

---

# ҚЫЛМЫСТЫҚ ҚҰҚЫҚ ЖӘНЕ ҚЫЛМЫСТЫҚ ІС ЖҮРГІЗУ

## УГОЛОВНОЕ ПРАВО И УГОЛОВНЫЙ ПРОЦЕСС

### CRIMINAL LAW AND CRIMINAL PROCEDURE

DOI 10.31489/2020L4/58-67

UDC 343.611.1

A.A. Biyebayeva<sup>1</sup>, A.M. Kalguzhinova<sup>2,\*</sup>, A.T. Zhumasheva<sup>3</sup>

<sup>1</sup> Academy of Justice under the Supreme Court of the Republic of Kazakhstan;

<sup>2</sup> NLC «Karagandy University of the name of academician E.A. Buketov»  
(E-mail: ardak\_22@mail.ru, aigul.kalguzhinova@ksu.kz, g\_aigul73@mail.ru)

#### **Revisiting the improvement of the criminal legislation of the republic of Kazakhstan on liability for the murder for hire**

The article is concerned with consideration of the signs of murder for hire, the identification of types of accomplices in the commission of murders for hire, the concept of hiring in the commission of a killing, the social grounds for increasing responsibility for these circumstances qualifying the killing. The authors carried out a historical and legal analysis of the customary law of Kazakhs, Soviet and modern domestic criminal legislation regulating responsibility for murders. The bases of differentiation of criminal responsibility for aggravated killing have been determined. The concept and signs of the composition of murder for hire are analyzed, the reasons for the imperfection of the legislative formulation of this aggravating sign are revealed. The empirical basis of the study is composed of the statistical data of the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan, analytical reviews, generalizations of judicial practice, published judicial practice of consideration of criminal cases on murders, as well as materials of criminal cases, acts of the «Taldau» forum, intended to ensure monitoring the quality of judicial acts, analysis of the results of the current activities of the courts, information support for litigants, practicing lawyers, use in scientific and research activities. The reliability of the obtained results is determined by the research methodology, analysis of theoretical and practical data. Studying the issues of correct legal assessment and effective prevention of the murder for hire, analysis of the ways of legal expression of this feature in the norm of criminal law constitute an important direction in the development of criminal law theory, designed to ensure the transition from the empirical basis of legal education to scientific one.

*Keywords:* lucrative killing, murder for hire, contract killing, qualification, judicial practice, warning.

#### *Introduction*

Murder is one of the most ancient crimes in the criminal law. This crime has always been given exceptional attention in the theory and history of domestic and foreign criminal law, as well as in law enforcement practice.

Among all the aggravating circumstances of murder, it seems relevant to consider the issues of qualification of a murder for hire, since its defining features are an additional object, lucre as a sign of the subjective side and the subjective corpus delicti.

The tendency to commit murders by organized groups, which are created for committing one or more murders, as well as murders for hire, appeared in the early 80s. The proportion of murders committed for motives of gain was 17 %, and at the end of the 90s this figure rose to 40 %. The significant public

---

\*Corresponding author's e-mail: aigul.kalguzhinova@ksu.kz

outcry caused by the murders for hire made it necessary to promptly take drastic measures to prevent them [1].

This qualifying feature was first provided in a clause «I» part 2 of article 111 of the Model Criminal Code for the member states of the Commonwealth of Independent States, approved by the resolution of the Interparliamentary Assembly of the member states of the Commonwealth of Independent States on February 17, 1996.

The 1997 Criminal Code of the Republic of Kazakhstan, in its original edition, stipulated responsibility for lucrative killing, as well as for a murder for hire (clause «z», part 2 of article 96 of the Criminal Code of the Republic of Kazakhstan). The Law of the Republic of Kazakhstan «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Combating Crime» dated May 5, 2000, sets forth this qualifying feature in the following edition «for lucrative motives, as well as for hire or associated with robbery, extortion or banditry».

On August 10, 1999, the General Prosecutor's Office of the Republic of Kazakhstan and the Ministry of Internal Affairs of the Republic of Kazakhstan approved a joint instruction «On an approximate unified approach of law enforcement agencies in assessing and classifying intended killings as «contract».

In the current domestic criminal legislation (Criminal Code of the Republic of Kazakhstan 2014), the analyzed qualifying feature is retained in the previous edition — «for lucrative motives, as well as for hire, or associated with robbery or extortion».

The content of murders for hire, like all other aggravating signs of murder, is disclosed in the normative resolution of the Supreme Court of the Republic of Kazakhstan dated May 11, 2007 «On the qualification of certain criminal offenses against human life and health».

However, the issues of qualification of murders for hire are still not clear enough, controversial and cause difficulties for law enforcement. In this regard, practical and scientific workers face difficulties in law enforcement when qualifying this type of murder, caused by the impossibility of an accurate interpretation of the qualifying signs of murders, the unclearness of their social grounds, unsuccessful legal expression of these grounds as part of a crime.

All of the above indicates the relevance of the research topic and the urgent need to solve many problems at the level of criminal law and law enforcement practice.

The purpose of this article is to develop a private criminal law theory, including a comprehensive study and analysis of criminal law and criminological problems arising in the process of qualifying and preventing murders for hire.

The object of the research is criminal law provisions stipulating liability for murders for hire, problems of their qualifications. We will also consider the issues of qualification of murder by association, since their defining feature is the subjective corpus delicti. A separate analysis of the data of official statistics, investigative and judicial practice for the designated category of cases was held.

#### *Methods and Materials*

The methodological basis of the research was formed by the dialectical method of cognition, which helped to reflect the relationship between theory and practice, the form and content of the research object, the dynamics of the development of quantitative and qualitative changes in the considered socio-economic and criminal-legal phenomena.

At the theoretical level of the research, the analysis and synthesis of historical, philosophical knowledge, criminal law and criminological views were used. In the course of the research, special methods were also used: the statistical method, the method of document research, the comparative jurisprudence.

#### *Results*

Responsibility for the murder was provided in all criminal laws in force on the territory of Kazakhstan. However, it should be noted that the first direct reference to the institution of murder for hire in the text of the law is given in Russian criminal law in the Voinsky Articles of April 26, 1715, published by Peter the Great, which provided liability for a murder committed by bribery.

Kazakh customary law distinguished between punishable and non-punishable murders; aggravated murder, mitigating murder and ordinary murder. Among all the types of murders in Kazakh society, the most widespread were revenge killings of feudal civil strife, usually accompanied by barimta and similar actions. At the same time, the murder has an open character.

The Criminal Codes of the RSFSR of 1922 and 1926, as well as the Criminal Code of the Kazakh SSR of 1959, highlighting the chapter «Crimes against life, health, freedom and dignity of the individual», provided responsibility for murder. The wording of aggravated killing varied:

- out of greed, jealousy and other base motives, etc. (Criminal Code of the RSFSR 1922 and 1926),
- out of lucrative motives (Criminal Code of the Kazakh SSR 1959).

We also consider it important to note that the Criminal Codes did not contain a general definition of murder, which many modern authors note as a disadvantage of these legislative acts.

A qualitatively new stage in the development of national criminal law should be considered the period from the moment of proclamation of the state sovereignty of Kazakhstan (Declaration «On the state sovereignty of the Kazakh SSR» of October 25, 1990) up to the present.

The 1995 Constitution of the Republic of Kazakhstan proclaimed a course for the creation of a democratic civil society in which human rights and freedoms are the highest values, and their observance and protection are recognized as the duty of the state. This approach determined the hierarchy of tasks of criminal legislation, the construction of the system of the Special Part of the Criminal Code.

On July 16, 1997, the Criminal Code of the Republic of Kazakhstan was adopted, on January 1, 1998 entered into force.

It is necessary to highlight the role of the Model Criminal Code in the formation of national criminal legislation for the member states of the Commonwealth of Independent States, approved by the resolution of the Interparliamentary Assembly of the member states of the Commonwealth of Independent States on February 17, 1996. The chapter «Crimes against a person» begins precisely with the regulation of criminal liability for crimes against life. Article 111 of the Criminal Code provides the main, aggravating and special aggravating circumstances. Part 1 of Article 111 of the Criminal Code reveals the concept of murder, this is the deliberate deprivation of the life of another person. An aggravating sign of a criminal act is determined to be killing for lucrative motives, as well as for hire (clause «I», part 2 of article 111 of the Criminal Code). A feature of the Model Criminal Code is that it does not define specific types, terms and amount of punishments, but only indicates the category of the crime — all types of murder are designated as especially grave crimes.

At the same time, the adoption of the Criminal Code of the Republic of Kazakhstan does not mean that the reform of the criminal legislation has been completed. New stages in the development of national law are associated with the Concept of Legal Policy of the Republic of Kazakhstan (Decree of the President of the Republic of Kazakhstan dated September 20, 2002) and the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 (Decree of the President of the Republic of Kazakhstan dated August 21, 2009). Social grounds for improving legislation were taken into account when making amendments and additions to Article 96 of the Criminal Code of the Republic of Kazakhstan by the Laws of the Republic of Kazakhstan dated May 5, 2000, July 10, 2009, December 10, 2009, July 3, 2013.

The new Criminal Code of the Republic of Kazakhstan was adopted on July 03, 2014, entered into force on January 01, 2015. In the original edition, the article for murder, as well as the considered qualifying feature, is retained in the previous edition — «for lucrative motives, as well as for hire, or associated with robbery or extortion». The changes were expressed only in the numbering of paragraphs of the articles in Arabic numerals.

The laws of the Republic of Kazakhstan dated November 7, 2014 and December 27, 2019, aimed at improving liability for murder, differentiated criminal liability depending on the form of complicity and the age of the victim.

According to Part 1 of Article 99 of the Criminal Code, murder is recognized as unlawful intentional cause of death to another person. This definition of murder most fully reflects all the signs of a crime, and allows you to distinguish it from other crimes against life.

All murders are traditionally divided into three types: simple, qualified and privileged. A simple murder is a murder committed in the absence of at least one mitigating or aggravating circumstance (part 1 of article 99 of the Criminal Code). Privileged murders include components containing signs that mitigate criminal liability and punishment (Articles 100–104 of the Criminal Code). Qualified murder is a component containing signs that aggravate criminal liability and punishment (part 2–3 of article 99 of the Criminal Code). These signs are used by the legislator to construct a more dangerous type of acts, to establish new limits of punishment in the law.

In the current criminal legislation, the qualifying signs of a murder are located depending on their connection with certain elements of the crime: characteristics of the victims; features of the method of commission; committing murder by association; the motive for the murder; the complex of murder and other crimes; the purpose of the murder; multiple crimes; the setting of the murder. The rules for constructing compound norms used to form qualified murder cases comply with the requirements of legal technology.

### *Discussion*

Analysis of the criminal law literature indicates that there is no clear and reasonable approach to understanding murder for hire among scientists.

For example, E.F. Pobegailo considers «murder for hire» and «contract killing» as synonymous, interchangeable terms. Some researchers distinguish between these terms, proceeding from the fact that murder for hire presupposes material reward, and murder «for hire» can be committed without it [2; 41].

So, M.D. Shargorodsky notes that «The degree of public danger of a murder for hire (for material award) is much higher than contract killing, devoid of a lucrative basis. In our opinion, this is due to the fact that in case of a murder for hire, a higher degree of antisociality (individualism) is manifested both on the part of the hirer and on the part of the performer. Other, non-lucrative motives and motives that are; not specified in this qualified murder, cannot be ranked (and even by law enforcement officers) as aggravating or special aggravating circumstances» [3; 62].

A.N. Popov identifies three approaches to the relationship between the concepts of «murder for hire» and «contract murder»: 1) these concepts completely coincide; 2) the first concept in its content is covered by the second, because murder for hire presupposes material reward, and contract murder can be committed without material award; 3) the first concept in its content is broader than the second, because it is a contract murder that is lucrative, since it is committed for material reward, and murder for hire can be committed for other reasons. It seems that it is impossible to use something else instead of a legislative definition without a good reason, since such a substitution of concepts only leads to terminological confusion and does not contribute to the understanding of the provisions of the law [4; 97].

Generally, the disagreements between researchers are due to different interpretations of its motives.

We agree with M.V. Gevorgyan that, «creating this norm and placing murder for hire on a par with the commission of the same act out of lucrative motives and others, the legislator did not take into account the social danger and characteristic features of this type of crime. Secondly, in the theory of criminal law there is a problem of the ambiguity of the name of this type of murder, since first in the publicistic and then in the legal literature «murder but hire» received a more common name — «contract murder». Thirdly, «murder for hire» and «contract murder» are different types of murder, both in their etymological and criminal-legal content. Fourth, almost all types of qualified types of murders provided in Part 2 of Art. 99 of the Criminal Code of the Republic of Kazakhstan, can be committed for hire or by contract, which leads to an increased social danger of these crimes and the need for a more deeply scientific approach to their study» [5].

Some scholars refer to murder for hire only when the murder is committed for material reward. For example, L.A. Andreeva is fair to call murder for hire «a special case of murder for lucrative motives» and emphasizes that «it cannot be committed without an orientation toward material gain» [6; 8].

For example, R. worked as a sales representative at M.'s LLP. Due to the occurrence of financial problems at M.'s firm, he decided to conduct an audit and demanded that R. return the money, his debt amount was 3,055,219 tenge. Unable to pay the debts, R. asked the previously convicted A. to commit the murder of M.

A. told R. that this «job» would cost \$50,000, but R. said he could pay \$5,000.

A. agreed, invited Z. with him and called M. out of the house. A. got into M.'s car in the back seat and Z. sat next to him. A. told him that R. had ordered his murder, on this basis a quarrel arose between them. Z. intercepted M.'s hand, after which A. struck several blows with a screwdriver in the area of M.'s neck. Then they removed the gold ring from M.'s hand, pulled money out of his trouser pocket and fled the scene.

An act of forensic medical examination established that M.'s death occurred from acute blood loss, which developed as a result of a penetrating stab wound to the left lateral surface of the neck with complete intersection of the carotid artery.

By the decision of the collegium A. and Z. were sentenced to 19 and 16 years of imprisonment, respectively, with confiscation of property [7].

As we have already noted, most often, rewards are paid in money. But in separate cases, the courts face situations when a murder for hire and for lucrative motives is committed not for monetary, but for other material reward.

For example, U. hired G. and I. to kill her husband, promising them to hand over her husband's car. G. and I. in U.'s apartment strangled U.'s husband — V., who was in a state of strong alcoholic intoxication, after which V.'s corpse was drowned in the lake [8].

However, we cannot fully agree with L.A. Andreeva's statement that «lucrative motives are present only in the actions of the performer, and they are absent in the actions of the hirer» [6, 9], since judicial practice knows both examples of the presence of a lucrative interest in the organizer of the crime and the absence of such.

Other scholars admit the possibility of recognizing the murder as committed for hire and in cases where the murder was conditioned not only by material, but also by a different kind of reward. So, A.N. Krasikov adheres to the point of view that a murder for hire may not be associated with self-interest. In particular, he points out that a murder can be committed in the name of «moral gratitude» on the part of an influential hirer, in the name of like-mindedness, for a woman's consent to «pay off» for a murder with a criminal by sexual intercourse, etc. [9; 82]

There is no doubt that the murder can be committed on the grounds that A.N. Krasikov names. However, it is worth agreeing with the legitimacy of the issues raised in this regard by A.P. Popov: «Are there any signs of a simple murder in the cases indicated by A.N. Krasikov? Or, according to the scientist, for a murder to be recognized as committed for hire, it is enough to establish that the killer acted at the request of another person? Then where is the line between a murder for hire and a murder committed at the instigation of another person?» [10; 143]. Unfortunately, we did not find the answer to these questions in the cited publication.

Some scholars do not make the commission of a murder for hire conditional on any reward. The main sign of such a murder, in their opinion, is that the performer is not acting on his own initiative, but in the interests of the hirer. For example, E.A. Loginov believes that the characteristic feature of a murder for hire is not the motive of the performer of the crime, but his awareness that the murder is committed in the interests of another person in connection with the receipt of such order from the him. At the same time, the performer can be guided by any motives — both selfish and others (revenge, fulfillment of an official duty, solidarity, assertion of his authority in order to «show what he is capable of», etc.). Based on the above, E.A. Loginov concludes that the determining factor of a murder for hire should be considered the presence of the fact of the order (hiring) and the realization of this circumstance by the performer of the murder [11; 13]. If one follows this approach, then any murder that is not caused by the own initiative of the person executing it, should be classified as committed for hire.

As the analysis of the investigative and judicial practice shows, in the overwhelming majority of cases of hired murders there are «domestic» motives, long-term antagonism, there are also lucrative, political motives.

At the time, the Supreme Court of the USSR drew attention to the following mistakes that were made in determining the co-execution of a murder:

- participants in group beatings, whose intent was not aimed at taking the victim's life, are condemned as accomplices of the murder;

- do not prosecute persons who participated in the attack on the victim, but caused him less significant damage than other attackers; the circumstances indicating that these persons had intent to kill are not taken into account;

- actions of some of the co-perpetrators are regarded as complicity, despite the fact that they committed actions similar to those of other persons prosecuted for the murder;

- when the participants in the murder commit heterogeneous actions, it is not taken into account that co-perpetrators may also be persons whose actions were not only homogeneous, but also characterized by varying degrees of intensity or use of the instruments of crime;

- the persons who participated in the murder are not recognized as co-perpetrators of the murder (for example, A. held the victim with his hands, B. at that time hit him on the head with a hard object, which led to death); in this case, both persons are co-perpetrators of the murder, including A., although he did not strike the victim [12; 59].

As it can be seen, the Plenum of the Supreme Court of the USSR, referring to the variety of specific circumstances of co-execution in the murder, did not offer a generalized formulation of co-execution of this crime, limiting itself, in essence, to an analysis of the disadvantages of judicial practice.

It is also important to emphasize that co-executing does not exclude the distribution of roles between co-executors. It is necessary to establish that with the unity of intent, place and time of actions, each of them performed either the completely objective side of the murder, or some of its element.

The Supreme Court of the Republic of Kazakhstan also explains that when committing the murder of several persons, the intent of the co-perpetrators of the crime was aimed at killing several people and for its implementation they assigned roles among themselves, as a result of which each participant in the crime was directly involved in killing only one person, then the actions of each of them are also subject to qualification under paragraph 1 of part two of Article 99 of the Criminal Code.

Above, we pointed out that a joint instruction of the General Prosecutor's Office of the Republic of Kazakhstan and the Ministry of Internal Affairs of the Republic of Kazakhstan on August 10, 1999 approved the «Approximate unified approach of law enforcement agencies in assessing and classifying intended killings as «contract».

In particular, the following circumstances indicate the «contract» nature of the murder:

- the situation of the crime (the commission of murder during a «conflict» caused by the failure of one of the parties to comply with the terms of the contract), while intent is aimed at killing a specific person;
- the subject of the crime (sniper);
- weapons of a crime (sniper or automatic weapons, explosive devices and other means, the use of which leaves no chance for victims to survive);
- injured person (committed in connection with the socio-political or entrepreneurial activities of a person);
- the way the crime was committed (a «control» shot was fired, which is confirmed by the circumstances of the inspection of the scene of the incident and the corpse);
- motives for committing a crime.

Thus, a murder for hire can be defined as a murder committed by a person specially hired for this crime, acting primarily in the interests of the hirer with lucrative motives, in the most likely way for the unconditional deprivation of the victim's life.

It should also be noted that, according to the fair opinion of researchers, the characterization of murder «for hire» used by the legislator «obscures the grounds for establishing increased responsibility for this type of murder» and allows for ambiguous interpretation [13]. Considering the etymological, criminal-legal and criminogenic content of the concepts of a «contract murder» (joint instruction of the General Prosecutor's Office of the Republic of Kazakhstan and the Ministry of Internal Affairs of the Republic of Kazakhstan dated August 10, 1999), «murder for hire» [14] and «contract killing», we believe that the consolidation of the formulation of the qualifying feature «Murder by order» will clearly define the characteristics of the parties, reflecting the degree of public danger of this type of murder.

In accordance with the task set, we studied the statistical data of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan. The dynamic number of murders committed in the period 2006–2014 shows a tendency for a consistent decrease in the registration of this crime: from 1760 crimes in 2006 to 904 crimes in 2014. As you can see, decrease is almost by half.

Only in the period from 2008 to 2014 was the commission of a murder «out of lucrative motives, for hire or associated with robbery, extortion or banditry» singled out as an independent sign (clause «z», part 2 of article 96 of the Criminal Code of the Republic of Kazakhstan) — Table 1.

Table 1

**The structure of murders registered in Kazakhstan for 2006–2014**

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Murders	1760	1677	1642	1604	1387	1420	1267	1120	904
Including murders out of lucrative motives, for hire			133/ 8,1 %	120/ 7,5 %	112/ 8,1 %	121/ 8,5 %	100/ 7,9 %	105/ 9,4 %	76/ 8,4 %

As it can be seen, the dynamics of lucrative murders was characterized by constant fluctuations, which is reflected in Figure 1.

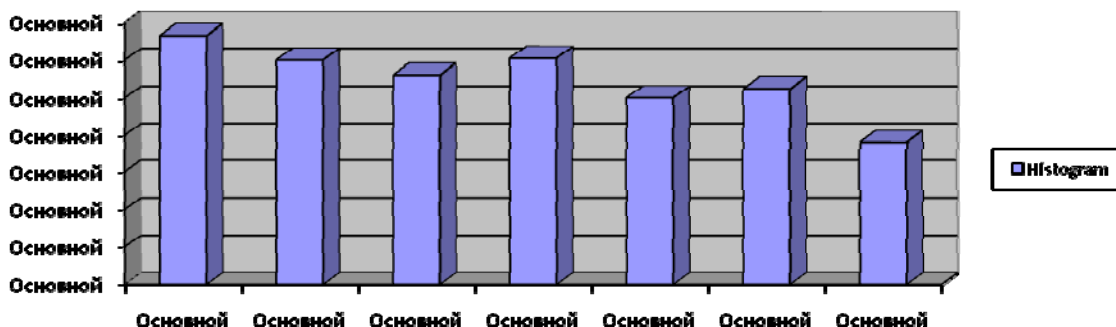


Figure 1. Dynamics of lucrative murders registered in Kazakhstan for the period 2008–2014

So, from 2008 to 2010, there is a decrease (by 8,3 %, by 7 %), then an increase by 7,4 %, again a decrease (by 21 %), a slight increase by 4,7 % and a significant drop by 38,2 % (from 105 to 76 crimes).

The proportion of murders committed for lucrative motives, in different years was 7,5 — 9,4 % of the total number of murders.

As A.A. Plaksina notes «most of the murders with aggravated circumstances are not widespread, and do not exceed five percent of the total number of murders, and the proportion of more than 2/3 of qualified types of murders is about one percent. The maximum related share is for murder associated with robbery — 10,32 %»[13].

The period of validity of the Criminal Code of the Republic of Kazakhstan in 2014 is insignificant and comes to five years. Changes in the registration of murders do not allow to allocate a clear trend. In 2015–2016, the number of murders decreased (by 4,9 %), in 2017 increased by 8,6 %, and again decreased, first by 14,5 % in 2018, then by 10,2 % in 2019.

At the same time, the indicator «preparation and attempted murder» was added in the form of a statistical report. According to statistics, in 2018, 120 murders were interrupted at the stage of preparation and assassination, in 2019 the number of unfinished murders was 98 crimes. Of the total number of identified murders, 22 % were committed with the use of weapons, including edged weapons — 37 %, firearms — 16 %.

A generalization of the judicial practice of consideration by the courts of the Republic of Kazakhstan of criminal cases on crimes provided by Article 99 of the Criminal Code of the Republic of Kazakhstan, based on the results of work for 2015, carried out by the Pavlodar Regional Court, showed the following. In the course of the generalization, the sentences and decisions under article 96, part 2 of the Criminal Code of the Republic of Kazakhstan, 1997, article 99, part 2 of the Criminal Code of the Republic of Kazakhstan, 2014 were studied. 39 sentences per 53 persons.

Criminological characteristics of the subjects of crime: the majority of the perpetrators are males — 45 persons (88,2 %), mainly at the age of 25 to 50 years — 26 persons (50,9 %), with secondary and secondary specialized education — 41 persons (80,3 %), while among the convicts — 1 person without education.

Most of the convicts are unemployed — 40 persons (78,4 %),

Most of the murders were committed by a group of persons, by a group of persons by prior agreement — 23 people (45 %), as well as in a condition of alcoholic intoxication — 39 people (76,4 %) [15].

The forms of state statistical reporting also contain information about the persons who committed crimes. So, according to the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan in 2019, the number of identified persons who committed murders was 681 people. 631 perpetrators were prosecuted with the referral of their criminal cases to the court.

In terms of age, they are represented by the following groups: «21–29 years old» — 189 people, «30–39 years old» — 205 people, «40–49 years old» — 148 people.

Persons prosecuted — males (611 people), unemployed (558 people), citizens of the Republic of Kazakhstan (625 people).

### Conclusions

Murder for hire as a special case of murder by association should always imply a lucrative motive on the part of the performer, due to the receipt of a material reward. The essence of this type of murder lies in the hiring relationship that arises between the performer and the hirer in the person of the organizer or instigator. These relations are always characterized by: 1) the presence of complicity (an agreement is reached between the hirer and the performer to commit the murder); 2) award for the «labor» of the performer (the performer can receive a reward both before and after the murder); 3) the performer's lucrative motives; 4) the actions of the performer are aimed at satisfying the interests of the hirer.

As it can be seen, responsibility for murder is differentiated depending on the form of complicity, however, the combination of three forms of complicity in one part (although at different points) entails the same qualifications. In turn, the same qualification under part 2 of article 99 of the Criminal Code of the Republic of Kazakhstan provides the same punishment, which seems to be incorrect from the point of view of taking into account the social danger of the crimes committed. Thus, the punishment for crimes of different degrees of social danger is equally increased.

Roughly, our generalization of theoretical and practical material related to murder for hire allowed us to develop proposals for improving the criminal law and criminological measures to counter murders for hire.

The social grounds for «murder for hire» are based on consideration of their content and include the need for stricter criminal law protection of public relations, taking into account the characteristics of the object, the objective side, the subjects and the subjective side of the «contract murder» as real phenomena of social reality.

The expression «for hired» used by the legislator «obscures the grounds for establishing increased responsibility for this type of murder» and allows its ambiguous interpretation. The introduction of the formulation of the qualifying feature «murder by contract» will clearly define the characteristics of the subject composition, reflecting the degree of public danger of this type of murder.

It seems appropriate to provide a liability for murder for lucrative motives, contract murder, murder associated with robbery or extortion in certain paragraphs of Article 99 of the Criminal Code of the Republic of Kazakhstan.

In order to inform the citizens of Kazakhstan about the criminal activities in an open format, we consider it necessary to highlight information on the spread of all types of qualified murders in the official criminal law and judicial statistics, including murder for hire.

### Список литературы

- 1 Статистические отчеты о зарегистрированных преступлениях и лицах, их совершивших за 2006–2019 гг. Информационный сервис «Правовая статистика». Официальный сайт Комитета по правовой статистике и специальным учетам Генеральной прокуратуры Республики Казахстан [Электронный ресурс] // Режим доступа: <http://service.pravstat.kz/portal/page/>.
- 2 Побегайло Э.Ф. Уголовная ответственность за убийства и борьба с ними / Э.Ф. Побегайло. — Воронеж, 1968. — 194 с.
- 3 Шаргородский М.Д. Избранные труды (по уголовному праву) / М.Д. Шаргородский. — СПб., 2004. — 347 с.
- 4 Загородников Н.И. Преступления против жизни по советскому уголовному праву / Н.И. Загородников. — М., 1961. — 274 с.
- 5 Геворгян В.М. Уголовно-правовая и криминологическая характеристика убийства по найму: автореф. дис. ... канд. юрид. наук. — М., 2008. [Электронный ресурс]. Режим доступа: <http://www.dslib.net/kriminal-pravo/ugolovno-pravovaja-ikriminologicheskaja-harakteristika-ubijstva-po-najmu.html>.
- 6 Андреева Л.А. Квалификация убийств, совершаемых при отягчающих обстоятельствах / Л.А. Андреева. — СПб., 1998. — 317 с.
- 7 Постановление Коллегии по уголовным делам Верховного Суда Республики Казахстан от 7 августа 2002 г. № 2а-365–02 [Электронный ресурс] // Информационная система «Параграф». — Режим доступа: [https://prg.kz/jurist\\_info](https://prg.kz/jurist_info).
- 8 Верховный Суд Республики Казахстан — Судебный кабинет — Форум Талдау — Банк судебных актов [Электронный ресурс]. Режим доступа: <http://office.sud.kz/courtActs/index.xhtml>
- 9 Красиков А.Н. Ответственность за убийство по российскому уголовному праву / А.Н. Красиков. — Саратов, 1999. — 183 с.
- 10 Попов А.Н. Квалификация убийства при отягчающих обстоятельствах / А.Н. Попов. — СПб., 2008. — 782 с.
- 11 Логинов Е.А. Правовые и криминалистические проблемы борьбы с убийствами, совершаемыми по найму / Е.А. Логинов. — СПб., 2011. — 418 с.
- 12 Рарог А.И. Вина в советском уголовном праве / А.И. Рарог. — Саратов, 1987. — 228 с.
- 13 Плаксина Т.А. Социальные основания квалифицирующих убийство обстоятельств и их юридическое выражение в признаках состава преступления: автореф. дис. ... д-ра юрид. наук. — Томск, 2006 / Т.А. Плаксина. [Электронный ресурс]



Режим доступа: <https://www.dissercat.com/content/sotsialnye-osnovaniya-kvalifitsiruyushchikh-ubiystvo-obstoyatelstv-i-ikh-yuridicheskoe-vyraz>.

14 Ежков А.В. Ответственность за убийство по найму по законодательству Российской Федерации: автореф. дис. ... канд. юрид. наук. — Нижний Новгород, 2006 / А.В. Ежков. [Электронный ресурс] Режим доступа: <http://docplayer.ru/35154227-Ezhkov-anatoliy-vadimovich-otvetstvennost-za-ubiystvo-po-naymu-po-ugolovnomu-zakonodatelstvu-rossiyskoy-federacii.html>.

15 Верховный Суд Республики Казахстан — Судебный кабинет — Форум Талдау — Обобщения судебной практики [Электронный ресурс]. Режим доступа: <http://office.sud.kz/forumTaldau/forum.xhtml?content=classes&category=10&article=1099&view=generalization>.

А.А. Биебаева, А.М. Калгужинова, А.Т. Жұмашева

## **Қазақстан Республикасының жалданып кісі өлтіру жауапкершілігі туралы қылмыстық заңнамасын жетілдіру жөніндегі мәселеге**

Мақала жалданып кісі өлтіру белгілерін, тапсырыспен кісі өлтірген кезде сыбайластарының түрлерін ажыратуды, кісі өлтіру кезіндегі жалдану ұғымын, осы кісі өлтіру жағдайларын саралау үшін жауаптылықты арттырудың әлеуметтік негіздерін қарастыруға арналған. Авторлар кісі өлтіргені үшін жауаптылықты реттейтін қазақтардың дағдылы құқығына, кеңестік және қазіргі заманғы отандық қылмыстық заңнамаға тарихи-құқықтық талдау жүргізді. Ауырлататын мән-жайлар кезінде кісі өлтіргені үшін қылмыстық жауаптылықты жіктеу негіздері айқындалды. Жалданып кісі өлтіру құрамы ұғымы және оның белгілері талданды, осы ауырлататын белгілерді заңнамалық тұжырымдаудың жетілмеу себептері анықталды. Қазақстан Республикасы Бас прокуратурасының құқықтық статистика және арнайы есепке алу жөніндегі комитетінің статистикалық деректері, аналитикалық шолулар, жалпыландырылған сот практикасы, қаралған кісі өлтіру туралы қылмыстық істердің жарияланған сот практикасы, сондай-ақ қылмыстық істердің материалдары, сот актілерінің сапасына, соттардың ағымдағы қызметтерінің нәтижелерінің талдауына, сот талқылауына қатысушыларды, тәжірибеден өтіп жүрген заңгерлерді ақпаратпен қамтамасыз етуге, ғылыми және зерттеу қызметтеріне пайдалануға мониторинг жүргізуді қамтамасыз етуге арналған «Талдау» форумының актілері зерттеудің эмпирикалық базасын құрады. Алынған нәтижелердің шынайылығы зерттеу әдістемесімен, теориялық және практикалық деректерді талдаумен анықталды. Жалданып кісі өлтіруді заң тұрғысынан дұрыс бағалау және тиімді алдын алу мәселелерін зерделеу, аталған белгінің қылмыстық заңның нормасындағы заңдық көрінісінің тәсілдерін талдау құқық құрудың эмпирикалық негізінен ғылыми негізіне өтуді қамтамасыз етуге тартылған, қылмыстық-құқықтық теорияны дамытудың маңызды бағытын құрайды.

*Кілт сөздер:* пайдакүнемдік ниетпен жасалған адам өлтіру, жалданып кісі өлтіру, тапсырыспен кісі өлтіру, саралау, сот практикасы, ескерту.

А.А. Биебаева, А.М. Калгужинова, А.Т. Жумашева

## **К вопросу о совершенствовании уголовного законодательства Республики Казахстан об ответственности за убийство по найму**

Статья посвящена рассмотрению признаков убийства по найму, выделения видов соучастников при совершении заказных убийств, понятия найма при совершении убийства, социальных оснований повышения ответственности за данные квалифицирующие убийство обстоятельства. Авторами проведен историко-правовой анализ обычного права казахов, советского и современного отечественного уголовного законодательства, регламентирующего ответственность за убийства. Определены основания дифференциации уголовной ответственности за убийство при отягчающих обстоятельствах. Проанализированы понятие и признаки состава убийства по найму, выявлены причины несовершенства законодательной формулировки данного отягчающего признака. Эмпирическую базу исследования составили статистические данные Комитета по правовой статистике и специальным учетам Генеральной прокуратуры Республики Казахстан, аналитические обзоры, обобщения судебной практики, опубликованная судебная практика рассмотрения уголовных дел об убийствах, а также материалы уголовных дел, акты форума «Талдау», предназначенные для обеспечения мониторинга качества судебных актов, анализа результатов текущей деятельности судов, информационного обеспечения участников судебных разбирательств, практикующих юристов, использования в научной и исследовательской деятельности. Достоверность полученных результатов определяется методологией исследования, анализом теоретических и практических данных. Изучение вопросов правильной юридической оценки и эффективной профилактики убийств по найму, анализ способов юридического выражения данного признака в норме уголовного закона составляют важное направление развития уголовно-правовой теории, призванное обеспечить переход от эмпирической основы правообразования к научной.

*Ключевые слова:* убийство из корыстных побуждений, убийство по найму, заказное убийство, квалификация, судебная практика, предупреждение.

## References

- 1 Statisticheskie otchety o zarehistrirovannykh prestupleniiakh i litsakh, ikh sovershivshikh za 2006–2019 hh. Informatsionnyi servis «Pravovaia statistika». Ofitsialnyi sait Komiteta po pravovoi statistike i spetsialnym uchetaм Heneralnoi prokuratury Respubliki Kazakhstan [Statistical reports on registered crimes and persons who committed them for 2006–2019. Information service «Legal statistics». Official website of The Committee on legal statistics and special records of the Prosecutor General's office of the Republic of Kazakhstan]. service.pravstat.kz Retrieved from <http://service.pravstat.kz/portal/page/> [in Russian].
- 2 Pobehailo, Je.F. (1968). Uholovnaia otvetstvennost za ubiistva i borba s nimi [Criminal liability for murders and the fight against them]. Voronezh: Izdatelstvo Voronezhskoho universiteta [in Russian].
- 3 Sharhorodskii, M.D. (2004). Izbrannye trudy (po uholovnomu pravu) [Izbrannye Trudy (selected works on criminal law)]. Saint Petersburg: Yuridicheskii tsentr Press [in Russian].
- 4 Zahorodnikov, N.I. (1961). Prestupleniia protiv zhizni po sovetскому uholovnomu pravu [Crimes against life under Soviet criminal law]. Moscow: Hosurizdat [in Russian].
- 5 Hevorhian, V.M. (2008). Uholovno-pravovaia i kriminologicheskaiа kharakteristika ubiistva po naimu [Criminal-legal and criminological characteristics of murder for hire]. *Extended abstract of candidate's thesis*. [www.dslib.net](http://www.dslib.net) Retrieved from <http://www.dslib.net/kriminal-pravo/ugolovno-pravovaja-i-kriminologicheskaja-harakteristika-ubiistva-po-najmu.html>. Moscow [in Russian].
- 6 Andreeva, L.A. (1998). Kvalifikatsiia ubiistv, sovershaemykh pri otiahchaiushchikh obstoiatelstvakh [Qualification of murders committed with aggravating circumstances]. Saint Petersburg: Yuridicheskii tsentr Press [in Russian].
- 7 Postanovlenie Kollehii po uholovnym delam Verhovnoho Suda Respubliki Kazahstan ot 7 avhusta 2002 hoda № 2a-365–02 [Resolution of the Criminal division of the Supreme Court of the Republic of Kazakhstan No. 2A-365–02 of August 7, 2002]. //Informacionnaja sistema «Paragraf». [prg.kz](http://prg.kz) Retrieved from [https://prg.kz/jurist\\_info](https://prg.kz/jurist_info).
- 8 Verhovnyi Sud Respubliki Kazahstan — Sudebnyi kabinet — Forum Taldau — Bank sudebnykh aktov [The Supreme court of the Republic of Kazakhstan — Judicial office — Forum Caldow — Bank of judicial acts]. [office.sud.kz](http://office.sud.kz) Retrieved from <http://office.sud.kz/courtActs/index.xhtml> [in Russian].
- 9 Krasikov, A.N. (1999). Otvetstvennost za ubiistvo po rossiiskomu uholovnomu pravu [The responsibility for the murder on the Russian criminal law]. Saratov: Izdatelstvo universiteta [in Russian].
- 10 Popov, A.N. (2008). Kvalifikatsiia ubiistva pri otiahchaiushchikh obstoiatelstvakh [Qualification of murder under aggravating circumstances]. Saint Petersburg: Yuridicheskii tsentr Press [in Russian].
- 11 Lohinov, E.A. (2011). Pravovye i kriminalisticheskie problemy borby s ubiistvami, sovershaemymi po naimu [Legal and forensic issues in the fight against murder]. Saint Petersburg: Yuridicheskii tsentr Press [in Russian].
- 12 Rarog, A.I. (1987). Vina v sovetском uholovnom prave [Guilt in Soviet criminal law]. Saratov: Izdatelstvo universiteta [in Russian].
- 13 Plaksina, T.A. (2006). Sotsialnye osnovaniia kvalifitsiruiushchikh ubiistvo obstoiatelstv i ikh yuridicheskoe vyrazhenie v priznakakh sostava prestupleniia [Social grounds of circumstances that qualify murder and their legal expression in the elements of the crime]. *Extended abstract of Doctor's thesis*. [www.dissercat.com](http://www.dissercat.com) Retrieved from <https://www.dissercat.com/content/sotsialnye-osnovaniya-kvalifitsiruyushchikh-ubiistvo-obstoyatelstv-i-ikh-yuridicheskoe-vyraz>. Tomsk [in Russian].
- 14 Ezhkov, A.V. (2006). Otvetstvennost za ubiistvo po naimu po zakonodatelstvu Rossiiskoi Federatsii [Responsibility for murder for hire under the legislation of the Russian Federation]. *Extended abstract of candidate's thesis*. [docplayer.ru](http://docplayer.ru) Retrieved from <http://docplayer.ru/35154227-Ezhkov-anatoliy-vadimovich-otvetstvennost-za-ubiistvo-po-naymu-po-ugolovnomu-zakonodatelstvu-rossiyskoy-federacii.html>. Nizhnii Novgorod [in Russian].
- 15 Verhovnyi Sud Respubliki Kazahstan — Sudebnyi kabinet — Forum Taldau — Obobshcheniia sudebnoi praktiki [The Supreme court of the Republic of Kazakhstan — Judicial office — Forum Taldau — Generalization of judicial practice]. [office.sud.kz](http://office.sud.kz) Retrieved from <http://office.sud.kz/forumTaldau/forum.xhtml?content=classes&category=10&article=1099&view=generalization> [in Russian].