

INFORMATION NOTE PREPARED BY HUMAN RIGHTS ORGANIZATIONS OF KAZAKHSTAN TO FIONNUALA D. NI AOLAIN, UN SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM, IN CONNECTION WITH THE FORTHCOMING VISIT TO THE REPUBLIC OF KAZAKHSTAN¹

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INTRODUCTION

The Republic of Kazakhstan, a former Soviet Union republic, gained independence in 1991. It has a territory of more than 2.7 million square meters and is located in the centre of the Eurasian continent bordering on Russia in the north and west, on China in the east and on other Central Asian states, i.e. Kyrgyzstan and Uzbekistan in the south. As of 2019, the population of Kazakhstan is over 18 million people, of which 70% are the Kazakhs and about 20% are the Russians. Several dozens of other nationalities, including the Uzbeks, Uighurs, Tatars, Ukrainians, Germans and Koreans, live in the republic. The main religions in Kazakhstan are Islam (Hanafiyah of Sunni Islam), which is practiced by the majority of population (Turkic people), as well as Christianity (the Russian Orthodox Church).

According to the studies of the majority of intergovernmental and international human rights organizations, the Republic of Kazakhstan is regarded as unfree country with authoritarian political regime, which is characterized by infringements of political rights and civil liberties, including the right to freedom from torture and other cruel treatment and the right to fair justice along with the relatively high figures of performance of economy, competitive performance and development of human capital.

The 2018 overall rating of the Freedom House “Nations in Transit”², which is included in the indices of the World Bank, provides the following results³:

- election process – 6.75;
- development of civil society – 6.75;
- independent mass media – 6.75;
- democratic management at the national level – 6.75;
- democratic management at the local level – 6.50;
- institutional development and independence of justice – 6.75;
- corruption – 6.71.

According to the 2017 International Press Freedom Index of the International Press Protection Organization “Reporters Without Borders”, Kazakhstan was ranked 158th out of 180 countries.

The Republic of Kazakhstan faced the problems of radicalization, violent extremism and terrorism in the first half of 2000s, facing a number of acts of terrorism in the west and south of the country over the last 15 years. According to our opinion, these problems were related to both external factors (i.e. penetration of the radical forms of Islam) and internal reasons (i.e. strong social differentiation, social and economic problems, high corrupt practices of government authorities, primarily, law enforcement agencies and absence of independent and impartial judiciary). The growing security threats under the authoritarian political regime have resulted in significant reforms of the Kazakhstani legislation, institutions and law enforcement practice having significantly affected the enforcement and observance of political rights and civil freedoms and having resulted in their severe restrictions and major violations as compared to international standards and commitments of Kazakhstan under the international human rights treaties ratified by it.

² See: URL: <https://freedomhouse.org/report-types/nations-transit>

³ According to a scale from 1 through 7, where 1 – is the highest index and 7 – is the lowest index.

1. FIGHT AGAINST TERRORISM IN THE REGIONAL CONTEXT: HUMAN RIGHTS ASPECT

In Kazakhstan, like in some other Central Asian countries, there are several problems related to observance of human rights in the course of fighting against terrorism. Firstly, this includes violations of fundamental rights and freedoms, specifically, the right to freedom of conscience, religion or belief, freedom of speech and expression of opinion, freedom of peaceful assembly and association, freedom of movement, etc. The state represented by the security or relevant agencies controls information space by treating one act as an act of terrorism and another act as incitement of discord, thus having a tool for prosecution of political opponents and dissenters.

Secondly, when it comes to security problems in Kazakhstan and Central Asia, many experts like government agencies and regional organizations principally use the terms “terrorism” and “extremism” using them separated by a comma or interrelated to each other without paying due regard to their definition, essence and difference.

Thirdly, in Kazakhstan like in the Central Asia and other ex-Soviet countries, the counter-terrorism efforts are mainly associated with law enforcement agencies and security agencies; therefore, they are strongly politicized and securitized. The human rights aspect is in no way highlighted in the current counter-terrorism programs since the power method continues to prevail. Moreover, the authority of security agencies is extending, and the matters of access, collection and storage of personal data are arising.

Cooperation and acceptance of the Russian and Chinese experience both bilaterally and within the framework of regional organizations, i.e. the Collective Security Treaty Organization (CSTO) and Shanghai Cooperation Organization (SCO), directly affect the implemented practices and adoption of repressive laws and amendments to the existing legislation.

The excessive securitization of terrorism problems, on the one hand, perpetuates a manual control over the political activities at the local level, expression of opinion and filtration of political protest acts. On the other hand, it creates the problems related to mythologization and scaremongering, misunderstanding and phobias associated with the word “terrorism” across the population. The dissatisfaction with the official position on the role of religion in the political management of the state as well as with the activities of the official representatives of Ummahs predetermined the organizational separation of Islamic communities in the Central Asian countries and formation of various radically-minded organizations, associations and movements.

Fourthly, each Central Asian country has its own legal enactments that classify one act or another as terrorism (or extremism), while there is no unified definition being common for all countries in the region. Moreover, the laws and wordings used therein are basically identical to each other and, in their turn, to the Russian legislation. There is much in common between the counter-terrorism strategies of Kazakhstan and Russia in terms of juridical and legal framework, role of security services and crisis management. In this regard, there is no communication strategy in the country in principle, therefore, the matters of social media and communications in counter-terrorism efforts are strongly politicized and securitized and are considered in terms of threats rather than in terms of opportunities.

For example, within the framework of CSTO, such definitions are absent; moreover, Uzbekistan and Turkmenistan are not members of CSTO. In the Shanghai Cooperation Organization, the Shanghai

Convention on Combating Terrorism, Separatism and Extremism (Clause 3 of Part 1 of Article 1) provides for the following definition of extremism: “*extremism shall be any act focused on violent upheaval or violent retention of power and also on dismantlement of statehood as well as violent offense against public safety, including formation for the above purposes of illegal military groups or participation in them, and prosecuted criminally in accordance with national legislation of the Parties*”⁴. How does this definition differ from the definition of “terrorism” considering that, from a legal viewpoint, many elements virtually repeat each other?! Furthermore, Turkmenistan is not a member of SCO.

Fifthly, notwithstanding the fact that Kazakhstan and Central Asian countries rank relatively low in the country ranking of terrorist threat level (the lower a position is, the less is a threat), some events that were classified as the acts of terrorism have become a catalyst of activation of counter-terrorism actions. For the relatively insignificant period starting from 2011, the prevention of growth of terrorism threat, religious extremism as well as improvement of the population’s literacy about religion have become one of the main tasks that the state and society face.

The actual manifestation of the above threats resulting in physical and verbal actions of representatives of criminal elements against central and local government authorities has enabled the state to take a set of legislative, judicial-and-administrative and investigative-and-prompt actions for minimization of risks and consequences provoked by de facto problems encountered. This, in its turn, has given rise to actualization and provocation of the broad massaging of the topic of radicalization of Islam in the political and social discussion of Kazakhstan. Not only the rabble-rousing politicians but also some experts and media drew attention of the public to the religious sphere with ever increasing frequency using this topic for both implementation of private interests and distraction of attention of population from the more critical issues (i.e. growth of social unrest or rise in prices or tariffs) showing concurrently to the public that people related to terrorist organizations and their ideology will be punished, in particular, by a long-term imprisonment, deprivation of nationality, etc.

In the context of the growing number of cases related to extremism, incitement of discord and terrorism (ideology support, financing, trips to/participation in the active combat zones, i.e. Syria, Donbas, terrorist propaganda), on the one hand, and the ambiguous terminology used in these cases, on the other hand, a campaign for improvement of legal literacy about the matters of terrorism is required. Civilians require further understanding of what is prohibited and what law permits, and what words, phrases or postings may be regarded as incitement of discord, extremism or terrorism. It is obvious that, for convicting a person on such charges, it is necessary to prove the presence of prejudicialness and existence of the facts of incitement of hatred and calls for violence.

The experts note that it is necessary to develop a mechanism of assessment of the incitement of discord and enhance the possibilities of forensic psychological-and-language examination⁵. However, when it comes to publications in the social networks, this matter becomes even more problematic since it is extremely difficult to judge the intent of posting, i.e. words rather than real physical actions⁶.

⁴ See: Shanghai Convention on Combating Terrorism, Separatism and Extremism dated 15 June 2001 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z020000316_

⁵ See: Article 174 of the Criminal Code of the Republic of Kazakhstan. May anybody be tried for comments in social networks?

URL: <https://factcheck.kz/glavnoe/statya-174-uk-rk-mozhno-li-popast-pod-sud-za-kommentarij-v-socsetyax/>

⁶ See: A.Gusarova. Online freedom in Kazakhstan: crime and punishment.

URL: <https://caa-network.org/archives/11200>

Obviously, it is very difficult for the state to keep a balance between the freedom of speech and expression in online space, on the one hand, and the national security, on the other hand⁷. The discussion on this issue continues throughout the entire world. Some countries cope with those problems better and some countries fail to do so. Some countries have controversial laws and their application is disputable, while other countries adopted the laws containing precise wordings and invest in raising the level of awareness and education of people. It is obvious that there is no prescription or universal formula for dealing with these matters. However, it is important to note that this is about the people who need to be trained and educated as to how to use social networks and legal provisions regulating the same.

Ultimately, the problems of terrorism and radicalization in the region concern more the third security category, i.e. the security of regime rather than the security of people. The questions of routes and origin of extremism and radicalism are almost never raised since, as shown by experience, the reasons for this lie in the social and economic problems and, consequently, the lack of identification of population by the national state because of the low level of life of the public. At the end, these problems are at core internal and home-grown to a greater extent.

2. BRIEF OVERVIEW OF THE DEVELOPMENT OF COUNTER-EXTREMISM AND COUNTER-TERRORISM LEGISLATION, INCLUDING THE EXISTING INSTITUTIONS AND DEFINITIONS

The actual uprising of radicalization, extremism and terrorism and its actualization due to the events of 11 September 2001 and subsequent military activities in Afghanistan and, subsequently, in Iraq and Syria had a significant impact on the drafting of repressive counter-extremism and counter-terrorism legislation in the Republic of Kazakhstan as well as the law enforcement practice.

The escalation of political situation within the country due to the formation of the opposition movement at the end of 2001 and, subsequently, the political party “Democratic Choice of Kazakhstan” (DCK), which were liquidated judicially and declared extremist organizations twice, in 2005 and in 2018, in its turn, also affected this process.

In 2005, the DCK party was declared an extremist organization and was liquidated because of the fact that, following the parliamentary elections of 2004, it did not accept the elections results and made the statement that the party reserves the right to call on citizens for acts of civil disobedience. The judicial authorities of Kazakhstan determined, based on the conclusion of the state experts, philologists, psychologists and political experts, that a possible call for acts of civil disobedience is a call for acts of violence and, despite the fact that the concept of civil disobedience is widely known in the world as the concept of non-violent resistance and that the party did not call for acts of civil disobedience and that no acts were carried out and that the party has never called for, or carried out, violence, it was liquidated as an extremist organization.

In 2018, the DCK movement was declared an extremist organization again (although it existed in the social networks only) and was liquidated by court on the initiative of the General Prosecutor’s Office of Kazakhstan since, according to it, *“through the social networks, messengers, distribution of leaflets addressing various population groups, it proactively incited the citizens of Kazakhstan to*

⁷ See: Anna Gussarova, Countering Extremism vs. Freedom of Online Expression: The Case of Kazakhstan. URL: <http://centralasiaprogram.org/wp-content/uploads/2018/01/Gussarova-CAP-Fellows-Paper-January-2018.pdf>

*join DCK, formed a negative image of the authorities in power, provoked protests, consistently excited social hostility and discord*⁸. In the meantime, no evidence to prove that the movement called for violence or carried out violence has been provided.

The events occurred in Georgia (2003), Ukraine (2004 and 2013) and in the neighbouring Kyrgyzstan (2005), the so called “colour revolutions” as well as the waves of protests, uprisings and revolutions in the Arab world in 2011 (Tunisia, Egypt, Libya, Syria, Yemen), taking into account the authoritarian political regime, also affected the tightening of Kazakhstan legislation and law enforcement practice. The fight against threats of violent extremism and terrorism came in very handy for the authorities in a number of authoritarian states for using it as a pretext for prosecution of political opposition and civil society activists and declaring them extremists.

The Constitution of the Republic of Kazakhstan⁹ contains a number of constitutional norms focused on combating the terrorist threats. Thus, Clause 2 of Article 10 of the Constitution of the Republic of Kazakhstan states: *“A citizen of the Republic may not be deprived of his/her nationality or may not be deprived of the right to change his/her citizenship nor may he or she be expelled from Kazakhstan. The deprivation of nationality shall be permissible only by a court judgment for the commitment of crimes of terrorism as well as for causing other grievous harm to the vital interests of the Republic of Kazakhstan”*. Taking into account that the legislation of the Republic of Kazakhstan does not permit a dual citizenship, this constitutional norm creates the situation of statelessness. For more details, please see Section 4 of this Information Note.

Despite the fact that the open-ended moratorium on execution of death sentences in Kazakhstan has been in force since 1 January 2004, Clause 2 of Article 15 of the Constitution of the Republic of Kazakhstan states: *“No one shall have the right to put a person to death arbitrarily. Death penalty shall be established by law as an exceptional measure of punishment for the crimes of terrorism associated with the loss of life as well as for the extremely serious crimes committed in the time of war with granting to the sentenced person the right to petition for mercy”*.

The preservation in Constitution and criminal law of the Republic of Kazakhstan (in 17 constituent elements of crimes) of such measure of punishment as death penalty does not allow the Republic of Kazakhstan to accede to the Second Optional Protocol focused on abolishment of the death penalty.

Article 5 of the Constitution of the Republic of Kazakhstan deals with public associations to which special constitutional restrictive provisions apply:

“2. Public associations shall be equal before the law. Illegal interference of the state in the affairs of the public associations and of the public associations in the affairs of the state as well as the imposition of functions of the government authorities on the public associations shall be prohibited.

3. The formation and operation of public associations whose objectives or actions are focused on dismantlement of statehood, violation of the integrity of the Republic, destruction of national security, incitement of social, racial, national, religious, class and tribal discord, as well as the formation of paramilitary forces shall be prohibited”.

⁸ See: URL: <https://ru.sputniknews.kz/politics/20180313/4887474/partiya-ablyazova-dvk-ekstremizm-priznaniye.html>

⁹ See: Constitution of the Republic of Kazakhstan (adopted by the Republican referendum of August 1995) (as amended and supplemented on 10 March 2017) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/K950001000_

Taking into account that the terms “violation of integrity”, “destruction of security”, “incitement of discord” (moreover, the criminal law uses the term “agitation” instead of the term “incitement”) and, specifically, agitation of “social” or “class” discord, are too general, are not legally defined and do not correspond to the principle of legal certainty and predictability; due to the rather arbitrary interpretation of such terms, they result in serious violations of political rights and civil liberties in the law enforcement practice. For more details, please see Sections 7 through 10 of this Information Note.

The same is relevant to the term “extremism”, which is widely used in Kazakhstan legislation. It significantly differs from the term “violent extremism” being customary in the international law, and its broad interpretation allows unreasonable restrictions of political activities, including the restrictions of the rights to create parties and public associations and the rights to peaceful assembly, etc.

This term is contained in Clause 1 of Article 1 of the Law of the Republic of Kazakhstan “On Combating Extremism”¹⁰, which was adopted right in 2005 and is characterized by a rather broad description:

“1) extremism shall mean the organization and/or commitment:

- by individual and/or legal entity or by a group of individuals and/or legal entities of actions on behalf of organizations declared extremist organizations in the prescribed manner;

- by individual and/or legal entity or by a group of individuals and/or legal entities of actions pursuing the following extremist objectives:

- dismantlement of statehood, infringement of sovereignty of the Republic of Kazakhstan, integrity, inviolability and inalienability of its territory, destruction of national security and national defence capability, violent upheaval or violent retention of power, formation, management and participation in illegal paramilitary forces, organization of armed insurrection and participation in it, incitement of the social or class discord (political extremism);

- incitement of racial, national and tribal discord including associated with violence or calls for violence (national extremism);

- incitement of religious strife of discord including associated with violence or calls for violence as well as application of any religious practice posing a threat to the safety, life, health, morality of citizens or civil rights and freedoms (religious extremism)”.

Moreover, the terms “terrorism” and “extremism” in legislation of Kazakhstan are used interrelated to each other, thus carrying all counter-terrorism tools and strategies over the counter-extremism efforts by interpreting them rather arbitrarily.

Since the counter-terrorism and counter-extremism efforts fall within the competence of the national security agencies, the legislation in this sphere was constantly developed by extending the authority of the national security agencies and expanding the area of their competence.

Thus, Article 4 of the Law of the Republic of Kazakhstan “On National Security”¹¹ provides that *“the types of the national security shall be:*

¹⁰ See: Law of the Republic of Kazakhstan “On Combating Extremism”, No.31-III, dated 18 February 2005 (as amended and supplemented on 28 December 2016) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: http://adilet.zan.kz/rus/docs/Z050000031_

¹¹ See: Law of the Republic of Kazakhstan “On the National Security of the Republic of Kazakhstan”, No. 527-IV, dated 6 January 2012 (as amended and supplemented on 28 December 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/Z1200000527>

- 1) *public safety – the state of protection of life, health and well-being of citizens, moral and spiritual values of Kazakhstan society and social security system from the present and potential threats, upon which the integrity and stability of the society is ensured;*
- 2) *military security – the state of protection of the vital interests of individual and citizen, society and state from the internal and external threats related to the use of military force or intention of its use;*
- 3) *political security – the state of protection of foundations of the constitutional system, operation of the government authorities system and the state administration procedure from the present and potential threats, upon which the observance of rights and liberties of citizens, social groups and balance of their interests, stability, integrity and favourable international situation of the state;*
- 4) *economic security – the state of protection of the national economy of the Republic of Kazakhstan from the present and potential threats, upon which its sustainable growth and economic independence are ensured;*
- 5) *information security – the state of protection of information space of the Republic of Kazakhstan as well as the rights and interests of individual and citizen, society and state in the area of information from the present and potential threats, upon which the sustainable growth and information independence of the state are ensured;*
- 6) *environmental security – the state of protection of the vital interests and rights of individual and citizen, society and state from the threats resulting from the human impact and weathering on the environment”.*

Besides the fact that a number of definitions used in this Article do not correspond to the principle of legal certainty and predictability, it is also expressly inconsistent with international law.

Thus, for determining what limitations of rights and freedoms are legal, founded or adequate to the intended purpose of their imposition, various “soft law” documents, including the general comments and resolutions of the UN convention bodies (for example, UN Human Rights Committee), judgments of the European Court of Human Rights as well as the Siracusa principles with regard to the provisions of the International Covenant on Civil and Political Rights concerning limitations and derogations (Siracusa Principles), are of great importance¹².

The state (national) security and public safety interests are one of such legal purposes of limitation of human rights and liberties determined in the international legal documents.

In the official text of the International Covenant on Civil and Political Rights (ICCPR) in English, which is posted on the United Nations Organization’s website, two different terms, i.e. the “national security” (“*gosudarstvennaya bezopastnost’*”) and “public safety” (“*obschestvennaya bezopastnost’*”)¹³, are used in the relevant articles.

In the official text of the Siracusa Principles in English, the terms “national security” and “public safety”¹⁴, which are translated into Russian in their official text as “*natsionalnaya bezopastnost’*” and

¹² See: United Nations Organization, Economic and Social Council, UN Sub-Commission for Prevention of Discrimination and Protection of Minorities. Siracusa principles of interpretation of the limitation and derogation provisions in the International Covenant on Civil and Political Rights. Adopted in May 1984 by a group of experts called by the International Commission of Jurists, International Association of Penal Law, American Association of the International Commission of Jurists, Urban Morgan Institute for Human Rights and International Institute for Theory and Practice of Criminal Law // Information website of ODIHR/OSCE Legislationline. URL: <http://legislationline.org/ru/documents/action/popup/id/14624>

¹³ See: International Covenant on Civil and Political Rights // Website of the Office of the UN High Commissioner for Human Rights. URL: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁴ See: Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights // Website of the International Commission of Jurists.

URL: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

“*obschestvennaya bezopastnost*”¹⁵, accordingly, are also used.

The Siracusa Principles contain explanations concerning the use of these terms.

Thus, the international legal documents establish the “national (state) security” and “public safety” as legal purposes of limitations of certain human rights and freedoms, which terms are not identical and have different definitions.

With regard to certain rights and freedoms they may be regarded as legal purposes, while in other cases they may be regarded as illegal.

Thus, according to the ICCPR, for example, the right to freedom of expression may be restricted for protection of the national security, the right to peaceful assembly and association may be restricted in the interests of the state security and public safety but the right to freedom of conscience and religion may be restricted only in the interests of the public safety.

Article 39 of the Constitution of the Republic of Kazakhstan contains the purposes of restrictions of certain rights and freedoms: “*1. The human and civil rights and freedoms may be restricted only by laws and only to the extent necessary for the protection of the constitutional system, enforcement of public order, protection of human rights and freedoms, the health and morality of the population*”¹⁶.

It should be noted that this Article does not specify the national security and the public safety as legal purposes of restrictions of certain rights and freedoms.

One might assume that “protection of the constitutional system” includes these purposes but these are assumptions only, although some logical confirmations of this may be found in the text of the Law of the Republic of Kazakhstan “On National Security”¹⁷.

Thus, Clause 6) of Article 1 of the Law (“The main definitions used in this Law”) defines the “***national interests of the Republic of Kazakhstan***” as *the entirety of the legally recognized political, economic, social and other needs of the Republic of Kazakhstan whose satisfaction affects the capability of the state to ensure the protection of human and civil rights, the values of Kazakhstan society and foundations of the constitutional system...*”.

Further, Clause 3) of Article 4 of the Law (“Types of the national security”) states that “***political security is the state of protection of foundations of the constitutional system, operation of the government authorities system and the state administration procedure from the present and potential threats, upon which the observance of rights and liberties of citizens, social groups and balance of their interests, stability, integrity and favourable international situation of the state...***”.

¹⁵ See: United Nations Organization, Economic and Social Council, UN Sub-Commission for Prevention of Discrimination and Protection of Minorities. Siracusa principles of interpretation of the limitation and derogation provisions in the International Covenant on Civil and Political Rights. Adopted in May 1984 by a group of experts called by the International Commission of Jurists, International Association of Penal Law, American Association of the International Commission of Jurists, Urban Morgan Institute for Human Rights and International Institute for Theory and Practice of Criminal Law // Information website of ODIHR/OSCE Legislationline.
URL: <http://legislationline.org/ru/documents/action/popup/id/14624>

¹⁶ See: Constitution of the Republic of Kazakhstan (adopted by the Republican referendum of 30 August 1995) (as amended and supplemented on 2 February 2011) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: http://adilet.zan.kz/rus/docs/K950001000_#z5

¹⁷ See: Law of the Republic of Kazakhstan “On National Security of the Republic of Kazakhstan”, No.527-IV, dated 6 January 2012 (as amended and supplemented on 12 November 2015) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/Z1200000527>

Basically, it follows from these wordings that they determine the state security or national security as construed in the international human rights documents as such purpose of restrictions of certain human rights and freedoms, although the definition set forth in Kazakhstan legislation is significantly broader and more vague as compared to the definition set forth in the Siracusa Principles.

Clause 1) of the same Article of the above Law specifies “1) *public safety means the state of protection of life, health and well-being of citizens, moral and spiritual values of Kazakhstan society and social security system from the present and potential threats, upon which the integrity and stability of the society is ensured*” as a type of national security, which creates yet more problems in ensuring the compliance of legal purposes of restrictions of human rights and freedoms, specifically, the right to freedom of conscience, religion or belief, with the international law requirements.

That is, public safety is treated as a type of the state or national security, which results in confusion of the terms that are different in the international law.

It should be noted once again that the legal purpose of restrictions of the right to freedom of conscience, religion or belief is the protection of public safety. The interests of the national or state security cannot be a legal purpose of restriction of the right to freedom of religion.

Thus, despite the fact that the definition of public safety itself, which is contained in Clause 1) of Article 4 the Law on National Security, generally complies with the definition accepted in the international law and set out in the Sirucasa Principles, Kazakhstan legislation considers it as a type of the national or state security.

This is inconsistent with international law, specifically, with the provisions of the International Covenant on Civil and Political Rights ratified by the Republic of Kazakhstan, and allows to restrict the right to freedom of conscience, religion or opinion in the interests of national security, which is inadmissible and specially stated in the UN Human Rights Committee’s General Comment No.22 to Article 18 of the International Covenant on Civil and Political Rights, which contains the guarantees of this right¹⁸.

We find it necessary to bring the national legislation of the Republic of Kazakhstan in this respect in line with the ratified international treaty and assumed international commitments in securing and protecting the human rights and freedoms, specifically, the right to freedom of conscience, religion or belief.

Clause 1 of Article 6 of the Law provides an extensive list of the national security threats, among which:

- “1) *falling level of law and order, including the rise in crime, including its organized forms, the merger of government authorities and criminal syndicates, terrorist or extremist organizations, the public officers’ protection of illegal capital turnover, corruption, arms and drugs traffic, which promote the fall of the level of protection of national interests;*
- 2) *degradation of demographic situation and deterioration of health of the population, including sharp decline in the birth rate and increase in the death rate;*
- 3) *uncontrolled migration processes;*

¹⁸ See: General Comment No.22 (48) to Article 18 of the International Covenant on the Civil and Political Rights adopted by the UN Human Rights Committee on 20 July 1993 in accordance with Clause 4 of Article 40 // Website of the Office of the UN High Commissioner for Human Rights. URL: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/21/Rev.1/Add.4&Lang=ru

- 4) lowering of the level and deterioration of the quality of the health care system, education and intellectual potential of the state;
- 5) loss of the cultural and spiritual heritage of the people of the Republic of Kazakhstan;
- 6) aggravation of the social and political situation expressed in the inter-ethnic and inter-religious conflicts, civil unrest;
- 7) activities focused on dismantlement of statehood including actions impinging on the unitary of the Republic of Kazakhstan, integrity, inviolability and inalienability of its territory, safety of guarded persons;
- 8) terrorism, extremism and separatism in any forms and manifestations;
- 9) investigative and subversive activities of the security services of foreign states, other foreign organizations and individual persons focused on causing damage to national security;
- 10) disruption of the activities of government agencies, violation of their uninterrupted operation, lowering of the management level in the country;
- 11) causing damage to economic security of the state including the use of strategic resources contrary to the interests of the state, resistance to innovation development and growth of investment activities, uncontrolled exports of capital and services outside the country, shadow economic growth;
- 12) deterioration of stability of the financial system;
- 13) decline in production, deterioration of quality, competitive performance, export and transit potential and availability of products and goods, reduction in supplies of the products and goods not manufactured in the Republic of Kazakhstan from other countries;
- 14) lowering of the level of the defence capability of the country, threat to inviolability of the state borders of, and use force against, the Republic of Kazakhstan, aggression upon it;
- 15) formation of the paramilitary forces not envisaged by legislation of the Republic of Kazakhstan;
- 16) falling level of protection of the information space of the country as well as national information resources from unauthorized access;
- 17) information influence on the public and individual consciousness related with deliberate misrepresentation of information and dissemination of misinformation in prejudice of the national security;
- 18) deterioration of environmental conditions, including deterioration of the drinking water quality, natural calamities and other natural and man-caused emergencies, epidemics and epizootic outbreaks;
- 19) causing damage to the national interests at the international level, political image and economic rating of Kazakhstan;
- 20) use of monetary resources and (or) other property received (arrived) from foreign states, international and foreign organizations, foreigners, stateless persons, for organizing and holding of meetings, political meetings, marches, protests and demonstrations as well as calls for participation in them, if their purpose is the incitement of racial, national, social and religious intolerance, class exclusiveness, dismantlement of statehood, infringement on the inviolability of the territory of the Republic, as well violation of other provisions of the Constitution, laws and regulations of the Republic of Kazakhstan or their holding threatens the public order and safety of citizens”.

Some of these threats, in particular, those specified in sub-clauses 6), 7), 16), 7) and 20) create the conditions for arbitrary application and prosecution of political opposition, dissenters and civil society activists.

Several dozens of articles specifying the crimes, which are classified as terrorist and extremist

crimes, have been introduced in the Criminal Code. For more details, please see Section 6 of this Information Note.

Besides the Law on National Security and the Law On Combatting Extremism, the counter-terrorism and counter-extremism efforts are also specified in a number of legal acts of the Republic of Kazakhstan, in particular:

- in the Law on the National Security Agencies¹⁹;
- in the Law on Combatting Terrorism²⁰;
- in the Law on Combatting the Legalization (Laundering) of the Proceeds of Crimes and the Financing of Terrorism²¹ (for more details, please see Section 6 of this Information Note);
- in the State Programme for Combatting the Religious Extremism and Terrorism for 2018-2022²²;
- in the Rules of Organization of the Counter-Terrorism Activities in the Republic of Kazakhstan²³;
- in the Rules of Drawing-Up and Submitting to the Government Authorities of the List of Entities and Individuals related to the Financing of Terrorism and Extremism²⁴ (for more details, please see Section 6 of this Information Note);
- in the Rules of Payment of Monetary Resources to the Individual included in the List of Entities and Individuals related to the Financing of Terrorism and Extremism for the Human Life Support²⁵ (for more details, please see Section 6 of this Information Notes);
- in the Rules of Determination and Payment of the Fee for the Information, which Helped to Prevent or Terminate the Act of Terrorism²⁶ and in many others.

Some of them contain the extremely disputable provisions in terms of the observance of human rights and freedoms. Thus, Clause 2 of the Rules of Burial of the Persons Died as a Result of Commitment of the Act of Terrorism or Its Termination by Security Agencies states that: “*The*

¹⁹ See: Law of the Republic of Kazakhstan “On the National Security Agencies of the Republic of Kazakhstan”, No.2710, dated 21 December 1995 (as amended and supplemented on 28 December 2017) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z950002710_

²⁰ See: Law of the Republic of Kazakhstan “On Combatting Terrorism”, No.416, dated 13 July 1999 (as amended and supplemented on 12 July 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z990000416_

²¹ See: Law of the Republic of Kazakhstan “On Combatting the Legalization (Laundering) of the Proceeds of Crimes and the Financing of Terrorism”, No.191-IV, dated 28 August 2009 (as amended and supplemented on 2 July 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z090000191_

²² See: Resolution of the Government of the Republic of Kazakhstan “On Approval of the State Program for Combatting the Religious Extremism and Terrorism in the Republic of Kazakhstan for 2018-2022”, No.124, dated 15 March 2018 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/P1800000124>

²³ See: Resolution of the Government of the Republic of Kazakhstan “On Approval of the Rules of Organization of the Counter-Terrorism Activities in the Republic of Kazakhstan”, No.1404, dated 22 December 2010 (as amended and supplemented on 2 April 2015) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/P1000001404>

²⁴ See: Joint Order of the Minister of Finance of the Republic of Kazakhstan, No.576, dated 20 November 2015, Minister of Justice of the Republic of Kazakhstan, No.34, dated 25 January 2016, General Prosecutor of the Republic of Kazakhstan, No.6, dated 20 January 2016, Minister of Foreign Affairs of the Republic of Kazakhstan, No. 11-1-2/539, dated 30 November 2015, Chairman of the National Security Committee of the Republic of Kazakhstan, No.17, dated 14 January 2016, and Minister of Internal Affairs of the Republic of Kazakhstan “On Approval of the Rules of Drawing-Up and Submitting to the Government Authorities of the List of Entities and Individuals related to the Financing of Terrorism and Extremism”, No.962, dated 25 November 2015 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V1500013007>

²⁵ See: Order of the Minister of Finance of the Republic of Kazakhstan “On Approval of the Rules of Payment of Monetary Resources to the Individual included in the List of Entities and Individuals related to the Financing of Terrorism and Extremism for the Human Life Support, No.613, dated 4 December 2015 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V1500012823>

²⁶ See: Resolution of the Government of the Republic of Kazakhstan “On Approval of the Rules of Determination and Payment of the Fee for the Information, which Helped to Prevent or Terminate the Act of Terrorism”, No.685, dated 9 November 2016 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/P1600000685>

bodies of the persons, the criminal prosecution of whom due to participation in terrorist activities has terminated because of their death resulted from the commitment by them of an act of terrorism as well as termination of the act of terrorism being committed by them, shall not be given for burial and the place of their burial shall not be reported”²⁷.

Since the criminal prosecution of such persons has not been terminated by rendering of a judgment of conviction, the established procedure for burial of these persons violates the principle of presumption of innocence and the rights of their relatives and friends.

The Law on Combatting Terrorism as well as the Law on Combatting Extremism provide a number of definitions of a general nature, which, in case of arbitrary interpretation, may result in violation of human rights and freedoms.

For example, Article 1 of this Law, which sets out the basic definitions, states that:

“...4) violent ideology means a system of the social theories, views and ideas justifying violence, including with the use of terrorist methods and techniques for achievement of political, religious, ideological and other purposes;

5) terrorism means violent ideology and practice of influence on decision-taking by government authorities, local government authorities or international organizations by the commitment or threat of commitment of violent and/or other criminal actions associated with frightening of the population and focused on causing damage to a person, society and state;

6) act of terrorism means the commitment or threat of commitment of explosion, burn or other actions creating the danger of loss of life, causing significant property damage or ensuing of other socially dangerous consequences, if such actions are performed for the purpose of violation of public safety, frightening of the population or influencing on taking decision by the government authorities of the Republic of Kazakhstan, foreign countries or international organizations as well as endangering the life of a person committed for the same purposes, as well as endangering the life of public officers or public figure committed for the purpose of termination of his/her public or other political activities or out of revenge for such activities;

6-1) call for commitment of an act of terrorism means the appeal made publicly or set forth in the published information material influencing the individual’s mind, will and behaviour in order to induce such individual to commit an act of terrorism;

12) financing of terrorism means a provision or collection of monetary funds and/or any other property, property rights or property benefits, as well as gifting, barter, donations, charity, providing information and other services or rendering of financial services to an individual or group of individuals or entity, committed by a person who has known about terrorist nature of their activity or that a given property, provided information, financial and other services will be used to carry out terrorist activity or providing terrorist group, terrorist organization, illegal paramilitary unit;...

14-1) terrorist materials mean any information materials containing information on the methods and techniques of commitment of an act of terrorism as well as evidence and (or) calls to carry out terrorist activity or substantiating or justifying the need to carry out such activity;

15) a terrorist group means the organized group pursuing the purpose of commitment of one or several crimes of terrorism ...

²⁷ See: Resolution of the Government of the Republic of Kazakhstan “On Approval of the Burial of the Persons, the Criminal Prosecution of Whom due to Their Participation in Terrorist Activities has Terminated Because of Their Death Resulted from the Commitment by them of an Act of Terrorism as well as Termination of the Act of Terrorism being Committed by Them”, No.858, dated 26 August 2013 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/P1300000858>

17) a terrorist organization means the organization that carries out terrorist activity or accepts the possibility of using terrorism in its activities, in respect of which a court judgment on declaring it a terrorist organization was rendered and became final and binding;

18) terrorist activity means the commitment of the following acts:

- organization, planning, preparation, financing and commitment of an act of terrorism;
- incitement to commit an act of terrorism;
- formation of illegal paramilitary unit, crime syndicate (crime organization), organized group for the purpose of commitment of an act of terrorism as well as participation in such groupings;
- recruiting, arming, training and using of terrorists;
- information or other aiding and abetting in organization, planning, preparation and commitment of an act of terrorism;
- propaganda of terrorism ideas, distribution of terrorist materials, including with the use of the mass media or telecommunication networks;
- provision of financial and legal aid and other assistance to terrorists as well as organizations, the activity of which has been declared a terrorist activity in accordance with legislation of the Republic of Kazakhstan, understanding that the specified actions will be used for carrying out terrorist activity or supporting a terrorist organization”.

In December 2017, the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan on certain matters of judicial practice concerning the application of legislation on the crimes of terrorism and extremism²⁸ was adopted; it contains the explanations to courts concerning consideration of the cases related to crimes of extremism. It also combines the crimes of terrorism and extremism into one category.

Generally, despite the fact that Kazakhstan legislation contains the required tools for efficient fighting against terrorism, it suffers from the presence of a number of wordings and definitions, which do not correspond to the principle of legal certainty and predictability, especially, when it comes to the definitions of “extremism” and “extremist activity”. It allows using such wordings for prosecution of political opponents, dissenters and civil society activists, restriction of the right to freedom of association and peaceful assembly, speech and expression of opinion, conscience and religion, and movement.

3. RIGHT TO LIFE

The legislation concerning the use of arms and riot control weapons does not guarantee the right to life and contradicts the principle of legal certainty and predictability. The grounds for using arms are very broad and pose a threat of using them without due regard to justifiable threats and proportionality.

The matters of the use of firearms are regulated by the Law of the Republic of Kazakhstan “On the Law Enforcement Service”²⁹. For example, Sub-clause 1 of Clause 1 of Article 61 of the Law states “...officers shall be entitled to use firearms and other weapons to hold off an attack against officers

²⁸ See: Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan “On Certain Matters of Judicial Practice concerning the Application of Legislation on the Crimes of Terrorism and Extremism”, No.11, dated 8 December 2017 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/P170000011S>

²⁹ See: Law of the Republic of Kazakhstan “On the Law Enforcement Service”, No. 380-IV, dated 6 January 2011 (as amended and supplemented on 11 July 2017) Published in: the “Kazakhstanskaya pravda” newspaper, dated 19 January 2011, No.17-18 (26438-26439); Bulletin of the Parliament of the Republic of Kazakhstan, January, 2011, No. 1 (2578), page. 4

and their family members, or persons performing official or public duty relating to the maintenance of public order, maintenance of public safety and fight against crime”.

Therefore, any attack, even without weapon, allows using the firearms, which does not correspond to the principle of proportionality of threats and of the riot control weapons used. Moreover, Kazakhstan legislation does not define the term “attack” or its characteristics as well, which may also subsequently result in manipulations by police in order to justify the use of firearms.

There is similar problem in Sub-clause 3 of the same Article, which also states about the use of firearms in case of “*attack against residential premises of individuals, facilities safeguarded by law enforcement agencies, premises of government authorities, holding off an attack against official or military detail*”. Again, it does not clearly specify which particular attack will serve grounds for using firearms. The literal sense of this clause allows using arms irrespective of the degree of danger to life in case of attacks of any kind.

Another example of broad interpretation of the Law’s provisions allowing using arms is Sub-clause 4) of the same Article: “*...detention of persons making resistance or caught during the commission of a crime, escaped from custody (other than those being under administrative arrest), detention of the armed persons*”.

The resistance may be both armed and unarmed. That being said, the use of arms is justifiable only in case of the armed resistance, however, the law granted wide powers to police officers, who may also shoot at the unarmed person “making resistance”.

Article 61 of the Law contains a list of eight sub-clauses that set out the grounds for using firearms, in which case the eighth sub-clause is stated as follows – “*in any other cases of justifiable defence and extreme necessity*”. Thereby, the law further expanded the scope of use of arms and allows treating broadly and arbitrarily any other cases of using arms as “*justifiable defence and extreme necessity*”.

Article 61 of the Law also seemingly contains an expression prohibition to use arms. Notwithstanding, it contains many vague wordings: “*2. The use of arms against women, persons with strong indication of disability, minors when their age is known or obvious shall be prohibited except for the armed attack, armed resistance, taking of hostage and vehicles, including aircraft, committed by them, or assault in concert*”.

Unfortunately, we have not find any regulatory legal acts that would contain the clear criteria of determination, for example, persons with strong indication of disability and minors when their age is known or obvious.

Rhetoric with regard to destruction fire and its equivalents create a deep and long-term threat to the human rights-based methods of law enforcement activities

The rhetoric of destruction fire, which is expressed in such frequent phrases as “killing of terrorists”, is formed within the Kazakhstan authorities in charge of fighting against terrorism and extremism³⁰.

³⁰ See: URL: <https://rus.azattyq.org/a/kazakhstan-prezident-nazarbaev-terakt-v-aktobe/27786474.html>

Such attitude entails the formation of presumption of using arms by law enforcement agencies without due regard to the requirements of adequacy and proportionality, control of all stages of operation and its planning in compliance with the standards of the right to life, even when it comes to terrorists.

Thus, after a terrorist attack in Aktobe in 2016, the following official comment was made³¹: *“Thirteen persons are killed, fourteen persons are wounded. Further, twenty persons who refused to participate in the crime at the stage of its preparation are already identified and questioned. Six persons are currently wanted. They move in two groups and one person moves separately from them. We are aware that they are staying in Aktobe now ...”*.

Right to life of officers of law enforcement agencies and armed forces when taking the counter-terrorism efforts

On 5 June 2016, in Aktobe, a group of the armed persons conducted attacks against the arms shops “Palada” and Pantera” as well as against military unit 6655 of the National Guard of the Republic of Kazakhstan.

As a result of the attack against the arms shop “Palada”, two salespersons of the shop, one guard of the security organization “Zhedel Kuzet” who arrived on the scene on call as well as civilian standing near the shop were killed. During the attack against the arms shop “Pantera”, one customer who visited the shop before fishing was killed. During the attack against military unit 6655 of the National Guard of the Republic of Kazakhstan, three military servicemen were killed.

The following was published in the media: *“According to updated information, the criminals conducted attacks against the arms shop “Palada” where a salesman and an officer of the security agency “Kuzet” were killed, as well as three patrol officers who arrived on the scene were gun-shot wounded. During the attack against the arms shop “Pantera”, the criminals killed one customer and wounded another customer. In a shout-out with the squad that arrived on the scene, all attackers were killed and one attacker was detained. For conducting an attack against the military unit, the criminals took over a public transport bus, debused a driver and passengers; and then, by using the bus, they rammed through the gates where, having penetrated into the territory were they started a random shooting, having killed three military servicemen and wounded four military servicemen. The officer of the guard, having engaged a weapon, terminated at attempt of further penetration into the territory of the unit and then, together with the squad that arrived on the scene, one criminal was killed and yet another was wounded and detained. Overall, in the course of conducting of a counter-terrorism operation in Aktobe, four criminals were killed, seven criminals were detained of whom two criminals are wounded. The operational-investigative activities for detention of the other criminals are being currently carried out”³².*

Consequently, with regard to safeguarding of the right to life of the officers of law enforcement agencies and citizens, the following conclusions may be made:

In accordance with the alarm response rules at the facilities, where explosives and firearms are stored, in case of emergency call, an operator of a security organization should send a crew to

³¹ See: URL: <https://www.ktk.kz/ru/news/video/2016/06/08/69995/>

³² See: URL: <http://otyrar.kz/2016/06/situaciya-v-aktobe-krasnyj-uroven-opasnosti-zhertvy-vypuskniki/>

facility. If within 10 minutes there is no reply from the crew, the operator should send the second crew at the address and, if there is no report on situation at the facility from the second crew, the operator should report to police.

In this case, one of the crew members who arrived at the facility was immediately shot and another one was wounded by attacker. Then the second crew and police got involved.

At the end of 2016, some enactments regulating the statutory regulations concerning the fight against terrorism and religious extremism were adopted in the Republic of Kazakhstan. After the making of amendments to the Law on Security Activities with regard to alarm response plan for the facilities, where firearms and explosives are stored, the Law regulates it as follows: in case of receiving an emergency call from such facilities, an operator shall send a crew and shall simultaneously communicate information to the police.

In terms of safeguarding of the right to life, it is more reasonable that signals of attack against facilities, where firearms or explosives are stored, directly arrive at the police. The private security organizations may be on daily duty at such facilities. If the attack signal was received by a specially trained specialized state fast-response detachment, this could have prevented the killing of several persons and further movement of attackers throughout the city.

Over thirty minutes passed between the first attack against the arms shops “Palada” and against the second arms shop “Pantera” and military unit No.6655. The local government authorities (law enforcement agencies) could not conduct a fast operation relating to disarming of suspects on their way to the second arms shop and to military unit No.6655 and enabled a half of attackers to escape through the military unit, to stop and take over a motor transport and to go away. The distance from the first attack point up to other points is not less than 2 km. That is, the local government authorities could not terminate the movement of the transport of suspects. It is possible to conclude that the local government authorities were not specially trained and were not ready for potential acts of terrorism.

Attacks were notified to all state defence agencies and military unit No.6655. It is reported that³³ an officer of military unit No.6655, Major Tastanbekov, who was accused of negligence by prosecutor’s office, testified as follows: *“No phone calls about the robbery of the arms shop “Palada” and theft of arms were received by the unit from the Department of Internal Affairs”*. That is, the local government authorities did not raise the alarm promptly, the military unit was not ready to hold off the attack and the arms shops continued to operate.

Thus, with regard to safeguarding of the right to life, the Kazakhstan legislation and law enforcement practice have problems related to both the use of firearms in the course of carrying out of anti-terrorism measures and compliance with safety measures with regard to the officers of law enforcement agencies.

4. RIGHT TO LEGAL PERSONALITY, CITIZENSHIP AND STATELESSNESS

As of the beginning of 2019, the Republic of Kazakhstan has not acceded to or ratified the Convention on the Status of Stateless Persons (1954) and Convention on the Reduction of Statelessness (1961).

³³ See: URL: <http://aktobetimes.kz/verhyaya-novost/2892-dva-oficera-stali-obvinyaemyi-v-dele-o-teraktah-v-aktobe.html>

The Constitution of the Republic of Kazakhstan (Clause 3 of Article 10)³⁴ establishes that the foreign citizenship of a citizen of the Republic shall not be recognized. This being said, according to the Code of Administrative Offences of the Republic of Kazakhstan (Part 2 of Article 496)³⁵ the failure to notify of acquiring of a foreign citizenship within the time limits established by the law of the Republic of Kazakhstan shall be punishable by a fine in the amount of two hundred monthly calculation indices³⁶ or administrative deportation outside the Republic of Kazakhstan. Moreover, the acquiring of a foreign citizenship forms the ground for terminating the Kazakhstan citizenship by this person in the form of loss of the citizenship of the Republic of Kazakhstan.

Before 2017, the then effective legislation of the Republic of Kazakhstan did not provide for deprivation of citizenship, and deprivation of citizen of his or her citizenship was generally considered as heritage of the totalitarian past when, in the Soviet Union, dissidents were deprived of citizenship and expelled from the country.

However, in March 2017, within the framework of the counter-terrorism and counter-extremism measures, amendments were made to the Constitution of the Republic of Kazakhstan (Clause 2 of Article 10), according to which the deprivation of citizenship of the Republic of Kazakhstan for the commission of terrorist crimes and for causing other grave harm to the vital interests of the Republic of Kazakhstan is now permitted by a court decision.

Moreover, the wording of this Article of the Constitution of the Republic of Kazakhstan is highly controversial since it is stated in the first phrase that: “*A citizen of the Republic may not be deprived of citizenship, of the right to change his/her citizenship as well as he/she may not be expelled from Kazakhstan*”, while in the second phrase it is stated that “*Deprivation of citizenship shall be permitted only by a court decision for commission of terrorist crimes as well as for causing other grave harm to the vital interests of the Republic of Kazakhstan*”.

Due to these amendments, a number of other legal enactments were amended accordingly.

Thus, Article 19 of the Law of the Republic of Kazakhstan “On Citizenship”³⁷ establishes that citizenship of the Republic of Kazakhstan shall terminate as a result of:

- 1) withdrawal from citizenship of the Republic of Kazakhstan;
- 2) loss of citizenship of the Republic of Kazakhstan;
- 3) deprivation of citizenship of the Republic of Kazakhstan.

According to Sub-Clause 5) of Article 21 of this Law, citizenship of the Republic of Kazakhstan, as mentioned above, terminates if a person has acquired a foreign citizenship, while in accordance with Article 20-1 the deprivation of citizenship of the Republic of Kazakhstan is permitted only by a court decision for commission of terrorist crimes as well as other crimes envisaged by the relevant

³⁴ See: Constitution of the Republic of Kazakhstan (adopted by the Republican referendum of 30 August 1995) (as amended and supplemented on 10 March 2017) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/K950001000_

³⁵ See: Administrative Violations Code of the Republic of Kazakhstan dated 5 July 2014 (as amended and supplemented on 28 December 2018 г.) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000235>

³⁶ The Monthly Calculation Index (MCI) is used for calculating allowances and other social payments as well as fine sanctions, taxes and other payments in accordance with legislation and is fixed annually by the Law on the Republican Budget. For 2019, it amounts to 2,525 tenge (about \$7).

³⁷ See: Law of the Republic of Kazakhstan “On Citizenship of the Republic of Kazakhstan” dated 20 December 1991 (as amended and supplemented on 16 April 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z910004800_

articles of the Special Part of the Criminal Code of the Republic of Kazakhstan, which resulted in causing other grave harm to the vital interests of the Republic of Kazakhstan.

Deprivation of citizenship as an additional punishment as included in Part 3 of Article 40 of the General Part of the Criminal Code of the Republic of Kazakhstan³⁸: *“The following additional punishments, along with the primary punishment, may apply to the person found guilty of commission of a criminal offense: ... 3-1) deprivation of citizenship of the Republic of Kazakhstan”*.

The following Article 50-1 “Deprivation of citizenship of the Republic of Kazakhstan” was added to the General Part of the Criminal Code of the Republic of Kazakhstan:

“1. Deprivation of citizenship of the Republic of Kazakhstan consists in the involuntary termination by the state of the stable political and legal relationship with convict person, which represents the aggregate of their mutual rights and obligations.

2. Deprivation of citizenship of the Republic of Kazakhstan shall not apply to the persons who committed a crime under the age of eighteen”.

The deprivation of citizenship, as an additional punishment, was included in a wide range of Articles of the Special Part of the Criminal Code of the Republic of Kazakhstan: 160 “Planning, preparation, initiation or conducting of a war of aggression”, 163 “Application of the prohibited tools and methods of conducting of a war”, 164 “Violation of the laws and customs of law”, 168 “Genocide”, 169 “Ecocide”, 170 “Mercenarism”, 173 “Attack against individuals and entities enjoying international protection”, 175 “Treason”, 177 “Infringement on life of the First President of the Republic of Kazakhstan – Elbasy”, 178 “Infringement on life of the President of the Republic of Kazakhstan”, 179 “Propaganda or public calls for violent upheaval or retention of power as well as violent upheaval or retention of power or dismantlement of the statehood of the Republic of Kazakhstan”, 180 “Separatist activity”, 181 “Armed insurrection”, 182 “Formation, management of extremist group or participation in its activity”, 184 “Subversion”, 255 “Act of terrorism”, 257 “Formation, management of terrorist group and participation in its activity”, 261 “Hostage taking”, 269 “Attack against buildings, installations, means of communications or their takeover”, 270 “Hijacking of aircraft, ship or railway vehicles”, 455 “Handing-over or leaving to enemy of the means of war”.

In some cases, such additional punishment is imposed not on all components of the relevant crime but only where severe consequences occur.

Besides the fact that such statutory provisions violate the principle of legal certainty and predictability, in particular, by using the legally undefined term “other grave harm to the vital interests of the Republic of Kazakhstan”, they give reasons for creating the situation of statelessness, which expressly contradicts the UN objectives of statelessness reduction.

Since the legislation of the Republic of Kazakhstan does not provide for dual citizenship, deprivation of a citizen of the Republic of Kazakhstan of his/her citizenship for the commission of terrorist crimes as well as the crimes, which resulted in causing other grave harm to the vital

³⁸ See: Criminal Code of the Republic of Kazakhstan dated 3 July 2014 (as amended and supplemented on 21 January 2019) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/K1400000226>

interests of the Republic of Kazakhstan, makes such citizen a stateless person with all ensuing political and legal consequences.

5. THE RIGHT THE RIGHT TO LIBERTY AND SECURITY OF PERSON, TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, RIGHTS OF PRISONERS, INCLUDING THOSE WHO HAVE BEEN IMPRISONED FOR CRIMES OF EXTREMISM AND TERRORISM

The Penal Code of the Republic of Kazakhstan³⁹ contains no special provisions legislating the legal status of individuals convicted of crimes of terrorism and religious extremism. However, those individuals are recognized as persons representing a fairly high public threat. This manifests itself in what kind of conditions they are kept at correctional institutions.

Those prisoners are placed mainly in medium-security institutions. At the same time, Article 96.2(2) of the Penal Code of the Republic of Kazakhstan establishes a direct ban on transferring individuals sentenced for crimes of terrorism and extremism crimes to minimum-security institutions. If the crime of terrorism or extremism is found to be especially serious, the perpetrator may be sent to a maximum-security correctional institution (Article 89.5 of the Penal Code). If it is a repeated offence or a convicted person is imprisoned for a term exceeding five years, they may be placed in a total-security facility (Article 89.7 of the Penal Code).

Under Article 113.1(5) of the Penal Code, which provides for a possibility for the prisoners to exit prison, such is not permitted with respect to individuals who have been convicted of criminal offenses involving extremism and terrorism.

In other words, a serious limitation of the rights of said prisoners is the prohibition for them to be transferred to minimum-security facilities, irrespectively of what kind of progress they have made in terms of rehabilitation, and the impossibility for them to go outside of the correctional facility to deal with a difficult life situation (for instance, this is something that is permitted under the penal legislation).

It should be noted that those who have been convicted of crimes of terrorism and extremism are normally kept in strict conditions. Under Article 136 of the Penal Code which regulates the conditions of serving a sentence in medium-security facilities and according our research the persons who are kept in strict conditions are kept in cells as opposed to those convicts who serve their sentence in normal conditions and who can live in dormitory-like conditions. The strict legal regime provides a number of specific limitations that apply to those placed under those conditions.

Under Article 136.4 of the Penal Code persons who have been convicted of committing a crime of terrorism or extremism and placed in medium-security facilities may: (1) on a monthly basis spend on food products and necessities money that is placed on special temporary accounts, in the amount of up to two monthly calculation indices; (2) receive three parcels or care packages and three postal packets within a year; (3) have three short family visits within a year.

In contrast, those prisoners who are kept in normal conditions are entitled not only to six short family visits but also two long family visits within one year. Therefore, those imprisoned for

³⁹ See the Penal Code of the Republic of Kazakhstan dated 5 July 2014 (as amended on 28.12.2018) // Adilet Information Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.
URL: <http://adilet.zan.kz/rus/docs/K1400000234>

committing a crime of terrorism and extremism are not granted long family visits of their close ones. This means, undoubtedly, that their contacts with the «outside world» are cut short and at the same time speak of the problem of using such contacts in the process of rehabilitation of such prisoners.

Based on Article 148 of the Penal Code, those individuals should be subject to special educational individual work in smaller or larger groups in specially designated premises. Such prisoners should be used for labour in specially equipped working chambers or, if no such chambers are available, within the territory of isolated local industrial-zone plots (Article 149 of the Penal Code).

It should be noted that individuals imprisoned for committing a crime of extremism and terrorism are subject to the provisions of Article 9 of the Penal Code of the Republic of Kazakhstan which speaks of the fundamentals of the legal status of prisoners, and of Article 10 of the Penal Code which concerns the main rights of the prisoners. In particular, individuals serving their sentences for terrorist crimes, based on Article 10.1(4) of the Penal Code, have the right to have their human dignity recognized, be protected from torture, abuse and other cruel or degrading treatment or punishment, to the same extent as the rest of the prisoners.

This right, as is known, is an absolute one and may not be limited in any way or form. It assumes a legal responsibility on the part of the administration of correctional facilities to ensure such a level of communications with the prisoners, which would exclude torture and other types of cruelty and degrading of human dignity.

This fully applies to the prisoners' right to personal security (Article 10.1(5) of the Penal Code), right to professional legal assistance (Article 10.1(7) of the said Code), as well as other rights of prisoners as covered in Article 10 of the Penal Code.

To the same extent, individuals convicted for crimes of extremism and terrorism are subject to legal responsibilities of prisoners (Article 11 of the Penal Code).

In doing so, situations are possible when the convicted “extremists” and “terrorists” run into conflicts with the administration of the correctional facility, for instance caused by the convicts performing their religious rituals while being confronted by the authorities of a secular state. Religious extremists, as a rule, have a negative perception of the public institutions of a secular state and its legal foundations. Therefore, conflicts are very possible in particular when performing the provisions legislated in Article 13.3 of the Penal Code, which states that “*when performing religious rituals, the Internal Rules and Regulations [of the correctional facility or execution body in question] shall be abided by. Actions aimed at inciting the convicts to refuse to perform duties as set forth in this Code and allow for other violations of the legislation of the Republic of Kazakhstan should not be permitted.*”

It should be noted that a distinct feature of a high degree of public threat assigned to individuals who have committed crimes of terrorism and extremism is the fact that they are placed under administrative supervision. According to Article 171 of the Penal Code, administrative supervision is introduced with respect to individuals who are serving a sentence for committing a crime of terrorism and extremism.

The institute of administrative supervision is “...*a complex instrument of administrative and legal influence which is applied in criminal legal relations with the purpose of preventing a criminal*”

*relapse and other forms of socially dangerous behaviour manifested by the convicted...*⁴⁰ Since serving a sentence normally does not cancel out a conviction, as long as the legal state of being convicted continues to exist, so do the criminal legal relations.

Administrative supervision as a measure of post-penitentiary security accompanies extremists and persons who have been imprisoned for crimes of terrorism, after they have been released from the correctional facility. It is assumed that the purpose of such supervision is to prevent the risks of crimes being committed by individuals who have already served a sentence.

Leaving a penitentiary, those persons leave the jurisdiction of the Committee on Penitentiary System of the Ministry of Internal Affairs. However, they still remain under the jurisdiction of the police at the place of residence and under the preventative supervision. In other words, their behaviour, even after being released from the prison, still remains within the area of interest of the police. We believe the problem is that this kind of control, which manifests itself in restrictions on the rights of the “extremists” and “terrorists” who serve a sentence, while undoubtedly relevant to the objectives of individual prevention, is not complemented by measures to re-socialize and de-radicalize the former convicts. In the absence of scientifically sound methods of ensuring re-socialization and de-radicalization, even perfectly arranged administrative supervision will be insufficient in keeping the behaviour of persons convicted for crimes of terrorism and extremism within boundaries that would be acceptably safe for the society and state.

Administrative supervision is carried out in the form of a probation service, which under Article 172.7 of the Penal Code has a task of compiling an individual program for providing social and legal assistance to the supervised person. Without a doubt, this is an absolutely correct approach by the legislators; however, due to a lack of a clear algorithm of actions for the probation service officials in the process of development and implementation of aforementioned programs of social and legal assistance to former convicts, the task of re-socialization of the “extremists” and “terrorists” may become unattainable.

Under Article 172.9 of the Penal Code, “...a person who has been placed under administrative supervision by a court must at least once a month appear to the internal affairs authorities for the purpose of registration, reporting and conducting a preventative talk, and to the probation service to report on his/her progress in receiving social and legal assistance.”

In the Republic of Kazakhstan, release on parole is legislated in Article 72 of the Criminal Code. This Article provides a sufficiently detailed description of the use of this criminal legal institution. On the one part, a Kazakhstani legislator has established a prohibition on release on parole for persons who have been convicted of crimes of terrorism and extremism, which resulted in human deaths or involved an especially grave crime. Such a position of the Kazakhstani legislator seems like the most preferential and differentiated, since it excludes release on parole only for crimes of extremism that carry an especially high degree of public threat. If a crime of terrorism or extremism has not caused human deaths, then the perpetrator is not deprived of release on parole, which is a motivational factor of socially useful post-criminal behaviour.

A system of penal legislation consists of by-laws that regulate the process of execution of punishment and other legal criminal measures.

⁴⁰ See *Limiting Freedom: Problems of Application* / M. R. Geta, A.N. Smirnov; Novokuznetsk institute (branch) of the Kemerovo State University - Novokuznetsk: NIB KemGU, 2013. – p.115.

It should be noted that in Kazakhstan an Instructions to create conditions for the prisoners to carry out religious rituals⁴¹ has been approved by an order of the Minister of Internal Affairs. It regulates the procedure for conducting meetings between the prisoners and clergymen. In accordance with this document, in order to organize a meeting with clergymen an application must be submitted to the administration of the correctional facility. If a correctional facility does not have a special premise for conducting religious rituals, visits by clergymen to such facility, in the absence of a personal appeal from the concerned prisoner(s), become impossible. Unfortunately, the Instructions are silent when it comes to the forms of interaction between the Committee on Penitentiary System of the Ministry of Internal Affairs and the religious organizations, or how the clergymen could participate in the programs to prevent religious extremism in prisons.

Based on the foregoing, it should be said that persons convicted for crimes of terrorism and extremism represent a rather problematic group of individuals, one that requires a higher measure of attention from the administrations of penitentiaries and civil society institutions. An absolute majority of those people are kept in isolation from the rest of the society. According to official statistics, in the Republic of Kazakhstan, in December 2018, there were 656 persons⁴² convicted for criminal acts of extremist and terrorism nature that were kept at the penitentiaries (400 persons in 2016, and 570 persons in 2017)⁴³.

Terrorism is a barbarian method of solving actual or imaginary problems; extremism in any of its shapes or forms is a feeding ground for crimes of terrorism. So, the negativity with which society and state perceive any manifestations of a terrorism and extremism ideology and practices is well understood. This kind of criminality has the potential of causing mass deaths and threatening the constitutional and global order. However, these considerations should not nullify the danger of a situation which may arise when the fight against terrorism and extremism may lead to grave violations of human rights and liberties—fundamental social values.

The threat of excessive and overbearing restrictions on human rights and freedoms under the disguise of fight against terrorism and extremisms is a global problem, one that has a significant for Kazakhstan as well. It is important to note that persons convicted for crimes of terrorism and extremism are perceived in an extremely negative light by a society, especially one has a tendency to overdo it with punishments.

In accordance with Article 5 of the UN Universal Declaration of Human Rights, “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”⁴⁴ The same idea is a common thread is Article 7 of the International Covenant on Civil and Political Rights, which states, “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or*

⁴¹ See Order of the Minister of Internal Affairs of the Republic of Kazakhstan N503 dated 8 August 2014 “On the approval of an instructions to create conditions for prisoners to perform their religious rituals” // Adilet Information Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.

URL: <http://adilet.zan.kz/rus/docs/V14C0009722>

⁴² See Report by M.A. Ayubayev, Deputy Chair of the Committee on Penitentiaries of the Ministry of Internal Affairs of the Republic of Kazakhstan, dated 5 December 2018, made at the roundtable “Prevention of spreading of extremist ideology at penitentiary institutions”

⁴³ See Those imprisoned for religious extremism have their beards shaved off in Kazakhstani prisons. An interview with A. Bazylbekov, Chair of the Committee on Penitentiaries of the Ministry of Internal Affairs, dated 7 September 2017 [an electronic resource].

URL: <https://www.caravan.kz/gazeta/osuzhdennym-za-religioznyj-ehkstreizm-sbrivayut-borody-v-kazakhstanskikh-tyurmakh-400944/>

⁴⁴ See Universal Declaration of Human Rights. Adopted and declared as Resolution 217 A (III) of the US General Assembly dated 10 December 1948 // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan.

URL: <http://adilet.zan.kz/rus/docs/O4800000001>

*punishment.”*⁴⁵ In particular, *“no one shall be subjected without his free consent to medical or scientific experimentation.”*

We should note that the United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”, 2015)⁴⁶ contain an absolute ban on subjecting prisoners to said experimentation, even with their consent. This circumstance means no torture, cruel and inhuman treatment is permitted with respect to persons who have been convicted for criminal acts of terroristic and extremist nature. In other words, such prisoners, just like other persons, have the right to humane treatment during pre-trial investigation as well as during the sentence.

It should be noted that the criminal and penal legislation of the Republic of Kazakhstan is based on impermissibility of cruel or degrading punishment (Article 39.2 of the Criminal Code which states, *“Punishment is applied in order to restore social justice and to correct the convicted and prevent from other criminal offenses, both by the convicted and by other persons. Punishment does not pursue the goal of causing physical suffering or degrading human dignity.”*)

In the Republic of Kazakhstan, it would be most appropriate to discuss the problem of combating cruel and inhuman treatment of persons that have been convicted for crimes of extremism and terrorism. In other words, it is necessary to discuss not the issue of cruel punishment but, instead, the issue of a treatment that is not compatible with human dignity. What should be understood as a treatment? Treatment is a totality of conditions and measures of influence as applied toward a prisoner while he or she is kept at a penitentiary facility. Therefore, cruel treatment is a totality of conditions and measures of influence as applied toward prisoners that are similar to torture and cruelty and are incompatible with the notion of human dignity.

It is quite obvious that persons placed in correctional facilities as a result of committing crimes of terrorism and extremism have an extremely high risk of their personal security being violated, and of being subjected to cruel and inhuman treatment. This risk is conditioned by the following circumstances:

- an extremely negative perception on the part of the general public, including other prisoners;
- personnel of the penitentiary system perceive those individuals as very high-level public risk, thus tend to ignore the prohibition to treat them cruelly, or choose to employ “torturous practices” toward them;
- a dominating ideology whereunder fight against terrorism and extremism justifies any human rights violations, including those involving torture and cruel treatment. Individuals who torture prisoners may be perceived by society and even by their fellow servicemen not as criminals but, instead, almost as “benefactors” who fight against terrorism.

Negative and even hostile perception on the part of the population, other prisoners and personnel at the penitentiary facilities toward the persons who committed crimes of terrorism and extremism are among the factors that work toward victimization of those persons and making them “subjects” of torture and cruel treatment. Such factor as a certain degree of “internalized isolation” of such prisoners, which make them stand out from the rest of the prison population, should also be noted. These individuals often make up an isolated community, which is perceived by the rest of the

⁴⁵ See International Covenant on Civil and Political Rights dated 16 December 1966 // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan.

URL: http://adilet.zan.kz/rus/docs/Z050000091_

⁴⁶ See United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) // website of the United Nations Office on Drugs and Crime.

URL: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-R-ebook.pdf

prisoners as dangerous, and with certain hostility and detachment. Besides, prisoners who were convicted for crimes of terrorism and extremism may be the carriers of a crude and radical ideology, which promotes negative sentiments against a state, society and other important social institutions. It is especially noticeable with prisoners who adhere to Wahhabi and Salafi ideologies.

In our opinion, another important factor is the inability of the penitentiary personnel to engage with such prisoners and handle the matters of their re-socialization and de-radicalization. The objectives of correction of prisoners as set forth in the penal legislation make no distinction between those serving sentences for crimes of terrorism and extremism and other prisoners. The United Nations' Mandela Rules make no such distinction, either. A lack of professionalism on the part of personnel working at the penitentiaries, their inability to take into account the psychology of "ideological" prisoners who were convicted for crimes of terrorism and extremism, are poor remedies when it comes to a successful re-socialization of this category of prisoners.

International standards of treatment of prisoners, including the Mandela Rules 2015, recommend that a prisoner should find a basis in his/her family and close ones in the process of his/her correction. There are certain issues there, as well. First of all, these kinds of prisoners often have no family. Secondly, their relatives may carry the same radical religious and extremism ideologies and may exert a negative influence on people around them. Besides, excessive restrictions existing with respect to such prisoners, a higher interest in "prison syndrome" may promote their radicalization even further and convert them into committed deniers of the modern civil society and state. As for the matter of keeping the links with the external world, one of the objective obstacles in this process is the fact that those prisoners serve their sentence at facilities that are located very remotely from their original place of residence (most of the time, in the south and in the west of Kazakhstan).

When it comes to the "insides" of the correctional facilities, other prisoners and the facility personnel do recognize that they deal with persons who have been convicted for committing crimes of terrorism and extremism and as such are under the jurisdiction of the Ministry of Internal Affairs' Department for the Fight against Terrorism (and other special-purpose bodies of the Republic of Kazakhstan, including the Committee on National Security), which makes them extra-suspicious when dealing with this category of prisoners.

This category of prisoners is perceived by the facility's personnel, other prisoners, as well as a majority of the population as a kind of "leper" that existed in the ancient world and the Middle Ages. In and by itself, such a notion excludes any sympathy, justifies abuse of power, cruelty and indifference to such treatment. Prisoners subjected to isolation in connection with crimes of terrorism and extremism are at risk of being beaten, abused, their physical security violated, threatened, insulted, unlawfully denied medical care, being placed in inadequate sanitary and living conditions, boycotted and other degrading treatment. Any minors with disabilities, women and other vulnerable prisoners, should they happen to be in that category of prisoners, their risks of torture-caused victimization become far higher.

This category of prisoners includes some persons whose crimes have gained quite high degree of notoriety. For example, the case of V. Chelakh, a former private who served at the border control post "Arkangeren" which is part of the border security force under the Committee on National Security, who on 29 May 2012 was convicted for a mass murder of his fellow servants and a ranger. In November 2017, the UN Committee on Human Rights ruled that the Republic of Kazakhstan in sentencing V. Chelakh had violated Article 14 of the International Covenant on Civil and Political Rights, an international document ratified by Kazakhstan. In its ruling, the Committee notified the

Prosecutor General's Office that Kazakhstan carried an obligation to provide Vladislav Chelakh with an effective legal remedy. On 22 January 2019, the Judicial Collegium for Criminal Cases of the Supreme Court of the Republic of Kazakhstan ruled as follows: "...the verdict of the specialized inter-district Military Court for Criminal Cases for the city of Almaty issued on 11 December 2012; the ruling of the Appeals Judicial Panel on Criminal Cases of the Military Court of the Republic of Kazakhstan issued on 6 February 2013; the ruling of the cassation board of the Military Court issued on 21 June 2013 with respect to the convicted Vladislav Chelakh all to be left stand; Chelakh's petition to be dismissed."⁴⁷

It has merits to believe that torture of those convicted of crimes of terrorism and extremism carries the threat of not only increased violence and cruel treatment in penitentiaries but also an actual possibility of radicalization and even greater estrangement from the society and state of those prisoners who carry the stigma of "terrorists and extremists." Ultimately, this may contribute not only to a higher degree of latency of torture and cruel treatment, but also to an increase in the scope of threats of terrorism and extremism in Kazakhstan.

It should be noted that individuals involved in or connected with terroristic and extremist activities may be subject to cruel treatment not only during the pre-trial phase when placed in a detention centre and investigative units. What could be the solution to this? We believe that the solution of prevention of abuse of personal security, torture and cruel treatment with respect to those who committed crimes of terrorism and extremism should be systematic and multi-levelled. First of all, the baseline should be that cruel and inhuman treatment of convicted terrorists and extremists must be absolutely off-limits, in full agreement with the letter and intent of the international legal acts signed under the auspices of the United Nations.

The personnel of the penal system and all law enforcement authorities across Kazakhstan must be taught the notion of impermissibility of torture and cruel treatment and how dangerous they might be for the future of the society and the state, especially in light of the international human rights standards, in particular Article 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁴⁸ which states, "*No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.*" No circumstance means also any circumstances pertaining to a pre-trial investigation, conviction and punishment for terroristic or extremist activities.

Therefore, impermissibility of torture and cruel treatment of convicted extremists and terrorists should form part of a mentality, set of values that the management and personnel working in Kazakhstan's penal system have. The same path should be taken by the judicial and law enforcement practices that establish punishment for torture and cruel treatment, including cases when persons who have been criminally prosecuted for engaging in acts of terrorism and extremism become victims of torture and inhuman treatment.

Another path should be the provision of training to the penal system personnel in terms of their skills sets and methodologies of educational work and re-socialization of those who have been convicted for committing crimes of terrorism and extremism. An extremely important component of this is the ability to establish a psychological contact with such persons, build a dialogue and the

⁴⁷ See Supreme Court of the Republic of Kazakhstan has reviewed the case of V. Chelakh // Website of Forbes-Kazakhstan magazine.
URL: https://forbes.kz/process/probing/verhovnyiy_sud_rk_peresmotrel_delo_chelaha/

⁴⁸ See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment // website of the United Nations.
URL: http://www.un.org/ru/documents/decl_conv/conventions/detent.shtml

ability to understand their individual psychological problems and, ultimately, form in their brains a paradigm whereunder the civil society and the state are not perceived as their enemies.

It is believed that in the process of education of the law enforcement officers and, especially, of the penitentiary bodies and establishments, special attention should be paid to the methodologies of education, re-socialization and de-radicalization of this category of prisoners. If there are no such methodologies in the educational process they must be created without delay, with leading international experience and practices being taken into consideration. Without a doubt, those methodologies should be included in the educational process used at Kazakhstan Academy of the Ministry of Internal Affairs and other educational institutions within the law enforcement system.

Yet another important direction is the improvement of a mechanism of government and social oversight over the compliance with the legislation of the Republic of Kazakhstan and international legal documents in the field of treatment of prisoners who have been sentenced for crimes of terrorism and extremism. In this regard, a platform should be created making it possible for them to file complaints and petitions freely and without obstacles, including on circumstances pertaining to torture and degrading treatment. It must be mandatory to ensure unconditional confidentiality of such a platform.

It should be noted, that according to information from human rights organizations in Kazakhstan, prisoners have a problem with the filing of their complaints and with the efficiency of review of those complaints, and with actual protections against torture and cruel treatment. This circumstance applies to the same extent to prisoners who have been convicted for crimes of terrorism and extremism.

Ensuring personal security, protection against torture and cruel treatment of persons convicted for crimes of terrorism and extremism, are all within the jurisdiction of the members of the National Preventive Mechanism of the Republic of Kazakhstan; however, the various aspects pertaining to the improvement of the penal legislation of Kazakhstan also carry a certain degree of significance, i.e. those that discuss the provisions of educational impact and measures to stimulate a positive post-criminal behaviour.

In summary, it should be noted that a successful fight against torture and cruel treatment of persons convicted for crimes of terrorism and extremism must be based on a solid foundation of a strategic cooperation and partnership between the state and civil society institutions in the Republic of Kazakhstan.

6. ECONOMIC AND SOCIAL RIGHTS OF PERSONS CONVICTED FOR CRIMES OF EXTREMISM OR TERRORISM

As part of the fight against the financing of terrorism in Kazakhstan, the Law “On the fight against legalization (laundering) of income received illegally, and against the financing of terrorism”,⁴⁹ has been adopted. The Law defines the legal basis for the fight against legalization (laundering) of income received illegally, and against the financing of terrorism, legal relations among the subjects of financial monitoring, the authorized body, and other state authorities of the Republic of

⁴⁹ See Law of the Republic of Kazakhstan N191-IV dated 28 August 2009 “On the fight against legalization (laundering) of income received illegally, and against the financing of terrorism” (as amended on 2 July 2018) // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan
URL: http://adilet.zan.kz/rus/docs/Z090000191_

Kazakhstan in the area of fight against legalization (laundering) of income received illegally, and against the financing of terrorism.

Article 12 of the Law defines the procedure for inclusion in the List of organizations and natural persons associated with the financing of terrorism and extremism. According to Article 12.4.3 of the above-mentioned Law, the following serves as the grounds for inclusion of organizations or individuals into the list of organizations and persons involved in terrorism and extremism financing: effective verdict of a Kazakhstan court recognising an individual guilty of an extremist⁵⁰ and/or terrorist⁵¹ crime.

Joint order of the heads of a number of state bodies⁵² approved the Rules for compiling and informing the government authorities of the lists of organizations and persons linked to the financing of terrorism and extremism, which state that the authorised body immediately includes into the list and excludes from the list organizations and persons, makes changes when receiving information from competent government authorities on the presence of grounds stipulated by Article 12.5.4 of the Law, and publishes the list and any changes made thereto on an official Internet resource of the Committee for Financial Monitoring of the Ministry of Finance of the Republic of Kazakhstan so that measures can be implemented to freeze the assets by the subjects of financial monitoring and government authorities of the Republic of Kazakhstan.

Contrary to international standards, the legislation of Kazakhstan includes in this list not only persons associated with terrorism and financing of terrorism, but also persons who have been convicted for crimes of extremism and the financing of those crimes, and persons who have no association with the financing of terrorism.

In other words, the provisions of the Law of the Republic of Kazakhstan “On the Fight against Legalization (Laundering) of Income Received Illegally, and against the Financing of Terrorism”, which “equate” the crimes of extremism to the crimes of terrorism in terms of their danger/significance, as per international standards, do not meet the principles of proportionality, reasonableness and sufficiency, which are the fundamental in the decision-making with respect to

⁵⁰ Under Article 3.39 of the Criminal Code of the Republic of Kazakhstan, extremist crimes are the acts that are provided for by Article 174 (incitement of social, national, tribal, racial, class or religious discord), Article 179 (propaganda or public calls to seize or retain power, or to seize power or violently change the constitutional system of the Republic of Kazakhstan), Article 180 (separatist activities), Article 181 (armed revolt), Article 182 (establishing, leading an extremist group or participating in activities of an extremist group), Article 184 (sabotage), Article 258 (financing terrorist or extremist activities or otherwise promoting terrorism or extremism), Article 259 (recruiting or training or arming people with the purpose of organizing terrorist or extremist activities), Article 260 (taking training in terrorist or extremist activities), Article 267 (financing the activities of a criminal group, as well as storage, distribution of property, development of channels of financing), Article 404.2 and 404.3 (establishing, managing and participating in the activities of illegal public and other associations), and Article 405 (organization of and participation in the activities of a social or religious association or other organization after a court of law has ruled to ban their activity or liquidate them due to their involvement in extremism or terrorism) of the Criminal Code of the Republic of Kazakhstan.

⁵¹ Under Article 3.30 of the Criminal Code of the Republic of Kazakhstan, terrorist crimes are the acts that are provided for in Article 170 (mercenary activities), Article 171 (establishing bases (camps) for training mercenaries), Article 173 (committing attacks on individuals or organizations that are under international protection), Article 177 (infringement upon the life of the First President of the Republic of Kazakhstan - Elbasy), Article 178 (infringement upon the life of the President of the Republic of Kazakhstan), Article 184 (sabotage), Article 255 (act of terrorism), Article 256 (propaganda of terrorism or public calls to committing an act of terrorism), Article 257 (establishing and leading a terrorist group and participating in its activities), Article 258 (financing of terrorist or extremist activities and otherwise promoting terrorism or extremism), Article 259 (recruitment or training or arming people for the purpose of arranging a terrorist or extremist activity), Article 260 (taking terrorist or extremist training), Article 261 (taking hostages), Article 269 (committing attacks on buildings, structures, means of communications, or seizing the same), and Article 270 (hijacking, and seizing an airplane or a ship or a railway rolling stock) of the Criminal Code of the Republic of Kazakhstan.

⁵² See: Order of the Minister of Finance of the Republic of Kazakhstan N566 dated 20 November 2015; Order of the Minister of Justice of the Republic of Kazakhstan N32 dated 25 January 2016; Order of the General Prosecutor of the Republic of Kazakhstan N6 dated 20 January 2016; Order of the Minister of Foreign Affairs of the Republic of Kazakhstan N 11-1-2/539 dated 30 November 2015; Order of the Chair of the National Security Committee of the Republic of Kazakhstan N17 dated 14 January 2016; and Order of the Minister of Internal Affairs of the Republic of Kazakhstan N962 dated 25 November 2015, on the approval of the “Rules for drafting and communicating to the state bodies a list of organizations and individuals associated with the financing of terrorism and extremism” // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan.

URL: <http://adilet.zan.kz/rus/docs/V1500013007>

measures to combat money laundering and the financing of terrorism; therefore, they contradict the international standards.

Moreover, as it was mentioned in this document already, the Kazakhstani legislation does not use the term “violent extremism” which is a term used in international law, but instead it uses the term “extremism,” which is a vague notion which does not have a clear legal definition thus non-compliant with the principle of legal certainty and predictability.

Being in the list of persons who have served a sentence is effectively an additional criminal penalty which restricts the person in his/her ability to exercise their right of use of their property, and which is not stipulated by the provisions of the Criminal Code, that is, not included in the list of types of punishments specified in Article 40 of the Criminal Code of the Republic of Kazakhstan “Types of punishments”.

In other words, persons who have already served a sentence for committing the above-stated crimes, will continue to be in this list for many years to come, until their criminal record is cleared,⁵³ without having a legal possibility to be removed from it.

All attempts by the persons included in the List to appeal the legality of the Rules have been unsuccessful. The Esil district court in Astana refused to review an application, stating absolutely unlawfully that this matter cannot be reviewed as part of a civil court process. In the meantime, an entire Chapter (29) in the Code of Civil Procedure of the Republic of Kazakhstan⁵⁴ is dedicated to the procedure for appealing the legality of regulatory legal acts. Further appeals with the Astana city court and the Supreme Court resulted in nothing. In January 2019 a request was filed for a petition to be presented against the legally effective judicial acts by the Chair of the Supreme Court. The request is under review by the Supreme Court, no response has been received so far.

Now regarding the List itself, and what the legal of being in it might be.

Pursuant to paragraph 1-1 of Article 13 of the Law, no later than one business day of publishing on the official internet resource of the authorised body of information on the inclusion of an organization or individual into the list of organizations and natural persons associated with the financing of terrorism and extremism, subjects of financial monitoring (SFM), specifically banks, must immediately, except for the cases set forth in Article 12.8 of the Law, implement the following measures to freeze the transactions with money and/or other property:

- suspend any payment transactions on bank accounts of such organization or individual, as well as on the bank accounts of the client for whom such individual is a beneficiary owner;
- suspend execution of payment orders or transfer orders without using a bank account for such individual, as well as the payment orders for the client for whom such individual is a beneficiary owner;

⁵³ Criminal record is a criminal-law institution that has survived since the old Soviet times, which states that a person who has been convicted for committing a crime is considered convicted from the day a guilty verdict entered into legal force until such moment as it is lifted or erased (Article 79 of the Criminal Code of the Republic of Kazakhstan). Criminal record is something that is taken into account when determining a repeat crime, a dangerous repeat crime, and when prescribing a punishment. Criminal records are erased with respect to persons who have been convicted for committing minor or moderate-severity crimes – upon expiry of three years after the sentence has been served; with respect to persons who have been convicted for committing grave crimes – upon expiry of six years after the sentence has been served; and with respect to persons who have been convicted for committing especially grave crimes – upon expiry of eight years after the sentence has been served.

⁵⁴ See the Code of Civil Procedure of the Republic of Kazakhstan dated 31 October 2015 (as amended on 28 December 2018) // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan.

URL: <http://adilet.zan.kz/rus/docs/K1500000377>

- block the securities in the securities register and the nominal holders accounting system on the bank accounts of such organization or individual, and also on the bank accounts of the client for whom such individual is a beneficiary owner;
- deny other transactions with monetary funds and/or other property conducted by such organization or individual or in their interest, as well as any transactions conducted by or in favour of the client for whom such individual is a beneficiary owner, except for crediting amount to such person's bank account.

The Law leaves open the matter of deadlines for implementation of the measures to freeze the transactions by the persons included in the List. In doing so, it specifies that the transactions may be carried out based on a court judgment, collection orders by the government revenue agency, resolutions by the government revenue agency to foreclose the restricted property, and after the organization or natural person has been removed from the said List in accordance with the procedure set forth by the Law.

According Article 12.8 of the Law, an individual who has been included in the List, for the purpose of supporting their life and their family with whom they have a shared residence and who do not have their own independent sources of income, has the right to apply to the SFM requesting that the following operations be carried out with monetary funds or other property:

- 1) received in the form of a wage in the amount not exceeding a minimum wage set for the relevant financial year by the Law of the Republic of Kazakhstan on the Republican Budget, during a calendar month for each member of the family;
- 2) received in the form of a pension, stipend, allowance, other social payment in accordance with the legislation of the Republic of Kazakhstan, and to make payments of taxes, other mandatory payments to the budget, penalties and fines.

In accordance with the Rules of payment of financial means to an individual included in the list of organizations and persons associated with the financing of terrorism and extremism, for his/her sustenance in order to pay him/her a salary an additional request is placed with his/her place of work regarding the amount of his/her salary, as well as additional documents for any members of his/her family with whom she/he shares the residence, etc.

In accordance with the Law of the Republic of Kazakhstan On the Republican Budget for 2019-2021,⁵⁵ effective from 1 January 2019 the amount of a minimum wage for the purpose of calculation of the amounts of basic social payments is set at 29,698 tenge (just over \$70).

It should be specifically noted that the persons included in the list include all those who have been convicted for crimes of terrorism or extremism as listed above, irrespectively of whether they have been convicted for the financing of terrorist or extremist activities, or whether there is any direct or indirect proof of them actually sending any money for said activities. Moreover, they have already served their sentence and now, for the next 6-8 years, by being included in this List, will be restricted in the use of their money, which they need not only for their own sustenance but also for their families.

Those provisions of the law are discriminatory and violate the rights of the said persons for an adequate standard of living, since the government sets the limit on the amounts of money that can

⁵⁵ See the Law of the Republic of Kazakhstan N197-VI dated 30 November 2018 "On the Republican Budget for 2019-2021" // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan.
URL: <http://adilet.zan.kz/rus/docs/Z1800000197>

be used in the described circumstances. In other words, even if a person earns a salary of 150,000 tenge, he/she can only use 29,698 tenge for each member of his/her family. If the person lives alone, he/she must find a way to support himself/herself on that amount of 29,698 tenge: pay for the apartment, food, clothes and taxes.

According to Article 11 of the ICESCR⁵⁶, “*the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent*”.

According to Article 24 of the Constitution of the Republic of Kazakhstan, everyone must have the right to safe and hygienic working conditions, to just remuneration for labour without discrimination, as well as to social protection against unemployment.

In other words, the provision that restricts the said persons in their ability to receive compensation for their labour in full is a discriminatory one, violates the rights of such persons and the rights of that person’s family members to an adequate standard of living, to an opportunity to provide for themselves with dignity.

In addition to the said restrictions, there have been cases when persons that had earlier served a sentence for committing an extremist or terrorist crime were not able to issue a notarized power of attorney to their attorney: when registering the power of attorney in a database the following message was presented: “*this person is included in the list of banned persons.*” Those individuals were unable to document a car owner’s civil liability because the insurance policy would not be registered in the relevant database. They also experienced problems when trying to pay a state fee when replacing their driver’s license, national identity card, etc. Those operations were not suspended, they were simply denied.

In the opinion of NGOs, the procedure and grounds for including organizations and individuals into the List should be revised; Article 12.4 of the Law of the Republic of Kazakhstan on the Fight against Legalization (Laundering) of Income Received Illegally and Against the Financing of Terrorism should be brought in line with international standards by stating that the List may only include those individuals who have been convicted for financing of terrorism. In doing so, a limitation period during which the special-purpose financial sanctions will be applied, should be determined and legislated.

It is necessary to lift the restriction on the amounts in line with international standards, which provide that when measures to combat money laundering and the financing of terrorism are applied those measures should in no way violate the freedom of the flow of legal capital.

The Penal Code may be complemented by an Article “Financial oversight/monitoring over persons who have been released from penitentiary facilities” which would read as follows: persons who have served a sentence for committing crimes qualified as terrorism and been released from a correctional facility shall be subject to financial oversight/monitoring.

⁵⁶ See the International Covenant on Economic, Social and Cultural Rights dated 16 December 1966 // Adilet Information Legal System of Regulatory Legal Acts of the Republic of Kazakhstan.
URL: http://adilet.zan.kz/rus/docs/Z050000087_

The title of the Law of the Republic of Kazakhstan “On the Administrative Oversight over Persons who have been Released from Penitentiary Facilities” can be changed to read as follows: “On the Administrative Oversight and Financial Oversight/Monitoring over Persons who have been Released from Penitentiary Facilities,” with additions that would state that persons who have served a sentence for crimes of terrorism, including the crimes of financing terrorism, may be subject to financial oversight/monitoring. Similarly, with administrative oversight, financial oversight/monitoring may be established by a court of law, which also determines a period of time for which it is established. This Law should also be complemented by provisions, which would determine restrictions that could apply with respect to persons who have become subject of financial oversight/monitoring. The law should also spell out a procedure for lifting financial monitoring/oversight.

The Criminal Code of the Republic of Kazakhstan should be complemented by an article which would provide for liability for evading financial monitoring/oversight as established by a court with respect to persons who have been released from a penitentiary facility where they were placed for committing a crime of terrorism, by setting forth a relevant sanction in said article, similar to Article 431 of the Criminal Code of the Republic of Kazakhstan which establishes liability for evading administrative oversight as set forth by a court over persons who have been released from penitentiary facilities.

Simultaneously with making changes to the Penal Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan “On the Administrative Oversight over Persons who have been Released from Penitentiary Facilities,” relevant changes should be made to Article 12 of the Law of the Republic of Kazakhstan on the fight against legalization (laundering) of income received illegally, and against the financing of terrorism.

Introducing the suggested changes to the legislation will permit to bring the relevant provisions closer to international standards, which, in our opinion, is a necessary measure to protect the rights and freedoms of persons whom they concern.

7. THE RIGHT TO FREEDOM OF SPEECH, EXPRESSION OF OPINION, MASS MEDIA INCLUDING INTERNET

Clause 2 of Article 20 of the Constitution of the Republic of Kazakhstan guarantees the right to freedom of expression, in particular, the right to freely seek, receive and disseminate information in the Internet and contains the following provision: “*Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of information constituting the state secrets of the Republic of Kazakhstan shall be determined by law*”.

The main legal enactments, which regulate the right to free speech and to freely receive and disseminate information, include:

- Law of the Republic of Kazakhstan on the Mass Media⁵⁷;
- Law of the Republic of Kazakhstan on Access to Information⁵⁸;

⁵⁷ See: Law of the Republic of Kazakhstan “On the Mass Media”, No. 451-1, dated 23 July 1999 (as amended on 8 January 2019) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: http://adilet.zan.kz/rus/docs/Z990000451_

⁵⁸ See: Law of the Republic of Kazakhstan “On Access to Information”, No. 401-V, dated 16 November 2015 (as amended on 28 December 2016) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/Z1500000401>

- Criminal Code of the Republic of Kazakhstan (Articles 174, 256, 258, 274 and 405)⁵⁹.

As part of the counter-terrorism and counter-extremism efforts, the Law of the Republic of Kazakhstan on the Mass Media has been supplemented by the provisions, which make it more difficult to receive and disseminate information through the mass media.

Hence, the monitoring of the mass media compliance with legislation (Article 1) has been introduced. The monitoring procedure has been approved; the monitoring results are passed to the law enforcement agencies for bringing the media owners to civil and administrative responsibility.

The risk assessment criteria and checklists for controlling the operation of the mass media⁶⁰, including in the television and radio broadcasting⁶¹, have been approved as well.

Greater focus has been placed on the print media. Generally, government agencies have been vested with additional authorities for controlling the operation of the mass media.

Article 2 of the Law on the Mass Media was supplemented by the note, which provides for the interpretation of the term “propaganda”. The interpretation is rather vague, which gives grounds for holding a person criminally liable under Article 179 “Propaganda or public calls for violent upheaval or retention of power as well as violent upheaval or retention of power or dismantlement of the statehood of the Republic of Kazakhstan” and Article 256 “Terrorist propaganda or public calls for commission of an act of terrorism” of the Criminal Code of the Republic of Kazakhstan.

The list of government agencies having the right to control the operation of the owner has been significantly extended.

Despite a great number of the amendments made, the statutory provisions drawing criticism and recommendations from international and Kazakhstan human rights organizations have not been amended yet.

For example:

- an obligatory registration of the mass media is still in place; the failure to register the mass media results in the responsibility, which may include the termination of the mass media;
- an obligatory re-registration of the mass media in case of change of the media owner is still in place; the responsibility for this violation may include the termination of the mass media;
- the interpretation of the term “mass media” has become out-dated and does not meet international standards;
- the law plays with the terms “mass media” and “media owner”, which results in miscarriage of justice;

⁵⁹ See: Criminal Code of the Republic of Kazakhstan dated 3 July 2014 (as amended on 21 January 2019) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000226>

⁶⁰ See: Joint Order of the Minister of Information and Communications of the Republic of Kazakhstan, No.473, dated 9 November 2018, and Minister of the National Economy of the Republic of Kazakhstan, No.69, dated 15 November 2018 “On Approval of the Risk Assessment Criteria and Check List for Checking the Compliance with Legislation of the Republic of Kazakhstan concerning the Mass Media” // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V1800017787>

⁶¹ See: Joint Order of the Minister of Information and Communications of the Republic of Kazakhstan, No.455, dated 31 October 2018, and Minister of the National Economy of the Republic of Kazakhstan, No.39, dated 31 October 2018 “On Approval of the Risk Assessment Criteria and Check List for Checking the Compliance with Legislation of the Republic of Kazakhstan concerning the Television Broadcasting” // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V1800017674>

- the definition of the term “journalist” has become out-dated and is of a restrictive nature since it provides for obligatory existence of contractual relations between a journalist and media editors, thus excluding bloggers and self-employed journalists completely. Currently, there is no agreed definition of the term “journalism”, or what the “journalist activity” represents internationally; the Staff Committee and Council of Europe have provided preliminary definitions. In particular, they have recognized the crucial role, which the “civil journalists” play in the collection and dissemination of information. The most important is that they have proposed the functional definition of “journalism”, which covers those who communicate publicly through the new mass media, provided that the media meets certain criteria;
- there is no definition of the term “information” in the law, which term is of great importance since the dissemination of “information” is punishable in the form of publication of refutation, free of charge response and monetary compensation of moral harm. The absence of the formal interpretation of the term “information” results in diversity of practice and abuse of statutory provisions.

Despite the fact that there is the Law on Access to Information, it does not contain efficient legal provisions concerning access to the government information, in which the public is interested, which makes it more difficult to exercise the right of access to information or makes the current law impracticable.

The existing procedures for obtaining information on the activities of government agencies are highly inefficient:

- an extensive list of grounds for refusal of provision of information,
- a lengthy period of requests handling,
- the existence of restricted and need-to-know information.

The Criminal Code of the Republic of Kazakhstan adopted in 2014 contains a number of articles aimed at fighting against terrorism and extremism but, in fact, it is widely used for fighting against political opponents and dissidents who exercise their right to freedom of speech and expression.

Thus, Article 174 “Incitement of social, national, tribal, racial, class or religious discord” contains a number of the legally undefined concepts.

For example, it provides for liability for the incitement of “class” discord. In Kazakhstan, the society is not divided into social classes. Criminal liability for incitement of class discord allows the law enforcement agencies and courts to interpret the term of a “social class” subjectively and to abuse the rights towards political undesirables.

There is no formal definition of the term “incitement of discord” in the current legislation of Kazakhstan, which allows holding people criminally liable for the commission of grave offence, which includes the offence envisaged by Article 174 of the Criminal Code of the Republic of Kazakhstan, for dissemination of customary information materials. The lawmakers, when adopting the Criminal Code, dismissed the proposals and requests of human rights organizations to define the term “incitement of discord” as the calls for commission of the acts of violence against a particular group of people.

It should be noted that liability under this Article involves the imprisonment for the period of 2 to 7 years. In the previous criminal law, this liability involved either a fine or corrective labour for the period of up to two years or imprisonment for the period of up to seven years.

Moreover, pursuant to part 2 of this Article, if this act is committed by a group of persons upon a preliminary collusion or repeatedly or involves violence or threat of its use as well as committed by a person using his/her official position or by a leader of public association, including through the use of monetary funds received from foreign sources, then it is punished by imprisonment for the period of 5 to 10 years with or without deprivation of the right to hold certain positions or engage in certain activity.

In this case, it is not about severe consequences of this act, the liability for which is envisaged by Part 3 of the same Article and involves the punishment in the form of imprisonment for the period of 12 to 20 years with or without deprivation of the right to hold certain positions or engage in certain activity.

For the last five years, dozens of civil society activists, bloggers and religious figures have been held criminally liable under Article 174 of the Criminal Code of the Republic of Kazakhstan concerning the incitement of national, social, religious or other discord. Besides the fact that, as noted above, the terms “incitement”, “social discord”, etc. are not sufficiently legally defined and do not correspond to the principle of legal certainty and predictability, in the vast majority of cases, criminal cases are mainly opened on the basis of opinions of state experts, i.e. linguists, philologists, psychologists and political scientists, who discover the impulsive cause of incitement of discord in any given text or statement.

Court decisions in the form of judgments of conviction sentencing to long periods of imprisonment (for 3 to 5 years up to 10 and more years) are rendered on the basis of these opinions, disregarding the opinions of independent experts and specialists. In 2016, 12 cases of this kind were opened and 7 cases were settled by judgments of conviction sentencing to long periods of imprisonment, in 2017 – 12 and 10 cases, respectively, during the first half of 2018 – 46 cases were opened against 57 persons (41 persons were sentenced to various punishments), and during 9 months of 2018 – criminal proceedings with regard to 196 cases were instituted. For the last four years, the following civil society activists, i.e. A.Jumayev, A.Ashim, E.Narymbayev, S.Mambetalin, B.Blyalov, R.Ginatulin, S.Dosov, O.Halabuzar, religious figures, i.e. Sh.Kibirov, N.Seitzhanov and Y.Kabduakasov, and bloggers, i.e. S.Baykenov, M.Tkachev, U.Aliaskarov, E.Taychibekov, T.Valova-Shevtsova and many others, were held criminally liable and convicted.

Article 274 of the Criminal Code of the Republic of Kazakhstan “Dissemination of misleading information” is worded extremely broadly, for which reason any person may be held liable for dissemination of his/her opinion. It is specially used to threat and prosecute those who criticize the government and, therefore, it exerts restraining influence on the freedom of expression.

From 2014, as part of prevention of outreach of extremist or radical views, in order to simplify and speed up the procedure of blocking of the Internet resources, the Law of the Republic of Kazakhstan on Communications⁶² was supplemented by Article 41-1, which states that the General Prosecutor’s Office of the Republic of Kazakhstan and the National Security Committee of the Republic of Kazakhstan shall be entitled to temporarily suspend an access to networks and (or) means of communications without a court decision if the resources are used for criminal purposes prejudicing

⁶² See: Law of the Republic of Kazakhstan “On Communications” dated 5 July 2004 (as amended on 5 October 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: http://adilet.zan.kz/rus/docs/Z040000567_

the interests of a person, society and state, as well as for dissemination of information violating the legislation of the Republic of Kazakhstan concerning elections and containing the calls for carrying out extremist and terrorist activities and civil unrest, as well as in the cases, which are urgent or may result in the commission of grave crimes and especially grave crimes as well as crimes prepared or committed by a criminal group.

This provision gives full rein to the government agencies to freely block access to the Internet resources under the pretence of “protection of society and state”.

It is known from the information obtained from the Ministry of Information and Communication what may serve grounds for restricting access to any given Internet resource.

From 2015 up to present, on the basis of court decisions, access for users from the territory of the Republic of Kazakhstan was restricted to more than 7044 materials: in 2015 – to 2563 materials, in 2016 – to 1154 materials, in 2017 – to 3234 materials, in 2018 – to 93 materials.

On the instructions of the government agency, access to Internet resources/URL-links was restricted: in 2014 – 0, in 2015 – 0, in 2016 - 30,174, in 2017 - 10,311, in 2018 - 9,014.

In 2015, under the court decisions, access for users from the territory of the Republic of Kazakhstan was restricted to more than 2,563 materials, of which 1,056 materials – for propaganda of ideas of terrorism and religious extremism, including 753 materials – in 2016, 2,470 materials – in 2017, and 48 materials – from the beginning of 2018.

From 2016, there is a strong tendency for restricting access to websites on the instructions of government agency rather than under the court decisions.

Generally, during the period of 2014 to 2018, access to 57,960 Internet resources/URL-links was restricted.

For example, the website of the Republican Religious Association “Spiritual Board of Muslims in the Republic of Belarus” was restricted in the territory of the Republic of Kazakhstan for propaganda of ideas of terrorism and religious extremism, although the website has been registered with the Republican Unitary Enterprise for Controlling Telecommunications “BelGIE”, resource number: 24334. The causes of accusation of the RRA “Spiritual Board of Muslims in the Republic of Belarus” are not clear. The religious association itself is fighting against the propaganda of extremism and terrorism, however, access to its website on the territory of the Republic of Kazakhstan has been restricted. No instruction has been received from government agency, for which reason it may be concluded that any foreign Internet resource may be restricted merely on the instructions of government agency.

The new Article 41-1 of the Law on Communications, as mentioned above, which authorizes the out-of-court restriction of the Internet resources, enables to do it.

It should be also noted that such resources as SoundCloud, Telegra.ph, Meduza.io, Tumblr and other popular Internet resources have been restricted for propaganda of ideas of terrorism and religious extremism.

It is impossible to learn what Internet resources are restricted in access to them from the territory of the Republic of Kazakhstan since the Ministry of Information and Communications (currently, the Ministry of Information and Public Development) does not provide a register of restricted Internet resources stating that: “...in order to prevent the dissemination of information on the Internet resources, which contain materials violating the legislation of the Republic of Kazakhstan, the Register of Materials, the access to which is restricted on the territory of the Republic of Kazakhstan by decisions of competent authorities, is not publicly available” but merely advises to refer to the information system posted on its website to check access to one Internet resource or another.

However, the problem is that this resource is less informative since:

- 1) the Register has not been updated since 28 May 2018. That is, the websites blocked after that date are not reflected in this information system;
- 2) the system of retrieval of information on restricted Internet resources in response to a system user request is of a random nature. For example, the entry of “tumblr.com” results in generating a list of 175 addresses of Internet resources owned by “tumblr.com”, which are prohibited within the Republic of Kazakhstan⁶³, however, when entering “change.org” in the information system, the website is displayed as not-prohibited;
- 3) it does not contain the more detailed information, which would specify the number of suspended Internet resources with the grounds for their suspension, IP-addresses, the date and time of commencement of the suspension of Internet resources, and the name of government agency.

For some prohibited websites, the information system displays the grounds for their suspension but, more often, it merely provides for information on the number of the document serving grounds for blocking without specifying the name of government agency.

8. THE RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION

Use of the legally undefined term “extremism”

The definition of extremism, which is given in Section 2 of this document and enshrined in the law, being extremely vague and broad and having no precise legal interpretation and not corresponding to the principle of legal certainty and predictability, is widely used by the Kazakhstan authorities to suppress not only the opposition political activity but also to suppress any criticism.

For example, even the attempt to create a political party immediately results in the prosecution of its founders by the police, although the fact of creation of a political party is not an act of “extremism”⁶⁴.

“Thus, a woman residing in Almaty who recently initiated the creation of a political party says that, after the “strong recommendations” of the authorities, she cancelled the founding congress scheduled for 9 March but failed to avoid prosecutions by security forces. The woman not previously found to be involved in political activity is surprised at the “difficulties of creation of a party”.

⁶³ At the time of writing this document, tumblr.com is accessible within the Republic of Kazakhstan despite the Decision No. 2-4438/15 of the Esilsk Court of Astana, dated 23 October 2015. It is most probable that the social network is recorded in the register as http://tumblr.com but the domain is currently accessible at https://tumblr.com, i.e. the social network uses the HTTPS (HyperText Transfer Protocol Secure) protocol to support encryption technology.

⁶⁴ See, for example:

URL: <https://rus.azattyq.org/a/kazakhstan-almaty-failed-party-congress/29812295.html>

The founding congress of the party “Our Right” was not held. Sanovar Zakirova, an entrepreneur from Almaty, who initiated the creation of the political organization, complaints about obstacles created by the police.

- I wanted to create a party and faced an array of problems. Over thousand people from various parts of the country were supposed to come today to attend the congress. However, despite the fact that it was me who organized the congress, I cannot get to the place where the congress must be held. “Since yesterday the representatives of law enforcement agencies do not leave me alone” – Sanovar Zakirova said to Azattyq”.

On 8 March 2019, Sanovar Zakirova posted on the social network Facebook a reminder of the founding congress of the party “Our Right” scheduled to be held in Almaty. Closer to the afternoon of that day, she posted the “program” of the non-registered party. In the second half of the day, police patrol stopped her car several times. Sanovar Zakirova broadcasted live event online in the social network. On one of the videos posted in Facebook, a police officer that introduced himself as a “police duty officer” says that the Public Prosecutor of the Bostandyk District is inviting Sanovar Zakirova for discussion. However, Mr Zakirova refused to go to police department by referring to the absence of summons.

In the evening of 8 March, Sanovar Zakirova received the summon requesting her to appear before the police department. The summon was served on the woman by the police officers who stopped her car on the road and cordoned it by their official cars. The video recording posted on Facebook depicted the police officer who could not distinctly explain what particular person and for which purpose summons Mrs Zakirova to appear before the police.

Thus, this case suggests that citizens trying to enjoy their rights to create a political party are subject to treatment as if they were dangerous extremists.

Prohibition on creation and operation of unregistered public associations

Clause 1 of Article 23 of the Constitution of the Republic of Kazakhstan⁶⁵ establishes that citizens of the Republic of Kazakhstan shall have the right to freedom of association. The operation of public associations shall be governed by law.

The legislation of the Republic of Kazakhstan assumes that the right to freedom of association shall mean the right to unite into public associations, which, in their turn, are one of the forms of incorporation of non-commercial organizations (legal entities).

However, as follows from the legislation of the Republic of Kazakhstan, the right to create and operate informal or unregistered public associations (organizations) is not recognized.

Thus, the Code on Administrative Offences of the Republic of Kazakhstan contains Article 489 whose heading “*Violation of legislation of the Republic of Kazakhstan on public associations as well as management, participation in, and financing of, the activities of the public, religious associations not registered in the manner prescribed by the legislation of the Republic of Kazakhstan*” speaks for itself.

⁶⁵ See: Constitution of the Republic of Kazakhstan adopted by the Republican referendum on 30 August 1995 (as amended on 2 February 2011) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/K950001000>.

It directly contradicts the standards of Article 22 of the UN International Covenant on Civil and Political Rights.

In accordance with international standards and practice of many countries of the world, NGOs may operate both incorporated and unincorporated.

In Kazakhstan, there is a system of registration of acquiring the status of a legal entity. As regards registration of non-commercial organizations, the legislation of the Republic of Kazakhstan does not contain an express prohibition on the activities of NGO without its registration (without acquiring the status of a legal entity). As already mentioned above, such express prohibition is established only with regard to public associations.

However, as follows from the law enforcement practice of justice authorities and public prosecutor's office, in some cases, the NGO established by a group of people not seeking the status of a public association and not acquired the status of a legal entity is considered as unregistered public association and its founders are subject to administrative liability. Unregistered religious associations have similar problems.

The bringing to liability of Serikzhan Bilyash, the leader of the informal organization "Atazhurt", which conducts a public campaign in defence of the Muslim minorities in Xinjiang (People's Republic of China) from their prosecution by the authorities, putting them in the so called "rehabilitation" camps where these people are subjected to torture and cruel treatment, may be mentioned as an example this year.

On 13 February 2019, the Specialized Inter-District Administrative Court of Almaty found Serikzhan Bilyash guilty of the administrative offence envisaged by Article 489 of the Code of the Republic of Kazakhstan on Administrative Offences and sentenced him to a substantial fine. On 5 March 2019, the Almaty City Court dismissed an appeal and upheld a decision of the court of first instance.

The prosecution of Serikzhan Bilyash terminated at that stage. In the night-time of 10 March, he was arrested presumably violently. In the hotel room where he was arrested observers found out the blood traces. Then he was taken out from Almaty to Astana and brought to police department. From the mass media announcements, we know that he was refused to see his attorney and that he was charged with incitement of national discord under Article 174 of the Criminal Code of the Republic of Kazakhstan. This Article is deemed extremist.

Ambiguity and non-transparency of the procedure, criteria and consequences of recognition of organization as a terrorist or extremist organization

Due to the broad outline of the term "extremism", the recognition of organization as an extremist organization judicially is associated with the use of provisions of legislation violating the principle of legal certainty and predictability of statutory provisions. In addition, such judicial proceedings are conducted in a closed regime, and no observers or representatives of the mass media are prohibited to attend them. This violates the right to information. The state conceals the final texts of the court decisions on recognizing organizations as extremist and terrorist organizations. These decisions are not publicly available.

Criminalization of involvement in public organization in the Criminal Code of the Republic of Kazakhstan by strengthening the responsibility of the “leaders of public associations”

It should be also noted once again the provisions of the criminal legislation of Kazakhstan with regard to the responsibility of the leaders and members of public associations.

The new version of the Criminal Code of the Republic of Kazakhstan⁶⁶ contains a number of Articles (3, 146, 174, 182, 256, 257 and 403), in which “*a leader of public association being the head of public association as well as other member of public association who is able, through control and authority, to exert solely a managerial influence on the activities of this public association*” is treated as a separate subject of crime. The crimes specified in these articles of the Criminal Code of the Republic of Kazakhstan are regarded as the so-called crimes of terrorism.

The introduction of this concept in the criminal law means discrimination of the leaders and members of public associations on the ground of public status, which directly violates the non-discrimination principle stipulated in Article 14 of the Constitution of the Republic of Kazakhstan as well as in Article 26 of the International Covenant on Civil and Political Rights.

The broad interpretation of this concept results in prosecution of any members of public associations, which also include the political parties. According to the logic of lawmakers and drafters, the “*leaders of public associations*” are exclusive violators of the equality of citizens (Article 145 of the Criminal Code of the Republic of Kazakhstan). The classification of the leaders of public associations as falling into a separate category is the violation of equality itself!

Application of additional punishments to those convicted under Article 174 in the form of prohibition on “engagement in public activity”

Article 174 of the Criminal Code of the Republic of Kazakhstan itself does not meet the standards of freedom of expression. It should be specially noted that the persons convicted under this article are sentenced to additional punishments (in addition to the primary punishments such as deprivation or restriction of liberty for a certain period of time) in the form of prohibition to engage in “public activity”.

Such court practice violates a number of the rights stipulated in the International Covenant on Civil and Political Rights.

In Kazakhstan, the court judgments with regard to civil society activists and opposition leaders often contain a prohibition on engagement in public activity as the punishment additional to the primary punishment and are also rendered under other articles of the Criminal Code of the Republic of Kazakhstan, which specify the crimes treated as the crimes of extremism. Specifically, the court judgments prohibit them to participate in the acts of protest, political meetings, flash mobs, marches and protest demonstrations, attend the seminars and trainings with participation of international organizations, conduct concerts and publish posts on the public-and-political and social-and-ecological topics.

⁶⁶ See: Criminal Code of the Republic of Kazakhstan dated 3 July 2014 (as amended on 21 January 2019) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/K1400000226>

Such additional punishments apply pursuant to Article 50 of the Criminal Code of the Republic of Kazakhstan “Deprivation of the right to hold certain position or engage in certain activity”. This article does not contain a clear definition and does not mention such punishment as prohibition to particularly engage in public activity, including the prohibition to “participate in the acts of protest, political meetings, flash mobs, marches and protest demonstrations, attend the seminars and trainings with participation of international organizations, conduct concerts and publish posts on the public-and-political and social-and-ecological topics”.

Moreover, this article contains the provision, which does not correspond to the principle of legal certainty and predictability. Pursuant to Clause 3 of Article 50 of the Criminal Code of the Republic of Kazakhstan: *“The deprivation of the right to hold certain positions or engage in certain activities may be imposed where it is not envisaged by the relevant article of the Special Part of this Code as additional punishment for the relevant criminal offence if, taking into account the nature and level of the public danger of the committed act and personality of guilty person, the court finds it impossible to reserve such person’s right to hold certain positions or engage in certain activities”*.

Such broad interpretation is left to discretion of the judge who may impose the additional punishment *“not to engage in the public or religious activity”* under any Article of the Criminal Code of the Republic of Kazakhstan.

In January 2019, Dilnar Insenova, a civil society activist, was sentenced to two years of imprisonment for embezzlement and, further, the court imposed on her an additional punishment in the form of prohibition to engage in public activity.

Such punishments violate the right of association and expression since they restrict them more than required and in violation of the principle of legal certainty and predictability of statutory provisions and standards set out in the Siracusa principles of interpretation of limitations and derogations from the provisions of the International Covenant on Civil and Political Rights⁶⁷.

As part of preventive measures against radicalism and extremism, including their financing, in 2015, the Parliament of the Republic of Kazakhstan adopted the Law on Introducing Amendments to Certain Legislative Acts on the Matters of Operation of Non-Governmental Organizations in the Republic of Kazakhstan⁶⁸, according to which substantial changes were made to the Law of the Republic of Kazakhstan on social contract award⁶⁹, Law of the Republic of Kazakhstan on the non-profit organizations⁷⁰ and the Code of the Republic of Kazakhstan on Administrative Offences. These amendments were negatively received by independent organizations of civil society, in

⁶⁷ See: United Nations Organization, Economic and Social Councils, UN Sub-Commission for Prevention of Discrimination and Protection of Minorities. Siracusa principles of interpretation of limitations and derogations from the provisions of the International Covenant on Civil and Political Rights. Adopted in May 1984 by a group of experts called by the International Commission of Jurists, International Association of Penal Law, American Association of the International Commission of Jurists, Urban Morgan Institute for Human Rights and International Institute for Theory and Practice of Criminal Law // Information website of ODIHR/OSCE Legislationline.

⁶⁸ See: Law of the Republic of Kazakhstan “On making amendments and addenda to certain legislative acts of the Republic of Kazakhstan on the matters of operation of non-governmental organizations”, No.429-V, dated 2 December 2015 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/Z1500000429>

⁶⁹ See: Law of the Republic of Kazakhstan “On public procurement of social service, grants and premiums for non-governmental organizations in the Republic of Kazakhstan”, No.36, dated 12 April 2005 (as amended on 13 June 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z050000036_

⁷⁰ See: Law of the Republic of Kazakhstan “On Non-Profit Organizations”, No.142, dated 16 January 2001 (as amended on 5 July 2018) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z010000142_

particular, human rights organizations, because of the excessive interference in the freedom of operation of NGOs and disproportionate restriction of the freedom of association.

For example, the amendments have introduced the NGO's obligatory annual reporting on the activities of the organization, including information on its founders (individual initiators), official persons, members, financing, projects, programs, etc., to be submitted to the Ministry of Culture and Sport (currently, the Ministry of Information and Public Development of the Republic of Kazakhstan). The non-provision as well as provision of false information involves administrative responsibility under Article 489-1 of the Code on Administrative Offences of the Republic of Kazakhstan in the form of a warning, fine or suspension of the organization's activities for 3 months.

These amendments were negatively received by international organizations. The UN Human Rights Committee, in its final report on the results of consideration of the Government report on the fulfilment by Kazakhstan of the International Covenant on Civil and Political Rights, recommended to the Government⁷¹: *“(c) to ensure that the new legislation concerning the appropriation of funds to public associations will not be used as a tool of control and illegal interference in the activities of such associations neither for activities of such associations nor for limitation of their possibilities of fund raising”*.

However, in July 2016, the Law of the Republic of Kazakhstan on Making Amendments and Addenda to Certain Legislative Acts of the Republic of Kazakhstan on the Matters of Payments and Payment Systems⁷² made amendments to tax legislation, which in the Tax Code of the Republic of Kazakhstan⁷³ adopted in 2017 were worded as follows: *“Individuals and/or structural subdivisions of a legal entity shall be obliged: 1) to notify the tax authorities, in the manner, in form and within the time limits established by the authorized body, of the receipt of monetary funds and/or\ other property from foreign countries, international and foreign organizations, foreigners, stateless persons in the amount exceeding the amount established by the authorized body where the activity of the recipient of funds and (or other property) is aimed at:*

- *providing legal assistance, including legal information, protection and representation of the interests of citizens and organizations as well as their consulting;*
- *studying and conducting of public opinion surveys, sociological surveys (other than public opinion surveys and sociological surveys conducted for commercial purposes) as well as distributing and publishing of their results;*
- *collecting, analysing and disseminating information except where the specified activity is carried out for commercial purposes”*.

Accordingly, yet another mechanism of control over the activities of civil society organizations was adopted, which mechanism is characterized by excessive interference of the state in the NGO's affairs and provides for disproportionate restriction of their activities in the form of monetary penalties in substantial amounts, suspension of activity and liquidation, which may undermine the very existence of organizations.

⁷¹ See: Final Comments to the Second Periodic Report of the Republic of Kazakhstan. // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law.

URL: http://www.bureau.kz/novosti/iz_drukikh_istochnikov/zaklyuchitelnye_zamechaniya_ko_vtoromu_periodicheskomu_dokladu

⁷² See: Law of the Republic of Kazakhstan “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Matters of Payments and Payment Systems”, No.12-VI, dated 26 July 2016.

URL: http://online.zakon.kz/Document/?doc_id=36220400#pos=1;-179

⁷³ See: Code of the Republic of Kazakhstan “On Taxes and Other Mandatory Payments to the Budget (Tax Code)”, No.120-VI ZRK, dated 25 December 2017 (as amended on 21 January 2019) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1700000120>

The monitoring of peaceful assembly in Kazakhstan, carried out by human rights organizations over many years shows that the attitude of the state to this right changed consistently towards tightening. At present, the state virtually equated extremism with exercise of the right to peaceful assembly.

Criminalization of the intention to hold a meeting

Currently, even a call for participation in peaceful assembly is the ground for prosecution. Any attempt to express the intention to hold a peaceful assembly even with the purpose of protection of social rights results in intimidation by the police. This happens as follows. Police officers come to the house of the person, who informed of his or her intention to participate in peaceful assembly (protest demonstration, political meeting) or arrest such person out of door. Then they force this person to write an explanatory note with regard to his or her actions. Further, it is the recent practice when a person is questioned as witness with the right of defence under the criminal case about which such person has no idea.

The persons so arrested are kept in the police where moral coercion is exerted on them and they are threatened to be subjected to prosecutions in order to force them to refuse to hold the meeting.

Arrests of journalists

On 22 March 2019, in the capital of Kazakhstan, i.e. Astana, nearby the trading house “Shapagat”, unknown people intentionally prevented the journalists of the “Present Time” television project of the Radio Free Europe/Radio Liberty and Voice of America to capture the statements of citizens who disagree with hasty renaming of the capital.

An appeal of the journalist Svetlana Glushkova to the police for assistance was ignored. Moreover, police officers having believed one of the ladies from among the persons preventing the journalists from shooting arrested the journalist and brought her to the police department where she was kept for more than three hours trying to accuse her of the offence envisaged by Article 293 of the Criminal Code of the Republic of Kazakhstan “Hooliganism”. Later, the accusations were substituted for the offence under Article 73-2 “Battery”⁷⁴.

The same day, in Almaty, on the pedestrian boulevard named after Panfilov, unknown young people tried to prevent the Present Time’s shooting team from shooting the arrests of townspeople. The law enforcement officers stood nearby and did not take any measures against wrongdoers.

One day earlier, on 21 March, near the Akimat of Astana, a group of people tried to prevent the Present Time’s journalists from shooting the citizens stated about their disagreement with capital renaming.

Earlier, on 11 March 2019, in Zhanaozen, where the public speaking of citizens requesting for employment was held, the police officers arrested Saniya Toyken, a reporter from Azattyq, the Kazakhstan service of the Radio Free Europe/Radio Liberty. She was arrested in the evening time when she came out of the café. In the morning, Saniya Toyken was sentenced by the Zhanaozen Administrative Court to the payment of a fine in the amount of 20 times the MCI on the charge

⁷⁴ See: URL: <https://rus.azattyq.org/a/29835923.html>

under Article 667 of the Code of the Republic of Kazakhstan on Administrative Offences “Failure to carry out the lawful order or request of police officer”⁷⁵.

Earlier, on 27 February 2019, in Zhanaozen, police officers, having used force, arrested the journalist and camera operator of the Kazakhstan service of the Radio Free Europe/Radio Liberty, Saniya Toyken and Sanat Nurbek. The journalists were arrested in the course of performance of their professional duties when shooting a political meeting of the townspeople who requested for employment. The journalists were taken from Zhanaozen to the regional centre, having deprived them of the possibility to finish shootings and prepare materials concerning the events⁷⁶.

The same day, in Uralsk, the well-known blogger Askar Shaygumarov was arrested when he came out of his house and brought to the local police department where they failed to bring any charge against him. It is obvious that the arrest of Mr Shaygumarov was associated with the congress of the president party “Nur-Otan” held that time in Astana, during which citizens in various cities of the country intended to request for implementation of political reforms⁷⁷.

On 12 February, in Astana, Saniya Toyken, a reporter from Azzatyq, who conducted an interview with mothers with many children participated in the act of protest, was brought to police department without giving any reasons. Daniyar Adilov, the Head of Criminal Investigation Department, had a discussion with the reporter for half an hour, after which the reporter was released⁷⁸.

The use of the “extremist articles” for prosecution of civil society activists exercising their right to peaceful assembly

In the end of April 2016, the public discontent associated with amendments to land legislation of Kazakhstan proposed by the authorities took the form of numerous demonstrations in the Western Kazakhstan and, later, in other regions of the country.

On 21 May, the rioters planned to continue the peaceful acts of protest in various cities of Kazakhstan. In response, numerous police squads were called to the streets in order to prevent from holding peaceful assembly in Almaty, Astana and other cities. Hundreds of activists were arrested; the central streets and squares of some cities were blocked. Citizens were deprived of the right of expression in the course of peaceful acts of protest.

By various estimates, from 1,000 to 1,500 activists and over 50 journalists and 5 human rights defenders were arrested only in Almaty. The detained persons were brought to police departments and were released in 6-10 hours without giving any reasons or explanations. The detained persons were not provided with legal assistance.

Meanwhile, in some cases criminal proceedings were instituted against a number of civil society activists. In the Western Kazakhstan city Atyrau, several activists were accused of preparation for crimes and calls for overthrow of constitutional system and mass disorders.

⁷⁵ See: Website of the International Freedom of Speech Protection Foundation “Adil coz”

URL: <http://www.adilsoz.kz/news/show/id/2886>

⁷⁶ See: URL: <https://www.svoboda.org/a/29793555.html>

⁷⁷ See: Website of the Coalition for Security of Human Rights Defenders

URL: <http://pana-defenders.info/publications/27nurotanbailanysta/>

⁷⁸ See: Website of Radio Liberty.

URL: <https://rus.azattyq.org/a/29765946.html>

In November 2016, Talgat Ayan and Max Bokayev, civil society activists, were found by the Atyrau City Court guilty under the extremist article of incitement of social discord, violation of legislation concerning the holding of political meetings and distribution of false information, and were sentenced to five years of imprisonment each. By the court decision, they must also pay substantial fines. Mr Bokayev and Mr Ayan rejected the charges, their advocates and human rights defenders consider their case politically motivated.

The UN Working Group for Arbitrary Detentions recognized their detention arbitrary and demanded their release.

In 2018, Mr Ayan was released on parole, and Mr Bokayev remains in the place of detention.

Large-scale human rights violations in Zhanaozen in December 2011

In December 2011, in Zhanaozen, the police engaged weapons against unarmed protestors, i.e. oil workers who carried out the strike lasting many months requesting to raise their salaries. According to the official information, 17 persons were killed.

Several oil workers and the opposition leader Vladimir Kozlov were accused according extremist articles and were sentenced to lengthy periods of imprisonment. Despite the calls of the international organizations, including the UN High Commissioner for Human Rights Navi Pillay, in 2012 for conducting an independent international investigation of these accidents, the authorities of Kazakhstan did not take any steps in this regard.

9. THE RIGHT TO FREEDOM OF CONSCIENCE, RELIGION OR BELIEF

Since 2001, within the framework of fighting against violent extremism and terrorism, amendments to legislation of the Republic of Kazakhstan have been being made regularly, which amendments significantly restrict the human right to freedom of religion and belief.

As early as March 2001, the Resolution of the Government of the Republic of Kazakhstan on the draft Law of the Republic of Kazakhstan “On Introducing Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Matters of Freedom of Religion”⁷⁹ proposed significant amendments to legislation.

These amendments, under the pretence of the necessity to fight against extremism and religious sects, significantly affected the matters of registration of religious associations, missionary activity, distribution of materials of religions content and many other significant issues relating to the human right to freedom of belief, conscience and religion.

Even at that time, the Government introduced the statutory provision, which required more than 50 individual initiators in order to register a religious association. The right to freedom of religion and belief exercisable both solely and together with others was significantly limited to missionary activity, and illegal missionary activity involved criminal prosecution.

⁷⁹ See: Decree of the Government of the Republic of Kazakhstan “On the draft Law of the Republic of Kazakhstan “On making amendments and addenda to certain legislative acts of the Republic of Kazakhstan on the matters of freedom of religion”, No.407, dated 29 March 2001 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: http://adilet.zan.kz/rus/docs/P010000407_

Because of international pressure and critics of this draft law by the experts, in September 2001 this draft law was withdrawn from the lower chamber of the Parliament of the Republic of Kazakhstan.

After the terrorist attack on 11 September 2001 against the buildings of the World Trade Centre in the centre of New-York, in November 2001, the draft Law of the Republic of Kazakhstan “On making amendments and addenda to certain legislative acts of the Republic of Kazakhstan on the Matters of Freedom of Religion” was submitted to the Parliament of the Republic of Kazakhstan again and, in April 2002, it was adopted by both chambers of the Parliament.

However, on 4 April 2002, by Resolution of the Constitutional Council of the Republic of Kazakhstan⁸⁰ this law was recognised unconstitutional. It is worthy of note that, in November 2017, that Resolution was abolished by the Constitutional Council itself.

Later similar amendments were initiated by the Government of the Republic of Kazakhstan and members of the Parliament repeatedly under the pretence of fighting against violent extremism and terrorism; however, each time the law was not finally adopted.

In 2001, 2004 and 2009, Kazakhstan requested the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) to evaluate the draft laws intended to amend legislation concerning the freedom of religion and belief. As a result, critical assessment was received from the OSCE/ODIHR’s experts repeatedly.

Following the Government’s attempts to amend the legislative acts of the Republic of Kazakhstan on the matters of freedom of religion and activity of religious associations for 10 years, and after the waves of protests and uprisings, which happened in the Arab world in 2010-2011, notwithstanding the criticism of experts and international organizations, during a month, under the pretence of fighting against violent extremism and terrorism, in October 2011, the new Law of the Republic of Kazakhstan on Religious Activities and Religious Associations⁸¹ was adopted.

Therefore, a number of statutory provisions significantly restricting the right to freedom of religion and belief, which were attempted, without success, to be adopted during 10 years, became the provisions of legislation of the Republic of Kazakhstan that are currently in effect.

It should be particularly noted that, in February 2005, the Law of the Republic of Kazakhstan on Combatting Extremism⁸² and, in 2016, the work on making amendments to the said Law was commenced, which resulted from execution of the instructions of the Security Council (headed by the President) given at its meeting on 10 June 2016 following the act of terrorism in Aktobe where attacks against military unit happened, as a result of which 8 persons were killed. (For more details,

⁸⁰ See: Resolution No. 2 of the Constitutional Council of the Republic of Kazakhstan “On Verification of the Constitutionality of the Law of the Republic of Kazakhstan “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Matters of Freedom of Religion and Activity of Religious Associations” (became inoperative) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/S020000002_

⁸¹ See: Law of the Republic of Kazakhstan “On Religious Activities and Religious Associations”, No. 483-IV, dated 11 October 2011 (as amended on 22 December 2016) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/Z1100000483>

⁸² See: Law of the Republic of Kazakhstan “On Combating Extremism”, No.31-III, dated 18 February 2005 (as amended and supplemented on 28 December 2016) // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z050000031_

please see Section 3 of this Information Note).

After the official appeal of Kazakhstan in October 2016, the OSCE/ODIHR's experts provided analysis of the draft amendments to the Law on Combatting Extremism being considered by the lower chamber of the Parliament. Critical comments and recommendations were dismissed by the Kazakhstan authorities. As a result, on 28 December 2016, having undergone all necessary procedures the Law was adopted,

These legislative changes affected the Law of the Republic of Kazakhstan on Religious Activities and Religious Associations.

The following amendments were made to it:

- 1) Article 1: to add sub-clause 4-1 which reads as follows: *“advancing of religious doctrines shall be the activity focused on the communication as well as the transfer of information on the fundamental articles of belief, ideas, views and practices of a particular religion”*; to add sub-clause 5 which as follows: *“missionary activity shall be the activity of citizens of the Republic of Kazakhstan, foreigners, stateless persons focused on distribution of a religious doctrine within the Republic of Kazakhstan for the purpose of voluntary conversion”*;
- 2) Clause 1 of Article 6: to add sub-clause 4 which reads as follows: *“importation of religious literature and information materials intended for personal use in one counterpart each”*; to add sub-clause 6 which read as follows: *“preparation, issue and distribution of religious literature and other religious information materials”*;
- 3) Article 9: to add clause 3 which shall read as follows: *“Religious literature and other religious information materials other than those intended for personal use in one counterpart each shall be imported in the territory of the Republic of Kazakhstan only by registered religious associations after obtainment of a positive opinion of theological expert examination”*; Sub-Clause 3-1 of the following wording shall be added: *“The preparation, issue and distribution of religious literature and other religious information materials shall be permitted after obtainment of a positive opinion of theological expert examination”*.

In 2017, the Ministry for Religious and Civil Society Affairs of the Republic of Kazakhstan (currently, the Ministry of Information and Public Development of the Republic of Kazakhstan) drafted the Law on making amendments to certain legislative acts of the Republic of Kazakhstan on the matters of religious activities and religious associations.

The draft law provided for introduction of amendments to three codes and nine draft laws. After the long-lasting work in the Parliament and critics on the part of independent experts and international organizations, in January 2019, the Government withdrew that draft law.

Current legislation and law enforcement practice concerning the human rights to freedom of religion or belief

The Law on Religious Activities and Religious Associations adopted in 2011 has significantly restricted the rights to freedom of religion. Thus, the results achieved earlier have not been preserved.

The law enforcement practice with regard to the so-called “non-traditional religions” has strengthened the interference of the authorities resulting in the increase of the number of various inspections and special control of their activities.

The Law on Religious Activities and Religious Associations prohibits the operation of unregistered religious associations and provides for three possible statuses upon registration of a religious association and a fairly large number of individual initiators. To register a local religious association, 50 individual initiators are required, and to register a regional religious association, 500 individual initiators are required, and to register a republican religious association, 5,000 individual initiators are required.

Thus, the provisions of this Law violate Article 18 of the ICCPR as well as Article 14 of the Constitution of the Republic of Kazakhstan for the reason of the express discrimination based on religion.

Thus, for example, for creation of a public association, 10 citizens are required, and this public association may freely operate territorially, i.e. at the local, regional or national level.

Construction of religious buildings

The Law adopted in 2011 has given an additional impulse to the use of statutory provisions for discrimination purposes.

Thus, for example, the Preamble of the Law states that the Republic of Kazakhstan “*recognizes the historical role of Hanafi Islam and Orthodox Christianity in the development of culture and public spiritual life*”.

As a result, it is obvious that there is discrimination against religious minorities in the government/religious relationship. It is expressed in the special support of the state, both through motivation of major private business and directly upon construction of religious buildings, allotment of land plots in the upscale districts of large and small settlements for the needs of the said two confessions.

Therefore, a clearly excessive number of religious buildings of the so-called “traditional confessions” and the major deficiencies of religions minorities in such buildings are observed. Meanwhile, the overwhelming majority of “non-traditional” religious communities face huge bureaucratic problems and cannot get the land plots for construction of religious buildings.

If they purchase or lease the premises for the purpose of using them for the needs of religious association, they face discrimination by the authorities. It is mostly expressed in formidable obstacles at the legislative level to the possible use of the purchased or leased premises for holding religious meetings and performing rituals and ceremonies.

Carrying out of activities outside religious buildings

This may be evidenced by two regulatory legal acts (i.e. the Instruction⁸³ and Standard⁸⁴), which regulate the issues of agreeing upon the location of premises for holding religious actions outside

⁸³ See: Order of the Minister on the Affairs of Religion and Civil Society of the Republic of Kazakhstan “On approval of the Instruction for determining the location of special permanently installed premises for distribution of religious literature and other religious information materials, items of religious nature as well as premises for carrying out religious actions outside religious buildings (constructions)”, No.89, dated 9 June 2017 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/V1700015432>

religious buildings (constructions) issued by the Ministry for the Religious and Civil Society Affairs.

In accordance with the Instruction, premises for carrying out religious actions should be located at least 300 meters from the site and the premises (in case there is no area attached to them) specified in sub-clause 3 of clause 5 of the Instruction, save for the railway and bus stations, airports and seaports (clause 7). Sub-clause 3 of clause 5 of the Instructions is about educational institutions.

The Instruction also establishes requirements for the premises (i.e. area, sanitary facilities, etc.) and also states that the location of premises for carrying out religious actions shall be permitted provided that the rights and interests of the persons staying/residing in close proximity (in the neighbouring premises) are observed, as well as it does not prevent from operation of the building in which the premises are located (Clauses 8 and 9).

Among documents required for the provision of state services (the issue of a decision of approval), the State Services Standard specifies:

- a background statement, which should state that, within three hundred meters, there are no buildings of government authorities, government agencies or educational institutions, save for the faith-based (religious) educational institutions (sub-clause 3 of clause 9);
- a copy of decision of the meeting (gathering) of local community or decision of the meeting of the owners or lessees of the premises (apartments) operating in the area, where the premises for carrying out religious actions are located, of the consent to carrying-out of religious actions (to be provided if there are nearby residential houses bordering on the territory of the building in which the premises are located (including where there is an easement or motor road between the borders) (sub-clause 5 of clause 9).

The experience of religious minorities suffering major deficiencies in religious buildings (over 40%) shows that it is virtually impossible to comply with the requirements established for the premises used for carrying out religious actions outside the religious buildings (constructions), which are specified in the Instruction and Standard, which results in discrimination.

Minors

The discrimination concerning statutory provisions relating to the involvement of minors is of special concern. Where one of the child's parents has disagreements with the second parent or a guardian with regard to the child's visiting a religious association, the child's opinion is disregarded, which contradicts the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief (Article 5, Clause 2)⁸⁵ and Convention on the Rights of the Child (Article 14)⁸⁶. In case of violation of this statutory provision, an administrative liability is imposed on a member of the church and religions organization, which also triggers a lot of questions.

⁸⁴ See: Order of the Minister of Culture and Sport of the Republic of Kazakhstan "On approval of the state services standards in the field of religious activities", No.147, dated 23 April 2015 // Information and legal system of the laws and regulations of the Republic of Kazakhstan "Adilet".
URL: <http://adilet.zan.kz/rus/docs/V1500011183>

⁸⁵ See: Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief adopted by the General Assembly of the UN on 25 November 1981 // Information and legal system of the laws and regulations of the Republic of Kazakhstan "Adilet".
URL: <http://adilet.zan.kz/rus/docs/O810000001>

⁸⁶ See: Convention on the Rights of the Child adopted on 20 November 1989 // Information and legal system of the laws and regulations of the Republic of Kazakhstan "Adilet".
URL: http://adilet.zan.kz/rus/docs/B940001400_

Similar restrictions for minors are not established for any other activities, i.e. visiting by minors of sports sections, artistic clubs, and entertainment centres, etc. Therefore, we believe, it is discrimination against religion.

Preparation and distribution of religious informational materials and sacred objects

The provisions of Kazakhstan legislation also significantly affect the matters of distribution of religious literature, religious information materials and religious items. The preparation (manufacture) and issue are permitted only after the obtainment of a positive opinion of the theological expert examination. Such restrictions exist only on the ground of their classification as religious literature and materials, and are discriminatory.

It should be noted that, under the pretence of combatting terrorism and protecting human rights, there is significant and unreasonable restriction of the right to freedom of religion; the trends to restrict the right through the adoption of legislative acts and negative propaganda in the mass media persist; the law enforcement practice concerning non-traditional religions has strengthened the interference of the state and increased repressive actions through the administrative and criminal prosecution, which, in its turn, entails the lack of guarantees of the rights to freedom of religion. So drastic changes have occurred due to inconsistency of the adopted Law with the provisions of the International Covenant on Civil and Political Rights ratified by Kazakhstan.

The legislation of the Republic of Kazakhstan restricting the human right to freedom of religion and belief within the framework of counter-terrorism efforts needs to be reviewed and brought into line with the international standards, which Kazakhstan has committed itself to meet.

It is also necessary to review the current legislation in terms of non-discrimination based on religion since the counter-terrorism efforts must not be of a discriminatory nature based on religion.

Following a number of terrorist attacks in 2011 and 2012, a massive campaign aimed at fighting against the “alien” religious movements has been launched in the country. Kazakhstan authorities have recognized Salafist Islam as the most dangerous one. It is Salafist Islam that has been determined as ideological background for extremism in Kazakhstan, and its adepts have been made equivalent to potential extremists and terrorists⁸⁷.

The officially supported discourse of the “wrong” and “dangerous” movements have been embodied in the conceptual documents intended to regulate religious sphere. In 2017, the Concept of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2017-2020⁸⁸ was approved; it states about the radically minded representatives of destructive religious movements who “*are potentially ready to take extreme measures, i.e. organize and commit the acts of violence against citizens, society and the state*”⁸⁹.

Consequently, the fight against “destructive movement” was outlined as the main objective of those agencies that deal with preventive measures and counter-extremism and counter-terrorism efforts.

⁸⁷ See: URL: https://tengrinews.kz/kazakhstan_news/ministr-salafizm-ne-yavlyaysya-priemlyim-dlya-kazahstana-304119/

⁸⁸ See: Order of the President of the Republic of Kazakhstan “On Approval of the Concept of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2017-2020”, No. 500, dated 20 June 2017 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/U1700000500>

⁸⁹ See: URL: https://tengrinews.kz/zakon/prezident_respubliki_kazahstan/konstitutsionnyy_stroy_i_osnovyi_gosudarstvennogo_upravleniya/id-U1700000500/

Moreover, the category of “destructivity” remains to be an extremely vague and undefined term, which results in discrimination of citizens based on religion as well as restricts the Muslim minorities’ right to freedom of religion.

Today, there are the following types of discrimination of representatives of Muslim minorities in Kazakhstan:

1. As part of preventive measures against extremism, the special records of persons, who belong to “destructive religious movements”, are kept in each region of the country. As follows from the official sources, the representatives of Salafism fall under this list. Further, it remains unclear what criteria are used to determine whether or not a believer belongs to Salafism. The personal data is collected without consent of the citizens themselves, which constitutes a violation of the Law on Personal Data and Their Protection⁹⁰.

2. It is a common practice to arrest the persons having “specific” appearance in order to conduct “preventive” talks. The law enforcement officers may arrest anybody who looks like, in his or her appearance, a representative of “destructive movement” and bring him or her to the specialized Centres under the Departments for Religious Affairs under Akimats. Usually, the following criteria are determined: for men – beard and trunks, and for women – niqab or hijab. In these Centres, it is determined whether or not a person belongs to the “destructive” religious movements, and explanatory work is conducted.

Special focus may be on persons having “specific” appearance in the customs control zones of the border points. It was repeatedly reported about the cases when a person with a beard or wearing hijab was examined with great care or detained for a long time for conducting special checks.

Such practices are anti-constitutional since they restrict the liberty of citizens without any legal grounds.

3. The grounds for taking discriminatory measures are not only the outward appearances of “destructivity” but also the specific religious practices. In some regions of the country, in mosques, an administrative fine for performing a religious ritual in the manner not prescribed by the so-called “traditional” Islam may be imposed. Specifically, the issue is about the loud pronouncement of the word “Amen” after the praying, which is treated by the official clergy officers as a sign of the “non-traditional” movement.

Thus, in 2017, in Uralsk, a fine amounting to 80,000 tenge was imposed on the local resident. Article 490 of the Code on Administrative Offences of Kazakhstan “Impeding legal religious activity as well as infringement of the civil rights of individuals on the grounds of attitude towards religion or wounding their religious feelings or violation of their religious feelings or desecration of the objects, buildings and places held sacred by the adepts of a particular religion”⁹¹ was used as a ground. Similar cases were established in a number of other cities of the country.

4. Following the terrorist attacks in 2016, Kazakhstan authorities pay special attention to the establishment of the principle of secularism in the society. One of the main features of this police

⁹⁰ See: URL: <http://www.uralskweek.kz/2016/06/16/dknb-v-aktyubinskoj-oblasti-prozhivaet-bolee-1500-salafitov/>

⁹¹ See: URL: <https://rus.azattyq.org/a/kazakhstan-sanat-zko-amin/28529256.html>

has become the strengthening of requirements for school uniform in the secondary educational institutions of the country. Based on the Order of the Minister of Education⁹², in 2017, the access of pupils wearing religious kerchiefs (hijab) to educational institutions was, on a massive scale, restricted in Kazakhstan. Thus, from 2017 to 2018, the right to secondary education of several hundreds of girls throughout Kazakhstan was restricted because of refusal to remove their headbands⁹³. The administrative fines in the amount of 50 to 100 times the MCI⁹⁴ were imposed on the parents of those girls. In some regions, the parents applied to court against school administrations, however, their claims were dismissed by the judicial authorities of the Republic of Kazakhstan. Some experts believe that the prohibition to wear hijab at schools without providing an alternative option in the form of distance education or education in specialized schools is the direct violation of the constitutional rights of the citizens of Kazakhstan to secondary education⁹⁵.

In general, the existing restrictions with regard to the Muslim minorities as well as practicing believers have a number of negative consequences.

First, the extremely broad interpretation of radicalism serves a breeding ground for expansion of xenophobic feelings among citizens. The equating of fundamental Islam adepts with potential extremists gives rise to intolerance and hostility towards them among the other members of the society. The fact that the propensity for violence may not be a feature of any group, especially where the criteria of the group itself are extremely vague, has not taken into account.

The official discussion of the “alien” Islamic movements legitimizes the public pressure on everybody who is not in line with the concept of the “correct” Islam. It gives rise to demonization of the persons wearing hijab or other attributes of Islam.

The dismembering and antagonism against them by the public involves not only the psycho-emotional consequences but also predetermines the social and economic separation and poverty of the Muslim minorities. The persons having a specific appearance (hijab, beard) cannot find a job, often have to beachcomb or agree to menial work. This deprives them and their children of the possibility to become proper members of the society.

Thus, the existing approach to the fight against terrorism through the tightened control and restriction of representatives of the so-called “alien” Islamic movements comes with violation of their civil rights as well as creates the risk of marginalization of certain Muslim communities. It contradicts the legal nature and secularism of the Kazakhstan state as well as prejudices the achievements of the country in reaching the inter-confessional consensus.

10. THE RIGHT TO FREEDOM OF MOVEMENT, INCLUDING THE RIGHTS OF ASYLUM SEEKERS, REFUGEES, INTERNAL MIGRANTS

On 10 June 2016, during a session of the Security Council that was called in wake of a terrorist attack in Aktobe,⁹⁶ President of Kazakhstan instructed the government to develop a legislative

⁹² See: Order of the Minister of Education and Science of the Republic of Kazakhstan “On Approval of the Requirements for Obligatory School Uniform for Organizations of Secondary Education”, No.26, dated 14 January 2016 // Information and legal system of the laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V1600013085>

⁹³ See: URL: <https://informburo.kz/novosti/v-yuko-oshtrafovali-roditeley-130-shkolnic-nosyashchih-platek.html>

⁹⁴ See: URL: https://bnews.kz/ru/news/oshtrafovani_roditeli_uchenits_nosivshih_hidzhab_v_aktobe

⁹⁵ See: URL: <https://expertonline.kz/a15384/>

⁹⁶ See: “Ministry of Internal Affairs: Forty five individuals were getting ready for a jihad in Aktobe,” 14 June 2016, Nur.kz,

URL: <https://www.nur.kz/1159509-mvd-45-chelovek-gotovilis-k-dzhikhadu-v-ak.html>

package in the field of countering terrorism and extremism, and to “expedite work on the creation of an integrated system of migration control and provide for mandatory registration of migrants.”⁹⁷

Under the Law “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Countering Extremism and Terrorism”⁹⁸ which was adopted at the end of 2016, the authority and the role of national security agencies in the administration of migration processes had been significantly expanded.

Amendments to Article 726 of the Code of the Republic of Kazakhstan on Administrative Offenses provided the national security agencies with authority to review administrative cases involving “*violations of the legislation in the area of migration of population by individuals or legal entities who receive foreign citizens and stateless persons*” (Article 518), as well as those that involve “*employing foreign labour and labour immigrants in violation of the legislation*” (Article 519).

Clause 2 of Article 14 of the Law on Migration of the Population⁹⁹ has legislated the national security agencies’ right not to explain reasons for refusing to approve applications for entry, permanent residency and citizenship of the Republic of Kazakhstan. OSCE ODIHR has concluded that this clause does not meet the principles of a fair trial and transparency in an administrative and judicial process.¹⁰⁰

Clause 6 of Article 14 of the Law has given the national security agencies the right to review and give their consent to the petitions filed by foreign citizens and stateless persons seeking citizenship of the Republic of Kazakhstan.

Amendments made to the Law on the National Security Agencies of the Republic of Kazakhstan¹⁰¹ (Article 13.3) gave the national security agencies permission to independently (as opposed to jointly with the competent government bodies which was the case before) resolve on the matters of denying entry and expelling foreign citizens and stateless persons.

It is of concern that the amendments dealing with the expulsion and forced deportations do not provide exceptions to accommodate scenarios when such acts pose a threat to the life and safety of concerned people, i.e. victims of human trafficking, refugees and asylum seekers.¹⁰²

In addition, the function of administration of migration processes have been transferred from the jurisdiction of the Ministry of National Economy and distributed among the Ministry of Labour and

⁹⁷ See: Official website of the President of the Republic of Kazakhstan, “Session of the Security Council headed by the Head of the State”, 10 June 2016.

URL: http://www.akorda.kz/ru/events/akorda_news/zayavlenie-glavy-gosudarstva

⁹⁸ See: Law of the Republic of Kazakhstan No.28-VI ZRK dated 22 December 2016 “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Countering Extremism and Terrorism” // Adilet Information and Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.

URL: <http://adilet.zan.kz/rus/docs/Z1600000028>

⁹⁹ See: Law of the Republic of Kazakhstan No.477-IV dated 22 July 2011 “On Migration of the Population” (as changed and amended on 04.07.2018) // Adilet Information and Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.

URL: <http://adilet.zan.kz/rus/docs/Z1100000477>

¹⁰⁰ See: OSCE Office for Democratic Institutions and Human Rights, “Preliminary conclusion on the draft law of the Republic of Kazakhstan “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Countering Extremism and Terrorism” Warsaw, 16 October 2016

URL: <https://www.osce.org/ru/odihr/313101?download=true>

¹⁰¹ See: Law of the Republic of Kazakhstan No.2710 dated 21 December 1995 “On the National Security Agencies of the Republic of Kazakhstan” (as amended on 28.12.2017) // Adilet Information and Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.

URL: http://adilet.zan.kz/rus/docs/Z950002710_

¹⁰² Same source, p. 36.

Social Protection and the newly created Committee on Migration Services under the Ministry of Internal Affairs.

Certain rhetoric at the highest levels of the state and legislated links between migration and terrorism may lead to an increase in xenophobic trends in the society and legitimize ethnic profiling of migrants by law enforcement and national security bodies.

Thus, Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, warned that “*overly-restrictive migration policies introduced because of terrorism concerns are not justified and may in fact be damaging to state security.*”¹⁰³

Registration at place of residence

Registration at place of residence, which survived with a few modifications from the Soviet-time system of *propiska*, has for many years been criticized by international and Kazakhstan human rights organizations as an impediment to the right to freedom of movement and choice of place of residence, and to access to many fundamental human rights and equal access to social security, due to an insufficiently flexible system that does not provide all residents of the country with the same opportunity to obtain registration.¹⁰⁴

The requirements to get registered at the place of residence have been made even more stringent under the aforementioned law on amendments to certain legislative acts of the Republic of Kazakhstan on countering extremism and terrorism, which acted as the basis for amendments to the Code on Administrative Offenses of the Republic of Kazakhstan and the laws on migration of the population and on housing relations.¹⁰⁵

New terms, “*a place of temporary residence*” (clause 17-1 of Article 1 of the Law “On Migration of the Population”) and “*temporary residents*” (clause 45 of Article 2 of the Law “On Housing Relations”) have been introduced into the legislation; however, no definition was given of what duration is understood to be “*temporary.*”

According to clause 17-1 of Article 1 of the Law “On Migration of the Population”, a place of temporary residence was defined as “*a building, premise or dwelling which has an address, is not a place of residence, and at which a person resides (lives) on a temporary basis.*” In other words, dwellers at premises that have no legal address or are located in unregistered inhabited areas, and persons without a certain place of residence (homeless) lose the opportunity to obtain registration and, consequently, access to social services.

Clause 1 of Article 492 of the Code on Administrative Offenses has been amended to include changes where citizens are now obliged within ten days to register at the place of their temporary

¹⁰³ See: Office of the UN High Commissioner on Human Rights, “Refugees and terrorism: “No evidence of risk” – New report by UN expert on counter-terrorism”, 21 October 2016

URL: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20734>

¹⁰⁴ See: Boriss Cilevičs “The Propiska System Applied to Migrants, Asylum Seekers and Refugees in Council of Europe Member States: Effects and Remedies”, recommendation by the Parliamentary Assembly of the Council of Europe, (2001).

URL: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16961&lang=en>.

¹⁰⁵ See: Law of the Republic of Kazakhstan No.94 dated 16 April 1997 “On the Housing Relations” (as amended on 12.07.2018), clause 45 of article // Adilet Information and Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.

URL: http://adilet.zan.kz/rus/docs/Z970000094_

residence (as opposed to three months in the previous edition). Many experts¹⁰⁶ doubted if it was necessary to require citizens to register at the place of temporary residence, since it might impose too heavy burden onto individuals and property owners and represent a restriction of freedom of movement - e.g. for those persons whose professional business takes them on frequent trips around the country.

This legislative reform had caused an unprecedented public outcry in early 2017, which manifested itself in explosive discussions in social networks and mass media,¹⁰⁷ protests,¹⁰⁸ and several petitions signed by thousands of citizens.¹⁰⁹

In January 2017 the police embarked on a large-scale raid campaign by checking the status of citizens' registrations. As a result, in the first several weeks of 2017 dozens of thousands of citizens descended on the Public Service Centres (TsONs) to obtain registrations. Two people died in the lines in Almaty.¹¹⁰

Given the mass character of registration at the place of residence, use of this mechanism to counter extremism and terrorism seems like an unjustified restriction of the right to freedom of movement, and an excessive burden imposed virtually on every single citizen of the country. The system of registration of citizens, as it exists, impedes internal migrants in their process of successful adaptation in the cities, by reducing their chances to find a job with a properly documented employment contract and forcing them to work for salaries "in an envelope," with no social benefits, pension deductions, labourers' rights and insurance. Moreover, this system is hardly an impediment to terroristic organizations, considering an extremely high level of corruption at law enforcement agencies.¹¹¹

Protection of the rights of refugees

The Law of the Republic of Kazakhstan on refugees defines refugees as persons who flee persecution on the basis of "*race, ethnicity, religion, citizenship, social group or political beliefs and are based outside of the country of their citizenship.*"¹¹² Therefore, it does not provide protection to persons who are fleeing war or mass violence. Thus, in 2016 Yasser Aliziddin, a citizen of Syria, who is married to a Kazakhstani citizen and has five children with her, was refused a refugee status. A court ruled that under the current legislation war was not on the list of reasons to grant such status.¹¹³

¹⁰⁶ See: OSCE Office for Democratic Institutions and Human Rights, "Preliminary conclusion on the draft law of the Republic of Kazakhstan "On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Countering Extremism and Terrorism" Warsaw, 16 October 2016
URL: <https://www.osce.org/ru/odihr/313101?download=true>

¹⁰⁷ See: "The new law on registration has caused heated discussions in social networks." Tengrinews.kz, 3 January 2017

URL: https://tengrinews.kz/kazakhstan_news/novyiy-zakon-registratsii-kazahstantsev-vyizval-jarkie-309326.

¹⁰⁸ See: "A flashmob was held in Kazakhstan's oil capital in protest of temporary registration," Tengrinews.kz, 12 January 2017

URL: https://tengrinews.kz/kazakhstan_news/neftyanoy-stolitse-kazahstana-proshel-fleshmob-protiv-309881/

¹⁰⁹ See: "A website with a petition protesting temporary registration has been blocked in Kazakhstan," Tengrinews.kz, 9 January 2017

URL: https://tengrinews.kz/kazakhstan_news/kazahstane-zablokirovali-sayt-petitsiy-protiv-vremennoy-309646/

¹¹⁰ See: "[Mr.]Abayev has sent his condolences on the occasion of a human casualty at a Public Service Center (TON) in Almaty," Tengrinews.kz, 17 January 2017

URL: https://tengrinews.kz/kazakhstan_news/abaev-vyirazil-soboleznovaniya-svyazi-smertyu-mujchinyi-310232/

¹¹¹ See: Azattyq.org, "Kazakhstani "leaders" of corruption: will never change, ever?" 9 December 2018

URL: <https://rus.azattyq.org/a/kazakhstan-den-borby-s-korruptsiyeyi/29645778.html>

¹¹² See: Law of the Republic of Kazakhstan No.216-IV dated 4 December 2009 "On Refugees" (as amended on 30.12.2016), clause 1 article 1 // Adilet Information and Legal System of Regulatory Legal Documents of the Republic of Kazakhstan.

URL: http://adilet.zan.kz/rus/docs/Z090000216_

¹¹³ See: Kazakhstan International Bureau for Human Rights and the Rule of Law, "The family of a Kazakhstani woman that fled from Syria has received the first response to their cry for help," 17 February 2016

URL: https://bureau.kz/novosti/iz_drugikh_istochnikov/semya_kazakhstanki_iz_sirii_poluchila_pervyi_otklik/

CONCLUSION

Over the last twenty years or so, legislation and law enforcement practice in the Republic of Kazakhstan in the area of fight against radicalism, extremism and terrorism have been developing mainly toward becoming more restrictive, more authority given to law enforcement agencies, and less and less political rights and civil freedoms.

Mainly, this concerns the fundamental rights and freedoms, such as the right to freedom of speech and expression of opinion, right to freedom of association, including trade unions, and freedom of peaceful assembly, right to freedom of conscience, religion or belief, right to freedom of movement, right to participate in state governance, including opposition political activity.

The authorities have used and continue to use the fight against extremism and terrorism as a pretext to persecute political opposition, civil society activists and human rights defenders, independent journalists and mass media.

Legislation on political rights and civil freedoms has a niche character (legislation on the mass media, legislation on public associations, legislation on religious activity and religious associations, etc.), contains a number of very vague terms and definitions which do not meet the standard of legal certainty and predictability and allow, by way of an arbitrary interpretation, to exert pressure and persecute political opponents of the powers that be.

An arbitrary and tendentious application of the anti-extremist and anti-terrorist legislation has resulted in dozens and even hundreds of civil society activists, religious figures and sympathizers of political opposition ending up in prisons.

Opposition is not represented either in the Parliament or local executive bodies; there is no independent radio or TV in the country, only a few independent printed media and Internet publications.

The right to peaceful assembly is restricted by the authorities so much as to make it almost non-existent.

All this leads us to believe that the fight against terrorism and extremism in Kazakhstan has been widely used by the authorities to persecute political opposition and dissidents and caused serious violations of the fundamental political rights and civil liberties.

Legislation and law enforcement practices in this area do not conform to international standards and need to be completely overhauled.