

On some questions of court practice on application of the legislation on terrorist and extremist crimes

Unofficial translation

Normative Decree of the Supreme Court of the Republic of Kazakhstan dated December 8, 2017 No. 11.

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Pursuant to results of the court practice generalization and for the purpose of correct and uniform application by courts of the legislation of the Republic of Kazakhstan on liability for terrorist and extremist crimes, the plenary session of the Supreme Court of the Republic of Kazakhstan resolves to make the following explanations.

1. Terrorist and extremist crimes cause significant harm to public safety, undermine the statehood foundations, hence timely and correct consideration of these categories of cases is one of the most important conditions for security of the state, protection of the rights, freedoms and legitimate interests of citizens and organizations, execution of the Constitution of the Republic of Kazakhstan (hereinafter - the Constitution)), laws and other regulatory legal acts, and also international treaties of the Republic of Kazakhstan.

2. When hearing cases of terrorist and extremist crimes, courts shall be guided by regulations of the Constitution, the Penal Code of the Republic of Kazakhstan (hereinafter - the Penal Code), laws of the Republic of Kazakhstan of July 13, 1999 No. 416 On Countering Terrorism (hereinafter - the Law on countering terrorism), of August 28, 2009 No. 191-IV On Counteraction of Legitimization (Laundering) of Incomes Received by Illegal Means, and Financing of Terrorism (hereinafter - Law on countering legalization (laundering) of income), of February 18, 2005 No. 31 On Countering Extremism (hereinafter - Law on countering extremism), other regulatory legal acts of the Republic of Kazakhstan, and also international treaties on combating terrorism and extremism, ratified by the Republic of Kazakhstan.

3. According to article 255 of the Penal Code and subparagraph 6) of article 1 of the Law on countering terrorism, an act of terrorism is the commission or threat of committing an explosion, arson or other actions that create the risk of death, significant property damage or other socially dangerous consequences, if these actions are committed with a view to disruption of public safety, intimidation of the population, impacting the decision-making by state bodies of the Republic of Kazakhstan, a foreign state or international organization, provocation of a war or complication of international relations, also encroachment on human life, committed for the same purposes, and to the same extent encroachment on the life of a statesman or public figure, committed in order to terminate his state or other political activity or out of revenge for such activity, or encroachment on human life, involving an attack on

persons and organizations enjoying international protection, buildings, structures, hostage taking, capturing buildings, structures, means of communication, hijacking and capture of aircraft or watercraft, railway rolling stock or other public transport.

4. The list of terrorist and extremist crimes is set out in paragraphs 30), 39) of article 3 of the Penal Code.

It must be borne in mind that the acts indicated in Articles 184 (subversion), 258 (financing of terrorist or extremist activities and other complicity in terrorism or extremism), 259 (recruiting or training or arming people to organize terrorist or extremist activities), 260 (undergoing terrorist or extremist training) of the Penal Code, are referred to both extremist and terrorist crimes.

5. The subject of terrorist and extremist crimes indicated in Articles 173, 174, 177, 178, 184, 255, 256, 257 (parts one and two), 258, 261, 269 of the Penal Code, may be a person who has reached the age of fourteen by the time the crime was committed. For the commission of other types of crimes of a terrorist and extremist nature, criminal liability arises from the age of sixteen.

According to the third part of Article 15 of the Penal Code, a minor is not subject to criminal liability if, due to a lag in mental development that is not related to a mental disorder, during the commission of a criminal offense he could not fully realize the factual nature and social danger of his actions (inaction) or control them.

6. The subjective aspect of an act of terrorism is characterized by direct intent and a special purpose.

The special purposes of an act of terrorism (hereinafter -special purposes) are: disturbance of public order; intimidation of the population; impact on decision-making of state bodies of the Republic of Kazakhstan, foreign states and international organizations either with the aim of terminating the activities of state or public figures or out of revenge for such activities; provocation of war; complication of international relations.

In hearings on cases of acts of terrorism, it is imperative to ascertain whether the subject has a special purpose as an integral part of the subjective aspect of the crime. Pursuance by the offender of one of these special purposes is sufficient to adjudge the action as an act of terrorism.

If none of the purposes of the commission of actions is established, the perpetrators shall be held liable under other relevant articles of the Penal Code.

7. Public safety as an object of terrorism in accordance with subparagraph 1) of Article 4 of the Law of the Republic of Kazakhstan of January 6, 2012 No. 527-IV On National Security of the Republic of Kazakhstan shall be understood as security of life, health and well-being of citizens, ethic and cultural values of Kazakhstan society and social security systems against real and potential threats, which safeguard integrity of the society and its stability.

Actions that by their nature are capable of sowing fear among people for their life and health, safety of the loved ones, safety of property, and others shall be recognized as the population intimidation means.

The impact on state bodies of the Republic of Kazakhstan, foreign states, international organizations, state or public figures can manifest itself in incitement of relevant entities to making certain decisions or refraining from making them.

8. Commission of an explosion, arson, or other actions shall entail criminal liability under article 255 of the Penal Code in cases where it is established that these actions were intimidating for the population and posed a real risk of death, significant property damage or other socially dangerous consequences.

In this respect, the risk of death of a person, causing significant property damage or other socially dangerous consequences must be real, which shall be determined in each case taking into account the place, time, tools, means, method of committing a crime and other circumstances of the case (data on the number of people who were in the explosion area, force and destructive power of the used explosive device and the like).

By the commission of other actions that create danger of people's death, causing significant property damage or other socially dangerous consequences specified in article 255 of the PC, intentional actions are meant, comparable in consequences to an explosion or arson (organization of accidents, wrecks, destruction of dams, damage to water supply systems, power lines and other vital public infrastructure facilities, spread of pathogenic microbes that can cause an epidemic or epizootic, radioactive, chemical biological, bacterial (bacteriological) and other contamination of the area, armed attack on populated settlements, shelling of houses, schools, hospitals, administrative buildings, places of stationing (location) of military servicemen or servants of law enforcement, special or other state bodies; capture and (or) destruction of buildings, stations, ports, cultural or religious buildings).

When deciding whether property damage is significant, the courts shall proceed from the value and significance of the destroyed or damaged property, material assets, also actual costs necessary to restore (repair) the damaged property. Causing significant property damage by an act of terrorism shall be qualified in accordance with the first part of Article 255 of the PC (in the absence of other qualifying features of Article 255 of the PC) and shall not require additional qualifications under Articles 202 and 203 of the PC.

In relation to the first part of Article 255 of the PC, other socially dangerous consequences may include, in particular, moderate damage to the health of several persons, prolonged disruption of the enterprise (s) and (or) institution (s), disorganization of activities of state and local self-government bodies, significant environmental degradation (for example, pollution of water, atmosphere, land degradation and other negative environmental changes requiring significant material costs and time to eliminate their consequences).

When deciding whether disruption of the enterprise or institution was long, the courts shall proceed from specific circumstances of the case, taking into account duration of the

work suspension, specifics of their activities, amount of losses incurred, and other circumstances.

9. The threat of an act of terrorism shall be understood as actions with a resolute declaration of the perpetrator's explicit intentions to commit an explosion, arson or other actions that create the danger of death, causing significant property damage or other socially dangerous consequences, for special purposes.

The criterion for assessing the reality of a threat is existence of sufficient reason to fear materialization of this threat. The threat of an explosion, arson or other actions that frighten the population and create the risk of death of a person or several persons, causing significant property damage or other socially dangerous consequences refers to the formally defined crime and shall be considered a completed crime at the time of bringing the threat of these actions to the target, provided that the threat was perceived as real.

The threat may target public authorities, local governments, organizations, government or public figures, may be open or anonymous.

The threat can be expressed in various ways, for example, spoken language, written appeal, telephone communication, distribution using technical means, information and telecommunication networks, mass media, computer technologies.

Courts shall bear in mind that the threat of an act of terrorism differs from a knowingly false report (hoax) about an act of terrorism (article 273 of the Penal Code), in that a false report about an act of terrorism is information received via communication channels of law enforcement bodies and emergency response services about a knowingly non-existent threat of an act terrorism, that is, in a false report, threat of an act of terrorism does not exist, whereas in the threat of an act of terrorism, the perpetrator pursues special goals.

10. If, with the aim of committing an act of terrorism, the culprit attempted to carry out an explosion, arson, or other actions creating the danger of death, causing significant property damage or other socially dangerous consequences, but could not perpetrate these actions for reasons beyond his control, the offense shall be qualified as attempted act of terrorism.

Based on the second part of Article 24 of the Penal Code, it shall be borne in mind that criminal liability arises for preparing for a grave or especially grave crime, also for preparing for a terrorist crime.

Repeated commission of an act of terrorism involves the commission of a terrorist crime at least two times, for which the person was not convicted and was not released from criminal liability.

When in one case a terrorist act was committed, and in another there was an attempted act of terrorism, or when in the commission of one criminal offense the culprit was its perpetrator, and in the commission of other crimes - the organizer, instigator or accomplice, the actions of the perpetrator shall be qualified basing on clarifications of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan of December 25, 2006 No. 11 "On qualification of repeatability and aggregate of criminal offenses".

11. When deciding on the presence (absence) of a qualifying indication of a crime, such as “committing with the use of weapons or objects used as weapons, explosives or explosive devices”, it shall be borne in mind that in accordance with subparagraph 5) of Article 1 of the Law of the Republic of Kazakhstan of December 30, 1998 No. 339-I On State Control of Turnover of Particular Types of Weapons, weapons are devices and objects designed to hit a living or other targets, as well as for signaling. Any objects used by a person for killing, causing harm to health or to intimidate the population can be recognized as items used as weapons.

When recognizing objects used as weapons, courts shall take into account the content of paragraph 21 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan of July 11, 2003 No. 8 “On court practice in cases of theft”.

Explosives are chemical substances and their mixtures that are capable of explosive reactions. By explosives, gunpowder, trotyl, nitroglycerin, pyroxylin, ammonal and other chemicals and their mixtures are understood that are capable of explosive reactions. Objects that are structurally designed to produce an explosion shall be recognized as explosive devices. In this case, weapons, explosives or explosive devices can be both factory-made and makeshift.

If in the process of committing an act of terrorism, illegally acquired, stored or manufactured firearms, ammunition, explosives or explosive devices were used, then the actions of a person shall be subject to qualification in the aggregate of criminal offenses provided for in articles 255, 287, 288 of the Penal Code.

12. The public danger of a crime under paragraph 1) of the third part of Article 255 of the Penal Code lies in the fact that a terrorist act involving or threatening to use weapons of mass destruction, radioactive materials and the threat of mass poisoning, spread of epidemics or epizootics, other actions that can lead to people’s mass fatality, creates a threat of people’s mass fatality, destruction of vital public infrastructure facilities, infection or destruction of animal or plant world, and can also lead to other harmful consequences for society and the environment.

In accordance with subparagraph 2) of Article 1 of the Law of the Republic of Kazakhstan of July 21, 2007 No. 300 On Export Control, mass destruction weapons are chemical, bacteriological (biological), radiological, nuclear and toxin weapons.

13. When determining the types of mass destruction weapons, paragraph 1 of Article 2 of the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (Paris, January 13, 1993), ratified by the Law of the Republic of Kazakhstan of June 24, 1999 No. 398 shall be taken into account.

According to subparagraph 24) of Article 1 of the Law of the Republic of Kazakhstan of January 12, 2016 No. 442-V On Use of Nuclear Energy, as well as part 1 of Article 1 of the International Convention for the Suppression of Acts of Nuclear Terrorism (New York, September 14, 2005), ratified by the Law of the Republic of Kazakhstan of May 14, 2008 No

. 33-IV, the radioactive material means nuclear material and other radioactive substances (any materials of natural or technogenic origin in any aggregate state) which contain nuclides which undergo spontaneous disintegration and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or the environment.

If, when committing an act of terrorism, the illegally acquired or stored radioactive substances were used, then the actions of the person are subject to qualification in the aggregate of criminal offenses provided for in Articles 255 and 283 of the Penal Code.

14. The concepts “epidemic” and “epizooty” are defined in article 1 of the Code of the Republic of Kazakhstan On public health and health care system, also in article 1 of the Law of the Republic of Kazakhstan of July 10, 2002 No. 339-II On Veterinary Medicine, respectively.

Other actions specified in paragraph 1) of the third part of Article 255 of the Penal Code shall be understood as actions that could entail people’s mass mortality.

15. In the event that an act of terrorism entailed negligent death of a person (or two or more persons), such actions shall be within the scope of paragraph 2) of the third part of Article 255 of the Penal Code and shall not be subject to additional qualifications under Articles 99, 104 of the Penal Code.

Deliberate infliction of death on a person (or two or more persons) shall be qualified according to part four of Article 255 of the Penal Code.

Courts shall bear in mind that infringement on a person’s life through an explosion, arson, or other generally dangerous means that does not pursue special purposes of the act of terrorism shall be qualified not as terrorism, but as murder of a certain person, committed in a way dangerous to the lives of many people, that is under paragraph 6) of the second part of Article 99 of the Penal Code.

In the infringement on the life of a law enforcement, special state body officer, a military serviceman, as well as a person administering justice or conducting pre-trial investigation, committed by the indicated methods, but in the absence of a special purpose of terrorism, the actions of the perpetrator shall be qualified under Articles 380-1, 408 of the Penal Code.

16. In accordance with paragraph 3 of Article 20 of the Constitution, propaganda or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, and clannish superiority as well as the cult of cruelty and violence, shall not be allowed.

According to subparagraph 5) of Article 1 of the Law on countering terrorism, terrorism is ideology of violence and practice of influencing decision-making by state bodies, local government bodies or international organizations by committing or threatening to commit violent and (or) other criminal acts linked with intimidation of the population and directed at inflicting harm on an individual, society and the state.

Terrorist propaganda shall be understood as disseminating in any way materials or information containing the ideology of violence and the practice of terrorism, by influencing consciousness and will of a person (s) in order to arouse in him (them) a desire to carry out terrorist activities or justifying or motivating the need for such activities.

Propaganda of terrorism forms a set of a completed criminal offense from the moment of taking actions to spread the ideology of violence and practice of terrorism. The method of distribution is immaterial for bringing a person to criminal liability for propaganda of terrorism. Propaganda can be carried out through oral presentations or distribution of written or printed materials, including through the use of the media or telecommunication networks.

17. Criminal liability arises for extremist crimes referred to in paragraph 39) of article 3 of the Penal Code.

Courts shall bear in mind that in accordance with subparagraph 1) of Article 1 of the Law on Countering Extremism, extremism is an organization and (or) commission by an individual and (or) legal entity, an association of individuals and (or) legal entities, on behalf of organizations, recognized in the established procedure as extremist; an individual and (or) legal entity, of actions of individuals and (or) legal entities, pursuing the following extremist purposes:

forcible change of the constitutional system, violation of the sovereignty of the Republic of Kazakhstan, integrity, inviolability and inalienability of its territory, disruption of national security and defense capacity of the state, forcible seizure of power or forcible retention of power, creation, management and participation in the illegal paramilitary forces, organization of armed rebellion and participation in it, incitement of social, estate strife (political extremism);

incitement to racial, national and clannish hatred, including those related to violence or calls for violence (national extremism);

incitement of religious discord of strife, including related to violence or incitement to violence, also use of any religious practice, posing a threat to security, life, health, morality or rights and freedoms of citizens (religious extremism);

18. Public calls for committing an act of terrorism in the first part of Article 256 of the Penal Code shall be understood as appeals conveyed in any form (oral, written).

Calls must be of public nature. Public appeals to commit an act of terrorism shall be considered a completed criminal offense from the moment of the public proclamation (distribution) of at least one appeal, regardless of whether other citizens were led to the perpetration of this act or not.

The question of publicity of appeals to commit an act of terrorism shall be decided by the courts, taking into account the place, method, situation and other circumstances of the case, for example, appealing to a group of people in public places, at meetings, rallies, demonstrations, distributing leaflets, hanging posters, disseminating appeals by mass e-mailing.

If public calls for an act of terrorism were made with the use of media or telecommunication networks (periodicals, television and radio channels, Internet resources and other media), then the offense shall be qualified in accordance with the second part of Article 256 of the Penal Code.

When making public calls for an act of terrorism by mass mailing to mobile subscribers using electronic or information and telecommunication networks, the crime shall be considered completed from the moment the messages were posted on these public networks (for example, on sites, forums or blogs), mailing messages to other persons.

When deciding on the use of the media and objects of information and communication infrastructure to carry out propaganda of terrorism or public calls for an act of terrorism, provisions of the Laws of the Republic of Kazakhstan of July 23, 1999 No. 451-I On Mass Media and of November 24, 2015 No. 418-V On Informatization shall be referred to.

19. According to subparagraph 14-1) of Article 1 of the Law on Countering Terrorism, terrorist materials – are any information materials containing information on the ways and means of committing an act of terrorism, as well as signs and (or) calls for carrying out terroristic activities, or substantiating and justifying the need for such activities.

In accordance with subparagraph 7) of Article 1 of the Law on Countering Extremism, any informational materials calling for committing extremist actions or substantiating or justifying the need for their commission are extremist materials.

Under the distribution of materials containing propaganda of terrorism, the commission of actions shall be understood that are aimed at the transfer by any means of such materials to another person (s) in order to encourage the terrorist activities.

Courts need to keep in mind that general information explaining the essence of the phenomenon, and which has no signs of propaganda of terrorism and (or) calls for an act of terrorism, shall not be treated as terrorist materials.

20. It shall be clarified that in pre-trial investigation and court hearings on cases related to terrorism and extremism, special knowledge can be used. If necessary, in order to classify materials as terrorist and (or) extremist, also to determine mental development level of the subjects of a criminal offense and their ability to understand the essence of the materials distributed as terrorist and (or) extremist, especially minors with diminished sanity, relevant examinations can be appointed and conducted. In this case, it is necessary to be guided by the criminal procedural legislation, as well as clarifications of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan of November 26, 2004 No. 16 “On forensic examination of criminal cases”.

21. In accordance with paragraph 3) of Article 3 of the Penal Code (paragraph 40) of Article 3 of the Penal Code), subparagraph 15) of article 1 of the Law on Countering Terrorism (subparagraph 8) of Article 1 of the Law on Countering Extremism), a terrorist (extremist) group (hereinafter - the group) is an organized group pursuing the goal of committing one or more terrorist (extremist) crimes.

Creation of a terrorist (first part of Article 257 of the Penal Code), extremist (first part of Article 182 of the Penal Code) group shall be considered a complete crime from the moment the group was actually formed, that is, from the moment of bringing several persons into a group.

Management of the group consists in fulfillment of management functions in relation to the group and its individual members in order to sustain its activity.

Management of a group can consist, in particular, in approving plans for terrorist and (or) extremist activity, sharing criminal responsibilities in a group, guiding members of a group in committing certain acts of terrorism and (or) extremism, in committing other actions aimed at achieving certain goals (for example, in organizing logistics, in adopting security measures for the group members).

Criminal liability on part two of Article 257 of the Penal Code (in part two of Article 182 of the Penal Code) for participation in a terrorist (extremist) group arises in cases when members of this group realize its illegality and belonging to it and act to accomplish terrorist (extremist) goals.

Participation in the group's activities shall be understood as joining the group (for example, taking an oath, membership in an organization engaged in terrorist and (or) extremist activities, performing tasks and instructions of the group leader). A criminal offense in the form of a person's participation in a group shall be considered completed from the moment of joining the group with the intention to participate in terrorist and (or) extremist activities or in the preparation or commission of one or more criminal offenses of a terrorist and (or) extremist nature.

When participants in a terrorist group or illegal armed formation commit a specific terrorist crime their actions shall be qualified as aggregate of criminal offenses provided for in the second part of Article 257, second part of Article 267 of the Penal Code and the relevant articles of the Penal Code (for example, Articles 255, 256, 259 of the Penal Code).

22. It shall be clarified that to ensure completeness of investigation, the body conducting the criminal proceedings can use unified lists of organizations and information materials recognized by the court in accordance with Article 12-1 of the Law on countering terrorism, placed on the Internet resource of the state body conducting legal statistics and special accounting.

23. In accordance with article 258 of the Penal Code, also subparagraph 12) of article 1 of the Law on combating legalization (laundering) of incomes and subparagraph 3) of article 1 of the Law on countering extremism, terrorist financing - is providing or collecting money and (or) other assets, property rights or property benefits, as well as gifting, barter, donations, charity, providing information and other services or provision of financial services to an individual or group of individuals or entity committed by person, who is aware of terrorist

and extremist nature of their activity or that the given property, provided information, financial and other kind of services will be used to carry out terrorist activity or providing terrorist group, terrorist or extremist organization, illegal paramilitary formation.

Financing of terrorism and extremism shall also be understood as provision or collection of material resources, for example, uniforms, equipment, communications, pharmaceuticals, residential or non-residential premises, vehicles.

The crime shall be recognized completed from the moment of collection, transfer (direction) of money, other property or provision of services. In this case, the actual use of these assets for the purposes set out in the disposition of Article 258 of the Penal Code is not required.

24. Recruitment (part one of Article 259 of the Penal Code) shall be considered as deliberate actions directed at organizing terrorist or extremist activities to arouse in a person (group of individuals) a desire (intention, aspiration) and willingness to participate in a terrorist or extremist crime. In particular, search and involvement of individuals in terrorist or extremist activities, campaigning, inclusion in the list for training, and more. In this case, actions of the recruiter must be assertive and with the use of mental or physical influence.

Recruitment can be carried out in various ways, for example, persuasion, convincing, requests, offers, threats, intimidation, beatings, bribery, deceit, incitement of revenge, envy and other base motives, assurance of impunity, promise of payment for committed acts of terrorism. Recruitment shall be considered a completed criminal offense from the moment these actions were performed, regardless of whether the person had committed a crime of terrorist and (or) extremist nature or not.

The training consists in teaching the recruited persons the rules for handling weapons, ammunition, explosive devices, explosives, radioactive substances, nuclear materials, military equipment, communications, rules of warfare, as well as conducting coaching, trainings, firing, exercises and other actions with the aim of organizing terrorist or extremist activities in any form.

Arming in the first part of Article 259 of the Penal Code means provision of persons with weapons of any kind to participate in terrorist or extremist activities.

25. It shall be explained that an attack on buildings, structures, means of communication and other communications, in accordance with article 269 of the Penal Code, shall mean commission by a person of violent acts aimed at taking possession of these objects.

Under the seizure, in accordance with the first part of Article 269 of the Penal Code, one shall understand unlawful capture of a building, structure, means of communication and communication, other communications. The seizure can be carried out both secretly and openly, with or without violence.

It shall be borne in mind that the concepts “buildings” and “structures” are defined in Article 1 of the Law of the Republic of Kazakhstan of July 16, 2001 No. 242-II On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan.

Besides, in accordance with subparagraph 57) of Article 2 of the Law of the Republic of Kazakhstan of July 5, 2004 No. 567-II On Communications, telecommunications (communications) means shall be understood as technical devices, equipment, systems and software that enable formation, transmission, receiving, storing, processing, switching of electromagnetic or optical signals or controlling them.

26. In respect of persons found guilty of committing criminal offenses under articles 170, 171, 173, 182, 184, 255, 256, 257, 258, 259, 270 of the Penal Code, it shall be imperative for the court, in accordance with paragraphs 1), 2), 3) of the second part of Article 48 of the Penal Code, to resolve on confiscation of money, valuables and other property obtained by commission of these crimes and any income from this property; money, valuables and other property into which this property and income from it were partially or fully converted or transformed; money, valuables and other property used or intended to finance terrorism, extremism, an organized group, an illegal armed formation, a criminal community (criminal organization).

Issuing from the provisions of paragraph 4) of the second part of Article 48 of the Penal Code, the court shall resolve on confiscation of the tools belonging to the defendant or other means of committing a criminal offense.

In order to prevent financing of terrorism and extremism, if necessary, the measures provided for in Chapter 71 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter - the CPC) shall be taken.

27. The sanctions of the Penal Code articles, which establish penalties for commission of certain types of terrorist and extremist crimes, provide as an additional punishment - deprivation of citizenship of the Republic of Kazakhstan. Courts shall bear in mind that in accordance with the first part of Article 50-1 of the Penal Code, deprivation of citizenship of the Republic of Kazakhstan means compulsory termination by the state of a stable political and legal relationship with convicted person expressing the totality of their mutual rights and obligations.

When deciding on imposing or not imposing the indicated type of additional punishment, the courts shall take into account all the circumstances of the case resulting from terrorist and (or) extremist crimes, the consequences and identity of the perpetrator. The court resolution in this part shall be motivated. It shall be borne in mind that persons who committed a crime under the age of eighteen shall not be deprived of citizenship of the Republic of Kazakhstan.

28. Notes to articles 182, 255, 258, 260, 261 of the Penal Code provide for the conditions for exemption from criminal liability of persons who voluntarily ceased participation in terrorism and (or) in extremist activities, unless their actions contain a different criminal offense.

Voluntary termination of participation means termination by a person of criminal activity upon his awareness of the possibility of its continuation, which may be expressed, for example, in departure from an extremist group, non-fulfillment of their leaders' orders,

refusal to commit criminal offenses, as well as in other actions conducive to terrorist and (or) an extremist group.

29. Importance of preventive work to eliminate manifestations of terrorism and extremism shall be brought to notice of the courts, taking effective measures to this end, prescribed by law to guarantee inevitability of punishment. In necessary cases, the courts, in accordance with article 405 of the CPC, are required to issue private orders as measures to eliminate the causes and conditions conducive to commission of terrorist and (or) extremist crimes.

30. In accordance with article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution shall be included in the current law, shall be generally binding and shall be enforced from the date of its first official publication.

Chairman

*of the Supreme Court
of the Republic of Kazakhstan*

K. Mami

Judge

*of the Supreme Court
of the Republic of Kazakhstan,
secretary of the plenary session*

G. Almagambetova