

**LECTURES CRIMINAL LAW REPUBLIC OF KAZAKHSTAN. SPECIAL PART**

## **1 Lecture. Criminal offenses against the person**

### **Questions:**

- 1. General characteristics of criminal offenses against the person.**
- 2. Types of criminal offenses against life and health.**
- 3. Types of criminal offenses against personal freedom and dignity.**
- 4 Types of criminal offenses against sexual freedom.**

**The purpose of this lecture: To reveal the essence and general characteristics of criminal offenses against the individual. Also classify the types of criminal offenses against the person.**

**Keywords: personality, life, murder, health, honor, dignity, freedom, integrity, etc. Key questions: Criminal offenses against persons: concept, types and general characteristics. Criminal offenses against life. Criminal offenses against health. Criminal offenses that put in danger the life and health of citizens. Sex Criminal offenses Criminal offenses against physical liberty. Criminal offenses against honor and dignity.**

1. Concept, a general characteristic and the types of crime against life, health, freedom and dignity Criminal offenses against the person to classify according to their direct object, the degree of importance of protected rights and interests of the individual. In addition, the classification must be borne in mind that for certain crimes against the person comes responsibility if the offense created a risk of harm to life or health. Given these criteria, crimes against the person can be divided into the following groups: 1) Criminal offenses against life: murder, incitement to suicide and negligent infliction of death. 2) Criminal offenses against health: damage to health: venereal diseases (Article 117 part 2 and 3 of the Criminal Code) infection with HIV disease (Part 2 of Article 118 of the Criminal Code). 3) Criminal offenses that put in danger the life and health: leaving in danger, (Part 1 of Article 119) 4) sexual criminal offenses: having as its object the sexual freedom of adults, infringing on the sexual inviolability and the normal development of minors as well as other crimes in the sphere of sexual relations: 5) criminal offenses against individual freedom: unlawful imprisonment, hostage-taking, unlawful placement in a psychiatric hospital, ; 6) criminal offenses against the honor and dignity of the individual: defamation, disclosure of information constituting medical secret, and insult.

2. CRIMINAL OFFENSES AGAINST LIFE. CONCEPT AND TYPES OF MURDER Concept and types of murder. Under murder is commonly understood wrongful intentional infliction of death to another person. The object of life is to murder another person. The life of every man, sick and healthy, a newborn and the elderly are equally protected by the criminal law. The starting point of human life should be considered as the beginning of the normal physiological birth, and with this in mind should distinguish between murder and illegal abortion, which is an action committed by the expulsion of the fetus before the normal physiological birth. Hence, killing a child, it is not only immediately after birth, but in the process of birth, should be regarded as murder. The final moment of the crime should be considered an offensive biological death, at which stops the activity of the nervous system and in the cerebral cortex irreversible decay of proteins, and then restore the functioning of the organism is no longer possible. Criminal legal protection shall be the life of any person regardless of age, physical and mental state and qualities from the beginning of birth to the moment of death. The objective aspect of the murder is the unlawful deprivation of life of another person. Directions law on the unlawfulness of the act in question is of considerable importance. For example, can not be

regarded as murder causing death in a state of self-defense (Article 32 of the Criminal Code), execution of the sentence to the death penalty (Article 47 of the Criminal Code). Murder can be committed either by action or by omission. In all cases, between an act or omission of the perpetrator and the victim's death must necessarily be a causal link. By killing a person is aware that he committed the act or omission may cause the death of another person or knowingly allow wished such an outcome. Action for murder usually is the physical impact on the human body, entailing death (causing injuries, suffocation, poisoning, etc.). In this case the perpetrator can use a natural phenomenon (murder by drowning, exposure to extreme temperatures, etc.), as well as science and technology by the various sources of increased danger (high voltage current, poison gas, a variety of mechanisms, etc.) . The murder by omission requires special care and the duty of the perpetrator to commit actions that eliminate death of the victim (eg, the mother does not feed or treats her child; the driver does not take action to stop the car, do not turn off the current, gas, etc.), if he I had the opportunity to commit these acts, but did not make them. Murder is a crime with the so-called material composition. Therefore, the end of the killing takes place in cases where the result of such an act was followed by death of the victim. On the subjective side of the guilty action involves only intentional fault. Intent may be direct or indirect. A person who commits an act or omission anticipates death wishes, or knowingly allow such an outcome. It is very important, to establish in cases of this category to establish the motive and purpose of the deprivation of the victim's life. Only a thorough identification of all the circumstances of the criminal conduct of the victim and the perpetrator, their relationship largely helps to create a genuine motive and direction of intent, which in practice are often far from being identified, which could lead to incorrect qualification of the offense. Murder is divided into three types: 1) the murder without aggravating and mitigating circumstances listed in the law (ch.1.st.96UK) 2) aggravated murder (ch.2.st. 99 of the Criminal Code). 3) murder with extenuating circumstances (Art. Art. 100-103 of the Criminal Code) In the event that the murder was committed in the presence of symptoms as aggravating as mitigation, should be qualified as murder committed under mitigating circumstances / by the rules of competition, general and specific standards /.

### 3.CRIMES AGAINST HEALTH. CONCEPT AND TYPES OF CRIMES AGAINST HEALTH

Depending on the degree of harm caused to the health of these crimes are divided into three types: heavy, moderate and light. Encroachment on their own health as a general rule in criminal law punishable.. Intentional infliction of grievous bodily harm (art. 106 of the Criminal Code) The objective aspect of this crime is expressed in causing harm to the health, life-threatening or resulted in a loss of vision, hearing, or of any organ or the loss of its functions was summed up in the indelible face disfigured and causing other damage to health, life-threatening or cause health problems, coupled with a significant permanent loss of ability to work by no less than one-third, or known to the perpetrator of full occupational disability, or resulted in the termination of pregnancy, mental illness, drug addiction or substance abuse disorder. By providing personal injury by type, the legislator as the basis of their classification put an objective harm to human health. The objective side of a crime under Part 1 of Art. 106 of the Criminal Code, in particular, is characterized by life-threatening. For life-threatening injuries include penetrating injuries of the skull, spine, chest, stomach, esophagus, even without injury to internal organs. This closing of cracks and fractures of the skull, severe degree of concussion, fracture of the spine of the body, subcutaneous ruptures of internal organs of thoracic and abdominal cavity damage major blood vessels, a large blood loss, thermal burns I - IV degree with an area of lesions greater than 15% body surface, III degree burns over 20% of body surface burns II degree above 30% of the body surface, neck compression organs and other types of mechanical asphyxia. Deliberate infliction of grievous bodily harm, dangerous for life, subject to qualification under Art. 106 of the Criminal Code, regardless of the degree of subsequent disability. Life-threatening damage in the provision of timely assistance can not cause harm to human health, because the risk to life is considered at the time of injury. Under personal injury, which resulted in loss of vision can be expressed in full rack of human blindness in both eyes, or in a state where there is a low vision to accounts fingers at a distance of two meters or less. Loss of vision in one eye causes permanent

loss of the ability to work more than one-third, and on this basis relates to the application of grievous bodily harm. Hearing loss as a sign of serious damage it is expressed in the absence of complete deafness and hearing loss conversational speech at a distance of 3-5 cm. From the ear. Hearing loss in one ear refers to less serious injuries. Intentional bodily injury that resulted in the loss of any organ and its function, is also a sign of serious bodily injury. The organs are part of the human body, performing one or more functions that are essential for the life of the whole organism. Loss or irreversible loss of the functions of the hands, feet, productive capacity, loss of language (speech) allows the deed attributed to the offense in question. Signs of serious harm to health concerns and mental illness, which was the result of physical or mental injury, infection, poisoning, etc. Mental illness is any illness, regardless of its severity, duration or curability or incurability. However, to the grievous bodily harm can not be attributed disorder of the nervous activity (neurosis, personality disorder, hysteria and so on. N.).

4. The loss of work capacity - the most common consequence of the crime. This symptom is caused by a disorder of health, coupled with persistent disability of not less than one-third. In these cases we are talking about the loss of general ability to work. To counter disability applies constant, irreversible loss. Size of disability is determined according to the table to determine the percentage of permanent loss of total disability from accidents. Abortion, causally associated with causing bodily harm, also refers to the infliction of grievous bodily health. Causing grievous bodily harm is a lasting disfigurement of the face. This is due to the fact that such damage gives a person the victim repulsive, ugly appearance. It can be expressed in the removal of the nose, lips, ears, facial burns in hot water, acids, alkalis, etc. These injuries often do not cause serious harm to health, however, condemn victims to emotional experiences. Terms of Forensic evaluation of the severity of the injury, approved May 4, 1998 order of the Health Committee of the Ministry of Education, Culture and Health of RK. As a sign of serious bodily injury that damage must be, first, indelible and, secondly, disfigure the face. Under an indelible mark is understood the damage that indelibly can not be removed by conventional methods of treatment. Violation of facial asymmetry, causing deep scars, etc. on the basis of generally accepted ideas about the aesthetic appearance of normal people can referred to the Court disfigured face. The question of the disfigurement of the face is not a medical it is based on the aesthetic aspects, legal and therefore not in need of examination.

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## **2 lecture. GENERAL CHARACTERISTICS AND CLASSIFICATION OF CRIMINAL OFFENSES AGAINST THE FAMILY AND MINORS**

### **Questions:**

1. **General characteristics of criminal offenses against the family and minors.**
2. **Types of criminal offences against the family and minors.**

**The purpose of the lecture: To reveal the general characteristics of criminal offenses against the family and minors. To give a classification of the types of criminal offenses against the family and minors.**

**Keywords: Criminal offenses, minors, object, subject, subjective side, objective side.**

1. Chapter 2 of the Criminal Code of the Republic of Kazakhstan establishes responsibility for crimes committed against the family and minors.

The generic object of crimes provided for in Chapter 2 of the Criminal Code of the Republic of Kazakhstan is social relations that ensure the normal development and upbringing of minors, and the protection of the family. The victims are usually minors.

The objective side in most cases is to perform active actions. The exception is the failure to fulfill the duties of raising a minor and malicious evasion of payment of funds for the maintenance of children or disabled parents, which can be committed through inaction.

The subjective side of the crime is always direct intent, in some cases - selfish or other base motives (for example, Articles 132, 133 of the Criminal Code of the Republic of Kazakhstan).

The subject of the crime is a sane person who has reached the age of sixteen. In some compositions – a special subject. For example, the involvement of minors in the Commission of a crime under article 132 of the Criminal code of RK can be attracted by a person under eighteen years of age; a qualifying characteristic of this composition is the Commission of a crime by a parent, teacher or other person who by law is responsible for the education of minors.

The crimes provided for in Chapter 2 of the Criminal Code of the Republic of Kazakhstan, depending on the immediate object, their nature and content, can be divided into three groups:

1. crimes that promote antisocial activity of minors: involvement in the commission of a crime . Crimes committed by this group may be accompanied by harm to the health of a minor;
2. crimes that infringe on the freedom of a minor: substitution of a child;
3. crimes that infringe on the protection of the family and the creation of necessary conditions for the maintenance and upbringing of minors: illegal adoption ; disclosure of the secret of adoption; failure to fulfill obligations for the upbringing of a minor; malicious evasion of payment of funds for the maintenance of children or disabled parents.

## 2. Involvement of minors in a crime

Article 132. Involvement of a minor in the commission of a criminal offense

1. The involvement of a minor in the commission of a crime by promises, deception, threats or in any other way, committed by a person who has reached the age of eighteen , is punishable by imprisonment for a term of up to five years.

2. The same act committed by a parent, teacher or other person who is legally responsible for the upbringing of a minor - is punishable by imprisonment for a term of up to six years with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

3. The acts provided for in the first or second parts of this Article, committed with the use of violence or with the threat of its use ,shall be punishable by imprisonment for a term of two to seven years.

4. The acts provided for in the first, second or third parts of this article, related to the involvement of a minor in a criminal group or in the commission of a serious or particularly serious crime, shall be punishable by imprisonment for a term of five to eight years. 4

The involvement of minors by adults in the commission of a crime poses an increased danger to society, not only because it expands the circle of offenders, but also because such actions have a corrupting effect on the immature psyche of minors, violate their normal spiritual and moral development, and instill in them distorted value orientations.

It may be advantageous for adult criminals to involve minors as direct perpetrators, as they bear lighter responsibility compared to adults.

By sending minors to commit a crime, adults hope to stay out of the sight of law enforcement agencies.

On the objective side, the involvement of a minor in a crime can be carried out in various ways:

- the promise of money, gifts, entertainment, etc.;
- deception, i.e. when a minor, fulfilling the request of an adult, does not realize that he is committing a crime, being misled;
- threats to cause material harm, to disgrace in the eyes of peers and friends, to exclude from the environment of everyday communication (informal group), etc.

Other ways of involving a minor in a crime may be actions aimed at arousing hostility or envy towards certain persons, inciting selfish aspirations and thirst for profit, etc.

The crime is completed from the moment of inducing a minor to commit a crime, regardless of whether he has committed any crime. If, under the influence of the influence of an adult, the minor had the intention to commit a crime, the involvement took place.

The subject of the crime is a person who has reached the age of eighteen. Often, persons who involve minors in the commission of a crime are repeat offenders. The actions of such individuals are particularly dangerous, as they usually try to form criminal groups.

On the subjective side, the crime is committed with direct intent, i.e. the perpetrator must be aware that he is involving a minor in the commission of the crime and wants to do so. If an adult did not know about the minor involved in the commission of a crime, he can not be held liable under Article 132 of the Criminal Code.

In cases of involvement in the commission of a crime of a minor who does not bear criminal responsibility due to not reaching the age of 14 or 16, the perpetrator must be responsible for preparing for the crime in which the minor is involved, and when the latter commits a crime-for this crime as a performer by mediocre infliction.

If a minor is incited to commit a crime, an adult person must be held accountable both under Article 132 of the Criminal Code and for complicity in the commission of a specific crime.

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If a minor is incited to commit a crime, an adult person must be held accountable both under Article 132 of the Criminal Code and for complicity in the commission of a specific crime.

A qualifying sign that indicates a greater public danger is the commission of this crime by a parent, teacher, or a person who is legally responsible for the upbringing of a minor. In this case, instead of educating the minor in the spirit of observing the moral principles of society and law-abiding, the person who is an authority for the minor involves him in the commission of a crime, i.e., grossly violates the obligation to properly educate the minor assigned to this adult by law.

An even more dangerous act is the involvement of a minor in the commission of a crime through the use of violence (beatings, causing any harm to health, binding and locking in a room, etc.) or with the threat of physical violence. Such an act is qualified under Part 3 of Article 132 of the Criminal Code.

The involvement of minors in criminal group or committing a grave or especially grave crimes under part 4 of article 132 of the criminal code, is assessed as qualifying circumstance is particularly high degree of danger. In accordance with the Article of the Criminal Code, such an act is classified as a serious crime.

The creation of criminal groups, which has received a certain spread in modern conditions, represents a high degree of public danger.

A minor may be involved in a criminal group that has already been created, or in a group that is being created. Such a group may consist of minors, but be led by an adult who has involved minors in it.

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### **Lecture 3 Criminal offenses against constitutional and other human and civil rights and freedoms**

#### **Questions:**

1. General characteristics of crimes that infringe on constitutional rights and liberties
2. Criminal-legal characteristics of offenses against the constitutional and other rights and freedoms of man and citizen.
2. Analysis of crimes against the constitutional rights and freedoms of man and citizen
3. Crimes against political rights and freedoms
4. Crimes that infringe on socio-economic rights and freedoms.
5. The concept, types and general characteristics of crimes against the personal rights and freedoms of citizens

**Keywords:** object, subject, subjective side, equality, crimes.

## 1 Criminal offenses against the constitutional and other rights and freedoms of a person and citizen

General characteristics of crimes that infringe on constitutional rights and freedoms

The Constitution of the Republic of Kazakhstan contains thirty articles on the regulation of the constitutional rights and freedoms of man and citizen, which in turn determines their priority. The legislator, seeking to ensure the protection of the above-mentioned values by criminal legal means, has fixed the 3rd chapter in the Criminal Code of the Republic of Kazakhstan, which provides for criminal liability for crimes that infringe on the constitutional rights and freedoms of a person and citizen.

The basic rights and freedoms listed in the Basic Law of the country that are subject to criminal law protection. They are characterized by a number of properties that determine their consolidation, forcing the state to agree with them.

1) this is their naturalness, i.e. independence from the authorities, social and natural determination. Rights and freedoms exist objectively, and not by the will or permission of the legislator, they are granted by the authorities.

2) it is their universality, it means their universality, the absence of any exceptions. The natural rights of movement, privacy, inviolability of the person, etc. do not depend on the place of use of these rights, the individual characteristics of the person. They belong to everyone.

3) inviolability they belong to everyone from birth to death.

The generic object of the crimes enshrined in the analyzed chapter is social relations that guarantee the realization of these rights and freedoms by a person and a citizen.

In order to give a more detailed concept and define the types of crimes against the constitutional and other rights and freedoms of a person and a citizen, it is necessary to refer to the key concept of "rights and freedoms" of a person and a citizen.

At the same time, it should be noted that the emergence of the above-mentioned concepts, i.e. the awareness of this problem as a scientific one, is inextricably linked with the emergence and spread of the ideas of natural law. Under the "constitutional right of a person" should be understood as fixed by the Constitution and guaranteed by the state the ability of the individual to determine and choose the type and the extent of his behaviour, according to the order established by law. "Constitutional freedom" is a kind of right, it is a measure of possible and legally permissible behavior of an individual established by the Constitution of the Republic of Kazakhstan.

The direct objects are the rights and freedoms related to various aspects of human life and activity, equality, and freedom of elections.

The objective side is expressed in most cases in acts aimed at a significant infringement of constitutional rights and freedoms, less often in preventing their use by the owners, i.e. by inaction. The legislator mentions the illegality, unreasonableness of behavior that leads to the violation of the fundamental rights of people. The subject of crimes against constitutional rights and freedoms is represented by law in most cases by general conditions, age and sanity. Qualified agents are often paired with a symptom of a special subject to which the position of the perpetrator Subjectivno the formal destabilisation group of crimes are committed with direct intent, and material direct and indirect.

It should be noted that the constitutional rights and freedoms of citizens of the Republic of Kazakhstan constitute a system that covers all spheres of human and citizen existence. However, in our opinion, in order to provide the most complete coverage of the elements of crimes provided for in the analyzed chapter, it is necessary to conditionally distinguish them into three large groups:

- 1) crimes against political rights and freedoms;
- 2) crimes against personal rights and freedoms.
- 3) Crimes against labor safety and protection of rights in the field of labor relations

4) Crimes against the rights and freedoms in the field of information.

2. Criminal-legal characteristics of offenses against the constitutional and other rights and freedoms of man and citizen.

On the objective side, most of the considered groups of crimes are committed by action, and some by inaction (Articles 156, 158 of the Criminal Code of the Republic of Kazakhstan). In the Chapter of the criminal code, there are both formal (art. 145, 148, 151, 154, 155, 157, 158 of the criminal code) and material compositions (article 147, 152, 154, 156 of the criminal code). In some articles, the method of committing the crime is indicated as a mandatory feature of the composition of the crime.

On the subjective side, the formal components of the considered group of crimes are committed with direct intent, and the material ones are committed with both direct and indirect intent. The exception is the elements of crimes provided for in Articles 321 ("Disclosure of medical secrets") and Article 156 ("Violation of labor protection rules") of the Criminal Code of the Republic of Kazakhstan. They can also be committed by negligence. The motive of the crime is specified as a mandatory feature only in Articles 145 and 152 of the Criminal Code of the Republic of Kazakhstan. The goal as a mandatory feature is not specified in any of the considered group of crimes.

The subject of crimes against the constitutional rights and freedoms of a person and citizen may be sane persons who have reached the age of 16. In some compositions, a special subject is provided (Articles 321, 151, 152, 154 of the Criminal Code of the Republic of Kazakhstan). Depending on the object of direct assault crimes against constitutional rights and freedoms of man can be divided into the following groups: Crimes against political rights and freedoms (art. 145, 146, 150, 151, 154, 155, 157 CC of RK); Crimes against personal rights and freedoms ( article 147-149, 153 of the criminal code); Crimes against the safety and protection of the rights labour relations (article 152, 156 of the criminal code); Crimes against rights and freedoms in the sphere of information. (article 158 of the criminal code).

Crimes against political rights and freedoms. Violation of the equality of citizens (Article 145 of the Criminal Code of the Republic of Kazakhstan). The article under consideration provides for liability for violation of national and racial equality, as well as for violation of the equality of citizens on the grounds of origin, social, official or property status, gender, race, nationality, attitude to religion, beliefs, place of residence, membership in public associations, causing harm to the rights and legitimate interests of citizens. This crime infringes on the constitutional right of citizens to be equal among equals, regardless of gender, race, nationality, language, attitude to religion, beliefs (Article 14 of the Constitution of the Republic of Kazakhstan).

The object of this crime is the equality of citizens established by the Constitution of the Republic of Kazakhstan.

The objective side of the crime is expressed in the restriction of the rights of a citizen, depending on his race, nationality, gender, language, etc., but regardless of any individual qualities of the person. The restriction of the constitutional right of a citizen is to provide advantages to persons of the same sex, nationality, religion by infringing on the rights and freedoms of persons of the other sex, nationality, religion when hiring or dismissing them, when conducting an election campaign, presenting them for promotions, awards, etc.

If national, racial and other prejudices are not grounds for violating the equality of citizens, then it cannot be considered a crime.

This crime will be considered completed from the moment of committing the actions specified in the disposition of the article under consideration of the Criminal Code, regardless of the occurrence of consequences. Thus, the composition of the crime is formal. The crime in question is committed only with direct intent. The culprit is aware that he violates the equality of citizens and wants to cause this harm. The motives for committing a crime can be very diverse: hatred of representatives of another nationality, belief in the alleged superiority of a

particular race, etc.

The subject of the crime, responsibility for which is provided for in part 1 of Article 145 of the Criminal Code of the Republic of Kazakhstan, may be a sane person who has reached the age of 16 at the time of committing the crime.

Part 2 of Article 145 of the Criminal Code of the Republic of Kazakhstan provides for qualifying signs to which the legislator refers to the use of official position or violation of the equality of citizens by the head of a public association. Violation of the equality of citizens committed by a person using his official position or the head of a public association may be expressed, for example, in the issuance of illegal bonuses, remuneration, allowances, allowances to wages, pensions, deliberately illegal appointment to a position, etc. If a violation of the equality of citizens is committed by an official using his official position and this has resulted in a significant violation of the rights and legitimate interests of citizens, then the act must be qualified under Article 361 of the Criminal Code. The offense described in article 145 of the criminal code, must be distinguished from incitement of social, national, generic, racial or religious hatred (article 174 of the criminal code), as it is not aimed at inciting national, racial and religious hatred in the humiliation of national dignity. The creation of a public association that proclaims or in practice implements racial, national, tribal, social, class or religious intolerance or exclusivity, entails liability under part 2 of Article 404 of the Criminal Code of the Republic of Kazakhstan.

Crimes against personal rights and freedoms. Violation of the inviolability of private life (Article 147 of the Criminal Code of the Republic of Kazakhstan). In accordance with article 18 of the Constitution of the Republic of Kazakhstan, every citizen is guaranteed the right to privacy. This right can be restricted only in accordance with the law and in court, since this constitutional right is also protected by the Criminal Code. The direct object of the crime under consideration is public relations that ensure the implementation of the right to privacy. A violation of the inviolability of private life consists in the fact that the perpetrator collects or distributes information about the private life of a person that constitutes his personal or family secret, without his consent. The collection of information about private life is understood as the theft of this information, as well as any form of obtaining this information for subsequent disclosure. The collection of this information can also be expressed in violation of the secrecy of correspondence, telephone conversations, postal, telegram or other messages. In these cases, the act must be qualified under the totality of Articles 147 and 148 of the Criminal Code of the Republic of Kazakhstan. Spreading information means communicating it to at least one person. This crime will be completed only if the rights and legitimate interests of the victim are harmed. And if the disclosure of information about a person's private life contributed to raising his or her authority or did not negatively affect or harm his or her constitutional rights and legitimate interests, then what he or she did cannot be considered a crime. The crime in question can only be committed intentionally. The guilty person is aware that he violates the inviolability of private life guaranteed by the Constitution of the Republic of Kazakhstan, foresees the possibility or inevitability of harming the rights and legitimate interests of citizens and wants or deliberately allows it to cause harm, or treats the occurrence of such consequences indifferently. Part 2 of article 147 of the criminal code provides for aggravating circumstance guilty of using his official position, as well as the dissemination of information in a public statement, publicly performed work or through the media. The use of official position can be expressed in the fact that a person who has information about the private life of another, sells it, or distributes it for a certain fee or out of other personal interest. This includes the provision, for example, by an official of showrooms, clubs, theaters for public disclosure of information about private life. If the illegal collection of information about a person's private life involves illegal entry into a home, then the act should be qualified under Articles 147 and 149 of the Criminal Code of the Republic of Kazakhstan. Crimes against labor safety and protection of rights in the field of labor relations. Violation of labor legislation (Article 152 of the Criminal Code of the Republic of

Kazakhstan). Article 24 of the Constitution of the Republic of Kazakhstan states that everyone has the right to remuneration for work without any discrimination, as well as to social protection against unemployment. Violation of this right may entail criminal liability under certain circumstances provided for in article 152 of the Criminal Code of the Republic of Kazakhstan. This crime encroaches on public relations that ensure compliance with the rule of law in labor relations, regardless of their forms of ownership. Victims of violations of labor protection rules may be not only permanent workers and employees of these enterprises, but also persons temporarily working for them. The objective side of the crime, the responsibility for which is provided for by part 1 of article 152 of the criminal code, is committing one of the acts: A) the illegal dismissal of an employee from personal motives, B) failure of the court decision on reinstatement, C) violation of labor laws, resulting in substantial harm to the rights and legitimate interests of citizens. The composition of the crimes is formal, i.e., for the recognition of its completion, it is enough to commit these actions, regardless of whether or not any consequences have occurred. In the event of another violation of the labor law, it is required that it causes significant damage to the rights and legitimate interests of citizens. For example, long-term (for several years) non - provision of labor leave may entail such consequences. The subjective side of this crime is characterized by guilt in the form of direct intent. The guilty person is aware that his illegal actions grossly violate the labor legislation and trample on the legitimate interests of the employee, and wants to commit these actions.

The subjects of a crime can only be persons who are charged with the duty to comply with labor legislation: officials; persons who perform the functions of hiring and firing from work in a state, commercial or other organization; not officials who are charged with these duties in state institutions, organizations, or enterprises. Part 2 of Article 152 of the Criminal Code provides for criminal liability for unjustified refusal to hire or unjustified dismissal from work of a woman with children under the age of three, as well as unjustified refusal on the grounds of his minor. The existence of this form into the criminal code is one of the forms of protection of motherhood and childhood, regulated by the Constitution of Kazakhstan. Refusal of employment will be unjustified when these women are not hired due to pregnancy or the presence of children under the age of three, and minors due to their underage age, as well as when they are refused allegedly due to the absence of a vacant position, with staff reduction, etc. The same pretexts can also be used for dismissal. By refusing to hire or firing, the perpetrator is aware that those who are pregnant or have children under the age of three, as well as in relation to minors, and wants to commit these actions, that is, acts with direct intent. Part 3 of the article under consideration of the Criminal Code provides for liability for repeated delay in payment of wages. Repeatability means two or more times during the year. A mandatory condition for the application of part 3 of article 152 of the criminal code is to establish the fact that salaries were paid on time (for a few days, months, years) and not in full. The issue of an advance payment is considered to be the payment of wages not in full. It is also necessary to establish that the reason for the delay in the payment of wages in full was the use of funds for other purposes. Under the use of funds intended for payment of wages, for other purposes, you should understand their use, for example, the purchase of equipment, materials, raw materials, payment of taxes, etc. Repeated should recognize not only the delay of payment of wages to one person two or more times, but the delay of payment of wages once more persons. The subject of the crime provided for in part 3 of Article 152 of the Criminal Code is a special one. It can only be a person who performs managerial functions in enterprises, institutions and organizations, regardless of the form of ownership.

Crimes against human rights and freedoms in the sphere of information. Obstruction of the legitimate professional activity of a journalist (Article 158 of the Criminal Code of the Republic of Kazakhstan)

The crime under Article 158 of the Criminal Code infringes on the freedom of the press and other mass media. The objective side of the crime can be expressed in actions that hinder the legitimate professional activities of journalists by forcing them to disseminate or refuse to

disseminate information. Obstruction of the legitimate professional activities of journalists can include: censorship; interference in the activities and violation of the professional independence of the editorial board; illegal termination or suspension of the activities of the mass media; the establishment of restrictions on contacts with a journalist and the transfer of information to him, with the exception of information that constitutes a state, military, commercial or other specially protected secret. Part 3 of the article under consideration of the Criminal Code provides for liability for repeated delay in payment of wages. Repeatability means two or more times during the year. A mandatory condition for the application of part 3 of article 152 of the criminal code is to establish the fact that salaries were paid on time (for a few days, months, years) and not in full. The issue of an advance payment is considered to be the payment of wages not in full. It is also necessary to establish that the reason for the delay in the payment of wages in full was the use of funds for other purposes. Under the use of funds intended for payment of wages, for other purposes, you should understand their use, for example, the purchase of equipment, materials, raw materials, payment of taxes, etc.

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The subjective side of the crime of this crime is characterized by direct intent. The perpetrator is aware that by his actions he hinders the legitimate activities of journalists by forcing them to disseminate or refuse to disseminate information, and wants to commit these actions. The motives of the named crime and its purpose do not affect the qualification of the crime, they can be very diverse.

The subject of a crime is any sane person who has reached the age of criminal responsibility. Part 2 of Article 158 of the Criminal Code provides for increased liability if the same acts are committed by a person using his official position (a special subject). In this case, the perpetrator uses his opportunities, which arise from his official position, as well as his official connections.

This part of Article 158 of the Criminal Code is also applied in cases of obstruction of the legitimate professional activity of a journalist with the use of violence or the threat of its use. Violence is recognized as causing harm to the health of the victim of a mild or moderate degree, beating, binding, etc. The use of threats means exerting mental pressure on the victim in order to achieve the desired result. Thus, in this chapter, in their totality, these rights and freedoms can be classified as: a) political; b) personal; c) social; d) economic; e) cultural; e) environmental.

Depending on the orientation of a particular type into three groups:

a) Against the political rights and freedoms: article 150 of "Obstructing the exercise of electoral rights or the work of election commissions", article 151 of "Falsification of election documents, referendum documents or incorrect counting of votes," p. 155 "obstructing the

holding of meetings, rallies, demonstrations, marches, picketing, or participate in them»;

b) Against social rights and freedoms: Article 146 "Torture"; Article 156 "Violation of labor protection rules", Article 158 "Obstruction of the legitimate professional activities of journalists", Part 2 of Article 152 " Unjustified refusal to hire or unjustified dismissal of a pregnant woman or a woman with children under the age of 3 years»;

C) Against personal rights and freedoms: article 147 "Violation of privacy", article 148 "violation of the secrecy of correspondence, telephone conversations, postal, Telegraph and other messages", article 149 of "trespassing", article 140 "Denial of citizen information." The subjective side is characterized by guilt in the form of direct intent. Subject a person who has reached the age of 16.

## 2. Analysis of crimes against the constitutional rights and freedoms of man and citizen

### 2.1. Crimes against political rights and freedoms

#### Violation of the equality of citizens (Article 141 of the Criminal Code)

The article under consideration provides for liability for violation of national and racial equality, as well as for violation of the equality of citizens on the grounds of origin, social, official or property status, gender, race, nationality, attitude to religion, beliefs, place of residence, membership in public associations, causing harm to the rights and legitimate interests of citizens.

This crime infringes on the constitutional right of citizens to be equal among equals, regardless of gender, race, nationality, language, attitude to religion, beliefs (Article 14 of the Constitution of the Republic of Kazakhstan).

The object of this crime is the equality of citizens established by the Constitution of the Republic of Kazakhstan.

The objective side of the crime is expressed in the restriction of the rights of a citizen, depending on his race, nationality, gender, language, etc., but regardless of any individual qualities of a person. The restriction of the constitutional right of a citizen is to provide advantages to persons of the same sex, nationality, religion by infringing on the rights and freedoms of persons of the other sex, nationality, religion when hiring or dismissing them, when conducting an election campaign, presenting them for promotions, awards, etc.

If national, racial and other prejudices are not grounds for violating the equality of citizens, then they cannot be considered a crime.

This crime will be considered completed from the moment of committing the actions specified in the disposition of the article under consideration of the Criminal Code, regardless of the occurrence of consequences. Thus, the composition of the crime is formal.

The crime in question is committed only with direct intent. The guilty person is aware that he violates the equality of citizens guaranteed by the Constitution, and wants to commit these actions. The motives for committing a crime can be very diverse: hatred of representatives of another nationality, belief in the alleged superiority of a particular race, etc.

The subject of the crime, the responsibility for which is provided for in Part 1 of Article 141 of the Criminal Code, may be a sane person who has reached the age of 16 at the time of the commission of the crime.

Part 2 of Article 141 of the Criminal Code provides for qualifying signs to which the legislator refers to the use of official position or violation of the equality of citizens by the head of a public association. Violation of the equality of citizens committed by a person using his official position or the head of a public association may be expressed, for example, in the issuance of illegal bonuses, remuneration, allowances, allowances to wages, pensions, deliberately illegal appointment to a position, etc. If the violation of the equality of citizens is committed by an official using his official position and this has resulted in a significant violation of the rights and legitimate interests of citizens, then the act must be qualified under Article 307 of the Criminal Code.

The crime described in Article 141 of the Criminal Code must be distinguished from the incitement of social, national, tribal, racial or religious enmity (Article 164 of the Criminal

Code), since it is not aimed at inciting national, racial or religious enmity, at humiliating national dignity.

The creation of a public association that proclaims or in practice implements racial, national, tribal, social, class or religious intolerance or exclusivity, entails liability under Part 2 of Article 337 of the Criminal Code.

Obstruction of the exercise of electoral rights or the work of election commissions (Article 146 of the Criminal Code)

The object of the crime under part I, article 146 of the criminal code, are the electoral rights of citizens of Kazakhstan, providing them the opportunity to participate in government, as well as the normal activities of election commissions and commissions on the Republican referendum. When performing actions that are qualified under paragraph "a" of Part 2 of Article 146 of the Criminal Code, the health of citizens can act as an optional (additional) object.

the system of the Republic of Kazakhstan, which guarantees the free expression of the will of voters. It should be noted that in the criminal law literature of the Soviet period, when describing the object of a similar crime, some scientists noted that the shell with the electoral rights of citizens "violates" the procedure for holding elections. In the literature on criminal law of recent years, the judgment is expressed in this regard that the direct object of the crime under consideration is "the right to vote, the right to participate in a referendum"-. In our opinion, one can hardly agree with this interpretation of the immediate object of the crime under consideration. If we analyze the essence of the acts constituting the objective side of the crime (falsification of election documents of the people; incorrect counting of votes; incorrect determination of election results or outcome of the referendum; the violation of the secrecy of the vote), we can conclude that the first three acts impinge directly on the democratic order of determination of the election results, and the fourth on the relations that constitute the constitutional principle of a secret ballot.

The constitutional principle of secret ballot means such a way of expressing the will of the voter, in which his will remains unknown to other persons.

It seems that Article 147 of the Criminal Code contains four elements of a crime that differ from each other in their objective features. Among them should be attributed;

- 1) falsification of election documents or referendum documents, making fictitious entries in ballots or signature lists;
- 2) deliberately incorrect vote count;
- 3) knowingly incorrect determination of the election results or the results of the referendum;
- 4) violation of the secrecy of voting.

The combination of the four elements in one norm, on the one hand, can be explained by the fact that "the legislator used a kind of legislative technique in order to save verbal material and combined in one verbal formulation his opinion (judgment) on the signs of several criminal acts"<sup>1</sup>, and on the other - by the fact that the elements of crimes are very similar to each other and are therefore combined in one article. Of course, the individual and specific features of these acts differ in many ways, but the common thing that unites and unites them is that they are all connected with the violation of the electoral rights of citizens.

Falsification of election documents or referendum documents, making fictitious entries in ballots or signature lists are committed in the form of an action. This conclusion can be reached based on the interpretation of the word "falsification". In the dictionary of foreign words, this term is understood as "forgery of something; distortion, substitution of something genuine with false, imaginary". In the context of the act under consideration, falsification should be understood as the inclusion of deliberately false data in the voter lists, ballots, signature lists, certificates for the right to vote outside the place of residence and other documents related to the electoral process, or their production with such data. At the same time, it should be borne in mind that false data entered in these documents should really affect the election results (distort), the results of the referendum, or create a threat of distortion of

the election results, the results of the referendum. If the electoral documents were amended, which in principle could not affect the results of the elections( referendum), the registration of candidates, then there will be no corpus delicti.

Coercion to participate in a strike or to refuse to participate in a strike (Article 153 of the Criminal Code)

The strike action of the labour team for the satisfaction of their socio-economic and professional requirements in the collective labor dispute between the employees and the employer, virazhayusheyasya in full or partial cessation of work (absenteeism, neglect of duties) members of the staff on a fixed term or for a term up to meet the employer requirements of the workforce.

The procedure for conducting strikes is regulated by the Law of the Republic of Kazakhstan of July 8, 1996. On Collective Labor Disputes and Strikes", according to which:

1. A decision to hold a strike may be taken if the labour dispute has not been resolved through conciliation procedures.

2. The decision to hold a strike is taken at a meeting (conference) of the labor collective and is considered adopted if at least two-thirds of the members of this labor collective (conference delegates) voted for it.

3. The strike is headed by the body authorized by the labor collective (the strike committee). If a strike is declared by several labor collectives with the same requirements, it may be headed by a joint body formed from an equal number of representatives of these collectives.

Strikes for political reasons, including those demanding a change in the constitutional order, the convocation, dissolution or change in the order of activity of State bodies, the resignation of their leaders, as well as demands entailing violations of national and racial equality, changes in the territorial integrity of the country, are considered illegal.

Coercion to participate in the strike or refusal to participate in a legal strike is the case, when against the will, wishes and rights of the labor collective face (official) forces to participate in the strike or refusal to participate in a legal strike, and in the case of coercion body heading the strike, to act beyond the powers conferred upon him by the Law, which empowers its staff. In accordance with Article 153 of the Criminal Code, it is not a crime to force a person to refuse to participate in an illegal strike.

The object of the crime under article 153 of the criminal code, are the political rights of the citizens of Kazakhstan, providing them the possibility of participating or not participating in the strike, and the right of the labour collective to fight for the satisfaction of their socio-economic and professional requirements in the collective dispute between the employees and the employer. The additional object is the health of citizens.

The objective side of the crime is expressed in being compelled to participate in the strike, or to refuse participation in a lawful strike, i.e., the provision citizen of Kazakhstan obstacles in exercising their political rights.

Coercion consists in exerting physical or mental pressure on a citizen in order to force him to participate in a strike or to force him to refuse to participate in a legal strike at a time when he wished to participate in such a strike. The composition of the crime under consideration will take place both in cases of coercion to participate in a legal strike, and in cases of coercion to participate in a strike when it is organized in violation of the legislation on the procedure for organizing and conducting strikes.

The article of the Criminal Code of the Republic of Kazakhstan contains a formal composition. The crime is considered finished from the moment of commission of the specified actions regardless of whether any consequences have occurred or not, or whether the guilty person has achieved the desired result.

The legislator alternatively specifies as mandatory the three elements of the composition of the crime under consideration. One of them refers to the characteristics of a special subject, and the other relates to the methods of coercion to participate in a strike or to refuse to participate in it. This act must be committed either by a person (including an official) using

their official position or by violence (physical) or the threat of such violence (mental). The concept of violence or the threat of violence was discussed when considering the elements of a crime under Article 151 of the Criminal Code.

On the subjective side, this crime can only be committed intentionally. The culprit is aware that by forcing him to participate in the strike or to refuse to participate in it, commits a socially dangerous act, and wishes to commit this act.

The motives of the crime may be different: the execution of an illegal instruction of a superior, other officials and non-duty persons, revenge and greed, hooligan motives, etc. The motive and purpose do not affect the qualification of the act in question.

Article 153 of the Criminal Code is characterized by a special subject of the crime, i.e. a person who, using his official position, commits the crime in question. This can be either an official (see the note to Article 307 of the Criminal Code), a civil servant, or another employee. Coercion to participate in a strike or to refuse to participate in a legal strike with the use of violence or the threat of its use may be committed by any sane person who has reached the age of 16.

## 2.2. Crimes that infringe on socio-economic rights and freedoms

The direct object of violation of the rules of labor protection (Article 143 of the Criminal Code) is the right to safe working conditions. An additional object is human health.

Direct object if unjustified refusal to hire or unfounded dismissal of pregnant women or women with children under the age of three years (article 145 of the criminal code) is the right to free choice of profession and type of activity, the state-guaranteed right of women to work and pay, and vacation pay during pregnancy and the care of young children up to three years.

The direct object of infringement of copyright and related rights (Article 146 of the Criminal Code), inventive and patent rights (Article 147 of the Criminal Code) is to protect intellectual property and freedom of literary, scientific, technical, inventive and other types of creative activity, publications or information for which a patent has been issued.

An additional object of the considered compositions may be health, personal dignity, and property rights.

The objective side differs constructively and depends on the characteristics of the rights that the offender encroaches on. Article 143 of the Criminal Code assumes: a) an act (action or omission) that resulted in a violation of safety regulations or other labor protection rules, for example, not installing a fence in a dangerous area, or violating the operation of mechanisms, etc.; b) causing consequences - serious or moderate harm to health (part 1), death (part 2); c) a causal relationship between the act and the harm caused. The composition of the crime is material. St. 145 of the Criminal Code involves an act related to: a) unjustified refusal to accept a job or, b) unjustified dismissal of a pregnant woman or a woman with children under the age of 3 years. The composition of the crime is formal. Article 146 of the Criminal Code assumes: a) an act in the form of illegal use of objects of copyright or related rights or attribution of authorship; b) consequences in the form of major damage; c) a causal relationship between the act and the consequences. The composition of the crime is material. Article 146 assumes: a) illegal use of an invention, layout, industrial design, etc.; b) illegal disclosure of the essence of the invention, layout, industrial design, method, technology of action, materials used, etc.; c) illegal attribution of authorship or coercion to co-authorship in the invention. The corpus delicti is material, and in this regard, it is necessary to establish a major damage, which can be both material, for example, damage to the author who did not receive remuneration for the invention, and moral, for example, awarding instead of the author, the person who appropriated the invention.

The subject of the crime under Articles 143, 145, 146, 147 of the Criminal Code is a natural, sane person who has reached the age of 16. The subject of a special article 143 of the criminal code running in the enterprise, organizations irrespective of forms of ownership, which had the responsibility of ensuring the safety and protection of labour (production Manager, safety

officer, etc.), article 145 of the criminal code official, employ or dismiss it in the article. 146, 147 of the Criminal Code, in cases of violations of rights with the use of an official of his position, require qualification (if there are other signs of an official crime) in the aggregate also for an official crime.

The subjective side of the crime under Article 143 of the Criminal Code is characterized only by a careless form of guilt (frivolity or negligence). Violating the rules of safety or other rules of labor protection, the guilty person foresees that he may cause harm to health or lose his life, but unreasonably expects to prevent such consequences (in case of frivolity), or does not foresee the possibility of socially dangerous consequences, although he should have and could have foreseen them (in case of negligence). Article 145 of the Criminal Code assumes only direct intent. Unreasonably refusing to hire a pregnant woman or a woman with children under the age of 3 years, the perpetrator is aware of the illegality of his actions and wants to do so. The motive is misinterpreted production interests. Articles 146 and 147 of the Criminal Code are characterized by direct or indirect intent. Realizing that it violates copyright or related rights, the guilty person commits any of the provided acts and wants to cause the corresponding harm (with direct intent) or deliberately allows such harm to be caused or is indifferent to its occurrence (with indirect intent).

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### **Lecture 4 Crimes against the peace and security of mankind.**

#### **I General characteristics of crimes against the peace and security of mankind**

#### **2 Types of crimes against the peace and security of mankind**

#### **3 Crimes against Peace**

#### **4 Crimes against humanity**

#### **5 War crimes**

**Keywords: peace, security, war, aggression, crimes.**

The special part of the Criminal Code of the Republic of Kazakhstan begins with the fourth section "Crimes against the peace and security of mankind". This section is a concrete implementation of the obligation of Kazakhstan to the international community to provide in the national criminal legislation responsibility for international crimes that pose a real threat to the security of the existence of countries and peoples.

The UN Charter, as well as the Charter of the Tokyo Tribunal, UN documents adopted at the end of World War II and in the first post-war years with the active participation of the USSR, gave impetus to the creation of an extensive system of international legal treaties designed to counteract new wars of aggression, the destruction of population and nature, and other international crimes. The inclusion of this chapter in the Criminal Code follows from the Constitution: "The Republic of Kazakhstan to respect the principles and norms of international law, pursued a policy of cooperation and good-neighborly relations between States, their equality

and non-interference in the internal Affairs of each other, peaceful settlement of international disputes, renounces first use of armed force"

Considering the Chapter of the criminal code, it is necessary to emphasize that the crimes described in it are of a conventional nature: relevant criminal prohibitions are derived from international legal obligations.

At the present time, when the codification of international criminal law regarding crimes whose generic object is the peaceful life and security of mankind, the basis for the existence and cooperation of States, and the peaceful resolution of inter-State conflicts is not yet complete, certain difficulties in mastering the material can be caused by the use of two similar terms in the literature: "international crimes" and "crimes of an international character". In order to avoid these difficulties, it is necessary to be guided by the following:

International crimes are acts of such magnitude and severity, of such consequences that they pose a real threat to the destinies of humanity as a whole or of peoples or other significant groups of people that make up it: the subject of these crimes is in most cases the highest representatives of state power or persons acting on their instructions, or in an environment created by state power that encourages specific criminal actions.

International crimes is the common crimes, but covering the territory of two or more States and threatening not only to internal security and law and order in them, but normal inter-state relations (economic, tourism, etc.). But despite the risk, for example, international crimes related to terrorism, international drug trafficking and weapons, etc., these crimes are usually not reach the scale at which is a possible threat to the security of mankind as a whole. These crimes are not usually initiated or supported by the State authorities that fight them. There is also a formal distinguishing feature: the presence or absence of qualification of the relevant acts as crimes against the peace and security of mankind in international legal documents.

Of course, the distinction between these groups of crimes is not absolute in the international practice of combating crime, we meet with the facts of accusing some countries of state support for terrorism and drug trafficking. And in a number of other cases, these crimes pose a serious immediate threat to peace and security when they reach the international level, which is why it is not excluded that new elements of crimes will appear in this chapter in accordance with international legal instruments on combating terrorism and drug trafficking.

#### 1 General characteristics of crimes against the peace and security of mankind

The Declaration on the Right of Peoples to Peace, approved by the UN General Assembly resolution 39/11 of November 12, 1984, determined that the establishment of lasting peace on Earth is the first condition for the preservation of civilization and the existence of mankind. The Declaration solemnly proclaimed that the peoples of our planet have a sacred right to peace, and the promotion of its realization is one of the main responsibilities of every State.

The basis of the world order as an object of crimes against peace is the relationship of States, focused on eliminating the threat of war, primarily nuclear, on the exclusion of the use of force in inter-State relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.

Crimes against the peace and security of mankind – socially dangerous acts prohibited by criminal law, related to the preparation, unleashing of an aggressive war, illegal trafficking in weapons of mass destruction, actions aimed at the destruction of a certain circle of people, the destruction of flora, mercenary activities and the commission of other actions that infringe on the foundations of peaceful coexistence of States and the security of humanity.

The basis for the allocation of crimes against the peace and security of mankind in the Criminal Code was the requirements of Article 6 of the Statute of the International military Tribunal.

Crimes against the peace and security of mankind can be divided into three groups: (

- a) Crimes against peace;
- b) crimes against humanity;
- c) war crimes.

The object of the crimes under consideration is the foundations of good-neighborly, mutually beneficial, peaceful neighborhood and coexistence of States, the security of humanity. An additional object is the life and health of a person, relations that ensure the preservation of nature, and property relations.

Individual crimes as a mandatory feature include the subject-the production or distribution of weapons of mass destruction.<sup>1</sup>

The objective side of the crimes under consideration is characterized by an act in the form of active actions. According to the Constitution, the crimes under consideration are mainly formal elements, and are considered completed from the moment of committing the actions specified in the law. Ecocid<sup>2</sup> is a formal and material element of the crime.

The subjective side of crimes against the peace and security of mankind is characterized by guilt in the form of direct intent. For individual crimes, a mandatory attribute of the subjective side is the goal: an attack on persons and institutions that enjoy international protection, with the aim of provoking war or complicating international relations. <sup>1</sup>

Subject – a sane individual who has reached the age of sixteen. Certain elements of the crime as mandatory include signs of a special subject-propaganda and public calls for the unleashing of an aggressive war committed using the mass media or by an official holding a responsible state position.

## 2 Types of crimes against the peace and security of mankind

### Crimes against peace

Planning, preparing, launching, or waging an aggressive war. Within the framework of one norm of the Criminal Code, two structures are actually combined, the objective side of one of which consists in preparatory actions for an aggressive war, and the second – in the conduct of this war. The differences in the sanctions (part 1 provides for imprisonment for a term of 7 to 12 years, and part 2-for a term of 10 to 20 years) are clear. They are associated with a difference in the severity of the consequences that have occurred or are possible. The subjective side of this crime is characterized by guilt in the form of direct intent.

The key word in describing the compositions under consideration is aggressive war. Thus, we are not talking about any war as an armed struggle between States to achieve certain goals, but about the first use of armed force by a State in violation of the UN Charter. This means the use of armed force against the sovereignty, territorial integrity, and political independence of other States. It is assumed that the UN Security Council will assess the actions of a state as unleashing and waging an aggressive war (an act of aggression), if the consensus of its permanent members is reached.

The direct object of the acts provided for in this article is the state of peace between States and the security of humanity. Subject – a sane individual who has reached the age of sixteen. The subjective side is guilt in the form of direct intent. The use of armed force to suppress internal insurgency, attempts by illegal armed groups to establish control over a certain territory, even if it is associated with the self-declaration of independence, does not entail for the state that has used force in accordance with the Constitution to protect its integrity, the assessment of its actions as an act of aggression. This assessment applies only to the armed struggle of two or more States.

Planning an aggressive war is the development of its political and strategic goals, the calculations necessary human and material resources for the implementation and consolidation of the results of the aggression, the development of plans for military operations, the transfer of the national economy on a war footing, mobilizing people and technical resources; development of management plans for the occupied territories, the creation of a reason for it, etc.

The preparation of an aggressive war – another variant of the objective side of the composition includes, in a broad sense, its planning. "Breeding" of these concepts means that as an independent option, there are no longer "cabinet" actions, but real ones – in military units, united and united, in the national economy, in the mass media, in the area adjacent to the future theater

of military operations, etc. We are talking, in particular, about the fortification and communication equipment of the initial positions, about the concentration of troops in the areas from which the invasion will begin, about putting them on high alert, about intensive reconnaissance of certain territories, about "processing" public opinion, etc.

The aggressive war is the presentation of the ultimatum, the blockade of land, water, air and communications of the country in respect of which go to war, the invasion of the limited contingent for reconnaissance and capture strongholds, capture the diplomatic representatives, the internment of the other citizens of the country, which carried out the attack, the seizure of its property, etc. If the planning and preparation of an aggressive war is usually separated from its unleashing by a sufficiently significant period of time, then the actions to unleash aggression

Crimes against peace  
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immediately turn into a full-scale conduct of an aggressive war. We are talking about the bombing of a territory or part of a country that has been attacked. A war of aggression is also a conventional action that deploys the armed forces of the aggressor country that have already been previously introduced into the territory of a country under an agreement with it to perform any joint tasks (for example, under a mutual assistance agreement) if they undertake military operations contrary to the terms of the agreement. At a certain period of time, then the actions to unleash aggression immediately turn into a full-scale conduct of an aggressive war. We are talking about the bombing of a territory or part of a country that has been attacked. A war of aggression is also a conventional action that deploys the armed forces of the aggressor country that have already been previously introduced into the territory of a country under an agreement with it to perform any joint tasks (for example, under a mutual assistance agreement) if they undertake military operations contrary to the terms of the agreement.

Propaganda and public calls for the unleashing of an aggressive war. The location of this article indicates that the legislator essentially considers the crime described in it as an element of preparation for an aggressive war.

The objective side involves an appeal in any form (oral, written, graphic, etc.) to a sufficiently significant audience (at a rally, meeting, in a public place where there are many people, etc.) in order to convince them of the need to start an aggressive war to resolve an existing or predicted interstate conflict. Thus, the immediate object is peace between States, and in the longer term, the security of humanity.

The qualified staff provides for increased punishment in cases of use of the mass media, or by an official holding a responsible public position.

With the specified exception, the subject of the crime is any person who has reached the age of 16. The subjective side is direct intent.

Production or distribution of weapons of mass destruction

The key word in describing this *corpus delicti* is mass destruction. We are not talking about the usual small arms, not artillery shells or bombs even greater power or fitted with devices for accurate aiming, and the weapons (ammunition), the use of which implies a massive loss of life or destruction of the natural environment, not limited to the battlefield, and covering a large area and do not have selective. The possession and preparation for the use of weapons of mass destruction is essential for the planning and preparation of an aggressive war, creating psychological confidence in the perpetrators in the effectiveness of the attack. The objective side of the crime is the production, acquisition or sale of chemical, biological, as well as other types of weapons of mass destruction prohibited by an international treaty of the Republic of Kazakhstan.

In other words, we are talking about trade, supplies, and other forms of transfer to possession, use, and disposal (including free of charge, on credit, etc.), both at the interstate and domestic levels. Moreover, not only state structures, but also private enterprises, organizations, institutions, and individuals.

In view of the above, the immediate object of the crime under consideration is the state of peace between States and the security of humanity. The subjective side is guilt in the form of direct intent.

The subject of the act is common. But in most cases, with the exception of a relatively few attempts to manufacture or steal weapons of mass destruction by terrorists, persons acting out of self – interest, etc., we are talking about persons who are professionally involved in the trafficking of such weapons.

Attacks on internationally protected persons or organizations. With a certain degree of conditionality, it is possible to include this composition in the group of criminal acts against the world. Although much more local in nature than the acts provided for in articles 160 and 162, the immediate object of the act is essentially the same (the state of peace between States and the security of humanity). After all, an attack on persons or institutions that enjoy international protection always violates or threatens to violate normal relations between States; In some cases,

such an attack may be a provocation of an armed conflict.

Objective side-an attack on such persons or institutions, that is, the use of force or its threat to seize people, premises, vehicles, to cause harm to the health, property, honor and dignity of persons enjoying international protection. The range of persons protected by the composition in question is quite wide. These are diplomatic, consular, trade, special representatives of foreign states, and their family members; representatives of international (including regional) organizations whose status provides for special protection of their rights and legitimate interests in the host State. We are talking, of course, about the heads and members of state delegations.

The subjective side is direct intent. The person attacks knowing that the victim (premises, vehicle) enjoys international legal protection. At the same time, the statement about the need for a special purpose: provocation of war or international complications, which is widespread in the educational and methodological literature, is controversial. The content of the norm under consideration does not give grounds for such statements. Possible objective consequences should not be confused with the direction of a specific intent. The perpetrator may wish for these consequences, or may only wish to attack a person who enjoys international protection out of hooligan motives, out of self-interest, out of a desire to protest against certain actions of the state (organization) that the victim represents.

The subject of the crime is a general one. If the attack is an integral part of an act of terrorism or hostage-taking, it is necessary to qualify for the totality of the acts.

### 3 Crimes against humanity

This group of crimes under the Criminal Code includes genocide and ecocide. Their direct object is social relations that provide safe living conditions for peoples, ethnic groups, social or religious groups of the population, etc.

In the case of genocide, criminal acts are directly aimed at the destruction of people or the creation of such conditions for their life that sooner or later will lead to their death or to the disappearance of this community. In the case of ecocide, criminal actions are aimed at destroying the natural environment, but also at destroying the living conditions of the population living in this territory.

Genocide and ecocide can be carried out both in the course of war, other armed conflicts, and in peacetime, in particular, as a result of the burial of radioactive waste in conditions that obviously lead to poisoning of the natural environment.

Genocide. Genocide - deliberate acts aimed at the complete or partial destruction of a national, ethnic, racial or religious group by killing members of this group, causing serious harm to their health, forcibly preventing childbearing, forcibly transferring children, forcibly relocating or creating other living conditions designed for the physical destruction of members of this group.

The immediate object of genocide is the security of a group of people. The victims in this case will be the members of the destroyed group. The criterion for distinguishing such a group may be belonging to a certain race, nationality, ethnic group, religion, or any other attribute.

The objective side of the crime is expressed in the commission of active actions aimed at the systematic complete or partial destruction of a national, ethnic, racial, religious or other group as such

The genocide was declared an international crime against humanity by the UN resolution of 1946. The Convention on the Prevention and Punishment of Genocide (1948) is currently in force. The double meaning of the term "nation" has already been mentioned. In this case, we are talking about the people or its part (territorial, cultural, historical, psychological community of people who may belong to one or to different ethnic groups). In the second sense of the term, that is, to a genetic community that has common ancestors. A racial group is a community of people distinguished by inherited external characteristics (skin color, eye shape, head shape, hair structure, etc.). The term "religious group" does not need to be deciphered. The Criminal Law does not specifically allocate responsibility for genocide against a social group, although the Constitution of the Republic of Kazakhstan prohibits discrimination on the basis of belonging to

such a group. It seems to mean that the concept of genocide in relation to a national group also includes genocide on a social basis.

The crime from the subjective side is characterized by direct intent, focused on the goal of complete or partial destruction of the relevant population group.

The subject of the act in question is any participant who has reached the age of 16 (persons from 14 to 16 years old who participate in genocide, for example, out of religious fanaticism, are responsible for serious crimes against the person). At the same time, it is necessary to individualize the responsibility of the organizers, including senior officials, performers, and accomplices. At the same time, it is possible to state the presence of a criminal organization (criminal community).

Ecocide. As for ecocide, its objective side is the mass destruction of flora or fauna, poisoning the atmosphere, land or water resources, and other actions that caused or could cause an ecological disaster. This crime is also among the most serious.

The object of this crime is the security of humanity, since the destruction of the human habitat can lead to the death of a part, and, ultimately, to the death of all mankind.

We are talking about committing not only highlighted in the law, but also all other actions of the military, industrial, scientific, socio-maintenance nature, creating a threat of environmental catastrophe, that is, the destruction of the natural environment in large areas and the transformation of the conditions of life on it to life and health of people, the normal existence of flora and fauna.

The subjective side of ecocide has some specifics in comparison with genocide. Here, both direct intent, focused on the special purpose of creating an environmental disaster, and indirect intent are possible. In the latter case, the person is aware of the inevitability or real possibility of consequences, but treats them indifferently. However, the sign of familiarity is mandatory. In the case of negligent forms of guilt, responsibility should not come for crimes against humanity, but for the corresponding environmental crime.

The characterization of the subject of the crime is similar to the subject of genocide - a sane individual who has reached the age of sixteen. In conclusion, we note that although the crime has an international character (including in connection with the threat that extends to neighboring countries), the concept of ecocide, unlike genocide, is not codified in international law. At the same time, the content of its objective side can be derived from a number of international conventions on combating polluting effects on the environment.

#### 4 War crimes

The use of prohibited means and methods of warfare. This article covers compositions designed for use in conditions of an already ongoing war or other armed conflict. The immediate object here is social relations that ensure the minimization of harm caused by military actions (human losses, property damage, human suffering, destruction of historical and cultural potential, etc.).

The prohibition of ill-treatment of prisoners of war or civilians requires some specification in terms of the range of persons protected by this prohibition, and in terms of the very concept of ill-treatment. The Geneva Convention of 1949 refers to the number of prisoners of war not only the personnel of the armed forces, but also volunteers (but not mercenaries), militias, the population rebelling against the invaders, but subject to the open carrying of weapons and compliance with the laws and customs of the Vona. In the position of prisoners of war, the crews of the merchant fleet and civil aviation captured by the enemy should also be considered.

Abuse is caused not dictated by military necessity of physical or mental suffering, including torture, human experimentation, beatings, inhumane conditions of detention, humiliation of honor and dignity, etc. Appeared in the criminal law literature claims that the lack of physical violence does not allow to apply the qualification acts as abuse, not to the interpretation of this concept in international legal documents. Even torture is possible through the use of mental, not physical, influence.

It is prohibited under the threat of criminal liability to deport the civilian population, that is, to

expel them from the occupied territory, to hijack them while retreating, etc. But it is necessary to distinguish from deportation:

a) voluntary evacuation;

b) actions of the belligerent party aimed at preventing mass losses of the civilian population. For example, a temporary eviction of settlements, which are assumed to be of major hostilities.

One of the variants of the objective side of the composition under consideration is the looting of national property in the occupied territory. We are talking about the organization by the belligerent party in the occupied territory of the enemy of a large-scale seizure and appropriation "by right of the winner" of historical and cultural values, as well as the material base of the economy, regardless of the form of ownership. This prohibition does not apply to actions that:

a) are taken to temporarily preserve valuables from accidental military actions;

b) provided for by a peace treaty, for example, in connection with reparations;

in) provided after the unconditional surrender of the hand, unleashed a war of aggression by the decision of the Supreme body of the victorious countries in the occupied territories (with the subsequent decision of this question in the peace Treaty).

However, a permission that gives military or civilian leadership to troops in the capture and removal of a certain amount of property, including "orphan", and especially the organization of such seizure and removal, of course, is a form of looting of property within the meaning of article 159 of the criminal code.

Part 2 of article 163 of the Criminal Code provides for liability for the use of weapons of mass destruction prohibited by an international treaty. The crime is completed from the moment of the launch of a carrier rocket of such weapons, the take-off of an aircraft with these weapons, the release of toxic or bacteriological substances in the direction of the enemy. The concept of weapons of mass destruction was discussed when considering article 162 of the Criminal Code.

The subjective side of the acts under consideration is direct intent for violating the laws and customs of war or other armed conflict, minimizing their harmful consequences. Motive is irrelevant to qualify, but important for individualization of punishment (fanaticism, a false understanding of duty, greed, revenge for the dead, etc.)

Subjects reporting acts can be the person who orders the violation of the laws or customs of war, and the person organizing their execution, as well as committing acts under article 159 of the criminal code on its own initiative.

The objective side of the crime is expressed in the commission of any of the alternative actions specified in the disposition of the article.

Mercenary activity. Mercenary activity belongs to the group of war crimes, since it is a violation of the laws and customs of war (the use of prohibited means and methods of its conduct). Even in cases where the actions that constitute the objective side of mercenary activity are committed before the start of hostilities, they are also aimed at violating the laws of war.

According to the note to article 170 of the Criminal Code, which reproduces the international legal definition, a mercenary is a person:

a) acting for the purpose of obtaining material remuneration or other personal benefit;

b) who is not a citizen of a party participating in an armed conflict, does not permanently reside on its territory and is not sent by another State to perform official duties;

The objective side of the acts is multivariate. Responsibility is established for the recruitment, training, financing or other material support of a mercenary, as well as his use in armed conflict or military operations.<sup>1</sup> Recruitment by any means, from offers and promises to coercion, is punishable. Financing or material support is also punishable, regardless of the methods (provided to the mercenary, or his relatives, or the leader of the group for distribution; in a lump sum or regularly; in monetary or other form, etc.). Use in an armed conflict or military operations involves both direct participation in combat operations, and their maintenance by communication, transport, etc.

The qualifying circumstances of the recruiter's act are the use of official position or in the relations of a minor.<sup>2</sup> Along with the responsibility of the recruiter, the responsibility of the hired

person (mercenary) for participation in an armed conflict or military actions is provided. It seems that this act is over from the moment the mercenary is included in the armed forces of a party to such an armed conflict (military operations).

The subjective side of all forms of mercenary activity is qualified by direct intent, in the presence of qualifying circumstances, including those related to the underage age of the recruited person, the perpetrator must be aware of their presence and connection with the actions taken by him. The motivation for actions can be very diverse, from self-interest to a sense of patriotism – it affects the individualization of responsibility and punishment. In view of the above, the immediate object of the crime under consideration is the state of peace between States and the security of humanity. The subject of all forms of mercenary activity can be a person who has reached the age of 16, acting on behalf of another person, organization, state, or on his own initiative.

The act provided for by the main composition (part 1, Article 170 of the Criminal Code) is a serious crime: the qualified composition (part 2) is a particularly serious crime. The act provided for in Part 3 is a serious crime.

Planning, preparing, unleashing an aggressive war in accordance with the universally recognized norms of international law is a crime against peace, as it leads to the violation of the peaceful coexistence of peoples and States, predictable human losses and unjustified material costs, incredible suffering of the civilian population, including women and children, the destruction or destruction of national economic facilities, architectural monuments and cultural values.

The public danger of the public calls for an aggressive war is that such actions are formed in the society and relevant government structures socio – psychological atmosphere of moral justification and readiness for war, therefore, create appropriate support to persons holding public office of the state service of the Republic of Kazakhstan and competent to make decisions about the beginning of the war, when they need to make decisions about aggressive war.

The public danger of the production and proliferation of weapons of mass destruction lies in the fact that in cases of inter-State or intra-national conflicts, there is a real possibility of their use as a means of resolving the conflict in favor of the party possessing such weapons, and this creates a threat of mass death of people, infection or destruction of the animal or plant world in the conflict region, to other harmful consequences for society and the environment.

Public danger of actions, consisting in the application is prohibited by international law means and methods of warfare, is that when applied not only violated international law, but mainly cause undue suffering to the parties to the armed conflict and civilian population, increasing casualties and destroyed or destroyed national economic projects for the livelihoods of people permanently erases cultural and architectural monuments as for the achievement of human civilization.

The social danger of genocide lies in the fact that, as a result of the commission of the acts constituting this crime, a certain national, ethnic, racial or religious group of people, characterized by the identity of traditions, lifestyle and culture, and other features of life activity, completely or partially ceases to exist. The Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, proclaims that everyone has the right to life, liberty and security of person, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that everyone, wherever he may be, has the right to be recognized as a person before the law, that all persons are equal before the law and are entitled, without distinction, to the equal protection of the law. The danger of ecocide lies in the fact that the actions that make up this crime can cause or cause huge damage to the natural environment, as the natural basis of human habitation, sustainable socio – economic development of the country and society, the preservation of the gene pool of the people, the animal and plant world.

The social danger of mercenary activity is that a certain part of people, as a source of livelihood, chooses to participate in armed conflicts or military operations on the side of a State of which the person is not a citizen and where he does not permanently reside. Such actions are deeply immoral and especially dangerous because a group of people is formed in the human community,

whose professional occupation is killing, causing serious and other harm to the health of persons involved in armed conflict or military operations, destroying or destroying national economic and other objects of the conflicting party, plundering the national wealth of the state and the property of the civilian population.

Thus, to sum up, it is necessary to point out that the lives of millions of people on the planet are still marred by violence. Some States have ceased to exist as a result of internal conflicts, conflicts between States. No one should be allowed to suffer or be put in danger in their own country and abroad.

### Refernses

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### **Lecture 5 Criminal offenses against the foundations of the constitutional system and the security of the state**

#### **Questions:**

**1. General characteristics of criminal offenses against the foundations of the constitutional system and the security of the State**

**2. Types of criminal offenses against the foundations of the constitutional system and the security of the state**

**Keywords: sabotage, security, espionage, secret, constitutional system.**

These are socially dangerous acts (actions or omissions) provided for in Articles [175-204] of Chapter 6 of the Criminal Code, carried out intentionally or through negligence, encroaching on the foundations of the constitutional system and the security of the state, undermining the stability of society and weakening state power.

The public danger of these criminal offenses is to undermine the constitutional system of the state, undermine stability in society, and inflame social tension.

The main objects of criminal encroachments are the foundations of the constitutional system and the security of the Republic of Kazakhstan. An additional object is the interests of the state power.

The normative provisions on the foundations of the constitutional system are enshrined in the general Constitution, which defines the priorities of the State.

State security is the state of protection of the constitutional system, sovereignty, defense capability, territorial integrity and other vital interests of the Republic of Kazakhstan from external and internal threats. The security of the Republic of Kazakhstan, like any other state, consists of the stability of its economic, political and social foundations.

Criminal offenses under Article 184 of the Criminal Code are subject-related. So, objects of diversion (see article 184 of the criminal code) can be businesses, structures, ways and means of communication, means of communication, the public infrastructure; items infringement under article 185 of the criminal code, documents containing state secret, or items of information which constitutes a state secret.

The objective side of the offense is expressed by the act in the form of action, for example, in

collecting or stealing of information constituting a state secret (article 185, 186 of the criminal code), the Commission of an explosion, arson or other actions aiming at the destruction or damage of enterprises, facilities, ways and means of communication, means of communication, public infrastructure (see article 184 of the criminal code).

Despite the fact that according to the legislative structure, the elements of crimes are usually formal, they have an increased public danger, since they undermine the foundations of the constitutional system of the Republic of Kazakhstan, the security of the state. There is also a material construction of some elements of crimes

The method of its commission may become mandatory for the qualification of an act as a crime.

The subject of criminal encroachments is a physical sane person who has reached the age of 16 at the time of committing the crime. In the crimes provided for in Articles 186, 187 of the Criminal Code, the subject of encroachment is endowed with an additional feature. Thus, the subject of high treason (Article 175 of the Criminal Code) can only be a person who has Kazakh citizenship (including a bipatriote), and espionage (see Article 176 of the Criminal Code), on the contrary, is a foreigner or a stateless person (stateless person). The subject of encroachments provided for in Article 185 of the Criminal Code is a person to whom a state secret has been entrusted or has become known in the service or work, art. 186 of the Criminal Code - a person who has access to state secrets.

The subjective side of the elements of crimes is characterized by guilt in the form of intent or negligence. Almost all of these crimes are committed with direct intent. The loss of documents containing state secrets (see Article 186 of the Criminal Code) is possible only through negligence. The mental attitude of the guilty person to the disclosure of state secrets in the absence of signs of high treason (see Article 185 of the Criminal Code) can be characterized by two forms of guilt.

Sometimes the purpose of its commission becomes mandatory for the qualification of an act as a crime. Undermining economic security and defense capability is the purpose of sabotage (see Article 184 of the Criminal Code).

The motive for its commission may become mandatory for the qualification of an act as a crime.

High treason Article 175 of the Criminal Code. fundamentals of the constitutional system and security of the Republic of Kazakhstan. An additional object is the interests of the state power.

The objective side of the elements of crimes is expressed by the act in the form of an action. The subjective side of the elements of crimes is characterized by guilt in the form of intent. The subject of the crime is a special subject.

Attempt on the life of the First President of the Republic of Kazakhstan – Leader of the Nation (article 177 of the criminal code)

Encroachment on the life of the President of the Republic of Kazakhstan (art. 178 of the Criminal Code of the Republic of Kazakhstan) The direct main object of a criminal offense is the relations that ensure the protection of the political system of the state, its constitutional institutions. An additional direct object is the life and health of the First President of the Republic of Kazakhstan, as correctly emphasized in the literature, while taking into account his role, the importance and significance of the political role in the formation of our independent, democratic, legal, social and secular state. The objective side of a criminal offense is expressed in actions that infringe on life. We are talking about murder or attempted murder. The composition of a criminal offense is formally material, since both the beginning of an assault on life and the causing of death to a state or public figure are covered by the norm under consideration and do not require additional qualification. The subject of a criminal offense is a natural, sane person who has reached the age of sixteen. The subjective side of a criminal offense is associated with the commission of such an encroachment in order to stop his state or other political activities or out of revenge for such activities. Guilt implies the presence of direct intent. The guilty person is aware of the socially dangerous nature of the attack on a state or public figure, foresees the possibility or inevitability of causing death to him and wants to commit such an action. The perpetrator also pursues a special goal – to stop the state or other political activities of the victim,

or is guided by the motive – to avenge such activities. If the murder or attempted murder of a State or public figure does not have the specified purpose or motive, such an attack must be qualified as an attack on the person. Propaganda or public calls for the seizure or retention of power, as well as the seizure or retention or forcible change of the constitutional order of the Republic of Kazakhstan (article 179 of the criminal code) The direct object of a criminal offense is the relations that regulate the constitutional order and the stability of the legal power in the Republic of Kazakhstan. The crime involves unlawful encroachment on the legitimate government, as well as actions aimed at forcibly changing the constitutional system of the Republic of Kazakhstan. The objective side of a criminal offense is expressed in actions aimed at: forcible seizure of power; forcible retention of power in violation of the Constitution of the Republic of Kazakhstan. We are talking about such actions as the coming to power of a group of individuals, a party, public associations, foreign organizations with the help of force actions (terror, sabotage, violence against the population and officials), as well as the use of similar actions and techniques to retain power. The difference between capturing the holding power is unconstitutional admission or promotion to higher positions of power in the state in the first case and the second case – the reluctance to cede power with the use of violent actions in case of loss according to the law (on the expiration of the electoral term, "losing" when voting). Violent change of the constitutional system of the state implies violent actions when changing the form of government, violation of sovereignty, separation of the territories of the Republic of Kazakhstan contrary to the provisions of the Constitution. The composition of a criminal offense is formal and therefore is considered completed from the beginning of a violent action with the purpose of seizing power, retaining power or changing the constitutional system of the Republic of Kazakhstan. Other criminal offenses in office: violations of constitutional human rights, as well as causing death, encroachment on property, vandalism and others are classified according to the totality of crimes. The subject of a criminal offense is a physical, sane person who has reached the age of sixteen, while holding power, he is endowed with special characteristics of a representative of the government, who is obliged to transfer power to another person who came to it by constitutional means. The subjective side of a criminal offense is characterized by direct intent and a special purpose. The guilty person is aware that he is trying to seize or retain power or change the constitutional system by unconstitutional violence, and he wants to do so. Separatist activity (art. 180 of the Criminal Code of the Republic of Kazakhstan) The direct object of a criminal offense is the relations that ensure the stability of the legal authority in the Republic of Kazakhstan. The objective side of a criminal offense consists in acts that are expressed in public (designed for a large or small group of people) appeals to the population, in calls to carry out extremist activities, to preach the superiority of one religion, nation, or group of the population over another. A call – This is an active influence on the consciousness and will of people in order to persuade them to forcibly seize, retain power, undermine security, forcibly change the constitutional order, violently violate the integrity and unity of the territory of the Republic of Kazakhstan (extremist activities). The forms in which appeals are made can be diverse (oral, written, with the help of technical means, etc.). A mandatory requirement for appeals is their publicity. Publicity means that the appeals are addressed to a wide range of people.

A criminal offense has a formal composition and is considered completed when committing a public call for extremist activity.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side of a criminal offense is characterized by direct intent.

Only qualified personnel (part 2 of article 180 of the criminal code) provides the same operation, as set forth in the disposition of part 1 of committed using the official position or a leader of a public Association or with the use of mass media (TV, movies, periodicals, etc.), or networks of communication, or a group of persons or group of persons by prior agreement.

Special aggravating (part 3 of article 180 of the criminal code) provides for the establishment of a special purpose is a violation of unitarity and territorial integrity of the Republic of

Kazakhstan, inviolability and inalienability.

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## **6 Lecture Criminal offenses against property.**

### **Questions:**

- 1. General characteristics of criminal offenses against property**
- 2. The concept of theft and its forms**
- 3. Types of criminal offenses against property**

**Keywords: Theft, robbery, embezzlement, robbery, criminal offenses, hiding place.**

1. Criminal offenses against property include socially dangerous acts that violate the rights of ownership, use and disposal of the owner of the property or by any other means of causing (or threatening to cause) property damage to the owner.

The specific object of criminal offenses against property is the public relations of property (ownership, use and disposal of property) and the rights of legal ownership of property.

The subject of criminal offenses against property is any physical objects, any property that is not excluded from general civil circulation and has a consumer value (price). Of civil turnover excluded: a) the object and property that is only public property, such as diamond and monetary funds of Kazakhstan's historic and cultural values of national character, etc.; b) items removed from the General circulation due to their danger to others, for example, radioactive, potent toxic substances and drugs.

The objective side of criminal offenses against property is characterized mainly by active actions, only some elements, such as careless destruction or damage to property, can be committed by inaction.

Most criminal offenses against property have a material component, only three crimes (robbery, extortion and unlawful possession of a car or other vehicle without the purpose of theft) are formal components.

The subject of criminal offenses against property may be a natural, sane person who has reached the age of fourteen or sixteen.

The subjective side of the vast majority of criminal offenses against property is characterized by guilt in the form of direct intent, only the destruction or damage to someone else's property can be committed with direct or indirect intent or through frivolity or negligence.

A mandatory feature of most criminal offenses against property is a selfish motive and the purpose of extracting illegal profit.

According to the criminal code to all offences against property, depending on the direct object,

the method and motive are divided into three groups:

a) theft – theft (article 188), fraud (article 190), embezzlement (article 189), robbery (article 191), robbery (article 192), theft of items having a special value (article 180);

b) other mercenary assault – extortion (article 194), causing damage to property by deception or abuse of trust (article 195), unlawful possession of a car or other vehicle without theft (article 176), infringement of copyright and related rights (article 198), violation of rights to inventions, utility models, industrial designs, selection achievements or integrated circuits (article 199).

C) nicoresti assault, intentional destruction of or damage to property (article 179), destruction of or damage to property by negligence (article 204).

## 2. The concept of embezzlement and its forms

" In the articles of this Code, embezzlement is understood as the illegal gratuitous seizure and (or) conversion of someone else's property in favor of the guilty person or other persons, which caused damage to the owner or other owner of this property."

The signs of embezzlement as a criminal act follow from this definition. Embezzlement is an illegal act, just like any crime. In the structure of the crime, the object of theft - someone else's property-refers to the object of the crime, actions such as the gratuitous seizure and/or conversion of property in favor of the perpetrator or other persons, as well as socially dangerous consequences, such as causing material damage - to the objective side of the theft, a selfish goal - to the subjective side.

The object of theft can only be someone else's property. Property under civil law can be expressed, in particular, in things, in money, in securities. At the same time, only bearer securities can be the object of complete theft, illegal possession of other (order and registered) securities with a selfish purpose, as a rule, forms a preparation for fraud. The stolen property may be in the possession of the owner or in the legal possession of other persons, for example, in rent, storage, or transportation. Since theft is always an illegal act, the object of theft cannot be the property that is in the legal possession of this person. Within the meaning of the norm, the object of theft cannot be the property belonging to the guilty person. Illegal seizure of property belonging to the guilty person (including on the right of common ownership), but held by another person legally, or the seizure of theft does not constitute, but may entail liability, for example, for arbitrariness. Certain contradictions appear when the property is seized from the illegal owner with the subsequent appeal in their favor (the thief steals from the thief). On the one hand, such actions are illegal, unless, of course, they are intended to return the property to the owner, the rightful owner or to law enforcement agencies. On the other hand, this does not cause any additional damage to the rightful owners.

Most often, the object of theft is movable property, but, for example, real estate can also be the subject of fraud. In addition, real property in the course of criminal actions may be partially converted into movable property. The victim as a result of theft, as a rule, is the owner of the property. However, material damage as a result of theft may also be caused to another legal owner. As a result of theft, the lessee may lose possible income associated with the use of the property, and the custodian and carrier may lose their remuneration. In addition, in accordance with the Civil Code of the Republic of Kazakhstan, they can bear civil liability for the property stolen from them.

The objective side of embezzlement consists in the gratuitous seizure and (or) conversion of property in favor of the guilty person or another person, causing damage to the owner or other owner of this property. As a general rule, theft consists of two elements - the seizure of property from the owner or other owner and its conversion in favor of the guilty person or other persons. However, in some cases, there is no withdrawal, for example, in the case of embezzlement and embezzlement, when the property is already in the possession of the perpetrator, and on legal grounds. The first element of embezzlement may be absent, which explains the presence of the union " or " in the legislative definition of embezzlement. Seizure, as a rule, involves the illegal physical extraction and movement of property, that is, it is an active action. The conversion of property in one's own favor or in favor of another person also, as a rule, is expressed in active

actions, but it can also be expressed in inaction, for example, in the case of appropriation, when the property being appropriated is not returned to the owner, sometimes - in fraud. Since an illegal action within the meaning of civil law does not entail the transfer of ownership, therefore, it is a gross mistake to talk about the conversion of the guilty property to their own property or to the property of other persons.

A mandatory element of theft is socially dangerous consequences, which are expressed in causing damage to the owner or other owner of the property. In addition, there must be a causal relationship between the illegal actions of the perpetrator (seizure, circulation of property) and socially dangerous consequences (damage to the owner or other owner) (although it is usually obvious), so all the elements of crimes related to theft (with the exception of robbery) are material. If the definition is interpreted literally, then the theft should be recognized as completed after the stolen property has been seized from the victim, and material damage has been caused to him. However, judicial practice recognizes the theft as finished only after the guilty person has a real opportunity to dispose of the stolen property. If the actions are stopped before this moment, after the seizure of the property in an attempt to hide it (take it out, take it out), such actions are qualified as an attempt. An essential sign of embezzlement is the gratuitousness of the withdrawal or treatment. Gratuitousness literally involves the seizure or circulation of property without its return and without providing any compensation. This is how the simplest, most common crimes against property, such as theft and robbery, are committed. However, judicial practice recognizes the gratuitousness even in the case of partial, clearly inadequate compensation for damage, which is most often found in fraud. The so-called "temporary borrowing" is not theft, when a person voluntarily temporarily turns other people's money and other material values for personal use with subsequent return. Such actions entail civil, administrative, and disciplinary liability. However, criminal liability for such actions is not excluded, if they contain the elements of another crime (abuse of official position, non-payment of wages and other mandatory payments).

The subjective side of theft is characterized by guilt in the form of direct intent. The culprit is aware of the public danger of his actions, foresees the possibility and inevitability of causing material damage to the owner or the rightful owner and wants this.

In addition, the perpetrator is aware of the absence of any rights to the stolen property, otherwise, if he mistakenly believes that he has any rights to this property, his actions will be qualified as arbitrariness. Mandatory signs of the subjective side of embezzlement - a selfish goal (and, consequently, a selfish motive): the culprit always pursues material gain. Illegal seizure of property committed for other reasons does not constitute theft, but such actions may contain the composition of another crime. In some cases, illegal possession of property is not a crime at all.

The subject of theft is common. A person is responsible from the age of fourteen. It is believed that at this age a person is able to realize the social danger of these acts.

In the articles on theft, the following qualifying circumstances relating to the object and the objective side are most often found: commission on a large scale, causing significant damage to a citizen, with illegal entry into a home, premises or other storage. If a large amount of theft is defined by law (five hundred minimum wages), then causing significant damage to a citizen is descriptive, to determine this circumstance, it is necessary to assess not only the value of the stolen property, but also the property status of the victim. In any case, the court takes into account the amount of embezzlement when assigning punishment. Theft with illegal entry into a home, room or other storage facility is an increased public danger for the following reasons: they usually cause more significant material damage than simple theft, and are often associated with damage to locks, doors, windows, etc. In addition, they violate the non-property rights of citizens (inviolability of the home), the legitimate interests of organizations. The subject of the crime includes such qualifying circumstances as commission repeatedly, commission by a person who has been convicted two or more times for theft or extortion (as well as for banditry), commission by a group of persons by prior agreement or by an organized group, commission by a person using official position.

## 2.1. Theft

Among the thefts of other people's property, thefts are the most common.

Law enforcement agencies also have difficulties in qualifying burglaries with home invasion ; in defining the concept of "home": theft that caused significant damage, or was committed by an alcoholic or drug addict. In practice, the pre-trial investigation bodies and courts in some cases, the terms "premises", "other storage", "housing" and "penetration" are subjected to an excessively broad interpretation or , on the contrary, are understood too narrowly, which leads to incorrect criminal - legal qualification of the act and ultimately to violations of the law and the constitutional rights of citizens.

One of the main reasons that makes it difficult to qualify a crime for embezzlement is the constantly changing economic policy of the state in the last decade.

So the former state and public property is almost completely now transferred to private ownership. Both citizens and various legal entities (LLP , CJSC.....) became owners of houses , dachas , enterprises and organizations.

In addition, the restructuring of the economy has led to the emergence of a large group of citizens - the unemployed. The commission of crimes by this category of the population is sometimes the only way to feed themselves.

Another important reason that makes it difficult to qualify for the investigation of embezzlement is the participation of foreign citizens as subjects of crimes . Having family and other ties in Kazakhstan, acquiring real estate, creating commercial enterprises on the territory of Kazakhstan, they commit various crimes. When qualifying such crimes, it is necessary to take into account the nationality of these persons, the existing treaties between the countries , and the principles of international law.

The concept of theft.

Article 188 of the Criminal Code of the Republic of Kazakhstan in paragraph 1 defines theft as follows:"Theft , that is, the secret theft of someone else's property."

The law will define theft as "secret theft". The main difference between theft and other forms of theft is the method of seizure and possession of property. This method is characterized as secret, which corresponds to the generally accepted idea of theft. The verb "steal" means to act "stealthily", "stealthily" (words that are the same root as "theft"). For example, the expression "open theft" contradicts the norms of the Russian language.

Secret is the seizure of property that occurs without the knowledge and consent of the owner or the person in charge of the property, and, as a rule, unnoticed by outsiders . An example is a common apartment theft or theft involving illegal entry into a production facility , office, or other property storage facility. Theft can be committed in the presence of the owner, if he does not notice the actions of the criminal , for example, pickpocketing . Theft is also the seizure of property from a victim who does not perceive what is happening : from a sleeping , drunk , fainting person , or even an open seizure of property from a person who is unable to assess the criminal nature of the actions of the perpetrator due to infancy or mental illness .

It is possible to commit theft in the presence of strangers , if the criminal takes advantage of the fact that those present are not aware of the illegality of his actions. This is possible when , due to the circumstances of the case, the ownership of the property is not clear to others, or the criminal creates the impression that the property belongs to him or he is authorized to dispose of this property by deceptive tricks.

Theft should be distinguished from robbery, which is committed openly. If the criminal is mistaken

if he believed that he was committing theft secretly, but in reality his actions were realized by the victim or observed by other persons, then in accordance with the direction of the intent, the act should be qualified as theft.

Now let's look at what theft is . Theft in the articles of the Criminal Code of the Republic of Kazakhstan is understood as illegal gratuitous seizure and(or) conversion of other people's property in favor of the guilty person or other persons , which caused damage to the owner or

other owner of this property.

Seizure consists in the transfer of someone else's property from the possession of the owner or other legal owner to the actual possession of the guilty person .

The conversion of other people's property in their own favor means the appropriation or embezzlement of property that the guilty person unlawfully takes possession of.

Let us consider the two most important signs of embezzlement-illegality and gratuitousness.

The illegality of the seizure and (or) treatment in their favor of someone else's property means that the transfer of property to the actual possession of the guilty person is carried out without any grounds for this and without the consent of the owner or the legal owner.

The person who stole the property , although he owns, uses and disposes of it as his own, does not legally become the owner. Theft does not entail the loss of the owner's right to the stolen property. The seizure of property, the legality of which is disputed by the subject (organization or citizen ), does not constitute theft. Such actions may entail liability for other crimes , such as arbitrariness.

Gratuitousness of seizure of another's property should be seen in cases where the offender takes possession of them for free, without adequate compensation or inadequate reimbursement (for example, by illegal markdown of product , rejection of industrial products , the replacement is entrusted to the perpetrator of property less valuable. It

is the gratuitousness of the seizure of someone else's property that causes the onset of socially dangerous consequences in the form of causing property damage to the owner or other owner.

Next, consider the phrase "someone else's property", also contained in the concept of theft.

When committing theft, the acquisition of someone else's property is always associated with its withdrawal from the possession of the owner (or the person in charge or under the protection of which the property is located). If the property for one reason or another has already been removed from the possession of the owner, then the possession of such an item does not constitute

theft. The misappropriation of someone else's property found or accidentally found in the possession of the guilty person is not considered a crime.

It is not only specially protected or locked property that should be considered in the possession of the owner,

but also one to which access is open - on the territory of the enterprise, in the premises of the institution, on a construction site or in another place of economic activity, on a vehicle, as well as in any place where it is temporarily unattended, if this property is not lost

by the owner.

One of the central places in the definition of theft is the concept of property. It is no accident that crimes against property are also called property crimes. The property is a

the object of theft, which should be distinguished from the object of public property relations.

The object of theft is always material, it is part of the material world, that is, it has the attribute of a thing. Ideas, views, and manifestations of the human mind cannot be the subject of theft as a property crime. The theft of intellectual property

can only be discussed in a figurative sense, meaning, for example, the violation of copyright and related rights (Article 184 of the Criminal Code of the Republic of Kazakhstan).

Electric or thermal energy cannot be the subject of theft (due to the absence of a property attribute). Natural resources in their natural state cannot be the subject of theft.

**Qualifying signs of theft.**

Article 188 of the criminal code provides for three types of theft:

simple (basic)- part 1 of article 188 of the criminal code ; skilled (part 2 of article 188), and especially qualified (part 3 of article 188).

Qualification theft largely depends on a proper understanding of the characteristics that distinguish one type of theft from another, which ultimately boils down to a correct understanding of aggravating circumstances.

The size of the theft is the main criterion that determines the degree of public danger of the crime and affects the nature and size of the punishment.

Large size articles of Chapter 6 of the criminal code recognizes the value of the property in five hundred times exceeding the monthly calculation index established by the legislation of Kazakhstan at the time of the crime.

As the judicial and investigative practice shows, qualified thefts are the most common.

Such thefts include: theft committed by a group by prior agreement, theft committed repeatedly, theft committed with significant damage

a citizen, as well as theft committed with illegal "penetration into residential, office or industrial premises".

The object of theft is property. In the science of criminal law, there is no consensus among legal scholars about the definition of the immediate object of a crime. Some authors note that the immediate object of theft should be distinguished from the object of theft, which is the property. This is justified by the fact that the concept of "property" and the concept of "property" are different in their content. Based on this, it should be noted that the direct object of embezzlement (Articles 188-193 of the Criminal Code of the Republic of Kazakhstan) is property, and the property about which the crime is committed is the subject of encroachment.

The object of theft is someone else's property in the form of objects of the material world that have an objectively determined value, in the extraction, cultivation, manufacture or production of which human labor is spent and which, as a result, are subjected to monetary evaluation. Sometimes the objects of encroachment are non-ferrous and ferrous metals.

The subject of theft is a natural sane person who has reached the age of 14, according to Part 2 of Article 15 of the Criminal Code of the Republic of Kazakhstan. The legislator determines the age of criminal liability for theft from the age of 14, because from this age such a person forms a consciousness and he already knows that the seizure of someone else's property is unacceptable and that his actions could cause certain damage. On the subjective side, theft is committed with direct intent and self-serving purpose, that is, the perpetrator is aware of the socially dangerous nature of his actions, foresees the possibility or inevitability of the occurrence; understands that secretly, without any right, seizes someone else's property, thereby causing material damage to the owner in order to obtain illegal benefits for himself or third parties.

## 2 Fraud

Fraud is the theft of someone else's property or the acquisition of the right to someone else's property by deception or abuse of trust. In recent years, there has been a trend towards a constant and intensive growth of fraud. The object of the crime is property. The subject of the analyzed crime, as in previous crimes, is someone else's property, which has the characteristics described above. The subject of fraud can be not only property, but also the right to property. Documents that give the right to receive property, including money, can be the subject of fraud, in cases where they are the equivalent of property, bearers of a certain value. On the objective side, the law defines fraud as the theft of someone else's property or the acquisition of the right to someone else's property by deception or abuse of trust. Deception refers to a false idea of something, i.e. the victim is misled. Deception can take two forms: active and passive. Active deception is the communication of false information to a person that distorts the presentation of certain facts or events. Passive deception-omission of the truth or circumstances that the guilty person was obliged to report. Thus, any deception should be considered fraudulent if it is aimed at arousing the victim's desire or consent to transfer property or rights to property to the fraudster. On the subjective side, fraud is expressed in direct intent and self-serving goals: the guilty person is aware that he does not legally take possession of other people's property or acquire the right to it by deception or abuse of trust, foresees the possibility or inevitability of causing real damage and wants this. The subject of fraud is a natural sane person who has reached the age of 16, in accordance with Part 1 of Article 15 of the Criminal Code of the Republic of Kazakhstan. The current criminal law defines the concept of fraud, provides for a number of circumstances in the presence of which the crime in question is recognized as more

socially dangerous. These circumstances are taken into account by the legislator as qualifying signs of fraud.

The list of qualifying and especially qualifying signs for fraud is the same as for the appropriation and embezzlement of the entrusted property: by a group of persons by prior agreement; repeatedly; with the use of a person's official position; by an organized group; on a large scale; by a person who has previously been convicted of theft or extortion twice or more.

However, the concept of deception as a type of crime was not given, because in those socio-economic conditions, fraud was not formed into an independent and dangerous act. This was due to the weak industrial relations in society, the extreme economic backwardness of the state. Judging by literary sources, fraud in Russia appeared in the late 16th - early 17th centuries. First of all, this was due to the development of trade relations, the strengthening of domestic and international markets. Initially, deception prevailed in the sphere of trade, where merchants were engaged in it. Typical forms of trade fraud included deception in the quality and quantity of goods. In the future, fraud is spreading to other social spheres, no doubt, while changing the forms and methods of deception. The specifics of this crime made fraud the prerogative of the propertied class. According to the researchers, it belonged to the number of acts that were exclusively engaged in by the "owning classes". And this is quite natural, since fraud required certain knowledge, skills, education, profession and social status.

Misappropriation and embezzlement of other people's property

According to Article 190 of the Criminal Code of the Republic of Kazakhstan, misappropriation or embezzlement is the theft of someone else's property entrusted to the guilty person. Within the framework of this norm, two independent forms of theft are actually combined: embezzlement or embezzlement of other people's property. The common thing that unites these forms of theft is the special attitude of the subject to the stolen property, which is in his rightful possession or management. The object of the crime is property, that is, property. The totality of public relations concerning the ownership, use or disposal of property. The property is the subject of theft. At the same time, it is necessary that the property be entrusted to the guilty person. In the theory of criminal law, it has traditionally been noted that, unlike other forms of embezzlement, the object of embezzlement or embezzlement may not be any other person's property, but only that which was entrusted to him. The objective side of the crime under consideration is such forms of theft of other people's property as embezzlement or embezzlement. Embezzlement is a form of embezzlement that consists in the illegal gratuitous circulation of someone else's property entrusted to the guilty person for their own benefit or for the benefit of other persons, causing damage to the owner or other owner of this property, if the guilty person has not yet spent or otherwise alienated the property in question. The subjective side is characterized by direct intent and self-serving purpose: the person is aware that he unlawfully retains or alienates the property entrusted to him, foresees that by his actions he causes material harm to the owner, and, guided by selfish motives, wants this. The subject of the crime (special) is a natural sane person who has reached the age of 16, to whom the property is entrusted in lawful possession. As misappropriation or embezzlement, the illegal gratuitous treatment in one's own favor or in favor of another person of property that is in the rightful possession of the culprit, who, by virtue of official duties, contractual relations, exercised the authority to manage, deliver or store this property, should be qualified. Such persons include storekeepers, freight forwarders, sellers, cashiers, and others. Thus the subject of the assignment or embezzlement, can only be financially responsible persons.

The concepts of "embezzlement" and "embezzlement" are disclosed through the generic concept of "embezzlement", which means illegal gratuitous seizure and (or) conversion of someone else's property in favor of the guilty person or other persons who caused damage to the owner or other owner of this property (Note 1 to Article 190 of the Criminal Code of the Republic of Kazakhstan). Since such a feature as "someone else's property" as the subject of a crime is already laid down in the general concept of theft, there is no need to recall it when describing specific forms of theft. Therefore, theft can be defined simply as secret theft, embezzlement and

embezzlement - as theft by abuse of trust, fraud - as theft or acquisition of title documents to someone else's property by deception, robbery - as open theft, and robbery - as the use of violence dangerous to life or health, or the threat of using such violence for the purpose of theft. Returning to the concept of "entrusted" property, it should be noted that neither in the scientific literature nor in judicial practice there is no consensus on the question: what property is considered entrusted to the guilty? According to some authors, property should be considered entrusted to a person if it was under the material responsibility of the perpetrator. Others believe that the concept of "entrusted property" implies the exercise of rights under the actual domination of the thing. Property is entrusted, according to third parties, when " it is handed over with the simultaneous granting of certain powers and the assignment of duties in relation to the entrusted property; this must be properly legally formalized by an order, conclusion of a contract, etc.»

When describing the subject of embezzlement and embezzlement, it is necessary to answer the question: does the fact of documentary registration (or not registration) affect the qualification of theft) those powers with which the subject was endowed? We have partially addressed this problem. However, it requires more careful consideration. As a General rule of the authority of the person in respect of the property entrusted to him fixed (issued) to a specific document in the contract for full individual or collective (brigade) financial liability, in the order of the administration of the enterprise (institution, organization), in the bill of lading, the attorney for the inventory items, the employment contract, etc.

Various opinions have been expressed in the legal literature about the criminal-legal significance of documenting the transfer of property to a person. Some believe that " with all the variety of forms of such a transfer, it must necessarily be documented, indicating at least the quantity and weight of the transferred property." Summarizing the above, we can name the following common features of embezzlement and embezzlement:

- 1) the stolen property must be entrusted to the culprit, i.e., as a rule, (but not always) be under his full financial responsibility;
- 2) the subject of theft is only the person to whom the property is entrusted;
- 3) the guilty person steals property by abusing the powers in relation to the property entrusted to him (abusing the trust placed in him).

#### 2.4 Robbery

Robbery is the open theft of someone else's property. The immediate object of the robbery is property. In the legal literature, the point of view was expressed that an additional object, if the robbery is connected with the use or threat of violence, is the identity of the victim, bodily integrity and personal freedom. The object of robbery has the same characteristics as any form of theft. In contrast to non-violent methods of seizing someone else's property, which include theft, embezzlement or embezzlement, fraud in violent forms of theft (robbery and slavery) the very method of seizure allows them to be recognized as a criminal offense, even if the value of the stolen goods is insignificant. From the objective side, the act is expressed in the actions, the consequences that have occurred and in their causal relationship, therefore, by design, the composition of the robbery is material. The main distinguishing and defining feature of robbery is the "method of its commission", which in many other criminal acts acts as an optional feature, and as part of the robbery, it takes on the meaning of the main feature of the objective side. On the subjective side, robbery is characterized by guilt in the form of direct intent and self-serving purpose. So, for example, the actions of the guilty person, expressed in the seizure of the victim's property at a bus stop, should be recognized as open theft, since the guilty person is aware of the fact that he acts in the presence of outsiders who are aware of the illegal nature of his actions. The subject of the robbery is a physical sane person who has reached the age of 14. The qualifying signs of robbery are: a) the use of violence that is not dangerous to the life or health of the victim, or the threat of such violence; b) repeatedly; c) by a group of persons by prior agreement; d) illegal entry into a residential, office, industrial premises or storage. The theft should be considered complete if the property is seized and the perpetrator has a real opportunity to use

it at his own discretion.

As for robbery, as a form of theft, it meets all its objective and subjective characteristics. It differs from other types of theft, first of all, in the methods and size of the seizure of property, which characterizes it as one of the very dangerous types of crime.

According to the Criminal Code of the Republic of Kazakhstan, robbery is "an open theft of someone else's property" (Article 191 of the Criminal Code), committed without violence, or combined with violence that is not dangerous to the life and health of the victim.

The peculiarity underlying the separation of robbery into an independent crime consists in the open method of seizing property. An open theft is considered to be committed in the presence of the victim or persons in charge or under the protection of whom the property is located, or in the presence of outsiders, when the person committing the theft realizes that those present understand the nature of his actions, but ignores this circumstance.

Consequently, the objective side of the robbery is characterized by the active actions of the criminal, consisting in the open non-violent seizure of other people's property. A typical robbery is a "jerk", i.e. a sudden seizure of someone else's property, committed without the intention of having any physical impact on the victim.

If those present do not notice the theft, or, observing the fact of the seizure of property, consider it legitimate, which is what the guilty person expects, then the theft cannot be recognized as open—that is, robbery.

Theft cannot be qualified as robbery even if someone present notices that an illegal seizure of someone else's property is being committed, but the criminal himself mistakenly believes that he is acting unnoticed by others. In this case, the theft also qualifies not as robbery, but as theft.

A more complex situation is also possible, when the theft, started as a secret, turns into a robbery. If the perpetrator intended to commit theft secretly, but after being caught in the act, he moved to active actions, the crime should be considered as robbery. The question of turning secret theft into open theft arises only in cases where the actions initiated as theft are not yet completed, i.e. the perpetrator has not yet taken possession of the property and has not received a real opportunity to use it (or dispose of it) at your own discretion.

## 2.5 Robbery

The object and objective side of the crime

The direct objects of robbery under Russian law are: first, the specific form of ownership, and secondly, the health of the person who was attacked. In its objective aspect, robbery is an attack committed with the use of violence that is dangerous to the life or health of the victim, or with the threat of using such violence. An attack should be understood as an open or hidden unexpected aggressive and violent impact on the owner, another owner of the property, or on another person, for example, a security guard. The attack can be disguised (a stab in the back, for example), as well as expressed in an explicit or secret effect on the victim with nerve agents, toxic or intoxicating agents. These methods of influence are often not realized by the victim, but they do not lose the quality of the attack. At the same time, it is not considered an attack to expose the victim to alcohol, drugs or other intoxicating substances, if they were voluntarily taken by the victim. A mandatory objective sign of robbery is the use or threat of violence that is dangerous to life or health. To qualify a crime as robbery, it is quite enough that the violence creates a danger at least for the health of the victim.

Violence must be considered life-threatening, if the method of its application was a real danger of death, even if not caused actual serious harm (e.g., choking, holding the victim's head under water, etc.). Under violence, hazardous to health, refers to such actions, which caused the victim moderately or light injury and violence, which, though not caused specified harm, but at the time of application was a real danger to human health. If the violent actions caused serious harm to the health of the victim, they are no longer covered by the main composition of the robbery and require its qualification as committed under particularly aggravating circumstances.

A sign of robbery can also serve as such violence, which is applied not to the owner or owner of the property, but to outsiders who, in the opinion of the perpetrator, can prevent the illegal

acquisition of property. The nature of violence serves as an objective criterion for distinguishing between violent robbery and robbery. Violence that is not dangerous to life or health indicates robbery, and if it is associated with a real disorder of health, i.e. it is dangerous to the health of the victim or puts his life or health in real danger, then the act is a robbery.

The subject of robbery can be a person who has reached the age of 14. What appears to the subject. Why does he (or they) resort to this particular form of criminal behavior? The social factors that determine the formation of the personality of such a criminal are well studied in many works on criminology. The characteristic indicators of their influence in the family, school, normal and informal collectives, microenvironment are shown, typical characteristics of the social, moral and cultural appearance of such criminals are derived. The subjective side of robbery is characterized by direct intent and self-serving purpose. Robbery presupposes the commission of intentional actions by the guilty, not only connected with violence, dangerous to the life or health of the person who was attacked, or with the threat of using such violence, but also aimed at illegally turning property into their own or the property of others. In the absence of intent to illegally turn the property into their own property or the property of third parties, the composition of the robbery is excluded. Admittedly, towards the ultimate goal and the choice of the method of committing a crime robbery can be committed only with direct intent, and in relation to possible effects on wine can be expressed in the form of indirect intent or even negligence.

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### Lecture 7 Criminal offenses in the field of economic activity

1. General characteristics of criminal offenses in the field of economic activity.
2. Types of criminal offenses in the field of economic activity.

**Keywords:** Theft, robbery, embezzlement, robbery, criminal offenses, hiding place.

The appearance in Chapter 8 of the criminal code of rules on liability for criminal offences in the sphere of economic activity was a logical consequence of happening in recent years in our country, the reforms in political and economic spheres. The norms included in this chapter are aimed at protecting legitimate business activities, protecting the natural state monopoly on the commodity-monetary system, products, precious metals, the rights of consumers of goods and services, and protecting customs and tax relations established in the Republic of Kazakhstan. In the legal literature, there is an opinion that at present, " a coherent concept of criminal law concerning the solution of issues of regulation and legitimization of the sphere of economic activity, the sphere of entrepreneurship, has not been developed»1. But, it should be noted that

given the radical changes of social relations in the sphere of economic activity, essential to the empowerment of business and forms of ownership in the transition to a market economy has undergone major changes this Chapter (in the UK KAZ. SSR 1959 - part of the compositions related to the chapter on economic crimes).

The specific object of the acts under consideration is social relations arising in the sphere of economic activity (production, distribution, exchange and consumption of material goods and services).

The direct object can be specific social relations related to a specific area of the economy, a specific economic relationship.

The objective side of most of the considered criminal offenses in the field of economic activity is to commit them by means of actions (for example, compulsion to commit a transaction or to refuse to commit it). Some crimes may be committed by omission (for example, malicious evasion of repayment of accounts payable).

The compositions that have a material structure assume the obligatory interconnectedness of the act, the socially dangerous consequences and the causal relationship between them (for example, illegal banking activities). The formal compositions assume for the legal assessment only the establishment of the fact of a socially dangerous act (for example, obstruction of legitimate business activities).

The subject of criminal offenses in the field of economic activity may be individuals, sane persons who have reached the age of sixteen. The subjects of some criminal acts have the characteristics of a special subject-an official (for example, registration of illegal land transactions).

The subjective side of criminal offenses in the field of economic activity involves a deliberate form of guilt or may have two forms of guilt.

Depending on the immediate object, all criminal offenses can be divided into three groups: 1:

a) encroaching on legitimate business activities (art. 214-223, 227-230, 233, 237-240, 242, 243 Criminal Code of the Republic of Kazakhstan);

b) infringes on the state monopoly in the field of economic activities (article 224-229, 231-233, 241 of the criminal code);

c) customs and tax (article 233-236, 244 - 246 of the criminal code).

2. Criminal offenses that infringe on legitimate business activities

Illegal entrepreneurship, illegal banking activity<sup>2</sup> (Article 214 of the Criminal Code of the Republic of Kazakhstan)

The direct object of a criminal offense is public relations that regulate the procedure for engaging in entrepreneurial activity. The article assumes the implementation of business activities in violation of the established procedure for registration (licensing) or in violation of the licensing conditions.

In paragraph 2 of the regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 2 of 18. 06. 2004 "On certain issues of qualification of criminal offenses in the field of economic activity" (with amendments and additions as of 7. 07. 2016 ) stipulated that lawful business should recognize aimed at obtaining net income activities of citizens of Kazakhstan, non-commercial legal entities (private businesses), public sector (Federal state enterprise), carried out in accordance with the Constitution of the RK, the Business code and other legislative acts regulating business деятельность<sup>1</sup>.

The objective side of a criminal offense is expressed in entrepreneurial activities without registration or without a special permit (license), in cases where such permission is required, or violation of the licensing terms, as well as the occupation of the forbidden types of business activities, if the act caused major damage to citizens, organizations or the state, or involve the generation of income on a large scale or the production, storage, transportation or sale of excisable goods to a considerable extent.

This composition is a material and involves the Commission of a socially dangerous act socially dangerous consequences in the form of major damage, material damage to citizens,

organizations, government, or revenue on a large scale over two thousand monthly calculation indices or in large sizes of over one hundred monthly calculation indices, and causal connections between them.

The subject of a criminal offense may be an individual who has reached the age of sixteen, along with the signs of a common object engaged in entrepreneurial activity without registration or a special permit (license). It should be noted that to engage in entrepreneurial activity in accordance with civil legislation (art. 19 of the Civil code of the RK – GK RK) can a person who has attained eighteen years of age, from the age of sixteen, a person may engage in business activities only with the permission of the parents, adoptive parents or guardians (article 22 of the civil code of Kazakhstan).

The subjective side of a criminal offense involves direct or indirect intent. The guilty person is aware that he is illegally engaged in business activities, foresees the possibility or inevitability of causing major damage to citizens, organizations, the state, or extracts large amounts of income, wishes (direct intent) or deliberately allows (indirect intent) the occurrence of the specified damage.

Qualifying features provided for in Part 2 of Article 214 of the Criminal Code of the Republic of Kazakhstan:

- a) the Commission of criminal offenses criminal group, the signs of such groups are given in part 3 of article 31 of the criminal code;
- b) the extraction of income in a particularly large amount (more than twenty thousand monthly calculation indicators-see: paragraph 3 to Article 3 of the Criminal Code of the Republic of Kazakhstan); c
- ) the commission of a criminal offense repeatedly.

False entrepreneurship (Article 215 of the Criminal Code of the Republic of Kazakhstan)

Qualifying features provided for in Part 2 of Article 214 of the Criminal Code of the Republic of Kazakhstan:

- a) the Commission of criminal offenses criminal group, the signs of such groups are given in part 3 of article 31 of the criminal code;
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- ) the commission of a criminal offense repeatedly.

False entrepreneurship (Article 215 of the Criminal Code of the Republic of Kazakhstan)

In accordance with paragraph 2 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated January 12, 2009 No. 1 "On certain issues of Application of the legislation on pseudo-entrepreneurship" (as amended as of 7. 07. 2016), the object of encroachment in pseudo-entrepreneurship is public relations in the field of taxation, lending and other legitimate economic activities.<sup>1</sup>

Pseudo-entrepreneurship involves the creation of a subject of private enterprise or acquisition of shares (shares, shares) of other legal entities, which determine their decisions and guide them, without the intention to carry out business activities, provided that all trades pursue a wrongful purpose and caused significant damage to the citizen, organization or the state. The Supreme Court in its explanation notes that the pseudo-entrepreneurship – view criminal offense in the sphere of economic activity, in which the guilty person creates (gains) and uses subjects of private entrepreneurship, as well as directs, with no intention to engage in business activities, for illegal purposes, envisaged by the provisions of article 215 of the criminal code, provided that these actions caused significant damage to the citizen, organization, or государству<sup>2</sup>.

The objective side of a criminal offense is characterized by an act of an organizational nature aimed at creating and registering a commercial structure. The stages of such activity: preparation of the necessary documents, adoption of the charter, registration, obtaining a license, etc. This usually stops the legal activity or it is carried out for a short time, after which actions that cause damage to citizens, organizations, and the state begin to be committed. Unfortunately,

there are many examples of such activities in the current conditions.

One of the most difficult issues of judicial practice in Kazakhstan remains disputes over so-called "pseudo-enterprises" - companies created on front persons. In early 2008, the Prosecutor General's Office conducted an analysis of the legality of judicial acts in civil cases involving false entrepreneurship. It was noted that "pseudo-entrepreneurship is a significant threat to the security of the state, as well as for entrepreneurs who enter into legal relations with pseudo-enterprises, since a legitimate commercial organization is created, the intentions of the leaders of which do not include the implementation of entrepreneurial activities"<sup>1</sup>.

According to the sentences that have entered into force, the number of persons convicted of false entrepreneurship is 73, or 0.06% of the total number of convicted persons, including in 2005 – 29 or 0.08%, 2006-9 or 0.03, in 2007 – 13 or 0.04, in the first half of 2008 – 22 or 0.13% . The largest number of cases were considered by the courts of Aktobe (19), South Kazakhstan (12) regions and Astana (13)<sup>2</sup> . Currently on the claims of prosecutors canceled state registration 569 pseudo-enterprises, by acts of oversight of contractors to be recovered 50 billion tenge, of which 19 billion. it was already collected . The damage is large if it exceeds one thousand monthly calculated indicators or damage. The composition is material, it requires the establishment of the act, the damage and the causal relationship between them.<sup>3</sup> The

subject of a criminal offense is a natural, sane person who has reached the age of eighteen or sixteen years of age in the case of carrying out business activities with the consent of parents, adoptive parents, trustees.

The subjective side of the crime involves direct intent. The guilty person is aware that by creating a commercial structure, he does not intend to carry out such activities, foresees the possibility or inevitability of causing harm to citizens, organizations or the state, and wants to cause such damage. For this composition, it is mandatory to have a special purpose – the creation of an entrepreneurial structure for the purpose of extracting illegal benefits: making loans, "covering" illegal activities, tax exemption (according to the authentic interpretation contained in the note to art. 215 OF the Criminal Code of the Republic of Kazakhstan). Such a goal must be present and proven at the time of the creation of the commercial organization, otherwise the composition of the false entrepreneurship is absent.<sup>1</sup>

Performing actions to issue an invoice without actually performing work, rendering services, or shipping goods (Article 216 of the Criminal Code of the Republic of Kazakhstan)

The objective signs of this act include: the commission of a transaction (transactions) by a private business entity (including through the use of an invoice) without actually performing works, rendering services, or shipping goods that pursue illegal purposes and cause major damage to a citizen, organization, or state. The content of the goal is similar to the goals of pseudo-entrepreneurship, as it follows from the note to Article 215 of the Criminal Code of the Republic of Kazakhstan.

According to the legislative structure, the composition is material.

The subject of a criminal offense is a person who, in accordance with the procedure established by law, is a subject of private entrepreneurship.

Violation of the procedure and rules for marking excisable goods with excise stamps and (or) accounting and control stamps, forgery and use of excise stamps and (or) accounting and control stamps (Article 233 of the Criminal Code of the Republic of Kazakhstan)

The direct object of a criminal offense is public relations that ensure the economic interests of the Republic of Kazakhstan, the rights and interests of consumers in the production and turnover of goods and products that require appropriate labeling defined by law in order to protect them from counterfeiting. Given the blanket nature of the disposition, must be guided by the norms of a wide range of legislative (the Tax code, the Customs code, the Law of 19 July 1999 "About state regulation of the turnover of ethyl alcohol and alcoholic products", Law "On state regulation of production and turnover of tobacco products"), and also refer to the provisions of the normative acts of the government of Kazakhstan, in particular, to the Rules of obtaining, recording, storage, issue of excise and accounting-control marks and performance of the

obligations of the importers report to target the use of accounting-control marks while import of alcoholic beverages in the Republic of Kazakhstan from Customs Union countries, and consideration of such commitments, approved by Order of the Minister of Finance of the Republic of Kazakhstan dated December 29, 2014 No. 5911, marking Regulations (re-marking) alcoholic beverages, excluding wine, beer and beer beverage, accounting and control stamps and tobacco tax stamps, as well as for the form, content and elements of protection of excise and accounting-control marks, approved by Order of the Minister of Finance of the Republic of Kazakhstan dated February 27, 2015 No. 1442.

The subject of a criminal offense is a natural, sane person who has reached the age of eighteen or sixteen years of age in the case of carrying out business activities with the consent of parents, adoptive parents, trustees.

The subjective side of the crime involves direct intent. The guilty person is aware that by creating a commercial structure, he does not intend to carry out such activities, foresees the possibility or inevitability of causing harm to citizens, organizations or the state, and wants to cause such damage. For this composition, it is mandatory to have a special purpose – the creation of an entrepreneurial structure for the purpose of extracting illegal benefits: making loans, "covering up" illegal activities, tax exemption (according to the authentic interpretation contained in the note to art. 215 OF the Criminal Code of the Republic of Kazakhstan). Such a goal must be present and proven at the time of the creation of the commercial organization, otherwise the composition of the false entrepreneurship is absent.<sup>1</sup>

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The subject of a criminal offense under Article 233 of the Criminal Code of the Republic of

Kazakhstan is goods and products marked according to the legislation with the following brands:

1) excise stamps – stamps that have elements of protection applied to a unit of production in accordance with the legislation of the Republic of Kazakhstan<sup>3</sup>. Tobacco products packed in consumer packaging are subject to excise stamps (paragraph 2 of the Rules for Labeling (relabeling). ..).

2) accounting and control stamps — special one-time stickers with the necessary degrees of protection, designed to identify tobacco products for the purpose of accounting and monitoring their turnover.<sup>4</sup>

In accordance with the new wording of article 1 of the Law "On state regulation of the turnover of ethyl alcohol and alcoholic products" accounting brand, a special one-off label with the necessary protection elements in the prescribed form and content, which carries information used to authenticate alcoholic beverages (except wine and beer) with the aim of accounting and the control of its turnover (excluding export)<sup>5</sup>. Learn more procedural aspects are reflected in the Rules of marking (re-marking) alcoholic beverages, excluding wine, beer and beer beverage, accounting and control stamps and tobacco tax stamps, as well as for the form, content and elements of protection of excise and accounting-control marks.

Alcoholic products, except for wine materials and beer, bottled in consumer containers in accordance with the regulatory and technical documentation (sub. 2 of item 2 of the Labeling (re-labeling) Rules, are subject to labeling with accounting and control marks. . . )

Samples of stamps, the procedure and amount of their payment, the rules of marking are established by the Government of the Republic of Kazakhstan.

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Samples of stamps, the procedure and amount of their payment, the rules of marking are established by the Government of the Republic of Kazakhstan.

The objective side of the criminal offense involves a violation of the marking rules. For example, in accordance with clause 4 of the Rules of marking (re-marking) alcoholic beverages, excluding wine, beer and beer beverage, accounting and control stamps and tobacco tax stamps, as well as for the form, content and elements of protection of excise and accounting-control marks Accounting grade is glued to the hologram in the lower direction on the consumer packaging so that at the opening of consumer packagings violated the integrity of the accounting and control of the brand in order to avoid its re-use.

The registration and control mark is tightly glued to the consumer packaging and ensures its identification and reading of the barcode information by the reader.

Alcohol products are not subject to mandatory marking with accounting and control marks and tobacco products are not subject to excise stamps in accordance with paragraph 4 of Article 653 of the Tax Code:

- 1) exported outside the Republic of Kazakhstan;
- 2) imported into the territory of the Republic of Kazakhstan by the owners of duty-free shops, intended for placement under the customs procedure of duty-free trade;
- 3) imported into the territory of the member states of the Eurasian Economic Union in the customs procedures of temporary import (admission) and temporary export, including temporarily imported into the territory of the Republic of Kazakhstan from the territory of the member States of the Eurasian Economic Union for advertising and (or) demonstration purposes in single copies;
- 4) transported through the customs territory of the member states of the Eurasian Economic Union in the customs procedure of customs transit, including transported in transit through the territory of the Republic of Kazakhstan from the territory of the member States of the Eurasian Economic Union;
- 5) imported (sent) to the territory of the Republic of Kazakhstan by an individual who has reached the age of eighteen, within no more than three liters of alcoholic beverages, beer and beer drink, as well as tobacco and tobacco products within no more than 200 cigarettes or 50 cigars (cigarillos) or 250 grams of tobacco, or the specified products in the assortment with a total weight of no more than 250 grams. (paragraph 9 of the Rules).

Under considerable size, is a prerequisite for the objective side of the considered socially dangerous acts that refers to the damage in excess of two thousand monthly calculation indices (paragraph 2 of article 3 of the criminal code).

The composition is material, the act will be considered finished from the moment of occurrence of the specified consequence. in the form of causing a large size, the listed actions violate the established procedure for mandatory marking with excise duty stamps and (or) accounting and control stamps protected from forgery.

The subjective side of a criminal offense involves direct intent. The guilty person is aware that he / she commits actions prohibited by criminal law to a significant extent with unmarked goods and products that are subject to mandatory marking with excise duty stamps, special stamps or conformity marks that are protected from forgery, and wants to commit them.

The subject of a criminal offense can be physical, sane person carrying on business in violation of applicable regulations for the marking of goods subject to mandatory marking in the areas of production, purchase, storage, transportation for the purpose of sale and distribution of such commodities and products, it needs to be an officer, Director, or entrepreneur.

Qualifying signs of independent composition and includes the commission of such alternative actions: for the purpose of marketing: a) production or b) acquisition; c) use; d) sale of knowingly counterfeit excise stamps and (or) accounting and control stamps.

According to paragraph 3 of the order of the Minister of Finance of Kazakhstan "On approval of the Rules for the obtaining, recording, storage and issuance of accounting-control marks and excise stamps" accounting stamps, and tax stamps issued by the departments of state revenue of regions, cities of Astana and Almaty.

Production of accounting and control stamps and excise stamps, their delivery and issue to the Department is carried out by the organization in accordance with agreements (contracts) concluded in accordance with the legislation of the Republic of Kazakhstan with the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan. At the same time, the accounting and control stamps or excise stamps purchased by the recipients are inalienable and cannot be transferred to other individuals and legal entities. (paragraph 12 of the order).

Acquisition implies receipt in any way, both paid and gratuitous. Use means the procedure for

the illegal placement of stamps obtained as a result of violation of the relevant rules.  
Marketing means any method of transferring stamps.

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## **8. Lecture Criminal offenses that infringe on the interests of commercial and other organizations**

### **1. General characteristics of criminal offenses that infringe on the interests of commercial and other organizations**

### **2. Types of criminal offenses that infringe on the interests of commercial and other organizations**

**Keywords: Theft, robbery, embezzlement, robbery, criminal offenses, hiding place.**

1. The concept of "crimes against the interests of service in commercial and other organizations" first appeared in the Criminal Code of the Republic of Kazakhstan in 1997. This is understandable. Reforms in the economy and other spheres of society's life have brought to life, along with the structures of the state and municipal service (bodies, institutions, organizations with managerial functions), numerous and diverse structures that are engaged in commercial and non-commercial activities and are not state (municipal) bodies, institutions, organizations.

There was also a transformation of the concept of public organization, whose employees now have a completely different status. Finally, the participation in economic activity in the market conditions of state (municipal) enterprises has qualitatively changed the tasks and functions of these enterprises, and consequently, their employees. The latter can no longer be equated with state (municipal) employees of management structures, as was the case before.

The situation has become even more acute due to the legal authorization of certain forms of private professional practice related to the delegation to a person of powers previously held by public officials (private notaries, appraisers, mediators, auditors, employees of security services). These persons also found themselves outside the scope of criminal responsibility for acts that would in the past have been official crimes for persons with similar functions in State structures. While preserving the traditional concept of an official as referring only to the public sector of managerial official activity, the legislator criminalizes a number of acts that are similar in objective terms to official criminal offenses, but have non-state employees performing managerial functions as a subject.

As already noted, the acts provided for in article 250 and 253 of the criminal code, in its objective side is very similar to the acts provided for in accordance with article 361 of "Abuse of power" and article 366, 367 "receiving a bribe", "bribery" of the criminal code. Therefore, we will focus only on the specifics of the compositions provided for in the chapter on crimes against the interests of service in commercial and other organizations. First of all, we will highlight some issues related to the subject of abuse of power and commercial bribery. It is defined as "a person who performs managerial functions in a commercial or other organization". It appears that the concept of management functions, as can be seen from paragraph 19 of article 3 of the criminal code covers as a family all the same features, which are inherent official (organizational-administrative or administrative-economic) in the public sector or local government, or organization with a state share which is more than fifty percent.

Therefore, the controversial conclusions made by individual authors that state and municipal enterprises are outside the scope of the chapter "On crimes against the interests of service in commercial and other organizations" of the Criminal Code of the RF<sup>1</sup>. In a market economy, these enterprises act as commercial enterprises with profit-making as their main goal, and in this sense do not differ from private enterprises. <sup>2</sup> The authentic interpretation of the law, expressed in article 3 of the Criminal Code of the Republic of Kazakhstan, put an end to the discussion.

The provisions of article 250 and 253 of the criminal code seen, that the object of the relevant elements of criminal offense are the interests of service in commercial organizations regardless of their form of ownership, as well as in non-profit (non-governmental and remunicipalised) public organizations, religious, charitable structures, in which the profit, if it occurs, is a means of core activities and not an end in itself. At the same time, it seems that the interpretation of the object as "the interests of the service" is a direct interpretation of the complex of public relations related to maintaining a balance between the legitimate interests of the owners and employees of commercial or non-profit organizations, their clients, depositors and creditors with the interests of society or the state. In other words, species and generic objects are considered crimes in the field of public relations, implementing the constitutional foundations of business, other commercial or economic activities in the implementation of the constitutional foundations of the public, charitable, etc., non-state activities, including using entrepreneurship as a secondary direction.

## 2. Abuse of authority (Article 250 of the Criminal Code of the Republic of Kazakhstan).

As noted, this article is similar in its objective side to Article 361 of the Criminal Code of the Republic of Kazakhstan, but there are some differences. The objective side of the crime, the contents of the intent, the range of special subjects of abuse of authority clearly described in the text of article 250 of the criminal code. We will only note in addition that this act can be committed both within the limits of the powers that a person is endowed with by the charter or other regulatory act of a commercial or other organization, and with their excess. But in any case, the powers are used contrary to the tasks assigned to this person.

The subjective side of a criminal offense under Article 250 of the Criminal Code of the Republic of Kazakhstan is characterized by direct intent. Abuse of authority by a person performing managerial functions of a commercial or other organization entails criminal liability only if it causes significant harm to the rights and legitimate interests of citizens or organizations, or to the interests of society or the state. The law does not reproduce the condition of causing significant harm for an official offense: here, the fact of a significant violation of someone's rights and legitimate interests is sufficient for criminal liability.

We will note two more points. First, the intention of the legislator to "punish" a person who has abused his official powers in a commercial or other organization to the maximum extent is clearly visible.

Secondly, taking into account the general status of a commercial or other organization, the legislator has narrowed the possibilities of holding its employees accountable for abuse of authority. Namely, if the harm is caused only to the organization (its owners), criminal prosecution is carried out only at the request or with the consent of the organization, i.e. the person or persons authorized to act on its behalf. Thus, the expansion of the dispositivity of criminal prosecution (criminal responsibility and punishment of the perpetrators) is aimed at ensuring the interests of the organization. After all, it is possible that the preservation of a good name, which will be damaged by the publicity of the fact of internal abuses, is more important for the company than the prosecution of the guilty. The principle of dispositivity applies when an act provided for in this chapter has caused harm to the interests of an exclusively commercial organization that is not a state or municipal enterprise.

If the abuse of authority by a person performing managerial functions has harmed the interests of other organizations, such as the bank that provided the loan; the interests of citizens, such as depositors; the interests of society or the state, for example, by undermining the stability of the foreign exchange market, criminal prosecution is carried out on a general basis.

The perpetrator must foresee and desire the consequences of a material violation of the rights and legitimate interests of citizens, society or the state (direct intent), or at least anticipate the possibility of their occurrence, but treat it indifferently (indirect intent).

Commercial bribery (Article 253 of the Criminal Code of the Republic of Kazakhstan).

This article provides for criminal liability for two crimes: a) illegal transfer of the person performing managerial functions in a commercial or other organization, the rewards of property character for actions (inaction) in the interests of giving in his this face of official position (h 1-3 of article 253 of the criminal code); b) for illegal receipt by that person of such remuneration (part 4-6, article 253 of the criminal code).

The article under consideration has many common features of the objective side with bribery. The difference is that in the case of bribery, an official receives remuneration of a property nature (see paragraph 26 of Article 3 of the Criminal Code of the Republic of Kazakhstan).

The subjective side of the act in question is characterized by the direct intent of both participants in the criminal transaction. The purpose of the person engaged in bribery is related to obtaining certain benefits or advantages in the field of activity of the organization in which the person receiving the subject of bribery works. Responsibility is not eliminated in cases where the relevant item is transferred and accepted as a "thank you" for the service already rendered, even without prior agreement. But, of course, commercial bribery should be distinguished from the presentation of a souvenir, a small gift. The person who accepts the subject of bribery is guided by selfish motives. The legislator introduced a rather extensive list of aggravating circumstances in h 2-6, article 253 of the criminal code: the act is committed repeatedly or by a group of persons upon a preliminary collusion or on a large scale; the Commission of a criminal group or in especially large size; conjugation with the extortion.

Abuse or abuse of authority by non-State employees

The nature of the actions and their legal consequences require the delegation of certain powers to the relevant private employees (private practitioners), which in principle relate to the powers of state and municipal bodies.

The described specifics of the relevant types of activities of non-state (non-municipal) employees also require an increased guarantee of the legality of this activity, compliance with the rights and legitimate interests of citizens, legal entities and public interests in general. One of such guarantees was the introduction of Articles 251, 252 in the Criminal Code of the Republic of Kazakhstan.

Abuse of powers by private notaries, appraisers, private bailiffs, mediators and auditors working in an audit organization (Article 251 of the Criminal Code of the Republic of Kazakhstan).

Private notaries (as well as public ones, but with certain restrictions) certify various transactions (see Article 1 of the Law of the Republic of Kazakhstan of July 14, 1997 N 155 " On Notaries»1. According to paragraph 3 of art. 1 of the Law of 20 November 1998 No. 304-I "On audit activity" audit — audit in order to Express an independent opinion on the financial statements and other information associated with the financial statements, in accordance with the legislation of the Republic of Kazakhstan, the auditor is a natural person, certified by the Qualification Commission on certification of candidates for auditors (hereinafter — Qualification Commission) received a qualification certificate of qualification (paragraph 6 of article 1 of the Law)2.

Auditors (employees of audit firms) carry out independent audits of accounting statements, financial documentation, the legality of financial and business transactions performed by the audited organization, property status (assets and liabilities) , etc. The tasks of audit activity are also related to ensuring the rights and legitimate interests of citizens and legal entities that are the subject of audit, as well as partners, clients, depositors, securities holders, etc. It is obvious what consequences can lead to the violation of private notaries and auditors of their official duty: certification of knowingly illegal transactions; documents that knowingly do not correspond to reality; publication of knowingly false conclusions about the financial and property status of the organization, etc.

In accordance with paragraph 6 of Article 1 of the Law of the Republic of Kazakhstan" On Enforcement Proceedings and the status of a bailiff " of April 2, 2010. No. 261-IV ZRK bailiff – a state bailiff and a private bailiff who perform the functions assigned to them by law to take measures aimed at the enforcement of executive documents, and who have equal rights and obligations for withdrawals1.

A mediator is an independent individual engaged by the parties to conduct mediation on a professional and non-professional basis in accordance with the requirements of the Law of the Republic of Kazakhstan "On Mediation" No. 401-IV ZRK2 of January 28, 2011. According to the above-mentioned legal act, mediation is a procedure for settling a dispute (conflict) between the parties with the assistance of a mediator (s) in order to achieve a mutually acceptable solution, implemented by voluntary consent of the parties.

In accordance with paragraph 9 of article 2 of the Law "On appraisal activities in the Republic of Kazakhstan" dated November 30, 2000, No. 109-II appraiser – an individual or legal entity licensed to engage in evaluation activities and are a member of one of the houses оценщиков3. The same normative legal act notes that valuation activity is an entrepreneurial activity carried out by appraisers aimed at establishing a market or other value in relation to the objects of valuation on a certain date, unless otherwise provided by the laws of the Republic of Kazakhstan.

To attract private notary, bailiff, evaluator, mediator or auditor to criminal liability according to article 251 of the criminal code, you need to install: a) use of the powers granted contrary to professional tasks and responsibilities; b) the motive of personal gain or benefit and advantage for others or harm others (e.g., revenge, hostility, etc.); C) the presence of significant harm caused by the actions (inaction) of the private notary, bailiff, evaluator, mediator or auditor in the audit of the organization. The public nature of the activities of a private notary, audit, mediation, enforcement proceedings or evaluation activities entails the recognition of significant harm caused to the rights and legitimate interests of one citizen, for example, in connection with the certification of deliberately fictitious documentation that violated the rights of a citizen to an apartment, even if the violators failed to complete the case or their actions were stopped by the intervention of the authorities.

Considered a criminal offence is committed intentionally: a guilty conscious that uses its powers contrary to statutory objectives and functions activities to extract benefits for themselves or for other persons or harm to others, and wants it. This act has two direct objects that are closely related to each other: first, public relations, which constitute the content of the lawful implementation of the tasks and functions assigned by law to a private notary, audit, mediation, enforcement proceedings or evaluation activities; secondly, the rights and legitimate interests of citizens and legal entities, which are provided by the above-mentioned types of activities. At the same time, it seems that the characterization of the second of these objects as "additional", which is found in the comments and educational literature, is controversial. It is this object that is important for the formulation of the composition of a criminal offense under Article 251 of the Criminal Code of the Republic of Kazakhstan. This object is caused "significant harm" by abuse of authority.

The subject of the act in question is special. A person must be allowed to work as a private notary, appraiser, bailiff, mediator or auditor by an authorized state body, and have a license. If the person willfully usurped the powers of the private attorney or auditor, his actions, depending on the specific circumstances of the case may qualify under article 190 of the criminal code (fraud), article 385 of the criminal code (forgery, manufacture or sale of counterfeit documents). Illegal actions of officials (officers) of state bodies or bodies of local self-government entrusted with the certificate, under certain circumstances, of wills, issuance of certificates or copies in their possession of official documents, are not subject to article 251 of the criminal code and punishable under article 190 and 385 of the criminal code, etc. if they are not subject to article 369 of the criminal code (forgery).

Under article 251 of the Criminal Code of the Republic of Kazakhstan, persons who temporarily replace an absent notary, or persons who are entrusted with an audit on a special order (contract), i.e. persons who actually assume the relevant duties, if the law provides such an opportunity, are also responsible.

Part 2 of article 251 of the criminal code provides for the qualifying part of the act: abuse of power, causing significant harm to the person, which is known to the perpetrator is a minor or incapacitated.

Abuse of authority by employees of private security services (Article 252 of the Criminal Code of the Republic of Kazakhstan).

The object of the act is the social relations that make up the contents of the lawful exercise of tasks and functions specified by law for private security services; rights and legitimate interests of citizens and legal persons falling within the scope of these services. The peculiarity of private security activity is that the danger primarily threatens the rights of the individual to inviolability, life and health.

The specifics of the objective side is that article 252 of the criminal code covers only the abuse of power, and not other cases of abuse. Moreover, the abuse of authority must be associated with violence or the threat of it. We are talking about exceeding the powers granted under the license, contrary to the tasks and functions of the activity provided for by law. Thus, if any of the functions provided for by the Law of the Republic of Kazakhstan of October 19, 2000 N 85-II. "On security activity" 1, is not mentioned in the license, the implementation of this function will be an excess of authority.

The use of violence or threats of violence in cases of self-defense, necessity, prevent crime and arrest the culprit, of course, does not entail responsibility according to article 252 of the criminal code. However, the restrictive wording of this article regarding the objective side of the act, which is necessarily associated with violence or the threat of its use, does not mean that non-violent forms of abuse of authority or other abuse of them remain unpunished.

The subjective side of the crime is related to intentional guilt. The guilty person is aware that by his actions he goes beyond the limits of the powers granted to him and these actions contradict the objectives of the activities of his service (part 1 of Article 252), wants the occurrence of these consequences (direct intent) or treats them indifferently (indirect intent)<sup>2</sup> (Part 2 of Article 252 of the Criminal Code).

Taking into account the fact that the subject of criminal offenses under Articles 251 and 252 of the Criminal Code of the Republic of Kazakhstan is special, the mandatory additional punishment is the deprivation of the right to hold certain positions or engage in certain activities. We are talking about positions and activities in which the perpetrator has abused his powers, as well as similar positions and activities associated with the risk of falling into situations of abuse of powers or exceeding them.

Unfair attitude to duties (Article 254 of the Criminal Code of the Republic of Kazakhstan).

The immediate main object of a criminal offense is public relations that ensure the normal operation of commercial or other organizations. An additional direct object is public relations that ensure the health of citizens, the safety of property and other legally protected rights and interests of society and the state. The objective side of the act in question is expressed in the non-performance or improper performance of the person performing managerial functions of their duties due to unfair or negligent attitude to the service. A mandatory element of the objective side is the result of non-performance or improper performance of official duties in the form of death by negligence or other serious consequences. Some authors include intentional infliction of moderate harm to several persons, as well as serious harm to health or homicide.<sup>1</sup> This article is competing with Article 371 of the Criminal Code of the Republic of Kazakhstan "Negligence" and the difference lies in the subjects. At the same time, there are similarities. So, these two compositions require a reliable establishment of the scope of duties of the relevant subject of the crime with a specific indication of which normative act and in which place of this act (article, paragraph) this duty is fixed. The absence of a properly executed legal act on the scope of duties of an official excludes liability for negligence.

Improper performance of official duties involves non-compliance with all or part of the mandatory regulations governing the order and content of official activities in these specific circumstances, as a result of which the interests of the case are significantly violated. The indication in the law of bad faith or negligence as the reasons (motives) for improper performance or non-performance of official duties means the need to prove the lack of due care and foresight in the performance of official activities in these specific circumstances, irresponsibility in relation to official duties, inattention, etc. The considered wording of the law, due to the exhaustive list of reasons for non-performance or improper performance of duties, excludes or at least casts doubt on the possibility of bringing to criminal responsibility a person who did not properly perform his duties due to inexperience and other circumstances indicating possible innocent harm (see Article 23 of the Criminal Code of the Republic of Kazakhstan).

The structure of a criminal offense under article 254 of the criminal code, available only in case, when the case a causal link between the unlawful actions (inaction) of a person and of consequences. The absence of such a link excludes liability under Article 254 of the Criminal Code of the Republic of Kazakhstan.

The subjective side of a criminal offense is characterized by careless guilt more often in the form of negligence or frivolity.

Subject of the act-special: a person performing managerial functions in a commercial or other organization.

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### Lecture 9 Criminal offences that infringe on public safety

**1. General characteristics of criminal offenses that infringe on public safety.**

**2. Types of criminal offenses that infringe on public safety.**

**Keywords: Theft, robbery, embezzlement, robbery, criminal offenses, hiding place.**

1. Chapter 10 of the Criminal Code of the Republic of Kazakhstan "Criminal offenses against public safety and public order" includes articles 255 to 294. Generic object of the criminal offenses provided for in Chapter 10 of the criminal code, is a set of similar nature and content of public relations, public safety (safe existence of the population) and public order (rules safe for people to live together). Criminal offenses against public safety protect the safe living conditions of people, their professional activities, the use of objects, objects and sources of increased danger. The specific object of a criminal offense includes relations that regulate various areas of public safety. An additional direct object may be the life or health of a person (group of persons). The objective side of criminal offenses is characterized by acts in the form of action and inaction. There are structures of the compositions: formal and material, banquet standards are applied. The subjects of criminal offenses are individuals, sane persons who have reached the age of sixteen, in some cases-the age of fourteen. There are also special subjects. The subjective side of a criminal offense is characterized by intentional guilt, in some cases-careless guilt. In some cases, the motive and a special purpose are identified as mandatory signs of the subjective side. Consider the characteristics and characteristics of specific compounds. 2. Act of terrorism (Article 255 of the Criminal Code of the Republic of Kazakhstan) The direct object of a criminal offense is the relationship of public safety of the population, the normal functioning of government bodies. An additional object is the life or health of people, property interests. In his statement of June 8, 2016, the Head of State N. A. Nazarbayev noted the following: "As you know, a terrorist attack was carried out in Aktobe on June 5. Law enforcement agencies have taken the necessary measures to strictly suppress this criminal act, destroy and neutralize the terrorists. On my instructions, a special interdepartmental investigative and operational group headed by the Minister of Internal Affairs is working. The investigation is conducted under the

personal control of the Prosecutor General. All criminals will be brought to justice to the fullest extent of the law. According to available data, the terrorist act was organized by adherents of radical pseudo-religious movements, they received instructions from abroad. As a result of the attack, unfortunately, there are dead and wounded among the military and civilians. They have families, children. Law enforcement officers stopped the terrorists at the cost of their lives. They showed professionalism, loyalty to their duty, valor and patriotism»In the official press release of the Anti-Terrorist Center of the Republic of Kazakhstan dated June 12, 2016, it was reported that the Aktobe regional Operational Headquarters for Combating Terrorism neutralized and detained all participants in the violent actions of June 5, 2016 in Aktobe. All their weapons were seized.<sup>2</sup> Later, criminal liability was tightened and sanctions were strengthened.<sup>1</sup>According to the statistical data of Table A-Form 1 of the EAIAS SB RK of criminal cases on terrorism and extremism in 2014, the courts of the republic had 98 cases against 110 persons, 97 persons were convicted, in 2015, 113 cases against 140 persons were completed, 127 persons were convicted, in the first half of 2016, 52 cases against 60 persons were completed, 56 people were convicted.<sup>4</sup>The objective side of a criminal offense involves the commission of explosions, arson, or other actions that create a risk of loss of life, causing significant property damage, or the occurrence of other socially serious consequences, if these actions are committed for the purpose of violating public safety, intimidating the population, influencing decision-making by state bodies of the Republic of Kazakhstan, foreign states or international organizations, provoking war or complicating international relations, as well as threats to commit these actions for the same purposes. An act of terrorism is expressed in: a) actions to organize explosions, arson, or other actions that create a risk of loss of life, causing significant property damage, committed in order to influence decision-making by the authorities of the Republic of Kazakhstan, a foreign state or international organizations; b) threats to commit these actions for the same purposes. An act of terrorism involves the creation by an act of a danger of causing loss of life or significant property damage, or the threat of committing such actions. A mandatory feature of the subjective side of terrorism is a special purpose: violating public security, intimidating the population, influencing decision-making by authorities or international organizations, provoking war or complicating international relations. The composition of a criminal offense is formal, it assumes responsibility for the commission of these actions, causing harm is not a constructive sign. The subject of a criminal offense is a natural, sane person who has reached the age of fourteen. The subjective side of a criminal offense involves direct intent. The perpetrator is aware that he commits explosions, arson or other actions that create a risk of death, causing significant property damage, or the occurrence of other socially dangerous consequences, and wants this. The qualified composition (p. 1, 2 part 2) provides for the following signs of committing a crime in the form of an act of terrorism: a) repeatedly; b) with the use of weapons or objects used as weapons, explosives or explosive devices that may pose a real threat to the life and health of citizens. This rule seems to be not entirely successful, since it conflicts with such a sign of the objective side of the main composition as the commission of an explosion, which is difficult to imagine without the use of explosives or explosive devices. Therefore, it is no accident that some authors interpret it as follows: "Arson means the destruction of an object or the destruction of people by using a TNT or other charge, in other words, using the destructive energy of an explosive wave." <sup>1</sup> According to paragraph 3 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated July 21, 1995 No. 4 "On judicial practice in cases of theft of firearms, military supplies, weapons and explosives, illegal acquisition, carrying, storage, manufacture or sale of them, and negligent storage of firearms", explosives should be understood as gunpowder, tnt, nitroglycerin, pyroxylin, ammonal and other chemicals and their mixtures that have the ability to explosive reactions, the acquisition and storage of which requires a special permit.<sup>1</sup> The specially qualified composition (p. 1, 2, Part 3) includes the following signs of the commission of the crime in question:

a) with the use or threat or use of weapons of mass destruction, radioactive materials and the commission or threat of mass poisoning, the spread of epidemics or epizootics, as well as other actions that can lead to mass death of people;

b) caused by negligence the death of a person or other serious consequences.

As other serious consequences, the infliction of serious or moderate damage to health, disruption of the transport conveyor is considered. The remaining qualification criteria were considered earlier.

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b) caused by negligence the death of a person or other serious consequences.

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The specially qualified composition (Part 4 of Article 255 of the Criminal Code of the Republic of Kazakhstan) provides for liability for the following types of terrorist acts:

a) an attack on a person's life committed for the purposes specified in the main composition;

b) for encroaching on the life of a state or public figure for the same purposes, as well as for the purpose of terminating his state or public activities or out of revenge for such activities;

c) an attack on a person's life involving an attack on persons or organizations enjoying international protection, the taking of hostages, buildings, structures, means of communication and communication, the hijacking, as well as the hijacking or seizure of an aircraft or water vessel, or railway rolling stock, or other public transport.

Note this article provides that a person involved in the preparation of a terrorist act, shall be exempt from criminal responsibility, if it is a timely warning of public authorities or otherwise helped to prevent acts of terrorism and if his actions do not contain the composition of a crime.

Propaganda of terrorism or public calls to commit an act of terrorism (Article 256 of the Criminal Code of the Republic of Kazakhstan)

The direct object of the criminal offense is the relations and interests for the protection and maintenance of public safety.

The objective side of a criminal offense that encroaches on public safety is formed by:

a) propaganda of terrorism;

b) public calls to carry out terrorist activities;

c) distribution of materials of the specified content.

Propaganda of terrorism is a set of measures aimed at spreading the ideology of terrorist activities through various forms (lectures, talks, presentations, etc.), a statement to a mass audience (a group of people) about the recognition of the ideology and practice of terrorism, its support and imitation.

Public calls to commit an act of terrorism involve influencing the consciousness of a certain circle of people to form motivation for terrorist activities and commit specific terrorist acts;

The distribution of materials involves the distribution of relevant literature containing the ideology of terrorism.

A criminal offense is of a formal nature, it is considered to be completed at the time of public appeals or justification of terrorist activities in front of people in speeches, hanging posters or otherwise distributing leaflets in a public place.

If mass riots or armed insurrection occurred as a result of public appeals, the act is qualified under the totality of Articles 256 and 272 or 181 of the Criminal Code of the Republic of Kazakhstan.

The subjective side of a criminal offense is characterized by direct intent. The culprit is aware of the public danger of public calls to carry out terrorist activities.

The motive doesn't matter. The purpose, despite the fact that it is not named, is derived from the meaning of the disposition and is associated with the desire to motivate the commission of an act of terrorism or to justify such criminal actions.

The subject of a general criminal offense is a sane individual who has reached the age of sixteen. The qualifying feature of a criminal offense (Part 2) involves public calls for terrorist activities committed by a person using his official position or the leader of a public association, or using the mass media (periodicals, radio, television, the Internet, etc.) or information and communication networks, or by a group of persons or a group of persons by prior agreement. Creation, leadership of a terrorist group and participation in its activities (Article 257 of the Criminal Code of the Republic of Kazakhstan)

The immediate object is the relations of public safety and the normal functioning of the authorities.

The objective side of a criminal offense involves the person in the Commission of terrorist crimes (art. 170, 171, 173, 177, 178, 184, 255, 256, 257, 258, 259, 260, 261, 269, 270 of the criminal code) in the framework of criminal enterprises and terrorist groups. Specific actions may consist of: a) creation; b) leadership; c) participation in the activities of a terrorist group.

Creation involves actions to form such a group by persuasion, that is, arousal in any way (persuasion, bribery, threats, etc. ) the desire or need to take part in terrorist activities, recruitment (involvement, training of persons involved in terrorist activities), armament (equipment with weapons, explosive devices and other devices for committing terrorist acts) preparation for a terrorist crime (implementation of organizational measures, planning, technical and other support, except for the financing of terrorist acts. (Responsibility for such acts is provided for in Article 258 of the Criminal Code of the Republic of Kazakhstan "Financing of terrorist or extremist activities and other assistance to terrorism or extremism").

The implementation of the development plan and skills, the formation of a committed terrorist acts, coordination and control of activities of members of the group.

A criminal offense has a formal composition and is completed at the time of committing any of these actions.

The subjective side of a criminal offense is characterized by direct intent. The guilty person is aware of the public danger of his actions, foresees their criminal nature and wants to commit them.

The subject of a general criminal offense is a sane individual who has reached the age of sixteen. Part 2 of the article contains an independent rule on responsibility for participation in the activities of a terrorist group or in acts of terrorism committed by it.

A particularly qualifying feature (Part 3) is the commission of an act by a person using his official position or the leader of a public association. Thus, first, a special subject of the crime is designated. Secondly, such a person attracts opportunities to serve in state and other organizations of any form of ownership, which expands the limits of promoting terrorist activities.

Hostage-taking (Article 261 of the Criminal Code of the Republic of Kazakhstan)

The direct object of a criminal offense is a relationship that ensures the public and personal safety of a person.

The objective side of a criminal offense criminalizes any form of detention or retention of a person as a hostage, performed with the purpose of forcing the state, organization or citizen to take any action or refrain from taking any action as a condition of release of the hostage is in action to seize (arrest) or retention (imprisonment and the possibility of discretion) hostage. The capture and retention suggest the possibility, along with the detention of the use of force or weapons, as well as deprivation of liberty, i.e. the possibility of free contact with the outside world at your own discretion.

The composition is formal, the criminal offense lasts, the moment of criminal responsibility is the beginning of the capture (detention) of the person.

The subject of a criminal offense is a natural, sane person who has reached the age of fourteen.

The subjective side of a criminal offense consists in direct intent. The perpetrator is aware that he is committing actions to capture or hold a person (or a group of persons), and wants to do so. A mandatory feature of the subjective side is a special purpose-forcing the state, organization, or citizen to commit any actions or refrain from any actions as a condition for the release of the hostage (s). As such, conditions may include requirements for the presentation of money, vehicles, the possibility of traveling outside the country, etc.

The immediate object of the crime is relations that ensure public and personal security.

The objective side of the crime consists in actions to: a) create an organized criminal group or criminal organization; b) lead such organizations.

At the same time, part 2 of the article includes actions for participation in an organized group or criminal organization.

The organization of an organized group or criminal organization involves the creation of a criminal structure, the signs of such a structure are given in paragraphs 36 and 25 of Article 3 of the Criminal Code of the Republic of Kazakhstan.

Part 3 of Article 262 of the Criminal Code of the Republic of Kazakhstan provides for the above-mentioned acts committed with the use of official position. Responsibility in this case are individuals, the public or another service, or leaders of business organizations for the creation or leadership of a criminal community using his official position, the use of such of the powers of the office, providing information to members of the criminal community, create other conditions for committing a grave or especially grave crime.

The composition of the crime is formal. The crime is considered finished from the moment of commission of any actions specified in the disposition.

The subject of the crime is a physical, sane person who has reached the age of sixteen.

The subjective side of the crime involves direct intent. The perpetrator is aware that he is committing acts to create or lead an organized group or criminal organization or to participate in them and wishes to commit such acts.

Organization of an illegal paramilitary group (Article 267 of the Criminal Code of the Republic of Kazakhstan).

The immediate object of the crime is the relations that regulate public safety and the security of the individual.

The objective side of the crime establishes criminal liability for the creation of an armed formation (association, detachment, squad or other group) that is not provided for by law, as well as the leadership of such a paramilitary formation. A common feature characteristic of this norm is the creation of a paramilitary formation that is not provided for by law. The creation of a paramilitary formation involves its organization: the selection of people, the creation of a structure, the definition of subordination. A paramilitary group is a stable, cohesive, structured group of individuals, subject to a certain discipline and armed with firearms or cold weapons. For the qualification of actions, the degree of organization of the paramilitary formation, its number, does not matter. The illegality of a paramilitary formation (association, detachment, squad, or other group) implies its creation without a corresponding legal basis or its financing.

The subject of the crime is a physical, sane person who has reached the age of sixteen.

The subjective side of the crime involves direct intent. The perpetrator is aware that he is creating or leading an illegal paramilitary group, and he wants to do so.

Part 2 of Article 267 of the Criminal Code of the Republic of Kazakhstan provides for liability for another action – participation in an armed formation that is not provided for by law. A member of an armed group who is not the organizer or leader of such a group is recognized as a participant. The difference between this part and Part 1 of Article 267 of the Criminal Code of the Republic of Kazakhstan is based on the objective side.

The note to this article stipulates that a person who voluntarily ceases to participate in an illegal paramilitary formation and surrenders weapons and military equipment is exempt from criminal liability, unless his actions contain other elements of a crime.

The direct object of the crime is the relations regulating public and personal security in the field of sea and river transport of people and goods.

The objective side consists in acts of attack on a sea or river vessel, committed with the use of violence or the threat of its use. An attack is an open or hidden sudden attack on a ship with the aim of seizing the property of passengers or cargo, causing harm to the health of passengers or crew members. Harm to health, including moderate harm, is covered by the objective side of Article 271 of the Criminal Code of the Republic of Kazakhstan. More serious harm to health is qualified by the combination of the norm under consideration and the norm on causing death or serious harm to health.

The composition of piracy was first defined in the Criminal Code of the Republic of Kazakhstan in 1997. In its content, it corresponds to the International Geneva Convention "On the High Seas" of April 29, 1958, ratified and entered into force on September 30, 1962.

Article 271 of the Criminal Code of the Republic of Kazakhstan provides for liability for an attack on a sea or river vessel committed with the use of violence or with the threat of its use.

The composition of the crime is formal and material. It is considered finished either from the moment of piratical actions or from the moment of causing the socially dangerous consequences specified in the disposition of the article.

The subject of the crime is a physical, sane person who has reached the age of sixteen.

The subjective side of the crime is characterized by direct intent. The culprit is aware of the illegality of the attack on the ship and wants it.

The qualified composition (Part 2) includes a sign of the commission of a crime-repeatedly or with the use of weapons or objects used as weapons.

The specially qualified composition (Part 3) includes signs of the commission of a crime: a) by a criminal group; b) resulting in the death of a person by negligence or other serious consequences. Other consequences include causing serious harm to health, major property damage, an accident or a shipwreck.

Deliberately false report of an act of terrorism

(Article 273 of the Criminal Code of the Republic of Kazakhstan)

Direct primary object of the criminal offences, and the amount-relations that regulate the safety of the population. An additional direct object is the relations that regulate the normal functioning of the service sector of the population, transport, etc., which may cause material damage.

The objective side of a criminal offense consists in an action – a false report about an upcoming explosion, arson, or other actions that allegedly infringe on public safety. This is expressed in the message of unreliable, untrue information about an upcoming explosion, arson or other actions that create a risk of loss of life, causing significant property damage or the occurrence of other socially dangerous consequences.

As a result of the measures taken by the internal affairs bodies, over the past five years, it has been possible to achieve a noticeable decrease in crimes related to the transmission of deliberately false reports of an act of terrorism (2011-123, 2012-114, 2013. – 91, 2014 – 84, 2015 – 86 and 3 months of 2016-16). During the three months of 2016, 13 people were detained for committing such crimes, 10 of them were brought to criminal responsibility, and 31 were released from responsibility.

The subject of a criminal offense is a natural, sane person who has reached the age of fourteen.

The subjective side of a criminal offense is characterized by direct intent. The culprit is aware that he is giving false information about a possible explosion, arson, etc., and wants to commit such an action.

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## **10. Criminal offenses that infringe on public health and public morals**

### **1. General characteristics of criminal offenses that infringe on public health and public morals**

### **2. Types of criminal offenses that infringe on public health and public morals**

**Keywords: Theft, robbery, embezzlement, robbery, criminal offenses, hiding place.**

1. Chapter 11 of the Criminal Code of the Republic of Kazakhstan contains provisions on those guilty of socially dangerous acts that infringe on public health and public morals, cause or may cause significant harm to these public relations. The specific object in relation to these crimes is public relations that regulate the conditions associated with ensuring the health of the population and public morals. As the impact on the health and morality of the population can be applied to the items specifically included in the relevant standards: narcotic drugs (article 297 and 298 of the criminal code), toxic substances (article 301 of the criminal code), etc. Given the danger of the above items and committed a crime, separate the authors put forward a proposal on "the allocation of the Special part of criminal code independent of the Chapter "Crimes in the sphere of illicit trafficking in narcotic drugs and psychotropic substances". In it, on the basis of a single generic object, it was possible to combine all the so-called drug crimes»1. The objective side of a criminal offense consists in most cases of actions, a number of acts that can be committed both by action and inaction, for example, Article 322 of the Criminal Code of the Republic of Kazakhstan. Most of them have a formal composition, while the smaller part has a material composition. The subject of a criminal offense may be individuals, sane persons who have reached the age of fourteen (Article 298 of the Criminal Code of the Republic of Kazakhstan), for all other compositions – sixteen years of age. Some compositions suggest a special subject of the crime. The subjective side of criminal offenses is the intentional or negligent form of guilt. The motives and goals of the crime do not matter for the qualification. Depending on the direct object of a criminal offense, all the teams included in Chapter 10 of the criminal code, can be divided into crime: a) infringe on human health (article 296-306); b) against public morality (article 308-316).

2. Criminal offenses against the health of the population Illegal manufacture, processing, acquisition, storage, transportation, shipment or sale of narcotic drugs or psychotropic substances (Article 297 of the Criminal Code of the Republic of Kazakhstan). The object of a criminal offense is public relations that regulate the protection of public health. Narcotic drugs and psychotropic substances are the subject of a crime in Article 297-299 of the Criminal Code of the Republic of Kazakhstan. It provides for liability for these actions with narcotic drugs and psychotropic substances. According to experts: "the structure of drug crime is dominated by crimes under Article 297 of the Criminal Code (illegal manufacture, acquisition, storage, transfer or sale of narcotic drugs or psychotropic substances). In total, 9230 crimes were registered under this article of the Criminal Code of the Republic of Kazakhstan in 2009, their specific weight was 95.1%, in 2008. , respectively, 9495 (-2, 8% and 94, 4%). The rest have to articles 250, 260-265 of the criminal code and part 5 of article 266 of the criminal code»1. At the same time, in 2011 and for 6 months of 2012, the number of cases related to illegal trafficking in narcotic drugs, psychotropic or toxic substances decreased almost twice (by 56.5% and 39.7%, respectively)2. One of the reasons is the decriminalization of certain acts. However, " ... in the

qualification of acts related to illicit drug trafficking, the preliminary investigation bodies and the prosecutor's office have certain difficulties, as evidenced by the change in the qualification of acts during the judicial review»3.

Narcotic drugs are substances of plant or synthetic origin that have a hallucinogenic or intoxicating effect, cause feelings of euphoria, aggression, etc., and subsequently have a destructive effect on the human body. According to paragraph 3 of Article 1 of the Law of the Republic of Kazakhstan of July 10, 1998. N 279 "On narcotic drugs, psychotropic substances, precursors and measures to counteract their illicit trafficking and abuse" narcotic drugs – substances of synthetic or natural origin included in the List of narcotic drugs, psychotropic substances and Precursors subject to control in accordance with the legislation of the Republic of Kazakhstan, the Single Convention on Narcotic Drugs of 1961, as amended in accordance with the Protocol of 1972 on Amendments to the Single Convention on Narcotic Drugs of 1961. Psychotropic substances – substances of synthetic or natural origin included in the List of Narcotic drugs, psychotropic substances and precursors subject to control in accordance with the legislation of the Republic of Kazakhstan, international treaties of the Republic of Kazakhstan, including the Convention on Psychotropic Substances of 1971.

2. Psychotropic substances are substances of natural or synthetic origin, drugs, natural materials that have a significant impact on the human psyche, "freeing" or "binding" the volitional mental capabilities of a person. These substances are also included in this List, including in accordance with the Convention on Psychotropic Substances of 1971. The objective side of a criminal offense involves the following illegal actions:

- a) manufacture – any intentional actions that resulted in the production of narcotic drugs, psychotropic substances or precursors, or the conversion of one narcotic drug, psychotropic substance, or precursor, respectively, into others included in the List. Changing the shape of the same type of narcotic drug or psychotropic substance (grinding, pressing into tablets, pills, tiles, pastes, etc.) is not a manufacture.
- 3b) processing – reworking or refining (cleaning from foreign impurities) without the appropriate authorization of the same type of narcotic drug or psychotropic substance in order to increase its concentration. Drying, grinding, separation of certain parts and other modification of the same type of narcotic plant is not illegal processing (except in cases of obtaining another narcotic drug from it).
- 1.c) acquisition, i.e. receipt as a result of any transaction, purchase, receipt in exchange for other goods and things, in payment of a debt, loan or gift, appropriation of found narcotic drugs or psychotropic substances, collection of wild narcotic plants or their parts, remnants of unprotected crops of such plants after their harvesting, etc.
- 2;d) possession, i.e. any intentional actions related to the actual presence of narcotic drugs or psychotropic substances in the actual possession of the culprit without a corresponding permit, regardless of the place (on oneself, in a hiding place, room, vehicle, and other places) and the time of their storage.
- 3;e) transportation, i.e. actions for the movement of narcotic drugs or psychotropic substances, regardless of the method of transportation, in violation of the established order.
- 4;f) forwarding – sending by any type of communication, by express, as well as using animals, poultry
- 5;g) sale – any means of illegal sale or transfer from the possession of one person to the possession of others (sale, donation, payment of debt, in exchange, lending, injection of injections to another person, etc.).

6. The legislator, within the framework of one article, provides for a number of independent rules on liability for the acts listed above without the purpose of selling on a large scale (Part 1) or on a particularly large scale (Part 1 - 1). Part 2 of the article includes acts (acquisition, transportation or storage for the purpose of sale, manufacture, processing, shipment or sale. Part 2-1 of Article 297 of the Criminal Code provides for the same acts on a large scale. A prerequisite for the objective side is also the illegality of these actions, i.e. without the permission of doctors, and a large or particularly large amount of narcotic drugs or psychotropic substances. The summary table on the classification of narcotic drugs, psychotropic substances and precursors to small, large and especially large sizes found in illicit trafficking set out in Annex 2 to the Law of the Republic of Kazakhstan of July 10, 1998 N 279 "On Narcotic drugs, psychotropic substances, precursors and measures to counteract their illicit trafficking and abuse" contains information on the types of narcotic drugs or psychotropic substances and specific sizes. The composition of the

criminal offense is formal, the crime will be considered completed from the moment of committing any of these actions. The subject of a criminal offense is a natural, sane person who has reached the age of sixteen. In relation to Article 250 of the Criminal Code of the Russian Federation, a special subject is provided – a person who is obliged to comply with the rules for the production and circulation of narcotic drugs or psychotropic substances. The subjective side of a criminal offense involves direct intent. The guilty person is aware that he is committing illegal actions with narcotic drugs or psychotropic substances, and wants to commit them. These actions must have a sales purpose (Part 1, 297 of the Criminal Code of the Republic of Kazakhstan). If there is none, then the act falls under the signs of Article 296 of the Criminal Code of the Republic of Kazakhstan "Illegal handling of narcotic drugs, psychotropic substances, their analogues, precursors". Qualifying circumstances (p. 1-4 part 3) provide for the acquisition, transportation, storage for the purpose of sale, manufacture, processing, shipment, or sale:

- a) by a group of persons by prior agreement;
- b) repeatedly;
- c) on a particularly large scale;
- d) by an official using his official position.

The objective side of a criminal offense involves the following illegal actions:

- a) manufacture – any intentional actions that resulted in the production of narcotic drugs, psychotropic substances or precursors, or the conversion of one narcotic drug, psychotropic substance, or precursor, respectively, into others included in the List. Changing the shape of the same type of narcotic drug or psychotropic substance (grinding, pressing into tablets, pills, tiles, pastes, etc.) is not a manufacture. 3
- b) processing – reworking or refining (cleaning from foreign impurities) without the appropriate authorization of the same type of narcotic drug or psychotropic substance in order to increase its concentration. Drying, grinding, separation of certain parts and other modification of the same type of narcotic plant is not illegal processing (except in cases of obtaining another narcotic drug from it)1.
- c) acquisition, i.e. receipt as a result of any transaction, purchase, receipt in exchange for other goods and things, in payment of a debt, loan or gift, appropriation of found narcotic drugs or psychotropic substances, collection of wild narcotic plants or their parts, remnants of unprotected crops of such plants after their harvesting, etc. 2;
- d) possession, i.e. any intentional actions related to the actual presence of narcotic drugs or psychotropic substances in the actual possession of the culprit without a corresponding permit, regardless of the place (on oneself, in a hiding place, room, vehicle, and other places) and the time of their storage. 3;
- e) transportation, i.e. actions for the movement of narcotic drugs or psychotropic substances, regardless of the method of transportation, in violation of the established order. 4;
- f) forwarding – sending by any type of communication, by express, as well as using animals, poultry 5;

g) sale – any means of illegal sale or transfer from the possession of one person to the possession of others (sale, donation, payment of debt, in exchange, lending, injection of injections to another person, etc.)<sup>6</sup>. The

legislator, within the framework of one article, provides for a number of independent rules on liability for the acts listed above without the purpose of selling on a large scale (Part 1) or on a particularly large scale (Part 1 - 1).

Part 2 of the article includes acts (acquisition, transportation or storage for the purpose of sale, manufacture, processing, shipment or sale. Part 2-1 of Article 297 of the Criminal Code provides for the same acts on a large scale.

A prerequisite for the objective side is also the illegality of these actions, i.e. without the permission of doctors, and a large or particularly large amount of narcotic drugs or psychotropic substances.

The summary table on the classification of narcotic drugs, psychotropic substances and precursors to small, large and especially large sizes found in illicit trafficking set out in Annex 2 to the Law of the Republic of Kazakhstan of July 10, 1998 N 279 "On Narcotic drugs, psychotropic substances, precursors and measures to counteract their illicit trafficking and abuse" contains information on the types of narcotic drugs or psychotropic substances and specific sizes.

The composition of the criminal offense is formal, the crime will be considered completed from the moment of committing any of these actions.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen. In relation to Article 250 of the Criminal Code of the Russian Federation, a special subject is provided – a person who is obliged to comply with the rules for the production and circulation of narcotic drugs or psychotropic substances.

The subjective side of a criminal offense involves direct intent. The guilty person is aware that he is committing illegal actions with narcotic drugs or psychotropic substances, and wants to commit them. These actions must have a sales purpose (Part 1, 297 of the Criminal Code of the Republic of Kazakhstan). If there is none, then the act falls under the signs of Article 296 of the Criminal Code of the Republic of Kazakhstan "Illegal handling of narcotic drugs, psychotropic substances, their analogues, precursors".

Qualifying circumstances (p. 1-4 part 3) provide for the acquisition, transportation, storage for the purpose of sale, manufacture, processing, shipment, or sale:

- a) by a group of persons by prior agreement;
- b) repeatedly;
- c) on a particularly large scale;
- d) by an official using his official position.

Particularly qualifying features (Part 4) include the commission of the above actions:

- a) by a criminal group;
- b) in educational organizations;
- c) in relation to a known minor.

Note 2 to art. 296 of the criminal code provides that a person who voluntarily surrendered narcotic drugs, psychotropic substances, their analogues, precursors, purchased for personal

consumption or a person who voluntarily referred to a healthcare facility for medical assistance in connection with the use of narcotic drugs, their analogues for non-medical purposes, or actively contributing to the disclosure or suppression of crimes related to illicit trafficking in narcotic drugs, psychotropic substances, their analogues, precursors, exposure of individuals who have committed them, the detection of property obtained by criminal means, is exempt from criminal liability for this crime.

Theft or extortion of narcotic drugs or psychotropic substances (Article 298 of the Criminal Code of the Republic of Kazakhstan).

The object of a criminal offense is public relations that regulate the protection of public health.

The objective side of a criminal offense includes theft or extortion.

Theft refers to the illegal seizure of narcotic drugs and psychotropic substances from institutions, enterprises and organizations, from citizens, as well as the illegal collection of narcotic plants or their parts. Extortion involves the demand for the transfer of these substances or the right to them under the threat of using or damaging someone else's property, as well as under the threat of spreading information that disgraces the victim or his relatives, or other information that can cause significant harm to the rights or legitimate interests of the victim or his relatives.

The composition of a criminal offense is formal, the crime is considered completed from the moment of possession of narcotic drugs or psychotropic substances.

The subject of a criminal offense is a natural, sane person who has reached the age of fourteen.

The subjective side is characterized by direct intent. The perpetrator is aware that he is stealing or extorting narcotic drugs or psychotropic substances, and wants to do so.

Qualifying and especially qualifying signs provide for the commission of an act:

- 1) by a group of persons by prior agreement;
- 2) repeatedly;
- 3) by a person using his official position;
- 4) with the use of violence that is not dangerous to life or health, or with the threat of such violence (part 2);
- 5) by a criminal group;
- 5) in relation to narcotic drugs, psychotropic substances and their analogues on a large scale;
- 6) the use of violence dangerous for life or health, or with threat of application of such violence (part 3)
- 7) in respect of narcotic drugs, psychotropic substances, their analogues in especially large size (part 4).

Inducement to use narcotic drugs or psychotropic substances (article 299 of the criminal code).

The object of a criminal offense is public relations that regulate the protection of public health.

The objective side consists in inducing (involving) the use of narcotic drugs or psychotropic substances – any deliberate actions aimed at arousing the desire of other persons to use them (persuasion, suggestions, giving advice, misleading, deception, threats, etc.)<sup>1</sup>. The

composition of the structure is formal, the act will be considered completed from the beginning of the commission of actions to arouse the desire of another person to consume narcotic drugs or psychotropic substances.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by guilt in the form of direct intent. The perpetrator is aware that he incites another person to use narcotic drugs or psychotropic substances, and wants to do so.

Qualifying and especially qualifying signs provide for the commission of a crime:

- a) by a group of persons by prior agreement;
- b) repeatedly; (part 2); c
- ) in relation to a known minor or two persons or more;
- d) with the use of violence or the threat of its use;
- e) a criminal group (Part 3);
- f) if they caused the death of the victim or other serious consequences (Part 4).

Illegal cultivation of prohibited plants containing narcotic substances

(Article 300 of the Criminal Code of the Republic of Kazakhstan).

The object of a criminal offense is public relations that regulate the protection of public health.

The objective side of the criminal offense is the sowing and cultivation, as well as the cultivation of plants, such as opium poppy, narcotic cannabis.

According to paragraph 17 of the above-mentioned regulatory decree, the sowing of prohibited plants containing narcotic substances should be understood as sowing seeds or planting seedlings of the plants listed in the List without proper permission on any land plots, and the cultivation – care of crops and seedlings in order to bring them to the stage of maturation. Cultivation – selection of narcotic plants carried out without proper permission and control, i.e. actions aimed at developing new varieties of them, as well as improving the process of their cultivation.<sup>1</sup>

The composition of the structure is formal, the crime is considered completed from the moment of sowing and caring for crops containing a narcotic component.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The culprit is aware that he is sowing and growing plants containing drugs or their components, and wishes to do so.

Aggravating circumstances contained in paragraph 1 through 3 of part 2 of article 300

Note 2 to art. 296 of the criminal code provides that a person who voluntarily surrendered narcotic drugs, psychotropic substances, their analogues, precursors, purchased for personal consumption or a person who voluntarily referred to a healthcare facility for medical assistance in connection with the use of narcotic drugs, their analogues for non-medical purposes, or actively contributing to the disclosure or suppression of crimes related to illicit trafficking in narcotic drugs, psychotropic substances, their analogues, precursors, exposure of individuals who have committed them, the detection of property obtained by criminal means, is exempt from criminal liability for this crime.

Theft or extortion of narcotic drugs or psychotropic substances (Article 298 of the Criminal Code of the Republic of Kazakhstan).

The object of a criminal offense is public relations that regulate the protection of public health.

The objective side of a criminal offense includes theft or extortion.

Theft refers to the illegal seizure of narcotic drugs and psychotropic substances from institutions, enterprises and organizations, from citizens, as well as the illegal collection of narcotic plants or their parts. Extortion involves the demand for the transfer of these substances or the right to them under the threat of using or damaging someone else's property, as well as under the threat of spreading information that disgraces the victim or his relatives, or other information that can cause significant harm to the rights or legitimate interests of the victim or his relatives.

The composition of a criminal offense is formal, the crime is considered completed from the moment of possession of narcotic drugs or psychotropic substances.

The subject of a criminal offense is a natural, sane person who has reached the age of fourteen.

The subjective side is characterized by direct intent. The perpetrator is aware that he is stealing or extorting narcotic drugs or psychotropic substances, and wants to do so.

Qualifying and especially qualifying signs provide for the commission of an act:

- 1) by a group of persons by prior agreement;
- 2) repeatedly;
- 3) by a person using his official position;
- 4) with the use of violence that is not dangerous to life or health, or with the threat of such violence (part 2);
- 5) by a criminal group;
- 5) in relation to narcotic drugs, psychotropic substances and their analogues on a large scale;
- 6) the use of violence dangerous for life or health, or with threat of application of such violence (part 3)
- 7) in respect of narcotic drugs, psychotropic substances, their analogues in especially large size (part 4).

Inducement to use narcotic drugs or psychotropic substances (article 299 of the criminal code).

The object of a criminal offense is public relations that regulate the protection of public health.

The objective side consists in inducing (involving) the use of narcotic drugs or psychotropic substances – any deliberate actions aimed at arousing the desire of other persons to use them (persuasion, suggestions, giving advice, misleading, deception, threats, etc.)<sup>1</sup>. The

composition of the structure is formal, the act will be considered completed from the beginning of the commission of actions to arouse the desire of another person to consume narcotic drugs or psychotropic substances.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by guilt in the form of direct intent. The perpetrator is aware that he incites another person to use narcotic drugs or psychotropic substances, and wants to do so.

Qualifying and especially qualifying signs provide for the commission of a crime:

- a) by a group of persons by prior agreement;
- b) repeatedly; (part 2); c
- ) in relation to a known minor or two persons or more;

- d) with the use of violence or the threat of its use;
- e) a criminal group (Part 3);
- f) if they caused the death of the victim or other serious consequences (Part 4).

Illegal cultivation of prohibited plants containing narcotic substances

(Article 300 of the Criminal Code of the Republic of Kazakhstan).

The object of a criminal offense is public relations that regulate the protection of public health.

The objective side of the criminal offense consists in the sowing and cultivation, as well as in the cultivation of plants, such as opium poppy, drug-containing cannabis.

According to paragraph 17 of the above-mentioned regulatory decree, the sowing of prohibited plants containing narcotic substances should be understood as sowing seeds or planting seedlings of the plants listed in the List without proper permission on any land plots, and the cultivation – care of crops and seedlings in order to bring them to the stage of maturation. Cultivation – selection of narcotic plants carried out without proper permission and control, i.e. actions aimed at developing new varieties of them, as well as improving the process of their cultivation.<sup>1</sup>

The composition of the structure is formal, the crime is considered completed from the moment of sowing and caring for crops containing a narcotic component.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The culprit is aware that he is sowing and growing plants containing drugs or their components, and wishes to do so.

Aggravating circumstances contained in paragraph 1 through 3 of part 2 of article 300

The Criminal Code of the Republic of Kazakhstan, includes the commission of a crime:

- a) by prior agreement by a group of persons;
- b) repeatedly;
- c) on a large scale.

Illegal trafficking of toxic substances, as well as substances, tools or equipment used for the manufacture or processing of narcotic drugs, psychotropic or toxic substances (Article 301 of the Criminal Code of the Republic of Kazakhstan)

The object of a criminal offense is public relations that ensure the protection of public health.

The objective party consists in actions for the illegal manufacture, processing, acquisition, storage, transportation or shipment for the purpose of sale, as well as in the sale of toxic substances that are not narcotic drugs or psychotropic substances, or equipment for their manufacture or processing.

In accordance with paragraph 2, paragraph 1, of the Sanitary and Epidemiological Rules and norms "Sanitary and epidemiological requirements for the use of toxic substances (poisons)", approved by Order of the Ministry of Health of the Republic of Kazakhstan No. 232 of May 13, 2005, toxic substances (poisons) are chemical, biological compounds with high biological activity that can cause pathological changes when they enter the body in small doses and concentrations.<sup>1</sup>

The composition of a criminal offense is formal, it is considered completed from the moment of committing any of the actions listed in the disposition of Part 1 or Part 2 of Article 301 of the Criminal Code of the Republic of Kazakhstan.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The guilty person is aware that he is illegally trafficking in toxic substances, and wants to do so.

Concealment of information about circumstances that create a danger to the life or health of people (Article 305 of the Criminal Code of the Republic of Kazakhstan).

The object of a criminal offense is public relations that ensure the protection of public health. This article provides for criminal liability for failure to communicate such information to the public.

The objective side consists in not reporting or concealing (falsifying) information about circumstances (disasters, natural or man-made accidents, contamination of the area, etc.consequences) that pose a threat to the life or health of the population.

The composition of the criminal offense is formal.

Subject of a special criminal offense: an official or other person who is obliged to bring information about life-or health-threatening circumstances to the public and the bodies authorized to take measures to eliminate such circumstances.

The subjective side is characterized by direct intent. The guilty person is aware of the public danger of his actions, foresees the possibility or inevitability of the occurrence of socially dangerous consequences and wants them to occur.

Qualifying signs of a criminal offense (Part 2): causing harm to human health or other serious consequences.

Release or sale of goods, performance of works or provision of services that do not meet the safety requirements

(Article 306 of the Criminal Code of the Republic of Kazakhstan).

This provision criminalizes the production, storage or transportation for the purpose of sale or marketing of goods and products, fulfillment of works or services not meeting requirements of safety of life or health, and for the wrongful issuance of an official document certifying the conformity of goods, works or services to the same security requirements.

The object of a criminal offense is public relations that protect the life and health of the population.

The objective side is formed by any of the following actions: a) the issue or b) sale of goods; C) work d) the provision of services that do not meet the requirements of safety of life or health of consumers d) illegal results, or an official document certifying the conformity of goods, works, services to the requirements of safety of life or health of consumers.

Output – acts related to the production, manufacture, development, creation and others in relation to goods and products entering the consumer market. Such goods and products, works and services must violate the requirements of safety for life or health.

Sale – actions related to the sale of goods.

The issuance of official documents involves the transfer of the relevant authorities, institutions or organizations to the consumer of a license, warranty card or other documents certifying the safety of goods, products, work, services.

The composition of the structure is material, the act will be completed from the moment of the occurrence of negligent harm to health. It is necessary to establish a direct causal relationship

between the committed act and the socially dangerous consequence that has occurred in the form of a violation of the anatomical integrity of a person.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side of a criminal offense is characterized by a deliberate form of guilt. The negligent form of guilt may take place in relation to the consequences in the cases provided for in paragraph 2 of Part 2, and Part 3 of Article 306 of the Criminal Code of the Republic of Kazakhstan.

Qualifying signs (Part 2) include the commission of an act:

- a) in relation to goods, works or services intended for minors;
- b) negligently causing harm to the health of two or more persons;

Especially qualifying signs (Part 3) include acts that caused the death of a person by negligence.

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## **12 Lecture. Environmental criminal offenses**

### **1. General characteristics of environmental criminal offenses.**

### **2. Types of transport criminal offenses.**

### **3.Specialized environmental criminal offences**

#### **Keyords: criminal, environmental, offenses, object, subject.**

1.The concept of "environmental criminal offense (crime)" is not given in the criminal legislation before or today. It is also absent in the laws of the Republic of Kazakhstan of July 9, 2004 N 593 "On the protection, reproduction and use of wildlife", the Environmental Code of the Republic of Kazakhstan of January 9, 2007 No. 212-III, the Water Code of the Republic of Kazakhstan of July 9, 2003 N481-II, the Land Code of June 20, 2003 N442-II.

Environmental criminal offenses can be defined as socially dangerous acts that infringe on the environmental order established in the Republic of Kazakhstan, the environmental safety of society and cause (or may cause) harm to the environment and human health. This is fairly addressed in the literature<sup>1</sup>. Environmental law and order presupposes such relations established by normative acts that allow us to preserve the natural environment and the safety of life that is favorable for humans and other living beings. Environmental safety is such conditions that determine the favorable life, preservation and development of nature and society in their mutual connection.Environmental criminal offenses are most closely related to encroachments on the person, the sphere of economic activity, as well as the activities of economic entities. This dependence in criminal law is twofold. First, environmental criminal offenses that cause damage to the plant and animal world, thereby are dangerous to humans (life, health, normal development, etc.). Secondly, they have a significant impact on the economy, diverting,

especially in extreme situations, huge funds for the restoration of the natural environment. In this sense, the distinction between criminal offenses against the person, property, and other criminal offenses in the field of economics, and environmental criminal offenses is important for proper qualification.

The specific object of environmental criminal offenses is relations on the rational use of natural resources, the preservation of a qualitatively favorable natural environment for humans and other living creatures, and ensuring the ecological safety of the population<sup>1</sup>.

On the objective side, they are expressed in actions or inaction in violation of the established rules of environmental protection, handling of environmentally hazardous substances, biological agents or toxins, etc. The dispositions of the norms in most compositions are blank, they refer to the rules established for working in certain conditions or with substances dangerous to the natural environment.

Many environmental criminal offenses have a material composition, involving the establishment of not only a specific violation of the rules, but also the occurrence of socially dangerous consequences and a causal relationship between them (Articles 324, 327 of the Criminal Code of the Republic of Kazakhstan, etc.). Some environmental crimes are structurally formal compositions and involve only the establishment of the fact of the act regardless of the consequences (Article 326 of the Criminal Code of the Republic of Kazakhstan).

The subjects of this group of acts are individuals, sane persons who have reached the age of sixteen. A number of compositions provide for a special subject, for example, a person who makes the design, placement, construction of objects (Article 324 of the Criminal Code of the Republic of Kazakhstan). The

subjective side of many of them is characterized by intentional violation of the established rules and intentional or careless guilt in relation to the consequences that have occurred or may occur socially dangerous consequences.

Based on the immediate object, all environmental criminal offenses can be subdivided:

- a) for environmental criminal offenses of a general nature;
- b) for special environmental criminal offenses<sup>2</sup>.

Criminal offenses of a general nature encroach on the natural environment as a whole, special environmental crimes – on the components or components of the natural environment (air, water, land, etc.).<sup>3</sup> These may include violations of the following rules: environmental protection during work (Article 324), handling of environmentally potentially dangerous chemical, radioactive and biological substances (Article 325), safety in handling microbiological or other biological agents or toxins (Article 326).

Special environmental criminal offenses in accordance with the Criminal Code of the Republic of Kazakhstan include: violation of veterinary rules and rules established for the control of plant diseases and pests (Article 327), pollution, clogging and depletion of water (Article 328), atmospheric pollution (Article 329), marine pollution (Article 330), violation of the legislation of the Republic of Kazakhstan on the continental shelf and on the exclusive economic zone of the Republic of Kazakhstan (Article 331), land damage (Article 332), violation of the rules for the protection and use of subsurface resources (Article 332, 333), illegal extraction of fish resources and other aquatic animals and plants (Article 335), illegal hunting (Article 337), violation of the rules for the protection of wildlife (Article 338), Illegal handling of rare and endangered species of animals and plants (Article 339), illegal cutting of trees and shrubs (Article 340), destruction or damage to forests (Article 341), violation of the regime of specially protected natural territories and natural objects (Article 342), failure to take measures to eliminate the consequences of environmental pollution (Article 343).

2. Violation of environmental requirements in the production and use of environmentally potentially dangerous chemical, radioactive and biological substances (Article 325 of the Criminal Code of the Republic of Kazakhstan). The direct object of a criminal offense is the relationship of environmental safety associated with harmful effects on humans or the natural

environment. The objective side is expressed in the following forms: a) production; b) transportation; c) storage; d) disposal; e) use or other handling of environmentally potentially hazardous chemical, radioactive, biological substances and waste in violation of the established rules, if these actions created a threat of causing significant harm to human health or the environment. In this case, criminal liability occurs if these acts have created a threat of causing significant harm to human health or the environment. In accordance with paragraph 21 of the Resolution of the Supreme Court of the Republic of Kazakhstan dated June 18, 2004 No. 1 "On the application by courts of Legislation on liability for certain environmental crimes", under the threat of causing significant harm to human health or the environment (Part 1 of Article 325, Part 1 of Article 326) it should be understood that there is a real danger of causing harm to human health or the environment, or the occurrence of such a situation or circumstances that could lead to the occurrence of harmful consequences if they were not prevented in time by the measures taken or other circumstances that do not depend on the will of the culprit.<sup>1</sup> When analyzing the signs of this crime, it is necessary to follow the norms of Chapter 40 of the Environmental Code of the Republic of Kazakhstan. The composition of the structure is formal, or rather truncated, or you can still call the composition of the danger. The subject of a criminal offense is a natural, sane person who has reached the age of sixteen and has the characteristics of a special subject – a person whose duties include compliance with the rules for handling environmentally hazardous substances and waste. The subjective side assumes a deliberate form of guilt (more often indirect intent). The guilty person is aware that he violates the rules for handling environmentally hazardous substances and waste, foresees the possibility of socially dangerous consequences, does not want to, but consciously allows these consequences or treats them indifferently. Part 2 of article 325 of the criminal code provides for liability for violation of the rules for handling hazardous substances and waste, resulting in pollution, poisoning, contamination of the environment, harm to human health or the mass death of animals, as well as committed in the zone of ecological disaster, or in the area of environmental emergency. An ecological disaster zone should be understood as a disastrous complex impact on the plant and animal world, when all living things in a certain territory are threatened with death. An environmental emergency zone means a destructive impact on individual parts (spheres) of the natural environment. Part 3 of Article 325 of the Criminal Code of the Republic of Kazakhstan provides for liability for acts that caused the death of a person or mass diseases of people by negligence. These compositions are material and require the establishment of these socially dangerous consequences. The subjective side of a qualified and specially qualified team involves a careless form of guilt (frivolity or negligence). The perpetrator foresees the possibility of socially dangerous consequences of his actions, but without sufficient grounds confidently expects to prevent these effects (levity) is either not foresee the possibility of such consequences, but with the necessary care and prudence should have and could have foreseen these consequences (negligence). Violation of safety rules when handling microbiological or other biological agents or toxins (Article 326 of the Criminal Code of the Republic of Kazakhstan). The direct object of the criminal offense is the relations regulating environmental safety. The objective side is expressed in an act or omission that violates the safety rules when handling microbiological or other biological agents or toxins during: storage, destruction or burial, illegal import into the Republic of Kazakhstan for processing, storage or burial. Criminal liability occurs if a violation of safety rules has caused harm to human health, the spread of epidemics or epizootics, or other serious consequences. An epidemic is a mass spread of infectious diseases of a person in any locality, region, or state that significantly exceeds the usual level of morbidity. Epizootic – a widespread contagious disease of animals, significantly exceeding the usual level of morbidity in a given area. The composition of the structure is formal or truncated. The act is considered from the moment of the threat of causing significant harm to human health or the environment. The subject of a criminal offense is a natural, sane person who has reached the age of sixteen, who has the characteristics of a special subject – a person who is allowed to work with biological agents or toxins.

The subjective side can be characterized by both intentional and negligent forms of guilt (Articles 20, 21 of the Criminal Code of the Republic of Kazakhstan). As a qualified staff under part 2 of article 326 of the criminal code provides for actions that lead contamination, poisoning or contamination of the environment, causing injury or massive loss of animal or vegetable life, as well as committed in the territory with an extremely ecological situation, and in part 3 of this article provides for liability for the acts negligently caused mass illness or death of a person. Acts under parts 2 and 3 of Article 236 of the Criminal Code are material.

### §3. Specialized environmental criminal offences

Violation of veterinary regulations and rules established for the control of plant diseases and pests

(Article 327 of the Criminal Code of the Republic of Kazakhstan).

The direct object of a criminal offense is the relations regulating the protection of the animal and plant world. Criminal liability is imposed for two criminal offenses that cause damage to animals and plants. The objective side of the criminal offense under Part 1 of Article 327 of the Criminal Code of the Republic of Kazakhstan is a violation of veterinary rules that entailed epizootic or other serious consequences. Violation of the rules can be committed both by action (sale of sick livestock, import of sick animals) and by inaction (failure to take measures to destroy sick animals, sale of products infected with infectious diseases). The objective side of the violation of the rules established for the control of plant diseases and pests (Part 2) is expressed both in the commission of actions prohibited by the rules, and in inaction. The composition according to the construction material, and its binding characteristics are socially dangerous consequences in the form of the offensive by the negligence of epizootic diseases or other grave consequences, such as infection human (h 1) or mass distribution of plant diseases, infected seed (part 2). The subject of a criminal offense – a natural, sane person who has reached the age of sixteen, with signs of a special subject – the person who is required by the nature of the activities to implement or ensure compliance with the rules of animal health and crop production.

### Specialized environmental criminal offences

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The subjective side assumes both indirect intent, when a person is aware of the illegality of his actions, foresees the possibility of socially dangerous consequences and consciously allows them

to occur, or treats it indifferently, and a careless form of guilt. As a qualifying feature (Part 2), a violation of the rules established for the control of plant diseases and pests that have entailed serious consequences is provided. Such consequences may include the mass spread of plant diseases over large areas or the death of a large number of agricultural crops, mass contamination of agricultural land. Pollution, clogging and depletion of water (Article 328 of the Criminal Code of the Republic of Kazakhstan). The direct object of the criminal offense is the relations regulating the protection of water resources and the associated ecological system. This article establishes liability for various forms of impact on waters that lead to changes in their natural properties, if these acts have caused significant harm to the animal or plant world, fish stocks, forestry or agriculture. The objective side is expressed in pollution, clogging, depletion of surface or underground water, sources of drinking water supply, or in other changes in their natural properties. When establishing the signs of an objective party, you should refer to the provisions of Chapter 33 of the Environmental Code of the Republic of Kazakhstan. Water pollution should be understood as the saturation of surface or underground water supply sources with pollutants that change the chemical or other natural qualities of water, the appearance of impurities that exceed the limits of the maximum permissible concentration of various (primarily harmful to the living world) substances. The depletion of water means a steady reduction of inventory and deterioration in the quality of surface and groundwater (article 1 of the Water code of the RK, article 1 of the Environmental code of Kazakhstan). By other changes in natural properties, we mean other changes in their physical, chemical, or biological properties. The composition of the structure is material, and therefore a prerequisite for the correct qualification will be the establishment of causing significant harm to the animal and plant world, fish stocks, forestry or agriculture. Such harm can be expressed in loss of animal and plant species, breeding in force on land pollution of crop rotation, etc., and also a causal link between the act and the consequences. The subject of a criminal offense is a natural, sane person who has reached the age of sixteen. The subjective side of the acts provided for in Part 1 and Part 2 of Article 328 of the Criminal Code of the Republic of Kazakhstan is characterized by intent and carelessness, and Part 3-only carelessness. The qualified composition (Part 2) provides for liability for causing harm to human health or mass death of animals, as well as committing water pollution on the territory of a reserve, reserve, specially protected areas or in an environmental disaster zone or in an environmental emergency zone, when the additional adverse impact indicated in this article increases the danger to the animal and plant world. Regarding the indication of an environmental emergency zone, please refer to section 6 of the Environmental Code of the Republic of Kazakhstan. As a particularly qualified circumstance (Part 3), liability is provided for such water pollution that caused the death of a person through negligence.

Air pollution (Article 329 of the Criminal Code of the Republic of Kazakhstan).

The direct object of the criminal offense is the relationship that regulates the protection and safe condition of the air basin. This article provides for liability for violation of the rules for the release of polluted substances into the atmosphere or violation of the operation of installations, structures and other objects, if these acts caused major damage to the environment or harm to human health. The objective party consists in violation of the rules for the release of pollutants into the atmosphere or violation of the rules for the operation of installations, structures and other objects, if these acts have caused pollution or other changes in the natural properties of the air. The composition of the structure is material, so it is necessary to establish the occurrence as a result of the act of socially dangerous consequences in the form of major damage to the environment or harm to human health, as well as the causal relationship of the act and the consequences that have occurred. The subject of a criminal offense – a natural, sane person who has reached the age of sixteen, with signs of a special subject – the person obliged by the nature of the activities to implement or ensure compliance with the rules of the atmosphere. The subjective side is characterized by a deliberate or careless form of guilt. The qualified

composition (Part 2) provides for causing particularly large damage to the environment, or the death of a person, or a mass disease of people.

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## **13 Lecture Corruption and other criminal offenses against the interests of public service and public administration.**

### **1. General characteristics of corruption and other criminal offenses against the interests of the public service and public administration.**

### **2. Types of corruption and other criminal offenses against the interests of the public service and public administration.**

**Keyords: criminal, transport, corruption, object, subject.**

Chapter 15 "Corruption and other criminal offenses against the interests of the public service and public administration" contains a system of interrelated structures aimed at pre-empting the destabilization of the state apparatus.

At the same time, as noted in the normative resolution of the Supreme Court of the Republic of Kazakhstan dated 27.11. 2015 No. 8 "On the practice of considering certain corruption crimes", the Republic of Kazakhstan has ratified the UN Convention against Corruption and, based on the norms of international law, expressed its intention to develop and apply effective legal measures aimed at preventing and combating corruption. 1

The new Criminal Code and the Code of Criminal Procedure have implemented principled approaches to combating corruption. Thus, persons who have committed corruption crimes will not be subject to the statute of limitations, a ban on probation has been established, a lifetime ban on the right to hold positions in the public service has been introduced, etc. The right to pre-trial investigation of corruption criminal offenses is directly assigned to the investigators of the anti-corruption service, etc.

Finally, fundamental changes have taken place in the field of legislation on public service: new laws on public service in the Republic of Kazakhstan, on combating corruption, on access to information, and on public councils were adopted in 2015. Earlier in 2013, was adopted the Law "On public service", in 2012, the Law "On military service and status of servicemen" in 2012, the Law of the RK "On special state bodies" in 2011 Law of the Republic of Kazakhstan "On Law Enforcement Service", in 2011 The Law of the Republic of Kazakhstan "On State Control and Supervision in the Republic of Kazakhstan" and many other laws, where systematic and targeted measures against abuse have been consolidated, the effective implementation of which is the main condition for achieving practical results in the fight against corruption

They differ, first of all, by the peculiarity of the object of criminal encroachment and the specifics of its subject.

The object of this category of criminal offenses is the activity of state bodies, state and municipal institutions, the Armed Forces of the Republic of Kazakhstan and military formations of the Republic of Kazakhstan provided for by the relevant legal acts. This activity is based on public relations that determine the goals, objectives, and content of the public service. These public (legal) relations presuppose the lawful, fair, and effective exercise of public service. Its representatives must act in accordance with the interests of the individual, society, and the state. It is a significant violation of these interests that determines the public danger of the crimes under consideration.

The direct object of this category of criminal offenses is the rights and legitimate interests of citizens or organizations, or the legally protected interests of society or the state.

The list of corruption crimes criminalized in Kazakhstan is exhaustive and is not subject to widespread interpretation.<sup>1</sup> This list is contained in paragraph 29 of Article 3 of the Criminal Code of the Republic of Kazakhstan. A distinctive feature of these criminal offenses is that by encroaching on the normal functioning of these bodies and institutions, this crime undermines not only their authority in society, but also the confidence of citizens in the protection of their rights and legitimate interests.

The objective side of the acts under consideration is connected with the use of the official's powers granted to him against the interests of the service. A number of articles considered the head directly impose consequences in the form of a significant violation of the rights and legitimate interests of citizens or organizations or legally protected interests of society or the state (article 361-363, 370, 371 of the criminal code). Other elements of criminal offense under consideration by Chapter 15 of the RK criminal code implicitly also rely on the availability of consequences in the form of significant harm, for example art. 364 of the criminal code "Illegal participation in entrepreneurial activities" indicates the effects of providing illegal benefits, protection, etc.; article 369 of the criminal code "forgery" indicates inclusion in the document of false information or other misrepresentation of their actual content. Thus, the objective side of the official criminal offences implies the existence of such essential characteristics as the Commission specified in the disposition of the relevant articles of the acts contrary to the interests of the service, i.e. which are in conflict not only with the tasks, but also with the powers that are directly assigned to the official; the occurrence of certain consequences of the crime and the presence of a causal relationship between the illegal actions (inaction) of the official and the consequences that have occurred.

Chapter 15 of the Criminal Code of the Republic of Kazakhstan is generally characterized by the material content of its compositions. At the same time, in each specific case, it is supposed to establish which rights and duties of a civil servant are used contrary to the interests of the service, by what act and in what order the employee is endowed with them.

The ways and forms of committing a particular official crime may be different, but they are united by the fact that they are in conflict with the interests of the service.

The subjective side of the acts under consideration is characterized by the presence of intent (direct or indirect) or the presence of two forms of guilt: intentional in relation to the act and negligent in relation to the criminal consequences.

## 2. Abuse of official powers

(Article 361 of the Criminal Code of the Republic of Kazakhstan).

The composition in question establishes responsibility for the use by a person authorized to perform state functions, or a person equated to it, of their official powers:

a) contrary to the interests of the service;

- b) the purpose of obtaining benefits and advantages for yourself or other persons or organizations;
- c) that have caused significant harm to the rights and legitimate interests of citizens or organizations, or to the interests of the society or the State protected by law.

Along with the main squad (part 1 of article 361 of the criminal code) in paragraph 2, 3, 4 of article 361 of the criminal code describes skilled compositions on the basis of a special subject in the form of an official person, person, holding responsible state position, or serious consequences.

The objective side of the act can be carried out both through action and through inaction, but always with the use of official (official) powers. The use by a person of his authority or the authority of the position, the connections that he has acquired in connection with his status, to obtain any benefits, advantages, benefits does not fall under the characteristics of the composition under consideration. The law directly indicates that the official actions (inaction) of the guilty person are carried out to the detriment of the interests of the service (literally contrary to these interests). This is a violation of the goals and objectives for which the perpetrator is entitled. Moreover, we are not talking about abstract value judgments about the violation, but about specific instructions on what kind of legally binding regulations the official violated. Accordingly, it is necessary to attach to the case the normative acts that characterize the functional duties of the official and the scope of his powers to implement them. As recorded in one of the criminal cases: ". . . when deciding on the presence or absence of the elements of this crime in the actions of an official, it is necessary to establish the scope and nature of his official rights and obligations, enshrined in legislative or other normative legal acts, in charters, regulations, etc. " 1. 1The lack of investigation of

the circumstances of the case led to an unjustified conviction for abuse of official powers (extraction): resolution 2up-104-13//Bulletin of the Supreme Court of the Republic of Kazakhstan. -2013. - No. 11. - pp. 34-37.

The elements of a criminal offense, under article 361 of the criminal code, has the following features characterizing the objective and subjective side: the guilty person using his official powers against the interests of the service; the crime out of mercenary or other personal interest; the onset of specific consequences of a crime is a significant violation of the rights and legitimate interests of citizens or organizations or legally protected interests of society or the state; the existence of a causal link between the action or inaction of officials and said consequences.

Responsibility for the abuse of official powers may occur if the official has a selfish or other personal interest.

Forms and methods of abuse of official powers can be varied: the concealment committed by a public authority, local government or by the state education theft; the publication contrary to the law or other normative legal act and orders, resulting in referred to in article 361 of the criminal code of the consequences, etc.

In accordance with paragraph 5 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated November 27, 2015 "On the practice of considering certain corruption crimes", the receipt of property benefits and benefits should be understood as the acceptance by a person related to the subject of the crime, not only for himself, but also for other persons or organizations provided free of charge, subject to payment for all kinds of services, or illegal use of benefits, construction, repair work, provision of sanatorium or tourist vouchers, travel tickets, loans or loans on preferential terms, etc.1. Investigative and judicial practice is often faced with cases of abuse of office on the basis of a misunderstanding of the interests of the service. For example, the head of an institution accepts the wife of a major boss for the position

of legal adviser, without requiring her to perform functional duties or even show up for work. At the same time, the official expects to establish a trusting relationship with this chief in the expectation that he will assist in allocating funds for the institution, premises, etc. Such cases do not exclude liability.

A mandatory condition for liability for abuse of official powers is causing harm in the form of violation of someone's rights and legitimate (protected by law) interests. At the same time, the damage must be significant. To determine the damage caused, the investigative and judicial practice has developed some guidelines: the number of victims, the consequences of their normal life, the nature and amount of damage, including lost profits, caused to individuals or legal entities, the degree of diminution of the authority of the body, institution or hindering its normal activities as a result of illegal actions, etc. are taken into account.

Qualified composition (Part 4), which provides for serious consequences, means causing serious or moderate harm to health as a result of abuse of official authority, suicide of the victim or an attempt on him, material damage on a particularly large scale, disruption for a long time of the normal work of the body, institution, concealment of serious or particularly serious crimes, provoking mass riots, blocking highways, etc. For example, serious harm to health may be caused as a result of illegal instructions from the head of the health authority not to enter a valid diagnosis in the medical documentation for persons affected by radioactive contamination of the area. Damage on a particularly large scale may be caused to an enterprise as a result of knowingly illegal accrual of tax payments and fines. Provoking mass demonstrations of the population can be the result of deliberately illegal actions to dispose of the salary fund or pension payments, etc.

The law of the RK № 400-V of November 13, 2015 qualified personnel specified in part 4 of article 361 of the criminal code RK added the following circumstances: abuse of power, resulting in serious consequences: a) in the interests of a criminal group; b) in the performance of official duties established by the Law "On Amnesty of citizens of the Republic of Kazakhstan, repatriates and persons who have a residence permit in the Republic of Kazakhstan, in connection with the legalization of property", with the use of information obtained in the process of legalization of property.

The subjective side of a criminal offense is characterized by direct or indirect intent or two forms of guilt (in the case of causing serious consequences by negligence – Article 22 of the Criminal Code of the Republic of Kazakhstan). A special feature of the design of Article 307 of the Criminal Code of the Republic of Kazakhstan is the inclusion of a motif in the number of signs of the composition. By self-serving motives, the law means the desire to obtain material benefits, such as a bonus, an apartment, in the absence of legal grounds, etc.

The subject of the act in question is a special one: an official in the sense of a note to Article 361 of the Criminal Code of the Republic of Kazakhstan. In the case of a person holding a public office, reference is made to the law under which this status was acquired. Permanent, temporary or special assignment of the functions of a representative of the authorities, organizational and administrative, administrative and economic, must be proved by reference to the orders of appointment and regulations on functional duties. At the same time, a person is considered an official from the moment of his actual admission by the chief, who has the right to hire (appoint) to perform the relevant duties, even if the order was delayed for some reason.

Abuse of power or official authority

(Article 362 of the Criminal Code of the Republic of Kazakhstan).

This composition provides for criminal protection, responsibility and punishment of officials for actions that clearly go beyond their powers, in the presence of the same consequences that are provided for in Article 362 of the Criminal Code of the Republic of Kazakhstan. The peculiarity

of the construction of this article is that, along with the qualified compositions provided for in art. 362 of the criminal code (state the position of the perpetrator, in serious consequences), article stored the same upper limits of sanctions primary and skilled rosters, as well as provide additional aggravating circumstances in the form of violence or threat of use or use of weapons or special means.

Objective aspect considered a criminal offence is committed by a person authorized to perform state functions or equal to face action in the service, which clearly went beyond its powers, resulted in substantial harm to the rights and legitimate interests of citizens or organizations or legally protected interests of society or the state, and these actions are causally related to consequences. The composition is material, and the actions of the subject of the criminal offense significantly violated the rights and legitimate interests of citizens or organizations, as well as the legally protected interests of society and the state. The infliction of any consequence is sufficient to declare the crime over.

The legislator points to a clear, i.e. obvious, obviously for the guilty person, going beyond the limits of authority.

The subjective side of the criminal offense is the same as provided for in Article 362 of the Criminal Code of the Republic of Kazakhstan. However, the motive is not a sign of the composition of the increase in powers. This does not mean that it is not necessary to establish it, but it should be considered in the aspect of individualization of responsibility and punishment.

Qualifying circumstances (Part 2) provides for:

Part 3 of Article 362 of the Criminal Code of the Republic of Kazakhstan states that the commission of an act committed by a person holding a responsible public position.

Tsch.4 of article 362 of the criminal code act, provided by 1, 2, 3 of article 362 of the criminal code, which entailed grave consequences or committed: a) by using force or threat of its use; b) the use of weapons or special средств; c) in order to extract benefits for themselves or other persons or organizations or harm to other persons or organizations; d) when performing official duties, which established the legislative acts of Kazakhstan on Amnesty in connection with the legalization of property.

At the same time, the perpetrator must be aware of the implementation of physical or mental violence in any form, including threats.

Under the note "weapons or special means" (their concept is discussed in the chapter on criminal offenses against the person and against public safety), we mean both the use of the combat properties of weapons or special means, and the real threat of this use, for example, waving a pistol out of its holster in front of the victim. The infliction of grave consequences is established by the court and is a matter of fact.

The subject of the act is a special one, covered by the general concept of an official. Examples: Senior operative of the criminal police Department of the Department of Internal Affairs of the Aktobe region K. illegally detained 8 citizens: M., T., brothers X, D., Zh., I. on suspicion of killing two police officers. In the office of the Sazda police department of the Aktobe police department, Lieutenant Colonel K. using a gas mask, as well as inflicting numerous blows with his hands and feet on various parts of the body, together with unidentified police officers, caused minor harm to the health of all the victims in the form of multiple abrasions, bruises to the head and body. As a result of the bullying and beating, A. and D. pleaded guilty and implicated their friends in the murder of two persons, although all of them were not involved in this crime. Moreover, M. and H. were arrested and illegally detained for a month. In addition, Lieutenant Colonel K. in the building of the Mugalzhaz district police department when interviewing

witness G. , used violence against her defense lawyer, lawyer B., striking her in the back with his fist.

For these actions, K. was sentenced by a court verdict of November 11, 2008 under p. p. "a, b" Part 4 of Article 308 of the Criminal Code to three years in prison.

Only with the third attempt sentence Eskeldy district court of Almaty region Y. was convicted under part 4 of article 308 of the criminal code to 3 years of imprisonment conditionally with the application of article 63 of the criminal code on probation for one year. As it was established during the last trial, the senior operative of the criminal police department of the Eskelda district police department, E., illegally detained the minor A. on suspicion of stealing a purse at the unregistered request of an unknown woman. In the premises of the ROVD E. in the absence of a legal representative and a lawyer, he interrogated the minor without drawing up any procedural documents, and then beat him, breaking his front tooth and breaking his lip. At the court hearing, Ye., without pleading guilty, categorically denied even the fact of A.'s detention, while there was irrefutable evidence in the case. When taken to the police department, the criminologist recorded the minor A. on a photograph, which clearly shows that the detainee has no injuries, and that he was actually taken to the Department of Internal Affairs. The forensic medical examination carried out confirmed the presence of the teenager's injuries sustained during his stay in the police station<sup>1</sup>.

1sud. gov. kz/rus/legislation/CATO1/79692 / 2015. 1applicable

to this point, see : The court's conclusions on the commission of a crime with the use of special means—handcuffs were found to be unfounded (extract): resolution 2up-151-13//Bulletin of the Supreme Court of the Republic of Kazakhstan. 2014. No. 1. pp. 61-63.

2IN order to properly understand the meaning of this provision, see The absence of aggravating circumstance "in order to extract benefits for themselves," the convict was the basis for the exclusion of charges in the fourth part of article 308 of the criminal code and retraining of its actions in the second part of article 308 of the criminal code (extract): Resolution No. 2up-79-14//Bulletin of the Supreme Court of the Republic of Kazakhstan. 2014. No. 7. - p. 19-21

1 See : Generalization of judicial practice on the issue "Application of certain norms of the Criminal Procedure Code of the Republic of Kazakhstan on ensuring the rights and freedoms of citizens in criminal proceedings" (inviolability of the person, private life, home; secret of correspondence, telephone conversations, postal, telegraph and other messages) / / Bulletin of the Supreme Court. -2010. - No. 4. - p. 58.

Illegal participation in entrepreneurial activity

(Article 364 of the Criminal Code of the Republic of Kazakhstan).

The direct object of criminal offenses is the legally protected interests of society or the State. The legislation on public service prohibits its combination with other paid activities, with the exception of scientific, teaching and creative activities. This prohibition, as well as the norm of the Criminal Code of the Republic of Kazakhstan that follows from it, carries out a double prevention, eliminating or limiting the possibility of abuse of official powers or their excess in the interests of business partners. Thus, the immediate object of the composition under consideration is the same as that of the previously considered acts of this chapter.

The objective side is expressed in the fact that, contrary to the prohibition established by law, a person authorized to perform state functions or a person equivalent to it:

- a) establishes an organization that carries out entrepreneurial activities;
- b) participates personally or through a proxy in the management of such an organization;

c) provides this organization with benefits and advantages or provides it with patronage in another form.

The disposition of this article does not specify the consequences of illegal actions of a person authorized to perform state functions or a person equated to it, but such consequences should be attributed as an additional direct object – undermining the authority of the body or institution that represents this person. The peculiarity of this composition of a criminal offense is that responsibility for it can occur only if the persons named in art. 364 of the Criminal Code of the Republic of Kazakhstan, the actions of the official were related to the provision of benefits and advantages to the specified organization or to patronage in another form.

The subjective side is characterized by direct intent: the official is aware of organizations related to the public service, and he deliberately violates them. The law does not single out the motive as an element of the subjective side of the act, but its establishment is necessary for the individualization of responsibility and punishment. These appear to be of the same reasons indicated in article 361 of the criminal code, since the norm is a special composition relative to the total composition of the abuse of power.

The subject of a criminal offense is a special one: a person authorized to perform state functions or a person equated to it, an official, a person holding a responsible state position. Liability is excluded if participation in business activities (for example, joining the management body of a concern or firm) is carried out in accordance with a legal order of a higher authority, for example, to participate in the management of a state-owned (local self-government body) block of shares. A civil servant may be brought to criminal responsibility for illegal participation in business activities only on the condition that at the time of the commission of this criminal offense, these employees were given the authority of an official. In the literature it is noted that in the period from 2013 was registered 6 offences, the liability for the Commission of which is provided by article 364 of the criminal code in 2014 and 5 in 2015 12 .

Obstruction of lawful business activity (Article 365 of the Criminal Code of the Republic of Kazakhstan)

Negligence (Article 371 of the Criminal Code of the Republic of Kazakhstan).

The immediate main object of a criminal offense is public relations that ensure the normal operation of state bodies or local self-government. An additional direct object is public relations that ensure the health of citizens, the safety of property and other legally protected rights and interests of society and the state.

The objective side of the act in question is expressed in the non-performance or improper performance by an official of his duties due to an unfair or negligent attitude to the service. A mandatory element of the objective side is the result of non-performance or improper performance of official duties in the form of a significant violation of someone's rights and legitimate (protected by law) interests or the interests of society or the state.

Article 371 of the Criminal Code of the Republic of Kazakhstan identifies qualified personnel associated with causing serious consequences by negligence (Part 2).

Negligence, like most of the other compositions, stipulated by Chapter 15 of the RK criminal code, requires reliably determining the responsibilities of officials with specific indication of what normative act and in what place of the act (section, paragraph) this obligation is recorded. The absence of a properly executed legal act on the scope of duties of an official excludes liability for negligence.

Improper performance of official duties involves non-compliance with all or part of the mandatory regulations governing the order and content of official activities in these specific

circumstances, as a result of which the interests of the case are significantly violated. The indication in the law of bad faith or negligence as the reasons (motives) for improper performance or non-performance of official duties means the need to prove the lack of due care and foresight in the performance of official activities in these specific circumstances, irresponsibility in relation to official duties, inattention, etc. The considered wording of the law, due to the exhaustive list of reasons for non-performance or improper performance of duties, excludes or, at least, casts doubt on the possibility of bringing to criminal responsibility a person who did not properly perform his duties due to inexperience and other circumstances indicating possible innocent harm (see : Article 23 of the Criminal Code of the Republic of Kazakhstan).

The elements of a criminal offense under article 371 of the criminal code, available only in case, when on the case, the causal link between the unlawful actions (inaction) of officials and of consequences. The absence of such a link excludes liability under Article 371 of the Criminal Code of the Republic of Kazakhstan.

The subjective side is characterized by careless guilt more often in the form of negligence or frivolity.

The subject of the act is a special one: an official.

The subject of the criminal offenses provided by Chapter 15 of the RK criminal code, may be: a) persons authorized to perform state functions are the officials, members of Parliament and maslikhats, judges and all government officials; b) equal to the persons authorized to perform state functions, the persons elected local governments, citizens registered as a candidate for the President of Kazakhstan, deputies of the Parliament and maslikhats, members of elective bodies of local self-government; employees permanently or temporarily working in local self-government bodies, whose remuneration is made from the state budget of the Republic of Kazakhstan; persons performing managerial functions in state organizations and organizations in whose authorized capital the state's share is more than 50%, including h, national managing holdings, national holdings, national companies, national development Institute, shareholder is the state, its subsidiaries, more than 50% of the voting shares (participation shares) which belongs to them, as well as a legal entity, more than 50% of the voting shares (participation shares) which belongs to the specified subsidiaries; employees of the National Bank and its agencies (section 28, article 3 of the criminal code).

This characteristic of the subjects of crimes under Chapter 13 of the criminal code, requires some explanation arising from the law of Republic of Kazakhstan dated November 23, 2015 No. 416-V ZRK "On civil service"<sup>1</sup>, and article 3 of the criminal code.

The main special subject of criminal offenses provided for in Chapter 15 of the Criminal Code of the Republic of Kazakhstan is an official. It is no accident that the acts under consideration are called not only corruption, but also official crimes.

Officials are persons who permanently, temporarily or under special authority perform the functions of a representative of the government or organizational and administrative or economic functions in state bodies, local self-government bodies, as well as in the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan. Thus, the concept of an official is narrower than the concept of a civil servant. In accordance with art. 1 of the Law "On civil service" public servant is a citizen of the Republic of Kazakhstan, who is in the manner prescribed by law paid from the Republican or local budgets, or funds from the National Bank of the Republic of Kazakhstan post of a government body and exercising authority in order to implement the tasks and functions of the state. Any official is thus a public servant, but not any such official can be considered an official. Employees who are not public officials responsible for crimes under Chapter 15 of the RK criminal code, only in the

case of a direct reference to it in the relevant compounds, such as article 363, 369 of the criminal code. Officials may be held liable under any article of the chapter under consideration. Of course, "just" employees can be accomplices (accomplices), but the perpetrators of crimes under art. 361, 362, 364, 366, 369-371 of the Criminal Code of the Republic of Kazakhstan, can only be officials, persons authorized to perform state functions, persons holding a responsible state position.

A representative of the government is a person who has administrative functions in relation to individuals and legal entities, regardless of their official subordination. For example, a police officer has the right to offer any violator to stop illegal actions, and in case of refusal to apply the measures provided for by law. Representatives of the authorities are, in particular, members of Parliament, maslikhats, members of the Government, judges, prosecutors, investigators, bailiffs, operational employees of law enforcement agencies, inspectors of regulatory bodies, etc.

Managerial functions as a sign of an official are associated with the management of the activities of a state body, institution, military unit or institution of divisions and services, etc. Management functions are also those for the disposal of state property. We are talking about the heads of economic and financial departments, services, dedicated bodies and institutions, which have just been mentioned.

Officials and other employees who are responsible for crimes under Chapter 15 of the Criminal Code of the Republic of Kazakhstan are only employees of state bodies, institutions, as well as troops and military formations. Persons working in commercial and non-commercial economic organizations and enterprises, including state, municipal or mixed forms of ownership, are liable in similar cases under Articles of Chapter 8 of the Criminal Code of the Republic of Kazakhstan.

In articles 361, 362, 366, 369, 370 of the Criminal Code of the Republic of Kazakhstan, in turn, the narrower concept of "persons holding a responsible public position" is distinguished in relation to officials.

In addition, the subject of this category of crime act of a person holding a responsible public office persons occupying positions established by the Constitution, constitutional and other laws of the RK for the direct exercise of state functions and powers of state bodies, as well as persons under the law of the RK on state service of the political office of public servants.

Paragraph 16 of Article 1 of the Law of the Republic of Kazakhstan "On Public Service" stipulates that a political civil servant is a civil servant whose appointment (election), release and activities are of a political-determining nature, who is responsible for the implementation of political goals and tasks.

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#### **14 Lecture Criminal offenses against the order of management**

## **1. General characteristics of criminal offenses against the order of management**

## **2. Types of criminal offenses against the order of management**

**Keywords: criminal, transport, management, object, subject.**

1. Criminal offenses against the order of government are socially dangerous acts that infringe on the proper functioning of the state apparatus and local self-government bodies and involve the commission of violent acts against officials or representatives of government bodies, hindering their activities, disobeying laws or other actions that may disrupt the normal work of state bodies, harm their authority, violate the rights and interests of citizens. The norms providing for liability for criminal offenses against the management order are included in Chapter 16 of the Criminal Code of the Republic of Kazakhstan.

The specific object of a criminal offense is the relations that regulate the order of state and local government. Given Blankenese dispositions necessary to carefully analyze the norms of a number of normative legal acts, such as the constitutional laws of RK dated July 20, 2000, No. 83-II "About the First President of the Republic of Kazakhstan – the Leader of the Nation"<sup>1</sup>, dated 16 October 1995 No. 2529 "On the Parliament of the Republic of Kazakhstan and status of its deputies"<sup>2</sup>, dated 29 December 1995 No. 2737 "About the constitutional Council of the Republic of Kazakhstan»<sup>3</sup>.

The direct object is the relationship of a specific type (area) of a criminal offense, which is encroached upon by a criminal offense. An additional immediate object may include the life, health, honor, and dignity of the individual.

In some formulations of criminal offences against public order specified as a mandatory feature the subject of criminal offences, such as border sign (article 396 of the criminal code), official documents (article 383 of the criminal code) or the victim, such as a law enforcement officer (article 378 of the criminal code).

The objective side of criminal offenses against the order of management consists in the majority of the compositions formulated as formal. In a number of compositions, the crime scene – the State Border of the Republic of Kazakhstan-is indicated as a mandatory feature.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen (a general subject), or in some cases a special subject – a person who is subject to conscription for military or alternative service.

The subjective side is characterized by intentional guilt (direct or indirect). The motive and purpose in some cases are mandatory (Articles 375-377, 384, 390 of the Criminal Code of the Republic of Kazakhstan).

According to the Criminal Code of the Republic of Kazakhstan, depending on the direct object of a criminal offense against the order of management, they can be divided into the following groups, namely encroaching:

- 1) on representatives of the authorities and management (Articles 373-382, 390 of the Criminal Code of the Republic of Kazakhstan);
  - 2) on the normal activity of the management sphere (Articles 383-389, 392-395, 397-406 of the Criminal Code of the Republic of Kazakhstan);
  - 3) encroaching on the sovereign rights and attributes of the Republic of Kazakhstan (Articles 372, 391, 396 of the Criminal Code of the Republic of Kazakhstan).
2. Encroachment on the honor and dignity of the President of the Republic of Kazakhstan and obstruction of his activities (Article 375 of the Criminal Code of the Republic of Kazakhstan).

The direct object of a criminal offense is the relations that regulate the activities of the head of State. An additional object is the honor and dignity of the head of state. The public danger of this criminal offense is that it violates the normal activities of the authorities and their authority, as well as the honor and dignity of the President of the Republic of Kazakhstan.

The objective side is expressed in a public insult to the President of the State in the performance of his official duties or in connection with them, or in other encroachment on honor and dignity. Insult is a humiliation of the honor and dignity of another person, expressed in an indecent form (Article 130 of the Criminal Code of the Republic of Kazakhstan). In relation to the composition under consideration, the concept of "insult" is supplemented by other features:

- a) the publicity of the insult;
- b) the specifics of the object of encroachment – the President of the country;
- c) with a special purpose or motive-the performance of official duties (Part 3).

The composition of a criminal offense is formal, and the act is considered completed from the moment of committing the actions specified in the disposition.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The perpetrator is aware that he publicly insults or commits other attacks on the honor and dignity of the President of the country in the performance of his official duties or in connection with their performance, and wishes to do so.

The qualifying feature (Part 2) involves the commission of a crime using the mass media or telecommunications networks.

The specially qualified composition (Part 3) consists in any influence on the President of the country or his close relatives in order to prevent him from performing his duties.

In relation to the aforementioned special rule is article 373 of the criminal code providing responsibility for similar attacks against the First President of Kazakhstan – Leader of the Nation.

The attack on the honor and dignity of the Parliament of the Republic of Kazakhstan and the obstruction of its activities (article 376 of the criminal code).

The direct object of a criminal offense is the relations that regulate the activities of deputies of the country's Parliament. An additional object is the honor and dignity of a deputy of the upper or lower house of the Parliament of the Republic of Kazakhstan. The public danger of this criminal offense is that it violates the normal activities of the legislative authorities – the Parliament of the Republic of Kazakhstan and their authority, as well as the honor and dignity of a representative of the government.

Signs of objective and subjective side of the main, well qualified and very skilled rosters, with the exception of differences in patients, similar to the signs referred to in article 375 of the criminal code.

In a separate clause – article 377 of the criminal code, the legislature responsible for the obstruction of the activities of the constitutional Council of the Republic of Kazakhstan.

The attack on the honor and dignity of the Parliament of the Republic of Kazakhstan and the obstruction of its activities (article 376 of the criminal code).

The direct object of a criminal offense is the relations that regulate the activities of deputies of the country's Parliament. An additional object is the honor and dignity of a deputy of the upper or lower house of the Parliament of the Republic of Kazakhstan. The public danger of this criminal offense is that it violates the normal activities of the legislative authorities – the Parliament of the Republic of Kazakhstan and their authority, as well as the honor and dignity of a representative of the government.

Signs of objective and subjective side of the main, well qualified and very skilled rosters, with the exception of differences in patients, similar to the signs referred to in article 375 of the criminal code.

In a separate clause – article 377 of the criminal code, the legislature responsible for the obstruction of the activities of the constitutional Council of the Republic of Kazakhstan.

Insulting a representative of the authorities (Article 378 of the Criminal Code of the Republic of Kazakhstan).

The direct object of a criminal offense is the relations that regulate the activities of government officials. The public danger of this criminal offense is that it violates the normal activities of the authorities and their authority, as well as the honor and dignity of a representative of the authorities. An additional object is an insult to the honor and dignity of a representative of the government.

The objective side is expressed in a public insult to a representative of the government in the performance of his official duties or in connection with them. Insult is a humiliation of the honor and dignity of another person, expressed in an indecent form (Article 130 of the Criminal Code of the Republic of Kazakhstan). With respect to the composition of the concept "insult" is complemented by other features: a) public humiliation; b) specificity of the threat – representative government; C) a special purpose or motive – performance of duties or revenge for their execution.

The concept of the representative of the authorities cited in paragraph 9 of article 3 of the criminal code, it is a person in the public service, given in the manner prescribed by law administrative powers in relation to persons not in the service of his subject, including law enforcement or special state body, military police, soldier involved in ensuring public order.

The composition of the structure is formal, that is, the act is considered completed from the moment of committing the actions specified in the disposition.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The guilty person is aware that he publicly insults a representative of the authorities in the performance of his official duties or in connection with their performance, and wishes to do so. The qualifying signs under Part 2 of Article 378 of the Criminal Code of the Republic of Kazakhstan are-the commission of an act in public or using mass media or communication networks.

Given the democratic standards of the country in the field of pluralism in the area of citizens ' rights to freedom of expression, in the notes to articles 375, 376 and 378 of the criminal code, provides that public speaking, containing critical remarks about the President of the Republic of Kazakhstan policy, or about parliamentary activities of a member of Parliament, or the performance of representative government do not entail criminal liability.

Use of violence against a representative of the government

(Article 380 of the Criminal Code of the Republic of Kazakhstan).

This article provides for the protection of public relations and responsibility for such violence that is not dangerous to life or health, or the threat of violence against a representative of the government or his relatives in connection with the performance of his official duties.

An additional object of a criminal offense is the health of government officials or their relatives.

The objective side assumes: a) the use of physical or mental violence that is not dangerous to life or health; b) the threat of violence against a representative of the government or his relatives in connection with the performance of his official duties. We are talking about the signs of violence specified in Articles 104, 105 of the Criminal Code of the Republic of Kazakhstan, the threat of violence can be of any nature.

The composition of the structure is formal and material.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The perpetrator is aware that he uses violence that is not dangerous to life or health against a representative of the authorities or his family, and wants this. A mandatory feature of the subjective side is the purpose – in connection with the performance of their official duties, i.e. committed to hinder the specified activity or to avenge it.

Qualified personnel (Part 2) involves the use of violence that is dangerous to life or health against a representative of the authorities. If this is the case, the consequences of murder or infliction of serious harm, such action must be qualified in conjunction with part 2 of article 380 and paragraph 2 of part 2 of article 99 (the murder) or paragraph 2 of part 2 of article 106 of the criminal code.

Obstruction of the prosecutor's activities and failure to comply with his legal requirements (Article 381 of the Criminal Code of the Republic of Kazakhstan).

The direct object of the crime is the relations that regulate the activities of the prosecutor's office for the supervision of legality.

An additional object of the crime is the rights and legitimate interests of individuals or legal entities.

The objective side is expressed in:

- a) non-execution of acts of prosecutor's supervision;
- b) obstructing the activities of the prosecutor;
- c) causing significant harm to the rights and legitimate interests of citizens or organizations, or to the interests of society or the State.

The public danger of this act is that it violates the normal activities of the prosecutor's office to exercise supervision and their authority, as well as the rights and legitimate interests of citizens or organizations. The law of 21 December 1995 No. 2709 "On Prosecutor's office of the Republic of Kazakhstan" highlights 17 activities of the Prosecutor's office, including 6 types of supervision over observance of the rights and freedoms of man and citizen, interests of legal entities and the state; over operational investigative activities; pre-trial; over the legality of administrative proceedings; for the legality of enforcement proceedings; for the application of laws in the field of international legal co-operation<sup>1</sup>.

The Prosecutor's Office exercises supervision by conducting inspections. According to their results, the prosecutor makes a protest; gives an order to eliminate violations of the law; makes decisions on the initiation of a criminal case, disciplinary proceedings or proceedings on an administrative offense, on the enforcement of the prosecutor's requirements, on delivery (drive),

takes measures to compensate for material damage; in case of violation of the rights and legitimate interests of a person and citizen, legal entities and the state, suspends the illegal act, except for laws; cancels or removes the restrictive measures imposed by state bodies and their officials; applies to the court for the protection of the rights and legally protected interests of the state, individuals and legal entities; makes a submission to the body or official on the elimination of violations of the law.

Disclosure of information about security measures applied to an official holding a responsible public position (Article 382 of the Criminal Code of the Republic of Kazakhstan).

The direct object of a criminal offense is the relations that regulate the security of the activities of an official holding a responsible public position.

A mandatory feature of the object is the victim – a person holding a responsible public position. In accordance with item 16 of article 3 of the criminal code recognizes those persons holding positions established by the Constitution, constitutional and other Laws of the RK for the direct exercise of state functions and powers of state bodies, including members of Parliament, judges and persons according to the legislation of Kazakhstan on civil service political public office or administrative public posts of category "A". The list is described in more detail in the Register of positions of Political and Administrative Civil Servants, approved by the Decree of the President of the Republic of Kazakhstan dated December 29, 2015 No. 150. (as amended from 01. 06. 2016 ) The

objective party assumes acts of disclosure of information about security measures applied to an official holding a responsible public position, as well as his relatives, by a person to whom this information was entrusted or became known in connection with his official activities.

Disclosure of information about security measures in relation to a person holding a responsible public position is understood as the communication of such information to third parties that may interfere with the official activities of such a subject of legal relations. The public danger of this criminal offense is that it encroaches on the normal activities of officials holding responsible public office.

The composition of the structure is formal and is considered complete from the moment of disclosure of the relevant information about the security measures applied to the official.

The subject of a criminal offense is a natural, sane person who has reached the age of sixteen.

The subjective side is characterized by direct intent. The perpetrator is aware that he is disclosing information about the security measures applied to an official of a law enforcement or supervisory authority, as well as his relatives, and wishes to do so. A mandatory feature of the subjective side of the crime is a special purpose – obstruction of official activity.

Qualified personnel (Part 2 of the ROK) includes the execution of the act specified in Part 1 of Article 382 of the Criminal Code of the ROK, which entailed serious consequences. Such consequences may be physical harm (bodily harm to an official); material harm (in the form of damage to his personal property) or moral harm to the relevant official.

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## **15 Lecture. Military criminal offences**

### **1. General characteristics of military criminal offenses.**

### **2. Types of military criminal offenses.**

#### **Keywords: criminal, gang, military, object, subject.**

In accordance with Article 36 of the Constitution of the Republic of Kazakhstan, the protection of the Fatherland is a sacred duty and duty of every citizen. This requirement is implemented in the obligation of citizens to perform military service in accordance with national legislation. The armed forces must be prepared to defend the country against an armed attack, and if there is one, to carry out such protection. In cases provided for by law, the Armed Forces may also be involved in other tasks related to ensuring the security of the country and its population (for example, to rescue people and property in case of disasters, to suppress illegal armed groups in areas declared under a state of emergency, etc.). A necessary condition for the constant combat capability and combat readiness of the Armed Forces is the steady fulfillment by military personnel of the requirements of normative acts establishing their tasks, functions, duties; maintaining high military discipline. Socially dangerous violations of it form the components of military crimes included in Chapter 18 of the Criminal Code of the Republic of Kazakhstan. Feature of this Chapter of the criminal code is that it is left only compounds involving criminal offences against the established order of military service against the requirements of military discipline and responsibilities of military personnel. Acts of a common criminal nature committed by military personnel (violent, property, official, etc.) entail responsibility under the relevant articles of other chapters of the Criminal Code of the Republic of Kazakhstan. Chapter 18 of the Criminal Code of the Republic of Kazakhstan provides for the existence of a special subject of criminal offenses – a soldier. According to paragraph 11 of Article 1 of the Law of the Republic of Kazakhstan " On military service and the status of military Personnel " of February 16, 2012. No. 561-IV military service is a special type of public service members of the Armed forces, aimed at immediate military security associated with the armed defence of the sovereignty, territorial integrity and inviolability of borders of the Republic of Kazakhstan, and in accordance with paragraph 14 of the same rules, the soldiers are citizens of Kazakhstan, performing military service in the Armed Силах1. The condition of criminal liability under the articles on military criminal offenses is determined depending on the status of subordination to military discipline in accordance with the law. Therefore, the subjects of responsibility under the articles of Chapter 18 of the Criminal Code of the Republic of Kazakhstan include citizens undergoing military training, as well as military builders. Persons who are not enrolled in the list of personnel of the unit (institution), or persons whose military service has expired, are not considered military personnel. Evasion of military service in the absence of legal grounds for doing so is punishable by 387 Chapter 16 of the criminal code (criminal offences against public order), but not the Chapter 18 of the criminal code. If persons who are not included in the lists of personnel of units (institutions) participate in military criminal offenses, they are liable according to the rules on complicity – as organizers, instigators, accomplices. In the case of co-execution, they are charged in the aggregate (complicity) in a military criminal offense and the execution of a common criminal offense, the signs of which are present in their direct actions (inaction). The specific object of military criminal offenses is social relations that constitute the content or ensure the established order of military service, timely and accurate performance of its tasks. The content of the established order of military service is determined by military legislation, by-laws issued in accordance with it, by orders of commanders and superiors. According to the direct objects of military criminal offenses, the following groups of acts can be distinguished::encroaching on the duty and obligations of

military service (article 441-443 of the criminal code);encroaching on the General requirements of military discipline (article 437 - 440 of the criminal code);encroaching on special duty military service(article 444-449, 454 of the criminal code);related to the loss, damage or destruction of military property or violation of the rules for handling high-risk sources (Article 459-466 of the Criminal Code of the Republic of Kazakhstan).On the direct objects of military criminal offences it is possible to allocate the following groups of acts:encroaching on the duty and obligations of military service (article 441-443 of the criminal code);encroaching on the General requirements of military discipline (article 437 - 440 of the criminal code);encroaching on special duty military service(article 444-449, 454 of the criminal code);related to the loss, damage or destruction of military property or violation of the rules for handling high-risk sources (Article 459-466 of the Criminal Code of the Republic of Kazakhstan).

It is essential to resolve the issues of responsibility under the articles of Chapter 18 of the Criminal Code of the Republic of Kazakhstan to correctly distinguish the relevant elements of criminal offenses from disciplinary offenses that have some similar features, for example, when violating the rules of internal service and patrolling in the garrison, or when leaving the place of service without permission, insulting a serviceman, etc. As a rule, it is necessary to take into account the nature of the occurred or possible consequences. This stress criterion and the wording of most of the articles under review, the head of the criminal code that contains a mention of the harm caused to the interests of national security, the threat of causing significant harm, serious consequences and other consequences.

Finally, we note two points that affect the limits of application of the norms of Chapter 18 of the Criminal Code of the Republic of Kazakhstan. First, in accordance with international legal treaties (the Geneva Convention of August 12, 1949 "On the Treatment of Prisoners of War"), the subjects of certain military criminal offenses may be prisoners of war. Secondly, the chapter under consideration regulates the responsibility for military criminal offenses committed in peacetime, during war and in other combat situations.

The objective side of military criminal offenses in most cases is of a material nature and requires the establishment of the consequences specified in the disposition. Formal by design are criminal offenses against the performance of duty and duties of military service (Articles 440-443, 454 of the Criminal Code of the Republic of Kazakhstan). The

subjective side of most acts is characterized by a deliberate form of guilt. In material compositions, direct or indirect intent is possible; in formal compositions, only direct intent is possible. A number of compositions provide for a careless form of guilt, for example, Articles 453, 458, 460-465 of the Criminal Code of the Republic of Kazakhstan.

## 2. Unauthorized abandonment of a unit or place of service

(Article 441 of the Criminal Code of the Republic of Kazakhstan).

The direct object of a criminal offense is public relations that ensure the established order of military service.

The norms, the direct object of which is evasion from military service, are placed not at the beginning of Chapter 18 of the Criminal Code of the Republic of Kazakhstan, but after the norms regulating responsibility for crimes against the general requirements of military discipline. However, it is logical to begin the analysis of the acts provided for in this chapter with Articles 441-443 of the Criminal Code of the Republic of Kazakhstan, since they provide for cases when a soldier breaks with his duties altogether, and not just violates some of them. The legal status of persons undergoing military service under a contract is determined by the Law of the Republic of Kazakhstan "On Military Service and the Status of Military Personnel" dated February 16, 2012 No. 561-IV.

The objective side of a criminal offense is formed by the following acts: unauthorized abandonment of a unit or place of service or failure to appear on time without valid reasons for service, committed in peacetime, if the unauthorized absence lasted up to one month. The maximum period of unauthorized abandonment of a unit or place of service, after which the acts are qualified as desertion, is one month, respectively. As persons sent to a disciplinary military unit, shall retain the status of the military, leaving this part qualifies under article 441 of the criminal code, and not by art. 426 of the Criminal Code of the Republic of Kazakhstan.

The lawful grounds of abandonment or place of service (in the terminology of article 441 of the criminal code – "good reason") associated with external circumstances that make it impossible to find in parts or on-site service, as well as the attendance of the period of service. We are talking about natural, man-made, social extreme situations( disasters), sudden serious illness when being outside the unit or the inability to leave another person without care when being outside the unit, and other actions in situations of extreme necessity.

The subjective side of the act in question is characterized by direct intent. But at the same time, it is necessary to establish a motive and purpose in order to distinguish this case from desertion. In paragraph 14 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated October 28, 2005 No. 6 "On judicial practice in cases of military crimes" fixed "mandatory feature of the subjective side of the offense under article 372 of the criminal code, is guilty intent on temporary leave or place of service for further passage»1.

Qualified and very skilled elements of criminal offense (part 2 and part 3) provide for absence without leave or place of service committed in time of war, if unauthorized absence lasted more than one day absence without leave or place of service in a combat situation, regardless of duration.

Desertion (Article 442 of the Criminal Code of the Republic of Kazakhstan)

The direct object of a criminal offense is public relations that ensure the established order of military service, timely and accurate performance of its tasks.

The objective side is expressed in the unauthorized abandonment of a unit or place of service in order to avoid military service. Desertion is also a failure to appear for the same purpose in the service during a transfer, business trip, vacation, stay in a medical institution, or dismissal from a unit. The difference between desertion and the act provided for in Article 441 of the Criminal Code of the Republic of Kazakhstan is precisely in the purpose. Article 441 of the Criminal Code of the Republic of Kazakhstan applies in cases when a person, although he left a military unit (place of service) due to some local goals, transient circumstances, but is going to return to the unit. And according to Article 442 of the Criminal Code of the Republic of Kazakhstan, an act is qualified in cases where direct intent is proved, expressed in the purpose of evading military service. Therefore, this act is completed from the moment of unauthorized abandonment of a unit or place of service (failure to appear for service) with the intention not to return. This crime is a continuing one. It is terminated by detention, surrender, amnesty, etc. In contrast to Article 442 of the Criminal Code of the Republic of Kazakhstan, the responsibility of persons serving on conscription and under contract in the event of desertion is not differentiated. Qualified personnel (Part 2) involves the commission of desertion with weapons entrusted to the service, as well as committed by a group by prior agreement or an organized group, means the commission of an act under qualifying circumstances and entails a more severe penalty. The phrase "weapons entrusted to the service" means that if the desertion is accompanied by the theft or forcible seizure of weapons stored in the unit or assigned to another soldier, there will be a set of crimes. The Supreme Court in this regard, explains: "under the weapons entrusted to the service, in relation to the second part of article 373 of the criminal code should be understood service small arms and other weapons, adopted in service in the Armed Forces and other military formations of the Republic of Kazakhstan, which has a legitimate soldier, because of his duties in military service. Desertion committed by a serviceman with a cold weapon attached to him (a bayonet from a firearm, other special army and navy knives) is also subject to qualification under part two of Article 373 of the Criminal Code " 1.

Especially qualified personnel (Part 3) involves the commission of this act in a combat situation. This feature, unfortunately, is not explained by either the legislator or the Supreme Court, which is rightly referred to in the literature and even the following theoretical model of interpretation is proposed: "the combat situation is the state of combat readiness of military units and ships for solving operational and tactical tasks." 1

Part four of the article also contains an aggravating circumstance – the commission of an act in wartime. According to section 29 of article 1 of the Law dated January 7, 2005, No. 29 "On defense and the Armed Forces of the Republic of Kazakhstan" military time is the period from the announcement of a state of war or actual outbreak of hostilities until the announcement of the cessation of hostilities, but not before their actual прекращения2.

Article 442 of the Criminal Code provides for a special case of exemption from criminal liability. Note to Article 442 of the Criminal Code of the Republic of Kazakhstan states that a serviceman who has committed desertion may be released from criminal liability by a court if the desertion was the result of a combination of difficult circumstances or if he voluntarily appeared for further military service. "Unfortunately, the optional exemption from criminal liability, according to these norms, significantly reduces their useful potential»

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Evasion or refusal to perform military service

(Article 443 of the Criminal Code of the Republic of Kazakhstan).

The direct object of a criminal offense is public relations that ensure the established order of military service and the performance of military service tasks.

This norm, from the point of view of the objective side, provides for criminal liability for temporary evasion from the performance of military service duties by simulating illness or causing any damage to oneself (self-harm) or other harm to one's health, or forgery of documents, or other deception, for example, in order to completely release from the performance of military service duties. (part 1), as well as in order to avoid participation in hostilities and the elimination of the state of emergency (part 2), or evasion or refusal to serve in adverse wartime conditions. In the latter case, the purpose of the criminal offense under Article 443 of the Criminal Code of the Republic of Kazakhstan coincides with the same purpose in desertion.

Article 443 of the Criminal Code of the Republic of Kazakhstan does not provide for differentiation of responsibility and punishment for military personnel serving under conscription and contract. At the same time, an exhaustive list of methods of evasion is given. This is a simulation of the disease by the serviceman himself or at his request by other persons (knowingly false statement about the presence of the disease, falsification of its signs, exaggeration of the severity of the actual disease); intentional self-harm, i.e. causing harm to health in any way (self-shooting, the use of cold weapons, household items, medicines, chemicals, mechanisms, etc. ); fraud by presenting false documents (for example, about changes in the family composition, about disasters that have befallen the family, etc.). In accordance with paragraph 18 of the regulatory resolution of the above mentioned liability under article 374 of the criminal code occurs regardless of the method of self-harm, gravity caused his health damage, and method used обманa.

For the correct qualification of the actions of a serviceman in each case, it is necessary to establish the presence of direct intent and purpose of the act.

### **Refernses**

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