Anti-Extremist Policies in Russia, Kazakhstan, the Kyrgyz Republic and Tajikistan. Comparative Review

SOVA Center for Information and Analysis

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Civic Solidarity Platform
Working Group
On Counter-Terrorism, Anti-Extremism and Human Rights

SOVA Center for Information and Analysis

Anti-Extremist Policies in Russia, Kazakhstan, the Kyrgyz Republic and Tajikistan. Comparative Review

Joint report by members of the Working Group:
SOVA Center for Information and Analysis (Russian Federation)
Public Association 'Dignity' (Republic of Kazakhstan)
Bir Duino (Kyrgyz Republic)
Office of Civil Freedoms (Republic of Tajikistan)

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About the Working Group

Members of the Civic Solidarity Platform (CSP) are cognizant of a significant threat posed by terrorism to peace, security and stability in the OSCE region, as well as to the realization of human rights and to social and economic development.

Protecting human rights is often seen as a task incompatible with protecting national security, but in reality upholding human rights is necessary for sustainable security. Nevertheless, authorities throughout the OSCE region increasingly introduce anti-terrorism measures that violate human rights. Such policies can be extremely counterproductive.

The same applies to anti-extremist policies intended to prevent conflict and ensure tolerance and security, which instead often provoke confrontation and a sense of injustice when they violate fundamental rights such as freedom of speech, freedom of assembly, or freedom of conscience.

Members of the CSP strive to play a constructive role in the design and implementation of effective anti-terrorism and anti-extremist strategies that respect and promote human rights.

Tasks of the Working Group on Counter-Terrorism, Anti-Extremism and Human Rights:

a) monitoring the human rights impact of counter-terrorism and anti-extremism initiatives across the OSCE region and raising the alarm when human rights threats emerge;
b) facilitating the exchange of experience and expertise between CSP members with respect to the human rights impact of counter-terrorism and anti-extremism initiatives;
c) advocating to ensure human rights standards are respected and promoted within policies and initiatives to counter terrorism and violent extremism.

The Counter Terrorism Working Group was officially launched in January 2018 and is currently coordinated by ARTICLE 19 and SOVA Center for Information and Analysis of which the latter has been responsible for preparation of the present report.

About SOVA Center

SOVA Center for Information and Analysis is a Moscow-based non-profit organization founded in 2002. SOVA Center specializes in monitoring and analysis in the fields of nationalism, racism, hate crimes, hate speech, the relationship between religious organizations, the state and the secular society, as well as the government's misuse of anti-extremism legislation. SOVA Center is involved in promoting human rights standards in enforcement of anti-terrorism and anti-extremist legislation.

On December 30, 2016, the Ministry of Justice forcibly included SOVA Center on the list of "non-profit organizations performing the functions of a foreign agent." We disagree with this decision and have filed an appeal against it.

The report was prepared with support from DRA and German MFA and published with the European Union support.

The SOVA Center website, which includes publications and news, can be found at:
sova-center.ru

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Introduction

Anti-extremist legislation, as a comprehensive legislation in the sphere of state and public security, emerged in Russia in 2002. On the one hand, it includes elements that exist or formerly existed in the legislation of Russia and other countries, in one form or another. On the other hand, it represents an ambitious attempt at a comprehensive solution to problems usually linked in the realm of social sciences rather than in the realm of law.

This approach has been adopted by several post-Soviet countries to varying degrees. To the greatest extent, this applies to Kazakhstan, the Kyrgyz Republic and Tajikistan, both in their adoption of Russian legal innovations, and in the scale of their law enforcement activities. Accordingly, our report focuses on the experience of our four countries. We sought to draw attention to commonalities as well as differences in the regulatory framework and in the law enforcement dynamics.

The Civic Solidarity Platform Working Group on Counter-Terrorism, Anti-Extremism and Human Rights has already submitted a report covering the threat to basic human rights that stems from the introduction of a common approach to anti-extremism in our countries.[1] We hope that this new report will help to better understand both the merits and the shortcomings of the path chosen by our countries and to discuss and outline ways to improve the legislative framework and the law enforcement practice.

The country chapters of the report were prepared by four organizations participating in the Working Group: SOVA Center for Information and Analysis (Russian Federation), Public Association Dignity (Republic of Kazakhstan), Bir Duino (Kyrgyz Republic), and the Office of Civil Freedoms (Republic of Tajikistan). The comparative review in the conclusion and general editing of all chapters and recommendations were done by SOVA Center.

1. Fundamental Freedoms on Trial. The human rights impact of broad counter-terrorism and anti-extremism laws // Fair Trials. 2019. URL: https://www.fairtrials.org/sites/default/files/publication_pdf/CTWG-Fundamental-Freedoms-on-Trial-final-online.pdf.

The Russian Federation

Russian anti-extremist legislation consists of a framework law "On Combating Extremist Activity," related criminal and administrative norms, as well as relevant provisions of several other laws.

A systematic state policy on countering extremism in Russia can be said to have originated on July 25, 2002 with signing of Federal Law No. 114-FZ "On Combating Extremist Activity."[1] It actually defines the concept of "extremism" ("extremist activity"),[2] as well as the related concepts of "extremist organization," "extremist materials" and "symbols of an extremist organization." In addition to the general principles that underlie the anti-extremist policies, the law established particular mechanisms for holding public organizations and the media responsible for their extremist activities.

Extremism is defined in Article 1 of the law as a set of various actions. This list has been modified several times – in 2006, 2007 and 2012.[3] As of 2019, it includes the following:

- *forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation;*
- *public justification of terrorism and other terrorist activity;*
- *stirring up of social, racial, national or religious enmity;*
- *propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, national, religious or linguistic affiliation or attitude to religion;*
- *violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, national, religious or linguistic affiliation or attitude to religion;*
- *obstruction of the exercise by citizens of their electoral rights and rights to participate in a referendum or violation of voting secrecy, combined with violence or threat of the use thereof;*
- *obstruction of the lawful activities of state authorities, local authorities, electoral commissions, public and religious associations or other organizations, combined with violence or threat of the use thereof;*
- *committing of crimes with the motives set out in indent "f" ["e" in the Russian original] of paragraph 1 of article 63 of the Criminal Code of the Russian Federation;*
- *propaganda and public show of Nazi emblems or symbols, as well as of emblems or symbols confusingly similar to Nazi emblems or symbols, or public show of the emblems or symbols of extremist organizations;*
- *public calls inciting the carrying out of the aforementioned actions or mass dissemination of*

1. Federal Law of July 25, 2002 N 114-FZ "On Combating Extremist Activities" (as amended) // Garant. URL: https://base.garant.ru/12127578/.

2. These terms are equivalent in the law and, therefore, in the Russian legislation in general.

3. For additional information on these changes, see: Alexander Verkhovsky, "Anti-Extremist Amendments Adopted in the Third Reading. The Changes Are Minor" // SOVA Center. 2006. July 8. URL:https://www.sova-center.ru/racism-xenophobia/publications/2006/07/d8697/; Alexander Verkhovsky, "Anti-extremist Legislation and Its Application" // SOVA Center. 2007. September 10. URL:https://www.sova-center.ru/racism-xenophobia/publications/2007/09/d11533/; Alexander Verkhovsky, "Overview of the Principal Changes in Anti-Extremist Legislation in 2007" // SOVA Center. 2007. December 21. URL:https://www.sova-center.ru/racism-xenophobia/publications/2007/12/d12281/; President signed the law imposing harsher penalty for using extremist symbols // SOVA Center. 2012. December 26. URL:https://www.sova-center.ru/misuse/news/lawmaking/2012/12/d26131/.

knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination;
- *public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed actions mentioned in the present Article and that constitute offences while discharging their official duties;*
- *organization and preparation of the aforementioned actions and also incitement of others to commit them;*
- *funding of the aforementioned actions or any assistance for their organization, preparation and carrying out, including by providing training, printing and material/technical support, telephony or other types of communications links or information services.*

Legal understanding of extremism in Russia is characterized by the fact that, from the very beginning, this term has encompassed acts against the security of the state and actions threatening vulnerable groups of society (i.e. hate crimes and hate speech). The impetus to combine these phenomena of a different nature into a single notion can, most likely, be found in Article 13 of the Constitution of the Russian Federation, which prohibits activities instigating social, racial, national and religious strife and anti-state activities of public associations in the same sentence.[4] Presidential decrees of the 1990s, in which the term "extremism" was first mentioned, contain references to this constitutional norm.[5] Vague wording of the definition of extremist activity in the framework law, such as "forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation"[6] and "undermining the security of the Russian Federation" came from the same source (the 2007 amendments excluded the latter from the definition).

It should be noted that acts directed against the state and against vulnerable groups of the population were individually recognized as illegal even before they were united under the umbrella of "extremism."

Oddly enough, terrorist activity is mentioned on this list as a subcategory of extremism. Moreover, according to the law "On Counteraction to Terrorism" adopted in 2006,[7] the

4. The Constitution of the Russian Federation // Site of the President of Russia. URL: http://www.constitution.ru/en/10003000-02.htm.

5. See Decree of the President of the RF No. 310 of 23 March 1995 "On Measures Designed to Ensure the Coordinated Action of Bodies of State Power in the Struggle against Manifestations of Fascism and Other Forms of Political Extremism in the Russian Federation" // Garant. URL: https://base.garant.ru/3998639/fbdef9ec3a9d29ea27e4d7cea5c45377/; Decree of the President of the Russian Federation No. 1143 of October 27, 1997 "On the Commission under the President of the Russian Federation to Combat Political Extremism in the Russian Federation" // Official Internet Portal of Legal Information. URL: http://pravo.gov.ru/proxy/ips/?doc_itself=&collection=1&nd=201138340. See also: Decree of the President of the RF No. 1300 of December 17, 1997 "On Approving the Concept of National Security of the Russian Federation" // Website of the President of Russia. URL: http://www.kremlin.ru/acts/bank/11782.

6. See also below in the section on Article 280 of the Criminal Code.

7. Federal Law No. 35-FZ of March 6, 2006 "On Counteraction to Terrorism" // Garant. URL: https://base.garant.ru/12145408/. See the English version for 2014 here: Federal Law No. 35-FZ of March 6, 2006 "On Counteraction to Terrorism" (amended by the Federal Law No. 505-FZ of December 31, 2014) // Legislationline. URL: https://www.legislationline.org/download/id/7946/file/Russia_law_counteraction_against_terrorism_2006_am2014_en.pdf.

term "terrorist activity" is equivalent to "terrorism." Accordingly, the law "On Combating Extremist Activity" recognizes terrorism as a specific form of extremism. However, the anti-terrorism law fails to mention "extremism" at all. De facto, the fight against terrorism is regulated by a separate block of legislation that is not subordinate to the anti-extremist legislation.

Another feature of the Russian definition of extremism is that not all of its components are related to violence and the threat of its use, despite the fact that the Shanghai Convention on Combating Terrorism, Separatism and Extremism,[8] which preceded Law No. 114-FZ (it was signed in 2001 and ratified by Russia in 2003) uses "extremism" exclusively to denote violent attacks against state and public security. The difference between Russia's understanding of extremism at the national level and at the level of the Shanghai Cooperation Organization (SCO) was eliminated in 2017 as a result of the signing of a new convention that corresponds to the spirit of Russian anti-extremist legislation.[9]

Countering extremist activities, understood in accordance with the definition provided in the law, implies additional restrictions on civil rights and freedoms as compared to the ordinary fight against crime. However, according to the International Covenant on Civil and Political Rights (ICCPR), such restrictions must be established by law, pursue the legitimate aim of respecting the rights and reputations of others, protecting national security, public order, or public health or morals, and be necessary in a democratic society. Both the Russian definition of extremism described above and the legal norms associated with it raise questions regarding their compliance with the international legal standards, since they use vague terminology and can be interpreted broadly. This applies to freedom of expression in particular, but also to freedom of association. Coupled with the law enforcement practice, characterized, among other features, by a formal approach to establishing the illegality of an act in court, application of these standards often leads to state-imposed restrictions on civil liberties that cannot be recognized as necessary in a democratic society.[10]

8. Shanghai Convention on Combating Terrorism, Separatism and Extremism // Site of the President of Russia. URL: http://www.kremlin.ru/supplement/3405. See the English version here: Shanghai Convention on Combating Terrorism, Separatism and Extremism // Refworld. URL: https://www.refworld.org/docid/49f5d9f92.html.

9. See: The State Duma ratified the Convention of the Shanghai Cooperation Organization to Combat Extremism // SOVA Center. 2019. July 18. URL: https://www.sova-center.ru/misuse/news/lawmaking/2019/07/d41263/.

10. See: Rights in extremis: Russia's anti-extremism practices from an international perspective // ARTICLE 19, SOVA Center. 2019. URL: https://www.sova-center.ru/files/books/a19_sova_eng.pdf.

Recognizing Materials as Extremist

The law "On Combating Extremist Activities" defines extremist materials as "documents intended for publication or information on other media calling for extremist activity to be carried out or substantiating or justifying the necessity of carrying out such activity, including works by leaders of the National Socialist Workers' Party of Germany or the Fascist Party of Italy, publications substantiating or justifying ethnic and/or racial superiority or justifying the practice of committing war crimes or other crimes aimed at the full or partial destruction of any ethnic, social, racial, national or religious group."

A claim to recognize a material as extremist is filed by a prosecutor (since 2016, the claimant needs to be at least a prosecutor of a subject of the Federation, and has to secure a prior approval by the Prosecutor General) on the basis of an expert examination carried out as part of verification and investigative measures conducted by law enforcement agencies or by prosecutors. Until October 2019, such claims were analogous to civil claims filed to establish facts of legal significance, and the proceedings could be carried out in the absence of the concerned parties.

A new administrative procedure to ban materials as extremist (under the Code of Administrative Judicial Procedure of the Russian Federation) has been operating since October 2019. It stipulates the following:

- *mandatory participation in the process of either a creator or a publisher of the material or the Ombudsman of the Russian Federation or an Ombudsman in a subject of the Federation;*
- *imposing the legal costs on a creator or publisher;*
- *possibility of preventive judicial blocking of online materials;*
- *immediate entry of the decision into force.*

Theoretically, the law also provides for banning materials in the course of any administrative, civil or criminal proceedings, but, in fact, this procedure has not been utilized.

Descriptions of materials recognized as extremist are assembled by the Ministry of Justice into the Federal List of Extremist Materials. The list already includes about five thousand entries, with descriptions that are often completely incomprehensible. This lack of clarity complicates the process of identifying the banned materials, and makes the accountability for the publication of a material unforeseeable.

Responsibility of Mass Media and Organizations

Roskomnadzor (Federal Service for Supervision of Communications, Information Technology, and Mass Media) and the Prosecutor General's Office may issue a warning to a mass media resource for disseminating extremist materials and "extremist activities." If violations are not eliminated, reappear within a year, or are assessed as serious, the media resource activity is to be discontinued.

In addition, mass media can be fined under Article 13.15 Part 6 of the Code of Administrative Offenses for calls for terrorist or extremist activity or for justification of such activity; media can be fined under Part 2 of the same article for mentioning an extremist organization without indicating its prohibited status.

Certain prosecutor's offices can issue a notification to public or religious associations or other organizations about the inadmissibility of extremist activity, if prosecutors have information about upcoming actions that show signs of extremism. If the fact of such activity has already been established, a prosecutor's office or the Ministry of Justice issue a warning. If violations are recognized as serious, or are not eliminated, or if new ones are discovered within a year, the organization is subject to liquidation by a court decision, which recognizes it as extremist. The organization's activities may be suspended until the court decision on its liquidation.

> *After liquidation of a number of local Jehovah's Witnesses organizations as extremist and multiple cases of bringing communities and believers to administrative responsibility for the distribution of extremist materials, the Jehovah's Witnesses Administrative Center in Russia received a warning from the Prosecutor General's Office in 2016. The court ruled that the warning was legitimate, and the 2017 audit found that the violations were not addressed. After that, the Ministry of Justice filed a claim with the Supreme Court seeking to liquidate the Administrative Center and all 395 local Jehovah's Witnesses religious organizations as its structural units and also suspended their activities. In April 2017, the Supreme Court of the Russian Federation issued its decision to declare these organizations extremist and to eliminate them.*[11]

In addition, all non-profit organizations, including public and religious associations, are prohibited from having persons whose names appear on Rosfinmonitoring's List (see below) among their founders, participants and members.

Criminal Law

The reference to Article 63 Part 1 Paragraph "f" ["e" in the Russian original] of the Criminal Code in the definition of extremism means that extremist activity includes carrying out of a crime with such aggravating circumstances as the motive of "political, ideological, racial, national or religious hatred or hostility" or the motive of "hatred or hostility in relation to any social group." Moreover, these same motives are indicated as qualifying features in Articles 105 (murder), 111, 112, 115 (intentional infliction of grave injury, injury of average gravity, or light injury to health respectively), 116 (battery), 117 (torture), 119 (threat of murder or infliction of grave injury to health), 150 (involvement of a minor in the commission of a crime), 213 (hooliganism), 214 (vandalism), 244 (outrages upon bodies of the deceased and their burial places).

11. The Ministry of Justice went to the Supreme Court, seeking to liquidate Jehovah's Witnesses Administrative Center in Russia // SOVA Center. 2017. March 16. URL: https://www.sova-center.ru/misuse/news/persecution/2017/03/d36594/; Supreme Court decides to liquidate Jehovah's Witnesses Administrative Center in Russia // SOVA Center. 2017. April 20. URL: https://www.sova-center.ru/misuse/news/persecution/2017/04/d36871/.

> *In 2011, the Moscow District Military Court sentenced 13 members of the neo-Nazi group National Socialist Society – North (NSO-Sever) to various terms of imprisonment, up to life in prison, for committing 39 crimes, among them 27 murders, including those committed on grounds of national hatred. In particular, they attacked immigrants from the countries of Central Asia and from the Caucasus republics.*[12]

An entire block of existing criminal articles is aimed at countering extremism.

Article 280 of the Criminal Code provides for liability for public incitement to extremist activity.

According to the decision of the plenary meeting of the Supreme Court of the Russian Federation on judicial practice in cases involving "extremist" crimes,[13] calls for genocide, repression, deportation, for ethnic or religious violence in general are acts aimed at inciting hatred which fall under Article 282 of the Criminal Code (see below). However, investigators often prefer to qualify calls for xenophobic attacks under Article 280 of the Criminal Code, rather than Article 282. Such calls may be more or less clear about the object and the method of an attack.

> *In 2019, a Kurgan resident received a two-year suspended sentence under Article 280 Parts 1 and 2 of the Criminal Code. He twice wrote graffiti on garage walls that insulted immigrants from the Caucasus and called for violence against them. Then he photographed the graffiti and posted the photos on his VKontakte page.*[14]

Article 280 of the Criminal Code is often used as a tool for punishing incitement to a violent struggle against the state and law enforcement agencies, including calls that are not specific and not addressed to a wide audience, and thus cannot constitute a danger to the public.

> *The Chuvash opposition activist Alexei Mironov was sentenced to two years and three months in an open prison under Article 280 Part 2 and Article 282 Part 1 of the Criminal Code. The charge under Article 280 of the Criminal Code was based on the fact of Mironov's VKontakte publication of a single image that contained the statements "God bless the USA / Keep calm and f *** Russia" and "I officially call for a violent change of power." According to the investigation, it was only seen by two people.*[15]

12. Verdict issued in Moscow in the case of NSO-North neo-Nazi group // SOVA Center. 2011. July 11. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2011/07/d22096/.

13. Resolution of the plenary meeting of the Supreme Court of the Russian Federation No. 11 "On judicial practice in criminal cases involving crimes of extremist nature" of June 28, 2011 (as amended by the plenary meeting decisions No. 41 of November 3, 2016 and No. 32 of September 20, 2018) // The Supreme Court of the Russian Federation. 2018. September 20. URL: http://www.supcourt.ru/documents/own/8255/.

14. Kurgan: Verdict issued in the case under Article 280 // SOVA Center. 2019. May 27. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2019/04/d40902/.

15. Alexei Mironov sentenced to a real prison term // SOVA Center. 2017. September 18. URL:https://www.sova-center.ru/misuse/news/persecution/2017/09/d37891/.

Article 280.1, introduced into the Criminal Code in 2013, separately establishes liability for public calls for action aimed at violating the territorial integrity of the Russian Federation (i.e., separatism). The problematic nature of this norm stems from the fact that the definition of extremism and, accordingly, the disposition of Article 280.1 of the Criminal Code contain no indication that violation of territorial integrity is illegal specifically if and when it includes the use of force. The Supreme Court also stated in 2016 that incitement to any criminal methods of secession should be punished under other articles of the Criminal Code.[16] These formulas lead to criminalization of a peaceful discussion about the status of a particular subject of the federation.

> *In 2015, Vladimir Zavarkin, a deputy of the Suojärvi Urban Settlement Council in Karelia, was sentenced to a fine of 30 thousand rubles under Article 280.1 Part 1 of the Criminal Code for addressing a rally and proposing to hold a referendum on the secession of Karelia from Russia in response to the authorities' inaction in the socio-economic sphere.*[17]

Article 282 Part 1 of the Criminal Code, in its current version, stipulates responsibility for public actions aimed at incitement of hatred or hostility, as well as abasement of dignity of a person or a group of persons on the basis of "sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group" if, within a year after the entry into force of a relevant judgment, a citizen was repeatedly held liable for such an act under an equivalent administrative article (Article 20.3.1 of the Code of Administrative Offenses). This wording implies administrative punishment for the first violation. Until 2019, there was no corresponding administrative article, and citizens faced criminal prosecution for their very first violation of the law. People previously convicted under Article 282 Part 1 could apply for review of their cases in 2019 and get their sentences annulled; the cases under investigation as of the beginning of 2019 were closed.

There has been almost no judicial practice on the updated composition of Article 282 Part 1 of the Criminal Code. Until 2019, this part of the article was widely used to combat the spread of xenophobic propaganda.

Article 282 Part 2 covers the cases, when hatred is connected to the use of violence or a threat of such use; it does not provide for administrative punishment for the first violation.

> *Kirill Sulyarov, a supporter of the* Russkoe Natsionalnoe Edinstvo *(RNE, Russian National Unity) from Veliky Novgorod, received a suspended sentence of two and a half years under Article 282 Part 1 of the Criminal Code in May 2018 for having published two anti-Semitic texts on his VKontakte page.*[18]
>
> *A month later, a resident of Dagestan received an identical suspended sentence for having written a comment calling for violence against Kalmyks two years earlier during*

16. Resolution of the plenary meeting of the Supreme Court of the Russian Federation No. 11 of June 28, 2011.
17. Deputy Vladimir Zavarkin sentenced to a fine // SOVA Center. 2015. November 27. URL: https://www.sova-center.ru/misuse/news/persecution/2015/11/d33327/.
18. RNE supporter sentenced for anti-Semitic VKontakte posts in Novgorod // SOVA Center. 2018. May 11. URL:https://www.sova-center.ru/racism-xenophobia/news/counteraction/2018/05/d39343/.

> *the social network discussion of a scandal in Elista related to desecration of a Buddha statue by a Dagestan athlete.*[19]

The possibility of arbitrary defining "social groups" and recognizing low-risk rude statements as "abasement of dignity" led to sentences of dubious reasonableness and proportionality.

> *In 2015, rapper Ptakha [Bird] gave a concert in support of his colleagues arrested for drug use. The rappers faced punishment due to actions by Antidiler, a social movement to fight the spread of illegal drugs. Ptakha gave a speech at the concert insulting the Antidiler participants and called on the audience to make obscene graffiti on their cars. He was sentenced in Moscow under Article 282 Part 1 of the Criminal Code to a fine of 200 thousand rubles in 2017. The court found his actions to be aimed at inciting hatred or enmity towards "a group of persons united on the basis of "assisting law enforcement agencies in search and detention of criminals."*[20]

A whole series of Criminal Code articles is related to organizing. **Article 282.1** provides punishment for organizing an extremist community, recruiting for it and participation in it. Such a community is understood as an organized group of people gathered to plan "crimes of an extremist nature." The note to this criminal article indicates that this term only refers to hate crimes. In practice, however, "crimes of an extremist nature" – as also reflected in the aforementioned Supreme Court decision[21] – include all the crimes qualified under Articles 280, 280.1, 282, 282.1, 282.2, and 282.3 of the Criminal Code.

Article 282.2 of the Criminal Code establishes sanctions for organizing an extremist organization, recruiting for it and participating in it. In contrast to the previous legal norm, Article 282.2 of the Criminal Code refers to organizations already banned by the court as extremist and included on a special list published by the Ministry of Justice. Therefore, this is a formally defined crime – the very fact of participation in a banned organization makes a person liable regardless of whether or what kind of socially dangerous consequences it entailed or did not entail.

Both of these articles also covered terrorist communities and organizations until 2013, when separate articles that provide for much more stringent sanctions for these actions – 205.4 (for communities) and 205.5 (for organizations) – were added to the Criminal Code.

Article 282.3 of the Criminal Code relates to the financing of extremist activities.

> *Five residents of Tatarstan were convicted in 2019 under Articles 282.1, 282.2 and 282.3 of the Criminal Code and sentenced to five to seven years of imprisonment for continuing the activities of the so-called Faizrakhmanist community. This community brought together fol-*

19. Dagestan resident convicted of inciting enmity towards Kalmyks // SOVA Center. 2018. June 30. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2018/06/d39649/.

20. See: Rapper Ptakha fined under Article 282 // SOVA Center. 2017. March 16. URL: https://www.sova-center.ru/misuse/news/persecution/2017/03/d36599/.

21. Resolution of the plenary meeting of the Supreme Court of the Russian Federation No. 11 of June 28, 2011.

lowers of this Islam-based new religious movement. Its participants led an insulated but not aggressive way of life. Nevertheless, the religious group was recognized as extremist in 2013.[22]

Without going into much detail about the criminal liability for terrorist activities, we would like to bring attention to an anti-terrorism legal norm that restricts freedom of expression – **Article 205.2** of the Criminal Code (public calls for committing of terrorist activities, public justification of terrorism or propaganda of terrorism). In practice, the term "justification of terrorism" can be interpreted broadly.

In 2016, a Tyumen blogger Alexei Kungurov was sentenced to two years in a penal colony for publishing his article "Whom do Putin's falcons actually bomb?" claiming that the Russian campaign against terrorist groups in Syria was ineffective. Among other things, Kungurov wrote that the Islamic State was not just a terrorist organization, but a structure that had attributes of a state.[23]

Two additional norms of the criminal law are worth attention. Formally they are not part of the "anti-extremist" legislation, but, similarly to anti-extremist norms, they restrict the freedom of expression based on the statement's ideological stance and tend to be utilized by the Centers for Countering Extremism of the Ministry of Internal Affairs. The vagueness of their language leads to unjustified interference with the rights of citizens; moreover, SOVA Center believes that the imposed restrictions do not pursue aims stipulated by the international law.[24]

Article 148 Parts 1 and 2 of the Criminal Code penalize public actions "expressing clear disrespect for society and committed to offend the religious feelings of believers."

In 2016, Sergey Lazarov was fined 35 thousand rubles under Article 148 Part 1 of the Criminal Code in Orenburg for having published "Evil Christ" – an article by another author discussing the icon of the Savior the Almighty as viewed by Gnostics – on his website. The text contained a number of harsh epithets describing the Creator God as perceived by the Gnostics and negatively characterizing the Russian Orthodox Church (ROC).[25]

Article 354.1 Parts 1 and 2 of the Criminal Code (rehabilitation of Nazism) address punishment for publicly denying the facts established by the Nuremberg Tribunal, approving the crimes mentioned therein and "disseminating knowingly false information about the activities of the USSR during the Second World War." Part 3 of the same article provides liability for disseminating information about the memorable dates that expresses "obvious disrespect for society" and for desecrating symbols of military glory.

22. For more information see: Maria Kravchenko, "Disproportionality of Anti-Extremist Measures: The Case of Faizrakhmanists in Russia // Talk about: Law and Religion." 2019. December 10. URL:https://talkabout.iclrs.org/2019/12/10/disproportionality-of-anti-extremist-measures-the-case-of-faizrakhamanists-in-russia/.
23. Blogger Kungurov sentenced to two years of an open prison // SOVA Center. 2016. December 20. URL: https://www.sova-center.ru/misuse/news/persecution/2016/12/d36045/.
24. See: Rights in extremis: Russia's anti-extremism practices from an international perspective.
25. Verdict under Article 148 of the Criminal Code issued in Orenburg against the teacher who published the article "Evil Christ" on the Internet // SOVA Center. 2016. April 15. URL: https://www.sova-center.ru/religion/news/authorities/feelings/2016/04/d34332/.

In 2016, Ivan Luzgin was fined 200 thousand rubles in Perm under Article 354.1 Part 1 of the Criminal Code for reposting the article "15 Facts about Banderites, or What the Kremlin is silent about," which spoke about the cooperation between the USSR and Nazi Germany in the pre-war period and about the fact that these states had unleashed World War II together by attacking Poland. The court ruled that the publication constituted dissemination of knowingly false information about the activities of the USSR during the Second World War that was not reflected in the verdict of the Nuremberg Tribunal.[26]

Administrative Law

Article 20.3 of the Code of Administrative Offenses (CAO RF) provides penalties for publicly displaying Nazi symbols and paraphernalia, or attributes or symbols confusingly similar to them, symbols of extremist organizations, and other prohibited symbols. In addition, it covers the production and sale of such symbols for propaganda purposes.

In 2015, Konstantin Ulesov, the head of the Lampasniki ultra-right sports club and the organizer of the "White Rex – The Spirit of the Warrior" martial arts competition series spent 10 days under arrest in Chelyabinsk under Article 20.3 Part 1 CAO RF. The prosecutor's office found that, starting in 2012, Nazi symbols were periodically published on the VKontakte page he had maintained under a pseudonym.[27]

The ban against displaying Nazi and other illegal symbols fails to take the purpose of the display into account, giving rise to the whole host of law enforcement issues.

Mikhail Penkin – a committed communist and an activist of the movement against rising transport fares in Dzerzhinsk of the Nizhny Novgorod Region – was sentenced to four days of administrative arrest under Article 20.3 Part 1 CAO RF. He posted on his VKontakte page two images containing Nazi symbols with captions about the need to combat fascism.[28]

Article 20.3.1 CAO RF, introduced in 2019, punishes incitement to hatred and hostility, as well as humiliation of dignity with regard to groups defined by various criteria. Repeated violation of this law in the course of one year, is subject to criminal liability under Article 282 Part 1 of the Criminal Code (see above).

Article 20.29 CAO RF pertains to mass distribution of extremist materials and their storage for the purpose of mass distribution. Responsibility arises only with respect to

26. Sentence for disseminating false information about the activities of the USSR issued in Perm // SOVA Center. 2016. July 1. URL: https://www.sova-center.ru/misuse/news/persecution/2016/07/d34941/.
27. Head of the Lampasniki Sports Club arrested in Chelyabinsk for a swastika on a social network // SOVA Center. 2016. January 4. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2016/01/d33589/.
28. A Communist arrested for anti-Fascist publications in Dzerzhinsk // SOVA Center. 2017. December 7. URL: https://www.sova-center.ru/misuse/news/persecution/2017/12/d38438/.

materials already included in the Federal List of Extremist Materials on the basis of court decisions (see above).

At the same time, dissemination of such materials may qualify as incitement to hatred or calls for extremist activity and, accordingly, face prosecution, including criminal prosecution, if the investigation finds the defendant to possess the corresponding motive (and, of course, pre-existing ban on the material in question is not required for the criminal prosecution). De facto, there is no universally understood formal attribute that allows to distinguish between administrative and criminal qualifications.

> *In 2014, an inmate of one of the penal colonies in the Chelyabinsk Region was fined under Article 20.29 CAO RF for keeping and distributing among other prisoners Udar Russkikh Bogov [Strike of Russian Gods] – the anti-Semitic book by Vladimir Istarkhov, recognized as extremist by three different court decisions.*[29]

> *In the same year, a VKontakte user was prosecuted in Khakassia under Article 282 Part 1 of the Criminal Code for posting xenophobic publications in a VKontakte group he had created. The case was opened specifically based on the fact that these publications included Udar Russkikh Bogov."*[30]

The context and purpose of the distribution of prohibited materials are not taken into account when someone is held accountable under Article 20.29 of the Code of Administrative Offenses, and, in some cases, the intent to distribute materials has been established only nominally. Some of the materials were recognized as extremist inappropriately.

> *In 2017, imam khatib Kasim Biziaev from the Penza Region was fined 3 thousand rubles under Article 20.29 CAO RF for storing in a village mosque the brochure Virtues of Ramadan (Faza'il-e-Ramadan) by Shaykh Muhammad Zakariyya al-Kandhlawi, the ideologist of the banned Tablighi Jamaat movement. The brochure is on the Federal List of Extremist Materials. The imam said that he had no idea how this publication had found its way into the mosque, since neither himself nor the parishioners had brought or read the book; so it could not be ruled out that it had been planted on purpose. However, the court of appeals never explored this version and approved the decision to fine Biziaev, noting that it was his duty to ensure the absence of books recognized as extremist in the mosque.*[31]

> *In 2018–2019, a number of courts in the Belgorod Region fined at least 15 people and arrested one under Article 20.29 CAO RF for posting a video on VKontakte created by supporters of Alexei Navalny Let's Remind Crooks and Thieves about Their Manifesto-2002, recognized as extremist despite the fact that it contains no xenophobic incitement. The*

29. A penal colony inmate in Chelyabinsk fined for distribution of anti-Semitic materials // SOVA Center. 2014. December 22. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2014/12/d30903/.
30. Abakan: Investigation into the social network publication of thrice banned "Udar Russkikh Bogov" completed // SOVA Center. 2014. July 18. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2014/07/d29932/.
31. Yet another imam khatib punished for storing a banned book in the Penza region // SOVA Center. 2017. December 14. URL: https://www.sova-center.ru/misuse/news/persecution/2017/12/d38485/.

video merely lists some unfulfilled campaign promises from the 2002 United Russia party manifesto and calls to vote for any party other than United Russia.[32]

All offenses mentioned above are considered by default to be ongoing, that is, the limitation period for liability begins from the moment the offense is discovered, and not from the moment when the illegal information or statement was first disseminated. The same applies to new Article 20.3.1 of the Code of Administrative Offenses, which provides for the most stringent sanctions.

In April 2019, Volgograd resident V. Merenkov was fined under Article 20.3.1 of the Code of Administrative Offenses for having published a xenophobic audio on VKontakte in 2010. The prosecutor filed a protest against this decision, but the regional court rejected his argument that the limitation period had expired and only reduced the amount of the fine.[33]

The punishments under the above articles range from fines (small ones under Articles 20.3 and 20.29 CAO RF, and substantial ones under Article 20.3.1) to 15 days' arrest.

A number of other administrative code articles are indirectly related to countering extremism – such as Article 6.17 (violation of the law on protection of children from information harmful to their health and (or) development), several parts of Article 13.15 (abusing freedom of mass information), Article 13.34 (failure by a provider to fulfil the obligations to block websites), Article 13.36 (violation by an audiovisual service owner of the procedure for distributing information among children that is harmful to their health and (or) development), Article 13.37 (distribution by audiovisual service owner of materials containing public calls for terrorist activities or publicly justifying terrorism), Article 13.40 (failure to perform the obligations by a search engine operator), Article 16.3 (non-observance of interdictions and (or) restrictions on exportation of goods into the customs territory of the Eurasian Economic Union) and others.

In addition, **Article 5.26** Part 2 CAO RF (deliberate public desecration of objects of religious veneration) is sometimes used as a complete analogue of Article 148 Part 1 of the Criminal Code – in some known cases, the punishment under this article was imposed for posting anti-clerical and atheistic images and videos or even merely a distorted image of an Orthodox icon on social networks.[34]

32. The Belgorod region: Administrative prosecution for distribution of the video "Let's Remind Crooks and Thieves about Their Manifesto-2002" // SOVA Center. 2019. October 23. URL: https://www.sova-center.ru/misuse/news/persecution/2019/10/d41616/.

33. Administrative Cases under Article 20.3.1 CAO RF. June 2019 // SOVA Center. 2019. June 5. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2019/06/d41106/.

34. See for example: Resident of the Khanty-Mansi Autonomous Okrug sentenced to community service for posting an Orthodox icon with his friend's face on a social network // SOVA Center. 2017. October 30. URL: https://www.sova-center.ru/misuse/news/persecution/2017/10/d39779/; Novgorod resident fined for desecrating objects of religious veneration through a video clip // SOVA Center. 2018. January 23. URL: https://www.sova-center.ru/misuse/news/persecution/2018/01/d38695/; Resident of the Khanty-Mansi Autonomous Okrug fined for an episode from a satirical video featuring a priest // SOVA Center. 2018. August 2. URL: https://www.sova-center.ru/misuse/news/persecution/2018/08/d39778/; Decision to punish a Severodvinsk activist for posting atheistic memes upheld // SOVA Center. 2019. April 17. URL: https://www.sova-center.ru/misuse/news/persecution/2019/04/d40905/.

Blocking Extremist Materials on the Internet

Copies of extremist materials discovered by prosecutors are subject to legal blocking as one of many categories of materials prohibited from distribution in the Russian Federation. Since October 2019, a new administrative procedure has been launched for considering requests to ban materials, similar to the newly introduced procedure for recognizing materials as extremist (see above). Roskomnadzor is required to participate in the consideration of the claims.

Several categories of information are blocked under the extrajudicial procedure, in particular, calls for extremist activity and materials of "undesirable organizations" (Article 15.3 of the law "On Information"). A prosecutor's office sends the request to block information to Roskomnadzor, and the prohibited information, that is, the information deemed illegal by the prosecutor's office, has to be removed – otherwise, the offending page will be blocked.

Other Restrictions

On Electoral Participation. The law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" stipulates that candidates and parties may be disqualified if they call for extremist activity, incite hatred, or display Nazi symbols during the election campaign. The election committee may recommend non-dissemination of campaign products if it finds manifestations of extremism in them. Citizens punished under Articles 20.3 and 20.29 CAO RF lose their right to be elected for a year.[35]

On Organization of Meetings. The following actors cannot serve as organizers of public events: citizens with an unexpunged or unexpired criminal record (including under the "extremist" articles of the Criminal Code); citizens that have been charged twice in the course of one year, including under Articles 20.3 and 20.29 of the Code of Administrative Offenses; as well as banned parties and associations.

The Rosfinmonitoring List. Suspects, accused and convicted in "extremist" and "terrorist" criminal cases are to be included in the List of Extremists and Terrorists, maintained by Rosfinmonitoring (Federal Financial Monitoring Service).[36] The list also includes organizations recognized in Russia as extremist or terrorist. Foreign legal entities and individuals get into the list as well (relevant information comes from the Ministry of Foreign Affairs).

35. Federal Law No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" of June 12, 2002 // Garant. URL: https://base.garant.ru/3998504/ef67419dbaa01e4d228acc1d3cf42314/.

36. The List of Organizations and Individuals Known to be Involved in Extremist Activities or Terrorism // Rosfinmonitoring. URL: http://www.fedsfm.ru/documents/terr-list.

Individuals from the Rosfinmonitoring List are subject to restrictions on banking services (including severe limitations on withdrawing money from accounts) and managing their property. The corresponding norms of other branches of the legislation impose additional restrictions on them – for example, since 2019 they have been banned from working at nuclear facilities, operating railroad trains, or engaging in crowdinvesting.

In addition, a separate interdepartmental commission may freeze the accounts of persons associated with terrorist activities, based on information received from the competent authorities of foreign states.[37]

The Law Enforcement Dynamics

In the first years after the adoption of the law "On Combating Extremist Activities," the law enforcement was focused on two principal issues. The first one was the fight against neo-Nazi groups, with the main emphasis on punishing the practice of xenophobic violence. While this work of law enforcement agencies was not sufficiently systematic or effective in the early 2000s, starting in the middle of the decade, and especially since 2008, when the Russian Ministry of Internal Affairs launched its specialized Centers for Countering Extremism ("E" Centers), the authorities began to pay much more attention to this issue. According to SOVA Center, the largest number of sentences for hate crimes was handed down in 2010; the numbers have been steadily decreasing since then. The number of hate attacks recorded by SOVA over this time period consistently declined as well.[38] Thus, it can be concluded that the introduction and application of anti-extremist legislation successfully suppressed the wave of xenophobic violence in Russia.

Meanwhile, the practice of prosecuting participants in banned organizations, such as the National Bolshevik Party (NBP) or the radical Islamic Hizb ut-Tahrir party (recognized in Russia as terrorist) was also taking shape.

Cases of unjustified prosecution for public statements were reported as early as the first half of the 2000s.[39]

Since the beginning of the 2010s, the scope of prosecution against adherents of forbidden religious movements not involved in political activities or calling for violence began to grow. These groups included followers of Muslim theologian Said Nursi (they were declared to belong to a single organization, the Nurcular association, which was deemed extremist), Tablighi Jamaat and several others. Since the second half of the 2010s, their members have faced real prison terms.

The latest round of prosecutions for continuing the activities of extremist organizations is related to the ban against all local Jehovah's Witnesses organizations in Russia, enacted in 2017 (previously, only specific communities were banned, and individual believers were prosecuted under various anti-extremist articles).

37. Federal Law No 115-FZ "On Countering Legalization (Laundering) of Criminally Obtained Incomes and the Financing of Terrorism" of August 7, 2001 // Legislationline. URL: https://www.legislationline.org/download/id/7945/file/Russia_law_countering_money_laundering_financing_terrorism_2001_am2017_en.pdf.
38. In both cases, the results come not from the official statistics, but from the SOVA Center monitoring.
39. The Price of Truth about Chechnya // Moscow Helsinki Group. 2006. URL: http://old.mhg.ru/publications/A1AD606.

Countering extremism on the Internet remained a marginal law enforcement area throughout the 2000s. However, in the 2010s, with the widespread penetration of the Internet into the life of Russian citizens and the explosive growth of social networks in popularity, law enforcement agencies began to pay more attention to it. It soon became clear that identification of online crimes and offenses is not a difficult process, and makes it easy to generate favorable statistics on the fight against extremism. At the same time, security officials widely believed that, since imprisonment was not often imposed under anti-extremist articles, a criminal record could be viewed as a preventive measure. This line of thinking resulted in a rapid increase in the number of people convicted for "extremist" statements on the Internet (mainly under Article 282 of the Criminal Code); the number of sentences for offline propaganda has not increased. As a result, according to the SOVA Center estimates, the share of "web propaganda" offenders amounted to more than 80% of those convicted of speech crimes in 2014, and did not fall below this level in the subsequent years.[40] The number of people convicted under all articles that penalize public statements (Articles 282, 280, 280.1, 205.2, 354.1, and Article 148 Parts 1 and 2 of the Criminal Code) in 2017 exceeded 650,[41] while, early in the decade, there were fewer than two hundred of them annually.

The number of those brought to administrative responsibility started growing even faster. This growth was facilitated by the rapid growth of the Federal List of Extremist Materials; in 2016, the Prosecutor General's Office took control of the activities of prosecutors in this area,[42] which led to a decrease, but not a full stop, in the growth rate of the Federal List. The number of citizens and organizations charged under Articles 20.3 and 20.29 CAO RF in 2017 and 2018 exceeded 3,500 per year, while, in the early 2010s, their annual number remained in double digits. Penalties issued to little-known social network users, who may not even adhere to radical beliefs, account for a substantial percentage of the law enforcement. Distributors of materials placed on the Federal List without sufficient justification often face punishment, as do people who used Nazi symbols with no intent to advocate Nazism whatsoever. Both articles also turned out to be a convenient tool for mounting pressure against the peaceful opposition.

The need to demonstrate success in the fight against extremism has generated a lot of absurd requirements of various kinds. As an example, consider the requirement by prosecutors that newsstands and even train stations refreshment stands check their holdings against the Federal List of Extremist Materials.

40. For more information on countering online extremism, see: Natalia Yudina. "Virtual Anti-Extremism: Peculiarities of enforcing the anti-extremist law on the Internet in Russia (2007–2011)" // SOVA Center. 2012. September 17. URL: https://www.sova-center.ru/en/xenophobia/reports-analyses/2012/10/d25679/; Natalia Yudina, "Fight against Extremism in a Virtual Realm in 2012–2013" // Forum of the Newest East European History and Culture. 2015. No. 1. URL: http://www1.ku-eichstaett.de/ZIMOS/forum/docs/forumruss23/16Yudina.pdf; Natalia Yudina, "Anti-Extremism in Virtual Russia," 2014–2015 // SOVA Center. 2016. August 24. URL: https://www.sova-center.ru/en/xenophobia/reports-analyses/2016/08/d35262/.

41. Official statistics on the anti-extremism law enforcement in 2017 // SOVA Center. 2018. April 27. URL: https://www.sova-center.ru/racism-xenophobia/news/counteraction/2018/04/d39283/.

42. The Prosecutor General's office transferred the issue of banning materials for extremism to prosecutors of the federal entities // SOVA Center. 2016. September 9. URL: https://www.sova-center.ru/misuse/news/counteraction/2016/11/d35789/.

In 2018, the excesses of anti-extremist law enforcement gave rise to an extensive public debate, in the course of which the Russian president gave instructions to analyze the law enforcement practice and the need for legislative changes in the fight against extremism. This analysis resulted in the new instructions by the Supreme Court of the Russian Federation,[43] partial decriminalization of Article 282 (introduction of an administrative mechanism for the first offence under Article 20.3.1 CAO RF)[44] and plans to amend the disputed wording of Article 20.3 CAO.[45]

43. Resolution of the Plenary Meeting of the Supreme Court of the Russian Federation No. 32 // Supreme Court of the Russian Federation. 2018. September 20. URL: http://vsrf.ru/documents/own/27145/; SOVA Center commentary on Resolution of the Plenary Meeting of the Supreme Court on extremist crime // SOVA Center. 2018. September 25. URL: https://www.sova-center.ru/misuse/publications/2018/09/d40054/.

44. Putin signed the laws on partial decriminalization of Article 282 // SOVA Center. 2018. December 28. URL: https://www.sova-center.ru/misuse/news/lawmaking/2018/12/d40472/.

45. Amendments to Article 20.3 CAO RF adopted in the first reading // SOVA Center. 2019. December 12. URL: https://www.sova-center.ru/misuse/news/lawmaking/2019/12/d41828/.

The Republic of Kazakhstan

The anti-terrorism and anti-extremist legislation of the Republic of Kazakhstan consists of laws and bylaws, as well as articles on criminal and administrative liability in the Criminal Code (hereinafter – the CC RK) and the Code of Administrative Offenses of the Republic of Kazakhstan (CAO RK) respectively. The Criminal Code contains 15 articles on terrorist crimes[1] and 12 articles on extremist ones.[2] The Code of Administrative Offenses contains five articles on offenses related to terrorism.[3]

With such an abundance of legal norms, the legislative framework lacks clear definitions. For example, the law of the Republic of Kazakhstan "On Countering Extremism" defines extremism as "actions pursuing extremist goals."

The law distinguishes three types of extremist actions[4]:

1. Terrorist crimes provided for by the Criminal Code of the Republic of Kazakhstan are covered under Articles 170 (mercenary activities), 171 (developing the bases (camps) of training of mercenaries), 173 (assault on individuals or organizations using international protection), 177 (infringement on life of the First President of the Republic of Kazakhstan - Leader of the Nation), 178 (infringement on life of the President of the Republic of Kazakhstan), 184 (sabotage), 255 (an act of terrorism), 256 (propaganda of terrorism or public calls for commission of an act of terrorism), 257 (creation, management of terrorist group and participation in its activity), 258 (financing of terrorist or extremist activity and other aiding and abetting to the terrorism or extremism), 259 (recruiting or training or arming people to organize terrorist or extremist activities), 260 (undergoing the terrorist or extremist training), 261 (hostage taking), 269 (attack against buildings, structures, means of communication or their capture), 270 (theft, as well as seizure of aircraft or water vessel or railway vehicles).
2. Extremist crimes provided for by the Criminal Code of the Republic of Kazakhstan are covered under Articles 174 (incitement to social, national, tribal, racial, estate or religious enmity), 179 (propaganda or public calls for seizure or retention of power, as well as seizure or retention of power or forcible change of constitutional order of the Republic of Kazakhstan), 180 (separatist activities), 181 (armed rebellion), 182 (creation or management of an extremist group or participation in its activity), 184 (sabotage), 258 (financing of terrorist or extremist activity and other aiding and abetting to the terrorism or extremism), 259 (recruiting or training or arming people to organize terrorist or extremist activities), 260 (undergoing the terrorist or extremist training), 267 (organization of illegal paramilitary forces), Article 404 Parts 2 and 3 (creation, management and participation in activity of illegal public and other associations), Article 405 (organization and participation in activity of public or religious association or other organization after a court decision to prohibit their activities or liquidate in connection with their extremism or terrorism).
3. Terrorist offenses under the Code of Administrative Offenses of the Republic of Kazakhstan are covered under Articles 149 (non-fulfillment and (or) improper fulfillment of obligations to ensure anti-terrorist protection and the proper level of security of an object vulnerable to terrorism), 214 (breach of the legislation of the Republic of Kazakhstan on counteraction to legalization (laundering) of incomes received by illegal means, and financing of terrorism), 453 (manufacturing, storage, inflow, transmission, distribution of media products as well as other products on the territory of the Republic of Kazakhstan), 477 (violation of the legal regime in a zone of an anti-terrorist operation), 478 (actions that provoke a violation of legal order in a state of emergency).
4. The Law "On Countering Extremism" of the Republic of Kazakhstan No. 31 of February 18, 2005. In our translation we use the term "tribal", not "generic" as given in some other translations. The term "enmity" is used uniformly throughout this report, although the same word is also frequently translated as "discord" or "strife." The Russian word "soslovnyi" translated here as "class" is in fact a historical term which literally means "pertaining to estate."

— *forcible change of the constitutional system, violation of the sovereignty of the Republic of Kazakhstan or of integrity, inviolability and inalienability of its territory, disruption of national security and defense capacity of the state, forcible seizure of power or forcible retention of power, creation, management and participation in the illegal paramilitary forces, organization of armed rebellion and participation in it, incitement of social or class enmity (political extremism);*
— *incitement of racial, national or tribal enmity, including that related to violence or incitement to violence (national extremism);*
— *incitement of religious hostility or enmity, including that related to violence or incitement to violence, as well as use of any religious practice, causing a threat to security, life, health, morality or rights and freedoms of citizens (religious extremism).*

The definition of extremism does not indicate that it includes hate crimes, nor are hate crimes addressed separately in the Criminal Code. However, Article 54 CC RK recognizes the commission of a criminal offense on the grounds of "national, racial, or religious hatred or hostility"[5] as a circumstance that aggravates criminal liability and punishment.

The law "On Countering Terrorism" defines terrorism as ideology of violence and practice of influence on making a decision by the state bodies, the bodies of local self-government or the international organizations by committing or threatening to commit violent and (or) other criminal actions, linked with deterrence of public and directed on inflicting of damage to person, public and the state.[6]

Normative documents of Kazakhstan often refer to the terms "terrorism" and "extremism" in the same breath without noting any differences in their definitions and nature.[7] Thus, strategies and measures employed against terrorism can also be extrapolated to the fight against extremism. The decision by the Supreme Court of the Republic of Kazakhstan "On Some Questions of Court Practice on Application of the Legislation on Terrorist and Extremist Crimes," adopted in December 2017, combines terrorist and extremist crimes into one category.[8] The Committee for Religious Affairs of the Ministry of Information and Social Development of the Republic of Kazakhstan maintains a single list of banned terrorist and extremist organizations. The materials published by mass media, use both terms, often interchangeably.

As a result of a misinterpretation, the application boundaries for the corresponding legal norms expand, become blurred and extend to a wide range of offenses from terrorist activities to a threat to the national heritage and morality of citizens.

5. Here and below we kept the word "national," used in the published translations of the codes and statutes, even though "ethnic" is a much closer translation.
6. The Law "On Countering Terrorism" of the Republic of Kazakhstan No. 416 of July 13, 1999. Article 1.
7. Information Note by human rights organizations of Kazakhstan to Fionnuala D. Ní Aoláin, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in connection with her upcoming visit to the Republic of Kazakhstan.
8. The normative resolution "On Some Issues of Judicial Practice in the Enforcement of Legislation on Terrorist and Extremist Crimes" of the Supreme Court of the Republic of Kazakhstan No. 11 of December 8, 2017 // The Supreme Court of the Republic of Kazakhstan. URL: http://sud.gov.kz/system/files_force/pagefiles/np_11_terr_i_ekstr_rus.pdf?download=1.

Recognizing Materials as Extremist

According to the law "On Countering Extremism," extremist materials include "any of information materials, containing the signs and (or) calls for implementation of extremist actions or substantiating or justifying the need of their commission." Applications for declaring information materials extremist are submitted by prosecutors to courts corresponding to the location of the claimants' offices or at the place of discovery of such materials (Article 376 of the Republic of Kazakhstan Civil Procedure Code). The court decision to recognize materials as extremist serves as the basis for including corresponding information into the special records system of the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan. At the end of 2019, the list of informational materials recognized as extremist included 869 entries, and the majority were radical Islamic materials.[9] Prosecutorial claims seeking to ban such materials are usually based on opinions of religious studies experts. Currently, two types of forensic examinations by religious studies experts exist in Kazakhstan – one conducted by experts from the Center for Forensic Expertise of the Ministry of Justice of the Republic of Kazakhstan, and the other one by the Committee for Religious Affairs under the Ministry of Information and Social Development of the Republic of Kazakhstan.

Regulating the Activities of Organizations

The law "On Countering Extremism" defines an extremist organization as "a legal entity, association of individuals and (or) legal entities, implementing extremism and recognized by court as extremist." When detecting facts of violations of the legislation of the Republic of Kazakhstan in the field of countering extremism, by legal entities or their structural units (branches and representative offices), or upon receiving the information about impending unlawful actions, or in case of dissemination of extremist materials via mass media, prosecutors utilize the instruments of prosecutorial oversight seeking elimination of any manifestations of extremism, the reasons and conditions that contributed to extremism, as well as restoration of violated rights. Prosecutors also submit to courts the claims for banning the activities of organizations that carry out acts of extremism, and conduct criminal prosecutions.

Court decisions on recognizing organizations as extremist are often not publicly accessible, whereas, according to Article 18 paragraph 3 of the Constitution of the Republic of Kazakhstan, "State bodies, … officials, and the mass media must provide every citizen with the possibility to obtain access to documents, decisions and other sources

9. The List of Religious Literature and Information Materials Recognized as Extremist and Banned from Importation, Publication and Distribution on the Territory of the Republic of Kazakhstan // Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan. URL: http://pravstat.prokuror.gov.kz/rus/o-kpsisu/spisok-religioznoy-literatury-i-informacionnyh-materialov-priznannyh-ekstremistskimi-i.

of information concerning his rights and interests." Since these court decisions affect the right to freedom of association and to participation in public life of Kazakhstan, they are of public interest. Moreover, in this manner, a de facto ban on participation in the activities of civic organizations is established, and its violation entails criminal liability.

The list of banned terrorist organizations[10] and the list of banned extremist organizations[11] are published separately on the website of the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan. The website of the Committee for Religious Affairs under the Ministry of Information and Social Development of the Republic of Kazakhstan maintains a single list of banned terrorist and extremist organizations.[12]

The lists of the Committee on Legal Statistics as of the end of 2019 featured a total of 25 entries, including Al-Qaeda, the Islamic State, the Muslim Brotherhood, Al-Nusra Front, the East Turkestan Islamic Movement, the Turkestan Islamic Party, the Islamic Movement of Uzbekistan, Hizb ut-Tahrir, Tablighi Jamaat, Allya Ayat, the Democratic Choice of Kazakhstan (DCK) and others.

> *On March 13, 2018, the Democratic Choice of Kazakhstan (DCK) movement was recognized as an extremist organization by the decision of the Esil District Court of Astana. The court's decision stated, "A political science analysis of the subtextual information in the materials with appeals allows us to state that incitement of social hatred constitutes a micro-goal of the DCK leader aimed at achieving the macro-goal, namely, the seizure of power." According to the decision, in order to achieve this goal, DCK leader Mukhtar Ablyazov "tries to convince readers that the DCK is a true spokesman for people's interests, forms a negative image of the authorities, individual government entities and officials in order to incite social enmity, hostility, violent seizure and change of constitutional system of the Republic of Kazakhstan."[13] The court prohibited the DCK activities, including distribution of information materials, use of mass media, telecom, social networks, instant messengers and video hosting sites, throughout the Republic of Kazakhstan.*

10. The List of Terrorist Organizations // Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan. URL: http://pravstat.prokuror.gov.kz/rus/o-kpsisu/spisok-terroristicheskih-organizaciy.

11. The List of Extremist Organizations // Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan. URL: http://pravstat.prokuror.gov.kz/rus/o-kpsisu/spisok-ekstremistskih-organizaciy.

12. The List of Terrorist and Extremist Organizations Banned on the Territory of the Republic of Kazakhstan // Ministry of Information and Social Development of the Republic of Kazakhstan. URL: http://qogam.gov.kz/ru/pages/spisok-zapreshchennyh-terroristicheskih-i-ekstremistskih-organizaciy.

13. Anton Fabry, "The court decision was handed…"// Post on Facebook. 2018. May 21. URL: https://www.facebook.com/permalink.php?story_fbid=391875631296451&id=100014220528095.

Criminal Law

Article 174 (incitement of social, national, tribal, racial, class or religious enmity) CC RK is used mainly to bring charges of ethnic, social or religious enmity.

The article contains a number of legally vague concepts.

For example, it establishes responsibility for inciting "class [literally "estate"] enmity," but there is no division into estates in Kazakhstan. This discrepancy may lead to arbitrary interpretation of this concept by state and law enforcement agencies.

The legislation does not define "tribal enmity," although the tribal division ("ru" or "zhuz" in Kazakh), in fact, exists in Kazakhstan. Meanwhile, in practice, quite a different interpretation of the concept of "tribe" was used.

> *In 2008, Elizaveta Drenicheva, a follower of the Unification Church, was sentenced under Article 174 CC RK to two years in prison (this punishment was later replaced by a fine) for committing a crime against peace and security of the humanity. According to the expert examination conducted by expert E. Burova, the lectures given by Drenicheva as part of her religious activity, contained propaganda of the inferiority of citizens on the basis of their belonging to the "human race ["human tribe" in Russian]."*

The text of Article 174 also includes the concept of "social hostility," which can be interpreted extremely broadly, as well as such legally vague terms as "the national honor and dignity" and "religious feelings of believers." There are no official explanations, for example, from the Supreme Court on how to interpret the concept of "incitement to enmity" as opposed to "incitement to hatred" used in the international law.

As a result, a situation of legal uncertainty and unpredictability is created – it is not clear exactly what information materials, if disseminated, entail criminal liability under this article as a grave crime.

> *The case of Saken Baikenov, an activist of the Anti-Heptyl movement, caused great resonance. Baikenov published posts on his Facebook page against launching Russian* UDMH *(heptyl) rockets from the Baikonur Cosmodrome and demanded closing of Russian landfills in Kazakhstan. He was charged with inciting national enmity and sentenced to two years in prison.*[14]

According to the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan, the unified register of pre-trial investigations included the following number of cases referred to courts under Article 174 CC RK: 132 in 2017, 120 in 2018, and 55 in 2019 (as of September).[15]

We also would like to note that **Article 183** CC KR punishes for "giving permission" to publish in mass media "information and materials, aimed at incitement of national, tribal, racial, social and religious hostility, promoting class exclusivity, war, containing the calls

14. Ruslan Botayuly, "Saken Baikenov sentenced to two years behind bars" // Radio Azattyq. 2015. April 13. URL: https://rus.azattyq.org/a/26953332.html.

15. See: Information Service of the Committee on Legal Statistics and Special Records.

for forcible seizure of power, forcible retention of power, undermining security of the state or forcible change of the constitutional order, as well as violation of the territorial integrity of the Republic of Kazakhstan." This article is practically never applied, possibly due to the fact that the law fails to define the meaning of "giving permission" in this case.

Article 180 CC RK (separatist activity) was applied in a few isolated cases only, but used not only against violent separatism and incitement to it, but also to punish non-violent statements.

> *Igor Sychev, the administrator of the "Overheard in Ridder" VKontakte page, was sentenced to five years in prison in 2015 under Article 180 CC RK. He approved the publication in this group of a vote, created by another user under the headline "Let's imagine if a vote took place in the city of Ridder," which proposed voting for or against the entry of the East Kazakhstan Region into Russia. He removed this vote from the page after indignant responses from the group members; however, he was still charged for it.*[16]

Article 2 of the law "On Mass Media" was supplemented in December 2017 with a note that provides an interpretation of the term "propaganda." According to the note, "propaganda in the mass media means the dissemination of views, facts, arguments and other information, including intentionally distorted, in order to form a positive public opinion about information prohibited by the legislation of the Republic of Kazakhstan and (or) incitement of an unlimited circle of persons to commit an unlawful action or inaction." Such a vague interpretation gives rise to criminal liability for expressing one's opinion under **Article 179** (propaganda or public calls for seizure or retention of power or forcible change of constitutional order of the Republic of Kazakhstan) and **Article 256** (propaganda of terrorism or public calls for commission of an act of terrorism) CC RK. While Article 179 is applied relatively rarely (up to ten cases a year), the number of prosecutions under Article 256 is rising steadily and approaches 200 cases a year.[17]

Article 274 CC RK (dissemination of knowingly false information) is formulated very broadly, so that any person can be held accountable for dissemination of their opinions. A person who publishes or disseminates information may be prosecuted under Article 274 CC RK if this information contains libel, insult, and the like, but also "incitement to social, national, tribal, racial, social or religious hatred," "propaganda or public calls for seizure or retention of power" or "propaganda of terrorism or public calls for commission of an act of terrorism." Therefore, Article 274 is used in conjunction with relevant "anti-extremist" articles.

> *One of the most high-profile cases under this article is the case of a peaceful rally against amendments to land legislation. In late April 2016, numerous demonstrations took place in the country, during which people expressed their disagreement with the amendments. Peaceful protests ended in the activists' detention. In November 2016, civil activists Talgat Ayan*

16. Real prison term for virtual voting… Igor Sychev sentenced to five years of prison // TIREK Alliance. 2015. November 19. URL: http://tirek.info/realnyj-srok-za-virtualnoe-golosovanie-igorya-sycheva-prigovorili-k-pyati-godam-tyurmy/.

17. See: Information Service of the Committee on Legal Statistics and Special Records.

and Max Bokaev were found guilty by the Atyrau City Court of "inciting enmity" (Article 174 CC RK), "disseminating knowingly false information" (Article 274 CC RK) and "violating the procedure for holding a rally" (Article 488 CAO RK) and sentenced to five years in prison with a three-year ban on civic engagement. Amnesty International recognized Max Bokaev and Talgat Ayan as prisoners of conscience. After the arrest of Bokaev and Ayan, the international human rights organization Human Rights Watch demanded that the Kazakh authorities immediately release them and drop the charges against them.[18]

Article 405 CC RK is used to prosecute those who participate in the activities of organizations prohibited in Kazakhstan.

Thus, any reference on social networks to the DCK movement, as well as its leader, can become the basis for prosecution under Article 405. According to the monthly monitoring conducted by the Public Association Dignity, four civil activists were prosecuted under Article 405 Part 2 CC RK just in October 2019 and sentenced to a year of restriction of freedom for sharing social network posts and participating in the DCK.[19] The wave of arrests and detentions in April and May 2019, when people took to the streets in order to express their disagreement with the early presidential election, also resulted in charges under Article 405 CC RK.[20]

Charges against DCK supporters have also been brought under Articles **174, 179, 256** and **274**.

In 2018, Aigul Akberdieva, a participant of the DCK group on Telegram, was convicted under Article 179 CC RK (calls for the seizure of power). Earlier, her spouse Ablovas Dzhumaev was found guilty under Article 174 (incitement to national enmity) and Article 179 (calls for seizure of power) and sentenced to three years in prison, also for his involvement with the DCK.[21]

Over the past 10 years, more than 160 people in Kazakhstan have been convicted under Article 405 CC RK for participating in the activities of Hizb ut-Tahrir, an Islamic organization banned as extremist in 2005.[22]

18. Saniya Toiken, "Prison terms for Bokaev and Ayan" // Radio Azattyq. 2016. November 28. URL: https://rus.azattyq.org/a/atyrau-ayan-bokaev-prigovor/28143089.html.
19. Monitoring the human rights defenders security situation in October 2019 // Public Association Dignity. 2019. October 29. URL: https://kkassiyet.wordpress.com/2019/11/27/monithrd201910/.
20. See: "Boycott" and "People Are Tired!" Unauthorized actions and detentions in Nur-Sultan and Almaty // Radio Azattyq. 2019. May 1. URL: https://rus.azattyq.org/a/kazakhstan-nur-sultan-almaty-rally-1-may/29914075.html; Residents of the Kazakhstan's capital took to the streets demanding fair elections // Sputnik Kazakhstan. 2019. May 1. URL: https://ru.sputniknews.kz/incidents/20190501/10019591/nur-sultan-almaty-miting-zaderzhaniya-vybory.html.
21. Saniya Toyken, "Wife of a man recently convicted for "participation in the DCK chat" faces trial in Aktau" // Radio Azattyq. 24.09.2018. URL: https://rus.azattyq.org/a/kazakhstan-dvk-trial-aihul-akberdi/29507176.html.
22. Hizb ut-Tahrir on the ropes in Kazakhstan // EurAsia Daily. 2017. March 2. URL: https://eadaily.com/ru/news/2017/03/02/v-kazahstane-dozhimayut-hizb-ut-tahrir.

In 2017, seven members of Tablighi Jamaat, an organization recognized as extremist in 2013, were sentenced under Article 405 to terms ranging from one to four years behind bars.[23] In 2018, a follower of Tablighi Jamaat was sentenced to one year of imprisonment,[24] seven supporters of the movement were sentenced to compulsory labor and restriction of liberty for the terms of one to three years,[25] and three more received three years behind bars.[26]

Administrative Law

Article 453 CAO RK establishes liability for manufacture, storage, import and transportation of media products that contain information and materials aimed at promoting or advocating a forcible change in the constitutional system, violating the integrity of the Republic of Kazakhstan, undermining the security of the state, war, inciting social, racial, national, religious, class and tribal enmity, the cult of cruelty, violence and pornography. Note that the article does not talk specifically about the extremist materials included on the list maintained by the Committee on Legal Statistics. Thus, materials included on the list or the ones which are not included but contain the elements specified in Article 453 of the Code of Administrative Offenses may constitute an offense.

> *A man faced responsibility under Article 453 Part 4 CAO RK in 2017 for the storage of prohibited literature. Materials in Arabic, which, in the course of examination by a religious studies expert, were found to contain signs of inciting religious enmity, were discovered and seized from him at the Aktau International Airport.*[27]

Under **Article 434-1** CAO RK, a fine is imposed for the use of visual objects (posters, emblems, banners) aimed at inciting social, racial, national, religious, class or tribal enmity.

23. Seven members of banned Tablighi Jamaat convicted in the South Kazakhstan Province // Tengrinews.kz. 2017. April 5. URL:https://tengrinews.kz/kazakhstan_news/yuko-osudili-7-chlenov-zapreschennoy-organizatsii-tabligi-315460/.
24. In the Almaty region, a local resident convicted for participating in Tablighi Jamaat // Antiterror Today. 2018. February 10. URL: http://antiterrortoday.com/baza-dannykh/terroristicheskie-i-ekstremistskie-gruppirovki/tabligi-dzhamaat/tabligi-v-kazakhstane/15566-za-uchastie-v-tabligi-dzhamaat-osuzhden-muzhchina-v-almatinskoj-oblasti.
25. Extremists from Tablighi Jamaat sentenced to compulsory labor in Aktobe // BaigeNews.kz. 2018. July 25. URL: https://baigenews.kz/news/ekstremistov_iz_tabligi_dzhamaat_prigovorili_k_prinuditelni_rabotam_v_aktobe/.
26. Yelena Veber, "The trial of the Tablighi Jamaat members took only a few sessions" // Radio Azattyq. 2018. April 9. URL: https://rus.azattyq.org/a/karaganda-prigovor-delo-tabligi-dzhamaat/29154140.html
27. Banned religious literature seized from a man at Aktau Airport // Meta.kz. 2017. September 26. URL: http://meta.kz/novosti/kazakhstan/1155259-v-aeroportu-aktau-u-muzhchiny-iz-yali-zapreshhennuyu-religioznuyu-literaturu.html.

List of the Financial Monitoring Committee

In accordance with Article 12 of the law "On Combating Legalization (Laundering) of Illegally Gained Income and Financing of Terrorism," the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan compiles a list of organizations and persons related to financing of terrorism and extremism.[28] The grounds for including an organization or individual on this list include one or more of the following:

- *court decisions that have entered into legal force in the Republic of Kazakhstan recognizing this organization as terrorist or extremist (with or without liquidation of a legal entity) due to its terrorist or extremist activities on the territory of the Republic of Kazakhstan and (or) another state;*
- *finding an individual guilty of extremist and (or) terrorist crimes;*
- *sentences for terrorist activities issued in foreign countries and recognized by Kazakhstan;*
- *being on the international terrorist watchlists;*
- *being on the list of organizations and persons "involved in terrorist and extremist activities" compiled by the Prosecutor General of the Republic of Kazakhstan "based on data from law enforcement and special state bodies;"*
- *sanctions imposed by the UN Security Council.*

A person or entity is taken off the list when the basis for their inclusion loses its force – for instance in connection with the overturn of their sentence or as a result of a criminal record expungement or expiration.

Internet and Mass Media

In order to find a person guilty under Article 174 CC RK, it is necessary to prove the presence of prejudice, the presence of hatred or incitement to it. Experts note that a mechanism should be developed to identify the incitement of hostility, and the work of forensic psychological and philological experts should be improved. However, this issue becomes even more problematic with respect to social network publications, since the intent of the post (i.e. words rather than real physical actions) is extremely difficult to judge.[29]

Officials are worried about other issues. Thus, Dauren Abaev, the Minister of Information and Communication, who spoke approvingly of the initiative to ban anonymous comments on Internet resources (in Kazakhstan, the latter are viewed as equivalent to mass media), noted, "A lot of incitement to social or ethnic enmity and insulting citizens takes place in

28. The List of Organizations and Individuals Associated with the Financing of Terrorism and Extremism // Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan. URL: https://kfm.gov.kz/ru/the-list-of-organizations-and-individuals-associa/.

29. Anna Gusarova, "Online Freedom in Kazakhstan: Crime and Punishment" // CAAN. 2018. 10 January. URL: https://caa-network.org/archives/11200.

comments. In this regard, we are working on the issue of enabling information portals to acquire the ability to track and find out who is behind the comments."[30]

Tamara Kaleeva, the president of the Adil Soz International Foundation for the Protection of Freedom of Speech, in turn, notes that both the problem of media responsibility and the issue of excessive restrictions on freedom of speech are relevant for Kazakhstan. "Lack of ability to professionally and competently cover the most important issues in the society – first of all, interethnic, inter-confessional, inter-party relations – and the fear of unjustified punishment for an unfortunate incident – causes the media to write about these problems seldom and one-sidedly… On the other hand, law enforcement agencies also have no criteria for an objective assessment of media publications with respect to inciting ethnic and religious enmity. Under the pretext of combating religious extremism and terrorism and strengthening national security, harsh legislative restrictions regarding public associations, religious structures, political parties and the media are proposed and adopted."[31]

Article 13 of the law "On Mass Media" stipulates the media responsibility for, among other issues, "propaganda or advocacy of the cult of cruelty and violence, social, racial, national, religious, class and tribal superiority"; the punishment is levied in the form of suspending or terminating production or distribution of materials, based on the court decision or the owner's decision.[32]

Kazakhstan has adopted the State Program for Countering Religious Extremism and Terrorism for 2018-2022, which specifies the need to monitor the information space in order to protect users "from the influence of terrorist propaganda." The legal norm on monitoring media compliance with the legislation was introduced into the law "On Mass Media."

A provision, added to the law "On Communications" of the Republic of Kazakhstan in 2014, states that the Prosecutor General's Office of the Republic of Kazakhstan has the right to temporarily suspend the operation of networks, communications and Internet resources without a court order if they are used for criminal purposes that are detrimental to the interests of individuals, the society and the state, as well as for the dissemination of information that violates the laws of the Republic of Kazakhstan on elections or contains calls for extremist and terrorist activities or mass disorder; the National Security Committee of the Republic of Kazakhstan can do the same in cases that require an urgent response and could lead to the commission of grave and especially grave crimes, as well as crimes prepared and committed by a criminal group.[33] This norm allows government agencies to freely restrict (block) access to Internet resources.

Telecom operators are given only three hours to block materials as requested by the Prosecutor General's Office from the moment they receive the relevant order from an authorized body. At the same time, a telecom operator or a state technical service, in cooperation with an authorized body and law enforcement agencies must identify a person, who has been "using the networks and (or) communications for criminal purposes."

30. Ibid.

31. Cited from: Anastassiya Reshetnyak, "Terrorism and Religious Extremism in Central Asia: Problems of Perception. Case of Kazakhstan and Kyrgyzstan." Astana: KISI, 2016. Pp. 15-16.

32. The Law "On Mass Media" of the Republic of Kazakhstan No 451-I of July 23, 1999. Article 13.

33. See: The Law "On Communications" of the Republic of Kazakhstan No. 567-II of July 5, 2004. Article 41-1.

A request to delete the problematic information is sent to this person, and, if the request is fulfilled, the website is unblocked. However, the law fails to define who, specifically, is implied as the person in question – the hosting provider, the website owner, or an author of the informational material (who may not have capabilities for deleting the information).

The application of this norm resulted in large-scale blocking campaigns; according to the official 2018 data, more than 620 thousand materials "containing propaganda of terrorism or extremism" were blocked in Kazakhstan (150 thousand were blocked in 2015 and 700 thousand – in 2016, but some of the restrictions have been lifted).[34]

At the same time, it is impossible to find out what Internet resources are restricted on the territory of the Republic of Kazakhstan, since the Ministry of Information and Social Development does not publish the corresponding register with the following justification: "the Register of materials, access to which is limited on the territory of the Republic of Kazakhstan by decision of the authorized bodies, is not publicly available" "to prevent the dissemination of information about Internet resources containing materials that violate the laws of the Republic Kazakhstan." [35]

Termination of access to wordpress.com, a popular platform for creating websites that hosts the Public Association Dignity website, can serve as an example of a problematic restriction. Dignity was informed about restriction of access to their platform only after the Ministry of Information and Social Development, in response to a request, reported that the access to the resource was blocked because monitoring had revealed materials advocating terrorism and extremism posted there. For months now, Dignity has not been able to access its website. This factor constrains the work of the organization.

The law enforcement practice also includes the cases of mass blocking of various resources. Thus, on May 9, 2019, the authorities turned off access to social networks and news sites. International group NetBlocks described the event in its report as a "coordinated, automated effort" to restrict access. On that day, Kazakhstan experienced not only significant interruptions in social network access, but also blocked websites of media and human rights organizations. At the same time, detentions took place in a number of cities in the areas slated for the Immortal Regiment rallies dedicated to the World War II Victory Day.[36]

On June 9, 2019, during the early presidential election in Kazakhstan, numerous Internet providers in Kazakhstan blocked online streaming access. A complete Internet blackout was observed. At the same time, participants in non-permitted protests were detained in a number of cities.[37]

34. The State Program for Countering Religious Extremism and Terrorism in the Republic of Kazakhstan for 2018-2022, approved by the Government Decree of the Republic of Kazakhstan.

35. The information note was prepared by a group of Kazakhstan civil society experts under the coordination by the Kazakhstan International Bureau for Human Rights and Rule of Law and financial support from the Soros Foundation-Kazakhstan.

36. NetBlocks Group reported on the Internet blackouts in Kazakhstan // Radio Azattyq. 2019. June 9. URL: https://rus.azattyq.org/a/29989407.html; A cyberattack against one's own country. What happened to the Internet on May 9 // Radio Azattyq. 2019. May 14. URL: https://rus.azattyq.org/a/kazakhstan-websites-blocks-on-may-9-interview-with-alp-toker-netblocks/29937761.html

37. NetBlocks Group reported …

The Kyrgyz Republic

Kyrgyz anti-extremist legislation includes the law "On Countering Extremist Activity" No. 150 of August 17, 2005,[1] the provisions of the Criminal Code related to it, and the corresponding provisions of other regulatory acts of the Kyrgyz Republic.

The law "On Countering Extremist Activity" is mostly copied from the Russian Federal Law "On Combating Extremist Activity" No. 114-FZ dated July 25, 2002.

Article 1 of the law of the Kyrgyz Republic "On Countering Extremist Activity" defines extremism as the activity of organizations and individuals "for planning, organizing, preparing and executing of actions" aimed at:

- *a forcible change in the foundations of the constitutional system and violation of the integrity of the Kyrgyz Republic;*
- *undermining the security of the Kyrgyz Republic;*
- *seizing or assumption of power;*
- *creation of illegal armed groups;*
- *carrying out terrorist activities;*
- *inciting racial, national (ethnic), or religious enmity, as well as social enmity associated with violence or calls for violence;*
- *abasement of national dignity;*
- *carrying out mass riots, acts of hooliganism and acts of vandalism based on ideological, political, racial, national (ethnic) or religious hostility or enmity, as well as on the basis of hatred or hostility against any social group;*
- *promotion of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, social, racial, national (ethnic), religious or linguistic affiliation;*
- *as well as:*
- *propaganda and public display of Nazi paraphernalia or symbols or paraphernalia or symbols confusingly similar to Nazi paraphernalia or symbols;*
- *propaganda of paraphernalia or symbols of an extremist organization;*
- *public calls for the implementation of the aforementioned activities or the commission of the aforementioned actions;*
- *funding of the aforementioned activity or other assistance in its implementation or in carrying out of the aforementioned actions, including by providing financial means, real estate, educational, printing and material-technical base, telephony, fax or other types of communications, information services, or other material resources or technical resources for carrying out the aforementioned actions.*

Thus, based on the definition of extremism, this concept encompasses terrorist activities as well as, for example, images that include symbols and paraphernalia of extremist organizations published on social networks or possessing leaflets and books that are on the List of Extremist Materials.

The ambiguity of the wording in the definition leads to the situation, in which law enforcement authorities and judicial experts assessing the so-called extremist material

1. The Law "On Countering Extremist Activity" No. 150 of August 17, 2005 // Ministry of Justice of the Kyrgyz Republic. URL:http://cbd.minjust.gov.kg/act/view/ru-ru/1748.

are guided by their personal beliefs and concepts, and thus, the legislation on countering extremist activity is interpreted broadly.

It should be noted that, in practice, the concept of "religious extremism" is widely used in the Kyrgyz Republic. It is mentioned in several articles of the law "On Freedom of Religion and Religious Organizations,"[2] however, neither this law, nor any other legislative act of the Kyrgyz Republic provide any clarification of this concept. *Freedom of Religious and Other Beliefs in the Kyrgyz Republic: the Practice of Legal Settlement in Relation to Constitutional and International Standards*[3] accurately notes that the concept of religious extremism can be interpreted quite broadly, speculatively, and not in correspondence with the spirit of the anti-extremist legislation, and court decisions may not fully take into account the objectively existing difficulties in analyzing certain materials, works and publications about a particular creed for indicators of extremism.

Anti-extremist law enforcement in the Kyrgyz Republic is mainly focused on the activities of organizations. Currently, courts of the Kyrgyz Republic have recognized 21 organizations as terrorist and (or) extremist.[4] Most of them are religious, mainly Islamic, movements and groups of varying degrees of radicalism.

According to the State Penitentiary Service of the Government of the Kyrgyz Republic, the total number of people convicted of terrorist and extremist crimes has tripled over the past five years. There were 341 convicted offenders in 2016, 431 – in 2017, and 520 in 2018. 131 out of 520 persons were convicted for crimes of terrorism and 389 – for crimes of extremism.[5]

According to the Ministry of Internal Affairs of the Kyrgyz Republic, as of in October 2016, 4,154 "supporters of extremist organizations" were put under special operational surveillance by the Ministry of Internal Affairs of the Kyrgyz Republic.[6]

2. The Law of the Kyrgyz Republic "On Freedom of Religion and Religious Organizations in the Kyrgyz Republic" No. 282 of December 31, 2008 // Ministry of Justice of the Kyrgyz Republic. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/202498.

3. Freedom of Religious and Other Beliefs in the Kyrgyz Republic: the Practice of Legal Settlement in Relation to Constitutional and International Standards. Bishkek: Maxprint, 2018.

4. The List of Organizations Banned on the Territory of the Kyrgyz Republic // State Commission on Religious Affairs of the Kyrgyz Republic. URL: http://religion.gov.kg/ru/religion_organization/blocked.

5. The number of people convicted of extremism has tripled over five years in Kyrgyzstan // Counter-Terrorism Committee 2019. October 2. URL: http://ctc-rk.kz/количество-осужденных-за-экстремизм.html

6. Ministry of Internal Affairs: Results of the operational activities of the Republic's Internal Affairs Department summarized for the first 9 months of 2016 // Ministry of Internal Affairs of the Kyrgyz Republic. 2016. October 17. URL: https://mvd.gov.kg/index.php/rus/mass-media/all-news/item/2828-mvd-podvedeny-itogi-operativno-sluzhebnoj-deyatelnosti-ovd-respubliki-za-9-mesyatsev-2016-goda.

Recognizing Materials as Extremist and Blocking Them on the Internet

According to Article 13 of the law of the Kyrgyz Republic "On Countering Extremist Activity," extremist materials include "official materials of banned extremist organizations," materials with signs of extremism, the authors of which were convicted in accordance with international legal acts for crimes against peace and humanity, as well as any others materials, including anonymous, that show signs of extremism.

At the same time, the law states that information materials can be recognized as extremist only by a court upon request of a prosecutor at the place of their discovery, distribution, or location of the organization that produced these materials.

A copy of a court decision on recognizing informational materials as extremist is sent to the Ministry of Justice. The list of extremist materials is subject to periodic publication in the media, as well as on the official websites of the authorized judicial state bodies responsible for countering extremist activities.

In the court practice of criminal cases related to storage or distribution of extremist materials (see the Criminal Code norm below), the fact of presence or absence of a given item on the list of extremist materials usually plays no role. The prosecution does not present a relevant court decision that recognizes the problematic material as extremist, and the courts considering criminal cases pay no attention to this factor.

As of the end of 2019, the List of Extremist Materials published on the Ministry of Justice website of the Kyrgyz Republic contains only 21 entries.[7] Many of these items include entire groups of web addresses. The vast majority of them are websites and materials of Hizb ut-Tahrir.

In 2016, the Civil Code of the Kyrgyz Republic was amended to include the procedure for considering claims that seek to declare informational materials "extremist or terrorist." According to the law, such claims must be reviewed within three days (five, if additional verification is needed). In addition, before a decision is made based on the prosecutorial request, the court may impose a security measure in the form of restricting access to the materials.[8] Following the adoption of this law, the List of Extremist Materials, which totaled only three items by 2016, began to grow actively.

Nevertheless, the additions to the list remain sporadic. Thus, according to the information provided by the Prosecutor General's Office of the Kyrgyz Republic, 19 claims to recognize materials as extremist were satisfied in 2019 only;[9] however, these materials have not appeared on the list published on the Ministry of Justice website.

7. The List of Extremist Materials // Ministry of Justice of the Kyrgyz Republic. URL: http://minjust.gov.kg/ru/content/950/.

8. The Law of the Kyrgyz Republic "On Amending Certain Legislative Acts of the Kyrgyz Republic (the Civil Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic "On Countering Extremist Activity") No. 97 of July 1, 2016 // Ministry of Justice of the Kyrgyz Republic. URL: http://cdb.minjust.gov.kg/act/view/ru-ru/111376.

9. The Prosecutor General's Office of the Kyrgyz Republic informs // Prosecutor General's Office of the Kyrgyz Republic. 2019. URL: https://www.prokuror.kg/news/4075-generalnaya-prokuratura-kyrgyzskoj-respubliki-informiruet-5.html.

Section 12 of the law "On Countering Extremist Activities" prohibits the use of public communication networks for carrying out extremist activities; a similar ban is included in Section 40 of the law "On Electric and Postal Communications." However, the legislation does not contain special norms on the mechanisms for blocking online materials, and the register of prohibited online materials is not maintained in the Kyrgyz Republic. The possibility of introducing a procedure for extrajudicial blocking of websites was discussed in 2015,[10] but this idea has never been implemented.

The authorities of the Kyrgyz Republic have no problems with the implementation of court decisions on blocking certain websites. The authorized bodies contact providers, and the latter restrict access both to little-known websites and to large web portals that were put on the List of Extremist Materials. Thus, the entire "Internet Archive" (archive.org)[11] was blocked for posting some Islamist materials. The website of the well-known Ferghana news agency (fergananews.com) was blocked for publishing an article about xenophobic comments against Uzbeks on social networks, because the article was recognized as extremist.[12]

Recently, individual pages on popular social networks have often been recognized as extremist. The question arose for the first time in 2018, when 19 Twitter accounts were recognized as extremist. At that time, the State Committee of Information Technologies and Communications of the Kyrgyz Republic stated that it would not block the entire social network (blocking individual accounts is technically impossible), but would start working with its administration on getting the accounts blocked.[13] It was not specified whether the authorities of the republic established contact with popular social networks. In any case, the practice of banning materials on social networks is only expanding – the 19 above-mentioned 2019 decisions pertained to access restrictions on 64 websites and 233 social network accounts and channels on video hosting sites.[14]

Regulating the Work of Civic Associations and Mass Media

According to the law "On Countering Extremist Activity," "in case of sufficient and previously confirmed information about impending unlawful acts that contain signs of extremist activity," the Prosecutor General, his deputy or subordinate prosecutor may

10. Kyrgyz security forces demand the right to close extremist websites without court decisions // TASS. 2015. May 19. URL: https://tass.ru/mezhdunarodnaya-panorama/1978102.

11. Natalia Kozina, "Kyrgyz authorities block the Internet Archive due to "extremist materials" // Kloop. 2017. July 18. URL: https://kloop.kg/blog/2017/07/18/vlasti-kyrgyzstana-zablokirovali-arhiv-interneta-iz-za-ekstremistskih-materialov/.

12. The website of Ferghana news agency is blocked in Kyrgyzstan again. Now by court order // Ferghana. 2017. June 9. URL: https://www.fergananews.com/articles/9444.

13. Will social networks be blocked in Kyrgyzstan? Goskomsvyaz answers // Sputnik Kyrgyzstan. 2018. September 25. URL: https://ru.sputnik.kg/society/20180925/1041263908/kyrgyzstan-blokirovka-socseti-goskomsvyazi.html.

14. The Prosecutor General's Office of the Kyrgyz Republic informs.

send a written warning to the head of a public association, religious organization, head of another organization, "and also to other relevant persons."

If signs of extremism are detected in an organization's activity, a warning is issued to the entire organization. Besides prosecutors, the Ministry of Justice can also issue such a warning. If the committed violations can be eliminated, the term of at least ten days is indicated for their elimination. If violations are not eliminated within this period, or if new violations are discovered, registered organizations are subject to liquidation, and public associations and religious organizations that are not legal entities are banned. The decision on liquidation may be preceded by a suspension of activity.

Liquidation can also be carried out without prior warnings, if the organization's activity entailed "violation of human and civil rights and freedoms, harm to the individual, the health of citizens, the environment, public order, public safety, property, the legitimate economic interests of physical and (or) legal persons, the society or the state" or posed a real threat of causing such harm.

Mass media are regulated in a similar way. If extremist materials are disseminated through mass media, or if signs of extremism are found in the output of a media resource, an authorized body of a prosecutor's office issues a warning to the media outlet's founder or its editorial office. If the committed violations can be eliminated, the term of at least ten days is indicated for their elimination. If the violations are not eliminated within this period, or if new facts indicating "the presence of signs of extremism" are revealed in the course of one year, then the media outlet's activity is subject to termination by a court order. As an interim measure, distribution of a print run or distribution or release of audio or video recordings may be suspended. A court decision constitutes the basis for confiscating an unrealized portion of mass media products that contain "material of extremist nature."

It is worth noting that the law "On Mass Media"[15] prohibits dissemination of calls for forcible overthrow of the constitutional system, violation of the sovereignty and territorial integrity of the Kyrgyz Republic or any other state; propaganda of war, violence and cruelty, national or religious exclusivity or intolerance towards other peoples and nations. Moreover, dissemination is also prohibited for such ill-defined phenomena as "insulting the civil dignity of peoples" and "insulting the religious feelings of believers and clerics," which are close to the sphere of anti-extremist regulation.

Criminal Law

The new Criminal Code (CC), the Code of Misdemeanors, the Criminal Procedure Code (CPC), the Penal Code, and the law "On the Principles of Amnesty and the Procedure for its Application" came into force in the Kyrgyz Republic on January 1, 2019.

The following norms of criminal law are associated with the concept of extremism:

Article 313 CC KR criminalizes acts aimed at inciting racial, ethnic, national, religious or inter-regional hostility (enmity), humiliation of national dignity, as well as propaganda

15. The Law of the Kyrgyz Republic "On Mass Media" No 938-XII of July 2, 1992 // Ministry of Justice of the Kyrgyz Republic. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/819/70?cl=ru-ru.

of exclusivity, superiority or inferiority of citizens on the basis of their attitude toward religion, or their national or racial origin, committed publicly or using mass media, as well as via the Internet.

This norm corresponds to Article 299 of the Criminal Code of the Kyrgyz Republic dated October 1, 1997, which is now no longer in force. The difference is that the new Criminal Code of the Kyrgyz Republic increased the maximum sanction term without circumstances of aggravation from five years to seven and a half, that is, this crime is transferred from the minor gravity category to grave.

Most of the criminal cases under this article are related to "religious extremism." Charges in such cases are usually based on expert opinions of religious studies scholars.

> *As an example, we can point to the trial of Rashod Kamalov, the imam of the As-Sarakhsi mosque in Kara-Suu, which was widely discussed on social networks.[16] The imam was convicted of inciting religious hostility under Article 299 CC KR and as the head of the cell of the banned Hizb ut-Tahrir organization under Article 299-1 of the CC KR (see below). The lower court sentenced him to five years in prison; the appellate court increased the sentence to 10 years. The charge was built around three copies of the same video of a Friday sermon that contained a discourse on the meaning of the term "caliphate" in Islam. Kamalov claimed that he had no intention of inciting hostility. However, the court agreed with the investigation that substantiated the charge with the religious studies expert opinion,[17] which concluded that the material under investigation contained calls for changing the constitutional system.*
>
> *Charges of inciting inter-regional hostility under Article 313 were filed in November 2019 against blogger Avtandil Zhorobekov, the administrator of the "Bespredel.KG" webpage, who posted on Facebook and Instagram a text, in which, according to the investigation, he "deliberately and explicitly stated false and provocative information that the Head of State was, allegedly, an accomplice in a crime of corruption" and "presented, in a skillful manner, the artificial division of the Kyrgyz Republic into the South and the North."*[18]

The dynamics of recorded crimes under Article 299 of the old Criminal Code has shown no growth in recent years: 75 crimes were recorded in 2014, 58 in 2015, 26 in 2016, 60 in 2017, and only 18 in 2018.[19] According to the official statistics, the number of identified "persons who committed crimes" in the same years ranged from 26 to 39 people per year.[20]

16. Ernist Nurmatov, "The court sentenced Rashod Kamalov to five years of imprisonment" // Radio Azattyq. 2015. October 9. URL: https://rus.azattyk.org/a/27296486.html.
17. Makhinur Niyazova, "Nazgul Suyunbaeva: The charges of Hizb ut-Tahrir involvement against an imam from Kara-Suu are based on the results of a dubious expert examination" // 24.kg. 2015. February 26. URL: https://24.kg/obschestvo/7850_nazgul_suyunbaeva_obvinenie_imama_iz_kara-suu_v_prichastnosti_k_hizb_ut-tahriru_postroeno_na_rezultatah_somnitelnoy_ekspertizyi_/.
18. Search Warrant in Criminal Case No. 03-150-2019-000015 // Pervomaisky District Court of Bishkek. 2019. November 26.
19. Offenses and the Rule of Law in the Kyrgyz Republic. Statistical Digest. Bishkek: National Statistical Committee of the Kyrgyz Republic, 2019. P. 30. URL: http://www.stat.kg/media/publicationarchive/74e01990-418c-4399-ad79-b235790fc8b7.pdf.
20. Ibid. P. 50.

The number of convicted offenders under Article 299 of the Criminal Code, for unclear reasons, ranged in official judicial statistics between 96 in 2014 and 2018 and only four convicted offenders in 2016.[21]

Article 314 Part 1 CC KR (creating an extremist organization) qualifies the acts related to creating or leading an extremist organization, the activities of which are associated with inciting national, ethnic, racial, religious or inter-regional hostility (enmity), abasement of national dignity, propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude toward religion, ethnicity or race, or place of residence.

Part 2 qualifies acts related to organizing activities of an extremist organization, in respect of which there is a court-issued decision to liquidate or ban its activities in connection with carrying out extremist activities, as well as involving citizens in its activities.

Part 3 indicates participation in activities of an extremist organization, in respect of which there is a court-issued decision to liquidate or ban its activities in connection with carrying out extremist activities.

According to the note to this Article, a person, who voluntarily ceases to participate in the activities of an extremist organization, is exempted from criminal liability, if this person assists to law enforcement agencies in identifying and prosecuting the organizers of such an organization. However, clear criteria for such "assistance" have not been defined, leading to an arbitrary interpretation of this norm by investigators and courts.

In the old Criminal Code, this act was covered by Article 299-1. It included propaganda of exclusivity, superiority or inferiority of citizens solely on the basis of their attitude toward religion; the wording of the new norm also includes ethnic and racial affiliation and place of residence.

Article 299-1 also included such constituent elements of crime as committing the indicated act using an official position or by a person previously convicted of an extremist crime. They were excluded from the new norm.

In Article 299-1 Part 3, a sanction was provided for participating in the activities of an extremist organization in the form of imprisonment of up to five years with losing the right to occupy certain positions or engage in certain activities. In the new norm, imprisonment remained with its maximum term reduced to two years six months, and a penalty in the form of a fine was imposed.

In practice, this norm is often used to charge people in connection with their participation in the activities of such banned organizations as Hizb ut-Tahrir or Yaqyn Inkar. Yaqyn Inkar is believed to be an offshoot of the Tablighi Jamaat religious movement; it preaches asceticism and does not recognize the secular authorities or the rules established by the Spiritual Administration of Muslims of Kyrgyzstan, and therefore has refused an official registration and never received the necessary permissions for da'wah (Islamic preaching). Tablighi Jamaat, on the contrary, carries out legal missionary activity in the Kyrgyz Republic, where, in contrast to the Russian Federation, Kazakhstan and Tajikistan, it is not banned.

As a rule, defendants' confessions are presented as justification for the prosecution in such cases – for example, in cases related to the activities of Hizb ut-Tahrir as an extremist religious organization. In cases involving participation in the Yaqyn Inkar activities, the

21. Ibid. P. 70.

investigation may provide evidence that the defendants carried out da'wah without permission, refused vaccinations, dressed in Arabic clothes, or grew a beard.

> *For example, P. S. was sentenced to seven years in prison for participating in the activities of Hizb ut-Tahrir by the verdict of the Uzgen District Court of the Osh Region dated September 10, 2014. The court used his confession that he was a member of this organization as the evidence against him.*
>
> *D. M. was sentenced to three years in prison by the verdict of the Osh City Court dated November 27, 2017 for participating in the activities of the prohibited religious movement Yaqyn Inkar. As a basis for the charges against him, it was indicated that he carried out da'wah without the appropriate permission from the Muftiate of the Kyrgyz Republic, and also met with other members in the mosque on August 11, 2017 to elect their leader.*

It is worth adding that, under the criminal law reform of 2019, all cases under article 299-1 of the old Criminal Code are subject to review.[22]

According to **Article 315** Part 1 CC KR, manufacture, distribution, transportation or transfer of extremist materials or their acquisition or storage with intent to distribute, the use of symbols or paraphernalia of extremist organizations, including on the Internet, is punishable up to five years of imprisonment with or without deprivation of the right to hold certain positions or engage in certain activities for up to two years.

Part 2 of this article provides qualification for the commission of the same act by a group of persons, or by a group of persons in a prior conspiracy, using financial or other material assistance received from foreign public associations, religious or other organizations, or foreign citizens. These actions are punished by imprisonment of up to seven years and six months with or without loss of the right to hold certain positions or engage in certain activities for up to two years.

In the old Criminal Code, this act was covered by Article 299-2. As amended on August 2, 2016, it read: "acquisition, production, storage, distribution, transportation or shipment of extremist materials, as well as deliberate use of symbols or paraphernalia of extremist or terrorist organizations." Each of these comma-separated clauses constituted a corpus delicti.

This norm of the Criminal Code caused the justified indignation of human rights defenders and lawyers, since it allowed prosecution for the mere fact of possessing an extremist material or symbol. No evidence of criminal intent of such possession was required in order to hold someone accountable.

Human Rights Watch conducted a special study, interviewing defendants and convicted offenders in cases of storage of extremist materials, their relatives, local human rights

22. The Law of the Kyrgyz Republic "On the Enactment of the Criminal Code of the Kyrgyz Republic, the Code of Misdemeanors of the Kyrgyz Republic, the Criminal Procedure Code (CPC) of the Kyrgyz Republic, the Penal Code of the Kyrgyz Republic, and the Law "On the Principles of Amnesty and the Procedure for its Application" No. 10 dated January 24, 2017, Article 7, Part 4, Paragraph 1; Article 10, Part 2, Paragraph 4 // Ministry of Justice of the Kyrgyz Republic. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/111531.

defenders, lawyers and officials. The findings of the international human rights organization are reflected in the title of its report, *We Live in Constant Fear.*[23]

If we compare Article 315 of the new Criminal Code with Article 299-2 of the old Criminal Code, they do not differ much, except that the new Criminal Code has a clause "for the purpose of dissemination" added in order to denote that an act is criminal only if related to distribution of extremist materials (Article 299-2 contained a similar instruction until 2013). This amendment made the norm more focused, but there is still a cause for concern and the need for a clarification that not all kinds of dissemination of extremist materials are considered a crime – the propaganda intent of a distributor must first be proved.

It should also be noted that such qualifying components of the act as its commission with the use of one's official position, during public events or by a person previously convicted of extremist crimes (extremist activity) have been excluded from Article 315 of the new Criminal Code.

> *As a typical example, one can cite the criminal case of Abdullokh Nurmatov from the city of Kara-Suu in the Osh Region, who received a suspended sentence under Article 299-2 CC.[24] He committed an offense by pressing the "class" button (an equivalent of "like" which also allows sharing the post) to rate several materials on Odnoklassniki – thus using the social network to share materials related to Hizb ut-Tahrir and to the then-ongoing process of imam Rashod Kamalov from Kara-Suu, charged with inciting religious hostility and organizing Hizb ut-Tahrir's activities. (See above for more information on this case).*

In almost all such cases, religious informational materials found during the search or on the personal social network pages of the defendants were presented as the evidence of guilt.

According to Article 29 Part 2 of the Constitution of the Kyrgyz Republic, secrecy of correspondence, including electronic, may be restricted solely on the basis of a court order. In a significant percentage of criminal cases this norm has been ignored, and materials taken from a defendant's email without a court order have been presented as evidence of the defendant's guilt of storing extremist materials.

Since the regulatory documents never specify the grounds, on which the purpose to disseminate materials is determined in the context of Article 315 of the new Criminal Code, each law enforcement officer is guided solely by their personal ideas in determining such a purpose.

Such criminal cases are also based on expert opinions of religious studies scholars. Until 2019, these conclusions were issued by employees of the State Commission on Religious Affairs under the President of the Kyrgyz Republic; now they are issued by employees of the State Forensic Service under the Government of the Kyrgyz Republic.

According to our observations, in most of these cases, the corresponding linguistic and psychological-political expert examinations, whose tasks could include identification

23. "We Live in Constant Fear." Possession of Extremist Materials in Kyrgyzstan // Human Rights Watch. 2018. URL: https://www.hrw.org/sites/default/files/report_pdf/kyrgyzstan0918rus_web.pdf.
24. Abdulloh Nurmatov, convicted for a "like" - life goes on // Bir Duino Kyrgyzstan. 2018. April 5. URL: http://birduino.kg/ru/pressa/698-osuzhdennyj-za-lajk-abdullokh-nurmatov-zhizn-prodolzhaetsya; Sakhira Nazarova, "The story of a "like." How to find yourself on trial in Kyrgyzstan" // 24.kg. 2018. April 11. URL: https://24.kg/obschestvo/81080_istoriya_odnogo_layka_kak_vkyirgyizstane_mojno_okazatsya_naskame_podsudimyih/.

of the thrust of the text, are not conducted. Law enforcement and judicial authorities are guided only by expert opinions of religious studies scholars, which tend merely to establish the fact that the material in question comes from a prohibited religious extremist organization. The defense requests for an alternative expert examination are met with refusals under the pretext of the absence of state experts, while opinions of independent experts, if presented, are ignored and remain without a legal assessment.

Finally, it should be noted that no post-Soviet state, except for the Kyrgyz Republic, imposes criminal liability for the act of possession of extremist materials in and of itself. Usually, such an offence entails administrative responsibility, while in the criminal process, the fact of storing banned materials can only form an evidence of another extremist act. The use of prohibited symbols, in and of itself, does not even entail administrative responsibility in some countries. Meanwhile, the number of people in the Kyrgyz Republic charged with possession of extremist materials, especially on social networks, has increased in recent years. According to the official data, only 24 persons, who allegedly committed a crime covered by Article 299-2 of the then revised Criminal Code, were "identified" in 2014, but then there were 46 such persons in 2015, 89 in 2016, 95 in 2017, and the number reached 181 in 2018. Their share in the total number of persons charged with committing crimes against the foundations of the constitutional system and state security amounted to 61%.[25] The number of recorded crimes under Article 299-2 was growing in a similar way: 42 in 2014, 81 in 2015, 167 in 2016, 159 in 2017, and 230 in 2018.[26] At the same time, the number of convicted offenders under this article changed as follows: 81 in 2015, 125 in 2016, 88 in 2017 and 93 in 2018.[27] Notably, no suspended sentences were issued under this article in 2016-2018. On December 18, 2019, the Service for Countering Extremism and Illegal Migration of the Ministry of Internal Affairs of the Kyrgyz Republic reported that, since the beginning of the year, over 300 people have been detained for distributing extremist materials.[28] Most cases of prosecution for storing extremist materials are related to Hizb ut-Tahrir materials.

At the same time, according to the data provided by the Supreme Court of the Kyrgyz Republic in 2016, ethnic Uzbeks comprised over a half of those convicted of terrorist or extremist crimes (136 out of 252, including 213 convicted under Article 299-2 CC). According to the Ministry of Internal Affairs data presented in the Human Rights Watch report, the majority of extremist crimes in 2017 were reported in the south of the country, with Osh and Jalal-Abad regions accounting for 40% of the cases detected.[29]

It stands to reason that the inclusion of the clarification on "intent to distribute" as a necessary attribute of the crime in the text of Article 315 CC should entail the review of the sentences previously issued under Article 299-2 CC. However, since the law on criminal reform contains no direct references to this article, in practice, many convicted offenders encountered reluctance of the penitentiary system to initiate a review and reluctance of the courts to satisfy the review requests.

25. Offenses and the Rule of Law in the Kyrgyz Republic. P. 50.

26. Ibid. P. 30.

27. Ibid. P. 70.

28. Since the beginning of the year, over 300 people have been detained in Kyrgyzstan for distributing extremist materials // Xinhua. 2019. December 19. URL: http://russian.news.cn/2019-12/19/c_138641216.htm.

29. "We Live in Constant Fear." Pp. 36-37.

It should also be pointed out that the Supreme Court of the Kyrgyz Republic, to this day, has not provided the lower courts with clarifications based on the generalized criminal court practice with respect to extremist crimes.

With regard to the criminal law provisions related to countering extremism, it should also be noted that, according to Article 75 CC, the commission of a crime on the basis of racial, ethnic, national or inter-regional hostility (enmity) constitutes an aggravating circumstance. In Articles 130 (murder) and 138 (causing grievous bodily harm) CC, this clause is indicated as a qualifying component.

In addition, a number of articles of the Criminal Code punish crimes related to terrorist activities. These include Articles 239 (act of terrorism), 240 (financing terrorist activities), 241 (promoting terrorist activities), 242 (public calls for terrorist activities), 243 (participation of a citizen of the Kyrgyz Republic in armed conflicts or military operations in a foreign country or undergoing terrorist training) and 246 (knowingly false report on an act of terrorism). The principles of the fight against terrorism are defined in a separate law of the Kyrgyz Republic, "On Countering Terrorism."

In accordance with Article 92 CC KR, crimes against the peace or security of mankind, war crimes, crimes against sexual inviolability and sexual freedom of a person with respect to minors, as well as such crimes as torture, corruption, acts of terrorism, and creating an extremist organization are imprescriptible.

According to Article 89 CC KR, a person convicted for an act of terrorism or for creating an extremist organization is not eligible for parole.

The Financial Intelligence List

According to the current government regulation,[30] individuals and organizations "for which there is information about their participation in terrorist or extremist activities and proliferation of weapons of mass destruction" are included by the State Financial Intelligence Service on the Consolidated Sanctions List of the Kyrgyz Republic. The persons appearing on the list cannot use any financial services in the territory of the Kyrgyz Republic, and all their transactions and funds in their bank accounts are frozen.

As of the end of 2019, the list includes over 1000 individuals and 22 organizations.[31] In accordance with the law "On Counteracting the Financing of Terrorist Activities and Legalization (Laundering) of Criminal Proceeds,"[32] the list is based on verdicts issued by a court of the Kyrgyz Republic, decisions to ban an organization, decisions to initiate

30. Regulation on the lists of individuals and legal entities, groups and organizations, for which there is information about their participation in terrorist and extremist activities, proliferation of weapons of mass destruction and legalization (laundering) of criminal proceeds // Ministry of Justice of the Kyrgyz Republic. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/12928?cl=ru-ru.

31. Consolidated Sanctions List of the Kyrgyz Republic // State Financial Intelligence Service under the Government of the Kyrgyz Republic. URL: http://fiu.gov.kg/uploads/5df71d86a33e4.pdf.

32. The Law of the Kyrgyz Republic "On Countering the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Proceeds" No. 87 of August 6, 2018 // Ministry of Justice of the Kyrgyz Republic. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/111822/10?cl=ru-ru.

criminal proceedings or to bring charges against a person, decisions to put on the wanted list, documents by law enforcement agencies on direct or indirect participation in terrorist or extremist activities, verdicts of foreign courts recognized by the Kyrgyz Republic, foreign or international similar lists recognized by the Kyrgyz Republic, and international requests. In fact, the following three reasons are primarily used for including on the list: a verdict for terrorism or extremism issued by a Kyrgyz court, placement on the wanted list in the Kyrgyz Republic, or a letter from the Federal Financial Monitoring Service regarding a citizen put on the wanted list by Russia (often with a note that the citizen has gone to Syria).

In addition, there are provisions for a separate list of individuals who have served their sentences for money laundering, terrorist or extremist activities or their financing. For a person to be put on this list, the State Penitentiary Service must provide information about those "extremists" to the Financial Intelligence within a working day after their release. In accordance with the law "On Countering the Financing of Terrorist Activities and Legalization (Laundering) of Criminal Proceeds," the transactions of such persons are subject to monitoring.[33] Persons with a cleared criminal record should not be included on the list.

33. The Law of the Kyrgyz Republic "On Countering the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Proceeds" No. 87 of August 6, 2018.

The Republic of Tajikistan

The threat of terrorism and religious extremism is felt acutely in Tajikistan due to its long border with Afghanistan, the consequences of the civil war, and the difficult socio-economic situation in the country.[1]

About 80% of Internet users in Tajikistan regularly encounter propaganda of terrorism and extremism. Radical forms of Islam conduct extensive missionary activity in the Republic, and local authorities have been actively combating them since 2011.

The upsurge in extremism has been caused by the increasingly active Internet propaganda, close ties between foreign opposition groups and regional organizations within the state, and the citizens' migration on the huge scale due to the difficult economic situation in the country. About 85% of Tajiks recruited by extremists fall into the most vulnerable category of citizens – migrant workers – and first come to recruiters' attention while in Russia.[2]

A system to counteract terrorism and extremism in Tajikistan has been created and built in accordance with the country's Constitution, the law "On Countering Extremism," the Criminal Code of the Republic, the Code of Administrative Offenses of the Republic of Tajikistan, and a number of other legal norms.

According to the Unified Concept of the Republic of Tajikistan on the Fight Against Terrorism and Extremism, approved by the Decree No. 1717 of the President of the Republic of Tajikistan dated March 28, 2006, the Republic of Tajikistan views combating terrorism and extremism as the most important task for ensuring national security of the country and the entire world and advocates further strengthening of cooperation in this sphere.

The authorities of the Republic of Tajikistan carry out a number of legal and organizational measures throughout the country aimed at countering extremism. Thus, on December 8, 2003, the Law of the Republic of Tajikistan "On Countering Extremism" was adopted, and corresponding amendments and additions were made to the Criminal Code of the Republic.[3] New legislation has been adopted, such as the laws "On Security," "On Countering Legalization (Laundering) of Criminal Proceeds, Financing Terrorism and Financing the Proliferation of Weapons of Mass Destruction," and "On Combating Organized Crime," the National Concept for Countering Legalization (Laundering) of Criminal Proceeds, Financing Terrorism and Financing the Proliferation of Weapons of Mass Destruction for 2018-2025,[4] the National Strategy of the Republic of Tajikistan on Countering Extremism and Terrorism for 2016-2020,[5] the Unified Concept of the Republic

1. Religious Extremism in Countries of Central Asia // Sputnik Tajikistan. URL: https://tj.sputniknews.ru/infographics/20171211/1024132895/religioznyy-ekstremizm-v-stranah-centralnoy-azii.html.
2. Ibid.
3. On January 2, 2020, Tajikistan enacted its new law "On Countering Extremism" which was not analyzed in the current report since it had been finalized before January 2020. In Russian see: The Law of the Republic of Tajikistan No. 1655 "On Countering Extremism" of January 2, 2020. URL: http://base.spinform.ru/show_doc.fwx?rgn=121505.
4. Approved by Decree No. 1033 of the President of the Republic of Tajikistan of March 5, 2018.
5. Approved by Decree No. 776 of the President of the Republic of Tajikistan of November 12, 2016.

of Tajikistan on the Fight Against Terrorism and Extremism,[6] and the Concept of the State Policy of the Republic of Tajikistan in the Sphere of Religion.[7]

The Law of the Republic of Tajikistan "On Countering Extremism" of December 9, 2003 stipulates that "*extremism is the expression by legal entities and individuals of extreme forms of actions that call for destabilization, changing the constitutional system in the country, seizing power and appropriating its powers, inciting racial, national, social and religious hostility.*" In addition, according to the law, carrying out terrorist activities also constitutes extremism.

"Extremist activity" is characterized in the law as the activity of legal entities or individuals in planning, organizing, preparing and committing actions aimed at:

a) forcibly changing the foundations of the constitutional system and violating the integrity of the Republic of Tajikistan;
b) undermining the security of the Republic of Tajikistan;
c) seizure or appropriation of power;
d) creation of illegal armed groups;
e) carrying out terrorist activities;
f) inciting racial, national or religious enmity, as well as social enmity associated with violence or calls for violence;
g) abasement of national dignity;
h) carrying out mass riots, acts of hooliganism or acts of vandalism based on ideological, political, racial, national or religious hatred or hostility, as well as on the basis of hatred or hostility against any social group;
i) propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion or their social, racial, national, religious or linguistic affiliation;
j) public calls for carrying out the indicated activities or committing the indicated actions;
k) financing the indicated activities, or other assistance in its implementation or in performing the indicated actions by providing real estate, training, printing and material and technical base, telephone, facsimile and other types of communication, information services, or other material and technical means for carrying out the indicated activity.[8]

Thus, according to the law, extremism is a very broad concept encompassing terrorism as well as various offenses with a much lower extent of social danger. In practice, however, the fight against terrorism is regulated by the separate law, "On Countering Terrorism."

The Law of the Republic of Tajikistan "On Countering Extremism" has a number of shortcomings that require more precise elucidation both at the level of internal legal regulations and in its international aspect. The problem lies primarily in the lack of a clear definition of extremism, which makes unambiguous interpretation impossible.

The law is very vague on the attributes of many acts. For example, nowhere is it specified what incitement of social, religious enmity and abasement of ethnic dignity are; the legislation also contains many reference rules.

Article 6 of the law "On Countering Extremism" defines entities that counteract extremism and authorizes state bodies to apply measures against extremism, giving

6. Approved by Decree No. 1717 of the President of the Republic of Tajikistan of March 28, 2006.
7. Approved by Decree No. 1042 of the President of the Republic of Tajikistan of April 4, 2018.
8. The Law of the Republic of Tajikistan "On Countering Extremism," Article 3 // Akhbori Majlisi Oli of the Republic of Tajikistan. 2003. No. 12.

them broad powers in the fight. The following state bodies are tasked with counteracting extremism: State Committee for National Security (SCNS); the Ministry of Internal Affairs, the Ministry of Foreign Affairs; the Ministry of Justice, and the Customs Service under the Government of the Republic of Tajikistan. The law does not define the role of the parliament, which should have the right to control the activities of state bodies in this sphere.

Regulating the Activities of Organizations

Section 3 of the law "On Countering Extremism" stipulates that "an extremist organization is a public association, religious or other non-profit organization, in respect of which the court made a final decision on the liquidation or prohibition of its activities in connection with carrying out extremist activities."

The law also specifies the responsibility faced by public associations, religious and other non-profit organizations for carrying out extremist activities.

Section 10 of the law "On Countering Extremism" allows a prosecutor to issue a notification to the head of a public association, religious or other non-profit organization, as well as against "other relevant persons," "if sufficient and previously confirmed information exists" about forthcoming illegal actions that show signs of extremism.

Article 11 is dedicated to issuing notifications against legal entities "in the event of finding facts indicating that their activities exhibit signs of extremism." Such a notification is issued in writing and indicates the "violations" and corrective actions to be undertaken by the violator, if any. The time period for eliminating violation should not exceed a month. The notification may be appealed in court.

If a public association, religious or other non-profit organization fails to fulfill the requirements provided in the notification, or if new information appears on the involvement of the organization in extremist activities, it shall be liquidated, and the activities of the public association or religious organization not registered as a legal entity shall be banned. This article provides the state with almost unlimited powers – according to the law, "any sign" of extremist activities – potentially even the "wrong" social networks contacts – can serve as the reason for a notification.

In the case of failure to fulfill the notification requirements described above, or in the case of an organization carrying out "extremist activities that entailed a violation of the rights and freedoms of a human and a citizen, harm to an individual, to the health of citizens, the environment, public order, public safety, property, legitimate economic interests of individuals and (or) legal entities, to the state and the society, or which creates a credible threat of causing such harm," the organization is subject to liquidation upon request from the Prosecutor General or a prosecutor subordinate to him, or from the Ministry of Justice bodies of the Republic of Tajikistan. While a court deliberates on the issue of liquidation, the organization's activities may be suspended (Articles 12 and 13 of the law).

According to the CIS Anti-Terrorism Center, 18 organizations are banned in Tajikistan. These include structures such as Al-Qaeda, the Islamic State, the Muslim Brotherhood,

the East Turkestan Islamic Movement, the Turkistan Islamic Party, the Islamic Movement of Uzbekistan, Jamaat Ansarullah, Hizb ut-Tahrir, Tablighi Jamaat, the Salafiya movement, Group 24, the Islamic Renaissance Party of Tajikistan, and the National Alliance of Tajikistan. Most of them have been recognized as both extremist and terrorist, with the exception of Hizb ut-Tahrir and Group 24 (recognized only as extremist organizations) and Salafiya (recognized as an extremist community).[9]

Although the detailed data is not available, the following organizations have the largest number of followers in the Republic of Tatarstan, based on the Ministry of Internal Affairs reports, and are more likely than the others to come to the attention of law enforcement agencies: Hizb ut-Tahrir, the Islamic State, and Salafiya.

The first supporters of Salafism appeared in Tajikistan in the late 1990s. In 2009, their activities were outlawed, and the Supreme Court recognized the movement as extremist in 2014. The authorities claim that the movement poses a threat to the country's stability and security. Among the reasons for its prohibition they mentioned a concern that it incited inter-religious enmity. A special headquarters for combating Salafiya has been operating in Tajikistan since 2016. The Ministry of Internal Affairs of Tajikistan disseminated information that more than 700 citizens of the country were sentenced to various terms of imprisonment on charges of spreading Salafism.[10]

Prosecutions against supporters of the Islamic Renaissance Party of Tajikistan (IRPT) are also worth noting. This Islamist political opposition party, founded in 1990, was the only Islamist party officially operating in Central Asia and the entire post-Soviet space until 2015. However, in September 2015, it was recognized as terrorist in connection with an attempted coup by Abduhalim Nazarzoda, the Deputy Minister of Defense. The National Alliance of Tajikistan, which had been created abroad by representatives of the IRPT and other opposition structures, was banned in 2019.

Supporters of the social and political opposition movement Group 24, recognized as extremist in October 2014, are also being targeted for prosecution. Group 24 was created in Moscow in 2012 by Umarali Quvvatov (an entrepreneur and opposition leader killed in Istanbul in January 2015) after the Khorog events – a large-scale military operation in Gorno-Badakhshan.

Recognizing Materials as Extremist. Regulation of Information

Article 16 of the law "On Countering Extremism" stipulates that the presence of signs of extremism in information materials needs to be established by the court.

According to the law, extremist materials include official materials of banned extremist organizations, materials with signs of extremism authored by persons convicted by the

9. The Republic of Tajikistan. Organizations designated as terrorist or extremist in the procedure established by the national law of the CIS member-states // CIS Anti-Terrorism Center. URL: https://www.eng.cisatc.org/1289/134/160/1268.

10. Mirzonabi Kholikzod, "The nephew of the mufti of Tajikistan received a suspended sentence" // Radio Ozodi. 2019. March 23. URL: https://rus.ozodi.org/a/29837917.html.

international court for crimes against peace and humanity, and other materials (including anonymous) that show signs of extremism.

A court decision serves as the basis for seizure of an undistributed portion of the print run of materials. An organization that publishes extremist materials twice within one year is barred from publishing activities.

The official examination of religious literature is carried out by the Committee on Religious Affairs, which includes a special department for expert examinations. Such examinations are also conducted at the Center for Islamic Studies under the President of the Republic of Tajikistan.

In the course of 2018, the staff of the Center for Islamic Studies under the President of the Republic of Tajikistan examined and presented their conclusion on 176 books, compilations and brochures, 1,119 pages of leaflets and propaganda materials, 136 disks of records, 1 tablet, 7 mobile phones, 11 external information storage devices (flash drives), and 3 hard drives.[11] Only a quarter of them were found to show signs of extremism.[12]

The main problem with conducting an examination is that the country has no single policy or procedures governing religious studies, psychological, philological, and other examinations.

In accordance with the law "On Countering Extremism," copies of court decisions on recognizing materials as extremist are sent to a state body in charge of print media, television, radio broadcasting and mass media control. However, the law does not impose on this body any obligations to publish a list of extremist materials. Thus, no data on extremist materials or list of such materials has been officially published in the Republic of Tajikistan, and it is not clear what information is considered extremist. Many citizens share such material on social networks without positive knowledge or understanding what is regarded as extremist, and then face prosecution (see below).

In an attempt to compile a list of banned information on the Internet, the Ministry of Internal Affairs of the Republic of Tajikistan published a list of sites promoting the ideas of terrorist and extremist groups in 2015. The list was topped by 26 Hizb ut-Tahrir websites. It also included sites containing information on such groups and organizations as the Muslim Brotherhood, the Islamic Movement of Uzbekistan, Salafiya, the Caucasus Emirate, Jamaat Ansarullah, Sodiqlar, Taliban, Lashkar-e-Taiba, Tehrik-e Taliban Pakistan, Shariat Jamaat, the Islamic State, Jabhat al-Nusra, Ahrar al-Sham, and Jaish al-Muhajireen wal-Ansar (notably, some of these organizations have not been banned by court decisions in Tajikistan). The list also featured the entry "ISIS Video Archive" (including materials from the Internet Archive) and the website of Zello (a maker of online walkie-talkie applications) characterized as an alleged resource of banned Group 24. Some entries contained links to Facebook or VKontakte groups. In total, the list contained 80 addresses, which have been reportedly blocked by the providers and cell phone companies of Tajikistan.[13]

11. Mekhrangez Tursonzoda, "Rustam Azizi: Tajiks have become less religious, but their religiosity has become more public" // Asia-plus. 2019. March 25. URL: https://www.asiaplustj.info/ru/node/265735.
12. Rustam Azizi: Experts failed to find propaganda of extremism in many online publications // Radio Ozodi. 2019. February 18. URL: https://rus.ozodi.org/a/29777046.html.
13. The List of Sites Banned by the Legislation of the Republic of Tajikistan // Ministry of Internal Affairs of the Republic of Tajikistan. 2015. July 2. URL: https://mvd.tj/old/index.php/ru/glavnaya/7875-spisok-sajtov-zapreshchennykh-zakonodatelstvom-respubliki-tadzhikistan.

In November 2019, the Supreme Court of Tajikistan decided to block about 40 additional websites and social network pages (including Facebook groups and YouTube channels) of organizations banned in the republic – Hizb ut-Tahrir, Salafiya, the Islamic Renaissance Party, Group 24, and the National Alliance of Tajikistan.[14]

A unified list of blocked resources has not been published. Meanwhile, in November 2016, the Single Communication Center began to operate in Tajikistan under Tajiktelecom, the state telecommunications operator, and the government has ordered all telecom operators and providers to provide international communication and Internet services through it.[15] The single center was supposedly created for security reasons, but experts immediately expressed concern that this structure would allow authorities to strengthen control over access to the Internet and mobile communications, in particular, by facilitating the process of blocking websites, and would also simplify monitoring of user activity.[16] In recent years, the Tajik authorities have indeed taken arbitrary measures that infringe on the rights and freedoms of citizens, such as regularly blocking access to independent news sites and restricting access to the Internet and mobile Internet. For example, in November 2018, after a rally in Khorog, access to social networks and a number of news sites was blocked. The Tajikistan Communications Service denied involvement in these blockings ascribing them to "technical problems."[17] Access to social networks was closed again in January 2019.[18] The Asia Plus news agency website has been blocked for a long time under the pretext of technical problems.[19] However, the Ministry of Foreign Affairs of Tajikistan stated that information sites in the country were blocked for security purposes, because "the wrong ideology" had been previously advocated in this country.[20]

According to the law "On Countering Extremism," mass media responsible for disseminating extremist materials and carrying out extremist activities (Article 14) should have their activities terminated. If the fact of dissemination of extremist materials through a media resource is established or if materials that "indicate the presence of an extremist intent" in the activities of a media resource are found, an authorized body, the Prosecutor

14. The Supreme Court of Tajikistan blocked dozens of websites of extremist organizations // Ferghana. 2019. November 14. URL: https://fergana.agency/news/112486/.
15. Order of the Government of the Republic of Tajikistan about the Single Switching Center of Electric Communication No. 765 of December 30, 2015 // CIS-Legislation. URL: https://cis-legislation.com/document.fwx?rgn=82153.
16. The Single Communication Center – a dream or a nightmare of Tajikistan // NANSMIT. 2016. January 19. URL: http://nansmit.tj/edinyiy-kommutatsionnyiy-tsentr-mechta-ili-koshmar-tadzhikistana/.
17. Tajikistan Communication Service: Access to social networks closed for technical reasons // Sputnik Tajikistan. 2018. November 8. URL: https://tj.sputniknews.ru/country/20181108/1027354189/Sluzhba-svyazi-Tajikistan-dostup-sotssetyam-zakryt-po-tekhprichinam.html.
18. Access to social networks and instant messengers limited in Tajikistan // Sputnik Tajikistan. 2019. January 4. URL: https://tj.sputniknews.ru/country/20190104/1027886402/Tajikistan-ogranichen-dostup-sotsialnym-setyam.html.
19. Blocking websites benefits no one in Tajikistan // Reporters without Borders. 2019. April 29. URL: https://rsf.org/en/news/blocking-websites-benefits-no-one-tajikistan.
20. The Ministry of Foreign Affairs of Tajikistan spoke about the reason for blocking information sites // Sputnik Tajikistan. 2019. December 12. URL: https://tj.sputniknews.ru/country/20190212/1028252483/tajikistan-blokirovka-informacionie-sayty.html.

General or a prosecutor subordinate to him submits a written notification to eliminate the violations with a deadline of at least ten days. If the court failed to recognize the sanction as unlawful, the violations have not been eliminated, or signs of extremism were found repeatedly in the course of one year, the activities of the media resource are terminated. As an interim measure, the court may also suspend the publication of an issue of a periodical publication or the run of audio or video recording of the program, or a release of the corresponding television, radio or video program, and the court's decision to close the media resource constitutes the basis for seizing the undistributed part of the print run that contains "extremist material."

In addition, Article 6 of the law "On the Periodical Press and Other Mass Media" prohibits the media from disseminating information, in particular, "calling for violent overthrow or change of the constitutional order… inciting racial, national, local, religious, or language-based hatred, propaganda of war, violence, terrorist and extremist activities, or harming the integrity and independence of the state." Meanwhile, in 2016, the Government of the Republic of Tajikistan proposed to give the Ministry of Culture the right to suspend the activities of a media resource for three months upon request from a prosecutor's office without a court order. Due to widespread criticism, this provision has been excluded from amendments to the law, and the right to suspend and close the media continues to be reserved for the judiciary.[21]

Criminal Law

According to the position of the Supreme Court of Tajikistan, extremist crimes include those motivated by "political, ideological, racial, national or religious hatred or hostility" or "hatred or hostility against any social group" stipulated by Articles 157 (impeding a religious organization's activity), 158 (impeding activity of political parties and public unions), 160 (breaking the order for conducting and organizing meetings, mass meetings, demonstrations, street processions, picketing), 185 (organization of an illegal armed formation), 188 (mass disorders), 189 (arousing national, racial, local or religious hostility), 237 (hooliganism), 237(1) (vandalism), 242 (damaging or destruction of historical and cultural monuments), 243 (desecration of corpses and places of their burial) of the Criminal Code of the Republic of Tajikistan, and other crimes committed for the above reasons, which, in accordance with Paragraph "f" of Article 62 Part 1 of the Criminal Code, constitute aggravating circumstances.[22]

It should be noted that the current version of this paragraph of Article 62 of the Criminal Code indicates, in particular, such motives of crimes as "inciting local, national, racial or religious hostility, or religious fanaticism." "Local hostility" obviously, corresponds to the

21. Overview of recent events in Tajikistan. May–December 2016 // Nota Bene. URL: http://notabene.tj/Doc/Kaz/compl/Monitoring%20report%20May-Dec%202016.pdf.

22. Resolution of the plenary meeting of the Supreme Court of the Republic of Tajikistan No. 1 "On Court Practice in Criminal Cases on Crimes of Extremist Nature" of June 12, 2014.

concept of "local hostility" used in Article 189 of the Criminal Code (see below);[23] the concept of "religious fanaticism" is not defined by law.[24]

According to the data provided by the Ministry of Internal Affairs, in the first six months of 2019, the internal affairs units recorded and solved 226 crimes of a terrorist nature and 378 crimes of extremist nature.[25] However, the ministry never specified whether the latter group corresponds to formulas described above or to all the articles of the Criminal Code related to countering extremism.

In the criminal law sense, the concepts of "extremism (extremist activity)" and "crimes of extremist nature" are, apparently, not equal.

The concept of "extremist activity" is used by legislators in only one formula of the special part of the Criminal Code of the Republic of Tajikistan. The article in question is Article 307(1) (public calls for extremist activities). The Criminal Code of the Republic of Tajikistan also includes Article 307(3) (organizing activities of an extremist organization). However, these legislative norms do not clarify what exactly is meant by extremist activity – the Criminal Code of the Republic of Tajikistan refers the law enforcement to other regulatory legal acts that reinforce this concept. The concept of "extremist activity," as noted above, is addressed in detail in Article 3 of the Law of the Republic of Tajikistan "On Countering Extremism."[26]

Article 189 CC RT establishes punishment for actions, which lead to arousing national, racial, local or religious hostility or enmity, humiliating national dignity, as well as propaganda of the exclusiveness of citizens on the basis of their relation to religion, national, racial, or local origin, if these actions were committed in public or using means of mass media. Part 2 of the article punishes for the same acts committed repeatedly, with the use of violence or the threat of its use, with the use of one's official position, by a group of individuals or by a group of individuals in a conspiracy. Part 3 stipulates punishment for the actions described in parts one or two of the article, if they are committed by an organized group, caused manslaughter or other serious consequences, caused forced expulsion of a citizen from the permanent place of residence, or are committed by a dangerous or an especially dangerous recidivist.

The article is used to combat manifestations of ethnic xenophobia.

> *Thus, in 2019, charges under Part 2 of Article 189 of the Criminal Code of the Republic of Tajikistan were brought up against Burkhoniddin Safaraliev, the head of the village of Sayyod in the Hisor District, and his deputy Fakhriddin Radzhibov. Local residents complained to law enforcement officials that the village leaders changed the name of the local mosque, which had been named after ethnic Uzbek Mullah Akhmadkul-bobo, moti-*

23. "Mestnaya vrazhda" in Article 62 and "mestnicheskaya vrazhda" in Article 189, in Russian.
24. Criminal Code of the Republic of Tajikistan // Supreme Court of the Republic of Tajikistan. URL: https://sud.tj/upload/iblock/aee/aeeeb7c2a0287bfcca257b538651e5f3.pdf.
25. Press conference in the Ministry of Foreign Affairs // Ministry of Foreign Affairs of the Republic of Tajikistan. 2019. July 23. URL: https://mvd.tj/index.php/ru/novosti-arkhiv/24654-nishasti-matbuot-dar-vkd-tari-i-selektor-barguzor-gardid-2.
26. See: The Law of the Republic of Tajikistan "On Countering Extremism," of December 8, 2003 //Akhbori Majlisi Oli of the Republic of Tajikistan. 2003. No. 12, p. 697.

vated by the nationalist sentiment, and, during a dispute that took place in the mosque, they insulted the ethnic feelings of local Uzbeks by saying that "the Uzbeks have no right to say anything." Notably, during the trial, the main prosecution witness Shokirdzhon Ismoilov also was charged under Article 189 Part 2 of the Criminal Code – as it turned out that, during an argument with a local school teacher, he also said: "You are a teacher, but you do not pray and do not participate in funerals. You have no right to say anything! "All the three were sentenced to a year of incarceration.[27]

Article 189 CC RT can be used against supporters of organizations and religious movements recognized as extremist.

For example, Bakhtier Igamberdiev, a 54-year-old resident of Dushanbe, was sentenced in December 2016 under Article 189 CC RT to three years of imprisonment. He was detained during a Friday prayer as a follower of the Salafiya movement. In the course of the court hearing, it was reported that "imam khatib was the one to contact representatives of the State Committee for National Security, reporting that his parishioner dressed and prayed not according to the Hanafi madhhab, which is recognized as official in Tajikistan, but as a Salafi." Additionally, the defendant was reported to converse with other parishioners, pointing out to them that they recited their prayers incorrectly and dressed incorrectly," thereby sowing discord among believers."[28]

Article 307 CC RT establishes liability for public calls to forcible seizure or keeping of state power, or forcible violation of the territorial integrity of the Republic of Tajikistan, as well as for assistance in these acts. Parts 2 and 3 of this article stipulate the punishment for these acts, if they were committed using mass media or the Internet, as well as in case of especially dangerous repeated offenses.

A crime is considered to have been committed from the moment of uttering or publishing at least one public call, regardless of whether the call actually motivated anyone to commit the indicated actions or not.[29]

Article 307(1) CC RT establishes liability for public calls for extremist activities and public justification of extremism.

The second and third parts of the article establish punishment for committing these acts using mass media and the Internet, in case of a dangerous or especially dangerous repeated offense.

It follows from the note, added to this article in 2016, that the term "public justification of extremism" refers to "public propaganda to recognize the correctness of the ideology and practice of extremism; proposals for its emulation and its support."

The well-known practice of applying Article 307(1) in recent years is related to distribution of materials of banned organizations on the Internet.

27. Mirzonabi Kholikzod, "Three residents of Hisor charged with nationalism" // Radio Ozodi. 2019. July 25. URL: https://rus.ozodi.org/a/30075236.html.

28. Salafiya follower sentenced to three years of imprisonment in Tajikistan // Sputnik Tajikistan. 2016. December 8. URL: https://tj.sputniknews.ru/country/20161208/1021263148.html.

29. Resolution of the plenary meeting of the Supreme Court of the Republic of Tajikistan No. 1 "On Court Practice in Criminal Cases on Crimes of Extremist Nature" of June 12, 2014.

> *In 2018, Alijon Sharipov, a migrant worker who had returned from Russia, was sentenced under Part 2 of Article 307(1) CC RT to nine and a half years behind bars for sympathizing with the banned Islamic Renaissance Party of Tajikistan (IRPT). He "constantly watched videos of the meetings of the IRPT Political Council in exile, videos of conversations between party leader Muhiddin Kabiri and former deputy defense minister Abduhalim Nazarzoda, and pressed the "like" and "class" buttons to express his approval. In addition, he shared these videos with other social network users."*[30]

A case under Article 307(1) may also be opened for display of symbols of a banned organization, whether on the street or on the Internet.

> *In 2016, 21-year-old student Davron Kurbonov from Dushanbe was sentenced to six years in a penal colony under Article 307(1) CC RT and his accomplice, 17-year-old Kudrat Nasrulloev, – to four years. The investigation claimed that Kurbonov had purchased white paint and black cloth, painted the flag of the banned Islamic State and placed it on one of the city bridges. It was also noted that, while working in an Internet cafe, he had watched the Islamic State videos and suggested that others watch them.*[31]

> *In 2018, Bezhan Ibragimov, a conscript in the National Guard of the Republic of Tajikistan, was sentenced to seven years of imprisonment under Article 307(1) CC for publicly justifying extremism. The charge was related to the fact that he had posted a photo of the flag of the banned Ansarullah group on his Odnoklassniki page and also had engaged in social network conversations with his former classmate, who stayed in Syria or Iraq. Charges under the same article were brought against two of his friends.*[32]

The amendments of 2016 not only added a clarifying note to this article, but also increased the severity of the sanctions – while the maximum sentence under Article 307(1) had previously amounted to five years, the new edition imposed a sentence of three to twelve years in a penal colony. At the same time, the severity of the penalties for the public justification of terrorism (Article 179(3) CC RT) was increased as well – this article stipulates punishment in the form of imprisonment for a term of 10 to 15 years.[33]

Article 307(2) CC RT penalizes creation of an extremist community, that is, a group of persons organized for preparing or committing crimes covered by Articles 157, 158, 160, 185, 188, 189, 237, 237(1), 242, and 243 of the Criminal Code (crimes of extremist nature) on the grounds of ideological, political, racial, national, local or religious hatred or hostility, as well as on the basis of hatred or hostility against a social group, as well as for leading such an extremist community, a part or a structural unit of such a community, as well as for creating an association of organizers, leaders or other representatives of parts or structural

30. The grimaces of the Tajik Themis – 9.5 years in prison for "like" and "class" on the social network // Radio Ozodi. 2018. May 9. URL: https://rus.ozodi.org/a/29217598.html.
31. 6 years of prison for displaying the ISIS flag // Radio Ozodi. 2016. May 19. URL: https://rus.ozodi.org/a/27744647.html.
32. Mullorajab Yusufzoda, "National Guard soldier convicted of publicly justifying extremism" // Radio Ozodi. 2019. August 16. URL: https://rus.ozodi.org/a/29436947.html.
33. Overview of recent events in Tajikistan. May–December 2016.

units of such a community in order to develop plans and (or) conditions for committing extremist crimes, or for participating in an extremist community, or for committing acts provided for in the first or second parts of this article repeatedly or using one's official position.

The note to this criminal article indicates that a person, who voluntarily terminated their participation in an extremist community, is exempted from criminal liability, unless their actions also contain elements of another crime.

Article 307(3) CC RT (organization of activities of an extremist organization) establishes sanctions for organizing, recruiting and participating in an extremist organization. We are talking about organizations, in respect of which the court adopted a final decision on the liquidation or prohibition of their activities in connection with carrying out extremist activities. Responsibility comes for the very fact of involvement in a banned organization.

> *In November 2017, Abdumalik Salomov from Khujand, a well-known cardiac surgeon, was sentenced by the court to five and a half years of imprisonment under Article 307(3) CC for participating in the activities of the forbidden Salafiya movement. Two of his friends, Ilkhom Gafforov and Saydullo Mirzoev were sentenced to five years of imprisonment. The prosecutor's office reported that the charges based on the fact that they regularly participated in the "mahfili palav" – pilaf gatherings organized by the Salafis.*[34]

Charges under Article 307(3) can also be brought in connection with publications on the Internet.

> *Dzhamshid Khomidov, a 23-year-old Khujand resident, was sentenced in January 2018 under Article 307(3) Part 2 to five years in prison. The court found that he had created the "Odinoky Volk ChM" [Lonely Wolf] account on Odnoklassniki, through which he distributed videos and texts of the Salafiya movement, banned in the republic; he also recited prayers in the city's mosque following the Salafi rules in 2015-2016.* [35]

This article also contains a note which establishes that, if a person's actions do not contain elements of other offenses, they will be exempted from criminal liability in case of voluntary termination of their participation in the activities of a banned organization.

Tajik authorities actively urge supporters of banned organizations abroad to return to their homeland, promising to drop criminal prosecution.

Thus, according to the Ministry of Internal Affairs, in the course of just nine months of 2018, 163 Tajik citizens – supporters of the Islamic State, the Salafiya movement, Group 24 and Jamaat Ansarullah – repented and returned with their families.[36] In January-August

34. Mavlyuda Rafieva, "Well-known Khujand cardiac surgeon sentenced to 5.5 years for connection with Salafis" // Asia-plus 2017. November 27. URL: https://asiaplustj.info/ru/news/tajikistan/laworder/20171127/izvestnii-hudzhandskii-kardiohirurg-osuzhden-na-56-let-za-svyazi-s-salafitami.

35. Khujand: Five years for distribution – Salafiya // Sugdnews. 2018. January 22. URL: http://sugdnews.com/2018/01/22/hudzhand-5-let-za-rasprostranenija-salafija/.

36. Ministry of Internal Affairs of Tajikistan: 163 members of extremist groups returned to their homeland // Sputnik Tajikistan. 2018. November 26. URL: https://tj.sputniknews.ru/country/20181126/1027516537/mvd-tajikistan-163-chlena-ekstremistskih-gruppirovok-vernulis-na-rodinu.html; 163 members of extremist

2019, in the Sughd Region alone, prosecutors exempted 137 suspects under Articles 307(3) and 401(1) CC RT (illegal participation of citizens of the Republic of Tajikistan in an armed conflict in other countries) from prosecution.[37]

In a number of cases, those who repent of membership in banned organizations are not exempted from liability, since elements of other offenses are found in their actions.

> *A similar incident occurred with Mukhtadi Abdulkodirov, the nephew of Tajikistan's Grand Mufti Saidmukarram Abdulkodirzoda. In 2013, he was charged with involvement in the banned* Salafiya movement *under Article 307(3) CC, but left the country. Having received a promise from the Ministry of Internal Affairs of the Republic of Tajikistan that he was not to face responsibility, Abdulkodirov returned to his homeland from Saudi Arabia in 2018. However, he was soon detained by operatives of the State Committee for National Security of Tajikistan. Abdulkodirov was charged with inciting religious hostility; in March 2019, the court issued a suspended sentence.*[38]

> *In February 2019, Kulob resident Sadriddin Mulloev (known as Mullo Sadriddin), who had lived abroad since 2013 and was on the wanted list in his home country as a supporter of Tablighi Jamaat, returned to Tajikistan. Upon his return, he appeared in a video prepared by the Ministry of Internal Affairs of the Republic of Tajikistan, in which he repented of his activities and urged Tajik people to follow his example. However, in September, he was detained again and immediately charged under three articles of the Criminal Code: the charges of extremism were supplemented by charges under Articles 187 (organization of a criminal community) and 401 (mercenarism). The prosecution asked for 18 years of imprisonment.*[39]

The scope of the article's application can be estimated from the law enforcement reports. Thus, in the first half of 2019, law enforcement authorities of Tajikistan detained 97 participants in terrorist and extremist organizations.[40]

Article 307(4) of the Criminal Code punishes organization of schooling or a study group of extremist religious nature, as well as for leadership or participation in such schooling, regardless of the place of study, for committing this act using an official position, and for an act related to the financing of such groups.

groups repented and returned to Tajikistan // Xinhua. 2018. November 27. URL: http://russian.news.cn/2018-11/27/c_137633100.htm.

37. 137 terrorists and extremists forgiven and released in the north of Tajikistan // Regnum. 2019. October 4. URL: https://regnum.ru/news/polit/2739147.html.

38. Mirzonabi Kholikzod, "The nephew of the Mufti of Tajikistan received a suspended sentence."

39. Mullo Sadriddin returned to Tajikistan. He was amnestied // Avesta. 2019. February 22. URL: http://avesta.tj/2019/02/22/mullo-sadriddin-vernulsya-v-tadzhikistan-ego-amnistirovali/; Alisher Zarifi, "Mullo Sadriddin faces 18 years in prison" // Radio Ozodi. 2019. October 31. URL: https://rus.ozodi.org/a/30246130.html.

40. Press conference at the Ministry of Internal Affairs.

Administrative Law

Administrative law establishes responsibility for the manufacture, storage, import, transportation and distribution of banned media products and other prohibited printed materials on the territory of the Republic of Tajikistan (**Article 374** CAO RT). These products are considered prohibited if they are intended at propaganda or advocacy of a violent change in the constitutional system; violation of integrity and state sovereignty; undermining state security; war; incitement of social, racial, national or religious enmity; promoting cruelty, violence and pornography; justification of terrorism and extremism; dissemination of information constituting state secrets; demonstration of film and video products of pornographic and specifically sexual or erotic character, and of other prohibited printed matter.

Article 462 CAO RT on breaking silence includes, among other provisions, a punishment for playing discs, cassettes and other technical devices that contain records of religious extremist and (or) insulting nature on streets and avenues, squares, markets, shopping centers, parks and beaches, in vehicles and other public places.

In practice, according to the information available to us, these articles of the Code of Administrative Offenses have not been applied for the purposes of counter-extremism.

Law Enforcement Prospects

Despite the fact that the key legislative acts and Criminal Code articles on prohibition of extremist activities have been adopted starting in 2002, they were applied most actively in 2015-2019. The practice of long prison terms imposed for activity on social networks is also characteristic of this particular period.

However, there was a trend towards the humanization of law enforcement in 2019. Early in the year, the Center for Islamic Studies under the President of Tajikistan, which acts as an expert body in criminal cases related to extremism, criticized the practice of criminalizing social network activity. Rustam Azizi, the Center's Deputy Director, said that the use of "share" and "class" buttons cannot serve as principal evidence in criminal cases.[41]

Subsequently, the RT Prosecutor General's Office was reported to have created a working group that developed and submitted for approval proposals for the humanization of punishment under Article 189.[42] The essence of the proposals is that incitement to hatred, if such an act is committed for the first time, presents no public danger, and its perpetrator repents of the action, is subject to administrative responsibility.[43]

The working group for the humanization of the Criminal Code under the Government of the Republic of Tajikistan commented during the presentation of the new Criminal Code at the National Rule of Law Forum that the decrease in severity of punishments would

41. Rustam Azizi: Experts failed to find propaganda of extremism in many online publications.

42. Mekhrangez Tursonzoda, "Rustam Azizi: Tajiks have become less religious, but their religiosity has become more public."

43. Mullorajab Yusufzoda, "The punishment for inciting national or religious hostility will be mitigated in Tajikistan // Radio Ozodi. 2019. August 11. URL: https://rus.ozodi.org/a/30104319.html.

not affect articles related to extremist and terrorist crimes and drug trafficking; however, in 2019, the same working group proposed to decrease sanctions for crimes related to extremism. In general, the new Criminal Code "must take into account the general human rights principles, and provide for the introduction of fines or other sanctions not related to deprivation of liberty for most of the acts, for which people are now sent to prison." This consideration is included in the Program of Judicial Reform in the Republic of Tajikistan for 2019–2021.[44]

In addition, an amnesty was declared in Tajikistan in October 2019. According to its conditions, men convicted under a number of articles, including Articles 181, 307(1), 307(2), and Article 307(3) Part 1 and 307(4), were not exempted from punishment, but their terms of imprisonment were reduced.[45]

44. Abdullo Ashurov, "Humanization of the Criminal Code: Fines Instead of Prison Terms?" // Radio Ozodi. 2019. May 3. URL: https://rus.ozodi.org/a/29919518.html.

45. The Law "On Amnesty" of the Republic of Tajikistan // Narodnaya Gazeta. 2019. October 31. URL: http://www.narodnaya.tj/index.php?option=com_content&view=article&id=10279:2019-10-31-11-42-34&catid=69:zakoni&Itemid=171.

Conclusion

International Legal Context

Prior to analyzing the legal basis and practice of anti-extremist persecution in Russia, the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan, we should consider the international understanding of extremism. The term "extremism" entered the legal vocabulary from political science, and, since this concept had no generally accepted political science definition, such definition also does not exist in the international law.

UN documents tend to use the term "violent extremism." However, even the Plan of Action to Prevent Violent Extremism, presented by the UN Secretary General at the end of 2015, states: "violent extremism is a diverse phenomenon without clear definition" and provides the activities of terrorist groups – the Islamic State, Al Qaeda, and Boko Haram – as examples.[1] The resolution, adopted by the UN General Assembly prior to that, noted that the practices of violent extremism aim to threaten the enjoyment of human rights and fundamental freedoms, and democracy, and threaten the territorial integrity and security of States, and destabilize legitimately constituted Governments.[2]

The definition of violent extremism is given by UNESCO, but only in a guide for teachers; it reads as follows: "the beliefs and actions of people who support or use ideologically-motivated violence to achieve radical, ideological, religious or political views."[3] The OSCE has adopted a complex term that emphasizes the direct connection of this phenomenon with violence – "violent extremism and radicalization that lead to terrorism."[4]

Sometimes, however, the "soft law" documents use the term "extremism" without the specifying term "violent." Thus, Maina Kiai, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, defined extremism as "the advocacy of extreme or radical measures, such as violent overthrow of a government, violence and terrorism" (i.e. as a phenomenon related to violence) and called for separating it from fundamentalism (which he defined as "any movement – not simply religious ones – that advocates strict and literal adherence to a set of basic beliefs or principles"), noting that this widespread phenomenon is not necessarily connected to extremism.[5] The United Nations Special Rapporteur in the field of cultural rights, Karima Bennoune, on the contrary, noted that extremism was a "broad" and "vague" concept, and fundamentalism was one of its forms. She drew attention to the sociological "set of indicators" of extremism, according to which the "extremists" were seeking to "(re-)establish what they consider the natural order in society

1. Plan of Action to Prevent Violent Extremism (A/70/674) // UN. 2015. December 24. URL: https://undocs.org/en/A/70/674.
2. Resolution adopted by the Human Rights Council on October 2, 2015 (A/HRC/RES/30/15) // UN. 2015. October 12. URL: https://undocs.org/en/A/HRC/RES/30/15.
3. A Teacher's Guide on the Prevention of Violent Extremism. Paris: UNESCO, 2016. URL: https://unesdoc.unesco.org/ark:/48223/pf0000244676.
4. Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach. Vienna: OSCE, 2014. URL: https://www.osce.org/secretariat/111438.
5. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/32/36) // UN. 2016. August 10. URL: https://undocs.org/en/A/HRC/32/36.

– whether … based on race, class, faith, ethnic superiority, or alleged tradition; are usually in possession of an ideological programme or action plan aimed at taking and holding communal or state power; … reject universal human rights and show a lack of empathy and disregard for rights of other than their own people; … reject diversity and pluralism in favour of their preferred mono-culture society; … portray themselves as threatened." At the same time, Bennoune contrasts fundamentalism and extremism with violent extremism and terrorism.[6]

The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, indicated in 2016, referring to Russia among others, that he was "particularly concerned about the term "extremism," which had been used by several States … not as part of a strategy to counter violent extremism, but as an offence in itself."[7] Zeid Al-Hussein, the United Nations High Commissioner for Human Rights, emphasized in his report that, in some countries, extremism is defined, usually at the level of state strategies, rather than laws, by its violent methods, while in other countries it is defined by the anti-democratic nature of ideas implemented by "extremists" (moreover, both of these approaches to the definition of extremism have been borrowed from political science).[8] However, as the Commissioner pointed out, citing elements of the definition of extremism in Kyrgyzstan and Russia as an example, if the latter approach is developed in legislation outside the context of violence, there is a danger of targeting the holding of an opinion or belief rather than actual conduct.[9] The OSCE is similarly opposed to the criminalization of "extremist" views.[10]

Earlier, the UN Human Rights Committee had warned states against criminalizing underdefined extremism: "Such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising," "glorifying," or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression."[11]

The Parliamentary Assembly of the Council of Europe (PACE) in 2003 adopted a resolution,[12] in which extremism is understood as activity directed against democracy and in some cases associated with xenophobia, fundamentalism and other dangerous ideas. PACE does not specifically distinguish "violent extremism" and points out in relation

6. Report of the Special Rapporteur in the field of cultural rights (A/HRC/34/56) // UN. 2017. January 16. URL: https://undocs.org/en/A/HRC/34/56.

7. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/31/65) // UN. 2016. April 29. URL: https://undocs.org/en/A/HRC/31/65.

8. See for example: Countering Violent Extremism and Radicalization that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region // OSCE. 2017. October 28. URL: https://www.osce.org/chairmanship/346841.

9. Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism. (A/HRC/33/29) // UN. 2016. July 21. URL: https://undocs.org/en/A/HRC/33/29.

10. Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism, p. 51.

11. General Comment No. 34 (CCPR/C/GC/34) // UN. 2011. September 12. URL: https://undocs.org/en/CCPR/C/GC/34.

12. Resolution 1344 of 29 September 2003 of the Parliamentary Assembly of the Council of Europe on the threat posed to democracy by extremist parties and movements in Europe // Council of Europe. URL: http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17142&lang=en.

to extremism that "even if it does not directly advocate violence, it generates a climate conducive to the escalation of violence" and poses "a direct threat, because it jeopardizes the democratic constitutional order and freedoms, and an indirect threat because it can distort political life." Therefore, PACE invites the Council of Europe members "to provide in their legislation that the exercise of freedom of expression, assembly and association can be limited for the purpose of fighting extremism," but, of course, "any such measures must comply with the requirements of the European Convention on Human Rights."

Only one of the four countries discussed in the current report is the Council of Europe member, but this one country is Russia, whose anti-extremist legislation has served as the basis for similar legislation in the other three countries. Therefore, the PACE position deserves to be mentioned.

The approach of the Shanghai Cooperation Organization (SCO), which includes all the four countries we are discussing, goes much further than all the considerations described above. First, only SCO defines extremism in a way that imposes legal obligations on its member states. Next, the understanding of the fight against extremism in the SCO framework, from the very beginning, was connected with the Chinese concept of "three evils," extremism, separatism and terrorism, which share the same underlying nature. Finally, while the 2001 Shanghai Convention tied the definition of extremism to violence, the interpretation of extremism in the SCO convention, signed in 2017 in Astana, was updated to loosely correspond to its Russian definition and, at the same time, to the Chinese concept.[13]

Anti-Extremism in Russia, Kazakhstan, Kyrgyzstan and Tajikistan, the Comparative Perspective

Key Legal Norms and Law Enforcement Trends

Russian extremist legislation has been and remains the model anti-extremist legislation for Central Asian countries, despite the fact that, in recent years, it has been repeatedly criticized at the international level by UN High Commissioner for Human Rights Michelle Bachelet,[14] the UN Human Rights Committee,[15] the UN Committee on the Elimination

13. Convention of the Shanghai Cooperation Organization on Combating Extremism // The Embassy of the Russian Federation to the United Kingdom of Great Britain and Northern Ireland. URL: https://rusemb.org.uk/fnapr/6271.

14. Comment by UN High Commissioner for Human Rights Michelle Bachelet on criminalizing the right to freedom of religion for Jehovah's Witnesses in Russia // UN Human Rights Office of the High Commissioner. 2019. February 7. URL: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24145&LangID=E.

15. Concluding observations on the seventh periodic report of the Russian Federation (CCPR/C/RUS/CO/7) // UN. 2015. April 28. URL: https://undocs.org/en/CCPR/C/RUS/CO/7.

of Racial Discrimination,[16] the Venice Commission,[17] the European Commission against Racism and Intolerance of the Council of Europe,[18] and other structures.

In all the four countries under review, the definition of extremist activity[19] is not firmly tied to violence. The characteristic similarity of the definitions is that they include statements that can be described as hate speech along with actions and statements that threaten the state security. Thus, on a conceptual level, manifestations of xenophobia, even if non-violent, are equated with anti-state activities.

However, the definitions exhibit differences as well. The definitions of extremism in Kyrgyzstan and Tajikistan are very similar and almost completely repeat the Russian definition in its original version of 2002. Thus, extremism in these countries includes "seizure or appropriation of power" along with "undermining the security" of the state and "abasement of national (ethnic) dignity" (both defined extremely vaguely), as well as creation of illegal armed groups. These clauses have been removed from the current Russian definition.

At the same time, in Kazakhstan, the Kyrgyz Republic, and Tajikistan, violent crimes against individuals motivated by hatred are not formally related to extremism. However, the definition of extremism indicates that the prohibited "incitement of enmity" has to be associated with violence (in the Kyrgyz Republic and Tajikistan) or can be associated with it (in Kazakhstan). In Russia, the situation is currently reversed – the definition of extremism does not include the clarification about the connection between the prohibited "incitement of enmity" and violence, but all hate crimes are classified as extremism.

Kazakhstan stands apart with its unique definition that divides extremism into political (including social and class enmity), national and religious. In fact, Kazakhstan is the only state in which an attempt was made, on a formal theoretical level, to avoid mixing up criminal attacks against the state security and against ethnic or religious equality of citizens. At the same time, this distinction is absent from the criminal law norm on "inciting enmity."

In addition, the definition of extremism in Kazakhstan, unlike the ones in the Kyrgyz Republic and Tajikistan, points out that "inciting enmity" is not necessarily connected to violence.

Meanwhile, the norms of the Criminal Code and the Code of Administrative Offenses in any of the four countries contain no indication that a connection to violence is mandatory. In Kazakhstan, Kyrgyzstan and Tajikistan, such acts as insulting "national

16. Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation (CERD/C/RUS/CO/23-24) // UN. 2017. September 20. URL: https://undocs.org/en/CERD/C/RUS/CO/23-24.

17. Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation // Council of Europe. Venice Commission. 2012. July 20. URL: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e.

18. ECRI Report on the Russian Federation (fifth monitoring cycle) // Council of Europe. 2019. March 5. URL: https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91.

19. Strictly speaking, the Law of Tajikistan "On Countering Extremism" made an attempt to separate the concepts of "extremism" and "extremist activity." Extremist activity is defined through the list of prohibited actions that is traditional for the Russian model of the law. Extremism is defined as "extreme forms of action calling for" anti-state activities and incitement of enmity. Thus, in fact, extremism is characterized as incitement to "extremist activity." Hereunder, we will rely specifically on the item list in the definition of extremist activity, when speaking of extremism in Tajikistan, as well as in other countries.

honor and dignity" or "abasement of national dignity" (an abstract category that can hardly be defined in legal terms) are viewed as equivalent to incitement to hatred, and, in Kazakhstan, also to "insulting religious feelings" of citizens (such a concept also exists in Russian law though, formally, outside the framework of anti-extremist legislation). All countries, except for the Kyrgyz Republic, criminalize hatred on the grounds of belonging to a "social group," but provide no specific definition of this term. These features of their legislations, in combination with a formalistic approach to implementation of the law by law enforcement agencies, threaten the realization of the right to freedom of expression.

Still, to be fair, in the recent years, both Russia and the Central Asian region have experienced a shift in the use of criminal law against extremism from penalties for expressing opinions to prosecution for participation in banned organizations. Thus, partial decriminalization of Article 282 Part 1 of the Criminal Code took place in Russia. A reform regarding prosecution "for words" is being prepared in Tajikistan. In Kazakhstan, DCK supporters, previously prosecuted for inciting "social enmity," are increasingly charged with participating in a banned organization. This trend has not yet been observed in the Kyrgyz Republic; the most widely used mechanism there is criminal prosecution for possession of extremist materials, which has no equivalents in other countries under review. However, the scope of this article shrank somewhat after its wording came to include the intent to distribute these materials as a mandatory element.

Calls for separatism are covered in specific Criminal Code articles only in Russia and Kazakhstan; in both countries the scale of prosecution under these articles has been small, but also included the charges against those guilty of separatist calls unrelated to violence thus limiting the peaceful political debate. In Tajikistan, appeals for violation of territorial integrity are included in the legal norm that deals with changing the constitutional system, but only those which call for violent acts of separatism.

Russia is the only country with large-scale administrative prosecution under the "extremist" articles for displaying forbidden symbols and distributing extremist materials, but these measures only apply to materials that have been previously prohibited and included on the published list. In the Kyrgyz Republic, the possession of extremist materials is prosecuted in and of itself, and, in practice, these might include not only materials recognized by courts as extremist, but also any materials of banned organizations. Tajikistan has a mechanism to ban extremist materials, but we have no information regarding any existing list of such materials or special sanctions for their distribution. However, the act of displaying symbols of banned organizations in Tajikistan can be regarded as a criminal offense, such as, for example, justification of extremism.

Finally, only in Russia, prosecution against distributors of ethnic xenophobic propaganda, as well as participants in xenophobic attacks and members of ultra-nationalist groups (many such groups are recognized as extremist) constitutes a significant part of the anti-extremist law enforcement. Although the fight against ethnic xenophobia in Kazakhstan, the Kyrgyz Republic and Tajikistan shows some specific regional features (in particular, criminalization of the incitement to "tribal," "local" or "inter-regional" hostility), it generally represents only a small fraction of the anti-extremist law enforcement. The majority of anti-extremist cases pertain to counteracting various religious movements, as well as prosecution against political opposition whose activity is seen as intended to violate public order and to overthrow a government. The lists of banned organizations in these countries primarily include religious and opposition structures, along with Middle Eastern and Central Asian Islamist movements and groups.

Meanwhile, the concepts of extremism and terrorism are often lumped together in Kazakhstan, Kyrgyzstan and Tajikistan. Some organizations are even recognized in Kyrgyzstan and Tajikistan as both extremist and terrorist. Russia has developed separate anti-terrorism legislation, so the concepts of "extremism" and "terrorism" are distinguished much more clearly in the legal field.

The grounds for banning organizations are not always clear. Moreover, the lists of prohibited organizations include more than just organizations. For example, the list of organizations banned in the Kyrgyz Republic includes even "propaganda and advocacy materials as well as propaganda activities" of Said Buryatsky (although propaganda activities and materials are obviously not organizations). In both Tajikistan and Kyrgyzstan, Salafiya (or Salafism) – a broad area of Islamic thought and religious practice that has no structure at all – is banned as an extremist community. People who study the works of Muslim theologian Said Nursi do not consider themselves members of any single organization, including Nurcular, which is banned in Russia. Even if a ban has been imposed on actual registered organizations, as it happened to Jehovah's Witnesses communities, Russian law enforcement agencies still attempt to prosecute believers in places where no banned legal entities have ever existed. There is no clear justification for classifying Hizb ut-Tahrir as a terrorist organization in Russia (it is recognized only as an extremist organization in the other three countries).

Given that the criminal laws on continuing the activities of banned organizations are formalistic in all the countries under review – that is, the very fact of participation in the activities of such an organization is criminal – such regulations conflict with constitutional guarantees of freedom of expression, assembly and conscience, create legal uncertainty and entail blatantly disproportionate restrictions on civil rights.

Countries in the region actively restrict freedom of expression on the Internet under the pretext of combating extremism. In Russia and Kazakhstan, in addition to court-mandated blocking, extra-judicial restrictions are common as well. The prosecuting authorities have extremely wide discretion in implementing these restrictions. While the procedure for the interaction of the state with a hosting provider and a website owner in Russia is at least clearly spelt out, vague formulas of the laws contribute to arbitrary enforcement in Kazakhstan.

Additional anti-extremist legal mechanisms, developed in detail and widely applied in practice only in Russia, include restrictions and punishments for mass media (although, they formally exist elsewhere as well), suffrage restrictions and other, minor, instruments. Obviously, the states in the Central Asian region have no need for these mechanisms due to the greater role of extralegal mechanisms of pressure against dissidents.

Other Parameters for Comparison

The elevated role of expert opinions when considering cases related to extremism, constitutes a common problem for all the countries. In Russia, obtaining an expert opinion is de facto almost mandatory even for administrative offenses. Expert examinations are carried out not only by employees of departmental expert units, but also by academic scholars; however, academic affiliation is not a guarantee of the expert's integrity. In the Central Asian states, in contrast to Russia, an expert examination is conducted primarily or exclusively by experts directly dependent on the state. The problem of expert qualifications is especially acute in Tajikistan and Kyrgyzstan. Thus, in the Kyrgyz Republic

the "extremist" nature of materials is often established purely formally, on the basis of the fact of having been produced by a banned organization.

The similarity of legal approaches, the common threats as understood by the authorities of the four countries (specifically, Islamic organizations, although the lists of threats do not quite match) and the SCO membership facilitate the cross-border cooperation in the prosecution of alleged terrorists and extremists. Legal difficulties and abuses arising in the course of interaction between the four countries are not unique,[20] but have specific features that still require additional study.

The countries under review vary in the degree of public accessibility of texts of the judicial decisions related to extremism. In Russia, sentences under "extremist" criminal articles, as a rule, are not published online, since, by default, they are viewed as documents that affect the security of the state. Decisions on recognizing materials as extremist are not always published. The texts of decisions recognizing organizations as extremist are available; decisions recognizing organizations as terrorist are not published at all. Kazakhstan publishes decisions on bans against materials as well as the expert opinions, on which they rely, but not decisions on bans against organizations. In the Kyrgyz Republic, court decisions, including those pertaining to verdicts on "extremist" crimes, are supposed to be published online starting in 2017. In Tajikistan, court websites are often not updated or do not function at all.[21]

The availability of statistical information in the countries is also uneven. In Russia, detailed statistics on the work of courts, grouped by articles of the Criminal Code and the Code of Administrative Offenses, are published by the Judicial Department under the Supreme Court of the Russian Federation; the summarized information on registered crimes of extremist nature is published by the Prosecutor General's Office. In Kazakhstan, statistics on criminal cases currently in prosecution are made publicly available on a monthly basis by the Prosecutor General's Committee on Legal Statistics. In Kyrgyzstan, only the statistical compilation published in 2019 for the four preceding years treated crimes "against the state power" as a separate category and disclosed the data on application of some of "extremist" articles included in this category.[22] As far as we know, detailed statistical data is not published in Tajikistan.

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Transformation of the Russian legal understanding of extremism in the countries of Central Asia clearly demonstrates the inborn defects of this legislation, its inherent repressive potential. The weaker the legal institutions and the more pronounced the regime's authoritarianism, the wider is the use of this legislation as an instrument of political repression.

20. Cross-Border Criminal justice and Security: Human Rights Concerns in the OSCE Region // Fair Trials. 2018. URL: https://fairtrials.org/sites/default/files/publication_pdf/CSP%20WG%20spreads.pdf.

21. Farrukh Bozorov, Ismoil Islomov, "Judicial Reform in Tajikistan: Closed Courts, Inaccessible Websites" // CA-News. 2018. May 28. URL: http://ca-news.org/news:1450956/.

22. Offenses and the Rule of Law in the Kyrgyz Republic. Statistical Digest. Bishkek: National Statistical Committee of the Kyrgyz Republic, 2019. P. 30. URL: http://www.stat.kg/media/publicationarchive/74e01990-418c-4399-ad79-b235790fc8b7.pdf.

Recommendations

We believe that the legislation and practice of countering terrorism and extremism (in terms of national legislation) in our countries need to be brought in line with the international human rights standards. Understanding that the process of moving towards this goal cannot be simple and cannot be the same in the four countries covered by our report, we have to limit ourselves to the recommendations below that apply to them all and should contribute to this goal.

Legislation must, in one form or another, make a distinction between actions related to terrorism and actions related to extremism. Among the latter, a distinction should be made between actions related, in one way or another, to the use of violence and those not related to it. The severity of countermeasures, both in terms of urgency of procedures and in terms of severity of sanctions, should vary significantly between these categories.

We also believe that special, more stringent regulation in both of the aspects applies specifically to terrorism and violent extremism, but not to other acts currently covered by anti-extremist legislation.

The best option would be to change the legal definition of extremism so that this concept refers only to actions connected in one way or another with the use of violence.

In general, the definitions of terrorist and extremist activity in the relevant laws should be as clear as possible to eliminate the chance for an expansive interpretation.

The same applies to definitions in related articles of the codes as well as in sectoral laws (on public associations, the media, etc.).

With regard to the sphere of religion, we proceed from the idea that the threat of politically or ideologically motivated violent acts, which is the essence of terrorism or violent extremism, comes not from religious beliefs per se, but only from certain political views related to religion. Accordingly, freedom of conscience and belief as such should not be subject to additional restrictions within the framework of anti-terrorism or anti-extremist legislation, despite the fact that, in general, restrictions on civil rights and freedoms in order to protect the state security and the public security are permissible.

Criminal law articles relating to public statements should criminalize only statements that call for violence. Incitement to hatred based on group characteristics – such as race, ethnicity, religion, etc – may be an exception. The list of protected characteristics should not include any vague criteria, as the lack of clarity leads to abuse.

In any case, the wording and application of the relevant articles of the Criminal Code must meet the threshold of public danger of the statements in question. Six criteria presented in the Rabat Plan of Action can be used as an example.[23]

23. Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence // Annual report of the United Nations High Commissioner for Human Rights (A/HRC/22/17/Add.4). 2013. January 11. URL: https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

Investigation of the cases that involve public statements may include conducting an expert examination (linguistic, religious, historical, etc.), but only in cases where understanding the text in question requires expertise that exceeds common knowledge (true, for example, for many religious texts). The profile of such an examination should be selected depending on the kind of expertise that is lacking. Most importantly, such an examination should in no way assess the legality of acts in question.

The mechanism for banning "information materials" with subsequent punishment for their distribution should be abolished, since, given the wide availability of the Internet, such bans fail to limit socially dangerous campaigning in any meaningful way, but they sharply increase the risk of excessive or arbitrary punishment.

The elevated threat posed by terrorist activities (and possibly, in some cases, extremist ones) is not an excuse for extreme measures, including torture.[24]

Restrictions beyond the principal punishment should be imposed on offenders convicted for crimes of terrorist or extremist nature (whether these restrictions pertain to civil rights, access to financial instruments or something else) only by court order and on the case by case basis.

24. This report does not address the issue of torture in the investigation of cases related to extremism and terrorism, but this problem is relevant for the entire region.

Anti-Extremist Policies in Russia, Kazakhstan, the Kyrgyz Republic and Tajikistan. Comparative Review

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