

Forcible Acquisition of Another Property on the Territory of Kazakhstan: Historical-Legal Aspect

¹Askhat Gazayev, ²Voloshin Pyotr, ¹Kairat Yernishev,
¹Kurmanbek Saginbekov and ¹Mukhtar Tursynbayev

¹Taraz State University named after M.Kh. Dulaty, Taraz, Kazakhstan
²Kostanai Branch Federal State Budget Institution of Higher Professional
Education "Chelyabinsk State University"

Abstract: In this article the authors considered the historical features of formation of legal knowledge of the forcible acquisition of another property on the territory of modern Kazakhstan. Specifies several disadvantages associated with the peculiarities of the techniques legislative design of compositions of violent crimes against property. Suggestions for the solution of the existing problems, given the historical background. Property appears economic basis for the existence of any society. In turn, the right to own property is the most important guarantee of the rights and freedoms of the individual. Any study of the state of protection of property rights against encroachments connected with violence, objectively involves the study of its historical background. In no way claiming the historical novelty presented in this article the data necessary to characterize the peculiarities of normative character, which allows making certain conclusions about the state of the legal framework in the field of development of crimes against property with violence on the territory of Kazakhstan.

Key words: Kazakh customary law • Construction law • Criminal law norm • Violence • Assault • Robbery • Extortion.

INTRODUCTION

The property is the basis of any society and is a social value, protected by the state through legislation. Since the proclamation of the right of possession of any property, people perform, there is a desire to have more.

"People are characterized by two trends: one of them, the tendency to have-have-ultimately takes effect in biological factor in the pursuit of self-preservation; the second tendency is to be, so, to give, to sacrifice himself attains its strength in the specific conditions of human existence and internally inherent human needs in overcoming loneliness by uniting with others. Given that these two contradictory aspirations to live in each person, we can conclude that the social structure, its values and norms determine which of these two aspirations will become dominant. Those cultures that encourage thirst for profits and, hence, the modus of possession, rely on some potency of man; but those who favor the existence and unity, rely on others. We must decide which of

these two potentials we want to cultivate, realizing, however, that our decision is largely predetermined the socioeconomic structure of society, encouraging us to take a decision" [1].

The universal Declaration of human rights contains a provision in which the right to property enshrined in a number of important rights and freedoms: "Everyone has the right to own property alone as well as in Association with others. No one shall be arbitrarily deprived of his property" [2]. The legislator of the Republic of Kazakhstan in part 3 of article 26 of the Constitution defines "no one may be deprived of his property otherwise than by a court decision" [3].

Property rights protection is an essential task of any state activity. In any country must be a stable relationship property, provided by the state. However, protection of property rights in different states, as well as in the same country in different periods of its development has differences. This is due, above all, the properties of the objects involved in property relations, as well as changes under their influence the actual content of these relations.

"The development of legislation-a complex process that takes place under the influence of many diverse factors. Lack of scientific foresight, haste in the preparation of acts, errors in calculation, lack of analytical information, account for various factors reduce the quality of legal acts "[4].

The Main Part: Criminal legislation of the Republic of Kazakhstan considers the right property as the object of the legal protection. The greatest danger to the victim and to society in General carry crimes against property with violence. "Violent crime is a serious social problem faced by almost all nations around the world" [5].

Kazakhs, like other Nations, have a rich, diverse and multifaceted oral-historical knowledge that went into the Treasury of national culture. Republic of Kazakhstan is a Euro-Asian country. In the last Millennium history of Kazakhstan is a history of the relations between the two major ethnic groups of Eurasia - Turks and Slavs. On the territory of Kazakhstan are intertwined history, culture, religion, East and West. Rich knowledge of Kazakhs that had accumulated over the centuries, are the result of positive rational experience about the natural environment and the man himself, manifested in the material and spiritual life of people.

The analysis of formation of violence as a characteristic of crimes against property should anticipate the disclosure of the concept of "customary law".

In his work L.I. Petrazhitzky considering customary law, wrote: "In both types of customary regulatory fact usually happens massive legal behavior of others (ancestors or contemporaries). That is, it is understood that the action to be abstinence or patience committed as meet other rights recognized in the implementation of these and other human attributes to himself (and not, for example, the execution of a purely moral, aesthetic rules, etc.), but there is another possible the emergence and spread of customary legal opinions, statement of claims with reference to the known mass behavior ancestors, etc., although the behavior of the subject in general, or in most cases did not have the character of legal behavior. "He further emphasized," It is, moreover, be borne in mind that the customary law as a crucial regulatory fact is not what it was in reality, and what seems like the former. If, for example, in the scope of customary law old psyche worship ancestral customs and antiquities in this field, for example, among this tribe appears and spreads the view that the ancestors held such and such a legal custom,

observed that in the old-so, then may appear and act the relevant customary law to be referring to the custom of their ancestors, although in reality ancestors acted differently: this custom did not exist or had to be custom character is not legal, but, for example, a purely moral or aesthetic custom or habit, and so technical etc." [6].

Thus, L.I. Petrazhitzky defines customary law as imperative-attributive experience with reference to the corresponding mass represented by the behavior of others as a normative fact. From this conclusion it is clear that customary law is a manifestation of the individual psyche and as such it should be studied by using the method of introspection and connected internal and external observation.

Famous Kazakh philosopher Chokan Valikhanov about Kazakh customary law wrote: "customary law Kirghiz (Kazakhs) for the same analogy highest development from the lowest to which we like to refer to, is more humane than the law, for example, Muslim, Chinese and Russian on the Russian truth. In Kyrgyz (Kazakh) law no warning and terrifying measures, which is filled with the latest European codes. The Kirghiz corporal punishment never existed. And the laws of birth, by which the members of the genus are responsible for kinsman, when patrimonial relations bring many practical benefits" [7].

In the legal life of the Kazakh people customary law (adat) had a special significance. Using customary law was regulated all aspects of the legal life of nomadic people, including their criminal law sphere. According to the modern Kazakh scientist of E.A. Abil, this is explained by the fact that customary law acquire an independent significance in Muslim Nations where social and economic relations do not correspond to norms of the Shariah [8].

In the Kazakh customary law norms was especially devoted many punishments for criminal acts. If this is the peculiarity of economic life, especially feudalism left a deep imprint on the criminal law of the period. In the Kazakh adat missing general concept of "crime." This notion is expressed Kazakhs words "Jaman³s" or "Jaman kylyk", *i.e.* bad thing, bad behavior. From the word "kylyk" comes the word "kylmys" more appropriate scientific understanding of crime. Crime admitted causing material and moral damages to the victim and his relatives [9].

Torts different legal nature were seen mainly in terms of property damage caused, even if it came to attacks on the lives and health of the individual.

This circumstance, certainly, is reflected in the provisions, which punished for committing the infringement on other people's property. Property crimes were designated by one notion "urlyk".

As property Kazakhs were: "mal"-cattle and "mulik"-all the rest of private and real property. Kazakh law has established various responsible for attacks on these objects.

The basic branch of economy of the Kazakhs was cattle breeding, therefore private ownership of cattle was provided enhanced criminal protection. Cattle were the basis of wealth in the Kazakh steppe and so was the main object of attacks from thieves and robbers. For infringement of the owner of the cattle punishment was administered significantly higher than for the violation of the rights to other types of property. According to the code of Tauke and later on customary rules in force about 30-ies of the XIX century, for various types of theft of cattle provided a variety of measures of punishment, ranging from penalty payments and ending with the death penalty. It should be noted that the death penalty for theft of any other property were not envisaged in [9].

In the Kazakh society, from among the other types of property, i.e. Mulik, special protection enjoyed objects necessary for conducting hunting, as well as items of military equipment. Their heavy security was attributed to the fact that hunting was one of the most important sources of revenues of the Kazakh feudal and items of military equipment in its turn, was a means of ensuring internal and external security of the society and has been very important because of the continuing civil strife.

Kazakh common law crimes against property relations considered: theft, robbery, intentional destruction and damage property. "It didn't install the punishments for actions such as deception, fraud, extortion, etc. it is Characteristic that these acts were widespread, especially among the dominant class" [9].

Modern criminal law highlights the essential features that distinguish such infringing on another's property as theft, robbery, plunder, increasing the punishment for each of them according to the degree and nature of their danger to the public. Kazakh customary law in the eighteenth century did not distinguish these crimes. N.I. Grodekov wrote: "Among the Kyrgyz no special words to express concepts of theft and robbery. Urlyk-theft or robbery, Ury-is a thief, a robber and the criminal, urlama-stealing, Tartyp Almak-take, rob. Robbery is suing not more so simple theft".

In the laws of Tauke was no separation between theft, robbery and assault,- they say: "Who has done and theft and murder together, he pays for two crimes" [10].

This circumstance shows that the abduction of property, accompanied by dangerous violence or murder, did not create any new qualification of the crime and was considered as the aggregate of two crimes [10].

In later monuments of customary law, particularly in the collection of the Kazakh adat 1824, was first identified the concept of robbery, there were also some delineation of the concept of robbery from the concept of theft.

According to the norms of customary law under the robbery was meant every violent seizure of somebody else's property, do not fall under the notion of "barymta" (cattle feeding to support their claim) and organized armed attacks on the village. Under the robbery was understood robbery of people who were in the way. "So, the word robbery,-is said in the book of the Kazakh adat, published in the second half of the 19th century L. Ballyuzek, Kyrgyz understand those episodes predatory life when predation is limited to the robbery of one or two travelers making their way from some villages in the other, called Tonau, i.e. the removal of dresses and horses under the wayfarer" [9].

However, for robbery unarmed and for robbery in the way, provided only the return of stolen and payment minor penalt-"the horse and a vest". This fine horse and vest", established for the violence at the kidnapping of property corresponds exactly to the punishment envisaged in the record of Bronevsky for any beating, not involving mutilation [10].

In the collection of the Kazakh adat, published P. Makovetsky, also stated: "violence, constituting the distinctive sign of robbery, stands out among the Kyrgyz in a separate offense carrying a separate punishment" [9].

Under the influence of the changes in socio-economic relations in Kazakhstan, which have led in particular to the elimination of strife and under the influence of the criminal legislation of tsarism in the XIX century the robbery was discovered, mainly in the form of the open theft of property with the use and without the use of violence committed by one or several persons. However, in Kazakh customary law has become more clearly vary the concept of robbery from the concept of theft.

In consequence, the punishability of robbery under customary law was not established weaker and sometimes even stricter than for committing theft. In the collection of the Kazakh adat, published in the second half of the XIX century by L. Ballyuzek, says, "in case of opening of theft, is punished over the return of looted and stealing from under all robbed carnivores horses, as well weapons and dresses with them, nine times the size" [9].

The circumstance that increases the severity of the punishment for robbery in the second half of the XIX century, was also the night of the robbery by force of arms.

Thus, the analysis of normative-legal base in the field of criminal property security from violent attacks on the territory of Kazakhstan allows to note that Kazakh law did not exist distinguish between different forms of theft famous contemporary criminal law (theft, robbery, burglary).

Kazakh customary law considered the forcible acquisition of another property as two separate crime and establish the responsibility for each of them separately for property damage resulting from the seizure of the property and for physical harm caused to the victim when the appropriation of the property.

At present Kazakhstan is the successor of the traditions of Soviet law school. One of the evidences confirming this is that in the criminal legislation of the Republic of Kazakhstan, put recommendation legislative act "Model criminal code for the States-participants of the Commonwealth of Independent States", adopted by the Resolution of the Interparliamentary Assembly of member Nations of the Commonwealth of Independent States in St. Petersburg on 17 February 1996.

Under the criminal law of the Republic of Kazakhstan crimes against property with violence include robbery with violence not dangerous to life or health, or with threat of such violence (paragraph "a" of Part 2 of the Criminal Code of the Republic of Kazakhstan Article 178); robbery (Article 179 Criminal Code of Kazakhstan; theft of items of special value (Article 180 Criminal Code of the Republic of Kazakhstan); extortion with violence (paragraph "a" of Part 2 of Article 181 of the Criminal Code of the Republic of Kazakhstan) misappropriation of a car or other vehicle without theft with violence not dangerous to life or health, or with threat of such violence ("c" of Article 185, part 2 of the Criminal Code of the Republic of Kazakhstan) misappropriation of a car or other vehicle without the intent to steal from violence dangerous to life or health, or with threat of its application (Article 185 of the Criminal Code Part 4 of the Republic of Kazakhstan).

CONCLUSION

Analysis of the current criminal legislation of the Republic of Kazakhstan, as well as scientific literature regarding the regulation of violent capture somebody's

property, it should be noted that today there are a lot of shortcomings relating to the content of the notion of violence, dangerous and not dangerous for life and health, the concept of psychic violence, issues of qualification; and the fact that these issues are regulated on the legislative level is not clear enough. Due to the fact that the law signs of violence are worded differently, there are difficulties in qualifying committed socially dangerous acts. In some cases in the criminal law is used the general term "violence" (paragraph "a" of Part 2 of Article 181 of the Criminal Code of the Republic of Kazakhstan), is specified in other indication of danger to life or health (Article 179 Criminal Code of the Republic of Kazakhstan). According to some scientists, the lack of clarity and validity of criminological techniques legislative designing of structures of violent crimes, not differentiated responsibility for the physical and mental violence, there are gaps in the criminalization of violent crime has weakened the role of criminal punishment in the prevention of some violent crime [11].

When designing the rules providing for liability for forcible acquisition of another property, you need to map the above composite category of crimes and their mandatory component-violence in the form of harm to the life or health of varying severity. In this part (violence) should not apply to a more severe category than the composite act as a whole. Non-compliance with this rule is observed when qualifying robbery followed the murder victim. In such cases, the jurisprudence is ambiguous. Speaking of violence, life - threatening, the legislator indicates the possibility of intentional infliction of death to the victim.

Examples of jurisprudence indicate differences in the interpretation of this provision in practice its application.

RESULT

There is need to revise the design rules norms stipulating the responsibility for the crimes against property, accompanied by the use of violence. As a recommendation for these changes indicate that you should not combine simple crime in which the crime (violence), acting as a way to capture somebody's property, is among the more serious crime than property crime, for the commission of which it is directed. This recommendation is fully reflect the provisions of the Kazakh customary law has proven its worth for its centuries-old experience.

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