

## LAW AND INTERNATIONAL LAW

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### **RIGHT OF REBELLION: ON THE PROBLEMS OF REHABILITATION OF PARTICIPANTS IN ANTI-SOVIET REBELLIONS IN KAZAKHSTAN**

***Abstract.** Many participants in the anti-Soviet uprisings of the Kazakhs have not yet been rehabilitated. The obstacle to this is the norms of the laws of the Republic of Kazakhstan, which do not allow the rehabilitation of persons who participated in armed struggle and murders of representatives of the authorities and the military. At the same time, in international and national law there is such an institute as *jus resistendi* - the right of resistance or the right to rebellion. This legal institution enables the rehabilitation of participants of anti-Soviet uprisings due to the recognition of their natural and inalienable rights.*

***Keywords:** rehabilitation, human rights, anti-Soviet uprisings, right to rebellion.*

One of the directions of the work of the State Commission for the Rehabilitation of Victims of Political Repressions in Kazakhstan was the rehabilitation of participants of anti-Soviet uprisings in the early 20s and 30s of the 20th century. However, their full rehabilitation raises a number of questions and legal complexities. Thus, the current Law of the Republic of Kazakhstan "On Rehabilitation of Victims of Mass Political Repressions" classifies persons convicted of participation in an armed uprising for counter-revolutionary purposes as members of armed gangs and participation in murders and other violent acts, acts of terrorism, sabotage, as well as organization of armed gangs and participation in murders and other violent acts committed by them, as persons not subject to rehabilitation.

At the same time, we understand that the materials of the investigation are not always objective and it is impossible today to say exactly which of the convicted

persons actually committed the acts of which they were subsequently accused. In addition, Article 6 of the Act fails to take into account the important legal and philosophical phenomenon of «jus resistendi», the right of people to resistance or rebellion. It is a collective global natural right, recognized as positive law at the national and international levels [1].

The right of rebellion emerged simultaneously in both the Western and Eastern legal traditions. The schools of natural law and social contract contributed greatly to the establishment of this right. The strong influence of these major legal traditions throughout the world has led to the explicit or implicit recognition of this right in constitutional laws throughout the world. The right of revolution has developed into a general principle of law, representing "the inalienable right of a people to oust its rulers, to change its system of government, or to bring about radical reforms in its system of government or institutions by force or general revolt, when lawful and constitutional methods of effecting such changes have proved inadequate or so difficult as to be unavailable" [2]. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, recognizes the right of rebellion, asserting the need for the law to protect human rights in order to ensure that man is not forced to resort, as a last resort, to rebellion against tyranny and oppression.

Without going into discussions about the natural or affirmative nature of the right of rebellion, we note that all experts agree that it is historically conditioned, i.e. its relevance decreases with the introduction of universal suffrage, the development of institutions of public control over the activities of the authorities (trade unions, political parties) and legal methods to protect the interests of the masses of the population [3].

An insurrection and all the formal "offenses" and "crimes" connected with it can be recognized as lawful under international law if the following criteria are met:

1. a majority of the citizens support the use of force, or at least the rebels must honestly and reasonably believe that the majority would agree to it if they knew the circumstances involved;

2. The use of force must be a last resort and must not be excessive in relation to the particular advantage expected;

3. The reason for the use of force must be oppression of the government in the form of substantial violations of the constitution or fundamental human rights;

4. The use of force must be directed against the oppressing government [4].

Let us see to what extent the anti-Soviet uprisings of the 20s and 30s in Kazakhstan met these criteria.

1. The first condition is based on the notion of the sovereignty of the people, which means that the people have the right to determine their political destiny. This does not mean, however, that the revolution must necessarily establish democracy - the people can establish any form of government they wish. The principle of majority support includes two elements: (a) citizenship and (b) majority support. The citizenship requirement derives from the idea that only a citizen of a country has the right, as a party to the social contract of a particular state, to respond to oppression by the government. Majority support does not mean actual support by the majority of the population, for it may be limited by the delusions of the population due to propaganda or fear of reprisals. International law recognizes majority support when insurgents are honestly and reasonably convinced that they are acting in the interest of the majority (even if that belief is false).

Representatives of various social groups and representatives of various political forces participated in anti-Soviet uprisings of the 20-30s of the 20th century in Kazakhstan. Thus, the uprising of Loginov in Aktyubinsk in May 1920, Shishkin uprising in eastern Kazakhstan in June 1920, Sapozhkov uprising in August 1920, uprising in northern Kazakhstan and Serov uprising in 1921 were attended by peasants, Cossacks, former white officers and Red Army soldiers, representatives of the Soviet authorities, Kazakhs. The uprisings of 1929-1933 were attended by former sarbazas in 1916, as well as former Red Army soldiers, Communists, Komsomol members, ministers of religion, etc. In other words, it was a speech of the whole people, not of a single political party or social group. The leaders of the uprising advanced slogans which were directed not at one group but at the majority of the population (introduction of free trade, abolition of Prodravverstka, removal of the Bolsheviks from power - in 1920-21, freedom of conscience, abolition of confiscation and collectivization, introduction of local self-government - in 1929-1933).

Thus, the anti-Soviet uprisings in Kazakhstan meet the first criterion - the majority of citizens supported the use of force, and the rebels honestly and reasonably believed that the majority agreed to the use of force.

2. The principle of proportionality is the second requirement. According to this principle, if there is a milder method of overthrowing an oppressive government, it must be applied first. The right of insurrection must be conditioned on the exhaustion of nonviolent means of defense, such as constitutional methods, recourse to the legal system, political propaganda, peaceful protests, civil disobedience, passive resistance, etc. However, such means must be effective.

Was there such a possibility in Kazakhstan in the 20s and 30s of the 20th century? The revolution of 1917 established in Russia the power of the Bolshevik Party (a radical faction of the Russian Social Democratic Labor Party, since 1918 the Russian Communist Party (Bolsheviks)). Despite the declared people's character of the political regime, it was not democratic in the full sense of the word.

The Constitution of 1918 stipulated that the right to vote, both active and passive, was enjoyed only by workers, clerks, and peasants who did not use hired labor. Thus, large segments of the population classified as "exploitative," including well-to-do peasants, ministers of religion, private traders, former officials of the state apparatus were disenfranchised. In addition, unequal representation of workers and peasants was legislated. In fact, 1 vote of a townsman was equal to 5 votes of villagers. The elections were indirect, that is, the delegates to the Congress of Soviets were elected by the regional and provincial councils, and not by the population. In addition, the elections for rural inhabitants were four-stage, and for city dwellers - two-stage.

The Resolution of the All-Russian Central Executive Committee "On the Order of Re-election of Volost and Village Soviets" of February 12, 1918 explicitly established the control of higher authorities over elections at lower levels, prescribing that "elected bodies must be built from the center, and the cell standing above must carefully check the composition of the lower one" [5]. In addition, the higher bodies could override the results of elections at lower levels (give refusal, deprive powers, order re-elections). Thus, the elections were

neither direct, nor equal, nor universal, which allowed the Bolsheviks to easily ensure the necessary composition of the congresses and make decisions profitable for themselves.

The rural population of Kazakhstan (and this was the vast majority of the population in the 20-30s) actually had no representation at all levels of government, except for local (aul and village councils), greatly limited by the actions of various "commissioners" - representatives of higher levels of government from the uyezd to the guberniya (raiyn/okrug/oblast).

The Bolsheviks, coming to power, set themselves the task of completely changing the legal system based on their ideas of legality and justice. The development of the law during this period was characterized by the widespread use of criminal repression not only against criminals and opponents of the ruling regime, but also against all persons who, in the opinion of the authorities, could potentially pose a danger to it.

After coming to power, the Bolsheviks eliminated all judicial bodies, preliminary investigation agencies, the defense attorney's office, and the prosecutor's office. The new court system was created with great difficulty and many costs. Before the advent of the codified Soviet criminal legislation the courts could be guided by "revolutionary justice," i.e. they could independently determine the crime and the sanctions. The composition of the people's courts and tribunals was formed by local Soviets from persons loyal to the Bolsheviks, and in the overwhelming majority these were not qualified lawyers. In the absence of a professional defense bar, the trials became a farce, and the courts became the bodies of reprisals against real and potential opponents of the regime.

In fact, in the 20s and 30s, the lack of democracy and legal mechanisms to protect citizens from the arbitrariness of the authorities led to rampant terror, elevated to the rank of state policy. According to the Resolution of SNK "On Red Terror" dated 5.09.1918, any anti-government speech was treated as counter-revolutionary and brutally suppressed. Therefore, the population of Kazakhstan in the 20-30s of the 20th century had no legal non-violent methods of protest against the government.

3. The third condition is the principle of just cause. The reason for rebellion is just if the oppression consists either in a substantial violation of the constitution, or in a violation of basic human rights, or both. But what constitutes a substantial violation? As a general rule, it means that the oppression must be permanent. But it is also possible that even a single government action may constitute such serious harm to a people that it alone justifies the use of force. In any event, international law considers it permissible to use force against a government in cases of genocide, crimes against humanity, and war crimes, because even in these cases the international community has a duty to protect the people.

Were there such causes in the 20-30s in Kazakhstan? Of course there were. Without dwelling on all the actions of the authorities in 1919-21 and 1927-1932 in detail, we shall note that regardless of the true objectives of the main organizers of the actions of the Soviet authorities, they led to mass devastation, hunger and death of millions of people. Fundamental human rights and freedoms - the right to life, the right to liberty and security of person, the right to freedom of movement and choice of place of residence, the right to freedom of conscience, the right to freedom of speech, the right to free labor, the right to private property - were systematically violated. These reasons cannot but be recognized as just for the use of force against the government.

4. The last requirement is the principle of distinction (or discrimination), which means that the use of force must be directed against the people who have the power to stop oppression, as well as against the people who exercise that oppression. In other words, in times of oppression, people have the right, as a last resort, to use force against people with political and military power at all levels.

As applied to the participants of the uprisings in Kazakhstan in the 20s-30s of the 20th century, we can unambiguously speak about the legality, in terms of the right to rebellion, of the rebels' actions involving the use of force (up to and including murder) against law enforcement officers, military personnel, pro-government volunteer paramilitary detachments (ChON) and representatives of the authorities. At the same time, actions directed against the civilian population, including relatives and family members of representatives of the authorities, as was the case in some insurrections, should be considered illegal.

As we see, international law and a number of national legal systems recognize the right of the people to rebellion, and the anti-Soviet riots in Kazakhstan in the 20-30s of the 20th century fully fall under the criteria of the realization of this right. This gives grounds to change Article 6 of the Law of the Republic of Kazakhstan "On Rehabilitation of Victims of Mass Political Repressions" and exclude from the list of persons not subject to rehabilitation those convicted of participating in an armed uprising for counter-revolutionary purposes as part of armed gangs and participation in murders and other violent acts committed by them, acts of terrorism, sabotage, as well as organization of armed gangs and participation in murders and other violent acts committed by them.

This measure makes it possible to rehabilitate participants in anti-Soviet uprisings by recognizing their natural and inalienable «jus resistendi» - the right of resistance or the right to rebellion.

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