Path dependence in repressive law-formation in Kazakhstan

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INTRODUCTION

The structural development of repressive laws in authoritarian states is seldom studied. Instead, the academic discourse focusses largely on measures rather than laws and relates these to agency-centred perspectives and models of rational-choice, see the extensive literature-reviews of deMerrit (2017) and Davenport and Inman (2012). Such studies imply, that designed or applied repressive measures and laws are event-specific and aim at utility maximation. Meaning, that they are in a clear relation to specific features of the threat that is repressed and follow the cost-benefit considerations of agents[1]. For example, Varol (2015) analyses how authoritarians and their functionaries designed and rationally used (i.e. after event-specific cost-benefit considerations) repressive laws in order to suppress conceived threats to the government's power.

Yet, rational-choice theories have often been criticized to underestimate the influence of possibly irrational factors like feelings, habits, traditions, convictions and believes (Fioretos 2016, 5). Structural theories like Historical Institutionalism take these factors into account. Historical institutionalism is used to analyse the structural development of governmental institutions through time (e.g. electoral institutions). Some of these analyses thereby focus on authoritarian regimes (Gerschewski 2013, 17; Brownlee 2007; Gandhi and Przeworski 2007). A few studies thereby specifically focus on repressive legal institutions, like repressive laws. They analyse a phenomenon of institutional development that is called path dependence (Asal and Summer 2016; Pereira 2005).

Concerning the law, path-dependence describes the phenomenon that an initially adopted legal provision becomes locked-in in a developmental trajectory which reinforces itself continuously, becoming progressively more immune to change (Mahoney 2000, 511-513). Hence, path dependency impedes the adoption of new legal provisions that are alternative from already existing legal provisions, thereby limiting rational-choice. Moreover, path dependence might be maintained by irrational decisions-making. For example, by decisions-making that is merely based on old habits.

To further research the influence of path dependence on repressive legislation in authoritarian regimes, I take Kazakhstan as a case-study. Kazakhstan represents favourable circumstances for this kind of research because it is a consolidated authoritarian regime (Freedom House 2011-2016) that recently introduced a new set of amendments regarding migration, freedom of religion, communication and circulation of weapons that increased restrictions on human rights (OSCE/ODIHR 2016). The amendments are called "On Changes and Amendments to Some Legal Acts of the Republic of Kazakhstan On Countering Extremism and Terrorism[2]" and were ratified in 2017 (hereafter: the amendments or the amendments of 2017). These amendments functioned as a reaction to three events that took place in 2016: an amok-run in Almaty, a serious act of terrorism in Aktobe and nation-wide protests. All of these events were untypical for the otherwise stable situation in Kazakhstan. This offers an opportunity to find out whether the content of the amendments reflects their creators (agents) rational (event-specific) decision-making or whether it represents the next step of a developmental trajectory

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1 Agents are individuals that design or enact measures or laws.

2 All quotations of Kazakhstani legal documents are translations by the author unless stated otherwise.

that is locked-in in path dependence (structure) and maintained by irrational decision-making (e.g. habits). I will study two mutually exclusive hypotheses, stating that these amendments represent legislation:

(1) that is made by rational decision-making (rational-choice theory), i.e. specifically tuned to the events that caused the amendments, independently of previous legislation.
(2) that is made by path dependence (historical institutionalism), i.e. it has incrementally reinforced long-established repressive legislation, with no relation to the events that caused the amendments.

Note, that the hypotheses form extremes of a discussion between agency-perspectives of rational-choice and structural-perspectives of historical institutionalism. Results of the analysis are interpreted relatively as being more or less agreeing with one of the two hypotheses. These hypotheses have an ideal character and not are not expected to be fully encountered in real legislation: new legal provisions are never fully independent of previous legislation.

In this thesis chapter I elaborates the theoretical background for the analysis of the laws. Chapter II introduces Kazakhstan's repressive institutional landscape and describes the two attacks in Almaty and Aktobe and the nationwide protests in 2016. Chapter III relates these attacks and protests to the content of the amendments and their legal history.

CHAPTER I: THEORETICAL FRAMEWORK

Studies Repression by States

In order to understand state repression (hereafter: repression), it is necessary to distinguish between repression and coercion: repression is a form of coercion, but not all coercion is repression (deMeritt 2017, 3). The meaning of coercion by social structures like governments and societies has been debated since antiquity. It was pointed out that the essence of laws and rules is coercive because e.g. they force desired behaviour by punishing undesired behaviour (Anderson 2015). Thus, coercion has been described as the law-enforcing power that maintains order in society. For example, coercion is seen as the force "by which some members of society act in an organized manner to enforce the law by discovering, deterring, rehabilitating, or punishing people who violate the rules and norms governing that society" (Butterworth 1974, 358). From such a perspective, coercion can be understood as a means to protect freedom and human rights of individuals in a society. On the other hand, coercion can also infringe upon freedom and human rights. If so, coercion is called repression (DeMeritt 2-17, 3-4).

DeMerrit (2017) and Davenport and Inman (2012) note, that there are two core findings of the agency-focussed literature on the conditions and incentives that sustain repression. First, repressive tactics have been used to reach one primarily important strategic objective of governments that repress, namely: to contain political dissent[3] (deMeritt 2017, 1) and, more precisely, to contain "those who challenge existing power relationships" (Davenport 1996, 377).

[3] "Political dissent refers to any expression designed to convey dissatisfaction with or opposition to the policies of a governing body. Such expression may take forms from vocal disagreement to civil disobedience to the use of violence. Historically, repressive governments have sought to punish political dissent" (Cram 101 2016).

At times, scholars have included these aims in their definitions of repression. For example, Josua and Edel (2015) define repression as "the sum of all strategies by ruling elites to contain challenges to their rule by constraining (raising the costs of contention for) or incapacitating opposition leaders, rank-and-file activists, or parts of the politically inactive population."

Secondly, types of regime matter. It is assumed that repression is highest in states that are in between autocratic and democracy. This is assumed because (1) political leaders of autocracies do not need to repress their citizens as they are politically unengaged by knowing that political dissent is severely punished and (2) political leaders in democracies cannot repress, because their powers are restricted by democratic institutions, like for example fair elections (deMeritt 2017, 1;8).

Authoritarian regimes (like Kazakhstan) are somewhere in the middle but on the autocratic side of the continuum between autocracy and democracy. The repressive tactics of authoritarian regimes apply not only law enforcement agencies, the armed and special forces, informally hired thugs and assassins but also legal measures to delimit threats to their power (Rudbeck, Mukherjee and Nelson 2016; Varol 2015; Frantz and Kendall-Taylor 2014, 334). The authoritarians' use of legal measures Varol (2015) called „Stealth Authoritarianism ", which means that legal mechanisms look democratic but are used for anti-democratic ends (Varol 2015, 1684).

All the post-Soviet Central Asian states including Russia used these mechanisms to mask their repressive practices (von Soest and Grauvogel 2015). Varol analysed 5 types of such legislation. The first type concerned laws about judicial review. For example, Putin deployed judicial review by authorizing federal courts to nullify regional laws inconsistent with the federal constitution. While this looked legitimate and democratic, it meant in practice that the pro-Putin judicial elite in the constitutional court was activated to reduce vertical checks on the president's power by regional governments (Varol 2015, 1689). The second type concerned defamation laws. Authoritarians have used these to undermine the public's ability to voice political dissent and monitor their political leaders (Ibid. 1693). For example, to achieve this, between 5000 to 10,000 defamation cases a year have been filed in Russia of which approximately 60% targeted journalists (Ibid., 1696). The third type concerned electoral legislation supposedly eliminating electoral fraud or promoting political stability but actually raising the costs of unseating a leader (Ibid., 1701). For example, in Zimbabwe laws to register voters were used to hinder parts of the population to vote. Further, electoral thresholds (with 10% it is the highest in the world) were used in Turkey to exclude participation of other political parties (Ibid., 1704). Moreover, campaign finance laws, like Russia's law on foreign agents, were used to hinder the political influence of civil society organisations and NGO's (Ibid., 1706). The fourth type concerned how non-political crimes (such as tax evasion, fraud, and money laundering) were used to covertly repress the opposition (Ibid. 1708). Lastly, the fifth type concerned surveillance laws and institutions. These seemingly countered organized crime and terrorism, but were used to blackmail or persecute opponents for non-political crimes (Ibid., 1679). For example, Putin used the Russian Financial Monitoring Service to gather sensitive financial information to blackmail and to prosecute his opponents for non-political crimes (Ibid., 1712).

Agency and Structure: Rational-choice Institutionalism, Sociological Institutionalism and Historical Institutionalism.

All these repressive tactics have been analysed by the literature from perspectives of *agency* (deMeritt 2017; Davenport and Inman 2012), because they described what agents (policy and law makers) did to shape their environment. Instead, perspectives of *structure* would have described how the environment shaped the agents doing (Cairney 2012, 112).

The agency-oriented literature concerns mostly theories that are referred to as rational-choice institutionalism or just rationality. Marginally, it also concerns theories that analyse what one could call irrational choice. Concerning state repression, deMerrit (2017) and Davenport and Inman (2012) only noted studies applying rational-choice theories. These assume agents (the initiators of measures) to rationally consider and then impose repressive measures in order to contain perceived threats of political dissent to their own or their leaders power. The rational considerations the agents apply, are understood as a logic whereby the agents search for decisions with the best cost-benefit ration. These decisions aim for maximum efficiency and are implied to be event-specific, i.e. dealing with specific features of events they want to counter.

Most rational-choice models assume a notion of *bounded rationality*. Bounded rationality takes into account, among others, that (1) a set agenda forces an agent to only consider certain measures, that (2) an agents' cognitive abilities are limited and (3) that other complex contextual factors delimit the number and nature of the measures that can be considered by the agents (Cairney 2012, 95; 175; 126).

There are few models that incorporate the opposite of rational-choice, i.e. irrationality. Meierheinrich (2016) offers one such model concerning the decision-making that underlies law-formation. In reference to Weber (1978, 24-25) Meierheinrich discerns between four ideal legal actions which are instrumental, traditional, affectual or value-oriented (Meierheinrich 2016, 237). Instrumental legal actions are rational in the sense that they are the consequences of cost-benefit considerations. This means in turn, that all other types of legal action are more irrational: traditional legal actions follow as an automatic reaction to habitual stimuli. For example, law makers can be accustomed to increase punishments for illegal assembly when violent protests take place repeatedly. Affectual legal actions follow from decisions that are made under influence of strong feelings. For example, law makers can introduce repressive laws that punish all religious practitioners out of a feeling of revenge for a perpetrated act of religious-associated terrorism. Value-oriented legal actions follow from decisions that are oriented toward an ultimate value, i.e. actors form the law in accordance with their beliefs, morals or convictions. For example: in Brunei one can be stoned to death (Müller 2015) because government officials believe that the punishments of Shariah-law are intrinsically righteous.

On the other hand, the structure-oriented literature is based on theories like historical institutionalism, sociological institutionalism and complexity theory (Fioretos, 2016). These theories assume, that there are many complex contextual factors that determine the development of systems and the decision-making of agents. Complexity theory might take just about everything into account (e.g. the geographic location of a state or the culture of a country) (Cairney 2012, 175), whereas historical and sociological institutionalism narrow their focus by concentrating on contextual factors that are called *institutions.* Institutions are distinguished as being formal or informal. *Informal institutions* refer to the invisible rules that influence behaviour, e.g. traditions, beliefs and ideologies. *Formal institutions* are visible and/or set out on paper, e.g. organisations, rules and laws (Cairney 2012, 69-94). Generally, sociological and

historical institutionalism are similar. But historical institutionalism focusses more on diachronic analyses and sociological institutionalism more on synchronic ones (Fioretos 2016). In the next subsection I will describe, how this thesis combines historical institutionalism with the agency-conceptions of Weber and Meierheinrich to describe models of path dependence in formal institutions like the law.

Institutional Development: Path Dependence and Mechanisms of Reinforcement

Institutionalization is the process by which institutions are created. Institutions are made to persist and do so in most cases. Douglass North (1994) gives various explanations for this by noting, first, that formal institutions (as in governmental organisations) are built to be resilient against political actors that want to radically change or abolish them. Secondly, formal institutions are sustainable because they are supposed to reduce uncertainty and enhance stability (Denzau and North 1994, 43). Thirdly, formal institutions are entwined in complex social interdependencies with other institutions: social networks, career opportunities and shared operations between institutions are important reasons to sustain them (Pierson 2011, 26-27). Fourth, established institutions spread certain perspectives and discourses that justify their existence (Ibid., 39).

Institutions tend to develop within stable trajectories, which are sometimes called virtuous or vicious *spirals* (Acemoglu 2012). In turn, these are called *incremental* and *inert*, when they are understood as sequences that evolve infrequently and by small steps, whereby each step is highly dependent on the previous step. Such developmental trajectories often show increases of variables but no significant changes of variables. The essence of these institutions remains largely unchanged over time.

Inert developments are at times labelled as *path dependent* (see *figure 1*). I will follow Mahoney's (2000) conceptualization of path dependence. It discerns three aspects. First of all, a path dependent trajectory finds its origins in what is called a *critical juncture*. A critical juncture refers to a point in time when a particular institutional arrangement is adopted from several alternatives. Secondly, critical junctures are considered to be contingent. Contingency refers to the inability of a theory to predict or explain the occurrence of a specific outcome. *Thirdly,* the point in time when a juncture occurs is critical, because once a particular option is selected it becomes progressively more difficult to re-select one of the alternative initial options; after an institutional arrangement has been adopted the developmental trajectory is relatively locked in deterministic causal patterns (see lock-in in *figure 1*) *(*Mahoney 2000, 511-513).

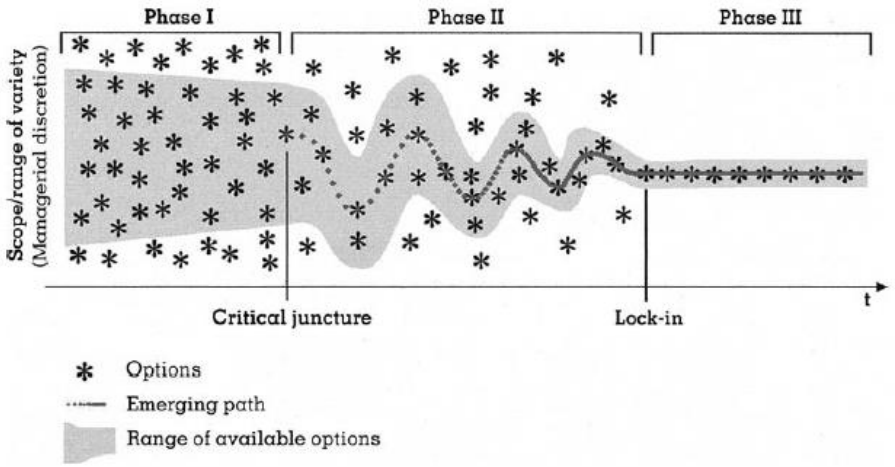

Figure 1: A conceptual framework on path dependence (Sydow 2009, 4).

Yet, the persistent development of institutions and policies does not imply the absence of change. Rather, path dependency implies that changes occur continuously, although incrementally and locked-in within a stern frame of development. Various contextual factors reinforce this locked-in trajectory and thereby produce incremental development[4].

I propose two concrete models of how path dependence can be conceived in legal development. Concerning the law, I understand a critical juncture as a contingent point in time when a concept is formed and incorporated in law that is thereupon locked-in (reproduced and reinforced) in a succession of laws and articles through time. One can understand this in two ways. First, as an expanding system of intertextual references between laws and articles that reinforce an idea (a certain text) that was introduced in some past (*Figure 2*). Second, as an increase in the number of values and variables used to describe this same idea in legal texts (*Figure 3*).

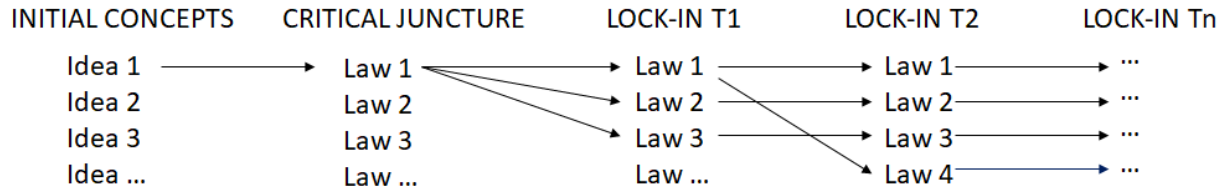

Figure 2: Legal path dependence as the continued intertextual expansion of a legal idea through time (T)

[4] Thereby, as an important side note, these incremental changes can marginally diverge from the locked-in trajectory, which might lead to significant changes in the long-run (Thelen 2010).

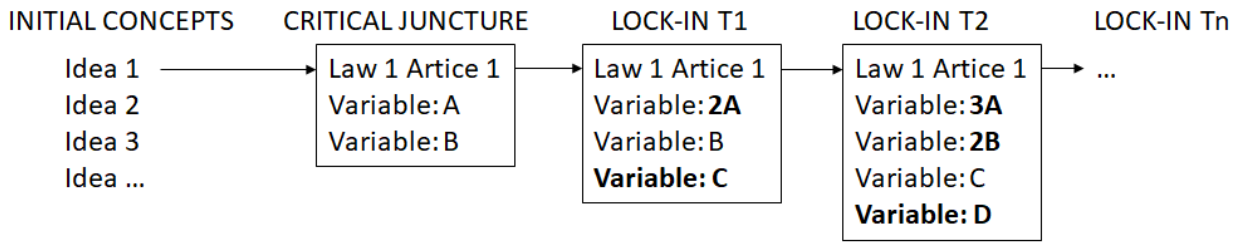

Figure 3: Path dependence as the continued expansion of variables and values of the same idea through time (T)

Thus, a certain legal provision that aims at repressing a certain form of political dissent is path dependently reinforced, when the specific content of this provision is repeated in an expanding amount of repressive laws and measures. Additionally, such a provision is reinforced, when, in its related articles, an increasing number of variables is punishable or when the severity of punishments increases.

Gerschewski (2013) discerns three mechanisms that reinforce locked-in trajectories, namely *endogenous*, *exogenous* and *reciprocal reinforcement*[5]. Endogenous mechanisms reinforce a path dependent trajectory by its own internal mechanisms, there is no influence from external disturbances. This development is fully self-reinforcing and can, for example, be typified by legal actions that Meierheinrich and Weber denoted as value-oriented or traditional legal actions (Meierheinrich 2016, 237). These concern the mere familiarity with previous actions or certain believes, convictions or ideologies about what action is appropriate or morally correct. Such legal actions reinforce institutions even if this is disadvantageous (Mahoney, 2000, 523). For example, laws repressing homosexuality can be reinforced by value-oriented legal actions. This happens because the law-makers are convinced that homosexuality is immoral (Asal and Summer 2016). Even-though from a rational cost-benefit perspective this is clearly disadvantageous, e.g. this repression hinders a significant part of the working force in the country.

The second type of trajectory is driven by exogenous reinforcement. This means that path dependence is triggered by external factors. This reinforcement can underlie, for example, instrumental (rational) or traditional legal actions (Meierheinrich 2016, 237). External factors can be rationally addressed by reinforcing existing provisions, which is beneficent and low in costs: instead of creating a whole new counterterrorism law, one can simply update existing provisions of the criminal codex by adding a concept of terrorism. Yet, law makers can also update a law out of habit: they might repeatedly reinforce institutions when re-occurring protest take place that threaten the regime.

The third type of trajectory is driven by reciprocal reinforcement (Gerschewski 2013). This means that path dependence is triggered by the development of other institutions (Mahoney, 2000, 517). Amended law A can force law B to be amended as well, thereby reinforcing law B. For example, when new laws allow intelligence agencies to expand their monitory-functions, then the laws on monitoring financial transactions need to be adjusted to enable these changes.

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[5] Note, that Gerschewski (2013) understands the meaning of path dependence more specifically than Mahoney (2000). He assumes that path dependency can only be reinforced by endogenous mechanisms (Gerschewksi, 2013, 23).

Path Dependence in Legal Institutions

Studies on path dependence in legal institutions are mainly concerned with non-repressive laws in democratic states (see Sourgens 2016; Bell 2013; Hathaway 2013). I could hardly find any studies that analysed the path dependence in repressive law-formation, let alone in authoritarian states.

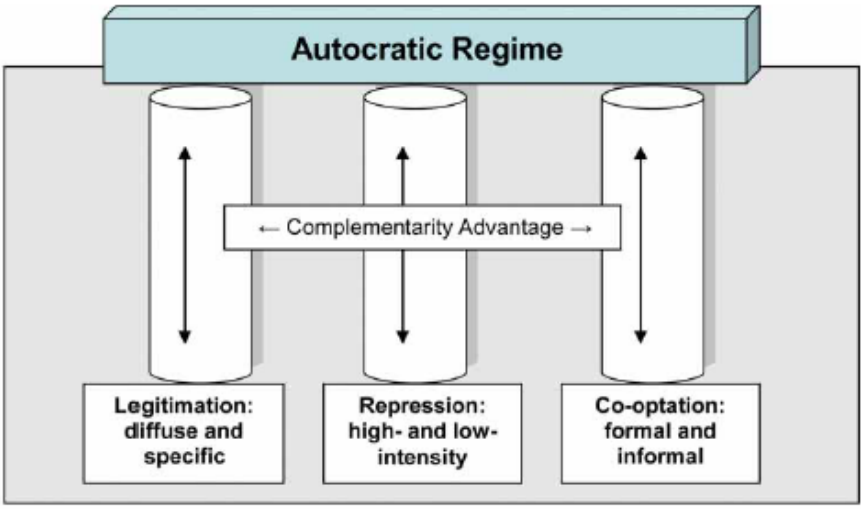
Pokalova (2015) showed how path dependence is an influential factor concerning the global development of separate counter-terrorism laws[6]. Because authoritarian regimes are prime examples for states that misuse counterterrorism laws to repress political dissent, her findings are of use here (Josua and Edel 2015, 9). They reveal that before the terrorist attack on eleven September 2001 in the U.S., state decisions to adopt new legislation correlated with the number of terrorist organizations operating in their territory. Since September 11, however, the existence of previous counterterrorism legislation and the participation of a state in the War on Terror correlates with the adoption of new legislation (Pokalova 2015, 474). Such development is path dependent and can be described as endogenous reinforcement, because it implies that counterterrorism legislation generates its own development independently of external or reciprocal factors (autopoiesis): it is its own cause (causa sui).

Asal and Sommer (2016) showed that similar findings also apply to laws that repress homosexuality in various nations. Many of these have developed since colonial times (Asal and Sommer 2016, 6).

These findings may elaborate a part of Gerschewski (2013) theory concerning the pillar of repression. Note that Gerschewski distinguishes three "pillars of stability" that secure autocratic regimes[7]. They consist of legitimacy, repression and co-optation (see *Figure 2*). The pillars are reproduced and reinforced by endogenous, exogenous and reciprocal reinforcement (Gerschewski 2013, 23-24).

[6] A specific counter-terrorism law is especially designed to counter terrorism. Such laws are not merely some additions that account for acts of terrorism in the criminal code.

[7] Autocracies are understood to include authoritarianism, totalitarianism and dictatorships (Gerschewski 2013).



Actors	Regime Elite vs. Population	Regime Elite vs. Potential Opposition	Regime Elite vs. Strategic Elite
Motive	Righteousness	Fear	Cost-Benefit-Calculus
Function	Gaining Support	Channelling Demands	Maintaining Elite Cohesion and Steering Capacity

Figure 2: The three pillars of stability (adapted from Gerschewski et al. 2013)

There is one rare study about path dependence in the development of repressive legislation of authoritarian states. It compares the transitional developments of the repressive legal systems in Brazil, Chile and Argentina (Pereira 2005) and describes the repressive legal systems of the countries as continuations or breaks with pre-transitional institutional settings, i.e. from the time before coups toppled the respective regimes in the 20th century (Pereira 2005, 10). Concerning Brazil, Pereira found that, because there was high judicial-military consensus before the coup, after the coup regime repression was largely judicialized, and the legal system was modified conservatively and incrementally. Concerning Argentina, he found that, because the military broke with judicial elites before the coup, the military radically subverted traditional legal procedures and repressed political dissent ex-juridically. Concerning Chile, Pereira found that because before the coup cooperation between the military and judiciary was limited, after the coup repression took place mostly in military courts and not in civilian courts (Ibid., 194).

Although these coups were critical moments of regime-change that could be conceived as critical junctures, Pereira did not describe them as such. Instead, he wrote that he is not giving a "fully path dependent approach," because he wants to avoid the debates associated with the concept (Ibid., 213). Yet, the inert development in the legal system of Brazil looks path dependent. This appears even more so, when this state, at that time an authoritarian regime, is placed within the theoretical framework of Gerschewski (2013) and associated with the findings of Pokalova (2015) and of Asal and Summer (2016).

Methodology

The methodology will describe *how* and with what *sources* I am going to analyse if path dependent trajectories have formed the legal amendments that were enforced in January 2017, titled "On Changes and Amendments to Some Legal Acts of the Republic of Kazakhstan On Countering Extremism and Terrorism" (the amendments of 2017). For this, I will analyse two mutually excluding hypotheses, stating that these amendments represent legislation:

(1) that is made by rational decision-making (rational-choice theory), i.e. specifically tuned to the events that caused the amendments, independently of previous legislation.
(2) that is made by path dependence (historical institutionalism), i.e. it has incrementally reinforced long-established repressive legislation, with no relation to the events that caused the amendments.

In order to distinguish whether the development of laws is path dependent or newly derived, I estimate the correspondence between the amendments and the events that were officially claimed to have caused them. This I will do as follows: the more correspondence there is between the features of the events and the content of the amendments, the more it is supported that the amendments are developed specifically as a reaction to the events (i.e. the attacks in Aktobe and Almaty as well as the nationwide protests of April in 2016). On the other hand, the more correspondence there is between the amendments and previous legal provisions, the more it is supported that the amendments are unrelated to the events and instead are subsequent increments of previous legislation.

This correspondence will be indicated by searching whether features of the events (as they were described in the media) are accounted for in the amendments. If the specific features of the events match the specific features of some of the amendments, these amendments are specifically designed to address the events. For example: the amendments introduced stricter regulations to protect weapon-shops. The terrorists in Aktobe attacked two weapon-shops. The weapon-shop is a feature of the event and also a feature of the amendments, thus the amendments are event-specific.

If the features of the event do not correspond to a counterpart in the amendments or vice versa, it is checked if the amendments features are related to the features of previous legal provisions. For example: the amendments introduced new measures for banning religious literature. Yet, only the attack in Aktobe was marginally religiously motivated. Thus, the events and the amendments have only a few shared features. On the other hand, the amendments share a lot of features with previous legislation. The oldest legislation seems to be established in 1929. Clearly, the amendments are subsequent increments of a long-established repressive legislation, locked-in in path dependence.

Thus, the longer in time the repressive content of the amendments of 2017 has persisted in previous laws, the more this repressive content is locked-in in path dependence. The persistence of this content through time will be disclosed by path-tracing the content through legal history (Tulia 2006, 1). This will be made explicit by historical narration (Büthe 2002, 482), which will elaborate the developments in relation to the mechanisms of endogenous, exogenous and reciprocal reinforcement (Geschewski's 2013). The concrete meaning of these mechanisms will in turn be elucidated with reference to instrumental, affectual, traditional or value-oriented legal actions (Meierheinrich 2016; Weber 1978).

Concerning the sources: laws are reliable sources of information, because they are recognized by the government to represent the official standards of order in state and society. For analysing the content of the amendments of 2017 and for analysing their legal history, I will use the official and online law-archives of Kazakhstan as they are published on the websites *zakon.kz* and *adilet.kz.* For analysing the media-reports on the causal events of the amendments of 2017, my study relies primarily on governmental sources. The governmental sources are *Akorda.kz* (the official website of Kazakhstan's government), *Knb.kz* (the official website of Kazakhstan's National Security Committee), *Inform.kz* (state media) and the state-supported and popular news-outlet *Tengrinews.kz.* To offer indications of how and why the laws are enforced in Kazakhstan, I have additionally used non-governmental and international sources. These are the *Organization for Security and Co-operation in Europe (OSCE*)*, Freedom House (FH), Human Rights Watch (HRW)*, *Forum 18,* the *Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR)* and the *International Foundation for Protection of Freedom of Speech "Adil soz" (Adil soz)*. News-reports from international media-outlets refer to *Eurasianet.org* and *Thediplomat.com.*

CHAPTER II: KAZAKHSTAN AS A CASE-STUDY

In order to provide for a full analysis of path dependence, it is necessary to determine a critical juncture (Mahoney 2000, 511-513). Yet, it turned out that the determination of critical junctures for the separate laws or even for their specific content takes too much space and would reach far beyond the time-span of this thesis, which focusses its analysis on developments between 1991 and 2017. This is because some of the path dependent trajectories have roots that go as far as the late 18th century, which will be indicated later in this chapter. Thus, instead of determining critical junctures, this thesis focusses on the most recent parts of the locked-in phases of path dependent developments of a selection of repressive laws in Kazakhstan.

Moreover, there is not enough contingency to determine the fall of the Soviet Union as a critical juncture. Some scholars correctly predicted before 1991 that repressive institutions (organizations and laws) in today's Kazakhstan would still root in the Soviet Union. Examples of such institutions will be given, which will introduce the institutional landscape of post-Soviet Kazakhstan. It appears that path dependence formed the exemplified repressive institutions, because they developed mainly in dependence of their own causes (causa sui) rather than of a causal relation with external events. This is supported by comparing indexes of state repression with databases measuring terrorist attacks and protests. Then, the amendments of 2017 are introduced as the object of analysis. Three untypical events for pre-2016 Kazakhstan are described that the government has referred to as the (in)official causes for the amendments.

1917 and 1991 as Critical Transitions

As it turned out, the path dependent trajectories of the in 2017 amended articles can be traced into such a distant past, that this thesis refrains from tracing the critical junctures that originally established these articles. Critical junctures for some of the laws are expected to lay hidden in the Russian Empire. Thus, even the October Revolution in 1917 seems not critical enough to have inhibited the transfer of significant repressive content from laws of the Russian Empire to laws of the Soviet Union (Newton 2015, 9). Likewise, the fall of the Soviet Union in 1991.

The transition of 1991 was so broad in scope, that it was recognized as a critical juncture by scholars (Forest and Johnson 2011). Yet, Loung shows that the fall of the Soviet Union was not contingent, i.e. it was predicted by many (see also Lipset and Bence 1994) and it was also predicted to leave intact most locked-in developmental paths of the Soviet institutional landscape in Central Asia. Scholars predicted correctly that most of the institutions after 1991 would remain the same as before (Luong 2002, 260-261; 278), because most Soviet elites would retain their high positions after 1991 and thereby keep the authoritarian features of the Central Asian Soviet Republics in place (Ibid., 53).

The specific context of Kazakhstan supports these findings. Despite the transition of 1991, Kazakhstan's president remained in the government with many of his close allies from the Soviet *nomenklatura*[8]. President Nursultan Nazarbayev was elected the first president of the Kazakh Soviet Socialist Republic (KSSR) on the 24th of April 1990, was re-elected president of the Republic of Kazakhstan on the 1st of December 1991 and remained president until today (October 2017) keeping many of his close allies in high positions around him (Collins 2006; Isaacs 2009; Freedom House 2011-2016). Thereby, old institutions remained largely unchanged (Khalid 2007, 78-79) as will be described below:

Kazakhstan's present legal provisions concerning registration of the population inherited many features of the so-called *propiska*-institution introduced in the 1930s in the Soviet Union. Literally, the word *propiska* means "inscription", referring to the inscription in a state internal passport permitting a person to reside in a place and then benefit from its public services. The *propiska*-institution was a tool for recording as well as (repressively) controlling migration. This system, again, has its roots in a similar institution form the Russian Empire (Tukmadiyeva 2015, 1-3).

Before the October revolution in 1917, Lenin (1903) criticized the Russian empire for its migration institution, calling it "serfdom" and "an outrage against the people" (Lenin 1903). As a consequence, its registration-system was abandoned around the 1920's together with the provisions for passports and ID-cards (Decree of the All-Russian Central Executive Committee 1923). Instead, a system with so-called "work books" was set up (Ibid., 1919). Unfortunately, functionaries soon concluded that the population needed to be monitored and controlled intensively to make the command economy of the Soviet Union work. One reason for this was the absence of a free market system: because prices became unified over the whole Soviet Union, one could not determine deficits by analysing financial statistics; the official costs of housing and consumer goods did not reflect their relative deficits. As the government alone was allocating all the goods, it needed to know beforehand where the goods had to be allocated to. This could only function with efficiency, when most people stayed put at their place of residency and when there was sufficient information about their needs, deeds and occasionally granted movement (Tukmadiyeva 2015, 8). Because of this, the registration system of the Russian Empire was modified and (re-)introduced together with a dual passport-system. This whole complex was called the *propiska*-institution. Similarly to the Russian Empire, the functionaries of the Soviet Union started to use this system also as a tool for repression (Buckley 1995). For example, the government stopped citizens from leaving their cities by denying them an inscription for leaving the city. Or the government denied a citizen to get an inscription to enter the city, which then deprived the citizen of his rights to use the local public services.

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[8] The nomenklatura (номенклатура) were key state-functionaries in the Soviet Union.

In the 1980s, human rights organizations started to criticize the *propiska*-institution (Tukmadiyeva 2015, 5). In 1991, the USSR recognized the *propiska*-institution to be unconstitutional and contrary to international obligations (Conclusion of the Committee for Constitutional Supervision of the USSR 1991). After the collapse of the USSR, Georgia and Moldova abolished the institution. Latvia and Estonia changed the institution to an informational registration mechanism (only used to inform the government). Yet, in Russia, Ukraine, Belarus, in Central Asia and especially in Kazakhstan the institution was largely preserved and the word *propiska* was changed to "registration" (Tukmadiyeva 2015, 36).

Another example of such a long-inherited institution in Kazakhstan concerns the Religious Administration of Muslims (DUM), known as the Muftiate. It is present in all post-Soviet Central Asian states and Russia. It was first establishment in the Russian Empire. In 1788 Catherine II established in Orenburg the so-called Orenburg Muslim Spiritual Assembly (OMDS) (Khalid 2007, 36). In 1943 its name was changed to the Spiritual Directorate of Muslims of Central Asia and Kazakhstan (SADUM) (Ibid., 78). After the fall of the Soviet Union every Central Asian state reinstated its own religious administration. Kazakhstan's religious administration has been called DUMK since then. Its functions have remained essentially the same as those in 1788. It is still headed by a supreme mufti, who oversees the appointment of imams and management of mosques. As before, the institute is used by the state to suppress political dissent.

The Soviet practice to repress religious groups has also remained in Kazakhstan and most other Central Asian republics as well as Russia. In Soviet times all practitioners of Islam that were registered within the DUM belonged to the "official Islam." The non-registered practitioners of Islamic faith belonged to "unofficial" or "parallel" Islam (Lenz-Raymann 2014, 135). This unapproved religious activity was persecuted severely by the KGB until 1988 in whole Central Asia, mostly for fear of political dissent (Khalid 2007, 118). Today, Kazakhstan's national security committee (KNB) persecutes the same unregistered religious activity but instead calls it "untraditional" (Ibid., 228). This typology of "traditional" and "untraditional" religious associations spread all over post-Soviet Central Asia and Russia (Knysh 2004). It is still used for both Islamic as well as non-Islamic (e.g. Christian) denominations. Notably, next to its repressive practices, almost all other organizational features of today's KNB have remained the same as those of the KGB before (McDermott and Lefebvre 2008).

The Soviet legacy of religious persecution is also visible in Kazakhstan's laws. Kazakhstan's present legal provisions on religious associations inherited many features of the Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of April 8, 1929 "On Religious Associations" (All-Russian Central Executive Committee 1929). This resolution was a part of the so-called "legislation on religious cults", which consisted of many secret acts that were only for official use. This legislation formed the legal basis for religious repression in Kazakhstan between 1930 and 1988 (Khalid 2007, 118). Among others, the resolution allowed activity of missionaries, clerics and religious organisation only after their registration by a special state body (the Council for Religious Affairs under the Council of Ministers of the USSR). If the activities of clerics, missionaries or organizations were not registered (with intention or without), they were persecuted (Podoprigora 2002, 4.1). Also, censure on all literature, including religious texts, was common. Today (10. 2017) Kazakhstan's government tries to control and subdue religious groups with essentially the same provisions (Podoprigora 2002; Law of the Republic of Kazakhstan 2011A).

Additionally, Kazakhstan adjusted Soviet laws with more democratic frames, which seemingly protect human rights but are used to repress religious groups and other perceived dissenters, i.e. "stealth authoritarianism" (Varol 2015). There is, for example, notorious article 174 of the Criminal Code, since 1997 titled "Incitement of Social, National, Clan, Racial, or Religious hatred or Discord" (Criminal Code 1997; Criminal Code 2014). Its content is essentially the same as article 60 of the Criminal Code of the Kazakh USSR of 1959 that is titled "Violation of national and racial equality" (Criminal Code 1959). Article 60 has been expanded incrementally over time until it obtained its current form under article 174:

Article 174: "Intentional actions aimed at incitement of social, national, tribal, racial, class or religious hatred, to insult national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, class, national, genetic or racial origin; if these acts are committed in public or through the use of mass media or telecommunications networks, as well as through manufacturing or distribution by literature or other media, promoting social, national, generic, racial, class or religious discord - are punished by restraint of liberty for a term of two to seven years, or imprisonment for the same period." (Criminal Code 2014)

Articles punishing hate-speech are common in the laws of democratic countries. What differs between article 174 and democratic laws is first of all the vague word "discord." Democratic laws punish hate-speech but not quarrels. Discord is considered part of freedom of speech. Secondly, the punishments are enormously high, namely 2 or 7 years of restricted freedom or imprisonment. In contrast, the Dutch law gives maximally 1 year of imprisonment (Law of the Kingdom of the Netherlands 1881, article 137c and d). Thirdly, the enforcement of the article is problematic because of its arbitrary interpretation (Corley 2017C). In democratic countries, people mostly receive a warning or a fine and only in extreme cases they are sentenced for imprisonment. Yet in Kazakhstan article 174 provides a rhetoric framework for a wide range of acts of repression, i.e. persecution of unregistered religious practitioners, of people that voice political dissent on the media or plan protests, riots and even (terroristic) attacks - because all of this could be said to incite religious or social discord (Mushfig 2017).

Moreover, the described crimes in article 174 are, according to article 3-39 of the same Criminal Code (2014), considered "extremist crimes". In the law "On Countering Extremism" the content of article 174 returns. When analysing this content, it becomes noticeable that extremism includes non-violence also: it is written that so-called nationalist extremism is "the incitement of racial, national and clan discord, including those related to violence or calls for violence" (Law of the Republic of Kazakhstan 2005). The broad meanings of discord as well as non-violent extremism leave space for arbitrary prosecution of any supposed political dissent. This is why the OSCE has continually recommended Kazakhstan to change the notion of extremism to "violent extremism" (OSCE/ODIHR 2016, 13), so that extremism becomes only punishable when violence is used. This would make the law more precise and less arbitrary when enforced.

However, the repressive potential of this and the other described institutions is still being reinforced today. This reinforcement appears to be part of a locked-in phase of path dependent developments that started in the Soviet Union or have origins in the Russian Empire and beyond. This statement will be supported by showing that the continued reinforcement is occurring

mostly in no relation with the occurrences of threatening events (like terroristic attacks or massive demonstrations). Instead, it seems to generate itself.

Pre-2016: Repression and Political Dissent

Many repressive institutions (organizations and laws) in Kazakhstan are still recognized as coming from the Soviet Union or even the Russian Empire. Thus, development is incremental. Pokalova (2015) and Asal (2016) have shown that if such incremental development has little correlation with external factors it can be called path dependent.

Because governmental repression in Kazakhstan is high while the severity of protests or terrorist attacks is low, I think, that Kazakhstan's government is either overreacting or it is continuing repression by path dependence. To show this, the level of state repression is indicated by measures of the Political Terrors Scale (PTS). In comparison, the frequency and vehemence of protests and terrorist attacks are indicated by the Kazakhstan International Bureau for Human Rights (KIBHR 2015) and by the Global Terrorism Database (GTD).

The Political Terror Scale measures state repression in Kazakhstan between 1993 and 2016. The lower the scale, the less repressive the state: scale 1 is non-repressive and scale 5 means extremely repressive. From 1993 till 2012 the average index — based on annual reports from Amnesty International and US State Department — for Kazakhstan is 2.48. From 2013 till 2016 the average index — based additionally on Human Rights Watch reports — for Kazakhstan is 2.9 (Gibney, Cornett, Wood, Haschke, and Arnon 2016). State repression in Kazakhstan is thus slightly increasing and hinges currently towards level 3, which indicates that:

„There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted." (Ibid.)

While this scale-description indicates continuous repression by the government, the number of incidents of political dissent has been low in pre-2016 Kazakhstan. The Global Terrorism Database (GTD) indicates a low threat of terrorism in pre-2016 Kazakhstan. It shows reliable information for about 14 terroristic attacks in 22years (between 1993 and 2015)[9]. 18 people were killed of which 3 concerned the assailants themselves. In total 7 people were wounded. With one exception, the causalities of each attack reached a maximum of 2 fatalities and 2 injuries (START 2016A). The exception concerns a range of suicide attacks that occurred in 2011 in the cities Aktobe (May 17), Astana (May 24), Atyrau (October 31) and Taraz (November 13). All of the attacks were targeted against the KNB or the police. Only the attack in Taraz was successful. It caused 8 fatalities: a suicide-terrorist killed 2 civilians after robbing a weapon shop, 5 law-enforcement officers and finally himself (Rakisheva and Morrison 2014, 104). Yet, even the numbers of this only exception reflect no real threat of terrorism, when compared to e.g. the atrocities in Paris on the 13th of November 2015, where 136 people lost their lives in one day.

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[9] GTD mentioned 4 incidents that I deemed not applicable. These concerned 2 cases about attacks on journalist that were perpetrated by government officials and not terrorist (GTD ID: 201308200004; 201204190056) and 2 cases with no sources (GTD ID: 199712100001; 199701080002). After analysing Kazakhstan's media, I deemed these last two cases to be forms of crime unrelated to terrorism (see RFERL 1997; Sharipzhan 1779).

The academic literature on terrorism reveals that terroristic attacks in Kazakhstan are of a rebellious kind as they tended not to attack civilians (Piazza 2009, 65; 76): of the 14 attacks 13 targeted law enforcement agencies or governmental buildings (START 2016A)[10]. Consequently, terrorism in Kazakhstan is considered to be an offshoot of the criminal sphere (Beissembayev 2016). Concerning the attack in Taraz in 2011 this was supported by various governmental officials, among others the president himself (Tengrinews 2011A).

Concerning protests in Kazakhstan. The frequency of protests has been declining from 158 protests in 2011 to 71 in 2015. The number of protesters has been declining, namely from 9796 people (62 per protest) in 2012 to about 1230 people (17 per protests) in 2015. The average duration of the protests declined from about an hour in 2014 to around thirty minutes in 2015 (KIBHR 2015). In pre-2016 there was only one serious protest that attracted serious domestic and international attention. It happened in Zhanaozen in 2011. An initially peaceful worker-strike changed into a violent demonstration, where hundreds were wounded and the police killed 16 people (Satpayev and Umbetaliyeva 2015, 125-126). Yet, even this protest has been relatively small and short-lived, when compared to e.g. the 150'000 participants that protested in Russia on the 26th of March 2017 for the one day (RBC, 2017) or even to Armenia where protests with such numbers are common (Way and Levitsky 2006; Atanesian 2016).

Having indicated, that state repression is growing and protests as well as acts of terrorism are low in level and decreasing, I expect that state repression is not motivated by external factors (i.e. not event-specific) but by locked-in path dependent developments from the Soviet Union, the Russian Empire and beyond. The same is expected for the content of amendments of 2017 that will be analysed in chapter III. Yet, there is also reason to expect new and event-specific forms of legislation. Because, if the untypical occurs, then legislation might react to this in untypical ways as well. And notably, the amendments (2017) were framed as responses to three events of which two were highly untypical for pre-2016 Kazakhstan: a high-casualty terrorist attack in Aktobe and nation-wide protests. The third event is more common and concerns an amok run in Almaty in 2016.

Causes for the amendments of 2017: official and unofficial

Kazakhstan's legal arsenal of repressive measures was enhanced in spring 2017 by the ratification and rapid enforcement of a package of amendments claimed to counter religious extremism and terrorism. The two official reasons for the amendments were the violent crimes that occurred in 2016 in (1) Aktobe on the 5th of June and in (2) Almaty on the 1st of July (Akorda, 2016 B). Implicitly president Nazarbayev broadcasted a third reason, namely the nationwide protests held in May and April 2016. These nationwide protests focused in Atyrau (Putz 2016 D). At first, the Aktobe attacks and the protests in Atyrau seem to have no mutual relations. However, in his speech on the 8th of July 2016, Nazarbayev implicitly brought them together by describing both as forms of subversive warfare led from abroad. In a Russian fashion, he described the protests as "colour revolutions" that gave birth to terrorism (Akorda 2016A; Putz 2016C; Gorenburg 2014; Korsunskaya 2014; RIA Novosti 2017).

The violent attacks in Aktobe at the 5th and 8th of June 2016 were internationally acknowledged as acts of terrorism (Bureau of Counterterrorism 2017) and are described by the

[10] The one incident left out concerns an attack at a school (GTD ID: 200801270005).

following main features: like most other terroristic attacks in Kazakhstan the attacks were targeted against non-civilian targets like law enforcement and security personnel. About 25 people robbed two gun-shops and unsuccessfully attacked a military outpost. Most of the attackers were caught or killed. There were 25 fatalities (7 victims, 18 perpetrators). About 45 people helped to plan the attacks (Kassenova 2016A). Tengrinews reports, that they were at least partly motivated by religious (Islamic) grounds, because tapes from extremist Imams in Syria were found at some of the terrorists unregistered apartments (Kassenova 2016B).

Concerning the amok-run in Almaty at the 18th of July 2016 Tengrinews reported that a gunman killed several policemen in Almaty (Tengrinews 2016A). The gunman was sentenced to death for terrorism (Esenkulova 2016). This meant lifelong imprisonment because there is a moratorium on executions since 2003 (Tengrinews 2003). However, this killing spree seems to have more characteristics of an amok run (Saint Martin 1999). For example, the perpetrator explained his motivation for killing several law enforcement officers as revenge for having been imprisoned. This revenge was not motivated by any religious or political grounds (Kozjametov 2016).

The nationwide protests in April 2016 were mostly concentrated in Atyrau, where around 1000 people gathered in the city centre. Other cities — like Almaty, Aktobe, Semey and Uralsk — also witnessed protests, albeit with much less participants (Human Rights Watch 2016C; BBC 2016; Tengrinews 2016B). The protests were against reforms that would enable foreigners to lease land in Kazakhstan. People feared that foreigners (especially Chinese) would buy the best land. To prevent further protests many activists were arrested in May 2016 (Tengrinews 2016B). Two human rights activists, Bokaev and Ayan, were sentenced to 5 years imprisonment on charges of i.a. "inciting social hatred" (Article 174 of the Criminal Code 2014) (Orozobekova 2016). Their names appeared on the "list of organizations and persons associated with financing terrorism and extremism" (numbers 779 and 778), as published on the website of the ministry of finance (Committee for Financial Monitoring 2017). The governments reaction has been condemned internationally as a crackdown on political dissent and on the rights to freedom of speech and assembly (Human Rights Watch 2016B)[11].

CHAPTER III: PATH DEPENDENT INCREMENTAL DEVELOPMENT OF LAWS

Did the above-mentioned attacks and the protest really cause the content of the amendments or was it mere path dependent reinforcement of long-established repressive legislation? In this chapter the amendments will be analysed in the following subsections:

A) The Law "On Migration of the Population"
B) The Law "On Religion"
C) The Law "On Communication"
D) The Law "On State Control over the Circulation Certain Types of Weapons"

[11] The national security service of Kazakhstan (KNB) explained the protests as a preposterous machination of a famous businessman called Tokhtar Tuleshov who aimed to overthrow the government with the help of undefined foreign sources (Putz 2016A; Putz 2016B).

Per subsection I will firstly summarize the most important changes. Secondly, I will offer a critical analysis on the similarities of features between the amendments and the two terroristic attacks in Aktobe and Almaty as well as the nationwide protests (Chapter II). Thirdly, I will give a critically narrated history of the evolution of (1) the specific articles that are adjusted by the amendments of 2017 and (2) of the general law these articles are part of.

A) The Law "On Migration of the Population"

Summary of the main amendments

The main amendments to the Law "On Migration of the Population" (hereafter: the law on migration) (Law of the Republic of Kazakhstan 1997B) were the following:

Article 17-1:

- The concept "place of temporary stay (residence)" is added. This is an address, a building, a place or a dwelling in which a person resides temporarily. Relevant other articles have been updated with this concept to make the registration of a person's temporary stay obligatory.
- When applying for any sort of registration, be it for temporary or permanent stay, this will now officially be notified by the KNB.

Article 492 of the Administrative Code (2014):

- All non-registered Kazakhstanis have to be registered at their (temporary) residence within 10 days, otherwise they will receive a warning and have time to get registered within 1 month (previously 3 months). If Kazakhstanis stay at the (temporary) residence for longer than a month without registration, they will receive a fine. The fine has been increased from 5 to 7 monthly calculation indices (Zhovtis 2017), which is 0.1x the average salary per month of 367euro in 2017 (Uchet 2017). The article is nuanced a bit by article 2-45 in the law "On Housing Relations", which states that guests, friends and family can be considered "temporary tenants" and only have to register within one month. No definitions of guests, friends or family are given (Law of Kazakhstan 1997).

Article 493 of the Administrative Code (2014):

- New definitions and heightened fines for landlords, who do not register the places they rent out or accept unregistered persons to live at their rented-out places.

The relation to the attacks and nationwide protests

There seems to be no correspondence between the features of the amendments to the Law "On Migration of the Population" (hereafter: the law on migration) and the features of the attack in Almaty. It is unclear if the gun-man was registered and there is no reason to believe that registration would have prevented the killing spree. At least, no such claims were found in the media. Also, the media did not relate the measures for registration to the nation-wide protests, although theoretically the registration-amendments might be useful to unearth activists or protesters.

Akorda cited Nazarbayev putting the registration-measures in the context of fighting terrorism as it occurred in Aktobe (Akorda 2016C). The main argument for the amendments that

the media reported was that registration would generally make it harder for all terrorists to operate and could help to detect them. Inform.kz reported a senator saying this (Mejrambek 2016C). Informbureau.kz reported law-enforcement agents supporting this (Marinets 2017). Notably, a similar explanation was also given in 2010, when laws on registration were somewhat strengthened with the goal to unearth hidden criminals and shadow activities (Asanbaev 2010).

Outside the government, the institutions and amendments concerned with registration were criticized heavily. Zhovtis[12] (2016) noted, that terrorists would never register anything, let alone their housing. Zhovtis (2017) also claimed that the execution of the amendments on temporary registration cannot not be controlled: in order to find out if a person temporarily stays at a place for more than 10 days, it is necessary for the government to be notified about the persons first day of stay. For this one needs e.g. a lot of policemen constantly checking all places of residence or other mechanisms that would seriously infringe on rights to privacy. Also, Zhovtis underlined that without definitions of who is considered to be a guest, friend or family-member, the registration laws cannot but be enforced properly. Tukmadieva (2015) added that despite the gradual tightening of pre-2016 legislation on registration, it was massively violated as most internal migrants could not even fulfil the conditions that allowed them to register permanently. As a result, the registration system in 2015 was a serious bureaucratic burden on the state apparatus and fertile ground for corruption and shadow activities (Tukmadieva 2015, 3). Notably, the latter was exactly the opposite of what senators intended to achieve with their registration measures in 2010 and in 2016 (Mejrambek 2016C; Asanbaev 2010). Additionally, the preliminary opinion of the OSCE on the amendments of 2017 stated that registration is not an effective way to combat terrorism (OSCE/ODIHR 2016, 21, paragraph 55). As Inform.kz reports, OSCE representative Anna-Lisa Chattel told the working group on the draft-law in 2016 that some countries already failed to fight terrorism by way of registration (Mejrambek 2016A). Unfortunately, all these critical remarks were ignored.

All things considered, the amendments seem intended to address the attacks in Aktobe but have no significant corresponding features with the attacks. Although the working group was informed in 2016 and before, by many critics including the OSCE, about the disadvantageousness of the present registration-system, this has led to no revisions. On the contrary, it led to reinforcement of the same registration system. Thus, it appears that the working group was not significantly led by rational consideration about costs and benefits nor event-specificity but more by strong belief in and familiarity with the registration institutions. This indicates value-oriented and traditional legal action (see chapter I; Meierheinrich 2016). Additionally, the amendments do not contain anything new, as the next subsection will show. Much to the contrary, these measures were present in Kazakhstan's legislation all along since its independence, implying strong path dependency.

Subsequent increments of long-established repressive legislation

As noted in chapter II, Kazakhstan’s post-Soviet institutions inherited many features of the Soviet Union. Much of the Soviet system for population-registration seems to have been taken over. Just like around 1930, in 2017 registration is colloquially still called *propiska*, which refers

[12] Evgenij Zhovtis is the Director of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR).

to a stamp in an internal passport in the USSR. Back then, there were both permanent (постоянная прописка) and temporary *propiski* (временная прописка) (Resolution of the Council of Ministers of the USSR 1974). Yet, after the fall of the Soviet Union, the first version of the law "On Migration of the Population" (1997) of independent Kazakhstan still included provisions for permanent and temporary registration. Article 51 stated concerning temporary registration that "internal migrants are obliged: to register at the place of residence and place of temporary residence in the territory of the Republic of Kazakhstan in the manner determined by the Government" (Law of the Republic of Kazakhstan 1997B). The old administrative code of 2001 stated in article 377: "Residence of citizens of the Republic of Kazakhstan without [...] registration at the place of residence for more than ten calendar days - entails a warning or a fine in the amount of five monthly calculation indicators" (Administrative Code 2001).

This provision remained unchanged until the new administrative code of 2014 slightly specified it in Article 492: "Residence without registration at the place of residence for a period of ten calendar days to three months - entails a warning or a fine of five monthly calculation indicators" (Administrative Code 2014).

And then, in 2017, these laws were added upon by the amendments summarized in the first subsection. They added nothing new at all: a description of "registration of temporary stay" (article 1-17) and a few updates on related violations in the Administrative Code of 2014 (articles 492 and 493). Legal provisions on permanent and temporary registration were already there in Kazakhstan's law. They have already been in place in the Soviet Union. And these, in turn, are legacies from the Russian Empire.

In conclusion: the amendments of 2017 reinforced long-established legal provisions from the Soviet-Union and the Russian Empire. The amendments of 2017 have developed by path dependent. This development seems reinforced by endogenous mechanisms, because, as was shown in the previous section, convictions about the value (value-oriented legal action) and long-term familiarity with Soviet-style registration measures (traditional legal action) appear more important than consideration about these measures event-specificity or their costs and benefits.

B) The Law "On Religion"

Summary of the main amendments

The main amendments to the Law "On religious activities and religious associations" (hereafter: the law on religion) (Law of the Republic of Kazakhstan 2011) were the following:

Article 1

- The meaning of "missionary activity" has been extended by the concept of "dissemination of religious doctrine" (Article 1-5), namely "activities aimed at transferring or communicating information about the fundamental dogmas, ideas, views and practices of a particular religion" (article 1-4-1). Article 490 of the administrative code of 2014 has included this concept, making the simple talking about faith by non-registered religious individuals punishable by "a fine for citizens of the Republic of Kazakhstan in the amount of one hundred monthly calculation indices [1.6x average salary per month of 367euro in 2017], for foreigners and stateless persons - in the amount of one hundred monthly calculated indices with administrative expulsion from the Republic of Kazakhstan."

Articles 6 and 9:

- The category "religious literature" has been added to the previous rules for "information-materials of religious content" (article 9). The import of religious literature "is carried out only by registered religious associations after receiving a positive opinion of a religious expert examination" (article 6). An exception is made for religious literature "intended for personal use in one copy of each denomination" (article 6). Violation of this law "attracts a fine for individuals at a rate of fifty [0.8x average salary per month of 367euro in 2017] calculation indicators - and for legal entities at a rate of two hundred monthly calculation indicators [3.1x average salary per month of 367euro in 2017] with suspension of activity for a period of three months" (article 490-1 in Administrative Code 201; Uchet 2017).

Article 15-5 and 1-2-1 in the Law "On Tourism" (hereafter: law on tourism)

- The law on tourism introduces the new term "religious tourism" (article 15-5). It focuses especially on pilgrimages. The provisions require pilgrims in Kazakhstan to register their places of temporary stay (article 1-2-1) (see law on migration).

The relation to the attacks in Aktobe, Almaty and the nationwide protests

Neither the attack in Almaty nor the nationwide protests were based on religious motivations, yet, the attacks in Aktobe were, Tengrinews reports (see chapter II): tapes from extremist Imams in Syria were found at some of the terrorists' apartments (Kassenova 2016B; Ibid. 2016A). This might indicate that the amendments have corresponding features to the attack. Although, when looking at the summaries of the amendments above, there is no clear connection: maybe the criminal liability for the communication of dogmas by unregistered religious associations could apply to the Imam on the tape, who was probably not registered? Such an interpretation appears far-fetched and has not been noted in the media.

Nazarbayev explained at a meeting with the security council in 2016 that the terrorist attack in Aktobe was performed by a group of followers of the "untraditional religious movement of Salafism[13]" (Akorda 2016C). He spoke, that the amendments served to "give a decisive rebuff to everyone who, under the cover of religious slogans, will shake the situation in the country" (Ibid). How the amendments were supposed to do this becomes clear when looking at the original law on religion of 2011 (Law of the Republic of Kazakhstan 2011A). The introduction of this law was motivated by a perceived lack of state control on religious activity. In Nazarbayev's words:

"it's about protecting the state from religious extremism […]. What these mosques are doing, no one knows. Nobody approves or registers them. This is the state, we must put our house in order." (Tengrinews 2011B)

Looking at the various provisions in the law on religion of 2011, the mentioned lack of state control is supposed to be filled by obligatory government approval and consequent registration of religious associations. The unapproved or registration-refusing associations are then left with

[13] All quotations of Nazarbayev are translations by the author unless stated otherwise.

an unregistered status, making them liable for a whole range of violations; it makes them targets for persecution. Thus, the main idea is that deterrence will force religious associations to conform to the party-line (Zhovtis 2011). It also means, that the government can arbitrarily decide who is and who is not supposed to be persecuted.

This explains what the above summarized amendments mean. Their content indicates that persecution is build up by increasing the criminal liabilities of activities of non-registered religious associations and their associates. The reasoning behind this seems to be, that increased persecution of unregistered associations and their activities will discourage individuals to become or recruit terrorists and force them to instead adapt to the government line. Thus, it is not event-specificity that explains the motives for the amendments but its correspondence with previous legal provisions and policies. Influence of path dependence is expected here.

Furthermore, the repressive nature of the amendments of 2017 as well as the original provisions of 2011 have been strongly criticized. They have been criticized to be disadvantageous, because repression is predicted to increase violent opposition (Lenz-Raymann 2014). Furthermore, this legislation was criticized to miss its point because religious extremists or terrorists are not expected to ever register but tend to hide themselves (Zhovtis 2011).

Moreover, the law-makers knew about this critique, if not by the heated discussions in the media and parliament, then at least through the OSCE comments in 2009, the OSCE preliminary opinion in 2016 and by two reports of visiting UN rapporteurs (Kiai 2015; Bielefeldt 2015). Since 2009 the OSCE has kept recommending the omission of provisions for obligatory registration of religious associations, censorship over religious literature and all related administrative punishments (OSCE/ODIHR 2009; Ibid. 2016). Additionally, in 2016 it was recommended to reconsider the amendments in the sphere of tourism (OSCE/ODIHR 2016, pars 76-79). Because all these forms of critique were ignored, it appears that the working group was immune to alternative views. Legal actions thus seem to be based on convictions about the existing legislation (value-oriented legal action) and familiarity with it (traditional legal action).

Subsequent increments of long-established repressive legislation

Kazakhstan's policies that currently administer and repress denominations of Islam and other religions seem to "reflect a deep anxiety that [religion] could become a powerful force opposing Soviet-style secularism and undermining the legitimacy of existing regimes" (Schoeberlein 2009, 98). This Soviet-anxiety is said to have been enhanced by western Islamophobia (Heathershaw and Montgomery 2014; Khalid 2007; Trisko 2005; Knysh 2004).

These claims are supported by the fact that the current provisions in the law on religion (Law of the Republic of Kazakhstan 2011A) share features with the laws on "religious cults" from the Soviet Union under Stalin (All-Russian Central Executive Committee 1929) in terms of compulsory registration of religious groups, clerics, missionaries and censure of religious literature (see chapter I).

Moreover, the summarized amendments appear to be the next incremental step in a sequence of continuous reinforcement of long-established legal provisions. Thus, the amendments clearly appear to be formed by path dependence. The convictions and fears behind this development seem to have remained as well. All of this will be shown by the short description of legal history bellow:

Notably, repressive legal provisions concerning religion have not existed continuously in post-Soviet Kazakhstan. There was a short moment of liberalism in state-confessional relations

from 1992 till 1997 when the "law on freedom of religion and religious association" (Law of Kazakhstan 1992A) was in place. This law on religion adopted many features from the law "On Freedom of Conscience and Religious Organizations" (Law of the USSR 1990) that was established under Gorbachev and marked a break with the repressive Soviet past by protecting human rights. It still contained articles on registration of religious associations like the laws on religious cults, but registration was not mandatory anymore (articles 9 and 10). Concepts and explicit restrictions on unregistered missionary activities or religious travelling were omitted (e.g. article 15).

However, this period of religious freedom ended in 1997, when the state started to increasingly control religion in resemblance of the repressive policies in the Soviet Union. This was accompanied by gradual legal changes that culminated in the full return of Soviet-like repressive laws in 2011. Kazakhstan's return to previous repressive methods appears to be motivated by strong convictions about the necessity of repression of religious associations (value-oriented legal action) and by familiarity with Soviet-methods (traditional legal action), because it seems not related to the few insignificant acts of religious terrorism that occurred nationally (START 2016A).

This gradual reintroduction of Soviet-repression started in 2001, when a new administrative codex was ratified. It included article 375 that described the evasion of registration by religious associations as a violation (Administrative Code 2001). This was a re-introduced provision from the Soviet administrative codex of 1966 (Administrative Code 1966). It was enforced contradictorily in 2001, because there still were no provisions explicitly obligating registration at that time (Podoprigora 2002, 4.2).

Thereafter followed three attempts to replace the law on religion of 1992. Two draft-laws were halted by Kazakhstan´s Constitutional Council in 2002 and 2009. A third draft-law was withdrawn in 2007 by the government, because it wanted to secure the approval for the OSCE chairmanship that was given in 2008 (Berg et al. 2008, Human Rights Watch 2008).

The advanced draft-laws intended to discriminate and persecute all unregistered religious associations. At the same time, it denied registration for associations that were disapproved by the Religious Administration (the DUMK, see chapter II). Requirements for the registration of missionaries were envisaged as well (Berg et al. 2008, 12; Human Rights Watch 2010).

Although these draft-laws were declined twice by the Constitutional Council, other ways were found to introduce amendments indirectly. In 2005 President Nazarbayev signed the first law "On combating extremism" (Law of the Republic of Kazakhstan 2005A) and various amendments to laws on national security (Ibid., 2005B), which "forbade the activities of unregistered religious communities and required registration for missionary activities" (Berg et al. 2008, 12).

From the first of January 2010 till the end of that year the development toward repressive legislation was halted somewhat, because Kazakhstan assumed OSCE chairmanship (Corley 2009; Ibid., 2010). But after that the frequently declined draft-law of 2009 resurfaced again and was accepted and ratified in October 2011 as the new law on religion (Law of the Republic of Kazakhstan 2011A). The most controversial provision concerned the compulsory re-registration of faith-based organizations. They had to be re-registered within a year under stringent new criteria or would face closure (Lillis 2012). These criteria concerned enhanced membership requirements that called for minimally 50 members to get registered as a local association, tightened guidelines for the training of clergy, enhanced compulsory religious censorship, more

banns on unregistered religious activity and extra requirements for approval to build or open new places of worship (Human Rights Watch 2012).

These provisions caused amendments to the Criminal Code and Administrative Code. Amended violations in the Administrative Code concerned the lack of "a positive assessment by a state religious «expert analysis»." Violations in Criminal Coded were amended to include "missionary activity without citizenship or without registration (re-registration)" (Corley 2011).

Consequences of the new legislation showed up soon. A month after the legislation was ratified in September 2011, the government was threatened by terrorists who warned to attack if the law was not revoked. The government did not react and consequently, in November, the first successful attack in Kazakhstan was carried out in Taraz (see chapter I; Rakisheva and Morrison 2014, 105)[14]. In 2012, when the provision about re-registration was enforced, hundreds of small religious communities were forced to close or to operate underground (Human Rights Watch 2013). The government ignored all criticism saying that this literally demonstrated the inefficiency of the laws, which were stated to make religious activities transparent but instead increased in-transparency and brought about violent resistance in the form of terrorism.

Then, in 2017, the incrementally updated the law on religion of 2011 by the above-summarized amendments. In conclusion: the amendments of 2017 incremental updated the law on religion of 2011, which has reintroduced repressive provisions from the Soviet legislation on religious cults of 1929. Thus, the development of the 2011 law is dependent on paths that started at least in 1929, yet they were interrupted for a period between 1992 till 1997. At that time legislation was in place that could have led Kazakhstan to more enlightened paths of development, i.e. to protection instead of repression of freedom of conscience. Unfortunately, post-Soviet Kazakhstan rejected this legislation in favour for a Soviet-style repressive law: freedom of conscience was not perceived as an intrinsic (positive) value but, on the contrary, believed to be a threat (i.e. a negative value) that needed to be repressed. Thus, value-oriented legal action endogenously reinforced a path dependent development. This is supported, firstly, by the indication that legal action seems not to have been in correlation with significant external factors like acts of terrorism (see chapter I). These did not occur until after the law of 2011 was introduced. And, secondly, after the attacks in 2011 the government did not recognize the law as a mistake but kept reinforcing it until 2017. Thereby, as shown in the previous sub-section, the government has continually ignored criticism about the inefficiency of the law on religion. Additionally, because Kazakhstan's government has been familiar with these Soviet-laws for nearly a century, it appears that legal actions were also traditional.

C) The Law "On Communication"

Summary of the main amendments

The main amendments to the Law "On Communication" (hereafter: the law on communication) (Law of the Republic of Kazakhstan 2004) were the following:

Article 41-1-2:

[14] This was followed by violent demonstrations in Zhanaozen in December. It remains unclear if these two events were related.

- In cases of emergency or in cases that may lead to grave crimes, the agencies engaged in crime detection on telecommunication networks have the right to suspend the work of networks and means of communication with a following notification of the Prosecutor General's Office within twenty-four hours. The list of agencies empowered to enforce this article has been expanded to i.a. include the KNB. Cases of emergency include "calls for the implementation of extremist and terrorist activities" (Article 41-1).

In order to give the agencies more power, article 36 was enhanced by paragraph 2.

Article 36-2:

- Subscribers of communication providers are obliged to register additional personal information. Communication providers are prohibited from providing services to unregistered mobile subscriber units.
- The law envisages the creation of a unified database of identification codes (IMEI-codes), which will streamline personal information of subscribers with mobile devices.
- Import, production, distribution and operation of mobile subscriber units with modified codes or other encryption tools and equipment is prohibited.

The relation to the attacks and nationwide protests

Article 41-1-2 targets specific criminals executing or planning to execute grave crimes. Because acts of terrorism and amok runs are such crimes, this amendment corresponds broadly to features of the incidents in Almaty and Aktobe.

Meanwhile, paragraph 36-2 does not target a specific group of people or individuals of which it wants to control the communication. Instead, the paragraph seems to target all subscribers of Kazakhstani communication providers. Thereby, the law explicitly forbids encryption tools (OSCE/ODIHR 2016). This empowers the agencies that enforce article 41-1-2 to monitor and block the communication of a large part of the population. Such measures seem useful to hinder or prevent mass gatherings like demonstrations and protests.

Notably, a shut-down of communication services was already possible before the amendments of 2017, for example, during the violent protests in Zhanaozen (see Chapter II; Anceshi 2015). Moreover, Freedom House reported that "social media and communications apps have been cut off [...] during the widespread land reform protests" (Freedom House 2015-2016).

Notably, such measures might also be useful to prevent acts of terrorism. The amendments resemble international surveillance laws that authoritarians use to covertly contain political dissent (Ozan 2015, 1710). This is supported by comments to the first draft of the amendments, released by the working group, that show that the measures were a product of legal diffusion. Article 36-2 is commented to be adapted from legislation in Kyrgyzstan, Turkey, Azerbaijan and the Ukraine (Law of the Republic of Kazakhstan 2016B). Yet, similar legislation is also present in Germany (The Local 2016) and the USA (compare the Patriot Act). Also, this indicates that the amendments might not be designed to be event-specific, but instead be merely part of a global trend of adopting surveillance laws to counter terrorism (see Chapter I; Pokalova 2015).

However it may be, articles 41-1-2 and 36-2 appear to be in some general correspondence with the features of the nationwide protests and the two attacks. This supports the argument that

the amendments were caused by and created to some degree in response to their proclaimed causes.

Subsequent increments of long-established repressive legislation

The first law on communication was introduced in 1999 and replaced by a second law with the same name in 2004. This law is still in force today (10.2017). The content of all versions of these laws bore witness to a high degree of surveillance and censorship over media and communication, which was enforced to contain political dissent in the media (Anceschi 2015, 287; Deibert 2010, 183-190). In 2007 or earlier the government started to close websites (Deibert 2010, 188). The shutting down of social media developed later, at least during and after the protests in Zhanaozen in 2011. This implies the government retained the Soviet-practice of controlling media but has adapted to technically changed media and communication environments.

Until 2008, repression seems to have focused mostly on individuals (Anceschi 2015, 287). An article of criminal law, frequently employed for these purposes (until today), was article 174 on incitement of hatred and discord (see chapter II). Having been relatively discrete in its repression previously, the government became more visibly repressive after around 2008 (Anceschi 2015, 287; Deibert 2010, 188). One important external reason for this development was the oppositional activity of Rakhat Aliev (son-in-law of president Nazarbayev who died in 2015). To silence him and his followers, the government increasingly closed websites containing forms of political dissent. In 2009, the law on communication was amended to equate all internet resources with traditional media outlets and to expand "the list of justifications for suspending the production and distribution" of these media outlets (Deibert 2010, 186; OSCE 2009B). Additionally, probably in imitation of similar laws in Russia, repressive anti-defamation measures were introduced, typically used by authoritarians to contain political dissent (Ozan 2015, 1685). The measures expanded criminal liability for defamation and insult to include all internet users in Kazakhstan (Human Rights Watch 2009A). The same repressive measures are still being enforced today (Adil soz 2017).

In 2011 repressive policies increasingly targeted social media due to another external factor (Anceschi 2015, 289; Freedom House 2011-2012). This was prompted by the violent demonstrations that escalated in the city of Zhanaozen at the 16th-17th of December 2011. Immediately after the brutal repression of the protesters, the government isolated Zhanaozen and its surroundings by making Twitter, YouTube, and other websites inaccessible (Anceschi 2015, 290) even though there were no laws that fully legalized such an action. Post factum, in 2012, the parliament adopted amendments to the Law "On National Security" (hereafter: the law on national security), which let the government block websites and suspend communications services during counter-terrorist operations and mass disorder (Article 23-4 in Law of the Republic of Kazakhstan 2012).

In April 2014, the governments legal powers to restrict social media were increased again due to external factors. Article 41 developed post-factum as a reaction to three events in 2014. Firstly, a false message on WhatsApp went viral announcing the collapse of a bank. Residents of Almaty and Astana massively withdrew their savings. Secondly, a protest was held in February 2014, at which multiple bloggers were arrested. Thirdly, in November a video was published showing Kazakhstani children being trained by IS (Lillis 2014). Consequently, article 41-1 was introduced in the law on communication as an omni-tool to target a very broad conception of

political dissent ranging from rumours to protests to terrorism (Anceshi 2015, 294; Recknagel 2014; Sodiqov 2014). The article is still in force today (10.2017) and confers the Attorney General or his deputies with extrajudicial power to temporarily suspend the operation of networks and communication facilities, including (e.g.) WhatsApp and Skype. Suspension is permitted when means of communication are used for criminal purposes, for the dissemination of information that violates legislation on elections, for calls for extremist and terrorist activities, riots and for participation in demonstrations that violate the legal procedures (Tengrinews 2014). Article 41-1 forms the basis of the amendments of 2017 summarized above.

Notably, only in January 2015 the bank run of 2014 seems to have received full attention. A new criminal code came into effect in 2015, which included a new article (article 274) punishing the spreading of undefined "false information" with up to ten years in prison. The article can be interpreted broadly to make "any person be held liable" (Mijatović 2017).

In 2016 freedom of expression continued to decline (Freedom House 2015 — 2016). Users complained that the "authorities blocked access to entire content hosting platforms, including Tumblr and Sound Cloud" (Ibid.). During the nationwide protests in April 2016 this was especially notable, when various social media and websites were blocked. After these protests and the attacks in Aktobe and Almaty, the amendments of 2017 were introduced, which expanded article 41 by letting it be enforced by the KNB and enlarged the scope of the measure by adding article 36-2 (see summary above).

In conclusion: the amendments of 2017 build on a tradition of repressive practice that started to be increasingly legalized since 2007 or earlier. This legal development of repressive tactics grew in reaction to a media landscape that changed through new communication-technologies. This was noticeable, because measures were first put into practice in reaction to external events and were only afterwards fully legalized: right after communication on social media was blocked during the violent protests in Zhanaozen in 2011, the first provisions to block social media were introduced in 2012. In 2014 similar measures (article 41) were added to the law on communication after a bank-run, a protest and IS propaganda on You-Tube occurred. In 2017 resembling measures were expanded again after nation-wide protests and acts of terrorism occurred. Thus, the amendments and their previous legal provisions were exogenously reinforced but do also reflect some path dependent development. This development is at least 5 years old (since 2012). It concerns the reinforcement of essentially the same provisions that allow the government to block social media. Note, that this path dependency might also be reinforced reciprocally in following a global trend of counterterrorism that incites to adopt international surveillance laws (see Chapter I; Pokalova 2015). It is hard to unambiguously interpret the legal action behind these developments. On the one hand, legal action seems to be instrumental (i.e. based on costs and benefits) because the amendments were generally addressing the features of external events. Also, Kazakhstan's government replicated the laws from other countries, which is less costly and more legitimate than designing them itself (Rudbeck and Mukherjee 2016, 150). Moreover, it seems beneficent to legalize practices of repression in order to increase legitimacy (von Soest and Grauvogel 2015). But legal action might also have been traditional, because the provisions indicate path dependent development for 5 years. Additionally, legal action might have followed a path dependent global trend concerning counterterrorism (Pokalova 2015).

D) The law "On State Control over the Circulation of Certain Types of Weapons"

Summary of the amendments

The amendments to the law "On State Control over the Circulation of Certain Types of Weapons" (hereafter: the law on circulation of weapons) (Law of the Republic of Kazakhstan 1989) are complemented in the laws "On Counteracting Terrorism" (Ibid. 1999) and "On Security Operations" (Ibid. 2000), which will not be treated separately here. The main amendments were the following:

- Surveillance-measures for facilities in the risk group as well as examination-measures on registration and the condition of weapons are enhanced and expanded.
- Administrative obligations for owners of terrorism-prone facilities or security companies protecting these facilities are expanded and enhanced. These include (1) heightened fines for leaving terrorism-prone facilities inadequately protected and (2) heightened fines for the inadequate opening and functioning of shooting galleries and weapon depots.
- Restrictions, administrative obligations, heightened fines and extra warnings for violations concerning owning, dispersing or carrying of weapons are established. These include (1) new exams testing the knowledge of rules on handling weapons; (2) clearer rules on re-registration of weapons that are malfunctioning or of which the permits have expired or of which the owners have passed away; (3) rules on locations where it is allowed to sell weapons; (4) new prohibitions for displaying weapons that are ready for use.
- Heightened fines are established for illegal possession and use of uniforms for employees of private security companies.

Human rights protection related to the attacks in Aktobe

These legal measures are not considered to be repressive, i.e. they are not restricting human rights but instead protecting them. The OSCE has not commented on these laws. The laws certainly aim at reducing terrorism, violent extremism as well as organized crime, because they simply restrict the access to weapons and increase the security of facilities that have proven to be vulnerable for terrorism, such as weapon-shops.

There is a strong link between these amendments and the attack in Almaty. The perpetrator used a weapon to shoot people. Consequently, these legal measures make it harder for such perpetrators to illegally obtain weapons. There also is a strong link between amendments and the terroristic attack in Aktobe. First of all, the attackers in Aktobe robbed two weapon-shops and used their equipment to attack a military outpost. As a consequence, new specific measures were introduced that explicitly forbade the display of weapons that are ready for use – before 2017 no such measures were in place (!) (article 22-4-3; Article 27-3). Secondly, the attackers stored weapons at home or in other places. Thus, for the first time a law was introduced in Kazakhstan that forbade persons, that are allowed to sell weapons, to store their weapons at other places (e.g. at home or at an airport) than the official places assigned for (e.g. weapon-shops or police offices) (article 22-4-2).

In conclusion: these are clear-cut and efficient measures, many of which are wholly new, that have a clear link to specific features of the attack in Almaty and the terrorist attack in

Aktobe. The measures are dependent on some previous provisions but seem not on long-established provisions, i.e. they appear not to be path dependent. Moreover, they do not infringe on any human rights but protect them. The amendments seem mostly to be the result of instrumental legal action (cost-benefit considerations).

CHAPTER IV: DISCUSSION

Two competing hypotheses were investigated (see methodology), stating that the amendments of 2017 represent legislation:

(1) that is made by rational decision-making (rational-choice theory), i.e. specifically tuned to the events that caused the amendments, independently of previous legislation.
(2) that is made by path dependence (historical institutionalism), i.e. it has incrementally reinforced long-established repressive legislation, with no relation to the events that caused the amendments.

This was investigated in chapter III A concerning the law on migration, chapter III B concerning the law on religion, chapter III C concerning the law on communication and chapter III D concerning the law on the circulation of weapons.

The law on migration and the law on religion

Chapter III A concluded, firstly, that the amendments to the law on migration were subsequent increments of long-established repressive legislation. This means that they were path dependent: the amendments of 2017 re-introduced a concept of temporary registration that was already present in post-Soviet Kazakhstan's legislation since independence and before that in Soviet-legislation. Temporary registration was an essential provision of the old *propiska*-institution of the 1930ies in the Soviet Union, which in turn was re-introduced from similar provisions in the Russian Empire. So, this type of registration-institution dates back a century or longer (Tukmadiyeva 2015, 1-3; Resolution of the Council of Ministers of the USSR 1974). Secondly, the development of the amended law has been continuously reinforced by endogenous mechanisms. Meaning, that convictions about the registration measures (value-oriented legal actions) and familiarity with these measures (traditional legal actions) blocked alternative amendments (for the used terms see Chapter I; Meierheinrich 2016), eventhough many critics have continuously warned law-makers about the serious disadvantages and outdatedness of these measures (Zhovtis 2017; Ibid. 2016; Tukmadieva 2015; OSCE 2016; Ibid. 2009).

Concerning the laws on religion in 2017 the analysis in chapter III B concluded, firstly, that the amendments were subsequent increments of long-established repressive legislation (thus path dependent). This path dependency was driven by endogenous mechanisms of reinforcement, namely long-lasting Soviet-convictions about the negative value of Islam for a secular society (value-oriented legal actions) and by the familiarity with repressive legislation from the Soviet Union (traditional legal actions) (Heathershaw and Montgomery 2014; Schoeberlein 2009; Khalid 2007; Trisko 2005; Knysh 2004): Kazakhstan's government was not convinced by the intrinsic value of freedom of conscience that the democratic laws on religion were protecting between 1990 and 1997 (Law of the USSR 1990; Law of the Republic of Kazakhstan1992A). Instead, it favoured Soviet values and traditions of repressive-control. As a consequence, the

democratic features of the law were gradually compensated with repressive measures from the Soviet legislation on "religious cults" (see chapter I; Podoprigora 2002, 4.1). In 2011, the democratic law was wholly substituted by a new law that reintroduced many features of the repressive resolution on religious associations of 1929 (All-Russian Central Executive Committee 1929). Secondly, the analysis concluded that the latest amendments to the law on religion in 2017 were not significantly influenced by external factors as can be inferred from the lack of correspondence between the amendments and the specific features of the attacks in Aktobe.

Thus, until now, the conclusions of both chapter III A and B clearly support the hypothesis that path dependence determined the formation of the amendments. Also, it was concluded, that this development was driven by endogenous mechanism of reinforcement. Although I think the former conclusion is solid, the latter can be nuanced by further research arguing for exogenous mechanisms of reinforcement. From a regional perspective, Lain (2016) and Omelicheva (2010) showed, that all post-Soviet Central Asian countries including Russia repeatedly copied legal provisions from one-another. Thus, it is expected that these countries mutually reinforced each other's legislation. This is supported by Tukmadieva (2015) who showed that the mentioned countries all share essentially the same institutions of registration (see chapter II; Tukmadieva 2015, 36). The same holds true for the regional presence of religious administrations and regionally similar repressive policies on religion (see chapter II; Khalid 2007). Consequently, the resulting path dependent development of the amendments could be a mix between exogenous and reciprocal mechanisms of reinforcement (Gerschewski 2013).

Additionally, specifically concerning the conclusions to the law on religion, the decision to backtrack to Soviet repressive laws on religion after 1997 might well have been externally reinforced by the threat of the civil war in Tajikistan from 1992 till 1997, where Islamists were involved. Later, in 1998, these same Islamists established the Islamic Movement of Uzbekistan (IMU). They executed serious acts of terrorism in neighbouring Uzbekistan and launched a series of raids into the south of neighbouring Kyrgyzstan in 1999 and 2000. In 2001 they were largely subdued (Green 2016; START 2015)[15]. Other regional threats concern the ongoing wars by the Taliban in Afghanistan.

Furthermore, Kazakhstan has shown a concern for fighters returning from IS in the amended laws "On Citizenship of the Republic of Kazakhstan" and "On the legal status of foreigners" (Law of the Republic of Kazakhstan 1991; Ibid. 1995B), which are outside the scope of this thesis. Article 21 in the law on citizenship (1991) was supplemented with subparagraph 8, which states that citizenship of the Republic of Kazakhstan is lost "as a result of a person's participation in foreign armed conflicts, extremist and (or) terrorist activities in the territory of a foreign state" (Law of the Republic of Kazakhstan 1991). Also, article 28 in the law on the legal status of foreigners (Ibid. 1995B) was changed to enable a stricter regime on the expulsion of foreigners or stateless persons. When ex-pulsed, these persons are to be escorted to the borders of Kazakhstan under compulsion and are prohibited to enter the country for 5 years (Criminal Code 2015, article 51-1). Note, that these amendments still merely expand provisions that have been enforced since independence. Human rights activists have reported about such expulsions

[15] From then on, most fighters of the IMU left Central Asia alone and continued fighting in Pakistan, Afghanistan and in Syria, as part of IS in 2015 (Green 2016). IMU's loyalty was seen as betrayal by the Taliban, which led to the liquidation of the IMU in Afghanistan by the Taliban in 201 (Zen 2016).

especially in relation to religious freedom. Many of the ex-pulsed foreigners were missionaries, priests, theologians (Berg et al. 2008; Mushfig 2011). More recently, these laws were also used to strip the citizenship of religious members of Kazakhstan's returning diaspora (Oralmans). Law enforcement agencies frequently denoted the Oralmans as religious-extremists and then ex-pulsed them. Maybe this is because many of the immigrated Oralmans have taken part in the violent protests of Zhanaozen (Tojken 2017; Satpayev and Umbetaliyeva 2015, 125). This may have led to Kazakhstan denoting their own diaspora as another sort of external threat. This would imply an exogenous mechanism of reinforcement of the amendments.

The law on communication

Concerning the conclusions of the analysis of the law on communication in chapter III C. Firstly, it concluded mostly in favour of the hypothesis that the amendments were event-specific and corresponded to the features of the terrorist attacks and the nationwide protests: article 41-1-2 targeted specifically grave crimes like terrorism and article 36-2 is expected to be applied to hinder mass assemblies, because the government already used such measures to block social-media before, e.g. during the nation-wide protests. This relative newness and event-specificity indicate aspects of instrumental legal action (cost-benefit considerations). Secondly, chapter IIIC concluded that, although the amendments were relative new, they also depended on short-term subsequent increments of previous repressive legislation: the amendments of 2017 reinforced essentially the same legal provisions for at least 5 years, since 2012. Thereby, this development was exogenously reinforced. Article 41 in 2017 and its prior version in 2014 as well as similar provisions in and before 2012 were all generally addressing the features of external events: article 41 was introduced in 2014 as a reaction to the external incidents (political dissent like protests, terroristic propaganda and a single bank-run). In 2012 provisions to block communications, websites and social media were introduced after the protests in Zhanaozen (2011). Because the amendments did show short-time path dependence, this indicates also traditional legal action, i.e. the law-makers were accustomed to repeatedly reinforce such legislation, although essentially nothing new was provided for. Thirdly, the amendments appear to have adopted some sort of international surveillance laws (Ozan 2015, 1710). The provisions resemble legislation in Germany, the USA (patriot act), Turkey, the Ukraine, Azerbaijan and Kyrgyzstan (The Local 2016; Law of the Republic of Kazakhstan 2016B). Therefore, both amended articles may be following a global trend of adopting surveillance laws to counter terrorism (see Chapter I; Pokalova 2015). Thus, on the one hand, legal action can be understood as instrumental (i.e. based on cost-benefit considerations), because when legislation is replicated from other countries, this is less costly than designing it by itself. Also, the adoption of international laws might increase their legitimacy, which is beneficent (Rudbeck and Mukherjee 2016, 150). Yet, this global trend has been indicated to develop by path dependence (Pokalova 2015), which indicates that non-instrumental legal actions might be at play as well.

A law that is similar to the law on communication concerns the Law “On Counteracting the Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism” (Law of the Republic of Kazakhstan 2009). Because it was only marginally amended in 2017, it was left outside the scope of this thesis. Just like the law on communication this law adopted international counterterrorism provisions and appears to belong to the same global trend in countering terrorism by surveillance (Pokalova 2015). Notably, this law incorporated international surveillance measures that are partly in line with UN regulations (OSCE 2016) and appear to

have been successful in countering terrorism[16]. Note that, simultaneously, these measures are enforced repressively to block the bank accounts of activists and oppositional figures without any due legal process by accusing them of financing broadly defined "extremism" (see chapter II) (article 12-1) (Corley 2017C; Ibid. 2016). In that way the law has been used against participants of the nation-wide protests (Glushkova 2017). Future studies are expected to find more ways in which this law is used repressively, probably comparable to Russia's Financial Monitoring Service (see chapter I; Varol 2015, 1712). Just like the law on communication, it is hard to give an unambiguous interpretation of the legal actions that formed this law, because contradicting types of legal action seem to apply simultaneously.

The law on the circulation of weapons

Chapter III D analysed the amendments to the law "on state control over the circulation of certain types of weapons". Conclusions were in full support of the hypothesis that the amendments were event-specific: the amendments did significantly correspond with the features of the attacks in Almaty and Aktobe but not with the nation-wide protests. The amendments restricted access to weapons, which were used in both attacks in Almaty and Aktobe. The amendments increased the security of vulnerable facilities such as weapon-shops, which truly were attacked by terrorists in Aktobe in 2016 and in Taraz in 2011. Some of these measures were shown to be wholly new and crucial. For the first time it was, for example, explicitly forbidden to display weapons that are ready for use or to store weapons at home or other inconvenient places. The amendments were the result of instrumental legal action (cost-benefit considerations), because they were new[17], event-specific and not significantly dependent on previous legislation. Unlike the other amendments, these amendments were not repressive: they did not infringe on any human rights but aimed at protecting them.

Discussion of the final conclusions

Concerning the amendments of 2017 as a whole, the analysis of chapter III, firstly, supported mostly the hypothesis stating that the amendments were path dependent, because they consisted largely of subsequent increments of long-established and essentially unchanged repressive legislation. The laws on communication appeared a partial exception and the law on the circulation of weapons a full exception to the hypothesis. Secondly, the analysis of chapter III has least supported the hypothesis that the amendments of 2017 were developed as a specific reaction to the two terrorist attacks in Aktobe and Almaty and the nation-wide protests in 2016. Only the law on the circulation of weapons applies fully to this hypothesis.

Notably, except for the law on the circulation of weapons, the amendments of 2017 have ignored the features of the attack in Almaty. This attack was wrongly determined as terroristic, because it was rather an amok-run in revenge for imprisonment (see chapter II). Measures that would have been suited to prevent such amok-runs would be improving the abominable prisons

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[16] Kairat Umarov, Kazakhstan's permanent representative to the United Nations, is heading the ISIL (Da'esh) & Al-Qaida Sanctions Committee of the UN Security council (UN Department of Public Information 2017).

[17] This can be nuanced a bit, because there are indications that some of the amendments may come from similar provisions in Russia. This would again highlight the regional dimension that this thesis did not significantly analyse (Law of the Republic of Kazakhstan 2016B).

and re-socialization programs in Kazakhstan[18]. Such content was not found in the amendments of 2017.

On the whole this thesis questions the idea that repressive measures are taken by rational-choice or cost-benefit considerations. It was shown that especially the laws on migration and religion were mostly reinforced by traditional and value-oriented legal action, which is not rational; meaning that some cost-benefit considerations might only marginally have been applied for this value- and tradition-driven reinforcement of long-established repressive legislation. In addition to this, the thesis concluded that the reinforcing mechanisms behind the developments of the law on migration and the law on religion were mostly endogenous. From a regional perspective, it is expected that further analysis will find significant mechanisms of exogenous (e.g. regional triggers like the civil war in Tajikistan and the attacks of terrorism in Uzbekistan) and reciprocal reinforcement (e.g. the mutual adaptation of laws by the Central Asian states including Russia).

Further research to uncover the drives behind the development of repressive laws is necessary to better understand the repressive functioning of authoritarian governments like Kazakhstan. If Kazakhstan's repressive policies are to be reduced and its human rights situation is to be bettered, it is necessary for human rights activists and peace builders to understand the governments fears and needs behind its repressive behaviour. At present it looks like path dependent reinforcement of repressive laws is continuing, which is predicted by some scholars to lead to increased social unrest and eventually to resistance, e.g. acts of terrorism, in the future (Lenz-Raymann 2014). This is all the more expected because new amendments to increase repressive provisions in the law on religion (2011) are being designed: if adopted these amendments will require "re-registration of almost all religious communities, and impose new restrictions on and punishments for religious education, sharing beliefs, censorship of literature and (for state officials) participating in worship" (Corley 2017A). Thereby, only the DUMK and the nationwide Russian Orthodox organisation are exempted form re-registration. Note, that in 2011 such measures were followed by a serious act of terrorism in Taraz. Strikingly, Kazakh authorities sought no legal reviews of their amendments from the OSCE or the Council of Europe's Venice Commission[19], implying that Kazakhstan is now refusing any alternative perspectives on matters of religious freedom and counterterrorism (Ibid.).

CHAPTER V: FINAL CONCLUSION

The amendments of 2017 consist mostly of subsequent increments of long-established repressive legislation and are only to a minor degree developed newly to specifically address the terrorist attacks in Aktobe and Almaty. The nationwide protests are only minimally accounted for in the amendments. The features of the attack in Almaty seems mostly ignored. Rather than using rational-choice a significant part of the amendments reinforces old repressive laws and practices from the Soviet Union based on strong convictions and familiarity with Soviet laws and policies.

[18] On the other hand, Nazarbayev did sign a new national policy to improve re-socialization programs (Kudajbergenov 2016).

[19] Kazakhstan is both an OSCE participating State and a Venice Commission member state (Corley 2017A).

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