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Interpreting Legal Norms and Their Role in Criminal Justice Administration

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Abstract

The significance of the research lies in addressing the critical issue of judicial misinterpretation by the Supreme Court of the Republic of Kazakhstan, which is subsequently mirrored by subordinate courts, potentially infringing upon citizens' rights and freedoms. This study aims to thoroughly develop theoretical frameworks to enhance constitutional and legislative measures in Kazakhstan, thereby increasing the efficacy of legal norm interpretation and its impact on criminal justice administration. Utilizing analysis and comparative legal methods, this research examines various statutes and scholarly theories to ensure the theoretical and practical soundness, objectivity, and credibility of the findings. The investigation identifies legislative gaps, particularly in the Constitution of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan No. 480-V "On Legal Acts" and administration of criminal justice, proposing amendments for legislative enhancement and advocating for the incorporation of case law into the Kazakh legal system.

Keywords: statutory resolution, Supreme Court, precedent, ulge, legislative regulation, criminal justice administration.

Introduction

At present, there are no legally defined rules for the interpretation of legal norms. The current scientific approach to the task of interpreting legal norms proceeds from two large concepts. The standard concept of interpretation focuses on the analysis of language and its means. It uses various linguistic rules to find out the true meaning of a legal norm or the intention of its author. Adherents of the second approach believe that language can be rather vague. Therefore, they advise law enforcement officers to favour an interpretation based on modern political and economic conditions in their interpreting activities. But one must not forget that the interpretation of legal norms is neither the field of linguistics nor the field of politics. When establishing the meaning of the norm, it is necessary to

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adhere to the already existing legal norms and legal materials (Baude, & Sachs, 2017). Researchers claim that the Kazakh legislation contains numerous discrepancies and inconsistencies. Many norms do not comply with the rules of legal technology and allow for a double interpretation. As a result of such contradictions in interpretation, many judicial disputes and corruption violations can arise, which leads to social indignation of the population (Lutsenko, 2017).

The interpretation of legal norms is a necessary system element of the legal regulation mechanism in modern society. Its significance is associated with the presence of ambiguous formulations in legislative acts, which leads to different, and sometimes opposite interpretations by executive authorities and courts, which apply the same legal norms differently in complicated situations (Mukomela, 2020; Vilks et al., 2022). Of particular importance is the interpretation performed by the courts upon resolving cases. The interpretation of legal norms can even be called one of the main functions of a judge. However, judges frequently fail to perform this function. Their solutions are technically erroneous, excessively complex, too long, and restrictive (Connolly, 2018). Judicial interpretation should be considered not only from a legal and linguistic standpoint, but also from the standpoint of argumentation, which focuses on strategies for defending a controversial or doubtful opinion (Valton, Macagno, & Sartor, 2021). The relevance of the subject under study is justified by the fact that Kazakh legal scientists often find facts of incorrect judicial interpretation carried out by the Supreme Court of the Republic of Kazakhstan. This incorrect interpretation of the law is also adopted by all other subordinate courts in their decisions. This cannot be allowed, since a misinterpretation may violate the law, and thus the rights and freedoms of citizens.

The purpose of this study is a comprehensive development of theoretical provisions aimed at improving the constitutional and legislative provisions of the Republic of Kazakhstan (Constitution of the Republic of Kazakhstan, 1995), ensuring an increase in the effectiveness of the interpretation of legal norms and the importance of law in the administration of justice. The object of this study is the norms existing in the current legislation of the Republic of Kazakhstan that regulate the institution of interpretation of legal norms. The scientific originality of this paper is expressed in a critical study of modern legal norms governing the institution of interpretation of legal norms, and the proposal of recommendations for eliminating the identified shortcomings by introducing changes to particular legislative acts. The theoretical importance of the present study lies in the analysis of articles addressing the interpretation of legal norms, as well as in the scientific investigation of the elements comprising the institution of interpretation – the

concept, types, subjects, aspects, rules of interpretation, problems arising during interpretation, etc.

This study focuses on solving the following issues in the field of interpretation of legal norms: determining the presence or absence of statutory force in statutory resolutions of the Supreme Court of the Republic of Kazakhstan; recognising them as acts of legal interpretation; increasing the importance of judicial interpretation by introducing the case law into the legal system of the Republic of Kazakhstan, etc.

Research Methodology

The theoretical framework of the present paper includes the doctrinal developments of legal scientists in the field of legal interpretation, namely the studies by V. T. Konusova and M. N. Abilova (2018), A. A. Shyngysov and B. O. Kadyrov (2016), W. Baude and S. E. Sachs (2017), V. Brannon (2018), M. Connolly (2018), D. C. Pearce (2019), D. Valton, F. Macagno and G. Sartor (2021) and others. The statutory basis of this study comprises the Constitution of the Republic of Kazakhstan (1995); the Civil Code of the Republic of Kazakhstan (1994; 1999); the Code of the Republic of Kazakhstan No. 377-V "Civil Procedural Code of the Republic of Kazakhstan" (2015); the Law of the Republic of Kazakhstan No. 480-V "On legal acts" (2016). The empirical framework of the study comprises the statutory resolution of the Supreme Court of the Republic of Kazakhstan No. 2 "On the application of certain norms of civil procedural legislation by courts" (2003). The methodological framework of this study includes a dialectical-materialistic method, which allows investigating the phenomena and processes of social life in their dynamics, interrelation, and interdependence. Therewith, the authors of this study employed the general scientific (analysis, synthesis, induction, deduction) and private scientific methods of cognition of socio-legal reality (system-structural, Aristotelian, comparative legal). The use of these methods allowed ensuring the theoretical and practical validity, objectivity, and reliability of the study results. The study was carried out in several stages:

1. At the first stage, the study conducts a theoretical analysis of scientific provisions concerning the term "interpretation of legal norms", goals, various aspects, types, subjects, methods, and rules for the implementation of interpretation. The importance of the interpretation of the legal norms in the administration of justice was also considered. The paper identifies the problems arising during the interpretation of the legal norms.

2. At the second stage, the authors analyse the institution of a statutory resolution of the Supreme Court of the Republic of Kazakhstan as an act of legal

interpretation that has a guiding significance for the administration of justice. The authors also consider the scientific arguments favouring the recognition of the statutory resolution of the Supreme Court of the Republic of Kazakhstan as a regulation, including arguments on the necessity of giving the statutory resolution of the Supreme Court of the Republic of Kazakhstan a exclusively recommendatory value.

3. The third stage addresses the idea of recognising case law as a special act of interpreting the legal norms. The authors also provide reasoning for the possibility of including the case law in the legal system of the Republic of Kazakhstan to increase the importance of judicial interpretation in the administration of justice. For this purpose, two different ways of integrating the case law into the Kazakh legal system were proposed – through the "ulge" institution or using the Guiding Cases System.

Results and Discussion

Theoretical Provisions on the Institution of Interpretation of Legal Norms

In connection with the continuation of the active transition of the Republic of Kazakhstan from a planned economy to a market one, which has been ongoing for more than a decade, the urgency of the problem of interpreting the legal norms and its application in the course of administration of justice is increasing. After all, the faster the activities of various economic entities develop, the more legal disputes arise relating to their interaction. Therefore, it is critical to develop a unified interpretation of various legal norms. The content of the term "interpretation of the legal norms" means the process of clarifying the exact content of each particular legal norm for the correct establishment of the will of the legislative body contained therein, its concretisation. In the course of interpretation, the subject of interpretation must establish the meaning and outlined scope of application of this rule, its social essence, its structural place in the legal system, the legal reality of application, as well as the purpose of legislative consolidation of such a rule of conduct (Boreiko & Navrotska, 2023). The purpose of the interpretation of the legal norm is to neutralise the possibility of an incorrect, contradictory understanding of the norms and to ensure uniformity of the application of laws and other regulations by judicial and other law enforcement authorities.

To achieve the goal of understanding the essence of a legal norm, it is necessary to consider the interpretation in two aspects. The first aspect is to consider interpretation as an internal thought process of a person. It occurs completely in the consciousness of a person perceiving the norm from the outside, realising its content, and then applying or using it in another way. The second

aspect is an external expression of the interpretation produced within consciousness. Such an interpretation must necessarily be contained in the most objective recommendations given by scientists, lawyers, judges, state bodies, etc. Therewith, it can have both a mandatory and non-mandatory form (Nam, 2001). Lawyers and judges often use the term “interpretation" to refer to two completely different things at the same time. For example, one can interpret a written text as a set of characters on paper to establish the meaning of the linguistic units. But it is also possible to interpret the same text, now considered as a legal object, to establish its legal content (Solum, 2013). Sometimes one can come across a scientific opinion that, from a theoretical standpoint, it is impossible for the only correct interpretation of a legal text to exist. Various legal systems may interpret their legal norms differently. And there is no certainty that they are all doing it exclusively correctly. Consequently, there is no single correct way to interpret a legal norm; therefore, it is impossible to consider the meaning of linguistic units as the only source of legal force of a regulation. Furthermore, sometimes there may be situations where the meaning of the regulatory provisions established in advance does not exist as a linguistic fact. That is, at the time of the emergence of particular legal relations governed by the legal norm, there may still not be an exact interpretation of this norm (Baude, & Sachs, 2017).

Depending on the criterion of the subject performing the interpretation, there are authentic, judicial, doctrinal, and ordinary interpretations. The right of authentic interpretation is vested in the bodies whose powers under the law include such a function. According to Paragraph 2, Article 60 of the Law of the Republic of Kazakhstan No. 480-V “On Legal Acts” (2016), the official explanation of regulations of the Government of the Republic of Kazakhstan is carried out on behalf of the Prime Minister by the Ministry of Justice of the Republic of Kazakhstan together with interested state bodies. In addition, under Article 60, the authorised bodies or officials who have adopted (issued) the regulations provide an official explanation of the regulations specified in Clauses 6, 7, 8 and 9 of Paragraph 2, Article 7 of this Law. This interpretation of these bodies is mandatory. Moreover, Paragraph 4, Article 60 of this Law establishes that state bodies conducting national policy, regulating and managing a certain industry (sphere of activity) or whose competence includes the solution of relevant issues, or other state bodies, in accordance with the powers granted to them, may, within their competence, provide explanations of regulations regarding particular subjects or regarding a particular situation. Such explanations are not legally binding and are of a recommendatory nature.

Interestingly, this Law replaces the term "interpretation" with the term "explanation". This indicates that the Law factually withdraws the official

interpretation of the legal norms from its jurisdiction (Shyngysov, & Kadyrov, 2016). Authentic interpretation is not limited to any semantic and substantive framework since the authority of authentic interpretation has the right to give statutory force to any new norm. There are two types of judicial interpretation. A casual interpretation is given by the court for each particular civil, administrative, or criminal case for which it is mandatory. A separate type of judicial interpretation includes the interpretation contained in the statutory resolutions of the Supreme Court of the Republic of Kazakhstan, developed based on a review and generalisation of practice. Recently, a new type of judicial interpretation has been distinguished – the interpretation of documents drawn up by citizens, and not of the laws. It is mandatory for persons who are in legal relations due to the entry, for example, into hereditary relations. However, the court of the second or third instance may disagree with the interpretation of the will carried out by the court of the first instance and cancel the decision of the subordinate court. This suggests that the courts of higher instances shall not be bound by the decision of the subordinate court, meaning that such decision does not have a universally binding, statutory property (Nam, 2001).

An example of vesting the powers of interpretation in the court can be found in Article 1085 of the Civil Code of the Republic of Kazakhstan. Paragraph 1 indicates that the court may engage in interpretation to establish the meaning of legal concepts, that is, the court may perform a legal qualification. Or, for instance, Article 1055 of the Civil Code of the Republic of Kazakhstan states that the court can interpret the will. Paragraph 1, Article 392 of the Civil Code of the Republic of Kazakhstan (1994) also establishes that the court has the right to interpret the terms and conditions of the agreement. To interpret the text, judges can use a simple method of analysis or various auxiliary materials, for example, dictionaries, reference books, scientific articles, etc. (Brannon, 2018). Judges usually begin to realise their task of interpretation by searching for the usual meaning of a certain word from the legal norm. They often end there, thinking that if the legislator wanted to express themselves more clearly, they would have done accordingly. The judge may not always give full and active meaning to every word in the legal norm, but they have no right to ignore any words at all or consider them insignificant (Sanson, 2016). Authentic and judicial interpretation is also frequently called statutory, since it is binding, that is, mandatory for application by all persons and bodies falling under the jurisdiction of the body whose competence it is to carry out interpretation. However, the Kazakh legal scientists discuss the statutory force of the statutory resolutions of the Supreme Court of the Republic of Kazakhstan.

All bodies that have the right to interpret regulations cannot be limited by any specific reasons or grounds for concretising a legal norm. They can only be limited by the scope of their jurisdiction. Interpretation is usually carried out based on a previous analysis of numerous court cases of a certain category. However, the doctrine of separation of powers still imposes certain restrictions on the interpreting bodies (Pearce, 2019). The doctrinal interpretation of the legal norms is carried out by researchers and teachers of educational institutions to establish ways to improve the legislation. Its results are not universally binding, but they enjoy authority in the scientific and professional community. The results of the doctrinal interpretation should be strictly based on the laws of logic. Professional interpretation is carried out by lawyers, advocates, investigators, and other employees of the legal field in the course of their professional work (Nam, 2001).

It is also necessary to consider several rules that should be used when courts interpret the legal norms. Thus, the interpretation should always be reasoned, i.e., in its decision, the court should provide a detailed explanation of the grounds on which it made a certain conclusion about the content of the legal norm. Therewith, simply quoting excerpts from various laws cannot yet be called a judicial interpretation if they are not accompanied by a logical explanation provided by the judge themselves. Furthermore, a norm can never be interpreted by taking it out of the context of a regulation, without considering other related norms. Any legal rules of interpretation applied by subjects to establish the content of legal norms are conditional; therefore, it is necessary to justify them in a statutory way to ensure maximum correctness of interpretation. The rules of interpretation are not something naturally established. They completely depend on which law or other regulation is currently in force (Baude, & Sachs, 2017).

Statutory Resolutions of the Supreme Court of the Republic of Kazakhstan as Acts of Interpretation of Legal Norms and Their Significance in the Administration of Justice

In the Kazakh legal science, there is a debatable question concerning the possibility of recognising statutory resolutions of the Supreme Court of the Republic of Kazakhstan as regulations or whether these are exclusively acts of interpretation without the universally binding force. According to Article 4 of the Law of the Republic of Kazakhstan No. 480-V "On Legal Acts" (2016), the legislative system of the Republic of Kazakhstan, apart from the Constitution of the Republic of Kazakhstan, corresponding legislative acts, other regulations, also comprises statutory resolutions of the Constitutional Council of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan. Article 5 of this Law establishes that statutory resolutions of the Constitutional Council of the

Republic of Kazakhstan are based solely on the Constitution of the Republic of Kazakhstan, and no other regulations can contradict them. Statutory resolutions of the Constitutional Council of the Republic of Kazakhstan have the legal force of those norms of the Constitution of the Republic of Kazakhstan based on which they were adopted. The statutory resolution of the Supreme Court of the Republic of Kazakhstan contains explanations on the issues of judicial practice. According to Article 10 of this Law, statutory resolutions of the Supreme Court of the Republic of Kazakhstan are outside the hierarchy of regulations. This raises the question of their true statutory force in relation to other regulations.

There is also no clear answer to the question of the legal nature of the statutory resolutions of the Supreme Court of the Republic of Kazakhstan. By their legal nature, these acts supposedly constitute acts of official clarification of regulations, although Article 60 does not list the Supreme Court of the Republic of Kazakhstan among the bodies entitled to carry out such clarification. Furthermore, the analysis of Articles 5 and 60 of this Law suggests that the said Law contains certain discrepancies. On the one hand, the Law states that the Supreme Court of the Republic of Kazakhstan uses its resolutions to provide explanations on matters of judicial practice. However, on the other hand, the Supreme Court of the Republic of Kazakhstan is not listed among the bodies that have the right to officially explain regulations. The above provisions of the Law contradict each other, since the Supreme Court of the Republic of Kazakhstan cannot analyse the judicial practice without explaining the content of laws and other regulations. And since the statutory resolutions of the Supreme Court of the Republic of Kazakhstan are part of the legislation, i.e., they are universally binding, then the explanations of the law contained in these resolutions are official. Therefore, it is necessary to amend Article 60, namely to supplement it with another body entitled to carry out an official explanation of regulations — the Supreme Court of the Republic of Kazakhstan. This change will greatly increase the importance of the role of statutory resolutions of the Supreme Court of the Republic of Kazakhstan as acts of interpretation of the legal norms applied upon the administration of justice.

Yet there is a completely different way, which is also proposed by certain researchers. On the contrary, it is necessary to remove references to statutory resolutions of the Supreme Court of the Republic of Kazakhstan as an integral part of the Kazakh legislation from Article 4. It is proposed to remove similar norms from the Constitution of the Republic of Kazakhstan — the provisions of Article 4, namely Paragraph 1, which states that statutory resolutions of the Supreme Court of the Republic of Kazakhstan are part of the current law in the Republic of Kazakhstan. If such changes are introduced, the statutory resolutions of the

Supreme Court of the Republic of Kazakhstan will lose their binding force and become advisory acts of interpretation of the legal norms. The Constitution of the Republic of Kazakhstan also contains controversial provisions of Article 81, which states that the Supreme Court of the Republic of Kazakhstan provides explanations on issues of judicial practice. It is necessary to supplement this wording with the term "universally binding" to finally resolve the issue of the statutory force of the resolutions adopted by the Supreme Court of the Republic of Kazakhstan and considerably increase the role of interpretation produced by the statutory resolutions of the Supreme Court of the Republic of Kazakhstan upon the administration of justice. The current scientific discussion on the definition of the legal nature of the statutory resolutions of the Supreme Court of the Republic of Kazakhstan dates back to the Soviet times. To date, two main opinions have been identified regarding this issue.

The first opinion is that the statutory resolutions of the Supreme Court of the Republic of Kazakhstan are exclusively explanatory and advisory in nature, and not statutory. They are necessary for building uniform law enforcement to avoid various conflicts. This opinion is supported by such a researcher as M. T. Alimbekov (2009). That is, adhering to this position, the meaning of judicial interpretation in the form of a statutory resolution of the Supreme Court of the Republic of Kazakhstan has an ordering, but only recommendatory value. Another opinion is that the statutory resolutions of the Supreme Court of the Republic of Kazakhstan are not regulations. According to this opinion, the Supreme Court of the Republic of Kazakhstan does not have the right to create, change, and amend the current legal norms upon adopting statutory resolutions. Researchers supporting the opposite position argue that the statutory resolutions of the Supreme Court of the Republic of Kazakhstan contain precisely regulatory prescriptions, and, consequently, create legal norms. According to this opinion, statutory resolutions of the Supreme Court of the Republic of Kazakhstan should relate to sub-legislative regulations. In this case, the interpretation proposed by the Supreme Court of the Republic of Kazakhstan in the form of statutory resolutions has much more weight, since it factually constitutes a method of creating new legal norms while bypassing the legislative body, which in turn violates the division of powers.

Zh. U. Tlembayeva (2016) believes that statutory resolutions of the Supreme Court of the Republic of Kazakhstan constitute a special type of regulations that include elements of interpretation, specification, and detailing of the initial norms, that is, in fact, an act of legal interpretation. Ye. B. Abdrasulov (2004) also defines a statutory resolution of the Supreme Court of the Republic of Kazakhstan as an act of an interpretative nature, which makes provision for

concretising norms derived in the course of logical inference from more general and abstract norms formulated by the legislator, and having an interpretative meaning. Next, the authors of the present study consider the statutory resolution of the Supreme Court of the Republic of Kazakhstan as an act of interpretation that is of particular importance for the administration of justice using a particular example. Researchers claim that sometimes situations occur when the statutory resolution of the Supreme Court of the Republic of Kazakhstan, upon interpreting the legal norms expansively or restrictively, changes the content of the legal norms (Alimbekov, 2009). The authors consider this statement on the example of the statutory resolution of the Supreme Court of the Republic of Kazakhstan No. 2 "On the application of certain norms of civil procedural legislation by courts" (2003). This statutory resolution of the Supreme Court of the Republic of Kazakhstan contains Paragraph 13, which was introduced to prevent delaying the terms of litigation and leaving them within reasonable limits, including to ensure that the adjournment of the court session always occurs reasonably. The provision stipulates that the number of adjournments of the trial, as a rule, should not exceed four times.

Such a restrictive approach of the Supreme Court of the Republic of Kazakhstan does not consider the fact that each of the grounds for postponing the trial is important and weighty to limit their effect only to four times. Moreover, the court has a directly consolidated obligation to postpone the trial in the cases established by Article 198 of the Civil Code of the Republic of Kazakhstan. These cases can be combined in various configurations and in different numbers; therefore, the formal approach of limiting the number of adjournments of the case to four times is incorrect. This can directly lead to a violation of the principles of civil procedure and adversely affect the quality of the administration of justice. This opinion is shared by V. T. Konusova and M. N. Abilova (2018).

A similar contradiction in the presence of a restrictive interpretation by the Supreme Court of the Republic of Kazakhstan is also found in Paragraph 28 of the said statutory resolution of the Supreme Court of the Republic of Kazakhstan. This provision unreasonably narrows the circle of subjects entitled to appeal against judicial acts that have entered into legal force in the cassation procedure. Meanwhile, Part 1, Article 435 of the Civil Procedural Code of the Republic of Kazakhstan contains a broader list of persons, namely stipulating that the following persons are entitled to appeal in cassation against judicial acts that have entered into force: the parties; persons involved in the case; other persons whose interests are affected by judicial acts; and their representatives. Therewith, this rule should be interpreted literally by the law enforcement officer, since it contains a complete and exhaustive list of persons. But without any compelling reasons, the

Supreme Court of the Republic of Kazakhstan decides to interpret it restrictively and stipulates in Paragraph 28 that the right of cassation appeal against judicial acts belongs to the following persons: the parties and their representatives; persons involved in the case; persons not involved in the case provided that the issue of their rights and obligations is resolved by a judicial act. According to the content of this paragraph, it is clear that the Supreme Court of the Republic of Kazakhstan for some reason failed to consider that under the Civil Procedural Code of the Republic of Kazakhstan, other persons involved in the case, including other persons not involved in the case, but whose interests are affected by judicial acts, are also entitled to appeal through representatives. That is, this provision of the statutory resolution of the Supreme Court of the Republic of Kazakhstan directly restricts the rights of persons to appeal against court decisions.

Apart from the direct violation of the rights of citizens, this paragraph also replaces one legal concept with another. Specifically, Part 1, Article 435 of the Civil Procedural Code of the Republic of Kazakhstan refers to the concept "other persons whose interests are affected by judicial acts". In Paragraph 28 of the same statutory resolution, the Supreme Court of the Republic of Kazakhstan, the concept "persons who are not involved in the case provided that the issue of their rights and obligations is resolved by a judicial act" is used to designate the same category of persons. Notably, the wording used in the statutory resolution of the Supreme Court of the Republic of Kazakhstan significantly restricts the circle of persons who are not involved in the case, but at the same time have the right to appeal in cassation against a judicial act. After all, according to Article 435 of the Civil Procedural Code of the Republic of Kazakhstan, a person is eligible for filing an appeal in cassation merely on the grounds in the form of a judicial act affecting their interests. However, Article 435 of the Civil Procedural Code of the Republic of Kazakhstan does not specify that this act must necessarily contain a decision on the rights and obligations of these persons.

Case Law as a Special Result of the Interpretation of Legal Norms and a Means of Increasing the Importance of Interpretation Upon the Administration of Justice

In the context of disputes regarding the presence or absence of valid statutory force in the statutory resolutions of the Supreme Court of the Republic of Kazakhstan, which essentially constitute acts of legal interpretation, and therefore are of great importance for the administration of justice, it is worth considering the opinions of researchers concerning the possibility of recognising these acts as case law. After all, the strengthening of the importance of judicial interpretation of the legal norms as a mandatory phenomenon can occur precisely through the use of

such institution as case law. Notably, the legal system of the Republic of Kazakhstan is built on the type of the Romano-German legal family; therefore, judicial discretion is focused precisely on law enforcement, during which the legal interpretation also takes place. The interpretation of legal norms can occur within the framework of judicial discretion, for example, upon specifying evaluative concepts or subjective rights and obligations. Next, the authors of this paper scrutinise the concretisation of legislatively consolidated evaluative terms as a kind of legal interpretation, and, consequently, judicial discretion. There are many evaluative terms in the civil legislation of the Republic of Kazakhstan, the interpretation of which is already being addressed by the court. Such terms include, for example, 'repetition' in Clause 2, Paragraph 2, Article 476 of the Civil Code of the Republic of Kazakhstan, 'reasonableness' in Paragraph 3, Article 536 of the Civil Code of the Republic of Kazakhstan, 'fairness' in Paragraph 2, Article 5 and Paragraph 4, Article 8 of the Civil Code of the Republic of Kazakhstan, etc.

The Civil Procedural Code of the Republic of Kazakhstan also contains a considerable number of evaluative terms: 'good faith' and 'bad faith' in Part 1, Article 46 and Part 1, Article 72; 'sufficiency', 'sufficient data', 'sufficient grounds' in Part 4, Article 183 and Part 2, Article 325 and Part 2, Article 496, etc. The presence of numerous evaluative terms in any sphere of legislation gives a legal opportunity for the law enforcement officer, and in this case — for the court, to widely use interpretation and an individual approach to resolve situations, the statutory regulation of which is not always advisable or even impossible (Akopyan, 2006). In addition, the presence of evaluative concepts allows individualising the consideration of each particular case, as well as to use the internal beliefs of the judge more extensively. The difference of the Anglo-Saxon legal systems lies in the fact that judicial discretion in these systems includes not only the possibility of legal interpretation by the court, but also the independent creation of a legal norm by judges. In the Republic of Kazakhstan, the introduction of case law is being discussed in connection with two legal phenomena — "ulge" and statutory resolutions of the Supreme Court of the Republic of Kazakhstan. The possibility of applying each of these methods of introducing a precedent is actively discussed in the academia. As for the statutory resolutions of the Supreme Court of the Republic of Kazakhstan, researchers base their position on the provisions of the Constitution of the Republics of Kazakhstan and the Law of the Republic of Kazakhstan “On Legal Acts”, which were analysed above. Based on these constitutional and legislative acts, it can be argued that the statutory resolutions of the Supreme Court of the Republic of Kazakhstan do not constitute a precedent since they represent a special type of regulation and

not a court decision on a particular case, which has become a universally binding model (Maksymovych, 2021).

The term "ulge" was introduced by A. G. Didenko when he stated the impossibility of applying the case law in its English format in the Kazakh legal system. A. G. Didenko (2012) suggests to understand "ulge" as "an act of a judicial body approved by the Supreme Court of the Republic of Kazakhstan, which can be used by participants in civil proceedings as arguments in support of their position, which the court should evaluate upon considering the case". "Ulge" can become an act of any judicial body at the level chosen as such by the Supreme Court. However, due to the potential possibility of legislative consolidation of the institution of "ulge", several questions arise: who, how, and by what criteria will select the judicial acts for the approval by the Supreme Court of the Republic of Kazakhstan? Why decisions of courts of any hierarchy can be included in the category of "ulge"? On what legal grounds should particular judicial decisions become "ulge"? (Konusova, & Abilova, 2018). Ye. A. Mukhanbediyev (2019) suggests a specific way to develop case law in Kazakhstan, and, consequently, to increase the importance of judicial interpretation upon the administration of justice. He wants to implement the legal practices of the People's Republic of China in the Republic of Kazakhstan, which concern the introduction and use of a special system of administration of case law — "Guiding Cases System". This project is an example of the introduction of a case law system into the traditionally Romano-Germanic system of law in China.

It all started when on November 26, 2010, the Supreme People's Court of the People's Republic of China (hereinafter referred to as "the SPC PRC") adopted the document "Provisions of the Supreme People's Court Concerning Work on Case Guidance" (hereinafter referred to as "the Provisions"). These Provisions contain only 9 Articles, but they are of fundamental importance for the introduction and application of a special system of case law enforcement in China. The Guiding Cases System was developed for the implementation of several goals: to generalise the experience of interpreting legal norms, to unify law enforcement, and to ensure fair justice. The Guiding Cases System allows the SPC PRC to select court cases that are given a guiding precedent value. These decisions will then be used for subsequent law enforcement in Chinese courts in similar court cases, that is, they become model court decisions (Gechlik, 2016). From the legislative standpoint, model court decisions are not included in the Chinese legal system, but in fact have binding force for subordinate courts. Article 7 of the Provisions stipulates that courts, when administering justice in similar cases, must refer to model court cases published by the SPC PRC.

The introduction of such innovations into the legal system, a scientific dispute naturally arose concerning the presence of the universally binding property in these model court decisions. To resolve this issue, the document "Detailed Implementing Rules on the “Provisions of the Supreme People's Court Concerning Work on Case Guidance" (hereinafter referred to as "the Detailed Provisions") was adopted. These Detailed Provisions did not change the legal status of model court decisions, but they provided more detailed guidance and clarification regarding case law enforcement (Feng, Guangxia, & Bing, 2015). Thus, the Guiding Cases System of China's case law enforcement system comprises Guiding Cases selected from all court cases. Article 2 of the Provisions lists criteria that judicial decisions must meet to become guiding. They must have legal force, attract considerable public interest, have a typical legal nature, as well as a complex, sophisticated nature, or constitute a court decision of a new type. Furthermore, the legal opinions expressed in the court decision should be relatively general and typical. Therefore, it can be concluded that to increase the importance of the interpretation of the law produced by the courts, it is possible to introduce case law in Kazakhstan according either to the "ulge" system or to the Guiding Cases System.

Conclusions

This study underscores the paramount importance of accurately interpreting the intent of legislators as articulated in legal norms, emphasizing the safeguarding of individuals' rights and freedoms. Critical attention is necessary for establishing clear rules of interpretation and delineating the authority of entities empowered to undertake this task. Our investigation reveals a plethora of interpretation types, methodologies, and agents, each contributing to the unique nature of individual interpretation instances. Analysis of Kazakhstan's Constitution and the Law No. 480-V "On Legal Acts" indicates the presence of a legislative framework supporting legal norm interpretation, albeit requiring revisions to address existing gaps and inconsistencies.

Specifically, the Law No. 480-V "On Legal Acts" should be amended to include the Supreme Court of the Republic of Kazakhstan among the entities authorized to issue official regulation clarifications. Additionally, Article 81 of the Constitution requires enhancement to enforce the universally binding nature of the Supreme Court's explanations regarding judicial practice. The potential introduction of a case law system into the Kazakh legal landscape, mirroring the Chinese model, could facilitate the harmonization in interpreting and applying legal norms, particularly in cases where current regulations addressing similar issues yield conflicting semantics. This new institution would aid in resolving

ambiguities and ensuring consistent law enforcement across contentious situations.

Moreover, there's an evident need for enacting detailed procedural and methodological guidelines for legal interpretation to prevent the Supreme Court of Kazakhstan from misinterpreting laws in ways that deviate from their intended statutory meaning. Enhancing the legislative framework governing legal norm interpretation is imperative for bolstering its efficacy and ensuring the administration of justice within the criminology realm. This study's findings advocate for a more comprehensive legislative approach to norm interpretation, aimed at refining its contribution to criminal justice processes and outcomes.

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