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METHODOLOGY FOR THE LEGISLATIVE APPLICATION OF EVALUATIVE CATEGORIES IN CRIMINAL LAW

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ABSTRACT

Objective: The study of evaluation categories by establishing the limits and degree of the evaluation category and their regulation in the legislation.

Theoretical framework: Theoretical materials were based on international scientific publications, reports, scientific papers. And also for a more complete and objective presentation of the problem under study, practical materials of criminal cases were used.

Method: constitutes a dialectical method of cognition of general patterns and particular manifestations of the essence of the phenomena of objective reality. The comparative legal method made it possible to qualitatively study foreign criminal legislation in terms of regulation of evaluative categories and formulate a conclusion in relation to domestic practice of regulation and application. The system-structural method of cognition was used in the study of methods for regulating evaluative categories in criminal law and methods for their interpretation, as well as specific sociological and statistical methods.

Results and conclusion: The methodology of regulation of evaluation categories in the criminal legislation of Kazakhstan is reduced to fixing the concepts of evaluation categories in the main ways. The first is a norm that explains the basic concepts used in the legislation. The second is the regulation of the concept of a specific evaluation category in the disposition of the Special Part of the Criminal Code of the Republic of Kazakhstan, when this evaluation category is applied once.

Originality/value: The phenomenon of evaluative categories in law is explained by the functions of law and the properties of evaluative categories used in law. At the same time, the main function of law is to consolidate a certain model of relations or behavior of individuals. And the more precisely this model is fixed in the rule of law, the more likely it is to be rigorously and uniformly interpreted and applied. Evaluation categories, on the other hand, imply an assessment in each specific case of the circumstances affecting the application of this norm,

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i.e. such rules may be applied in different ways. These diametrically opposed vectors form the value of the presented research.

Keywords: evaluation categories, criminal legislation, legal norm, act, object, justice.

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METODOLOGIA PARA A APLICAÇÃO LEGISLATIVA DE CATEGORIAS DE AVALIAÇÃO NO DIREITO PENAL

RESUMO

Objetivo: O estudo das categorias de avaliação estabelecendo os limites e o grau da categoria de avaliação e sua regulamentação na legislação.

Estrutura teórica: Os materiais teóricos foram baseados em publicações científicas internacionais, relatórios, artigos científicos. E também para uma apresentação mais completa e objetiva do problema em estudo, foram utilizados materiais práticos de processos criminais.

Método: constitui um método dialético de cognição de padrões gerais e manifestações particulares da essência dos fenômenos da realidade objetiva. O método jurídico comparativo permitiu estudar qualitativamente a legislação penal estrangeira em termos de regulamentação de categorias avaliativas e formular uma conclusão em relação à prática nacional de regulação e aplicação. O método sistema-estrutural de cognição foi utilizado no estudo de métodos para a regulação de categorias avaliativas no direito penal e métodos para sua interpretação, bem como métodos sociológicos e estatísticos específicos.

Resultados e conclusão: A metodologia de regulamentação das categorias de avaliação na legislação penal do Cazaquistão é reduzida à fixação dos conceitos das categorias de avaliação nas principais formas. A primeira é uma norma que explica os conceitos básicos utilizados na legislação. O segundo é a regulamentação do conceito de uma categoria de avaliação específica na disposição da Parte Especial do Código Penal da República do Cazaquistão, quando esta categoria de avaliação é aplicada uma vez.

Originalidade/valor: O fenômeno das categorias avaliativas na lei é explicado pelas funções da lei e as propriedades das categorias avaliativas usadas na lei. Ao mesmo tempo, a principal função do direito é consolidar um certo modelo de relações ou comportamento dos indivíduos. E quanto mais precisamente este modelo estiver fixado no Estado de direito, maior será a probabilidade de ser interpretado e aplicado com rigor e uniformidade. Por outro lado, as categorias de avaliação implicam uma avaliação, em cada caso específico, das circunstâncias que afetam a aplicação desta norma, ou seja, essas regras podem ser aplicadas de diferentes formas. Esses vetores diametralmente opostos formam o valor da pesquisa apresentada.

Palavras-chave: categorias de avaliação, legislação criminal, norma jurídica, ato, objeto, justiça.

1 INTRODUCTION

Along with the accuracy of legal norms, each legislative norm must correspond to the property of universality, which ensures its repeated application to an unlimited number of facts. Thus, the legal norm implements its own regulatory function. In order

to ensure this property and fulfill its function by a legal norm, the legislator in some cases resorts to the use of evaluative categories in the text, which allow the law enforcer to apply this norm based on the assessment of a specific legal fact.

Evaluative categories are lexical units that characterize the qualitative or quantitative features of a particular object or phenomenon. In criminal law, in our understanding, evaluative categories are lexical units (words) that characterize a phenomenon, act or object, the qualitative or quantitative value of which can only be determined based on the circumstances of the committed criminal act.

The study of various author's definitions of evaluation categories also allowed us to determine the features of evaluation categories. So, in our opinion, the identifying features of the evaluation categories are:

- the presence in the text of the norm of the code;
- the broad content of the term used;
- lack of exhaustive legislative interpretation;
- lack of measurement scale;
- situational (casual) assessment.

The findings obtained in the course of the study allowed us to assume that evaluative categories in criminal law are concepts (lexical units) used in the construction of the norms of the Criminal Code that do not have an exhaustive legislative interpretation and measurement scale, the legal meaning of which can only be determined in conjunction with internal unity disposition and external circumstances of the emergence of criminal law relations.

2 LITERATURE REVIEW

The current pace of globalization taking place in the world entails integration processes in almost all states. These processes include the introduction and implementation in our country of elements of culture, education, medicine, management methods, including the norms of legislation.

The Kazakh legislator, following global trends in respect for human rights and the administration of justice, observes generally recognized canons and implements individual institutions in its own legal acts and takes into account international standards in the field of ensuring human rights.

In this regard, for this study, the experience of international legislation on the application of evaluation categories in criminal laws and the methods of interpretation used are of interest.

The system of English law is one of the most mature, and the sources of such an area as criminal law are statutes, precedents, international acts, comments of reputable scientists, etc.

Thus, the English legislator has formed such a legal institution as the interpretation of statutes, which has its own classification. There are three ways of interpretation.

The first is "literal", which is not really an interpretation, since the terms used and the words of the law are interpreted literally. But still there is one condition: if the interpretation leads the conclusion to absurdity, then such a rule does not apply.

The following type of interpretation is referred to as the "golden rule", which applies when multiple literal interpretations are used in a statute. In applying the golden rule, courts should be guided by the application of an interpretation capable of consistently leading to a logical conclusion.

The third mode of interpretation by the English courts is defined as "correcting evil". Its essence lies in the fact that evaluative categories as lexical units contained in the norm of the law, although they have their own literal interpretation, their meaning should be evaluated in conjunction with the entire text of the norm. Sometimes the meaning of one single word can change significantly when used together with other words (Walker, 1970).

The next example of the use of evaluative categories in English criminal law is the concept of "significant contribution" (Edward, 1961) in the qualification of murder. In other words, when determining responsibility for causing death, the courts must take into account not only the existence of a causal relationship between the actions of the perpetrator and the onset of death, but also the degree of influence of these actions on the cause of death.

By contrast, a different precedent is shown in 1908, when a certain Dyson (Herring, 2002) was found guilty of attempted murder for attempting to poison his father, despite the fact that the latter's cause of death was a heart attack.

The severity of harm to a person has also become an evaluation category in the criminal law of England. One of the authoritative jurists, William Blackstone, commenting on English laws, stated: “The law cannot draw a line dividing the different

degrees of violence and therefore prohibits the very first and smallest degree of it, since every human being is sacred and no one has the right to touch him even in the most delicate manner." Thus, English criminal law, without dividing the degree of harm, defined this unlawful act as an attack. In an effort to evade the assessment of the degree of harm, English lawmakers led to the fact that even a simple touch can be qualified as an attack, provided it is hostile. Thus, they gave rise to a new condition - the assessment of hostility (Blackstone, 2016).

Wieczorek I.(2023) in his study, he provides a rationale for the actions of the EU in the field of criminal justice. The EU is increasingly regulating the areas of non-cross-border crime, as evidenced by the form and implementation of the power to harmonize crime definitions. And the Court has unambiguously extended the application of EU criminal law, both substantive and procedural, to domestic cases. Also Jannemieke W. (2023) noted that since the establishment of EU competence in the field of enacting laws in criminal matters, legal science has paid considerable attention to the scope of these powers, as well as their proper implementation. This has led to numerous scientific contributions to the creation of a commendable body of knowledge on the subject at hand.

Although the place of EU criminal law in European construction has now become undeniable, historically it was far from obvious. Two different motives can be distinguished in its origin and development: a functional one, aimed at using the tools of criminal law to solve specific problems of cross-border crime, generated or reinforced by the progress of EU integration in other areas, and a constitutional one, implying the use of criminal law also to further strengthen respect and promote common values of the EU. While the first rationale was dominant from the start, the second emerged only gradually. For the sake of efficiency, legitimacy and mutual trust, both justifications should equally stimulate the further development of EU criminal law (Monar, 2022).

The main part of European countries belongs to the family of continental law and the French criminal code is the closest to the Kazakh criminal legislation, which will be the object of our further study of the positive experience of using evaluation categories in foreign legislation.

The French legislator in his national Criminal Code in Art. 111-4 consolidated the constitutional principle of strict interpretation of legislation (Code Penal). The essence of this principle means that the norms of criminal law cannot be interpreted broadly. Thus,

the French Court of Cassation has developed several recommendations for judges in cases where they find ambiguity in the criminal law:

- Eliminate ambiguity as far as possible;
- in case of an obvious editorial error, correct it;
- using other means to determine the actual meaning of the norm;
- terminate the criminal case if the judge experiences an insurmountable difficulty in establishing the actual meaning of the norm.

In addition, French criminal law allows for a broad interpretation of the norms of the law, containing favorable conditions for the accused, when situations could not be provided for in the norm due to technical progress.

Another prominent representative of continental law is the German legislator. The German Penal Code is valid throughout the state. At the same time, in their legislation there is such a thing as additional criminal law, which includes various laws containing various prescriptions of a criminal law nature. At the same time, the system of criminal law in Germany imposes a peculiarity and a federal structure, and therefore the legislation can differ significantly depending on the lands (German Criminal Code).

Another institution of criminal law in Germany, containing evaluative features, is the appointment of punishment. Thus, the system of punishments of German criminal law contains such a type of punishment as preventive detention, which, in accordance with paragraph 66 of the Criminal Code of the Federal Republic of Germany, is imposed if there is a negative prognosis for the correction of the convict, if there are signs of his potential danger to society. A negative prognosis, in which a preventive detention is assigned, is carried out on the basis of studying, first of all, the committed act, the personality of the convicted person, his biography, characteristics and intelligence, as well as on the basis of other characterizing data.

It contains evaluation categories and the Italian Criminal Code, and the first unique feature should be recognized that it uses elements of objective imputation. This approach is manifested in the establishment of responsibility, in Kazakh terminology, with a complex form of guilt. This form of guilt is called by the Italian legislator pretentionality and is enshrined in Part 2 of Art. 43 of the Italian Criminal Code. The criminal code of this country contains only two provisions in which preterintentionality is presented in its pure form: these are preterintentional murder and abortion. In the first case, death is assumed after beating or bodily harm to a person, and in the second case,

an unwanted termination of pregnancy as a result of beating or bodily harm to a person (Pisani, 1997).

Similarly, a similar institution is contained in the Kazakh legislation in Art. 22 of the Criminal Code of the Republic of Kazakhstan, which establishes the conditions for the onset of liability for criminal offenses committed with a double form of guilt, where the perpetrator wants to commit criminal acts, and the onset of criminal consequences does not want, but must foresee the possibility of their occurrence.

The criminal legislation of the countries of the Anglo-Saxon legal family (USA, England) is distinguished by its case-based method of legal assessment of illegal acts. This circumstance has left its mark on the use of evaluative categories in criminal law, since the nature of the formation of a precedent originates from a specific event and its legal assessment. Similarly, the application and interpretation of scoring categories is guided by established precedent, or the court can evaluate each category on a case-by-case basis, not limited to the prescriptions of precedent. Such conditions have formed non-mandatory requirements for the use of evaluative categories in criminal law, thereby providing the court with wide opportunities and powers for their situational interpretation and application.

Thus, according to the results of the analysis of American legislation at the federal level in relation to the research topic, the fixed mechanism for sentencing caused the greatest interest. The “Federal Sentencing Guidelines” (Guidelines Manual) establish a mechanism for assessing the danger of a crime and calculating punishment. This mechanism seems to be quite complex and at the same time thorough in terms of evaluation categories. Designated guidelines establish 43 levels of crime severity. Moreover, each crime has its own statutory index of the act. The named index is, in the terminology of our legislator, an initial assessment of the degree of danger.

The issue under study is extensively studied by scientists, some of them lead an evidence-based approach to making decisions on several grounds under uncertainty (Yang and Singh, 1994; Ye et al. 2018; Verheij, 2017), others offer arguments, scenarios and probabilities: links between three normative frameworks for evidence-based argumentation (Verheij et al., 2016; Rodríguez et al., 2023).

3 MATERIALS AND METHODS

The current Criminal Code of the Republic of Kazakhstan (hereinafter referred to as the Criminal Code of the Republic of Kazakhstan) in Article 1 determined that the criminal legislation is determined only by the norms of this code. Any norms of a criminal law nature will be considered norms of criminal law only after their regulation in the Criminal Code of the Republic of Kazakhstan. Meanwhile, when applying the norms of the Criminal Code of the Republic of Kazakhstan, law enforcers use various sources of interpretation of their norms. So, according to our survey, when explaining and interpreting the evaluation categories, the respondents used:

- Criminal Code of the Republic of Kazakhstan - 63.1%;
- normative resolutions of the Supreme Court of the Republic of Kazakhstan (hereinafter referred to as NPVS RK) - 68.1%;
- scientific and practical comments - 37.6%;
- personal experience - 27%;
- international conventions and other legal acts - 6.3%.

The current Criminal Code of the Republic of Kazakhstan of 2014 differs from the previous ones in that the legislator introduced Article 3 with an explanation of the basic concepts used in the code. Thus, the legislator made an attempt to clearly regulate the interpretation of certain concepts, including evaluation categories, which are used in the texts of the criminal law norms. At the same time, it should be taken into account that the provisions of the General Part of the Criminal Code of the Republic of Kazakhstan apply to the norms of the Special Part of the Criminal Code of the Republic of Kazakhstan, where the elements of specific criminal acts are fixed.

Among the evaluation categories that are general and have their wide distribution in the norms of the Criminal Code of the Republic of Kazakhstan, it is necessary to include “serious consequences”, under which, in accordance with paragraph 4 of Art. 3 of the Criminal Code of the Republic of Kazakhstan, a certain list of consequences is understood when they are not indicated as a sign of a criminal offense in the Special Part of the Criminal Code of the Republic of Kazakhstan.

At the same time, the list of grave consequences is not limited to the listing in paragraph 4 of Art. 3 of the Criminal Code, but finds its extended interpretation in the clarifications of the Supreme Court. Thus, the NPVS of the Republic of Kazakhstan No. 3 of December 13, 2013 “On the application in criminal proceedings of certain norms of

legislation regulating the protection of state secrets" in relation to certain elements of criminal offenses (Articles 185, 186, 458 of the Criminal Code of the Republic of Kazakhstan) also refers to the number of serious consequences and "the transfer of information into the possession of foreign intelligence services, terrorist and extremist organizations or organized criminal groups, damage to the foreign policy interests or national security of the Republic of Kazakhstan, disruption as a result of criminal actions of the global scientific research program, government events and international negotiations, redeployment of a sensitive facility, death, causing serious bodily harm or arrest of employees of law enforcement and special state bodies, persons providing (provided) confidential assistance to these bodies, as well as members of their families, etc."

A similar assessment category "significant harm" is also enshrined in the form of a listing of socially dangerous consequences in paragraph 14 of article 3 of the Criminal Code of the Republic of Kazakhstan. For 29.8% of the respondents we interviewed, the interpretation of this evaluation category is difficult.

When interpreting this assessment category, the legislator also did not limit himself to the norms of the Criminal Code of the Republic of Kazakhstan. Separate clarifications of the Supreme Court of the Republic of Kazakhstan indicate that when determining the materiality of harm from extortion, both the subjective assessment of the harm caused to him and other facts indicating the physical or moral suffering of the victim from the threat of dissemination of discrediting information should be taken into account.

At the same time, the legislator attributed significant damage to the number of consequences of significant harm, which, in turn, in accordance with paragraph 2 of Art. 3 is measured in monetary terms and in relation to a fixed list of criminal offenses. In turn, 22.7% of the respondents surveyed by us consider this term difficult to apply and interpret. On this basis, we consider it necessary to exclude the term "significant damage" from the list enshrined in paragraph 14 of Art. 3 of the Criminal Code of the Republic of Kazakhstan.

It should be stated that all types of harm, as socially dangerous consequences of a criminal offense, enshrined in the discussed paragraph 14 of Art. 3 of the Criminal Code of the Republic of Kazakhstan, entail criminal liability.

Based on these considerations, we come to the conclusion that the consequences listed in paragraph 14 of Art. 3 of the Criminal Code of the Republic of Kazakhstan, are

not assessed by the law enforcer at the level of materiality or the absence of such a property, but simply the actual presence of the ensuing consequences in this list is established.

Thus, in order to minimize the use of evaluative categories in the norms of criminal law, it is necessary to abandon the word “significant” and use “other criminal” when characterizing harm as a constructive element of a criminal offense and make appropriate changes to the relevant norms of the Criminal Code of the Republic of Kazakhstan.

Moreover, among the two types of socially dangerous consequences enshrined in paragraphs 4) and 14) of Article 3 of the Criminal Code of the Republic of Kazakhstan, there are respectively two homogeneous assessment categories, namely “long-term decrease” and “short-term decrease” in the level of combat readiness and combat capability of military units and divisions. At the same time, 21.3% of the lawyers we interviewed experience difficulties in using criminal law norms containing these evaluation categories.

Among the norms designed to provide an explanation for some criminal law concepts, namely in paragraph 18) of Art. 3 of the Criminal Code of the Republic of Kazakhstan, the term "strict discipline" is used when defining the concept of "illegal paramilitary formation" and the use of this assessment category is difficult for 16.3% of law enforcement officers surveyed

The content of this term indicates its evaluative component, since neither in criminal law nor in sectoral military regulations there is a fixed methodology for assessing the severity of discipline. In general, discipline is ensured by the establishment of certain rules of conduct and responsibility for their violation, as evidenced by the established disciplinary type of responsibility.

In turn, in accordance with Article 1 of the Disciplinary Charter of the Armed Forces and other military formations, “military discipline is the strict and precise observance by military personnel of the rules established by laws, general military charters, other regulatory legal acts and orders (orders) of commanders (chiefs).” Responsibility is called one of the elements of discipline. Based on this definition, it is possible to single out certain signs of discipline, to which we attribute hierarchy, the existence of a set of rules and responsibility for their violation.

At the same time, the analysis of the norms of the Criminal Code of the Republic of Kazakhstan made it possible to establish that the legislator used the indication of the legal significance of the discipline only once. If the code would have an indication of different types of disciplines, for example, weak or hard, then it would be possible to differentiate it according to certain criteria. But the legislator once regulated the criminal-legal meaning of the discipline, applying the rigidity property to it. At the same time, this type of discipline applies and applies only to participants in this formation and is an internal rule. In the absence of other types of discipline, as a criminal law feature, we consider it unnecessary to indicate the property of rigidity, which creates more the need to establish the properties of the discipline than its presence. We believe that already the existence of rules establishing a certain internal discipline and responsibility for its violation in an illegal military formation, together with other signs, is sufficient to recognize it as such.

Based on the foregoing, we propose to abandon the property of rigidity when establishing the discipline of an illegal military formation and make appropriate changes and state paragraph 18) of Art. 3 of the Criminal Code of the Republic of Kazakhstan in the following wording: “an illegal paramilitary formation is a formation (association, detachment, squad or other group consisting of three or more people) not provided for by the legislation of the Republic of Kazakhstan, having an organizational structure of a paramilitary type, possessing unity of command, combat capability, internal discipline”.

The next way for the legislator to apply evaluation categories in the criminal law is their regulation in the Special Part of the Criminal Code of the Republic of Kazakhstan, where specific elements of criminal acts are fixed, some examples of which we will consider below.

Thus, the first composition of a criminal offense, the regulation of which contains an evaluation category, is enshrined in Art. 105 of the Criminal Code of the Republic of Kazakhstan "Incitement to suicide", which means bringing a person to suicide or attempted suicide by means of threats, cruel treatment or systematic humiliation of the victim's human dignity.

In recent years, the number of suicides committed in the country has remained consistently high, and in 2019, in terms of suicides among young people, Kazakhstan generally became the third in the world. In turn, the legal statistics of the Committee of Legal Statistics under the GP RK on the facts of incitement to suicide confirms our

hypothesis about the complex process of qualifying this act, provided for in Art. 105 of the Criminal Code of the Republic of Kazakhstan. Thus, under this article, from 400 to 553 criminal cases are registered annually, and no more than 2% are sent to court. So, in 2017, only 1% of criminal cases were sent to court to bring the perpetrator to justice, in 2018 - 1.5%, in 2019 and 2020 - 1.6%, in 2021 - 1%, and in 2022 – 0.5% (Committee of Legal Statistics).

As in the title of the article, so in the disposition contains the term "finishing", which we refer to the evaluation categories. Meanwhile, the legislator partially fixes the content of this term and defines the signs of the objective side of this criminally punishable act. So, according to the opinion of the legislator, bringing is manifested in such actions as the first - threats; the second is ill-treatment and the third is the systematic humiliation of the victim's human dignity.

The opinions of scientists are also inclined to the point of view that bringing is expressed in ways: threats, ill-treatment, systematic humiliation.

Based on the disposition of the considered Art. 105 of the Criminal Code of the Republic of Kazakhstan, one gets the impression that all these methods of committing this act are aimed at the suicide of the victim, since the term “bringing” suggests leading somewhere or to something. Meanwhile, the goal in this composition is not its constructive element and does not affect the qualification of the act. In this composition, suicide or attempted suicide is not the purpose of the act, but, if there is a causal relationship, the consequences of such actions as threats, ill-treatment or systematic humiliation of the victim's human dignity.

More obviously and acceptable for interpretation, without creating an evaluation category, the term "bringing" is used by the legislator in Art. 239 of the Criminal Code of the Republic of Kazakhstan "Bringing to insolvency". Despite the content in the title of the article, the word “bringing” is not used in the construction of this composition, but, on the contrary, is disclosed. Thus, the disposition lists such signs of the objective side as concealment, destruction and falsification, and the insolvency itself is fixed as a consequence, thus forming the material composition of this criminally punishable act.

A similar approach should be applied to the composition of incitement to suicide. We consider it appropriate not to use the word "bringing" in the very disposition of Art. 105 of the Criminal Code of the Republic of Kazakhstan, and leave only in the name. Suicide or an attempt on it, we consider it necessary to fix it as a criminal consequence.

4 RESULTS

Based on the foregoing, we propose an alternative to the current disposition of Art. 105 of the Criminal Code of the Republic of Kazakhstan and we consider it necessary to fix it in the following wording: “Threats, ill-treatment or systematic humiliation of the human dignity of the victim, which led to his suicide or attempted suicide, including by negligence.”

Another striking example of the evaluative categories used by the legislator in the Special Part of the Criminal Code of the Republic of Kazakhstan are such close to each other terms as "cruel treatment" and "special cruelty". At the same time, both of these categories are widely used in the Criminal Code of the Republic of Kazakhstan, which we have shown in the table below (Table 1).

Table 1 - Normative arrangement of the evaluation categories "cruel treatment" and "special cruelty"

Cruel treatment	Special cruelty
Part 3 Article 9 Extradition Extradition of persons who have committed a criminal offense	Clause 5, Part 2, Article 99 Murder
Clause 9, Part 1, Article 54 Circumstances aggravating liability	Clause 4, Part 2, Article 106 Intentional infliction of grievous bodily harm
part 1 of Art. 105 Driving to suicide	Clause 2, Part 2, Article 120. Rape
part 2 of article 140. Failure to fulfill the obligations of raising a minor	Clause 2, Part 2, Article 121. Violent acts of a sexual nature
Part 1 of Article 163. Use of Prohibited Means and Methods of Warfare	
Clause 3, Part 2, Article 107. Intentional infliction of moderate harm to health	
Article 313. Illegal distribution of works promoting the cult of cruelty and violence	
part 1 of article 316. Cruelty to animals	
Part 3, Clause 3, Article 380. Use of violence against a representative of authority	
Clause 4, Part 2, Article 380-1. Encroachment on the life of a law enforcement officer, a special state body, a military man, a state inspector for the protection of wildlife, an inspector of a specialized organization for the protection of wildlife, a huntsman	
Clause 3, Part 3, Article 380-2. The use of violence against a state inspector for the protection of wildlife, an inspector of a specialized organization for the protection of wildlife, a huntsman	

Source: compiled by authors

Despite the same root content of cruel (treatment) and cruelty (special), the legislator applied them in the norms of the code in different ways. In both of the evaluation categories described, the key is the cruelty that is legally applied in relation to treatment or its own peculiarity. As can be seen from the table brought to your attention, these terms once found their regulation in the norms of the General Part, and in other

cases they are fixed in specific elements of criminal offenses. An analysis of these acts showed that there are patterns in the object of encroachment. Thus, the assessment category "special cruelty" is used only in those compositions where the direct object of the encroachment is the life and health of a person.

In turn, the evaluative category "ill-treatment" is found in the regulation of only five compositions of criminally punishable acts with different direct objects of encroachment: human life (part 1 of article 105); the rights of a minor (part 2 of article 140); life and health (part 1 of article 163); morality of the population (art. 313); humanity towards animals (part 1 of article 316).

With the existing difference in the objects of encroachment, the listed elements of criminal offenses, in which such evaluative categories as “cruel treatment” and “special cruelty” are used, are united by causing harm to a person (or animal), his life, health, morality, humanity and education.

Despite the already long-standing presence in the code of the assessment category “ill-treatment”, it still seems difficult to interpret and apply 14.9% of respondents.

In criminal law, the term "conversion" is applied both to things of the material world (inanimate) and to animate objects. If the handling of inanimate objects is storage, transportation, marketing, etc., then these characteristics are not applicable to animate objects. The appeal of people to each other is based on the universally recognized principles of humanity, mutual respect, morality and ethics. In this regard, there are no clear criteria for assessing the cruelty of treatment, and it is impossible to fix them.

At the same time, attention should be paid to the comparative analysis between the discussed evaluation categories. So, in criminal law, ill-treatment should be understood as repeatedly repeated, systematic and lasting actions (and even inaction) with an object or over an object of influence.

In turn, special cruelty is a one-time act or several actions aimed at a criminal result. Comparative analysis also shows us the effectiveness of actions. Since repetition is inherent in "cruel treatment", a single commission of actions that form a criminal "super result" must be attributed to "special cruelty". If any criminal offense can be called cruel, then the property of special cruelty testifies to the awareness by the guilty person of redundancy to achieve the criminal goal, which is how we explain the “super result”.

Some authors have singled out a medical criterion of particular cruelty based on measuring the intensity and duration of pain through the achievement of medicine. But

the forms of manifestation of special cruelty are not limited to physical pain, it can also manifest itself in causing mental suffering to other persons (for example, killing a parent in front of a child, etc.). In this regard, the attempts made to propose methods of metric measurements of the category "special cruelty", as well as "cruel treatment", it is not possible to exclude them from the number of evaluations.

The theoretical views of individual authors express the point of view that the term "special cruelty" covers such concepts as torment, sadism, torture, torment, etc. and propose to regulate this statement in a note to the relevant articles of the criminal law. Other authors have a different view and recommend fixing the explanation of special cruelty in a separate decision of the Supreme Court, since excessive detail will not allow observing the casuistry of the application of the norm and its universality is lost.

Taking into account the point of view that the term "special cruelty" is a broad term and that it can be revealed in various features that have both an independent and generalized meaning, we propose to amend the norms of Kazakhstani criminal legislation on the regulation of the term "special cruelty".

Based on the foregoing, we believe it is possible to supplement Article 3 of the Criminal Code of the Republic of Kazakhstan with the following paragraph: “special cruelty - the intentional infliction of mental or physical suffering, the manifestation of sadism or bullying against the victims or their loved ones, when these signs are not indicated as a sign of a criminal offense provided for by this Code".

5 CONCLUSION

The analysis carried out in this study showed that the Kazakh legislator uses various methods of regulation of evaluation categories in the criminal sphere. At the same time, the results of the survey of respondents allow us to identify several sources of interpretation by law enforcement officers of the evaluation categories, the main of which were: regulation of the interpretation of evaluation categories in Article 3 of the Criminal Code of the Republic of Kazakhstan - 44.8%; clarification of assessment categories in the normative resolutions of the Supreme Court of the Republic of Kazakhstan - 32.8%; consolidation of the concepts of evaluation categories in the notes to the relevant articles of the Special Part of the Criminal Code of the Republic of Kazakhstan - 19.4%; among the rest of the opinions, scientific commentaries were named. Along with this, 73% of

respondents expressed an opinion on the need to transfer all terms from the NSAIDs of the Republic of Kazakhstan to Art. 3 of the Criminal Code of the Republic of Kazakhstan.

The content of the evaluation category is determined by setting the limits and degree of the evaluation category. At the same time, we refer to the limits of the evaluation category as qualitative characteristics, which are expressed in fixing the category in a specific norm of the criminal law. Depending on the place of normative regulation of the evaluation category, its content may differ. For example, the evaluative category “ill-treatment” is interpreted differently depending on the way it is enshrined in Art. 163 of the Criminal Code of the Republic of Kazakhstan "Use of prohibited means and methods of warfare" or Art. 316 of the Criminal Code of the Republic of Kazakhstan "Cruelty with animals". Thus, the qualitative characteristic of the evaluation category is determined by the scope of its legal significance, limited by the very norm of the criminal law.

In turn, quantitative characteristics determine the degree of manifestation or value of the evaluation category contained in the criminal law norm or in the committed criminal act. For example, when qualifying an act under Art. 293 of the Criminal Code of the Republic of Kazakhstan “Hooliganism”, a quantitative characteristic should be considered an assessment of the category of a particularly daring violation. The degree of peculiarity of audacity in this case is estimated by obvious disrespect. At the same time, for the qualification of an act, the multiplicity of the degree does not matter. Important is the presence of impudence and obvious disrespect, while the latter characterize the degree of violation of public order. Similarly, for a criminal offense committed in a state of passion (Article 101 or 111 of the Criminal Code of the Republic of Kazakhstan), where the degree of emotional excitement matters before its strong manifestation.

The next constructive element of the methodology for interpreting and applying criminal law norms containing evaluation categories should be considered the unity of quantitative and qualitative characteristics of the evaluation category, its limits and degree. Extrapolation of the degree beyond the estimated category is unacceptable in the interpretation and application of criminal law norms with evaluation categories. So, if keeping a person on a chain and in a booth is recognized as cruel treatment or special cruelty, then similar treatment of a domestic animal, for example, a dog, is considered absolutely permissible.

As a result, the methodology of regulation of evaluation categories in the criminal legislation of Kazakhstan is reduced to fixing the concepts of evaluation categories in three main ways.

The first method is defined by the novel of the Criminal Code of the Republic of Kazakhstan in 2014, where for the first time a norm was introduced that explains the basic concepts used in the Code (Article 3 of the Criminal Code of the Republic of Kazakhstan). This method is applicable to evaluation categories that are used repeatedly in the Special Part of the Criminal Code of the Republic of Kazakhstan in determining the composition of criminal offenses and have the same meaning.

The second method is to regulate the concept of a specific assessment category in the disposition of the Special Part of the Criminal Code of the Republic of Kazakhstan, when this assessment category is applied once. In cases where, according to legal technique, it is not possible to fix the concept of an evaluation category in the disposition of the article itself, the legislator fixes this concept in a footnote to the same article.

The third method is presented by the clarifications of the Supreme Court of the Republic of Kazakhstan in the form of Resolutions on the application of certain norms of the criminal law, including those containing evaluation categories. However, on the basis of theoretical and empirical analysis, we came to the conclusion that this method is inconsistent in view of the fact that only those included in the Criminal Code of the Republic of Kazakhstan can be recognized as the norms of criminal law.

Following the constitutional principle of declaring Kazakhstan a legal state, we consider it necessary to regulate all explanations of the concepts of evaluation categories in the articles of the Criminal Code of the Republic of Kazakhstan.

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