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## PROBLEM ASPECTS OF USE OF AUTOTECHNICAL (ROAD-TRANSPORT) EXPERTISE

**Abstract:** The author examines the law enforcement practice in the investigation of road accidents of the Law of the Kyrgyz Republic «On forensic activity» [1], the strengths and weaknesses of its system and structure. An individual characteristic feature of the accident investigation methodology is the need for many forensic examinations aimed at resolving the tasks of the investigation as a result of a constantly changing investigative situation. Since the problem of consistency or its absence within the structural components that form the interconnection of all traffic accident participants without exception is associated with a clear implementation of their practical actions, then in case of failure to function properly due to the lack of enforcement opportunities or the absence of appropriate competence, the investigator or expert has difficulties regarding accident investigation. Moreover, these problems have clearly expressed objective and subjective reasons.

**Key words:** forensic examination, investigation, problem, participants, competence of the investigator.

**Language:** English

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### Introduction

The author through analysis and logical conclusion concludes (containing the problem). That technical expertise does not have to be experts even with a high degree of competence, but not having an official status of «state expert» of the respective specialty of higher education, not owning the relevant examination techniques, and practice of their application and admission to the examination.

The author's analysis of the practical application of the provisions of the law «On judicial-expert activity» has established the fact that in the southern regions of Kyrgyzstan, Osh, Jalal-Abad currently has developed a problematic situation. In 40% of cases (100 of examinations) experts of the center of forensic examination do not possess the relevant powers or professional expertise in the resolution of issues put before them. But, despite this, conduct a scheduled examination, the conclusion, which in the future are challenged by lawyers on the basis of their procedure

of insolvency and evidence obtained in violation of procedural requirements.

The number of examinations, expert departments of internal Affairs of Jalal-Abad and Osh oblasts for 2018 - 2019. is 5067. While conducted autotechnical examinations - 189, investigative expertise - 62, of which 58 cases of outside experts for production of these examinations did not meet the requirements indicated by the law «On judicial expertise» and most importantly relevant professional competence. Which clearly confirms the previously submitted figures.

The author, examining the theoretical and practical challenges in the organization of investigation of accidents that occur at the investigator, body of inquiry, an expert for the appointment and autotechnical examinations associated with insufficient organization and planning of the investigation in the production of urgent investigative actions have identified the main ones

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which significantly complicate the course of the investigation:

- 1) the Surface inspection of the scene, the lack of timely permanent actions when inspection of the scene
- 2) Reverse vehicle inspection
- 3) A clear statement of the questions put to the expert of the investigators
- 4) Lack of understanding of the expertise of the
- 5) Lack of collected source material for forensic investigations.

The applicant notes that the extent and boundaries of the expert examination the expert avtotehnika to identify the causes and effects of the accident of their subjective and objective component depends only on the complex analysis of the events of the accident with the maximum use of scientific and applied knowledge. And the final conclusions of the investigation is the responsibility of the subject conducting the investigation and trial. The establishment of individual conditions and reasons for linking the accident with specific vehicles is the direct responsibility of the authorized expert and competent in the production of auto-technical expertise. This is due primarily to the necessity of application of special knowledge and professional authority. In the potential expert with relevant experience and expertise includes answers to questions about the impact of a particular subjective or objective conditions on the fact of accident, and most importantly determine the origin of the event.

The author claims in his study that the low quality of the roadway, it does not meet state standards for road maintenance and is the most common condition affecting the event of an accident.

For maximum accuracy in understanding all terms related to causes of accidents. Competent research and perform the necessary calculations using available advanced technologies and advanced scientific achievements. The examiner should maximize the use of the right, reasonable expert initiatives within the framework provided by the criminal procedural legislation and the law «On judicial-expert activity». When planning and organizing the investigation of accidents and crimes related to them the investigator must turn to the recommendations offered by forensic science in the context of technical and forensic support of the production of the investigation.

In theory of criminology has developed a huge theoretical and practical potential for the effective use of special knowledge in investigation of crimes related to the accident. In this case the author has in mind the use of a whole range of technical possibilities (road transport) examination based on related forensic science modern scientific knowledge. The investigator in the organization of investigation of accidents are constantly faced with technical issues concerning the technical characteristics of the transport features, degree of wear and possible

consequences associated with this wear. In order to answer these questions requires the use of special knowledge in almost all fields of science and technology, and this knowledge and their practical application to answer questions provide opportunities for special expertise. Who are competent in the field of not only law, but also psychology, physics, mathematics, medicine, construction, automotive. Modern advances in related science with forensic science knowledge is actively used in the various species, direction, and purpose of the auto-technical expertise. For the purpose of collecting, fixing and research necessary corollary of significant information for the case under investigation. Basic scientific knowledge in the field of operation of vehicles, physics, theory of strength of materials, medicine has formed a kind of special expertise as «technical expertise». We especially emphasize that this is the kind of scientific knowledge and research which is applied to criminology, and therefore is governed by the rules of criminal procedure and civil rights. G. P. Arinushkin on this issue in their research suggested that «the Totality of these Sciences is implemented with the methods of expert studies designed to improve the ability of expertise to improve the scientific validity of the conclusions of the expert-cars» [2].

The main purpose of autotechnical expert appraisal is the search for answers to questions arising in relation to the technical capabilities, characteristics, data, road transport is the subject of an accident. The author, based on his experience, offers to share the questions and answers that gives this kind of examination into the following groups:

- 1) The issues contributing to the elucidation of the mechanism of formation of traces accident;
  - a) The direction and speed of the vehicle, a pedestrian at the time of the situational road traffic events
  - b) Establishing possible causes of drift, and the conditions contributing to this
  - C) The possible objective and subjective reasons of the rollover of the vehicle
  - d) Identifying the causes and relationships, as car malfunction and directly fatal accident
  - d) Possible correlation of technical parameters with the subjective causes of accidents.
- 2) Matters relating to individual assessment of the actions of the driver directly in the context of compliance with traffic regulations.
  - a) Logic of sequence of actions of the driver of the car to prevent accident and its consequences
  - b) Psycho-physiological condition of the driver and the possible impact of this condition on the event of an accident
  - C) The seniority and level of professional competence the driver of the vehicle

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g) The state of the engineering and traffic communications and their possible impact on the fact of the event of an accident.

3) Questions about the possible causes and effects in the context of actions of participants dorozhno-transport incident and the ensuing events and consequences.

In his scientific work of Gordeeva A. K. exploring the same questions, their findings confirm the correctness of the position of the author regarding the significance and prospects «transportation» expertise. «Currently created theoretical foundations of this branch of knowledge that enables its further development in the development of new methods for improving the technical question of the ability to prevent a driver of the vehicle collision (the collision) by emergency braking» [3].

The modern theory of criminology has developed considerable experience in investigative practice techniques intended to identify potential opportunities for making a detour through the maneuver stationary obstacles. Using situational simulation, which developed expert program.

It should be noted that while not intense work is underway in the field of psychophysiology of the driver to determine the temporal parameters of the driver in various stressful situations in a traffic accident. Recent work in this direction was carried out by the staff of VNIISI of the Russian Federation, Suvorov Y. T., Gordeeva A. K., Konstantinova N. L. [4]. In the Soviet Union prior to 1988, the driver's reaction time was taken to be equal to 0.8 sec. that is not consistent with actual physiological data of the driver in various situations. The scientific and methodical Council on judicial autotechnical examination, VNIISI from January 1, 1988, the USSR had introduced the differentiated experimental and calculated values of the reaction time of the driver [5]. Based on the opinion of his colleagues, the author believes that the regular use of differentiated values with many probabilistic variables in the expert practice, in one case confirms the conclusions about the loyalty of such decisions in other cases States the need of the necessity of specification and clarification of the actual values. Since the use of different Based on the opinion of his colleagues, the author believes that the regular use of differentiated values with many probabilistic variables in the expert practice, in one case confirms the conclusions about the loyalty of such decisions in other cases States the need of the necessity of specification and clarification of the actual values. As the use of differentiated values of the absolute greatest probability of change in the reaction of the driver in the expert practice improvement in the reliability and objectivity itself autotechnical examination.

Multiple psychological tests and expert studies have concluded the fact that on an interim rate of

reaction of the driver of the vehicle is influenced by many factors:

1) The psychophysiological condition of the driver, experience, practical skills;

2) Designed the technical characteristics of transport, its technical condition, physical wear and tear;

3) Condition of road surface, total estimated road condition;

4) Status of engineering and technical communications;

5) Time of year, day, weather condition, a manifestation of human events.

In practical expert activity when conducting settlement indicators, experts tend to use averages to estimate the individual response of the driver of the vehicle. Of course, all agree with the fact that the data thus obtained may not correspond to the principle of absolute certainty and objectivity. During the expert evaluation of the presented indicators are important only to determine the likelihood or lack thereof to avoid making a collision with a pedestrian, collision with or by braking. But in practice, the courts and investigators, presented an expert opinion which are highly averaged and generalized indicators are perceived as sound scientific evidence, not subject to doubt and criticism. Meanwhile, the expert time estimates with respect to the reaction of the driver to operate a vehicle absent reasonable basic standards, and whether it is possible to develop such average standards, if all the people of the psychophysiological features of an organism is an individual. However, despite the fact that the rate of reaction speed «of the driver of» no corresponding GOST, a guideline of VNIISI of the USSR developed in 1988 and used in the EurAsEC member States, which may not have objective significance, since studies in this area were not carried out experimentally, but was calculated in the laboratory of the Institute. Given the characteristics of different road surfaces, road conditions, terrain, time of year, weather, etc. are based on the calculation of optimal driving conditions and the operation of motor vehicles. Modern discoveries and achievements in various branches of scientific knowledge used in forensics allow you to change the approach to use special knowledge during the investigation of the accident. Seems to be a promising the formation of private methods of expert analysis in relation to accidents, stimulating the development of the theory of forensic examination in cases of road accidents as an independent scientific direction, based on the results of the integration of forensic, engineering and other fields of scientific knowledge. Forensic expertise in criminal proceedings is made in the manner prescribed by the criminal procedure law, which is an essential guarantee of the truth of expert opinion and the possibility of use as judicial evidence. The law defines only General guidance about the grounds for an

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examination, therefore there is a need to concretize the purpose of examination of each kind (species) within existing methods of investigating certain types of crimes. Since the order of the examination is realized in the form of legal relations, which are between participants of the examination, procedural issues arising during its production, in respect of the rights and obligations of the individual participants expertise. In judicial and investigative practice according to the law, examination of cases of accidents are appointed on the basis of a reasoned decision, in real conditions of examination is very often received initiative under letters of stakeholders, leading the investigation, judges, lawyers. The work of the author in investigative and legal records suggests that the violations are not motivated purpose autotechnical examination was massive and continued to the present time. And this automatically leads to the denial and restriction of the rights and freedoms of the accused guaranteed by the Constitution. Not to mention the fact that you ignored the stated principles of the norms of the criminal process "the principle of implementation of criminal proceedings on the basis of equality and competition of parties» [6]. The content of the provisions for the mandatory appointment of the examination may be interpreted differently as to address specific issues. From this position we can conclude that in some cases, the issue of examination can be solved by the subject of the inquiry, the investigator, the court roofing only on the desire without the motivation of definition and justification. However, this desire can be construed as subjective or individually willed completely or partially ignoring the circumstances of the case, goals and objectives of the process of proof. We believe that the question of the need for expertise on a specific event must occur by a cumulative assessment of the degree of proof of the event, evaluation of collected evidence to corroborate the fact of it, with the likely possibility of studying at the hearing. R. E. Ovchinnikov considers that the conduct of the technical examination for each criminal case of an accident necessary, he opposes G. M. Nadgorny [7] speaking out against it for each accident separately, on the grounds that it is not based on law, and does not account for the lack of special technical issues in a number of cases in this category. We believe that application of special scientific knowledge in case of accident is a very important element of the examination, but is always and everywhere. The opinion of the author on this point. It consists in the fact that in complex cases, an accident can not do without carrying out technical examinations and attract competent specialists in certain branches of scientific knowledge. Capable at high professional level with use of modern technologies to answer their questions, and in cases where violations of traffic rules is indisputable, it is possible to do conclusions of the expert. R. S. Belkin [7] specifies the information

obtained by the expert, by which he is guided in the objectives of the study, defines its methodology and provides a set of necessary tools and techniques differential these sources on the process and not procedure. In the powers of the expert to use in their research only the data from criminal case materials, which were evaluated and selected by the investigator and specified in the resolution on the appointment of expertise. Independently select the source data from the case (records of interrogations, confrontations, etc.), the expert has no right. Ignoring expert set out the rules of application of the initial data gives the basis for the appointment of additional expertise [8]. The problem is the question of personalization of primary data in case of an accident. Currently in the expert practice are widely used, first, the tabular data are averaged, and secondly, the approximate parameters of the Protocol inspection of the accident (the data of inspection of the accident scene, including road conditions, these inspection vehicles). In the first and second cases, the right to determine the original data are actually provided to the expert. As an example we can cite the following. Focusing on the averaged indicators table cloth paving, an expert in his studies again determines the average, and most importantly, the estimated table values of parameters of the braking path of the vehicle. It is very approximately set temporary rates of reaction of the driver of the vehicle, (without taking into account individual psychophysiological data), deriving in turn from the table of the average obtained by laboratory method. In this example, according to the author, is a clear violation of procedural rules in the aspect of clear division of procedural functions. It is necessary to consider that the construction of the system of the criminal process to ensure the achievement of truth involves multiple recipients of proving the truth and is not confined to gaining knowledge, even a fairly complete and accurate, any one subject, which in this case is actually the expert. The practice has spread, when experts in the conduct autotechnical examination choose the tabular source data for calculations on the principle of "doubts in favor of the accused", we consider unacceptable. I. Y. Shaparev surely have noticed that such actions of the expert are an invasion of the sphere of law [9]. According to some authors, in cases where the use of limits of tabular data in the calculation of technical possibility to avoid road accident yields positive results and experimentally to clarify the required value is not possible, the examiner should inform the entity that appointed the expert examination, about the impossibility of giving an opinion. The author comes to the conclusion that it is time to reconsider the situation with the order of appointment and carrying out technical examination, use and interpretation of the results obtained in the investigation of the accident. Which requires the use of modern scientific and methodological developments, competences

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obtained in allied industries of knowledge and have already gained theoretical and practical experience available in the works of scientists devoted to the problems of the methodology of science, the investigation of the accident.

When deciding in the legal field tasks associated with personifications of the obtained data, it is important to stay in the position that the authority for their establishment should be the subject of proceedings or investigation by a specialist, or expert [10]. Moreover, it should be noted that significant specific features are inherent not only in the process of appointment of expertise in cases of traffic accidents, but also in the assessment of their results. To understand and evaluate the results obtained, not only experts and experts, but also an investigator

should possess special theoretical knowledge in the sciences related to forensic science.

And another important moment characterizing the relative chaos and causing controversy among theorists and practitioners. The definition of “expert opinion” is commented by the legislator, and, accordingly, it is applied in two meanings:

1) As the concept of a final and unambiguous result on the question posed, that is, “conclusion”;

2) As a real procedural document in the form of a conclusion, in which the process and the final results of the expert are recorded.

But in practical activities, the expert opinion consists of three parts;

- introductory (describing);
- analytical (research);
- conclusions (presented conclusions).

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