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Peculiarities of Appointment and Production of Forensic Examinations in Criminal Cases for Violation of Safety Rules During Mining Works

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Abstract

This study analyses the peculiarities of appointment and production of expertise in the investigation of facts related to the violation of safety rules in mining operations. The relevance of the research topic is due to the increase in deaths and injuries at work and several legal problems. These include a) failure to comply with the requirement of Article 271 of the Code of Criminal Procedure of the Republic of Kazakhstan; b) the absence in the Order of the Minister of Justice of the Republic of Kazakhstan dated 27 March 2017 of a list of expertise to be appointed in the investigation of violations of safety rules during mining operations. The situation is further complicated by the absence of clear methodological guidelines for investigators regarding the procedure for appointing forensic examinations and formulating questions for experts. The authors assert that the national system of forensic examination must be modernised.

Keywords: forensic examination, investigation, criminal offences, specialist, expert, criminal procedure, investigative bodies, mining industry.

Introduction

The research topic is relevant because it is based on the implementation of the provisions in occupational safety contained in the guiding policy documents: the Message of the President of the Republic of Kazakhstan to the people of Kazakhstan from 1 September 2023, the Concept of Safe Labour of the Republic of Kazakhstan for 2024-2030 and the Concept of Legal Policy of the Republic of Kazakhstan until 2030. The authors identify and address critical issues in the appointment and production of forensic expertise in criminal cases involving violations of safety rules in mining operations. They also conduct a comprehensive analysis of the national system of forensic expertise.

The study of current legislation and law enforcement practice has uncovered several significant shortcomings that need to be addressed. The Order of the Minister of Justice of the Republic of Kazakhstan No. 306 (2017) must be amended

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to include a list of expert examinations that are appointed in the investigation of violations of safety rules during mining or construction works. Furthermore, the Order must be updated to include methodological guidelines for investigators on the procedure for appointing forensic examinations. The examinations and the list of questions for experts are missing. Furthermore, the pre-trial authorities and the court are failing to comply with the requirements of Article 271 of the Code of Criminal Procedure of the Republic of Kazakhstan. There is also a lack of qualified specialists to carry out expertise in cases of accidents in the mining or construction sector of the economy. It is clear that 43% of 204 interviewed law enforcement officers have experienced difficulties in investigating criminal cases under Article 277 of the Criminal Code of the Republic of Kazakhstan, including the appointment of forensic expertise.

Literature Review

The study of specialised literature has revealed a glaring lack of in-depth analysis and a dearth of scientific works by Kazakhstani scientists. Researchers like Efizov (2007) and Kasenova & Voevodkin (2024) only touched on general issues related to forensic examinations in the mining industry or the examination of miners' working capacity (Kabysheva & Dimitrova, 2014). Bakyt and other scholars (2023) conducted a comprehensive study of the general problems associated with subjects authorised to perform forensic expertise. Sitkovskaya (1982), Rossinskaya (2005), Evsikov (2009), Plakhov (2012), Shagimuratova (2017), Sharov (2018), and Burvikov (2014) were engaged in the study of the problems associated with the classification of forensic expertise.

Scientists in neighbouring countries have directly addressed the production issues of forensic expertise in the sphere of mining. For example, Sergeyev (2010), Averin (2020), Zinin and Mailis (2022) and others have done so. However, they fail to consider the specific nuances of Kazakhstani legislation and its practical implementation. Consequently, the issue of appointing and producing expertise in criminal cases involving violations of safety rules in mining operations, particularly in the context of Kazakhstan's work-related trauma statistics, remains a pressing concern. Addressing this issue has significant theoretical and practical implications.

Research Questions

This study will answer the following main question:

1. What are the deficiencies of the Kazakhstan system of forensic expertise?
2. To what extent do pre-trial authorities and courts adhere to the stipulations outlined in the Code of Criminal Procedure of the Republic of Kazakhstan concerning the appointment of forensic examinations in criminal cases involving

violations of safety regulations in mining operations?

3. What challenges do law enforcement officials face when appointing forensic examinations in criminal cases investigated for violations of safety rules in mining operations?
4. Does the List of Expertise Types in the Order of the Minister of Justice of the Republic of Kazakhstan No. 306 (2017) encompass all potential expertise types that could be appointed in the investigation of violations of safety rules in mining operations?
5. Are there methodological guidelines for investigators on the procedure for appointment of forensic examinations in cases of violation of safety rules in mining operations?

Research Objectives

This study will achieve the following main objectives:

- To identify the shortcomings of the appointment and production of forensic expertise in the investigation of criminal cases related to violations of safety rules in mining operations.
- To formulate proposals to improve national legislation and law enforcement practice.

Research methods

To achieve the study's objective, the authors used various scientific methods. Normative-legal, comparative, critical, and logical analysis allowed for a thorough examination of existing legislative norms and law enforcement practices. Synthesis integrated diverse data into conclusions and recommendations for modernizing the national system of expertise. Expert judgment evaluated the opinions of specialists and the efficacy of forensic expertise. Legal interpretation provided deeper understanding of the norms applied by pre-trial authorities and courts, while the case method identified practical issues in forensic examinations. Materials included Kazakhstan's Criminal, Criminal Procedure, and Labour Codes, Supreme Court resolutions, and Ministry of Justice orders. Data on industrial injuries and safety violations further validated the study's relevance. The results indicate the need for forensic system modernization, improved specialist training, and legislative amendments.

Results and Discussion

The Concept of Legal Policy of the Republic of Kazakhstan until 2030, approved by the Decree of the President of the Republic of Kazakhstan No. 674 (2021), emphasises the necessity of maintaining efforts to modernise forensic

expertise. The modernisation of forensic examination represents a process of updating and improving the system of forensic activities, encompassing a range of technological, methodological and organisational changes. It constitutes a pivotal element of the broader reform of the judicial system, aimed at enhancing its efficiency and public confidence. The objective of this modernisation is to enhance the accuracy, objectivity, efficiency and, most crucially, accessibility of forensic examinations. In relation to the topic of the study, the following factors are of particular relevance.

1. The Bureau of National Statistics of Kazakhstan reports over two thousand work-related deaths or injuries annually, with the mining and metallurgical sectors experiencing the most casualties. Tragedies at the Lenin mine (2022) and Kostenko mine (2023) highlight the need to minimize operational risks, including through criminal law measures.
2. Procedural issues in appointing and conducting expert examinations in mining safety violations require resolution for effective legal proceedings.
3. The complexity of mining operations demands specialized expert training, yet the current forensic examination system lacks adequate specialization, hindering investigations.
4. The quality of expertise in mining and construction safety violations impacts public trust in law enforcement and the fairness of court decisions.

The relevance of the problem under study is also directly related to the provisions voiced by the President of the country in his address to the people of Kazakhstan in 2023, in which he drew attention to the extremely acute problem associated with a high level of occupational injuries. Following his directives, the Concept of Safe Labour of the Republic of Kazakhstan for the period 2024-2030 was developed and adopted. The objective of this conceptual framework is to prevent and minimise occupational risks at workplaces. The majority of recorded accidents occur in the mining and construction industries, typically as a consequence of the contravention of safety regulations during the performance of inherently hazardous tasks.

Although Article 277 of the Criminal Code of the Republic of Kazakhstan addresses offences in mining and construction works, this study considers the particularities of the appointment and production of expertise in cases related to the violation of safety rules in mining operations. It is evident that mining and construction works possess distinctive characteristics and several fundamental differences, particularly in investigation. Furthermore, an analysis of law enforcement practice and the regulatory legal framework has revealed that the processes of appointment and production of expertise in these sectors are markedly distinct. This is due to some factors, including the object of investigation, the

specifics of legislation, the typology of risks and the frequency of accidents.

Mining accidents often result in loss of life, requiring forensic professionals to determine the causes and those involved. Forensic expertise is crucial in understanding accidents and maintaining safety standards. Classifying forensic expertise in mining safety violations is a significant challenge for criminology (Burvikov, 2014). Legal scholars have expanded research in this area, but no comprehensive classification exists, leading to errors and procedural violations (Rossinskaya, 2005; Plakhov, 2012). Despite appearing unrelated, forensic expertise and mining safety are closely linked (Averin & Averin, 2020).

In the Republic of Kazakhstan, the procedure for appointing expert examinations is defined by Article 272 of the Criminal Procedure Code and the Normative Decree of the Supreme Court of the Republic of Kazakhstan No. 16 (2004). The types of expertise appointed in the context of a criminal case are defined by the Order of the Ministry of Justice No. 306. The order regulates the production of 30 types of expertise, of which the most frequently appointed are forensic fire-technical expertise; forensic explosion-technical expertise; forensic medical expertise of corpses, victims, accused and other persons. Article 273 of the Criminal Procedure Code allows for the assignment of an expert examination to be carried out by not only forensic examination bodies but also other specialists, including licensed individuals engaged in forensic activities or persons possessing special knowledge, under the conditions provided by law. A similar provision is also present in Paragraph 3 of the Normative Decree of the Supreme Court No.16.

There is a lack of normative legal instruments outlining a comprehensive list of forensic examinations, with external entities rarely involved. Currently, forensic examinations in criminal, civil, and administrative cases are primarily conducted by forensic bodies, influenced by traditional views among judges and law enforcement. The Ministry of Justice's Order limits criminal case expertise in mining safety violations to three types: forensic medical, fire technical, and explosion technical examinations, restricting objective investigations (Bakyt, et al., 2023). Expanding forensic examinations to licensed private individuals would promote equality, adversarial legal proceedings, and a fairer resolution of cases, including those under Article 277 of the Criminal Code.

Furthermore, the author's stance is predicated on the premise that, in addition to the dearth of requisite expertise within the order, there is a paucity of specialists within the forensic bodies of the Republic of Kazakhstan. At the time of writing, the country is experiencing a shortage of more than 140 forensic experts. The Centre for Forensic Expertise employs 1,076 specialists, yet the volume of work continues to increase. Increasing workloads and the need for updated methodological guidelines remain key concerns. Scientific and technological advances have

expanded the categories, types, and subtypes of forensic examinations, necessitating ongoing regulatory updates.

The modern classification system employs a hierarchical structure, with forensic examinations divided into classes, genera, species, and subspecies (Sharov, 2018). The criteria for such classification have been the subject of active scientific debate for many years (Evsikov, 2009; Shagimuratova, 2017). In general, the classification is carried out with consideration of many specific parameters, including the scope of conducted research, the methodology of performance, the number and professional composition of experts, and the peculiarities of the availability of the necessary specialised knowledge. Furthermore, the field of science is constantly evolving, which increases the likelihood of the emergence of new forms of expertise in the context of various criminal offences.

A review of the materials pertaining to criminal cases investigated on the grounds of violations of safety regulations during mining operations has revealed that, usually, the following disciplines are engaged: forensic medicine, electrical engineering, fire and technical engineering, mining engineering, explosion engineering, fire and mining expertise. In addition to the expertise, the doctrine of criminalistics mentions fire-explosion, chemical-toxicological, engineering-technical; engineering-technological; forensic-technical (Zinin & Mailis, 2022); construction-technical expertise and expertise in the legal examination of documents (Averyanova, et al., 2003).

In criminal cases involving violations of labor safety rules, pre-trial authorities must conduct a forensic medical examination, as harm to health or death defines the offence under Article 277 of the Criminal Code. This examination follows the Law "On Forensic Expert Activity" (2017) and relevant rules. An analysis of criminal cases shows that injuries or deaths often result from rock collapses (29.4%), forklift collisions (23.53%), gas poisoning (17.65%), and other causes. Accurate assessment of harm is crucial for justice, but this expertise is not always required. For example, senior mining foreman Ibraev, machinist Yedilbaev and mining foreman Shuinshbaev contravened safety regulations during mining operations, which resulted in the death of one individual and significant injury to two others. However, no forensic medical examination of the victims was conducted, and the criminal case, which was considered by the Khromtau District Court of the Aktobe region, was subsequently dismissed due to an amnesty (Archive of Khromtau District Court of Aktobe region. Criminal case No. 1560-22-00-1/2, 2022).

It is our considered opinion that such a practice is inadmissible, given that the appointment of a forensic examination by Article 271 of the Criminal Procedure Code is mandatory. Clause 5 of Article 190 of the Labour Code stipulates that the

materials of investigation of an accident related to labour activity, along with the act of investigation, must contain, inter alia, a medical report on the nature and severity of damage to the health of the victim (cause of death). It is conceivable that the absence of a forensic medical examination in the aforementioned criminal case can be attributed to the aforementioned dearth of experts. Therefore, the accurate determination of the extent of harm to health or the cause of death is pivotal in establishing a causal link between the actions of the perpetrators and the adverse consequences. Expert assessment provides the basis for understanding the causes and consequences of accidents, which in turn informs decision-making processes (Kasenova & Voevodkin, 2024). The absence of an expert opinion may result in adverse outcomes.

It is of the utmost importance that a comprehensive forensic medical examination is conducted in every industrial accident to guarantee the legality and fairness of procedural decisions. Paragraph 2 of the Normative Decree of the Supreme Court of the Republic of Kazakhstan No. 4 underscores the imperative for courts to bear in mind that a sentence is lawful if it is passed in exact accordance with the requirements of the law of criminal procedure, subject to the correct application of the rules of law. The validity of a judgement is contingent upon the evidence presented being collected by the legal requirements and subjected to a thorough, objective and comprehensive examination within the courtroom. Furthermore, the court's conclusions must be adequately justified and supported by a robust analysis and evaluation of the evidence. To avoid violations of the norms of procedural law, we consider it appropriate to add the following provision to Paragraph 2 of this normative decree: “In each case of consideration of a criminal case, courts should pay attention to the importance of compliance with the requirements of Article 271 of the Criminal Procedure Code”.

Another issue identified by the study is the difficulty in recruiting qualified experts due to a shortage of such individuals. In practice, there have been instances where unqualified individuals have drawn up conclusions, and conversely, experts have exceeded their competence. To illustrate, in the criminal case concerning the explosion at the Lenin mine in Shakhtinsk, which resulted in the death of five miners, the expertise was conducted without the involvement of the forensic expertise body. Because of the unavailability of experts with the requisite qualifications, the investigation was compelled to engage the services of specialists from the Karaganda Mining Engineering University to provide expertise in electrical and mining engineering (Efizov, 2007). Such circumstances frequently result in significant inaccuracies in expert conclusions regarding the underlying causes of industrial accidents and the identification of those responsible. This has a detrimental impact on the overall safety standards within the mining industry.

Mine accidents often result from the physical or psychological incapacity of operators. In 2022, 52 machine operators in Kazakhstan died at work. Labour safety depends on psycho-physiological traits, not just ethics. Improving personnel selection and training, along with expert studies, is crucial to prevent such incidents. Admission to special activities depends on the potential for extreme situations and the subject's ability to perform tasks under risk. Psychological conditions such as fear, stress, or fatigue do not absolve responsibility if the operator is adequately prepared. However, courts should consider these as mitigating factors. Some individuals may seek employment despite knowing their limitations, potentially leading to offenses. Therefore, a forensic psychological examination should assess the individual's ability to understand the situation, anticipate consequences, and take preventive actions based on their mental state and psychological traits (Sitkovskaya, 1982).

Nevertheless, the extant legislative, regulatory and procedural frameworks for the assurance of safe working environments fail to incorporate this crucial anti-crime variable. To illustrate, Paragraph 26 of Article 1 of the Labour Code merely states that regulations pertaining to occupational safety and health encompass ergonomic, sanitary-epidemiological, psychophysiological and other stipulations that guarantee normal and secure working conditions. Therefore, there is an absence of mandatory special medical examinations to ascertain the suitability of newly hired and existing drivers, machinists, operators and other workers whose activities are related to the maintenance of machines, mechanisms and motor vehicles for the requirements of extreme conditions and psychophysiological overloads, which is contrary to the interests of ensuring safe labour. Because of the above, we propose to supplement Article 26 of the Labour Code with the following provision: "It is prohibited to hire citizens who by virtue of their psychophysiological qualities do not meet the requirements of extreme conditions or neuro-psychic overload associated with driving a car, bus, trolleybus, tram and other mechanical vehicles or servicing technical systems, mechanisms, equipment". The same prohibition should be made in the list of medical psychiatric contraindications for the performance of certain occupational activities, as well as work related to a source of heightened risk, approved by the Order of the Minister of Health and Social Development of Republic of Kazakhstan No. 188 (2015). In addition, Article 185 of the Labour Code of the Republic of Kazakhstan, which regulates compulsory medical examinations of workers, should require employers to organise and conduct periodic special psychophysiological examinations and examinations of workers who service the machinery and different operating systems.

Conclusion

The study concludes that:

1) Courts in criminal cases under Article 277 of the Criminal Code do not always comply with the requirements of Article 271 of the Criminal Procedure Code requires that an expert examination be carried out in cases where the cause of death, the nature and degree of serious damage to the health and mental or physical condition of the suspect are established;
2) The Order of the Ministry of Justice of the Republic of Kazakhstan No. 306 (2017) does not contain an exhaustive list of types of expertises, appointed based on violations of safety rules in the conduct of mining and other types of works;
3) In Kazakhstan there are not enough specialists in the bodies of forensic expertise, which could qualitatively examine cases of safety violations during the conduct of mining works;
4) No methodological recommendations on the appointment of experts for bodies conducting pre-trial investigation of incidents of safety violations in mining;
5) The appointment and forensic examination of individual experts with a state licence is very rare due to conservative attitudes among judges and law enforcement officials;
6) The list of mandatory examinations assigned in criminal cases on violation of labour protection rules does not indicate some types of examination, for example, forensic-psychological examination.

Recommendations

This study recommends that:

1. The following provision should be inserted in Paragraph 2 of the Normative Decree of the Supreme Court of the Republic of Kazakhstan No.4: “In each case of consideration of a criminal case, the courts shall pay attention to the importance of compliance with the requirements of Article 271 of the Criminal Procedure Code”;
2. Include in the Order of the Minister of Justice of the Republic of Kazakhstan No.306 such types of forensic expertise as mining, mining technical, and forensic-psychological;
3. Form an interdepartmental working group with representatives from the Ministries of Justice, Internal Affairs, and Industry, along with mining experts, to draft a regulatory act listing the types of examinations licensed experts can perform. This group should also create guidelines for appointing experts and key questions for mining industry specialists;
4. To train and certify specialists for conducting forensic examinations, it is advisable to:

- develop and implement specialized educational programs for the training and

subsequent certification of experts in the mining industry in educational institutions with a legal profile based on existing expert organizations;

- stimulate the creation of specialized departments or laboratories within the existing forensic examination bodies.

5. To change approaches to the appointment and conduct of examinations:

- develop legislative initiatives aimed at simplifying the process of appointing and conducting forensic examinations by individual experts with a state license;
- conduct informational and explanatory work among judges and law enforcement officers about the benefits of engaging individual experts with the appropriate specialization to improve the quality and objectivity of forensic investigations;

6. To reduce the risk of criminal offences under Article 277 of the Criminal Code, the List of medical psychiatric contraindications should include a ban on hiring individuals whose psychophysiological traits are unsuitable for extreme conditions or neuropsychiatric overload in roles involving vehicles or technical systems. Additionally, Article 185 of the Labour Code should require employers to conduct regular psychophysiological examinations of employees servicing equipment and operating systems to ensure safety and compliance with these standards.

It appears that the proposed measures will significantly improve the quality and effectiveness of investigations of criminal offences under Article 277 of the Criminal Code and the production of forensic examinations in cases of this category.

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