

IMPORTANT TO READ BEFORE ANSWERING THE QUESTIONNAIRE:

The FORMOBILE project is aimed at creating better mobile forensic tools to help combat crime more efficiently, enlarging the capacities of both first responders, common forensic laboratories and highly specialised laboratories and experts by providing them with better tools to acquire, decode, and analyse data coming from mobile devices. The majority of these tools will be integrated in the existing suite of MSAB software (XRY). Please refer to the FORMOBILE website for more information and especially to the work package breakdown of WPs 4-6: <https://formobile-project.eu/project#.mod-wp-steps>. It is essential to have this background to be able to accurately answer this questionnaire.

One of the aspects of the FORMOBILE project is to make sure that these tools are able to be used in the EU for the collection, decoding and analysis of information from mobile phones in a way that makes the obtained evidence admissible in court (“from crime scene to courtroom”).

Hence, the questions that make up this questionnaire in essence aim to understand how mobile forensic tools aimed at retrieving, decoding and further analyzing information from a mobile device (e.g. a smartphone), are allowed in your jurisdiction under the applicable criminal law. We are especially interested in:

- whether technical measures may be used (and to what extent) to bypass security;
- to what extent the data on the mobile device may be read, searched, used and copied etc.;
- what the formal conditions are for accessing data on a mobile device;
- who must order such actions and in what level of detail the mandate must describe the authorized actions;
- in what scenarios this is permissible (only in certain scenarios, only if the phone belongs to the accused?), as well as the potential differences between scenarios;
- existing limits on the access to or further analyzing and use of the data on a mobile device.

In addition, we want to know under what conditions information on the Cloud can be accessed and if this is possible by technical means. We are also interested in any human rights' impacts, existing guidelines and issues in practice, existing case law and any other elements you deem relevant.

As we want to be able to compare answers across jurisdictions, we have drafted this request for information in a questionnaire format. This, however, does not mean we are looking for simple yes/no answers. Most questions are open questions and naturally invite an elaborate answer. Some questions may perhaps in theory be answered as yes/no question, but **please give as much guidance and details as possible within every question, to enhance our understanding of the legal system in your jurisdiction. Always cite the provision of the law or the case law you are relying on in providing an answer and please try to be exhaustive or at least as complete as possible. If you are relying on practical guidance or other informal rules and practice, please also refer to this and, if documentation on this is available, provide the link to where we can find this documentation.**

Please feel free to give additional guidance in the comments section at the end, in case you feel we did not sufficiently cover certain elements throughout the questionnaire.

The questionnaire is made up of 61 questions, in the following sections:

- Introductory questions
- Section 1: Criminal procedure when searching/reading mobile devices, seizing mobile devices and for acquisition of data on mobile devices
- Section 2: Criminal procedure rules on analysis of data from mobile devices
- Section 3: Admissibility of evidence before court
- Section 4: Interpretation and presentation of evidence from mobile forensics before the Court
- Section 5: Implications of the use of mobiles forensics on the role of the different parties in the trial
- Section 6: Comments

Introductory questions:

1. **Question:** *Please identify your organisation and your individual position?*

Answer: Indication of length of answer: one line.

«GRATA International» LLC.

2. **Question:** *Where is your organisation based?*

Answer: Indication of length of answer: one line.

Our law firm is located in Bishkek, Kyrgyzstan.

3. **Question:** *Do you have a legally defined term for a “mobile device”? If yes, what kind of devices are included within it? (e.g. Smartphones, Tablets, Smartwatches, Cameras, MP3-players, Navigation devices, Drones)*

Answer: Indication of length of answer: couple of lines.

No, there is no legally defined term for a “mobile device” under the Kyrgyz laws. There are certain indirect provisions under the Kyrgyz laws pertaining to “mobile devices”, but no clear definitions as such.

Section 1: Criminal procedure when searching/reading mobile devices, seizing mobile devices and for acquisition of data on mobile devices

Question: *Mobile devices (e.g. a smartphone) may enter investigations in a variety of scenarios. A suspect or a witness may have a smartphone on them during questioning or at the scene, mobile devices may be found during the search of a home or other premises, a suspect caught in the act may have a mobile device in use etc. We want to know for all these scenarios (and others you may be able to identify) what the applicable national rules are, namely answering the following questions:*

Mobile device not seized

Under what circumstances can a mobile device be read or searched without seizing it?

If there are sufficient grounds to believe that information on connections between subscribers (subscriber devices), such as suspects, accused persons and other persons, may contain information relevant to the criminal case, the investigator may, on the basis of the order issued by investigating judge, request such information.

Part 1 Article 224 of the Criminal Procedure Code of the Kyrgyz Republic dated 2 February 2017 No. 20 (last amendments as of 28 February 2020) (hereinafter – the “[Criminal Procedure Code](#)”)

4. *Are there any limits to this search (e.g. core area of private life, privacy limits, limits defined by the crime, limits defined by the order/warrant)? If so, how precise are these/must these be defined?*

According to the Article 16 of the [Criminal Procedure Code](#), citizens’ rights to privacy of correspondence, telephone and other conversations, postal, telegraphic, electronic or other communications may be restricted only on the basis of a court decision.

Seizure of postal and telegraphic consignments and their seizure at communication facilities, monitoring and recording of telephone and other conversations, obtaining information on connections between subscribers and (or) subscriber devices may be carried out only on the basis

of a court decision. Aside from the above provisions, the law does not clearly define limits to the search. This suggests that any limits to the search, carried out in the course of investigation, can be established only at the sole discretion of the court. The law does not provide for a specific mechanism for determining such limits by the court.

5. *Is it allowed to use technical tools to bypass security?*

The law does not clearly allow for nor prohibit use of technical tools to bypass security. However, the law provides that investigators may seize certain property as evidence. Furthermore, it is allowed to engage a specialist (a person not interested in the case, who has special knowledge and skills necessary to assist in the detection, fixation, seizure of items and documents, use of technical means, to raise questions of expert examinations, as well as to explain to the parties and the court the issues within his professional competence) who might participate in the criminal proceedings (Part 1 Article 60 of the [Criminal Procedure Code](#)).

This suggests that use of technical means (including assistance of certain specialists) is generally allowed, provided that such technical means shall not directly violate any general provisions pertaining to individual's privacy.

6. *Can information be copied or only read at this stage?*

As per our answer to the question 4 hereof, information can be obtained, seized and copied, only if there is a relevant court order.

7. *Is consent of the owner/person in possession of the mobile device necessary?*

Should there be a court order to seize the mobile device, the owner / person in possession thereof is obliged to provide it to investigation authority. The law provides that such owner / person can appeal such court order (Article 127 of the [Criminal Procedure Code](#)).

8. *Can the owner/person in possession of the mobile device be forced to unlock the device?*

Yes, provided that the relevant court order contains such obligation.

9. Must the owner/person in possession of the mobile device be informed?

Yes, persons whose rights have been restricted as a result of special investigative actions must be informed by the investigator in writing of the restriction. When a person is acquainted with facts obtained without his or her knowledge, that person is informed, no later than the date when the criminal case is referred to a court, of the special investigative action taken, to the extent that it directly affects the person concerned and prevents the disclosure of State or other legally protected secrets (Article 219 of [Criminal Procedure Code](#)).

10. Who can order a search and what are the formal requirements, if any?

If it is necessary to carry out special investigative actions (e.g., seizure of property, including mobile devices, forcing owner / person to unlock the mobile device, etc.), the investigator submits a relevant request to the investigating judge and notifies the prosecutor (Part 2 Article 212 of the [Criminal Procedure Code](#)).

11. Does it matter whether this person is the accused or witness/third party or the victim?

Regardless of the status of the person, if there is a sufficient ground to believe that a person is receiving and transmitting information relevant to the case, then special investigative action may also be taken against that person (Part 1 Article 224 of the [Criminal Procedure Code](#)).

12. What about data stored in the Cloud, what is the procedure to access/read this data if it is known or suspected to reside outside your jurisdiction? Is international cooperation like the European Investigation Order (hereinafter: EIO) or Mutual Legal Assistance Treaties (hereinafter: MLAT) the only route or do other options exist? Please elaborate.

Obtaining relevant data is generally possible on the basis of reciprocity / international treaty between the Kyrgyz Republic and jurisdiction of the Cloud. While there is no established procedure on application of provisions of such treaties under the Kyrgyz laws, certain treaties, for example, *Treaty between the Russian Federation and the Kyrgyz Republic on legal assistance*

and legal relations for civil, family and criminal matters, prescribe that official documents of a contracting party have the same status in the other contracting party. This suggests that in order to seize the data stored in the Cloud of another jurisdictions, local investigative authority shall submit official request to the other state-party in the manner prescribed by such international treaties.

As another option, the law provides that if there are sufficient grounds to believe that information from computers, servers and other devices designed to collect, process, accumulate and store information may contain information relevant to a criminal case, an investigator may, on the basis of the order by an investigating judge, instruct an authorized unit of the body conducting the inquiry to secretly withdraw the necessary information (Part 1 Article 225 of the [Criminal Procedure Code](#)).

13. *Does any of the foregoing depend on the type of crime involved (e.g. terrorism, child pornography etc.)?*

No, the law does not establish a connection between types of crimes and application of the foregoing. The foregoing rules in principle apply to any crime explicitly defined under the criminal laws of the Kyrgyz Republic.

14. *Does not following the applicable rules always lead to inadmissibility in court of the evidence in this scenario? If not, please elaborate on exceptions and relevant conditions.*

The general rule established under the Criminal Procedure Code of the Kyrgyz Republic is as follows: *Information obtained in violation of the requirements of the Criminal Procedure Code of the Kyrgyz Republic is inadmissible evidence, has no legal force and cannot be used as a basis for a decision on a case, as well as to prove any circumstances* (Part 3 Article 82 of the [Criminal Procedure Code](#)).

Furthermore, the law provides for the following to be considered as inadmissible evidence (Part 4 Article 82 of the [Criminal Procedure Code](#)):

- 1) testimony of a suspect, accused of committing a criminal act, given in the course of pre-trial proceedings, in the absence of a defense lawyer, except in cases of refusal of a defense lawyer (in his presence in writing), but his testimony must be confirmed in court;
- (2) Testimony from a witness, suspect or accused in the course of pre-trial proceedings with the use of torture, violence, threats, deception or other unlawful acts and cruel treatment;
- (3) Testimony of the victim, witness based on guess, supposition, hearing and the testimony of a witness who cannot indicate the source of his or her knowledge;
- (4) The testimony of a person, who, according to the procedure established in the Criminal Procedure Code, was found unable, at the time of questioning, to correctly perceive or reproduce circumstances relevant to the criminal case;
- (5) Information obtained in the course of any procedural action by a person who is not entitled to carry out proceedings in the criminal case in question or by a person subject to challenge;
- 6) Information obtained by applying methods contrary to scientific knowledge;
- 7) Other evidence obtained by the prosecution party in violation of requirements of the Criminal Procedure Code.

Regretfully, in practice, there might be and there are cases where investigation authority acts in violation of the above rule (e.g., political cases). Please note, however, that should there be a reason to consider an evidence as inadmissible, it is possible to appeal a decision to use such evidence in the course of investigation (Article 127 of the [Criminal Procedure Code](#)).

Mobile device seized

15. Can the mobile device (e.g. a smartphone) be seized?

Yes, as we previously covered this matter in the answer to the question 4, seizure of postal and telegraphic consignments and their seizure at communication facilities, monitoring and recording of telephone and other conversations, obtaining information on connections between subscribers

and (or) subscriber devices may be carried out only on the basis of a court decision (Article 16 of the [Criminal Procedure Code](#)).

16. What are the conditions for this, who can order it and what are the formal requirements?

As per our answer to the question 10, if it is necessary to carry out special investigative actions (e.g., seizure of property, including mobile devices, forcing owner / person to unlock the mobile device, etc.), the investigator submits a relevant request to the investigating judge and notifies the prosecutor (Part 2 Article 212 of the [Criminal Procedure Code](#)).

17. If seized, can the mobile device always be searched, information copied etc?

No, for each case, where the information stored on the mobile device can be crucial to the criminal investigation, the court shall issue a separate order, i.e. the mobile device cannot always be searched, information copied, etc.

18. Are there any limits to this search (e.g. core area of private life, privacy limits, limits defined by the crime, limits defined by the order/warrant)? If so, how precise are these/must these be defined?

As per our answer to the question 4, the law does not clearly define limits to the search. This suggests that any limits to the search, carried out in the course of investigation, can be established only at the sole discretion of the court. The law does not provide for a specific mechanism for determining such limits by the court.

19. Is consent of the owner/person in possession of the mobile device ever a relevant element?

No, should there be a court order on seizure of mobile device and a sufficient ground to believe that such evidence is crucial to the investigation, the owner's consent shall be irrelevant. However, it is always important to consider possibility of appeal of such court order (Article 127 of the [Criminal Procedure Code](#)).

20. Can the owner/person in possession of the mobile device (if identified) be forced to unlock the device?

Yes. It can be either done following the obligation established by the relevant court order or via use of technical means along with engaging certain specialists .

21. Must the owner/person in possession of the mobile device be informed? If so, about what exactly?

Yes, persons whose rights have been restricted as a result of special investigative actions must be informed by the investigator in writing of the restriction. When a person is acquainted with facts obtained without his or her knowledge, that person is informed, no later than the date when the criminal case is referred to a court, of the special investigative action taken, to the extent that it directly affects the person concerned and prevents the disclosure of State or other legally protected secrets (Article 219 of [Criminal Procedure Code](#)) .

22. Is it allowed to use technical tools to bypass security measures and/or anti-forensic measures?

As per our answer to the question 5, the law does not clearly allow for nor prohibit use of technical tools to bypass security. In the absence of relevant provisions, we assume that it is generally allowed should it be deemed necessary by investigation authority.

23. Does it matter whether this person is the accused or witness/third party or the victim?

It does not matter that status such person might have in the course of investigation. Should there be a need for such actions, the relevant court order might provide for performance thereof.

24. What about data stored in the Cloud, what is the procedure to access this data if it is known or suspected to reside outside your jurisdiction? Is international cooperation like the European Investigation Order or Mutual Legal Assistance Treaties the only route or do other options exist? Please elaborate.

Obtaining relevant data is generally possible on the basis of reciprocity / international treaty between the Kyrgyz Republic and jurisdiction of the Cloud. While there is no established procedure on application of provisions of such treaties under the Kyrgyz laws, certain treaties, for example, *Treaty between the Russian Federation and the Kyrgyz Republic on legal assistance and legal relations for civil, family and criminal matters*, prescribe that official documents of a contracting party have the same status in the other contracting party. This suggests that in order to seize the data stored in the Cloud of another jurisdictions, local investigative authority shall submit official request to the other state-party in the manner prescribed by such international treaties.

As another option, the law provides that if there are sufficient grounds to believe that information from computers, servers and other devices designed to collect, process, accumulate and store information may contain information relevant to a criminal case, an investigator may, on the basis of the order by an investigating judge, instruct an authorized unit of the body conducting the inquiry to secretly withdraw the necessary information (Part 1 Article 225 of the [Criminal Procedure Code](#)).

25. What about data stored in the Cloud, where you are unable to determine the location of the server or the identity of the service provider?

Such cases are not covered by the effective legislation of the Kyrgyz Republic. However, we do believe that such data might be obtained in the course of exercising the right to secretly withdraw such data following the court order (Part 1 Article 225 of the [Criminal Procedure Code](#)).

26. Can you legally access data in the Cloud, even if there is no app that links to this data or other direct link from the mobile device?

Regretfully, such cases are not covered by the effective Kyrgyz laws.

27. How is the access to data kept by a Service Provider related to the device regulated? Is it performed upon a Court order, or also through other means?

Access to data kept by a Service Provider can be only possible following the relevant court order. The law does not provide for other means to access such data kept by a Service Provider.

28. Does any of the foregoing depend on the type of crime involved (e.g. terrorism, child pornography etc.)?

No, the law does not establish a connection between types of crimes and application of the foregoing. The foregoing rules in principle apply to any crime explicitly defined under the criminal laws of the Kyrgyz Republic .

29. Does not following the applicable rules always lead to inadmissibility of the evidence in this scenario? If not, please elaborate on exceptions and relevant conditions.

The general rule established under the Criminal Procedure Code of the Kyrgyz Republic is as follows: *Information obtained in violation of the requirements of the Criminal Procedure Code of the Kyrgyz Republic is inadmissible evidence, has no legal force and cannot be used as a basis for a decision on a case, as well as to prove any circumstances* (Part 3 Article 82 of the [Criminal Procedure Code](#)).

Furthermore, the law provides for the following to be considered as inadmissible evidence (Part 4 Article 82 of the [Criminal Procedure Code](#)):

- 1) testimony of a suspect, accused of committing a criminal act, given in the course of pre-trial proceedings, in the absence of a defense lawyer, except in cases of refusal of a defense lawyer (in his presence in writing), but his testimony must be confirmed in court;
- (2) Testimony from a witness, suspect or accused in the course of pre-trial proceedings with the use of torture, violence, threats, deception or other unlawful acts and cruel treatment;
- (3) Testimony of the victim, witness based on guess, supposition, hearing and the testimony of a witness who cannot indicate the source of his or her knowledge;

- (4) The testimony of a person who, according to the procedure established in the Criminal Procedure Code, was found unable, at the time of questioning, to correctly perceive or reproduce circumstances relevant to the criminal case;
- (5) Information obtained in the course of any procedural action by a person who is not entitled to carry out proceedings in the criminal case in question or by a person subject to challenge;
- 6) Information obtained by applying methods contrary to scientific knowledge;
- 7) Other evidence obtained by the prosecution party in violation of requirements of the Criminal Procedure Code.

Regretfully, in practice, there might be and there are cases where investigation authority acts in violation of the above rule (e.g., political cases). Please note, however, that should there be a reason to consider an evidence as inadmissible, it is possible to appeal a decision to use such evidence in the course of investigation (Article 127 of the [Criminal Procedure Code](#))

Please, answer all these questions separately for each scenario or instance which, in your opinion, is (partially) subject to different rules than other scenarios. At least, make the difference between the scenarios where a mobile device is seized and where it is not. If all sub-scenarios in one of these scenarios are the same, it suffices to only answer the questions once. However, most jurisdictions have different situations in which seizure is possible (e.g. in the context of a search of premises vs. not in the context of a search), so please differentiate between these scenarios, as well and answer the questions for them separately. If you prefer, you can answer the questions in their totality in an integrated explanation, as long as all elements are covered and again, various scenarios are differentiated between.

Please, give as much guidance as possible to enhance our understanding. Always cite the provision of the law or the case law you are relying on (legal basis) and mention conditions, people involved in the action, formal requirements etc., even if not specifically asked.

Answer: Indication of length of answer: at least a couple of pages, as this is the main overview question.

30. Question: *In cases where the examination or data acquisition is not possible without changing the configuration of the device, is there a strict protocol that should be followed (e.g. procedure and changes should be tested, validated, and documented)? If yes, please specify on what rules this is based and what the requirements are. Please also provide examples.*

Answer: Indication of length of answer: 1-2 paragraphs.

Current effective legislation of the Kyrgyz Republic does not explicitly cover cases where the examination or data acquisition is not possible without changing the configuration of the device. As such, there is no strict protocol regulating such cases.

31. Question: *Are there any specific rules in criminal procedure that regulate the use of mobile forensics tools using/deploying AI technology? Are there any conditions which need to be met so AI-powered tools could be applied in the process of evidence collection?*

Answer: Indication of length of answer: 1-2 paragraphs.

Regretfully, no specific rules are provided by the law in connection with use of mobile forensics tools using/deploying AI technology.

32. Question: *What are the main legal issues in your jurisdiction in the cases when mobile devices are involved in crimes across geographical boundaries? What procedures are*

foreseen to tackle these multijurisdictional issues? Should the forensic examiner be aware of the nature of the crime and the regional laws/legislative framework?

Answer: Indication of length of answer: couple of paragraphs

The primary legal issue in this regard is the lack of legislation in terms of definitions pertaining to mobile devices and the absence of relevant provisions regulating mobile devices and mobile forensics in general. The lack of legislation does not allow for efficient application of international treaties and thus, does not allow for efficient and fair trial, where otherwise would be possible with evidence obtained via mobile forensics.

We are currently not aware of any legislative reforms pertaining to procedures which can be helpful in tackling any multi jurisdictional issues in connection with mobile devices and mobile forensics.

In our view, forensic examiners should be aware of the nature of the crime and the regional laws/legislative framework.

33. Question: *Is there an established procedure/course of action to decide whether to apply the EIO or another instrument for cross-border gathering of evidence within the EU?*

Answer: Indication of length of answer: 1-2 paragraphs.

Regretfully, current effective legislation of the Kyrgyz Republic does not provide for an established procedure / course of action to decide whether to apply to EIO or another instrument for cross-border gathering evidence within the EU.

34. Question: *Since, the abovementioned Directive does not preclude the application of MLAT by judicial authorities under some circumstances, what is the practice in your jurisdiction?*

Answer: Indication of length of answer: 1-2 paragraphs.

Should there be a relevant MLAT entered into by and between the Kyrgyz Republic and another state, recognition and enforcement of certain court rulings / judgements might be possible

pertaining to the abovementioned Directive. Regretfully, we are not aware of an extensive practice on application of foreign law (i.e., EIO Directive) in connection with local investigations carried out by local investigation authorities.

35. Question: *Are you aware of any existing cooperation mechanisms and practices with the private sector?*

Answer: Indication of length of answer: 1-2 paragraphs.

No, presently we possess no knowledge regarding existing cooperation mechanisms and practices with the private sector.

Section 2: Criminal procedure rules on analysis of data from mobile devices

36. Question: *When data has been made accessible through mobile forensics, are there any rules on how the data must be analysed, especially to take into account:*

- *Data protection concerns (Law Enforcement Directive 2016/680 and implementing national law)*
- *Privacy concerns and respect for core area of private life (i.e. how is it guaranteed that very sensitive information, not relevant to the investigation is not used)*
- *Human rights such as the right to a fair trial (tools may deliver faulty results and methods used are often untransparent) and the right to non-discrimination (tools that are untransparent may contain bias)*
- *What information can be retained/copied? For how long?*

Please elaborate on both criminal procedure law, relevant data protection law and any other measures or guidelines that may exist. Please also cite and explain relevant case law.

Answer: Indication of length of answer: couple of paragraphs.

There are no rules on how the data must be analyzed, especially to take into account data protection concern, privacy concerns and respect for core area of private life and human rights such as the right to a fair trial. Since information relevant to the criminal case can be obtained and copied only by order of the investigating judge.

Section 3: Admissibility of evidence before court

37. Question: *Are there general rules or guidelines on the admissibility of electronic evidence in your jurisdiction applicable to mobile forensics, not yet discussed above?*

Answer: Indication of length of answer: 1-2 paragraphs.

Under the Kyrgyz laws, electronic evidence (most frequently in the form of electronic documents) can be considered as evidence, and thus admissible, should information in such

electronic documents be crucial for establishing facts of the case (Article 91 of the [Criminal Procedure Code](#)).

38. Question: *Are the criteria for admissibility of evidence collected through mobile forensics the same as for the other types evidence? Please elaborate in any case.*

Answer: Indication of length of answer: 1-2 paragraphs.

Yes. The law does not explicitly provide for separate criteria for admissibility of the evidence collected through mobile forensics. Any evidence which is not explicitly deemed inadmissible by the law (as described in our answers to the questions 14 and 29) and which might be deemed crucial for establishing the facts of the case by investigation authority and other parties to the case, might be admissible following the court order.

39. Question: *What if procedural rules are not followed? Can evidence from mobile forensics still be submitted to the Court in certain circumstances, balancing out the interest of the criminal justice with the severity of the procedural breach?*

Answer: Indication of length of answer: 1-2 paragraphs.

As we mentioned previously in our answers to the questions 14 and 29, the general rule established under the Criminal Procedure Code of the Kyrgyz Republic is as follows: *Information obtained in violation of the requirements of the Criminal Procedure Code of the Kyrgyz Republic is inadmissible evidence, has no legal force and cannot be used as a basis for a decision on a case, as well as to prove any circumstances* (Part 3 Article 82 of the [Criminal Procedure Code](#)).

This suggests that violation of procedural rules on obtaining evidence shall result in inadmissibility of such evidence.

Furthermore, the law provides for the following to be considered as inadmissible evidence (Part 4 Article 82 of the [Criminal Procedure Code](#)):

- 1) testimony of a suspect, accused of committing a criminal act, given in the course of pre-trial proceedings, in the absence of a defense lawyer, except in cases of refusal of a defense lawyer (in his presence in writing), but his testimony must be confirmed in court;
- (2) Testimony from a witness, suspect or accused in the course of pre-trial proceedings with the use of torture, violence, threats, deception or other unlawful acts and cruel treatment;
- (3) Testimony of the victim, witness based on guess, supposition, hearing and the testimony of a witness who cannot indicate the source of his or her knowledge;
- (4) The testimony of a person who, according to the procedure established in the Criminal Procedure Code, was found unable, at the time of questioning, to correctly perceive or reproduce circumstances relevant to the criminal case;
- (5) Information obtained in the course of any procedural action by a person who is not entitled to carry out proceedings in the criminal case in question or by a person subject to challenge;
- 6) information obtained by applying methods contrary to scientific knowledge;
- 7) other evidence obtained by the prosecution party in violation of requirements of the Criminal Procedure Code.

Should the evidence obtained from mobile forensics (which basically does not exist in the Kyrgyz Republic) be considered inadmissible due to the fulfillment of the above criteria, such evidence will not be accepted in any case, regardless of the interest of criminal justice. Any person / owner of the mobile device might further appeal the decision of the investigation authority to collect / use such evidence in the course of investigation.

40. Question: *Specifically, if data in the Cloud is accessed according to criminal procedure, but it turns out to be located outside your jurisdiction does this mean it is not admissible at all? Is it relevant that there was reasonable doubt about the location of the data at the time?*

Answer: Indication of length of answer: 1-2 paragraphs.

No, there is no such restriction under the Kyrgyz laws. Should it be necessary to conduct the interrogation, examination, seizure, search, expert examination and other specific investigative and judicial actions within a foreign jurisdiction as per the rules provided for in Criminal Procedure Code, the court, prosecutor or investigator shall request the relevant authorities of a foreign state to assist with execution of such investigative actions on the basis of an international treaty on legal assistance or on the basis of the principle of reciprocity.

41. Question: *What are the consequences if mobile evidence are altered either intentionally, or unintentionally due to their dynamic nature during the investigation process? Note that intentional alteration refers to using a process to uncover data which is known to alter some (meta)data, not to the falsification of evidence. The question is more whether any alteration, even on small and not relevant data may render the evidence inadmissible.*

Answer: Indication of length of answer: couple of paragraphs.

Such cases are not clearly covered by the Kyrgyz laws. In our view, this particular case in connection with alteration of evidence does not fall under the criteria of inadmissibility as provided earlier in our answers to the questions 14 and 29. This might suggest that such evidence can be accepted, however, at the same time, it might be considered inadmissible following the claim of any party involved in the investigation.

42. Question: *Specifically, are there rules on the used technology, methodology or standard, such as for example that this must be forensically sound as a prerequisite for admissibility? If yes, please elaborate.*

Answer: Indication of length of answer: 1-2 paragraphs.

There are no specific rules on the used technology, methodology or standard under the Kyrgyz laws. Please note, however, that one of the inadmissibility criteria concerns use of methods contradictory to scientific knowledge which in turn suggests that evidence must be forensically sound.

43. Question: *Are you aware of existing case-law in your jurisdiction, dealing with the admissibility of evidence produced using mobile forensics? If yes, please elaborate.*

Answer: Indication of length of answer: 1-2 paragraphs.

While there is certain judicial practice which can be referred to upon use of material provisions of the law, there is no existing case law in the Kyrgyz Republic due to the civil law system. Regretfully, we are not aware of any substantial practice covering admissibility of evidence produced using mobile forensics.

44. Question: *Is there in your jurisdiction an established and recognised standardisation(s) of the processes of collection, analysis, interpretation and reporting of digital evidence that must be followed for the evidence to be admissible? (as critical to the validity of evidence, their quality and impact evidence's acceptance by the courts)? If yes, please elaborate.*

Answer: Indication of length of answer: 1-2 paragraphs.

No, there is no established and recognized standardisation(s) of the process of collection, analysis, interpretation and reporting of digital evidence.

45. Question: *Is a failure to comply with Data Protection law, or privacy rules in itself, enough to refuse admissibility of the evidence, even when procedure is otherwise followed?*

Answer: Indication of length of answer: 1-2 paragraphs.

As a general rule, yes. However, there is certain exception in the Law of the Kyrgyz Republic “On Personal Information” dated 14 April 2008 No. 58 (last amendments as of 20 July 2017) (hereinafter – the “Personal Information Law”) which prescribes that certain rights on transfer and collection of personal information might be limited if such information is obtained in the course of investigation and / or obtained from persons detained on suspicion of or charged with criminal offense (Article 15 of the [Personal Information Law](#)). Otherwise, failure to comply with requirements of the Personal Information Law might be deemed sufficient to refuse admissibility of the evidence provided there is a relevant claim from one of the parties.

46. Question: *Is there case law in your jurisdiction on evidence collected through mobile forensics having been questioned or rejected in Court because the admissibility was questioned? If yes, please elaborate on at least 3 cases.*

Answer: Indication of length of answer: 3+ paragraphs.

The Kyrgyz Republic is the civil law jurisdiction, hence there can be no case law as such. Regretfully, while there is certain judicial practice which can be referred to in the course of civil proceedings, there is no established practice on evidence collected through mobile forensics being questioned or rejected in the Court, especially so, since there is no mobile forensics as such.

Section 4: Interpretation and presentation of evidence from mobile forensics before the Court

47. Question: *Are there general rules or guidelines on the interpretation and presentation of evidence from mobile forensics, such as:*

- *Is mobile forensic evidence given a certain probative value?*
- *Are there rules on how to interpret mobile forensic evidence or requirements which must be complied with for the evidence to be considered reliable?*
- *Must such evidence be examined by an expert witness?*
- *If not obligatory, is this a common practice?*
- *What are the requirements for experts (experience, independence, training, etc.)?*
- *Is there a centralised management of mobile forensic operations in your jurisdiction to ensure the work is compliant with standards and can be presented in court in a consistent manner?*

Answer: Indication of length of answer: couple of paragraphs.

In general, there are no particular rules or guidelines on the interpretation and presentation of evidence from mobile forensics. As for the above questions:

- Data obtained from mobile devices does not have a separate probative value, and can have it only in conjunction with other evidence (e.g., it is not possible for the court to make a decision solely on the basis of mobile forensics evidence);
- No, there are no specific rules on how to interpret mobile forensic evidence;
- No, no such requirement pertaining solely to mobile forensics exists under the Kyrgyz laws. In general, it is possible to engage an expert to examine certain evidence following the decision of investigation authority, but it is no obligatory in principle;
- No, we cannot consider it a common practice;
- No requirements are prescribed for mobile forensics experts under the Kyrgyz laws;
- No, a centralized management of mobile forensics operations does not exist in the Kyrgyz Republic.

48. Question: *Are you aware of existing case-law in your jurisdiction dealing with the interpretation and presentation of evidence produced using mobile forensics? If yes, please elaborate.*

Answer: Indication of length of answer: 1-2 paragraphs.

No, regretfully, we are not aware of any existing judicial practice (case law does not exist since the Kyrgyz Republic is the civil law jurisdiction) pertaining to interpretation and presentation of evidence produced using mobile forensics.

49. Question: *Is there in your jurisdiction an established and recognised standardisation(s) of the processes of collection, analysis, interpretation and reporting of digital evidence that must be followed for the interpretation and presentation of evidence before a court? Or alternatively which is not obligatory but considered as critical for the validity of evidence, its quality or the impact of the evidence and its acceptance by the courts? If yes, please elaborate.*

Answer: Indication of length of answer: 1-2 paragraphs.

No, there is no established and recognized standardisation(s) of the process of collection, analysis, interpretation and reporting of digital evidence.

50. Question: *Is there case law in your jurisdiction on evidence collected through mobile forensics having been questioned or rejected in Court because of interpretation issues or presentation issues (e.g. considered admissible but not reliable)? If yes, please elaborate on at least 3 cases.*

Answer: Indication of length of answer: 3+ paragraphs.

The Kyrgyz Republic is the civil law jurisdiction; hence there can be no case law as such. Regretfully, while there is certain judicial practice which can be referred to in the course of civil proceedings, there is no established practice on evidence collected through mobile forensics being questioned or rejected in the Court, especially so, since there is no mobile forensics as such.

Section 5: Implications of the use of mobiles forensics on the role of the different parties in the trial

51. Question: *Are there rules or guidance, or is there case law in your jurisdiction on how to respect the right to a fair trial in case of evidence extracted via mobile forensics? What practices are established in view of the respect of the principle of equality of arms?*

Answer: Indication of length of answer: couple of paragraphs.

There are no particular rules or guidelines on how to respect the right to a fair trial in case of evidence extracted via mobile forensics.

52. Question: *Is there any training required by law for the judges, prosecution, expert witnesses, lawyers involved in cases with evidence coming from mobile forensics?*

Answer: Indication of length of answer: couple of paragraphs.

No, since there is no legally defined term for mobile forensics as such, and since there is no established practice pertaining to the extensive use of evidence obtained from mobile forensics, there is accordingly no specific training required by the law for the judges, prosecution, expert witnesses, lawyers involved in cases with evidence coming from mobile forensics.

53. Question: *Is there a pre-determined time duration/limitation period required for the extraction of evidence from mobile devices, time for decoding, reviewing and analysing of the data, time for reporting that data in a form that prosecutors and others can use?*

Answer: Indication of length of answer: 1-2 paragraphs.

No, the law does not provide for a pre-determined time duration / limitation period exclusively required for the extraction of evidence from mobile devices, time for decoding, reviewing and analyzing of the data, as well as the time for reporting that data in a form useful to prosecutors and other parties.

54. Question: *What are the procedural rights inherent to the different participants in a criminal procedure (i.e. the prosecution, the court, the defendant, the witness, the victim, etc.)?*

Answer: Indication of length of answer: couple of paragraphs per different participant.

The procedural rights inherent to the different participants in a criminal procedure are as follows:

1. We highlighted the following fundamental rights of the court from Art. 30 of the Criminal Procedure Code of the Kyrgyz Republic:
 - Acquit a person;
 - a person shall be found guilty of an offence and (or) an offence and shall be punished or subject to probation;
 - To apply other coercive criminal measures (security measures);
 - Reverse and uphold the decision taken by the court of lower instance.

2. We highlighted the following fundamental rights of the prosecutor from Art. 33 of the Criminal Procedure Code of the Kyrgyz Republic:
 - Have full access to materials, documents and other information relating to pre-trial proceedings;
 - Verify the legality of the reception, registration and resolution of reports of crimes committed or being prepared and (or) misconduct;
 - within the scope of the powers provided for in the Criminal Procedure Code to initiate and (or) conduct pre-trial proceedings in a criminal case and (or) in a misdemeanor case;
 - Issue a notification of suspicion in a criminal case and (or) a case of misconduct against persons, the list of which is determined by the Constitutional Law of the Kyrgyz Republic «On the separate powers of the Procurator’s Office established by the Constitution of the Kyrgyz Republic» Referring cases to the relevant authorities and prosecuting persons with military status;
 - To terminate or return a criminal case and (or) a case of misconduct to an authorized official of the body of inquiry or to an investigator;
 - To supervise the legality of the investigation of criminal cases and (or) of cases of misconduct, as well as the enforcement of the law by the agencies carrying out investigative activities;
 - Apply to the examining magistrate for the application of a preventive measure and its extension;
 - To extend or refuse to extend pre-trial proceedings;

3. We highlighted the following fundamental rights of the investigator from Art. 35 of the Criminal Code of the Kyrgyz Republic:
 - To carry out investigative actions in accordance with the requirements thereunder;
 - Take steps to compensate the victim for material and moral damage;
 - Request documents, materials containing information about the incident and the persons involved;
 - Require audits, inventories, audits and other checks;
 - Instruct the body of inquiry to implement security measures for witnesses, victims and other participants in criminal proceedings;
 - To give notice of suspicion of a crime and (or) misconduct;
 - Recognize victims;
 - To grant motions in connection with criminal proceedings;

4. We highlighted the following fundamental rights of the authorized official of the body of inquiry from Art. 39 of the Criminal Procedure Code of the Kyrgyz Republic:
 - To conduct pre-trial proceedings in cases of misconduct in accordance with the requirements thereunder;
 - Take steps to compensate the victim for material and moral damage;
 - Request documents, materials containing information about the incident and the persons involved;
 - Require relevant State and other authorities to provide experts and experts;
 - where necessary, an interpreter to assist in the proceedings;
 - detain a person with a reasonable suspicion of misconduct;
 - Recognize victims;

5. We highlighted the following fundamental rights of the victim from Art. 41 of the Criminal Procedure Code of the Kyrgyz Republic:
 - Be informed of the nature of the suspicion, the charge;
 - To give testimony in their mother tongue or in a language they know;
 - provide evidence;
 - To submit motions and challenges;
 - Use the services of an interpreter;
 - have a representative;

6. We highlighted the following fundamental rights of the suspect from Art. 44 of the Criminal Procedure Code of the Kyrgyz Republic:
 - To know what offence and (or) misdemeanor he is suspected of having committed;
 - When detained for one effective, free and controlled telephone conversation;

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- Obtain copies of the notice of suspicion, misdemeanor, notification of new suspicion or change in the characterization of the suspicion, the record of detention;
 - Receive a written explanation of their rights;
 - Defend oneself personally or with the assistance of a lawyer of one's choice;
 - To have legal counsel from the moment of notification of the suspicion of the commission of an offence and (or) of an offence, and from the moment of actual detention to legal assistance guaranteed by the State, in the absence of counsel of choice;
7. We highlighted the following fundamental rights of the accused from Art. 44 of the Criminal Procedure Code of the Kyrgyz Republic:
- To know what offence and (or) misconduct he is accused of;
 - To protect their rights, freedoms and legitimate interests and to have sufficient time to prepare their defense;
 - To obtain a copy of the indictment document with the certificates attached to it, a copy of the decision to order expert examinations by the court;
 - testify or refuse to testify;
 - provide evidence;
 - To submit motions and challenges;
 - To reconcile, including through mediation, with the victim in cases provided for by law.
8. We highlighted the following fundamental rights of the defense counsel from Art. 54 of the Criminal Procedure Code of the Kyrgyz Republic the has the right:
- To collect and submit case files testifying in favour of the suspect, accused person, witness, in person or using a private investigator, in accordance with the law, in pre-trial proceedings and in court;
 - to receive written statements and explanations of witnesses, to draw up private inspection reports;
 - Request the examining magistrate to deposit evidence;
 - To be present at the arrest of a person and at the notification of suspicion;
 - participate in the interrogation of the defendant (suspect, accused person, witness) as well as in other investigative actions conducted with his participation or at his request;
9. We highlighted the following fundamental rights of the witness counsel from Art. 58 of the Criminal Procedure Code of the Kyrgyz Republic the has the right:
- To give testimony in their mother tongue or another language they know, to use the services of a qualified interpreter;
 - To challenge the interpreter participating in the interrogation;
 - To give their own testimony;

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- Acquaint themselves with the record of the interrogation, make additions to it and amend it;
 - Reimbursement of costs incurred in the proceedings;
 - to obtain property seized from him by the body conducting the criminal proceedings as evidence or on other grounds belonging to him or her original official documents;
 - Have legal counsel during questioning.
10. We highlighted the following fundamental rights of the expert from Art. 59 of the Criminal Procedure Code of the Kyrgyz Republic the has the right: expert shall have the right:
- Familiarize themselves with the case file relating to the subject of the examination;
 - to obtain the necessary facilities and samples for comparative research and opinion;
 - To require the provision of additional material necessary for giving an opinion or for carrying out an expert examination with the participation of other experts;
 - Refuse to give an opinion if the questions posed are beyond his expertise;
 - To be present during the investigation proceedings and to ask questions relating to the subject matter of the expert examination;
 - To participate in judicial proceedings on matters relating to the subject of the expert examination.
11. We highlighted the following fundamental rights of the specialist from Art. 60 of the Criminal Procedure Code of the Kyrgyz Republic the has the right: The specialist shall have the right:
- To know the purpose of his summons;
 - Refuse to participate in a case if he does not have the relevant special knowledge and skills;
 - With the permission of the court, the investigator or the authorized official of the body conducting the initial inquiry, to put questions to the participants in the investigation;
 - Acquaint themselves with the record of the investigation in which he participates and make statements and observations to be entered in the record;
 - Lodge complaints against the actions of the court, the investigator or the authorized official of the body conducting the initial inquiry;
 - Has the right to remuneration for the work performed by him, to reimbursement of expenses incurred in criminal proceedings and in cases of misconduct.
12. We highlighted the following fundamental rights of the interpreter from Art. 61 of the Criminal Procedure Code of the Kyrgyz Republic the has the right:

- Acquaint themselves with the record of the investigation in which he participated, as well as with the record of the court hearing and make observations to be recorded in the record;
- Refuse to participate in a case if he does not have the knowledge necessary for translation;
- Lodge complaints against the actions of the court, the investigator or the authorized official of the body conducting the initial inquiry;
- Compensation for work performed and expenses incurred.

13. We highlighted the following fundamental rights of the mediator from Art. 62 of the Criminal Procedure Code of the Kyrgyz Republic the has the right:

- To assist the parties in concluding a conciliation agreement (mediation agreement) by way of mediation;
- To meet with the parties to the mediation in private and confidentially, without limitation of the number and duration of meetings;
- To engage with other parties interested in the dispute if this would help reconciliation and the parties to the mediation have not otherwise agreed;
- To waive the mediation procedure if it considers that the mediation procedure will not lead to conciliation between the parties.

5.1 The Prosecution

55. Question: *Are there any requirements or guidance provided to the prosecution as how to control and deal with mobile forensics and evidences?*

Answer: Indication of length of answer: couple of paragraphs.

The prosecution does not enjoy any specific rights nor there are any requirements pertaining to control and dealing with mobile forensics and evidence explicitly provided by the law.

5.2 The Court

56. Question: *Is there judicial control over the approaches and methods used for acquiring, collecting and analyzing evidence? Please refer to case law if possible.*

Answer: Indication of length of answer: couple of paragraphs.

Judicial control under the Kyrgyz laws can be exercised by an investigative judge upon making a decision to carry out a special investigative procedure, as well as inspection of legality and validity of exercised investigative or special investigative actions (Article 256 of the [Criminal Procedure Code](#)). The law does not specify on how judicial control is carried out over the approaches and methods used for acquiring, collecting and analyzing evidence pertaining to mobile forensics. No case law is available since the Kyrgyz Republic is the civil law jurisdiction.

57. Question: *How does the Court assess the evidence obtained via mobile forensics? Please refer to case law if possible to illustrate the approach.*

Answer: Indication of length of answer: couple of paragraphs.

The court does not have a specific approach provided by the law when it comes to evidence obtained via mobile forensics. As a general rule, the court assesses the evidence, obtained as a result of special investigative actions, on its own volition and at its own discretion, on the basis of conjunction of the evidence presented in the course of court proceedings in accordance with the law. Parties involved in the criminal proceedings enjoy the equality of arms principle and the court delivers a procedural decision only on the basis of evidence available and accessible for review by each party (Article 95 of the [Criminal Procedure Code](#)).

5.3 The defendant and defender

58. Question: *Are there rules and standards regulating the defendant and his/her defender's rights to access and to make copies of the acquired mobile evidence? Are they able to get any information on the process used to acquire mobile forensic evidence (e.g. information on how the tools work, the procedures used, the parties involved and how the validity of the results is guaranteed)? Please refer to case law if possible.*

Answer: Indication of length of answer: couple of paragraphs.

There are no separate rules and standards regulating the defendant and his/her defender's rights to access and to make copies of the acquired mobile evidence.

As a general rule, the accused and his or her attorney must be notified and have the right to review the investigation protocol and other case materials, as well as to make copies of them and to file petitions. This suggests that they are able to get information on the process used to acquire mobile forensic evidence only within limits permissible by the law (Article 219 of the [Criminal Procedure Code](#)).

5.4 Witnesses

59. Question: *During the pre-trial stage, how is the right to privacy of the witnesses preserved?*

Are there any practical steps taken to exclude certain types of information which are cumulatively non-relevant to the case and too private? Are there particular requirements for witnesses regarding their capability to testify in terms of mobile forensics both in the pre-trial and the trial phase of the criminal proceedings? Please refer to case law if possible.

Answer: Indication of length of answer: couple of paragraphs.

As a general rule, state body responsible for investigating is obliged to take security measures for suspects, accused persons, victims, witnesses and other persons involved in criminal proceedings, as well as for their close relatives and spouses, if in connection with the proceedings there is information that violence or other acts prohibited by criminal law might be committed against them (Part 1 Article 79 of the [Criminal Procedure Code](#)).

The results of special investigative actions, which the body of pre-trial proceedings recognized as having no evidentiary value in criminal proceedings, are not attached to the materials of the investigation and are stored in the authorized unit of the law enforcement or special state body in conditions that exclude the possibility of unauthorized persons to get acquainted with them, until the final court decision on the case, after which they are destroyed with the compilation of the relevant act (Part 1 Article 220 of the [Criminal Procedure Code](#)).

There are no particular requirements for witnesses regarding their capability to testify in terms of mobile forensics both in the pre-trial and the trial phase of the criminal proceedings.

No reference to the case law can be provided since there can be no case law in the Kyrgyz Republic due to the latter being a civil law jurisdiction.

5.5 The Victim

60. Question: *How are the victim's/victims' rights ensured during both the pre-trial and the trial phase of the proceedings? How is their privacy preserved? Can they use the evidence obtained via mobile forensics when exercising their rights? Please refer to case law if possible.*

Answer: Indication of length of answer: couple of paragraphs.

The victim's/victims' rights ensured during both the pre-trial and the trial phase of the proceedings by the duty of the court, the procurator, the investigator and the body conducting the initial inquiry to ensure that victims of a crime or misdemeanor have access to justice and compensation for harm caused in the cases and in the manner prescribed by law (Part 1 Article 10 of the [Criminal Procedure Code](#)).

The court also based its decisions only on evidence in which the participation of each of the parties in the investigation was ensured on an equal footing (Part 4 Article 18 of the [Criminal Procedure Code](#)).

As a general rule, state body responsible for investigating is obliged to take security measures for suspects, accused persons, victims, witnesses and other persons involved in criminal proceedings, as well as for their close relatives and spouses, if in connection with the proceedings there is information that violence or other acts prohibited by criminal law might be committed against them (Part 5 Article 13 of the [Criminal Procedure Code](#)).

Yes, the victim can use the evidence obtained via mobile forensics when exercising their rights.

Section 6: Comments

If you feel some important elements of your national law relating to the use of mobile forensics in criminal investigations have not sufficiently been covered, please explain them here. If you feel an overview is missing, please also provide guidance on this below.

Answer: Indication of length of answer: few paragraphs up to a couple of pages.