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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.

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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.

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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

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Introductory questions:

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

Answer: Attorney-at-law at Sofia Bar Association, PhD Student at the Bulgarian Academy of Sciences in Criminal litigation

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

Answer: Sofia, Bulgaria.

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: There is no legal definition of a "mobile device" in the relevant criminal procedure code (CPC) in Bulgaria. The CPC uses the term "electronic communication device" as far as the latter is used for communication or exchange of information between persons and it includes PC, mobile phones, tablets which are considered initial or last receivers of exchanged digital information (data). The quality "mobility" is not taken into consideration by the legislator. Other devices (e.g. mp3-players, drones, etc.) if needed to be treated as a source of information for a crime (the act of the crime) are considered "objects" in general. This does not take in account the possibility to be easily transferred from one place to another (the idea of mobility). The essence is in the information contained "in" or "on" the device, not in its mobility.

In the Electronic Communications Act there is a definition for "Electronic communication devices" – "any electronic communication equipment and related technical means, including antennas". This definition is practically useless for the purposes of criminal litigation as it explains "device" with its synonym "equipment" which barely fits the idea of explanation.

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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

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

The Bulgarian Criminal Procedure Code (CPC) makes difference between search and seizure as they are considered separate methods of evidencing used in the investigation of crimes. However, the most common practice is to combine both but if there are no objects found in the search, there will be nothing to be seized obviously. In this sense, the idea is that if mobile device is found in the process of search it will be seized for sure. Every time there is issued a Decree of the prosecutor or a Court determination for search and seizure, certain particular objects (including mobile devices) are to be searched for. Those will be only mobile devices having traces or containing information (data) for a certain crime. In this case there are a couple of options:

A. To find a mobile device which obviously has no relation to the crime investigated. This device will not be seized but it will be briefly read/examined/searched on site by the investigation officers which participate in the search. These are usually old mobile phones which are kept by the owners.
B. To find a mobile device which is or is not possessed by the investigated person but is found in his belongings, searched room, etc. This device will be searched and seized even if it considered not owned by the investigated person.
C. The mobile device to be voluntarily given to the investigators by the person.

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In all cases the devices will be checked/read after seizure as there is a procedure for their examination for the necessary information. For the search and seizure is prepared a Record (protocol) according to art. 128 CPC. The Record contains the description of the seized object (the mobile device) and its condition. After that the object (mobile device) is enveloped in a separate package sealed, stamped and signed by the investigators. Later the expert reads the data during an "expert examination" and prepares another record (protocol) with the relevant information found on the device.

There is no legal way to read a mobile device without completing the above in the following order: Decree of the prosecutor or a Court determination for search and seizure; Protocol for search and seizure; packaging the mobile device; expert examination; protocol for the content of the mobile device; expert examination; report on the examination.

5. *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?*

The performance of search (and seizure) is following the principles of respect of personal and intimate sphere of each and every person. This is legally provided in paragraphs 4 and 5 in art. 163 CPC: (4) During search and seizure no actions shall be carried out, which are not necessary for the purpose thereof. Premises and depositories shall be opened by force only in case of refusal to be opened avoiding unnecessary damages. (5) When circumstances regarding the private life of the citizens have been disclosed during the search, necessary measures shall be taken that they are not made public.

The aforementioned requirements are very abstract. There are no particular rules on how the investigators to act. This is depending on their will, professional attitude and practice.

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

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This is a matter of the actual expert examination which will be held later after the search and seizure. The expert will use all his knowledge and tools for completing the task of extracting the relevant information from the mobile device for the purposes of the criminal trial.

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

During search (and seizure) there is no possibility for information to be copied or read from the mobile device because of the initially set rules for the expertise which has to be done by a professional- expert (court expert). When the search is carried out there is no time and technical possibility for the investigators to copy or read the information. However, if the task of the search and seizure is related to certain information, there will be an expert – technical assistant present and he will briefly check the mobile device for it. If the device cannot be unlocked because of lack of cooperation of the person in possession, the presumption will be that it has to be seized and examined.

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

The owner/person in possession will be asked for initial cooperation which includes to reveal the location of the mobile device (in a certain room), the unlock codes and other security codes, etc. Before commencement of search and seizure, the respective body shall submit the warrant thereof and shall propose to be shown the searched objects, papers and computer information systems, where computer information data is kept (art. 163, para 2 CPC). However, it is his choice to cooperate and reveal this information.

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

No. It is his personal decision whether he will cooperate or not for which he cannot be held legally responsible.

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

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A. If the search and seizure procedures are held in a premise and in his presence, he will be given the opportunity to participate in that process, including to reveal where (in the room/premise) and whose possession are the searched objects – mobile devices, what is their purpose and does he have any objections or notes related to the procedure carried out. This whole procedure will be described in the Protocol for search and seizure, which will be signed by him.

B. If the search and seizure are carried out in a premise but not in his presence, he will not be notified for these actions, as the presumption is that the certain object is needed it has to be seized no matter who the actual owner is and where is he at the moment of the procedure taking place.

C. If the search and seizure are carried out as search of a person in the pre-trial procedure without a warrant by a judge of the respective Court of first instance, this shall be admitted: 1. upon detention; 2. where there are sufficient grounds to consider that persons attending the search have screened objects or papers of significance for the case. (2) The search shall be conducted by a person of the same sex in the presence of witnesses of the same sex. (3) The record of the conducted investigation action shall be produced to the judge for approval without delay but not later than 24 hours (art. 164 CPC).

D. The CPC specifies in art. 162 which are the persons in whose presence search and seizure shall take place in different scenarios: Persons in whose presence the search and seizure shall be carried out:

(1) Search and seizure shall be conducted in the presence of witnesses of the act and of the person using the premises or of an adult member of his/her family

(2) Where the person using the premises or a member of his/her family is unable to attend, the search and seizure shall be conducted in the presence of the house manager or a representative of the municipality or the town hall.

(3) The search and seizure in premises, which are used by state or public services, shall be conducted in the presence of a representative of the service.

(4) Search and seizure in premises used by a legal person, shall be carried out in the presence of its representative. Where a representative of the legal person is not able to be present, the search and seizure shall be carried out at the presence of a representative of the municipality or of the town hall.

(5) Search and seizure in premises of foreign representations of international organisations and in houses of their employees, which enjoy immunity with regard to the criminal jurisdiction of the Republic of Bulgaria, shall be conducted with the consent of the head of the representation office and in the presence of a representative of the Ministry of Foreign Affairs.

(6) Where the search and seizure are related to computer information systems and software products, the actions shall be carried out in the presence of an expert- technical assistant.

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

Bodies, which shall be entitled to order search and seizure are legally provided in art. 161 CPC and are separated according to the relevant phase of the trial: (1) Search and seizure in the pre-trial procedures shall be carried out with the permission of a judge of the respective Court of first instance or of a judge of the Court of first instance where the action shall be performed, upon request of the prosecutor. (2) In urgent cases, where this is the only possibility for the gathering and preservation of the evidence, the bodies of the pre-trial procedures may carry out a search and seizure even without a permission of a judge of the respective Court of first instance or of a judge of the nearest Court of equal rank. The record of the carried out investigation proceeding shall be presented for approval to the judge without delay but not later than 24 hours. (3) Search and seizure in the pre-trial procedures shall be carried out after decision of the Court, which is trying the case.

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

There is no difference as long as there is certain object (mobile device) and/or particular information searched for. The legislator has provided that where there are sufficient grounds to

presume that in a room or person there are objects, papers or computer information systems, containing computer information data, which may be of importance to the case, a search shall be made for finding and seizing them (art. 160 CPC).

13. *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.*

Bulgaria is following the options and procedures of European Investigation Order, mutual legal assistance and Joint Investigation Teams in the EU. With other countries outside EU the relations and cooperation is carried out according bilateral, regional in international agreements in which Bulgaria is a party. There is a department in Supreme Cassation Prosecutor's Office which deals with the international assistance and is in charge with the communication and cooperation with other countries. Any request from other countries outside EU are made through this department.

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

As far as the EIO, MLAT and Investigation teams are concerned, there are certain rules and procedure provided which include, terms, conditions and specification applicable to all crimes.

As far as search and seizure of personal correspondence is concerned, there are special rules regarding only serious crimes – the ones that are punished buy at least 5 years of imprisonment. This is provided in art. 165 CPC: (1) Interception and seizure of correspondence shall be allowed only when it is necessary for the detection and prevention of serious crimes. (2) Interception and seizure of correspondence in the pre-trial procedure shall be performed upon request of the prosecutor and with the permission of a judge of the respective Court of first

instance or of the first-instance Court in the district where the action will be performed. (3) In urgent cases, where this is the only possibility to collect and preserve evidence during investigation of crimes under Art. 108a and Art. 354a of the Penal Code, the pre-trial authorities may intercept non-delivered correspondence without the authorization under Para 2. The monitoring prosecutor shall without delay, within 24 hours, submit to a judge of the corresponding court the protocol of the act accompanied by a reasoned written request for seizure of the intercepted correspondence. The seizure shall be carried out following a reasoned written permission of the judge, who shall issue it without delay, within 24 hours. In case of refusal the judge shall rule also on the intercepted correspondence. (4Interception and seizure of correspondence in the Court proceeding shall be performed on a decision of the Court trying the case. (5) Interception and seizure of correspondence shall be performed under the order of Art. 162. Para. 1- 4. (6) The provisions of Para. 1, 2, 4 and 5 shall be also applied to interception and seizure of electronic mail.

Practically, if the electronic mail is accessible through the mobile device, it has to be seized according to the abovementioned rules.

15. *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.*

A. Considering EIO, MLAT and Investigation teams collecting evidence is a question of strict rules. Any breach will lead to failure to fulfil the EU standards in this field. The procedure is written in strict forms so the possibility for inadmissibility is minimal. However in the Bulgarian criminal procedure, all the collected evidence during the pre-trial proceedings is collected again in the court phase of the trial and checked by the court. This is another guarantee for the reliability of the evidence. In this way the court itself will make the requests.

B. Considering the evidence gathered according to the national law, each and every evidence gathered in breach of the strict formal rules of CPC is not to be considered evidence by court. Art. 102 CPC: Evidence which are not collected or made under the conditions as

provided by this Code shall not be admitted. Art. 292 CPC defines the data which may be referred to at the Court debates: The parties who participate in the Court debates may refer only to the evidence which has been collected and checked in the Court investigation, under the provisions, established by this Code.

Mobile device seized

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

Of course. It can be seized as a device containing certain data, or as an object with traces of the crime on it (i.e. blood stains), or as a subject of crime itself (if it has been stolen from the actual owner and found in the thief).

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

The conditions are the ones provided by the CPC. On a request of the Court or of the bodies of the pre-trial procedures, all establishments, juridical persons, officials and citizens shall be obliged to preserve and deliver the objects, papers, computer information data and other data, which may be of importance for the case (art. 159, para 1 CPC). Grounds and purpose of the search are where there is sufficient grounds to presume that in a room or person there are objects, papers or computer information systems, containing computer information data, which may be of importance to the case, a search shall be made for finding and seizing them (art. 160 CPC).

The bodies which may require it are depending on the phase of the proceedings. Search and seizure in the pre-trial procedures shall be carried out with the permission of a judge of the respective Court of first instance or of a judge of the Court of first instance where the action shall be performed, upon request of the prosecutor. In urgent cases, where this is the only possibility for the gathering and preservation of the evidence, the bodies of the pre-trial procedures may carry out a search and seizure even without a permission of a judge of the respective Court of first instance or of a judge of the nearest Court of equal rank. The record of the carried out investigation proceeding shall be presented for approval to the judge without

delay but not later than 24 hours. Search and seizure in the pre-trial procedures shall be carried out after decision of the Court, which is trying the case (art. 161 CPC).

After that the procedure follows the other requirements for performing it provided in art. 163 CPC:

(1) Search and seizure shall be performed during the day, except if they brook no delay.

(2) Before commencement of search and seizure, the respective body shall submit the warrant thereof and shall propose to be shown the searched objects, papers and computer information systems, where computer information data is kept.

(3) The body conducting the search shall be entitled to prohibit the persons present to come into contact with other persons or between or among themselves and to leave the premises until the search is over.

(4) During search and seizure no actions shall be carried out, which are not necessary for the purpose thereof. Premises and depositories shall be opened by force only in case of refusal to be opened avoiding unnecessary damages.

(5) When circumstances regarding the private life of the citizens have been disclosed during the search, necessary measures shall be taken that they are not made public.

(6) The seized objects, papers and computer information systems which contain computer information data shall be submitted to the witnesses of the procedural actions and the other persons present. Where necessary, they shall be packed and sealed at the place of seizure.

(7) The seizure of computer information data shall be carried out by record on a paper carrier and another carrier. Where the carrier is a paper one, each of the pages shall be signed by the body which has performed the actions and by the expert – technical assistant. In the rest of the cases the carrier shall be sealed by a note, which shall contain: the case, the body which has carried out the seizure, the place, the date and the names of all of the persons present - by the body which has performed the actions and by the expert – technical assistant and who will sign it.

(8) Unsealing the carrier, made out under the order of Para. 7, shall be admitted for the necessities of the investigation only and with the permission of the prosecutor and shall be

performed in the presence of witnesses of procedural actions and of an expert-technical assistant.

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

This is the actual purpose of the seizure - to extract the information from the mobile device. The only obstacle to do so will be if the device is broken.

19. *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?*

The performance of search and seizure is following the main principles of respect of personal and intimate sphere of each and every person. This is legally provided in paragraphs 4 and 5 in art. 163 CPC: (4) During search and seizure no actions shall be carried out, which are not necessary for the purpose thereof. Premises and depositories shall be opened by force only in case of refusal to be opened avoiding unnecessary damages. (5) When circumstances regarding the private life of the citizens have been disclosed during the search, necessary measures shall be taken that they are not made public.

The aforementioned requirements are very abstract. There are no particular rules on how the investigators to act. This is depending on their will, professional attitude and practice.

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

No. The procedure is not related to the owner's/person in possession will to cooperate. The final goal is for the mobile device to be seized and the relevant data/information extracted.

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

No. It is his/her personal decision whether he will cooperate or not for which he cannot be held legally responsible.

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

A. If the search and seizure procedures are held in a premise and in his presence, he will be given the opportunity to participate in that process, including to reveal where (in the room/premise) and whose possession are the searched objects – mobile devices, what is their purpose and does he have any objections or notes related to the procedure carried out. This whole procedure will be described in the Protocol for search and seizure, which will be signed by him.

B. If the search and seizure are carried out in a premise but not in his presence, he will not be notified for these actions, as the presumption is that the certain object is needed it has to be seized no matter who the actual owner is and where is he at the moment of the procedure taking place.

C. If the search and seizure are carried out as search of a person in the pre-trial procedure without a warrant by a judge of the respective Court of first instance shall be admitted: 1. upon detention; 2. where there are sufficient grounds to consider that persons attending the search have screened objects or papers of significance for the case. (2) The search shall be conducted by a person of the same sex in the presence of witnesses of the same sex. (3) The record of the conducted investigation action shall be produced to the judge for approval without delay but not later than 24 hours (art. 164 CPC).

D. The CPC specifies in art. 162 which are the persons in whose presence search and seizure shall take place in different scenarios: Persons in whose presence the search and seizure shall be carried out:

(1) Search and seizure shall be conducted in the presence of witnesses of the act and of the person using the premises or of an adult member of his/her family

(2) Where the person using the premises or a member of his/her family is unable to attend, the search and seizure shall be conducted in the presence of the house manager or a representative of the municipality or the town hall.

(3) The search and seizure in premises, which are used by state or public services, shall be conducted in the presence of a representative of the service.

(4) Search and seizure in premises used by a legal person, shall be carried out in the presence of its representative. Where a representative of the legal person is not able to be present, the search and seizure shall be carried out at the presence of a representative of the municipality or of the town hall.

(5) Search and seizure in premises of foreign representations of international organizations and in houses of their employees, which enjoy immunity with regard to the criminal jurisdiction of the Republic of Bulgaria, shall be conducted with the consent of the head of the representation office and in the presence of a representative of the Ministry of Foreign Affairs.

(6) Where the search and seizure are related to computer information systems and software products, the actions shall be carried out in the presence of an expert- technical assistant.

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

The technical expert will do all the necessary to take the information needed from the mobile device concerning the case including using apps and other methods to bypass security.

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

There is no difference as long as there is certain object (mobile device) searched for. The legislator has provided that where there are sufficient grounds to presume that in a room or person there are objects, papers or computer information systems, containing computer information data, which may be of importance to the case, a search shall be made for finding and seizing them (art. 160 CPC).

25. *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*

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Investigation Order or Mutual Legal Assistance Treaties the only route or do other options exist? Please elaborate.

As commented above in question 13, Bulgaria is following the options and procedures of European Investigation Order, mutual legal assistance and Joint Investigation Teams in the EU. With other countries outside EU the relations and cooperation is carried out according bilateral, regional in international agreements in which Bulgaria is a party. There is a department in Supreme Cassation Prosecutor's Office called International Department which deals with the international assistance and is in charge with the communication and cooperation with other countries. Any request for gathering data, permission to access data or receive such from other countries outside EU are made through this department.

26. *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?*

If you cannot access the data directly through the mobile device or app in the device, you will need permission and assistance from the provider.

27. *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?*

Technically not. You have to ask for the data collector or data provider through the relevant country authority.

28. *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?*

Depending on the phase of the trial and the crime, the regulation is through Prosecutor’s Decree or Court order. Court has to approve or give initial permission for performance if the investigation is about serious crime.

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

Provision of Data by Undertakings Providing Electronic Communications Networks and / or Services is regulated in art. 159a CPC.

(1) At the request of the Court in judicial proceedings or upon reasoned order by a judge from the respective first-instance court issued at the request of the supervising prosecutor in pre-trial proceedings, the undertakings providing public electronic communications networks and / or services shall provide the data created in the course of their business operation which is required for: 1. tracking and identifying the source of the connection; 2. identifying the turn of the connection; 3. identifying the date, time and duration of the connection; 4. identifying the connection type; 5. identifying the user electronic communication device or the one presented as their end device; 6. establishing an identifier of the data cells used.

(2) The data under para 1 shall be collected where necessary for the investigation of serious intentional crimes.

(3) The request of the supervising prosecutor under para. 1 shall be reasoned and must contain the following: 1. information about the crime, the investigation of which requires use of traffic data; 2. description of the circumstances on which the request is based; 3. data about persons requiring traffic data; 4. the period of time which is covered by the inquiry; 5. the investigative body, to which the data are to be provided.

(4) The court shall state the following in the order under para 1: 1. the data should be reflected in the inquiry; 2. the time period which is covered by the inquiry; 3. the investigative body, to which the data are to be provided.

(5) The time period regarding which provision of data under para 1 is required and authorized may not exceed 6 months.

(6) Where the report contains data which are not related to the case and do not contribute to their clarification, the judge who issued the authorization shall order their destruction upon a reasoned written proposal by the supervising prosecutor. The destruction shall be carried out in a procedure established by the Chief Prosecutor. Within 7 days from receipt of the order the

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undertakings under para 1 and the supervising prosecutor shall provide the judge who issued it with the data destruction reports.

30. *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.*

By definition, our criminal trial is following formal procedures especially as far as the collect of evidence is concerned. The court shall not take into consideration evidence means which are not collected or made under the conditions as provided by this Code shall not be admitted (art. 105, para 2 CPC). Moreover the CPC provides that The verdict and the determination shall be subject to cancellation or amendment under cassation procedure: 1. where the law is offended; 2. where a significant procedural breach has been admitted; 3. where the imposed penalty is obviously unjust (art. 348, para 1 CPC)

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.

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

31.* 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: The opinions that forensic experts prepare for the needs of criminal proceedings are scientifically based and follow two main objectives: the first to give the most independent (from the parties to the cases) and the most competent evaluation. Generally speaking, forensics is a study that which forensic examinations appoint a narrow specialist in the research area, in order for the result of the research to clarify the facts and circumstances subject of the research, as such a way for the competent authority to fully disclose the objective truth.

Forensic examination is a way to prove or rejection of certain circumstances related to the trial. After its assignment, it has its own process of clarification of the circumstances, subject to proof in criminal proceedings. Every expert chooses his own methods of work.

***32.* 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: The general rules are specified in Ordinance № 10 On Judicial And Arbitration Examinations issued by the Minister of Justice. .In the legislation as a whole, as well as in the Ordinance, there are no specific rules for the research methods, as and preparation of the expertises themselves, set by Art. 2, para. 4 of the Ordinance, namely “scientific grounds and substantiation of the means and methods used in the expert research”, in Art. 3, para. 2 "Forensic research", as well as Art. 3, para. 3 "scientific and methodological support of forensic expertise” of the Ordinance are not specified, which allows any forensic expert to use different methods (often

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unscientific) and this leads until the appointment of a new expertise, which extends the term of case and increases costs.

The most significant drawback is that in their practical work forensic experts do not use uniform methods for assessment of compliance / non-compliance with the set ones criteria from the court or other institution that commissioned the expertise. For different areas, these methods are regulatory in relevant national, foreign or international standards.

***33.* 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: After reaching point where the examiner shall get access to a cross-border data provider or any institution dealing with issues outside our national borders, he informs the Prosecution or Court depending on the phase of the trial. After that the relevant authority prepares and send the official request to the foreign ones. The expert is not entitled and authorized to make such requests on his behalf.

***34.* 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: Regulation of the international legal assistance is provided not only in the international and EU treaties but in the CPC also. International legal assistance in penal cases of another state shall be rendered on the terms of a concluded international treaty to which the Republic of Bulgaria is a party, or on the principle of mutuality. International legal assistance in penal cases shall also be rendered to an international Court of justice whose jurisdiction has been recognised by the Republic of Bulgaria. The international legal assistance shall include: 1. submission of documents; 2. investigation actions; 3. collection of evidence; 4. providing information; 5. other forms of legal assistance if they are stipulated in an international treaty to which the Republic of Bulgaria is a party, or are imposed on the terms of mutuality (at. 471 CPC).

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The exchange of information may be performed through: 1. the contact units of the European Judicial Network; 2. Eurojust; 3. mail, e-mail or fax; 4. any other dully protected manner, in which its authenticity may be established. The information shall be provided by the Bulgarian competent body to the competent body of the other EU Member State, within the indicated term, together with a translation in the official language of the Member State, which has sent the request, of in another official language of the EU institutions, which it has accepted through a declaration, deposited at the General Secretariat of the Council. Information, sent to a competent body in the Republic of Bulgaria shall be accompanied with a translation in the Bulgarian language (art. 482 CPC).

35. **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: The Directive is becoming part of the national legislation. It cannot contradict the MLAT as it relates to the State Members, not the countries outside EU. There cannot be collision of rules in this sense.

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

Answer: The basic principle in CPC for the cooperation with the public is provided in art. 204. The bodies of the pre-trial procedure shall use the wide co-operation with the public for the detection of the crime and clarification of the circumstances on the case. This includes the private sector.

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

***37.* 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: The lack of regulation in the methodology of the forensic experts was commented above. In its practical work forensic experts do not use uniform methods for assessment of compliance / non-compliance with the set one's criteria from the court or other institution that commissioned the expertise.

Law Enforcement Directive 2016/680 ant the other relevant EU acts are applied in the national legislation through the Personal Data protection Act. This Act also provides rules regarding the protection of individuals in the processing of personal data by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of crimes or the execution of penalties, including the protection against threats to public order and security, and their prevention. The Inspectorate of the Supreme Judicial Council, supervises and ensures compliance with Regulation (EU) 2016/679, this law and regulations in the field of personal data protection when processing personal data by:

1. the court in the performance of its functions as a body of the judiciary, and

2. the prosecution and the investigative bodies in the performance of their functions of bodies of the judiciary for the purposes of the prevention, investigation, detection or criminal prosecution of crimes or the execution of punishments.

According to art. 37 of the Personal Data Protection Act, the controller or the processor of personal data may refuse in whole or in part the exercise of the rights of the data subjects under Art. 12 - 22 of Regulation (EU) 2016/679, as well as not to fulfill its obligation under Art. 34 of Regulation (EU) 2016/679, where the exercise of rights or the fulfillment of an obligation would create a risk for:

1. national security;
2. defense;
3. public order and security;
4. the prevention, investigation, detection or criminal prosecution of crimes or the execution of the imposed punishments, including the protection from and the prevention of threats to the public order and security;

In case of violation of ones rights under Regulation (EU) 2016/679 and under this law in the processing of personal data by the court in the performance of its functions as a judicial authority and by the prosecution and investigative bodies in the performance of their functions as judicial authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of penalties, the data subject shall have the right to lodge a complaint with the inspectorate within 6 months of learning of the breach, but not later than two years after its commission (art. 37B PDPA).

In Chapter 8 of the PDPA there are rules for the protection of individuals in relation to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, including protection against threats to public order and security. Personal data collected for the purposes above, shall not be processed for other purposes, unless the law of the European Union or the

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legislation of the Republic of Bulgaria provides otherwise. When the deadlines for deleting personal data or for periodic verification of the need for their storage are not legally established, they are determined by the administrator. The controller shall, where applicable and as far as possible, make a clear distinction between the personal data of different categories of data subjects, for example:

1. persons for whom there are serious grounds to believe that they have committed or will commit a crime;

2. persons convicted of a crime;

3. persons who have been victims of a crime, or persons in respect of whom certain facts give grounds to believe that they may have been victims of a crime, and

4. other third parties in relation to a crime, for example persons who could be called to testify in criminal investigations or in criminal proceedings, persons who may provide information on crimes or related persons.

The exercise of the rights under PDPA, when the personal data are contained in a court decision, document or materials in a case, prepared in criminal proceedings, does not affect and cannot contradict the provisions of the Criminal Procedure Code. This means that the CPC prevails over PDPA. There is basic non-disclosure principle for the materials of the investigation that they shall not be disclosed without the prosecutor's permission. Where need be, the body of the pre-trial procedure shall warn against signature the persons attending the investigation actions that they may not disclose without permission the materials under the case and in case of a breach they shall be liable under the Penal Code (art. 198 CPC).

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Section 3: Admissibility of evidence before court

***38.* 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: Electronic evidence is intangible because it is a digital recording reproduced by an electric charge that is intangible in nature, so electronic conversion is absolutely necessary to make this information available for perception. Therefore, it is true that the hard disk, the CD , flash memory, mobile devices are physical evidence that reproduces intangible electronic data. The EU is also working on the issues by a proposal for a regulation on European orders for the provision and retention of electronic evidence in criminal matters. The Council adopted two mandates authorizing the Commission to negotiate, on behalf of the EU, an agreement with the United States to facilitate access to electronic evidence for the purposes of judicial cooperation in criminal matters.

***39.* 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: All the evidence collection and admissibility are regulated under the same criteria. The evidence means (means of proof – typical for the Bulgarian criminal procedure system) may serve for reproduction in the penal procedure of evidence or of other evidence means. The evidencing in the penal procedure shall be performed only as provided by the CPC. The basic principles in CPC are in art. 107:

(1) The bodies of the pre-trial procedure shall collect evidence ex- officio
(2) The Court shall collect evidence on requests, made by the parties, and in own initiative – where necessary for revealing the objective truth.
(3) The Court and the bodies of the pre-trial procedure shall collect and check as the evidence, exposing the defendant or aggravate his/her liability, as well as the evidence which acquit the defendant or mitigate his/her liability.

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(4) Collection of evindences may not be refused only because the request is not made within the definite period.

(5) All collected evidence shall be subject to a precise check

40. **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: The evidence may be submitted in court in breach of the procedures for collecting it, but after the legal assessment of the Court and the conclusion that there are violations of the procedural rules in the pre-trial proceedings, related to the admission, collection, verification and evaluation of evidence and means of proof, this evidence will be excluded.

41. **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: This question will be revised if the location of the data is related and relevant to the crime. Once the data is accessed and present on the mobile device, it will be extracted in the form of pictures, screenshots, forensic report etc. If the information is received by foreign authority according to the international mutual cooperation it will be included as evidence in the case.

42. **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: This can be proved only by expert examination – through complimentary and/or repeated expert examination The complimentary expert examination, where the expert opinion is not sufficiently complete and clear, while a repeated expert examination shall be appointed where the

expert's statement is not well grounded and there arises a doubt about its correctness (art. 152 CPC). It might be requested by the parties or the Court itself. The expert's statement shall not be compulsory for the Court and for the bodies of the pre-trial procedure. Where it disagrees with the expert's opinion, the respective body shall be obliged to give its reasons. If there are doubts on the evidence reliability, the Court may exclude it.

***43.* 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: No, there are no such as for example the ones used in the Common Law system such as Daubert's or Frey's test.

There are only formal requirements in the CPC on the expert's opinion in art. 152: After carrying out the necessary examinations, the expert shall draw a statement in writing, in which he/she shall state: his/ her name and the grounds on which the expert examination was carried out; the task set; the materials which have been used; the examinations which have been made and by what kind of scientific and technical means; the obtained results and the conclusions of the expert examination The statement shall be signed by the expert. In case of discovery in the course of the examination of new materials, which are important for the case but for which no task has been set, the expert shall be obliged to state them in his/her statement.

***44.* 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: Every court case that deals with data extracted from mobile phone analyzes the whole process of gathering the evidence starting from the conditions of its search and seizure, the permission granted by the prosecutor or the court on the pre-trial, its safe storage, expert examination, expert opinion and final presentation in the form of evidence to the court for final word.

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45. **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: No such evidence. No such standards. As mentioned above, they follow the general standards. The only exception was considered above regarding the provision of data by undertakings providing electronic communications networks and / or services in art. 159a CPC.

46. **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: It is not enough. As commented above, the CPC rules prevail over the Data protection rules in the PDPA in the matters of national security and crime investigation.

47. **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: All the cases that deal with data from mobile devices are relevant. As mentioned above, if one evidence is presented to the Court this does not mean that it will be approved and credited as legally suitable evidence. The cases can be numerous as the options to breach the law while gathering the evidence are many – lack of competence of the authority in charge of the search and seizure (for example police officer instead of an investigator), compromise in the witnesses of the procedural actions - search and seizure, non-approval of the Protocol for search and seizure afterwards by the first instance Court, etc.

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

48. **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: No evidence in out criminal litigation has initial probative value. Each and every evidence is judged by the Court according to its relation to the crime. This of course is done after the assessment of the proper collection and incorporation of evidence. The mobile forensic evidence is interpreted according the general rules mentioned above. It has to be always examined by an expert as the presumption is that where the clarification of certain circumstances concerning the case requires special knowledge in the field of science, arts or techniques, the Court or the body of the pre-trial procedures shall institute an expert examination (art. 144 CPC).

In the legislation as a whole, as well as the Ordinance are missing specific texts for the qualification and the experience of the forensic specialists (the conditions to the qualification of the forensic experts in art. 13, para 1 of the Ordinance are that he has completed professional education and has the relevant special scientific knowledge in the field of a certain type of forensic examination and has at least 5 years of experience in the specialty). The lack of specific requirements for narrow specialization, as well as requirements for periodic qualification, often leads to delays in expertise, preparation of inaccurate or incomplete expertise, which in turn leads to the appointment of

subsequent expertise. Since the expert is selected from a list, according to the specialties indicated by the specialists in their registration, it often turns out that forensic experts do not are sufficiently qualified or do not have modern knowledge on the subject of expertise, which in turn leads to the need to appoint a new expertise.

***49.* 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: Consider the above analysis on how the Court revises the expertise.

***50.* 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: There are no specific rules for the research methods, as well as the preparation of the expertise themselves. There are also no specific requirements for documenting the expertise. In their practical work the forensic experts do not use uniform methods for assessment of compliance / non-compliance with the set criteria by the court or other institution that commissioned the expertise.

***51.* 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: Consider the above analysis on hot the Court revises the expertise.

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

52. **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.

53. **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: No such training required. Each expert witness shall be completed professional education and has the relevant special scientific knowledge in the field of a certain type of forensic examination.

54. **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: The general terms of pre-trial and court proceedings are applied here. The Court shall hear the cases within a reasonable term. The prosecutor and the investigating bodies shall be obliged to provide the conduction of the pre-trial procedure within the terms stipulated by this Code. The cases over which the defendant has been arrested, shall be investigated, considered and decided with a priority before the rest of the cases (art. 22 CPC). The investigation shall be performed and the case forwarded to the prosecutor within two months from the date of its institution. The prosecutor may determine a longer period. If this period appears to be insufficient, it may be prolonged by the prosecutor before the elapse of the aforementioned period. Upon factual and legal intricacy of the case, the prosecutor may extend the term for investigation. If this term appears to be insufficient, the administrative head of the relevant prosecution office or a prosecutor, authorized by him may extend it upon request of the observation prosecutor. The term of every

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extension may not be longer than 2 months. The reasoned request for prolongation of the period shall be sent before expiration of the initial terms (art. 234 CPC).

The data from the service provider is kept for 6 months according to the provisions of the Electronic Communications Act: Companies providing public electronic communications networks and / or services shall store for a period of 6 months data created or processed in the course of their activity (art. 215B). They are necessary for:

which are necessary for:

1. tracking and identifying the source of the connection;
2. identification of the direction of the connection;
3. identification of the date, time and duration of the connection;
4. identification of the type of connection;
5. identification of the terminal electronic communication device of the consumer or of what is presented as his terminal device;
6. establishing an identifier of the used cells.

***55.* 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:

Court: After the prosecutor tables the indictment act or the victim by the crime person submits a complaint, the Court shall govern the procedure and shall decide all matters on the case.

Prosecutor: The prosecutor shall bring and maintain the accusation in crimes of general nature. In execution of his/her tasks, the prosecutor shall: 1. rule the investigation and carry out a permanent supervision of its lawful and due execution as a monitoring prosecutor; 2. may carry out investigation or separate actions of investigation and other procedural actions; 3. participate in the Court procedure as a state prosecutor; 4. take measures for removal of the admitted breaches of the

law, following the order as established by the PCPC and shall exercise supervision of lawfulness upon execution of the compulsory measures.

Defendant: The defendant shall have the following rights: to learn for which crime he/she is involved in this capacity and on the base of what evidence; to give or to refuse to give explanations about the accusation; to become acquaint with the case, including with the information obtained by usage of special intelligence devices and to make the necessary extracts; to submit evidence; to participate in the penal procedure; to make requests, notes and objections; to make statements last; to appeal the acts which harm his/her rights and legitimate interests; to have a defender. The defendant shall have the right of participation of his/her defender in the performance of all of the actions of investigation and other procedural actions with his/her participation, except if he/she abandons explicitly this right. The accused person shall be entitled to be provided with general information facilitating his choice of defense counsel. The accused person shall have the right to freely contact his defense counsel, meet him privately, receive advice and other legal assistance, including before and during the interrogation and any other procedural action involving the accused. The defendant shall also have the right to a last plea. A defendant who does not speak Bulgarian, shall have the right to interpretation and translation in criminal proceedings in a language he/she understands. The defendant shall be provided with a written translation of the decree for bringing the accusations, of the court rulings for a constraint measure, of the act of indictment, of the judgment delivered, of the decision of the Court of appeal and of the decision of the cassation instance. A defendant shall be entitled to refuse written translation pursuant to the CPC where he/she has a defense counsel and his/her procedural rights are not being violated.

Victim: In the pre-trial procedure the victim shall have the following rights: to be notified of his/her rights in the penal procedure; to acquire defense of his/her safety and his/her close persons; to be informed about the outcome of the penal procedure; to participate in the procedure as per this Code; to make requests, observations and objections; to appeal the acts which lead to disclosure or suspension of the penal procedure; to have a trustee; to receive a written translation of the decree for termination or stopping the penal procedure if he/she does not speak the Bulgarian language.

The authority initiating the pre-trial proceedings shall notify the victim immediately, provided that he has supplied an address for summoning in the country. The victim's rights shall arise upon his/her explicit request to participate in the pre-trial proceedings, indicating an address for summoning in the country.

Defender: The defender shall have the following rights: to meet alone with the defendant; to become acquainted with the case and to make the needed extracts; to submit evidence; to participate in the penal procedure; to make requests, notes and objections and appeal the acts of the Court and of the pre-trial procedure which harm the rights and the legitimate interests of the defendant. The defender shall have the right to participate in all the actions of investigation with the participation of the defendant, but his/her absence shall not establish obstacle for their performance. The participation of the defender shall not be an obstacle for the defendant to exercise in person.

Expert: The expert shall have the following rights: to get acquainted with the materials on the cases, which refer to the issues of the expert examination; to demand additional materials; to take part in the carrying out of separate acts of the investigation and of the Court investigation proceedings, when that is necessary for the performance of the set task; to receive remuneration for his/her work and to be paid for the incurred costs, as well as to demand the revocation of the acts, which harm his/her rights and legitimate interests. Where the experts are more than one they shall be entitled to consult one another before they give an opinion. In case of consensus, the experts may assign one of them to expose before the respective body the general opinion, and where there is a difference of opinions, each of them shall present a separate opinion.

5.1 The Prosecution

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

Answer: The prosecutor gives general guidance on the pre-trail proceedings to the investigators. It is the final result of the expertise which matters for the investigation and the prosecutor. One

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cannot be competent of the process of extracting data rom a mobile device. In this sense the prosecutor can give very general tasks to be completed by the expert in order to come to a desired result – getting the relevant information on the case.

5.2 The Court

***57.* 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: On a request of the Court, all establishments, juridical persons, officials and citizens shall be obliged to preserve and deliver the objects, papers, computer information data and other data, which may be of importance for the case (art. 159 CPC). At the request of the Court in judicial proceedings or upon reasoned order by a judge from the respective first-instance court issued at the request of the supervising prosecutor in pre-trial proceedings, the undertakings providing public electronic communications networks and / or services shall provide the data created in the course of their business operation (159A CPC). Search and seizure in the pre-trial procedures shall be carried out with the permission of a judge of the respective Court of first instance or of a judge of the Court of first instance where the action shall be performed, upon request of the prosecutor. In urgent cases, where this is the only possibility for the gathering and preservation of the evidence, the bodies of the pre-trial procedures may carry out a search and seizure even without a permission of a judge of the respective Court of first instance or of a judge of the nearest Court of equal rank. The record of the carried out investigation proceeding shall be presented for approval to the judge without delay but not later than 24 hours. Search and seizure in the pre-trial procedures shall be carried out after decision of the Court, which is trying the case (art. 161 CPC). Interception and seizure of correspondence in the pre-trial procedure shall be performed upon request of the prosecutor and with the permission of a judge of the respective Court of first instance or of the first-instance Court in the district where the action will be performed. Interception and seizure of correspondence in the Court proceeding shall be performed on a decision of the Court trying the case (165 CPC).

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

Answer: As mentioned above, no special methods of assessment are applied to the mobile forensics. It is estimated as part of the all evidence collected called "body of evidence" going through the legal ground on gathering, admission, inspection and legal estimation for each and every evidence.

5.3 The defendant and defender

***59.* 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: There is a whole stage dedicated to the right of the defendant and his defender to access the gathered evidence during the pre-trial proceedings. The defendant and his defender, the victim and his trustee shall be summoned for the presentation of the investigation, if requested by them. Before the presenting, the investigating body shall clarify to the attending persons their rights (art. 227, CPC).

The body of investigation shall determine a time limit for review of the materials depending on the nature of the accusation, the volume of the file and on other circumstances, which may be of importance for the duration of the examination. Where some of the appeared persons is unable to review the materials, the investigating magistrate shall be obliged to explain them, and if need be, to read them to him/her. Where a person refuses to read the materials, the refusal and the reason thereof shall be noted down in the record of the investigation. they examine the materials, the respective persons may make requests, notes and objections. The written requests, notes and objections shall be attached to the file, while the oral ones shall be entered in the record of the

investigation. On the requests, notes and objections the supervising prosecutor shall deliver a decree, which shall not be subject to appeal, within seven days (art. 229 CPC).

Where additional actions of investigation are carried out, the persons on whose request they have been undertaken shall also be present. Following the completion of the additional actions, the body of investigation shall perform a secondary submission of the investigation (art. 230 CPC).

5.4 Witnesses

60. **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: The mobile forensic reveal no specific differences from the forensic expertise as a whole. Witness testimony is considered an evidence as well as the result from the mobile forensic expertise and are evaluated on equal basis as the other evidence on the case in the court phase.

5.5 The Victim

61. **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: The rights of the victim were reviewed above in question 55. In addition, here are the basic principle provided in CPC:

Victim shall be the person, who has suffered property or personal damages from the crime. (2) In case of death of the person this right shall transit to his/her heirs. (3) The defendant may not exercise the rights of a victim in one and the same procedure. The victim shall be provided with the needed procedural remedies for the defence of his/her rights and legitimate interests (art. 15 CPC).

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The victim, who has suffered property or personal damages from a crime, which is subject to prosecution under the general order, shall have the right to participate in the penal procedure as a private prosecutor. After the death of the person this right shall transit to his/her heirs (art. 76 CPC).

The victim of a crime, which is subject to prosecution on a complaint of the victim, may bring and maintain indictment before the Court as a private complainant. After the death of the person this right shall transit to his/her heirs (art. 80 CPC).

The victim and his/her heirs, as well as the legal persons who suffered damages from the crime, may file a civil claim for compensation of the damages and to establish themselves as civil claimants in the Court procedure (84 CPC).

The hearing of the case or performance of concrete Court procedural actions shall be performed behind closed doors, if is needed for the keeping the state secret and morality, and where necessary in order to prevent the disclosure of facts of the intimate relations of citizens (art. 263 CPC).

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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: The problems of mobile forensic are to be understood through the main principles and objectives of the forensic expertise as a whole. A future survey shall cover first of all the nature of the forensic expertise, its elements, expert witnesses, their qualification, lack of common standards for the expertise, etc. There shall be initial knowledge on the expertise before making conclusions on the mobile forensic as one of the types of expert examination.

The era of scientific evidence in itself presupposes a scientific approach to their collection, analysis and evaluation. The generally accepted opinion in the scientific community is not always true. Contradictions or different, albeit close, conclusions from research are possible. Then arises the need for a critical assessment of the weight of such evidence.

The possibility of error in the study should be analyzed by the governing body. Unpredictability and a selective approach to the adoption of expert opinions or scientific evidence must be avoided. Another problem is whether the methods used in the specific expertise or in general the methodology applied in the scientific field, in the subject of which the issues to be resolved, should be analyzed.