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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:

I work at the Masaryk University as a researcher and deputy director of National Cybersecurity Competence Centre.

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

Answer:

Brno, Czech Republic.

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 mobile devices.

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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?*

There are number of situations when the mobile device can be searched without seizing, because law enforcement authorities can do anything to retrieve evidence from any device in their possession, if they obtained it legally. So, the search can be conducted for example in following situations:

- If the device was provided willingly by its user/owner,
- If it was found or otherwise legally obtained,
- If it was found during search of home or other premises,
- If it was taken from the suspect in the act,
- Mobile devices may be theoretically searched also remotely with or without help from ISPs or services providers.

There might be other situations when the mobile device may be searched.

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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?*

There are no specific limits connected specifically to mobile or other electronic devices, so general principles apply. Specific limits basically depend on the way the access to the device was obtained. For example, if the device was found or provided by its owner/user, then there are no further specific limits. However, when the device needs to be accessed and searched remotely, the law enforcement can do so only on the basis of court order which must be reasoned and main include limits. The reasoning of the court order may vary from judge to judge, but it usually is not very detailed.

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

Yes, it is not specifically regulated by the procedural law.

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

At what stage? Generaly it can be.

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

Depends on how the device was obtained. If it was provided by the witness/owner/user, then yes, the consent is necessary. In other cases in criminal procedure no, the LE doesn't need consent from the owner/user.

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

No.

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

No.

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

The search doesn't need to be specifically ordered. If the device is seized or otherwise obtained, it is assumed, that it will be searched. However, if the device is accessed/seized based on the court order, the court order may require the investigator to conduct search focused on collection of specific data/evidence. Also, when the search is conducted by someone else – like forensic expert, then the search is based on an order issued by the investigator or public prosecutor. Such order also explains to the expert, what should be the search focused on and what kinds of evidence is he expected to search for. In any case, there are also specific formal requirement regarding the process of search, data retrieval and analysis. The person conducting search should write protocol explaining how the search was conducted, what was found and what tools were used. There are also internal rules on how to conduct the search developed by law enforcement authorities and the chamber of forensic experts.

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

What person, the user/owner of the device? Not really, only difference is that the method of obtaining the device would be probably different in case of the accused and other persons.

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.*

If it the data reside outside Czech jurisdiction, but is controlled by Czech entity or entity that is known to cooperate with the Czech LEAs, then the procedure would be the same as if the data was stored within the Czech jurisdiction – the court would issue interception order or order to search items which is used to collect data from ISPs. If however is the data both stored abroad and the relevant operator is also foreign, then the LEAs would have to go through EIO/MLAT.

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

Yes, some of the procedural measures may be used only in case of serious crimes, listed in the criminal procedure code (for example, interception of electronic communication).

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.*

No, in some cases not following the rules cause mere relative inadmissibility in court, this happens in general in cases where the procedural error (not following a rule) can be corrected (ie. when there was no consent from the owner/user of the device but was obtained subsequently. Other rules are strict however, for example when the interception court order was issued for a crime for which the law doesn't allow such measure.

Mobile device seized

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

Yes.

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

In general, any person who is in possession of an item important for the criminal trial is required to release such item for the purposes of the criminal investigation upon request from the police, public prosecutor or court. It such person doesn't do so, the police, with prior consent of the public prosecutor, may remove the item in question from their possession.

Couple of rules apply here:

- Requested person is not required to release and item that contains evidence against her or person close to her.

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- Obligation to release an item doesn't apply in case the item contains data/information about which the interrogation is banned (for example communication between the accused and their attorney).
- The item can be seized by the police with prior consent of the public prosecutor, however, when it is impossible to obtain the consent soon enough, the police can seize the item and request the consent subsequently.

Details on the release and seizure of items are explained in the §§ 78 and 79 of the criminal procedure code:

Article 2

Impoundage of Items for the Purposes of Evidence

Section 78

Obligation to Submit or Release Items

(1) Those who keep an item that may serve for the purposes of evidence are obliged to submit it to the court, public prosecutor or police authority upon a call to do so; if the item has to be impounded for the purposes of the proper ascertainment of facts important for the criminal proceedings, they are obliged to release the item to those authorities upon a call to do so. When being called upon, they shall be warned that if they fail to comply with the call, the item may be removed from them, as well as there being other consequences of non-compliance (Section 66). The presiding judge and in the preliminary hearing, the public prosecutor or the police authority, are entitled to call to submit or release the property.

(2) The obligation under Subsection 1 shall not apply to a document or another tangible medium containing an audio, video or data record whose content relates to the circumstances of the ban on interrogation, unless there was an exemption from the obligation to keep the matter secret or confidential.

(3) Nobody may be forced to submit or release an item that may serve as evidence against them or against a person close to them at the time when its submission or release is requested; this does not affect the provisions on the removal of items, house search, search of other premises and lands and a personal search.

(4) If required in order to prevent the frustration of forfeiture or confiscation of an item, the law enforcement authority referred to in Subsection 1 shall issue an order prohibiting the person from whom the property was impounded from transferring such an item to another person or encumbering the item during the period of impoundage. Any legal action made contrary to this prohibition is invalid; the court shall take account of such invalidity even without a petition. Such a person must be instructed on this.

(5) The authority that performed the action shall immediately issue a written confirmation of the receipt of the item or a copy of the transcript to the person who submitted or released the item that may serve for the purposes of evidence; those documents must contain a sufficiently accurate description of the item so that it may be identified.

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(6) The law enforcement authority to which the item that may serve for the purposes of evidence was released shall take it over for custody.

(7) The person from whom the item was impounded has the right to request the return of the item at any time. The law enforcement authority referred to in Subsection 1 shall decide on such a request without undue delay. If the request is dismissed, the person may not repeat it until after 30 days from the full force and effect of the decision, unless they present new grounds in it.

Section 79

Removal of Items

(1) If an item that may serve for the purposes of evidence is not submitted or released when those who have it in their possession are called upon to do so, it may be removed from their possession on the warrant of the presiding judge, and in the preliminary hearing, the public prosecutor or police authority. The police authority needs to have the prior approval of the public prosecutor for the issue of such a warrant; without the prior approval, the warrant may be issued by the police authority only if prior approval cannot be achieved and the matter cannot be delayed.

(2) If the authority that issued the order to remove the item does not remove such an item themselves, the police authority shall do so on the basis of the order.

(3) A person who is not involved in the matter shall take part in removing the item.

(4) Section 78 Subsection 4 through 7 shall apply accordingly to the removed item.

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

Yes.

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?*

Not really, only limitation is that the law enforcement and courts can't use as evidence any information that was part of the communication between the accused and their attorney.

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

In case of seizure, no.

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

No.

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

No, they just receive certificate that confirms, that the device was seized.

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

Yes.

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

No.

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

If it the data reside outside Czech jurisdiction, but is controlled by Czech entity or entity that is known to cooperate with the Czech LEAs, then the procedure would be the same as if the data was stored within the Czech jurisdiction – the court would issue interception order or order to search items which is used to collect data from ISPs. If, however, is the data both stored abroad and the relevant operator is also foreign, then the LEAs would have to go through EIO/MLAT.

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?*

In such a case it might be possible to ask foreign or international law enforcement body for cooperation following common rules for police cooperation, or the law enforcement authorities may attempt to access the data remotely by bypassing security measures. This can be done only on the basis of court order according to § 158d:

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Surveillance of Persons and Items

(1) The surveillance of persons and items (hereinafter referred to as "surveillance") means acquiring knowledge about persons and items performed in a classified manner by technical or other means. If the police authority finds during the surveillance that the accused communicates with their defence counsel, they are required to immediately destroy the records with the content of the communication, and the information that they learned in this context they are not allowed to use in any way.

(2) Surveillance during which audio, video or other records are to be obtained may be performed only upon the written authorisation of the public prosecutor.

(3) If the surveillance is to interfere with in the inviolability of residence, the confidentiality of correspondence, or finding the contents of other documents and records kept in private with the use of technology, then it may be performed only with the prior authorisation of a judge. When entering a residence, no actions other than those that lead to the planting of technical equipment can be performed.

(4) The authorisation referred to in Subsection 2 and 3 can only be issued upon written request. The request must be justified by a suspicion of specific criminal activity and, if known, with the information about the persons or items that are to be surveilled. The authorisation must state the period during which the surveillance will be carried out and this must not be longer than six months. This period may be extended by those who authorised it on the basis of a new written request, but still not exceeding six months.

(5) If the matter cannot be delayed and it is not a case referred to in Subsection 3, the surveillance may be initiated even without prior authorisation. However, the police authority is obliged to additionally request the authorisation without undue delay and if it is not received within 48 hours they are required to cease the surveillance, destroy any records, and not to use any information found in this context.

(6) Without compliance with the conditions referred to in Subsection 2 and 3, the surveillance may performed only if the person whose rights and freedoms are to be interfered with by surveillance gives their express consent. If such consent is subsequently withdrawn, surveillance shall immediately terminate.

(7) If the record of the surveillance is to be used as evidence, it is required that the transcript is attached with the particulars referred to in Section 55 and 55a.

(8) If no facts important to the criminal proceedings were found, it is necessary to destroy the records in the prescribed manner.

(9) Operators of telecommunications activity, their employees, and other persons who participate in the operation of telecommunications activity, as well as the post office or the person performing the transport of the consignments are obligated to provide the police authority performing the surveillance with the necessary assistance free of charge and in accordance with their instructions. At the same time, they may not claim the obligation of professional confidentiality imposed by special Acts.

(10) In a criminal matter other than that which the surveillance was performed for under the conditions referred to in Subsection 2, the records obtained through surveillance and the attached transcript may be used as evidence only if there is, in this case, a pending criminal proceeding on an intentional criminal offence or if the person whose rights and freedoms the surveillance interfered with, gives their consent.

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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?*

Yes, but same rules apply, it always needs to be based on court order for surveillance of items or interception of electronic communication.

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?*

There is no difference between data related to the device and any other data kept by ISP. There are basically couple of methods for accessing the data.

First, it is possible to freeze the data for further processing and also to prevent access to the data by the service provider. This can be ordered by the police (with consent from the public prosecutor), public prosecutor or judge. Please see §7b:

§ 7b

(1) If it is necessary to prevent loss, destruction or alteration of data relevant to criminal proceedings that are stored in a computer system or on an information carrier, the person holding or having the data held under their control to keep such data may be ordered to keep the data unaltered for a period of time specified in the order and to adopt any necessary measures to prevent disclosure of the information that retention of data has been ordered.

(2) If it is necessary to prevent continuing with or repeating criminal activities, it is possible to order a person holding or having the data held under their control and that are stored in a computer system or on an information carrier to prevent others from accessing such data.

(3) An order under Subsection 1 or 2 may be issued by the presiding judge and by a public prosecutor or a police authority in pre-trial proceedings. The police authority must have a prior consent of the public prosecutor to issue such an order; without prior consent, an order may be issued by a police authority only if the prior consent could not be obtained and the matter cannot be delayed.

(4) The order referred to in Subsection 1 or 2 shall indicate the data to which the order relates, the reason for which the data are to be retained or the access to them is to be denied, and the period for which such data are to be retained or the access to them to be denied and which may not be longer than 90 days. The order must contain instructions about the consequences of disobeying the order.

(5) The authority which issued the order referred to in Subsection 1 or 2 shall immediately deliver it to the person to whom it is directed.

It is also possible to request specifically traffic and localisation data from the ISP. This measure can be used only in case of specific criminal offenses listed in §88a and based on court order.

Section 88a

(1) If, for the purposes of criminal proceedings conducted for an intentional criminal offence for which the law sets out a prison sentence with an upper penalty limit of at least three years, for the criminal offence of violating the confidentiality of messages (Section 182 of the Penal Code), for the criminal offence of fraud (Section 209 of the Penal Code), for the criminal offence of unauthorised access to computer systems and information media (Section 230 of the Penal Code), for the criminal offence of procuring and possessing access devices and computer system passwords and other such data (Section 231 of the Penal Code), for the criminal offence of dangerous threats (Section 353 of the Penal Code), for the criminal offence of dangerous persecution (Section 354 of the Penal Code), for the criminal offence of spreading alarming news (Section 357 of the Penal Code), for the criminal offence of encouraging a criminal offence (Section 364 of the Penal Code), for the criminal offence of approving a criminal offence (Section 365 of the Penal Code) or for an intentional criminal offence for which prosecution is stipulated in a proclaimed international treaty binding on the Czech Republic, it is necessary to ascertain data on the telecommunications service that are the subject of a telecommunications secret or that are subject to the protection of personal and intermediation data, and there is no other way to achieve the pursued purpose or if its achievement would be otherwise significantly harder, their release to the public prosecutor or to the police authority shall be ordered by the presiding judge in proceedings before the court and by the judge upon the petition of the public prosecutor in a preliminary hearing. If there are criminal proceedings for a criminal offence the prosecution of which is stipulated in such international treaty, the order for ascertaining data on the telecommunications service must be issued in writing and must be justified, including a specific reference to the proclaimed international treaty. If the request applies to a particular user, their identity must be stated in the order, if known.

(2) The public prosecutor or the police authority by whose decision the matter was finally concluded, and in proceedings before the court the presiding judge of the court of first instance after the final conclusion of the matter, shall inform the user referred to in Subsection 1, if known, of the ordered ascertainment of data on the telecommunications service. The information shall identify the court which issued the order for the ascertainment of data on the telecommunications service, and detail the period to which such order applied. Such information shall include instructions on the right to submit to the Supreme Court, within six months of receipt of this information, a petition to review the legality of the order for the ascertainment of data on the telecommunications service. The presiding judge of the court of first instance shall submit the information without undue delay after the final conclusion of the matter, the public prosecutor by whose decision the matter was finally concluded shall submit the information without undue delay after expiration of the period for the review of their decision by the Attorney General under Section 174a, and the police authority by whose decision the matter was finally concluded shall submit the information without undue delay after expiration of the period for the review of their decision by the public prosecutor under Section 174 Subsection 2 Paragraph e).

(3) The presiding judge, the public prosecutor or the police authority shall not submit the information under Subsection 2 in proceedings on a crime committed by an organised group for which the law stipulates a prison sentence with an upper penalty limit of at least eight years, in proceedings on a criminal offence committed for the benefit of an organised criminal group, in proceedings on the criminal offence of participation in an organised criminal group (Section 361 of the Penal Code), in proceedings on the criminal offence of participation in a terrorist group (Section 312a of the Penal Code) or if the commission of the criminal offence involved several persons and in relation to at least one of them criminal proceedings have not yet been finally concluded or if criminal proceedings are conducted against the person to whom the information is to be submitted, or if providing such information could defeat the purpose of the particular or some other criminal proceedings, or if it could threaten national security, life, health, or the rights or freedoms of individuals.

(4) An order under Subsection 1 is not required if the user of the telecommunications equipment to whom the data on the performed telecommunications service relates gives their approval for the provision of the information.

If the data that are to be accessed are content data of electronic communication (unread emails, IM messages, real time communication, etc.), then it can be only accessed following the rules for interception and recording of electronic communication. This can be done based on court order in cases of selected criminal offenses – see § 88:

Interception and Recording of Telecommunications

Section 88

(1) If criminal proceedings are conducted for a crime for which the law stipulates a prison sentence with the upper penalty limit of at least eight years, for a criminal offence of machinations in insolvency proceedings under Section 226 of the Penal Code, violation of regulations on rules of competition under Section 248 Subsection 1 Paragraph e) and Subsection 2 through 4 of the Penal Code, negotiating advantages during public procurement, tender and auction under Section 256 of the Penal Code, machinations during public procurement and tenders under Section 257 of the Penal Code, machinations at a public auction under Section 258 of the Penal Code, misuse of powers of an official person under Section 329 of the Penal Code false accusation under Section 345 (3) to (5) of the criminal code, false testimony and false expert opinion under Section 346 (3) to (5) of the criminal code, false interpretation under Section 347 (3) to (5) of the criminal code or for any other intentional criminal offence for which prosecution is stipulated in a declared international treaty, an order for the interception and recording of telecommunications may be issued if it may be reasonably assumed that facts relevant to the criminal proceedings will be obtained in this way and if there is no other way to achieve such purpose or if its achievement would be otherwise significantly reduced. The Police of the Czech Republic perform the interception and recording of telecommunications for the needs of all law enforcement authorities. The interception and recording of telecommunications between the defence counsel and the accused is inadmissible. If the police authority finds during the interception and recording of telecommunications that the accused has communicated with their defence counsel, they are obliged to immediately destroy the interception recording and not to use the information learned in this context in any way. The report on the destruction of the record shall be placed in the file.

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(2) The presiding judge and, in preliminary proceedings upon the petition of the public prosecutor, the judge, is entitled to warrant the interception and recording of telecommunications. If there is a criminal proceeding for an intentional criminal offence, the prosecution of which is governed by the applicable international treaty, the order for the interception and recording of telecommunications must be issued in writing and must be justified, including a specific reference to the applicable international treaty. The order for the interception and recording of the telecommunications service shall include a determined user address or a user device and the user if their identity is known, and the period during which the interception and recording of telecommunications traffic is conducted cannot be longer than four months; the justification must include the specific facts that justify the issue of such order as well as its period. The order for the interception and recording of telecommunications shall immediately be forwarded to the police authority. In the preliminary hearing, the judge shall send a copy of the order for the interception and recording of telecommunications to the public prosecutor without undue delay.

(3) The police authority is obliged to continuously assess whether the reasons which led to an order for the interception and recording of telecommunications are still valid. If the reasons have expired, they are obligated to immediately terminate the interception and recording of telecommunications even before the end of the period referred to in Subsection 2. They will immediately notify the presiding judge in writing, who issued the order for the interception and recording of telecommunications, and in the preliminary hearing, the public prosecutor and the judge.

(4) Based on the assessment of the current course of the interception and, recording of telecommunications, the judge of a superior court and, in the preliminary hearing upon the petition of the public prosecutor, deputy county court judge may extend the duration of the interception and recording of telecommunications traffic even repeatedly, however, always only for a maximum period of four months.

(5) The law enforcement authority may, without the order for the interception and recording of telecommunications, order the interception and recording of telecommunications or conduct it themselves if there is a criminal proceeding for the criminal offence of human trafficking (Section 168 of the Penal Code), the delegation of custody of a child to someone else (Section 169 of the Penal Code), restriction of personal freedoms (Section 171 of the Penal Code), extortion (Section 175 of the Penal Code), kidnapping of a child and persons suffering from a mental disorder (Section 200 of the Penal Code), violence against a group of people or an individual (Section 352 of the Penal Code), dangerous threats (Section 353 of the Penal Code) or dangerous persecution (Section 354 of the Penal Code), if the user of the intercepted unit agrees to such measure.

(6) If the record of the telecommunications service is to be used as evidence, it is necessary to accompany it with the transcript, giving the place, time, manner and contents of the record, as well as the authority which issued the record. The police authority is obliged to label other records, securely store them so as to protect them against unauthorised misuse, and indicate the place of storage in the transcript. In another criminal case other than the one in which the interception and recording of telecommunications service was performed, the recording may be used as evidence if there is a criminal prosecution in this matter for a criminal offence referred to in Subsection 1, or with the consent of the user by the intercepted station.

(7) If the interception and recording of the telecommunications service did not find any facts relevant to the criminal proceedings, the police authority, after approval by a court and in preliminary hearings, the public prosecutor, must immediately destroy all records after three years from the final conclusion of the matter. If the police authority was informed of an extraordinary appeal within the set deadline, they shall destroy the records of the interception after the decision on the extraordinary appeal or after a final conclusion on the matter. The police authority shall send a transcript on the destruction of the record of the interception to the public prosecutor, whose decision finally concluded the matter and in proceedings before the court, to the presiding judge in the first instance, for the record on file.

(8) The public prosecutor or the police authority, by whose decision the case was finally concluded, and in proceedings before the court the presiding judge in the first instance after the final conclusion of the matter, shall inform the person referred to in Subsection 2, if known, on the ordered interception and recording of telecommunications service. The information includes the designation of the court that issued an order for the interception and recording of telecommunications service, the duration of the interception and the date of the conclusion. Part of the information includes the instructions on the right to submit, within six months of receipt of this information, a petition to review the legality of the order for the interception and recording of telecommunications service to the Supreme Court. The presiding judge of the court in the first instance shall submit the information without undue delay after the final conclusion of the matter, the public prosecutor by whose decision the matter was finally concluded shall submit the information without undue delay after expiration of the period for the review of their decision by the Attorney General under Section 174a and the police authority by whose decision the matter was finally concluded shall submit the information without undue delay after expiration of the period for the review of their decision by the public prosecutor under Section 174 Subsection 2 Paragraph e).

(9) The presiding judge, the public prosecutor or the police authority does not submit the information under Subsection 8 in proceedings on a crime committed by an organised group for which the law stipulates a prison sentence with the upper penalty limit of at least eight years, in proceedings on criminal offences committed for the benefit of an organised criminal group, in proceedings for criminal participation in an organised criminal group (Section 361 of the Penal Code), in proceedings on the criminal offence of participation in a terrorist group (Section 312a of the Penal Code) or if the criminal offence involved more people and in relation to at least one of them the criminal proceedings have not yet been finally concluded or if it is against the person to whom the information was submitted, is the subject of criminal proceedings, or if providing such information could defeat the purpose of the criminal proceedings, including those referred to in Subsection 6, or if it could lead to threats to national security, life, health, or the rights and freedoms of individuals.

If the data in question are content data that are stored in cloud or other service and are not considered communication data, the law enforcement authorities can access it following the rules on surveillance of persons and items - §158d mentioned above.

So to sum it up, if the police seizes device and wants to access the data that are stored by providers of services connected to the device (or even other services), they need to consider what kinds of data they need to access and then decide which procedural measure(s) to implement. Due to

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different limitation of these individual measures, there may be a situation when it is possible to freeze the data, access stored content data, but impossible to access communication content data.

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

Yes, see above Q 28.

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.*

No, in some cases not following the rules cause mere relative inadmissibility in court, this happens in general in cases where the procedural error (not following a rule) can be corrected (ie. when there was no consent from the owner/user of the device but was obtained subsequently. Other rules are strict however, for example when the interception court order was issued for a crime for which the law doesn't allow such measure.

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

There are no specific rules for this situation. There might be internal guidelines developed by the police, but these are probably not legally binding.

Each investigative measure conducted by the law enforcement must be recorded in the form of protocol that explained basically what was done, how, when and who did it. This is required in §55 of the criminal procedure code:

Section 55

General Provisions for Transcript Recording

(1) Unless the law stipulates otherwise, at any action of criminal proceedings a transcript is recorded, usually during an action or immediately after, which must include

a) the name of the court, public prosecutor or other law enforcement authority,
b) the place, time and subject of an action,
c) name and surname of officials and their functions, name and surname of the parties present, the name, surname and address of the legal representatives, guardians, legal counsel and agents and the name and surname of any other persons who participated in the action, and in the case of the accused and the victim also the address that is specified for the purpose of delivery and other data necessary to establish or verify identities, including date of birth or birth certificate numbers; if any data on the residence and delivery address, on the place of employment or occupation or the entrepreneurial activity of the victim, witness, legal representative, guardian, agent or confidant are ascertained during the performed action, such data shall not be stated in the report, at the request of such persons, unless it is necessary for attaining the purpose of the criminal proceedings, but shall be kept in a manner allowing only law enforcement authorities and the officials of the Probation and Mediation Service acting in the matter concerned to learn such data; this shall also apply to any data about the personal, family and property situation of the victim and witness; if it is necessary for due exercise of the right to defence of the person against whom the criminal proceedings are conducted, such person shall be notified of the necessary

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data; communication of such data and the reasons for such communication shall be recorded in the report,
d) brief and concise statements of the course of an action which would be seen as preserving the statutory provisions governing the conduct of an action, essential contents of the decisions announced during an action, and if a copy of the decision was delivered immediately after reaching the decision, and the confirmation of this service; if there is a literal transcript of the person?s statement, it is necessary to indicate such in the transcript accordingly so that it is possible to safely identify the beginning and end of the literal transcript,
e) petitions of the parties, issued instructions, and/or an expression of the instructed persons,
f) objections of the parties or the persons interviewed during the execution of an action or the content of the transcript.

(2) Should the identified condition indicate that the witness or persons close to them appear to be under threat of bodily harm or any other serious risk of violation of their fundamental rights in relation to their testimony and witness protection can not be safely ensured by some other means, the law enforcement authorities shall take steps to conceal the identity of the witness; the name and surname and other personal information is not recorded in the transcript but are kept separate from the criminal file and only law enforcement authorities may gain access to such details for the purpose of the case. A witness shall be instructed on the right to request confidentiality of their identity and must sign the transcript under an assumed name and surname under which they are further recorded. If the protection of such persons is required, law enforcement authorities must take all necessary steps without undue delay. A special manner to protect witnesses and persons close to them is stipulated by a special Act. If the reasons for the confidentiality of identity and a separate record of personal data of witnesses has expired, the authority responsible for the legal proceedings at the time shall revoke the level of classification of information, attach the information to the criminal file, and the identity and details of the witnesses cease to be classified; this does not apply to the classified identity of persons listed in Section 102a.

(3) The transcript drawn up on the conflict shall include literal testimonies of the confronted persons, as well as the wording of questions and answers; and the circumstances that are important in terms of the purpose and implementation of the confrontation. The transcript is drawn up about the recognition and it must include detailed circumstances under which the recognition was performed, in particular the order in which the persons or items are shown to the suspect, accused or witness, the time and conditions of their observations and their opinions; the recognition conducted in the preliminary hearing is usually video recorded. The transcript drawn up about the investigative attempt, the reconstruction and on-site review is necessary to describe all the circumstances under which these actions were carried out in detail, including their contents and results; if the circumstances of the case do not exclude it, video recordings, sketches, and other appropriate tools shall, if possible, be included in the transcript. Similarly, it is necessary to proceed even if an event when the implementation of other evidence is not explicitly provided by law.

(4) The transcript in the Czech language is drawn up on the testimony of a person even if the questioned person speaks another language; depending on the literal testimony, the reporter or an interpreter shall record the relevant part of the testimonies in the language spoken by the person who testifies.

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(5) The correct transcript is guaranteed by the person who performs the operation.

Section 55a

Special Means of Transcript Making

(1) To capture the course of action a stenography record may be made, which is then, together with the transcript of the ordinary handwriting, attached to the transcript or an audio or video recording or other suitable means. Where videoconference equipment is used when making an action, an audio or video recording shall always be made.

(2) If an audio or video recording was made alongside the transcript, it is noted in the transcript of an action that in addition to the time, place and manner of its execution, shall also indicate the use of devices. The technical recording medium is attached to the file, or the place where it is stored is indicated.

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

No.

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: Indication of length of answer: couple of paragraphs

Well the main legal issue is retrieval of data stored by foreign service providers. It is necessary to follow MLAT/EIO rules, which is complicated and lengthy (especially in case of MLAT). There are no specific procedures that are dealing with this issue. However, Czech law enforcement authorities are eagerly waiting for implementation of expected Regulation on European preservation and production order, which could partially solve this issue.

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I'm not sure what you mean by forensic examiner. In Czech legal culture, the forensic examiner may be the police investigator, who of course should be aware of both the nature of the crime and applicable law, but forensic examiner could also mean an independent professional listed in the register of forensic examiners who conducts forensic examination ordered by the law enforcement. In such a case there is no need for him to know about the crime and/or applicable law, since he is only expected to examine the device/data and conduct ordered operations and reply to questions formulated in the order by the LE/judicial authorities.

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

There are no specific rules for this. It depends on what the investigator/public prosecutor finds most appropriate in the individual case.

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

There is no common practice. I presume they mostly use EIO in such cases, but it needs to be said, that some officials are sadly still not aware of the existence of EIO and its advantages.

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

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

Yes, when very specific technologies are involved, or very specific skillset is necessary, the law enforcement can cooperate with private sector and specifically and predominantly with academia. Our university regularly provide cooperation to the law enforcement.

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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: Indication of length of answer: couple of paragraphs.

- Data protection concerns (Law Enforcement Directive 2016/680 and implementing national law)

No there are no specific rules, the directive is implemented in procedural laws, but not specifically in relation to mobile forensics.

- 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)

This is one of the rules of the criminal procedure, that any information that is irrelevant to the case should be discarded, but this rarely happens in practice, because investigators in most cases consider any information as potentially relevant.

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- 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)

Yes, these tools are explained in replies to other questions. There are no binding specific rules in relation to digital evidence or mobile forensics, but these basic principles must be implemented in the criminal trial. Compliance with these principles is generally supervised by the public prosecutor or the courts. As stated above, there are generally accepted (but not binding) best practices which were developed with protection of basic rights in mind and are mostly followed by both investigators and experts. Noncompliance with these rules doesn't necessarily mean that the evidence produced is inadmissible, but it is a red flag that is usually indicator for the judge and public prosecutor, that use of such evidence should be careful, and for the defence, that they may be able to challenge the evidence in court.

- What information can be retained/copied? For how long?

There are no rules on this, it is generally based on court order. The evidence collected via digital forensics may be retained for period necessary for the criminal trial.

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

No.

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

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Yes, admissibility is very loosely defined in the procedural law. The only provision that deals directly with admissibility of evidence is general provision on evidence in § 89 of the criminal procedure court which states that evidence obtained by unlawful coercion or threat of coercion is inadmissible.

Evidence

Section 89

General Provisions

(1) In a criminal prosecution it is required to prove to the necessary extent, in particular:
a) whether an act is seen as a criminal offence,
b) whether the act was committed by the accused or based on what motives,
c) significant factors affecting the assessment of the nature and seriousness of the act,
d) the relevant circumstances to assess the offenders' personal circumstances,
e) the significant circumstances allowing the determination of the consequences, the amount of damage and unjust enrichment, caused by the criminal offence,
f) the circumstances that led to the criminal activity or allowed it to be committed.

(2) Evidence may be anything that may help to clarify matters, in particular the testimonies of the accused and witnesses, expert opinions, items and documents relevant to the criminal proceedings, and examinations. Each party may seek, submit, or propose the implementation of evidence. The fact that the law enforcement authority did not seek or request it is not grounds for the rejection of such evidence.

(3) Evidence obtained by unlawful coercion or threat of coercion may not be used in the proceedings except when used as evidence against the person that used coercion or threatened coercion.

This provision is interpreted broadly, which means that if the evidence is obtained in breach of any procedural rule, the produced evidence is usually considered inadmissible. However, in some cases the inadmissibility is relative, that is in cases where the errors made can be subsequently fixed (for example when the law enforcement subsequently obtains witness consent).

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

Yes, since the rules on inadmissibility of evidence are generally loose, the court could decide, that even though there were minor procedural mistakes made when obtaining the evidence, the evidence is admissible because it's inadmissibility would be disproportionally harmful. Also, as stated above, sometimes the inadmissibility is merely relative and may be corrected by subsequent adding of necessary procedural requirements.

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

No, according to the Czech caselaw, this is not issue at all. From the perspective of Czech law enforcement and courts, anything that is accessible and available from Czech republic can be used as evidence when collected based on valid court order, physical location of the data doesn't really play any role. This is based on current caselaw though, I'm not aware of any case of defense challenging this approach in court – if this happens and the case goes to higher courts, the practice might change based on their decision.

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

This will usually not render the evidence inadmissible. But the process of retrieval of the evidence must be well documented and explained to the court. If the expert examiner uses specialized tools, he needs to explain reasons for it use, it's functions, how it works with the evidence, how it may

alter the data, and how, when and by whom it was used, so other expert is able to determine, that it was used correctly and the evidence is not substantially altered.

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

No, this is considered on case by case basis.

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

No.

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

No, there are standards that are followed by expert examiners, but these are not binding nor required for the evidence to be admissible. When the expert uses certified procedures or tools, it is merely taken into account when assessing the credibility of the evidence.

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

Usually not, but this depends on who is in breach of the data protection law and on specific situation. For example, if the controller of personal data provides to the law enforcement personal data that he collected in breach of data protection laws, it would probably be used as evidence, but may be challenged by the defence and subsequently considered inadmissible.

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

I'm not aware of such case focused specifically on mobile forensics, but there are cases when for example the transcript of electronic communication was considered inadmissible due to badly reasoned court order, or due to the fact that the communication was protected by accused-defence attorney privilege.

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.)?*

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- *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.

- Is mobile forensic evidence given a certain probative value?

No, probative value of any evidence is assessend on case by case basis.

- Are there rules on how to interpret mobile forensic evidence or requirements which must be complied with for the evidence to be considered reliable?

No. There are best practices which are known among expert examiners and generally applied. If someone doesn't follow these best practices, the produced evidence might be challenged at court, but as in other cases the reliability is considered by court on case by case basis.

- Must such evidence be examined by an expert witness?

There are basically three entities that can examine the evidence other than police investigators, listed expert witnesses, experts that are not listed and forensic institutes. Provision of the experts involvement in the criminal procedure code are following.

Experts

Invitation of Experts

Section 105

(1) If the clarification of the facts relevant to the criminal proceedings requires the necessary expertise, the law enforcement authority will request a professional opinion. If such a procedure is not sufficient due to the complexity of the assessed issue, an expert is invited by the law enforcement authority. In the preliminary hearings, an expert is invited by the law enforcement authority which considers an expert opinion to be necessary for the decision if the matter was referred back for further investigation by the public prosecutor and, in proceedings before the court, the presiding judge. The accused and, in proceedings before the court, the public prosecutor, shall be notified on the invitation of an expert. Another person is notified on the invitation of an expert if it is necessary for such a person to perform or tolerate something for the purpose of the expert opinion.

(2) In selecting a person who is to be invited as an expert, it is important to take the reasons for which the expert is excluded from the presentation of an expert opinion under the special Act into account. In seeking a professional opinion, the law enforcement authority shall consider whether the person from whom the professional opinion is requested is not biased in regard to their relationship to the accused, other persons involved in the criminal proceedings, or their relationship to the case.

(3) Objections against the expert may be raised on grounds set out by the special Act. In addition, objections can be raised against the professional interests of an expert or on the wording of the questions given to the expert. In the preliminary hearings, the merits of such objections shall be judged by the public prosecutor and, in proceedings before the court, the presiding judge before whom the proceeding is being conducted during the time of the objections? notification; if the objections are raised by appeal they shall be reviewed by the authority competent to decide on the appeal. If the authority grants the objections and the reasons for requesting an expert opinion still exist, they will take steps to either request an expert opinion by another expert or by re-phrasing the questions; conversely they shall instruct the person who raised the objection that no reasons for the objection were found. The opinion to the objections raised in an appeal normally forms part of the justification of the decision of the appeal.

(4) If it is particularly important to clarify the facts, it is necessary to invite two experts. Two experts must be invited if it regards an examination or an autopsy of a corpse (Section 115). The physician who treated the deceased for a disease, which immediately preceded the death, may not be invited as an expert.

(5) Pursuant to Subsection 1, even a person who is, under special Act, registered in the registry of experts and a natural person and legal entity that has the required professional expertise may be asked for their professional opinion. The public authority shall always submit the professional opinion to the law enforcement authorities free of charge.

Section 106

An expert must be instructed on the consequences of the failure to appear on summons (Section 66) and the obligation to report the facts for which they could be excluded or could otherwise prevent them to be active in the matter as an expert without undue delay. The expert must also be instructed about the importance of the expert opinion in terms of general interest and the criminal consequences of perjury and a knowingly false expert opinion; this also applies to an expert who submitted an opinion on the basis of a request of a party pursuant to Section 89 Subsection 2.

Section 107

Preparation of Opinion

(1) An expert who is responsible for an act shall be provided with the necessary explanations from the files, and their functions should be defined. At the same time, it is therefore important that the expert does not evaluate the evidence and solve any legal issues. If it is necessary for the submission of the opinion, the experts are allowed to view the files or the files are loaned to them. They may also be allowed to be present during the interrogation of the accused and the witnesses to ask them questions related to the subject matter of the expert investigation. In justified cases, experts will be permitted to take part in another act of the criminal proceedings, provided such an act is important for

the expert opinion. The expert may also suggest that other evidence is first needed to clarify the circumstances necessary for the submission of the opinion.

(2) An expert invited along to submit an expert opinion on the cause of death or the deceased person's medical condition is entitled to require medical documentation concerning such persons; in other cases they may require medical documentation under the conditions provided by the special Act.

(3) Experts are usually requested to prepare a written version of the expert opinion. The expert opinion is also served to the defence counsel at the expense of the defence.

Section 108

Interrogation of an Expert

(1) If an expert has prepared a written expert opinion, it is enough to refer to it and confirm it during the interrogation. If the opinion was not prepared in writing, the expert shall dictate it for the transcript during the interrogation.

(2) If several experts were invited who, after a mutual consultation, arrived to affirmative conclusions, the expert opinion shall be submitted by an expert appointed to do so by the others; if their opinions are different, each expert must be heard separately.

(3) In the preliminary hearing, the expert opinion may be omitted if the police authority or the public prosecutor does not doubt the reliability and completeness of the submitted written expert opinion.

Section 109

Errors of Opinion

If there are doubts about the correctness of the opinion, or if the opinion is unclear or incomplete, it is necessary to ask an expert to explain. If that bears no results, another expert is invited along.

§ 109a

did not apply

Section 110

Opinions from an Institute

(1) In exceptional cases, particularly in difficult cases requiring special scientific assessments, the police authority or the public prosecutor and, in proceedings before the court, the presiding judge may invite a public authority, scientific institute, university or a specialised institution to provide expert services to submit an expert opinion or an examination of an opinion filed by an expert.

(2) A person who was invited to provide an expert opinion or to examine an opinion filed by an expert under Subsection 1 shall provide a written opinion. It will include the identification of the person or persons who prepared the opinion and if necessary, they

may be heard as an expert; if it was necessary to invite two experts (Section 105 Subsection 4), they will list at least two such persons.

(3) In selecting persons referred to in Subsection 2 it is important to take the reasons for which the expert is excluded from submitting the expert opinion under special Act into account.

(4) The provisions of Section 105 Subsection 3 are similarly applicable when requesting the opinion from an institute.

Section 110a

If the expert opinion submitted by a party has all the elements required by law and includes an expert clause that they are aware of the consequences of giving a knowingly false expert opinion, then the performance of such evidence is the same as if it was an expert opinion requested by a law enforcement authority. The law enforcement authority shall allow the experts that were requested for an expert opinion by one of the parties to inspect the file, or will otherwise allow them to become familiar with the information necessary for the preparation of the expert opinion.

§ 110b

did not apply

Section 111

Use of Special Regulations on Experts

(1) Special regulations apply to the provisions of an expert, their eligibility for this function, and their exclusion from it, on the right to deny the performance of an expert act, and on the oath and reminder of the responsibilities prior to the performance of the expert act, as well as the reimbursement of cash expenses and remuneration (expert fees) for the expert act.

(2) The amount of expert fees is determined by those who invited the expert and, in proceedings before the court, by the presiding judge without undue delay or within two months of invoicing the expert fees. If those who invited the expert disagree with the amount of expert fees, then they shall decide on it by a resolution. A complaint against the resolution with a suspensive effect is permissible.

(3) The expert fees must be paid without undue delay within 30 days after they were granted.

The listed experts are listed by ministry of interior or court chairman, if they demonstrate expertise in selected field. Forensic institutes are legal entities that are focused on forensic examination, demonstrate expertise and are certified by the ministry of interior. Expert that is not listed may be asked to undertake the examination if he demonstrates expertise and if there is no available listed expert able to do the examination or if it would be too complicated for him to do the examination.

- If not obligatory, is this a common practice?

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Yes it is a common practice.

- What are the requirements for experts (experience, independence, training, etc.)?

The listed expert must be: Czech citizen, competent to perform legal acts, with clean criminal record, wasn't de-listed from the list of expert witnesses in last 3 years, able to demonstrate expertise in selected field (ie. by university diploma), willing to become listed expert, able to reliable undertake responsibilities of the expert witness.

- 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?

No.

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

No.

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

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As I stated above. There is no standardization, nor relevant binding set of best practices. There are non binding best practices known among expert witnesses and police investigators, that are considered a norm, but noncompliance doesn't render produced evidence illegal or inadmissible. But evidence collected while not complying with these best practices might be challenged at court and considered inadmissible or unreliable.

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

Not that I know of. The issue in the Czech republic is, that there is a lack of relevant case law focused specifically on electronic evidence. The reason is that electronic evidence is usually based on expert witness testimony, which is considered very reliable, and also because it is very rarely challenged by the defense. There are some case law on interception of electronic communication, seizure of data or devices, inadmissibility of data, but virtually non specifically on mobile forensics.

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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.

Not really. As stated above, the evidence produced by expert witnesses is usually considered reliable and valid and rarely challenged at court. However best practices implemented by most expert witnesses usually require the examination to be done using widely accepted tools and methods, to be very well documented, and done in a way that ensures high level of integrity of analysed data – so the evidence (or the source of the evidence) may be reexamined by another witness.

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: Indication of length of answer: couple of paragraphs.

Not on a regular basis. There are workshops and trainings organized by private providers, individual experts and universities, which are not mandatory. For judges and prosecutors, there are lectures on electronic evidence (which include basic information on mobile forensics) provided by judicial academy, which is also voluntary.

The government is however working on a new legislation on expert witnesses, which will expect listed expert witnesses to get proper education (which is however inavailable in the Czech republic at the moment).

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?*

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

No, these specifics are, when needed, defined in the order that requests the expert to conduct examination.

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

I'm not sure what is meant by procedural rights, if I was to explain all procedural rights of individual participants, it would take at least one lecture book, so here's general description of roles of individual participants.

Prosecutor

The public prosecutor plays a key role in criminal proceedings. His main task is to represent the state - society, and thus to defend the interests of the state in court proceedings. His position and other matters are then regulated in the Public Prosecutor's Office Act.

The principle is that the public prosecutor is obliged to prosecute all criminal offenses of which he finds out about. The Public Prosecutor's Office is a body of public prosecution, it participates in the prevention of crime and provides assistance to victims of crime, it also supervises activities of the police and other law enforcement authorities during criminal investigation.

The public prosecutor acts in the position of a body active in criminal proceedings, and is entrusted with powers at all stages of criminal proceedings. The public prosecutor is endowed with certain procedural rights and at the same time is subject to appropriate procedural obligations. The public prosecutor processes and files an indictment (in the case of an abbreviated pre-trial procedure, a motion for punishment) in criminal proceedings against a suspect who has been sufficiently proved to have committed the crime. This begins the prosecution of the accused. Prosecutor also represents the state at the trial.

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General definition of powers of the public prosecutor's office is in §4 of the act on public prosecutor's office:

POWERS OF THE Public Prosecutor 's Office

§ 4

(1) The Public Prosecutor's Office to the extent, under the conditions and in the manner prescribed by law

a) is a public prosecution body in criminal proceedings and performs other tasks arising from the Criminal Procedure Code, unless otherwise provided for in the Regulation establishing the European Public Prosecutor's Office,

b) supervises compliance with legal regulations in places where detention, imprisonment, protective treatment, pre-trial detention, protective or institutional education are carried out, and in other places where personal liberty is restricted by legal authority,

c) is active in non-criminal proceedings,

d) performs other tasks, if so provided by a special law.

Court/Judge

Court is the main body that decides whether the accused committed the crime and on the punishment. Material jurisdiction of the courts is defined in Criminal procedure code:

Material Jurisdiction

Section 16

Unless this Act stipulates otherwise, the proceeding in the first instance is conducted by the District Court.

Section 17

(1) The County Court performs in the first instance of proceedings for criminal offences when the law stipulates a prison sentence with the lower limit of no less than five years, or if they are able to impose an exceptional sentence. The County Court performs proceedings in the first instance in the case of criminal offences, such as

a) of manslaughter, murder of a newborn child by its mother, unauthorised removal of tissues and organs, illegal handling of tissues and organs, taking tissue, organs and

performing transplantation for a fee, the illegal handling of human embryos and human genomes, or human trafficking,

b) committed by means of investment instruments that are admitted for trading in a trading system or whose admission to trading in a trading system was requested, or their counterfeits and pirate copies if causing substantial damage or obtaining substantial benefits is their legal feature,

c) of the infringement of competition rules, manipulation of the rate of investment instruments, misuse of information in the trade, misuse of a position in the trade, damage to the financial interests of the European Union, infringement of the export control of goods and dual use technologies, breach of duties in the export of goods and dual use technologies, distortion of data and failure to keep data records on the export of goods and dual use technologies, the performance of foreign trade in military material without permission or license, breach of obligations in connection with issuing permits and licenses for foreign trade in military material, distortion and failure to keep data records on foreign trade in military material, development, manufacture and possession of prohibited weaponry and

d)participation in a terrorist group, terrorism financing, support and promotion of terrorism, threatening to commit a terrorist criminal offence, of sabotage, abuse of representing the State and international organisation, espionage, threat to classified information, cooperation with an enemy, relations threatening the peace, the use of prohibited means of combat and clandestine warfare, looting in the area of military operations,
even if the lower limit of prison sentence is less.

(2) The County Court shall also act in the first instance of proceedings on the criminal offence of insobriety in cases when an act that is otherwise criminal and that was committed by the offender in a condition of diminished responsibility which the offender caused themselves fulfils the characteristic criteria of any of the criminal offences for which the competence of the County Court is stipulated under Subsection 1.

(3) The County Court performs proceedings in the first instance in the case of individual incidences of a continued criminal offence if, pursuant to the procedure of Section 45 of the Penal Code a decision on the guilt of the criminal offences listed in Subsection 1 or 2 comes into consideration during this proceeding.

Local Jurisdiction

Section 18

(1) The court in whose jurisdiction the criminal offence was committed is responsible for the performance of proceedings.

(2) If the crime scene cannot be found or the criminal offence was committed abroad, proceedings are conducted by the court in whose jurisdiction the accused lives, works or resides; if such places cannot be identified or is outside the Czech Republic, proceedings are performed by the court in whose jurisdiction the criminal offence was uncovered.

Section 19

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Repealed

Joint Proceedings

Section 20

(1) All accused whose criminal offences and crimes are mutually related, for all incidences of continued or mass crimes and for all parts of the continued crime, joint criminal proceedings shall be performed, unless there are important reasons for the prohibition thereof. In the case of other crimes, joint proceedings are performed when such an approach is appropriate in terms of speed and cost management.

(2) Joint proceedings on criminal offence, which should be conducted by a single judge, and proceedings on a criminal offence, which should be conducted by a court, shall be held by the court.

Section 21

(1) Joint proceedings are conducted by the County Court, provided it is competent to conduct proceedings on at least one of the criminal offences.

(2) Joint proceedings are held at the court that is competent to hold the proceedings against the offender of a criminal offence or for the most serious criminal offence.

Section 22

Jurisdiction of Several Courts

If under the preceding provisions, jurisdiction is given to several courts, proceedings are conducted by the court in which the public prosecutor filed an indictment, a petition for punishment, a petition for approval of an agreement on guilt and punishment, or by the court in which the case was ordered by a higher court.

Section 23

Exclusion and Joinder

(1) To advance the proceedings or for other important reasons the proceedings of a certain criminal offence or against any of the accused may be excluded from the joint proceedings.

(2) The jurisdiction of the court which excluded the case does not change; however, if the County Court excludes a case which would otherwise be held at District Court proceedings, it may refer it to this court.

(3) If the conditions for joint proceedings exist, the court may join such joint proceedings and co-decide the case where separate indictments were made.

Section 24

Decision on Jurisdiction of Courts

(1) Should any doubts about the jurisdiction of the court arise, the decision of which court has the jurisdiction to hear the case is made by the court that is the closest common higher court to the court at which the indictment, the petition for punishment or the petition for approval of an agreement on guilt and punishment was filed, or to which the case was referred in accordance with Section 39 of the Act on Juvenile Justice, or in which the case was ordered by a higher court, and the court which is to be relevant based on the decisions on the proposal of the matter for the decision on the jurisdiction [Section 188 Subsection 1 Paragraph a), Section 222 Subsection 1, Section 257 Subsection 1 Paragraph a)]. Simultaneously, it is only bound by the legal considerations that are crucial in determining the jurisdiction (Section 16 through 22). If the court that the case was submitted to for the decision is not a higher court that is competent under law, it shall refer the case to decide on the jurisdiction to the court that is both a higher court to the court proposing the case and the court that is competent under law.

(2) The court deciding on the jurisdiction of the courts may also decide to withdraw and order the case on the grounds referred to in Section 25.

Heading Omitted

Section 25

Withdrawal and Ordering of the Case

In the case of important reasons, the matter may be withdrawn from the competent court and ordered to another court of the same type and degree; the court, which is the closest higher court to both of the courts is the one that decides on the withdrawal and ordering of cases.

Section 26

Jurisdiction of Courts in Preliminary Hearing

(1) The District Court in whose jurisdiction the public prosecutor filed the relevant petition is the competent court to perform acts in the preliminary hearing.

(2) The court in which the public prosecutor filed a petition under Subsection 1, becomes competent to perform all acts of the court throughout the entire preliminary hearing, unless the matter is referred elsewhere due to the jurisdiction of another public prosecutor employed outside the jurisdiction of this court.

Defendant

The defendant in criminal proceedings is generally regarded to as the accused. His procedural rights are listed in the section 33 of the criminal procedure code:

Section 33

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Rights of Accused Person

(1) The accused has the right to comment on all the facts that found him guilty and they are not obliged to testify on the evidence therein. They may present circumstances and evidence for their defence, to make proposals, and submit applications and appeals. They have the right to choose the defence counsel and to confer with them during acts undertaken by law enforcement authorities. However they may not consult with their defence counsel on how to respond to a question once the hearing has commenced. They may request to be interrogated in the presence of their counsel, and that defence counsel can participate in other acts of the preliminary hearing (Section 165). If they are in custody or serving a prison sentence, they may consult their defence counsel without the presence of a third party. The accused has these rights even if their legal competence is restricted.

(2) Should the accused person prove that they do not have enough funds to pay the costs of the defence, the presiding judge or a judge during a preliminary hearing shall decide whether they are entitled to the defence counsel free of charge or at a reduced fee. If it appears from the evidence gathered that the accused person does not have sufficient funds to pay the costs of the defence, the presiding judge and during the preliminary hearing the judge, upon the petition of the public prosecutor may, if necessary to protect the rights of the accused, decide on an entitlement to a defence free of charge or at a reduced fee. In the cases referred to in the first and second sentence of the costs of the defence, such costs are in whole or in part covered by the state.

(3) In addition to the accused and his defence counsel, the persons referred to in Section 37 Subsection 1 are also entitled to submit a proposal for a decision under Subsection 2. The proposal for a decision under Subsection 2 including annexes, which should prove its merit, is submitted by the accused during the preliminary hearing through the public prosecutor and in proceedings before the court to the court that conducts the proceeding in the first instance. A complaint against the decision under Subsection 2, which has a suspensive effect, is admissible.

(4) If a final decision under Subsection 2 entitled the accused to a free defence or defence for a reduced fee and the accused requests the appointment of the defence counsel, the defence counsel shall be appointed immediately. The defence counsel shall set out and if the grounds for a decision under Subsection 2 are no longer valid the presiding judge, and during the preliminary hearing the judge shall revoke such provisions. Then the provisions of Section 38 Subsection 2, Section 39 Subsection 2, Section 40 and 40a shall apply accordingly.

(5) All law enforcement authorities are always obliged to instruct the accused on their rights with regard to the ongoing stage of the criminal proceedings and to provide them with the full opportunity to exercise such rights. An accused who was detained or arrested shall also be instructed of the right to immediate medical aid, of the maximum time for which their freedom may be restricted before they are referred to the court, and of the right to have a consular office notified as well as a family member, or any other natural person whose data necessary for such notification are indicated by the accused.

(6) The law enforcement authority that detained or arrested the accused shall provide the accused with a written instruction of their rights without undue delay; the accused shall be allowed to read the instruction; the accused has a right to keep the instruction with them throughout the duration of the restriction or denial of their personal freedom.

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Witness

According to the law, everyone is obliged to and testify as a witness about what they know about the crime and the perpetrator or about the circumstances important for criminal proceedings. If a witness, although duly summoned, fails to appear without sufficient apology, he or she may be presented.

Before questioning a witness, his identity, his relationship with the accused, his right to refuse to testify and, if necessary, the prohibition of questioning or the possibility of secret testimony, as well as the fact that he is obliged to testify in full, must always be ascertained. He must also be instructed on the importance of witness testimony and on the criminal consequences of false testimony.

The witness may be asked questions to supplement the statement or to remove incompleteness, ambiguity and inconsistencies. Questions aimed at the intimate area of the questioned witness, in particular as regards the victims, may be asked only if this is necessary to clarify the facts relevant to the criminal proceedings, in a particularly gentle manner so as not to repeat the hearing; their wording must be adapted to the age, personal experience and mental state of the witness, while maintaining the necessary consideration. The witness may not be asked questions which contain misleading and untrue circumstances or circumstances which are to be ascertained only from his statement.

The right to refuse to testify as a witness has the relative of the accused. Furthermore, a witness is entitled to refuse to testify if the testimony would cause danger of criminal prosecution to himself, his relative, partner or other persons in a family or similar relationship.

A witness is also entitled to reimbursement of necessary expenses.

More on role of witnesses here:

Witnesses

Section 97

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Obligation to Testify

Everyone is obligated to appear upon a summons and testify as a witness to what they know about the criminal offence and the offender, or the circumstances relevant to the criminal proceedings.

Section 98

Summons and Presentation

If a witness who was duly summoned fails to appear without sufficient excuse, they may be presented. The witness must be instructed on this and any other consequences of the failure (Section 66) to appear in the summons. If a member of the armed forces or armed corps in active service does not appear, it is necessary to request their commander or chief to state the reason why the summoned person did not appear, or to present them.

Section 99

Prohibition of Interrogation

(1) A witness must not be interrogated about the circumstances relating to classified information protected by a special Act which they are obliged to keep confidential, unless this requirement has been exempted by the competent authority; the exemption may be denied only if the testimony would cause serious damage to the State.

(2) A witness must not be interrogated if their testimony would violate the State imposed or recognised obligation of confidentiality, unless this obligation was exempted by the competent authority or those in whose interest such obligation lies.

(3) The prohibition to interrogate pursuant to Subsection 2 shall not apply to testimonies concerning criminal offences, based on which the witness has the obligation to notify in accordance with the Penal Code. Similarly it also does not apply to testimonies about classified information that is classified under a special Act as Confidential or Classified.

Section 100

Right to Refuse to Testify

(1) A direct relative of the accused, their sibling, adoptive parent, adopted child, spouse or partner has the right to refuse to testify as a witness; if there are more accused persons and a witness exists only in relation to one of them, then they have the right to refuse to testify in regards to other accused persons only if it is not possible to separate the testimony that concerns them from the testimony concerning the accused to whom the witness is in such relation.

(2) A witness is entitled to refuse to testify if the testimony would thereby cause the possibility of their own criminal prosecution, their direct relative, their siblings, adoptive parents, adopted child, spouse or partner or other persons in the family or similar relationship, whose detriment would rightly be felt as their own.

(3) However, the obligation to testify as a witness cannot be refused by those who have the obligation to notify under the Penal Code regarding the criminal offence which the witness testimony concerns.

The Interrogation of a Witness

Section 101

(1) Before the interrogation of the witness it is always necessary to determine their identity, their relationship to the accused, instruct them on their right to refuse to testify and, if necessary, on the prohibition to interrogate or the possibility of procedures under Section 55 Subsection 2, as well as the fact that they are obliged to testify the whole truth and nothing but the truth. Furthermore, the witness must be instructed about the meaning of a testimony in the view of a public interest and about criminal consequences of a false testimony, false accusations and defamation. If the interrogated witness is younger than fifteen years, they must be instructed accordingly.

(2) At the beginning of the interrogation the witness must be interrogated on their relationship to the case and the parties involved and, if necessary, other important factors in determining their authenticity. Interrogation of a witness shall be held in such a way as to provide, if possible, a complete and clear picture of the facts relevant to the criminal proceedings and which the witness perceived with their senses. The witness must be given the possibility to coherently testify about everything they know about the matter, and to indicate the source of their knowledge of the circumstances presented by them. When being interrogated, the witness must be treated regardfully, particularly in terms of their personal data and intimate matters.

(3) The witness may be asked questions to supplement their testimony or to resolve any incompleteness, ambiguity or contradiction. Questions concerning intimate matters of the interrogated witness, particularly if the witness is a victim of the criminal offence, may be asked only if it is necessary in order to clarify facts relevant for the criminal proceedings, and shall be asked in an especially considerate manner, aiming to obtain maximum information so that it is not necessary to repeat the interrogation; while maintaining the required consideration, the formulation of questions must be appropriate to the age, personal experience and mental condition of the witness. The witness must not be asked questions that contain misleading or untrue circumstances or circumstances that have yet to be ascertained from their testimony.

(4) If it is necessary to determine the authenticity of the handwriting, the witness may be asked to write the required number of words.

Section 101a

If the police authority does not find a reason for recording a transcript of the interrogation in the manner in compliance with Section 55 Subsection 2, despite the fact the witness requests it and states specific facts that according to them justifies such a procedure of transcript recording, then the police authority submits the matter to the public prosecutor to examine the accuracy of their procedure.

If there is no danger of delay, they shall defer the interrogation of the witness until the time when the public prosecutors take the appropriate measures. Otherwise the witness

is interrogated and until the adoption of the measures of the public prosecutor, the transcript is handled as to keep the identity of the witness confidential.

Section 102

(1) If a witness who is to be interrogated on the circumstances is a person younger than eighteen years old and, due to their age, the recovery of the memory could adversely affect their mental and moral development, then it is necessary to approach the interrogation and the content with extra care so that it would not be required to repeat the interrogation in further proceedings; a social-legal child protection authority or another person with experience in the education of young people who would contribute to the proper management of the interrogation in terms of the subject matter and the level of the intellectual development of that person is admitted for the interrogation. If it can aid in the correct conduct of the interrogation, their parents may take part as well. Persons who are admitted may propose to defer the action to a later time and, during the performance of such an action, they may also propose its suspension or termination if the performance or continuation of such an action could adversely affect the mental state of the interrogated person. If there is no danger of delay, the law enforcement authority shall grant the petition.

(2) The same person should be interrogated in further proceedings only if necessary. Based on the decision of the court, it is possible to produce evidence in proceedings before the court by reading the transcript or playing the audio and video recording made of an interrogation conducted through videoconference equipment, even without the conditions set out in Section 211 Subsection 1 and 2. A person who was admitted for interrogation, shall be interrogated on the correctness and completeness of the record, on the manner in which the interrogation is conducted, and also on the manner in which the interviewed person testified.

(3) A person younger than 18 years may be asked questions only through the law enforcement authority.

Section 102a

(1) If the person to be interrogated as a witness is a person who is under active duty in the police authority or is a police officer from another State,

a) is used in criminal proceedings as an agent or performs fictitious transfers, or

b) is directly involved in the use of an agent or in performing fictitious transfers,
they are interrogated as a witness with their identity and appearance kept confidential.

(2) In exceptional circumstances and provided that there is no threat of damage to the life, health, or the other official activities of the person due to an interrogation referred to in Subsection 1 or any danger to the life or the health of a person close to them, they may be interrogated as a witness without concealing their identity or appearance and only on the petition of the public prosecutor on the basis of the pronouncement of the relevant director of the security forces.

Section 103

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The provisions of Section 93 Subsection 1 and Section 95 on the interrogation of the accused shall be applied to the interrogation of a witness accordingly.

Specific kind of witnesses are experts. The fundamental difference between a witness and an expert is how they received information on the act which is the subject of their statement. The witness testifies to what he observed at the time of the crime, while the expert learns the subject of his testimony from the evidence gathered, which he assesses during his involvement in the proceedings on the basis of the order from law enforcement authority.

The expert is must meet the legal requirements for the performance of expert activities, is listed in the list of experts for the relevant field and when submitting an expert opinion is bound by special legal obligations that ensure its impartiality and professional level and quality and procedural usability of the expert opinion.

Expert conducts forensic examination in order to provide evidence relevant to the criminal proceedings, role of the experts within the criminal proceedings is explained in the criminal proceedings code:

Experts

Invitation of Experts

Section 105

(1) If the clarification of the facts relevant to the criminal proceedings requires the necessary expertise, the law enforcement authority will request a professional opinion. If such a procedure is not sufficient due to the complexity of the assessed issue, an expert is invited by the law enforcement authority. In the preliminary hearings, an expert is invited by the law enforcement authority which considers an expert opinion to be necessary for the decision if the matter was referred back for further investigation by the public prosecutor and, in proceedings before the court, the presiding judge. The accused and, in proceedings before the court, the public prosecutor, shall be notified on the invitation of an expert. Another person is notified on the invitation of an expert if it is necessary for such a person to perform or tolerate something for the purpose of the expert opinion.

(2) In selecting a person who is to be invited as an expert, it is important to take the reasons for which the expert is excluded from the presentation of an expert opinion under the special Act into account. In seeking a professional opinion, the law enforcement authority shall consider whether the person from whom the professional opinion is requested is not biased in regard to their relationship to the accused, other persons involved in the criminal proceedings, or their relationship to the case.

(3) Objections against the expert may be raised on grounds set out by the special Act. In addition, objections can be raised against the professional interests of an expert or on the wording of the questions given to the expert. In the preliminary hearings, the merits of such objections shall be judged by the public prosecutor and, in proceedings before the court, the presiding judge before whom the proceeding is being conducted during the time of the objections? notification; if the objections are raised by appeal they shall be

reviewed by the authority competent to decide on the appeal. If the authority grants the objections and the reasons for requesting an expert opinion still exist, they will take steps to either request an expert opinion by another expert or by re-phrasing the questions; conversely they shall instruct the person who raised the objection that no reasons for the objection were found. The opinion to the objections raised in an appeal normally forms part of the justification of the decision of the appeal.

(4) If it is particularly important to clarify the facts, it is necessary to invite two experts. Two experts must be invited if it regards an examination or an autopsy of a corpse (Section 115). The physician who treated the deceased for a disease, which immediately preceded the death, may not be invited as an expert.

(5) Pursuant to Subsection 1, even a person who is, under special Act, registered in the registry of experts and a natural person and legal entity that has the required professional expertise may be asked for their professional opinion. The public authority shall always submit the professional opinion to the law enforcement authorities free of charge.

Section 106

An expert must be instructed on the consequences of the failure to appear on summons (Section 66) and the obligation to report the facts for which they could be excluded or could otherwise prevent them to be active in the matter as an expert without undue delay. The expert must also be instructed about the importance of the expert opinion in terms of general interest and the criminal consequences of perjury and a knowingly false expert opinion; this also applies to an expert who submitted an opinion on the basis of a request of a party pursuant to Section 89 Subsection 2.

Section 107

Preparation of Opinion

(1) An expert who is responsible for an act shall be provided with the necessary explanations from the files, and their functions should be defined. At the same time, it is therefore important that the expert does not evaluate the evidence and solve any legal issues. If it is necessary for the submission of the opinion, the experts are allowed to view the files or the files are loaned to them. They may also be allowed to be present during the interrogation of the accused and the witnesses to ask them questions related to the subject matter of the expert investigation. In justified cases, experts will be permitted to take part in another act of the criminal proceedings, provided such an act is important for the expert opinion. The expert may also suggest that other evidence is first needed to clarify the circumstances necessary for the submission of the opinion.

(2) An expert invited along to submit an expert opinion on the cause of death or the deceased person's medical condition is entitled to require medical documentation concerning such persons; in other cases they may require medical documentation under the conditions provided by the special Act.

(3) Experts are usually requested to prepare a written version of the expert opinion. The expert opinion is also served to the defence counsel at the expense of the defence.

Section 108

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Interrogation of an Expert

(1) If an expert has prepared a written expert opinion, it is enough to refer to it and confirm it during the interrogation. If the opinion was not prepared in writing, the expert shall dictate it for the transcript during the interrogation.

(2) If several experts were invited who, after a mutual consultation, arrived to affirmative conclusions, the expert opinion shall be submitted by an expert appointed to do so by the others; if their opinions are different, each expert must be heard separately.

(3) In the preliminary hearing, the expert opinion may be omitted if the police authority or the public prosecutor does not doubt the reliability and completeness of the submitted written expert opinion.

Section 109

Errors of Opinion

If there are doubts about the correctness of the opinion, or if the opinion is unclear or incomplete, it is necessary to ask an expert to explain. If that bears no results, another expert is invited along.

Section 110

Opinions from an Institute

(1) In exceptional cases, particularly in difficult cases requiring special scientific assessments, the police authority or the public prosecutor and, in proceedings before the court, the presiding judge may invite a public authority, scientific institute, university or a specialised institution to provide expert services to submit an expert opinion or an examination of an opinion filed by an expert.

(2) A person who was invited to provide an expert opinion or to examine an opinion filed by an expert under Subsection 1 shall provide a written opinion. It will include the identification of the person or persons who prepared the opinion and if necessary, they may be heard as an expert; if it was necessary to invite two experts (Section 105 Subsection 4), they will list at least two such persons.

(3) In selecting persons referred to in Subsection 2 it is important to take the reasons for which the expert is excluded from submitting the expert opinion under special Act into account.

(4) The provisions of Section 105 Subsection 3 are similarly applicable when requesting the opinion from an institute.

Section 110a

If the expert opinion submitted by a party has all the elements required by law and includes an expert clause that they are aware of the consequences of giving a knowingly false expert opinion, then the performance of such evidence is the same as if it was an expert opinion requested by a law enforcement authority. The law enforcement authority shall allow the experts that were requested for an expert opinion by one of the parties to

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inspect the file, or will otherwise allow them to become familiar with the information necessary for the preparation of the expert opinion.

Section 111

Use of Special Regulations on Experts

(1) Special regulations apply to the provisions of an expert, their eligibility for this function, and their exclusion from it, on the right to deny the performance of an expert act, and on the oath and reminder of the responsibilities prior to the performance of the expert act, as well as the reimbursement of cash expenses and remuneration (expert fees) for the expert act.

(2) The amount of expert fees is determined by those who invited the expert and, in proceedings before the court, by the presiding judge without undue delay or within two months of invoicing the expert fees. If those who invited the expert disagree with the amount of expert fees, then they shall decide on it by a resolution. A complaint against the resolution with a suspensive effect is permissible.

(3) The expert fees must be paid without undue delay within 30 days after they were granted.

Victim

Victim in criminal proceedings is one who has been injured, suffered property damage or non-pecuniary damage that has been caused by a criminal offense, or one at whose expense the offender has been enriched by a criminal offense.

The Victim has the right to make a proposal to supplement the evidence, to inspect the files, to participate in the negotiation of an agreement on guilt and punishment, to participate in the main trial and public hearing held on appeal or approval of an agreement on guilt and punishment and to comment on the case before the end of the proceedings. The right of the victim cannot be exercised by a person who is being prosecuted as a co-accused in criminal proceedings. If the victim is not fully independent or if he is restricted in his own right, his rights shall be exercised by his legal representative or guardian.

The victim is also entitled to propose that the court in the sentencing judgment impose an obligation on the defendant to compensate in cash for the damage or non-pecuniary damage caused to the victim by the crime, or to issue unjust enrichment obtained by the defendant at his expense.

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Law enforcement authorities are obliged to inform the victim about his rights and provide him with a full opportunity to exercise them. The victim may also waive the procedural rights granted to him by law as a victim by an express declaration communicated to the law enforcement authorities.

For further information on victims rights please see:

Victim

Entitlement of the victim and the performance of damage or non-material damage claims or for the surrender of unjust enrichment

Section 43

(1) A person to whom the criminal offence caused bodily harm, damage or non-material damage or at the expense of whom the offender enriched themselves through a criminal offence (victim) has the right to file proposals for additional evidence, inspect documents (Section 65), attend the conclusion of an agreement on guilt and punishment, attend the main trial and the public hearing held on an appeal or on the approval of the agreement on guilt and punishment, and to comment on the matter before the end of proceedings. If it is the criminal offence of desertion (Section 196 of the Penal Code), then for the purposes of this Act, the material damage caused to the victim by the criminal offence shall also mean outstanding alimony.

(2) The victim is not a person who feels that they are morally or otherwise damaged by the criminal offence but the resulting damage is not caused by the fault of the offender or its origin is not causally related to the criminal offence.

(3) The victim is also entitled to petition for the court to impose an obligation on the defendant in the convicting judgment to compensate in monetary terms the damage or non-material damage caused to the victim by the commission of the criminal offence, or to surrender any unjust enrichment which the defendant obtained at the victim?s expense through a criminal offence. The petition must be filed no later than at the main trial before the commencement of the evidence (Section 206 Subsection 2); if an agreement on guilt and punishment has been concluded, the petition must be filed no later than at the first hearing on such agreement (Section 175a Subsection 2). The petition must be clear on what grounds and in what amount the claim for damage or non-material damage is being applied or on what grounds and to what extent the claim is being applied for the surrender of unjust enrichment. The victim is obliged to demonstrate the grounds and the amount of the damage, non-material harm or unjust enrichment. The victim must be instructed of such rights and obligations. If there are not sufficient documents to substantiate a decision on the victim?s claim and if important reasons, particularly the need to pronounce a judgment or to issue a criminal warrant without undue delay, do not prevent it, the court shall notify the victim regarding how the victim can supplement the documents and shall set out and provide a sufficient period for the victim to do so.

(4) A victim of a criminal offence under the Act on Victims of Criminal Offences has a right to make a declaration in any stage of the criminal proceedings stating what impact the committed criminal offence has had on the victim?s life. The declaration may also be made in writing. A written declaration shall be used in the proceedings before the court as documentary evidence.

(5) The victim may also surrender their procedural rights in an explicit declaration addressed to the law enforcement authority that is granted to them by this Act.

Section 44

(1) The entitlement of the victim can not be exercised by those who are prosecuted in criminal proceedings as co-defendants.

(2) If the number of victims is extremely high and the individual performance of their rights could threaten the rapid progression of the criminal prosecution, the presiding judge and in the preliminary hearing, upon the petition of the public prosecutor, the judge, shall decide that the victims may exercise their rights in criminal proceedings only through a common agent, whom they choose. The decision shall be announced to the victims who have already raised a claim for damages, or non-material damage, or surrenders any unjust enrichment, following the notification to the other victims during the first act of criminal proceedings that they shall be summoned for or which they are advised on, in the proceedings before the court by the court itself, and in preliminary hearing, the public prosecutor. If the total number of agents has increased to more than six and the victims are unable to agree, the court shall make the choice with regard to the interests of the victims. The common representative shall exercise the rights of the victims, who they represent, including a claim for damages, or non-material damage, or surrenders any unjust enrichment, in the criminal proceedings.

(3) An application under Section 43 Subsection 3 can not be filed if the claim has already been decided on in a civil or other relevant proceeding.

Section 45

(1) If the victim is not fully legally competent or their legal competence is restricted, their rights under this Act shall be exercised by their legal representative or guardian. If there is a risk of delay and the legal representative or guardian may not exercise the rights referred to in the first sentence or if no guardian was appointed, although there are reasons for their appointment, the guardian shall be appointed without undue delay. The guardian shall also be appointed without undue delay if there is a risk of delay and the victim is a legal entity and does not have a person competent to perform acts in proceedings.

(2)A guardian shall be appointed by the presiding judge, and in the preliminary hearing by the public prosecutor. A person other than a lawyer may only be appointed as a guardian with their consent. A person in respect of which there may be a reasonable concern that, given their interest in the result of the proceedings, they will not duly defend the interests of the victim may not be appointed as a guardian. The resolution on the appointment of a guardian shall be communicated to the person who is appointed as a guardian, and unless this is excluded by the nature of the matter, to the victim as well. A complaint against the decision on the appointment of a guardian is admissible.

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(3) If the claim is for damages or non-material damage (Section 43 Subsection 3), the rights which this Act confers on the victim are also transferred to their legal representative.

Section 45a

All documents intended for the victim shall be delivered to the address listed by the victim. If they have an agent, it is delivered to them alone; this does not apply if the victim is being called to personally do something.

Section 46

The law enforcement authorities are obliged to instruct the victim on their rights and provide them with the full opportunity to exercise them; as part of the instruction, they shall also advise the victim on the option to claim satisfaction of the entitlement to compensation for damage or non-material damage caused by the criminal offence or to the restitution of unjust enrichment obtained through the criminal offence under the Act on the use of funds from property-related criminal sanctions. Where proceedings are held for a criminal offence which allows the conclusion of an agreement on guilt and punishment, the law enforcement authorities, while providing instruction during the preliminary hearing, shall particularly instruct the victim that an agreement on guilt and punishment may be concluded and that in such case the victim may exercise a claim for compensation for damage or non-material damage in monetary terms or a claim for the surrender of unjust enrichment no later than during the first hearing on such agreement. If a victim is in the position of a victim under the Act on Victims of Criminal Offences, law enforcement authorities are also obliged to instruct the victim of the victim's rights under the Act on Victims of Criminal Offences and to provide the victim with full opportunity to exercise them.

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: Indication of length of answer: couple of paragraphs.

No, there is just one supreme public prosecutor's office guideline that deals generally with electronic evidence. This guideline just explains what procedural measures should be used to collect specific kinds of data from ISPs.

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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: Indication of length of answer: couple of paragraphs.

Yes, there is a theoretical judicial control, which can be exercised by courts when the evidence or procedure by which the evidence was obtained is challenged by the defence. In such a case, the court can decide whether methods used by the investigator or expert were appropriate and legal. There is however no case-law dealing with this in detail in relation to the mobile forensics or digital evidence.

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

On case by case basis. Every judge has their own approach. Some judges are educated on the issue of electronic evidence and digital forensics and may be more interested in how the evidence was obtained, what tools were used and things like that. But most judges unconditionally trust expert witnesses and their testimonies. These are usually challenged only by the defence.

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: Indication of length of answer: couple of paragraphs.

The defendant and his/her legal representative has the right to access any information included in the case file. They should be able to make copies of any information or data within and also to appoint their own expert to conduct forensic examination on the device or data.

As for the information on the process used to acquire evidence – yes, the process (incl. information about the tools used, procedures followed, etc) must be included in the (usually) written expert testimony, which is available also to the defendant.

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: Indication of length of answer: couple of paragraphs.

There are no particular requirements for witnesses regarding their capability to testify in terms of mobile forensics. The right to privacy is preserved by the rules of criminal trial, which state, that the questions aimed at the intimate area of the questioned witness, in particular as regards the victims, may be asked only if this is necessary to clarify the facts relevant to the criminal proceedings, in a particularly gentle manner so as not to repeat the hearing; their wording must be adapted to the age, personal experience and mental state of the witness, while maintaining the necessary consideration.

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: Indication of length of answer: couple of paragraphs.

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Not sure what you mean by using evidence obtained via mobile forensics being used to exercising their rights. In general, any admissible evidence collected in the criminal trial may be accessed and used by the victim to exercise by their rights – there is no specific limit in relation to mobile forensics. Their privacy is protected in the same way as in the case of witnesses. For more see cited provisions above.

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.