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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: Sorainen Lithuania, associate

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

Answer: Vilnius, Republic of Lithuania

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 precise legal definition for "mobile device" in the Republic of Lithuania (hereinafter – **Lithuania**). However, according to Communications Regulatory Authority of Lithuania, definition "mobile device" encompasses smartphones, tablets, e-book readers (link). Additionally, para 6.32 of Regulation of Forensic Science Centre of Lithuania for Forensic Examination and Object Investigation, describes "mobile device forensics" as examination of digital navigation devices, digital surveillance systems and sound recording systems, smartphones and mobile phones, tablets and other equipment that stores and maintains digital information.

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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?*

Scenario	*Rules*
(1) A suspect or a witness may have a smartphone on them during questioning	Mobile device could not be read or searched during questioning.
(2) A suspect or a witness may have a smartphone at the scene	Under Art. 205, part 2 Code of Criminal Procedure of the Republic of Lithuania (hereinafter – **CCP**) material objects, documents or other items may be examined at the place where they are found. In the event that material objects, documents or other items have to be examined for a longer period of time or its examination has to be done with technical tools, it shall be examined at the laboratory or any other place where conditions are met for the examination (requires seizing the device).
(3) A suspect caught in the act may have a mobile device in use	
(4) Mobile devices may be found during the search of a home or other premises	Under Art. 145, part 1, Art. 149, part 1 of CCP, a search can be carried out only by a reasoned

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	decision of a Pre-trial Investigation Judge. A search can only be carried out a Court order has been issued. During a search, the Prosecutor has a right to demand to submit material objects, documents or other items that are indicated in the issued ruling for the search.
(5) Other	This does not refer specifically to examination of a device, but Art. 154 part 1 of CCP establishes that a Pre-trial Investigation Officer may listen to or record communications, control other information transmitted via electronic communications networks, collect and store it if: (1) At the request of a Prosecutor a Pre-trial Investigation Judge's ruling has been issued; (2) There are reasonable grounds to assume that information about preparation for grave crime, serious crime, less serious crime or information about the crime that has been or will be committed *(such as Grooming of a Person under the Age of Sixteen Years (Art. 152(1)) of Criminal Code of the Republic of Lithuania (hereinafter – **CC**), Exploitation of a Child for Pornography (Art. 162, part 2 of CC) Incitement against Any National, Racial,*

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	Ethnic, Religious or Other Group of Persons (Art. 170 of CC), Unlawful use or takeover of electronic data (Art. 198 (2) of CC), Possession of Pornographic Material (Art. 309, part 2 of CC) could be obtained in this way. (3) Or if there is a risk of violence, rape or other unlawful acts against the victim, a witness or other participants in the criminal proceedings, or their relatives. Art. 154 part 3 of CCP establishes that information transmitted via electronic communications networks may be controlled and stored, except its content, if there are reasonable grounds to assume that information on minor crimes (such as *Violation of Inviolability of a Person's Correspondence (Art. 166 of CC), Unauthorised Access to the Information System (Art. 198(1) of CC), Possession of Pornographic Material (Art. 309 part 2 of CC)*) could be obtained in this way.

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?*

Under Art. 44 part 9 of CCP, Art. 4 of Recommendations on Law on Criminal Intelligence of the Republic of Lithuania, CCP Rules for Application and Use of Criminal Intelligence Information in

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Criminal Procedure (hereinafter – **Recommendations**) right to private life of person and his family, as well as right to inviolability of the home, secrecy of correspondence, telephone conversations and other communications may be restricted only under the law and according to the procedure provided for by CCP.

Under Art. 22 part 1 and 2 of Constitution of the Republic of Lithuania (hereinafter – **Constitution**) information about person's private life could be only collected if there is a judicial decision and it is established under the law.

Case law establishes that definition of private life is very wide and shall be considered as the category that has to be evaluated individually and thus there are no specific classification of private life areas (Case No. 2K-7-84-489/2018).

Recommendation on Publication of Pre-trial Investigation Data para 5.8. describes private life as private or family life of individuals, living environment which includes living space, its private territory and other private premises used by natural person for his/her economic, commercial or professional activities, as well mental and physical integrity of a natural person, inviolability, reputation and honour, confidential personal facts, photographs and other images, health information about a natural person, private correspondence and other communication, views, beliefs, habits and other data which may be used only with consent.

Aside from the above principles, limits for accessing information are established mainly by the relevant order/warrant, i.e. search and seizure can only be conducted having approval of a pre-trial investigation judge (Art. 145 part 3, Art. 146 part 1 of CCP), except in cases where a person's search and seizure is conducted during arrests or where there is a reason to think a person is hiding objects relevant to the investigation during a search and seizure of premises, in which case approval of a pre-trial investigation judge is not required (Art. 146 part 2 of CCP).

Finally, only objects and information or data which are relevant to the criminal investigation can be seized (copied) as established in Art. 149 part 6 of CCP.

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

No, unless device is seized, in which case technical tools can be used to bypass security.

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

Information can only be copied during a search and seizure on the basis of an order/warrant, issued by a pre-trial investigation judge. Therefore it depends on the type of procedure whether information can be copied or only read. Generally, if an object can be lawfully seized, the information can also be copied (whether during the procedure or at a later stage after the object is seized).

Additionally, it is allowed to photograph, film, make other video or audio records, to draw plans and schemes and to use other fixation methods during an investigation.

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

The consent of the owner/person in possession of the mobile device is not required. Art. 155, part 1 of CCP establishes that if a ruling to conduct a search and seizure is issued by a Prosecutor and the Pre-trial Investigation Judge approves it, the Prosecutor has the right to enter any state or municipality, public or private authority, company or organization and to demand to get the access to the documents or other information, to make extracts or copies of documents or other information or get written information that was requested if it is necessary for the investigation of a criminal act.

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

There are no specific provisions in CCP which provide such an obligation. However, under Art. 163 part 1 of CCP, the Pre-trial Investigation Officer, Prosecutor or Pre-trial Investigation Judge may impose a fine or may arrest a person (can be imposed only by the Pre-trial Investigation Judge or the Court) who refuses to comply with Pre-trial Investigation Officer's, Prosecutor's or Pre-trial Investigation Judge's or the Court's order or if the person in any other way hinders the investigation.

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Where a mobile device is protected by biometric data and where it is necessary for the owner of the mobile device to use biometric data in order to unlock the mobile device Art. 156 of CCP shall apply in addition to the above. Under Art. 156, part 1 of CCP, by decision of a Pre-trial Investigation Officer or a Prosecutor, a suspect or an accused person (in the latter's case a Court ruling must be passed) despite their objections may be photographed, filmed, measured, their hand prints or samples may be taken for purposes of genetic dactyloscopy. Art. 156, part 2 of CCP establishes further that when it is necessary for investigation purposes, these actions may be carried out to other persons as well. However, such person may disagree to be subject to these actions, in which case they can be carried out by force, but only if there is a Prosecutor's decision.

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

Under Art. 161 of the CCP a person who has been the subject of at least one of the relevant procedural measures, such as search, seizure, control, recording and storage of information transmitted via electronic communication networks under Art. 154 of the CCP etc. without his/her knowledge shall be notified of such measures when she or he cease to be a subject of a measure. Person shall be notified immediately if it is possible to notify without prejudicing the investigation.

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

Under Art. 145, part 1 of CCP a Prosecutor is entitled to order the search of a home or other premises if there are reasonable grounds to assume that in particular place there are objects, documents or other items that are relevant to a criminal investigation. Similarly, search of a person can be ordered by a Prosecutor under Art. 146 of the CCP. In both cases, an approval of the Pre-Trial Investigation Judge is required (unless exceptions apply, such as those described in Question 5).

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

This may impact the decision making of the Prosecutor or the Pre-trial Investigation Judge, but searches and seizures do not require that a person subject to these measures holds a specific status in the investigation.

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.*

In addition to EIO and MLAT, Lithuanian Prosecutor's office had delegated the representative of Lithuania to EUROJUST (EU Agency for Criminal Justice Cooperation) in order to coordinate the pre-trial investigation and prosecution which is related to two or more countries. But EIO and MLAT are the main options to gather data related to investigation outside Lithuania.

EIO could be issued in cases when evidence relevant to the case is available to other EU Member State's competent authority, or there are reasonable grounds to assume that evidence is or might be in other EU Member State and there is a need to obtain objects, documents and other items relevant to the case (Art. 97 of CCP), to apply criminal procedure coercive measures (Chapter XII of CPP), to perform pre-trial investigation actions (Chapter XIV of CCP) or perform evidence examination (Chapter XXI of CCP).

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

Art. 154 part 1 of CCP establishes that a Pre-trial Investigation Officer may listen to or record communications, control other information transmitted via electronic communications networks, collect the data and store it if:

(1) At the request of a Prosecutor, a Pre-trial Investigation Judge's ruling has been issued;

(2) There are reasonable ground to assume that information about preparation for **grave crime, serious crime, less serious crime or information about crime that has been or will be committed** *(such as Grooming of a Person under the Age of Sixteen Years (Art. 152(1)) of CC,*

Exploitation of a Child for Pornography (Art. 162, part 2 of CC), Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons (Art. 170 of CC), Unlawful use or takeover of electronic data (Art. 198 (2) of CC), Possession of Pornographic Material (Art. 309, part 2 of CC) could be obtained in this way.

(3) Or if there is a risk of violence, rape or other unlawful acts against the victim, witness or other participants in the proceedings, or their relatives.

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.*

Yes. Under Art. 20 of CCP evidence in a criminal procedure shall be material obtained in the manner prescribed by law. Whether data can be considered as evidence in criminal procedure shall be determined by the Judge or the Court which is in charge of the case. Material is admitted as evidence if it is obtained by lawful means and may be validated by the proceedings laid down in CCP. Judges shall assess the evidence according to their inner conviction based on a scrupulous and objective review of all the circumstances of the case in accordance with the law. This means that evidence could in some cases be admitted, despite violations of the due procedure.

Mobile device seized

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

Yes. The mobile device can be seized as a physical evidence. Under Art. 145, part 1 and 147, part 1 of CCP, a Pre-trial Investigation Officer or a Prosecutor may proceed with search and seizure if there is a need to obtain items or documents which were used as an instrument or a tool to commit a crime or if they are otherwise required for a criminal investigation.

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

Under Art. 147, part 1 of CCP, seizure must be sanctioned by a Pre-trial Investigation Judge.

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Under Art. 147, part 4 of CCP, during seizure, owners, lessors of flat, house or other premises must be present, or, in the event they cannot participate, a representative of municipality or other external person must be present instead.

In addition to seizure under Art. 147 of CCP, objects can be seized during a search (dawn raid) under Art. 145 (search of premises) or Art. 146 (person's search). Both procedures require that an order (warrant) is issued by the Pre-trial Investigation Judge.

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

Generally, yes, all relevant procedures which allow objects to be seized are intended to allow investigators to collect information and evidence. This includes searches under Art. 145, Art. 146 and seizure under Art. 147 of CCP.

Under Art. 205, part 2 of CCP, examination of material objects, documents or other items which have to be examined with use of technical tools is performed at the laboratory or any other place where conditions are met for the examination. Specific actions that can be performed are not specified.

Additionally, Forensic Science Centre of Lithuania which in certain situations is responsible for forensic examination and object investigation, is tasked with identification of digital information in a medium, copying of information from a medium, analysis of copied information and preparation of findings.

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?*

Please see Question 5.

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

Please see Question 8.

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

Please see Question 9.

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

Please see Question 10.

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

Please see Question 18.

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

Please see Question 12.

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.*

Please see Question 13.

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 case data stored in the Cloud is the only potential evidence in the case, the investigation shall be terminated if it is not possible to determine the location of the Cloud under Art. 212, para 2 of CCP. Art. 212, para 2 of CCP establishes that the investigation shall be terminated in case there are not enough evidence that confirms suspect guilt for the criminal act. It does not mean, however, that investigators would not attempt to determine relevant circumstances in order to collect evidence, but if this is not possible, lack of evidence is a valid ground for terminating the investigation.

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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?*

This is not specifically regulated. This would be determined based on the entirety of the circumstances on a case-by-case basis.

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?*

Under Art. 154, part 1 of CCP, electronic data is accessed upon request of the Prosecutor, subject to the Pre-trial Investigation Judge's approval. Art. 154, part 5 of CCP establishes that undertakings providing electronic communications networks and/or services must create conditions for listening to conversations of persons transmitted via electronic communications networks, making their recordings or controlling other information transmitted via electronic communications networks, and recording and storing it.

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

Please see Question 14.

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.*

Please see Question 15.

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: Information about mobile device examination or data acquisition is not specified in CCP or any other publicly available legal act.

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***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: There are no specific rules in criminal procedure regarding the use of mobile forensics tools using/deploying AI technology.

***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: Procedures for multijurisdictional issues are foreseen in Chapter IV (Art. 66 – 77 (1)) of CCP. It establishes regulation on communication between Courts of the Republic of Lithuania and Prosecution Office and foreign countries' authorities and international organizations in criminal procedure. Regulation on international cooperation on crimes that cross geographical boundaries is also established under international treaties of the Republic of Lithuania. Lithuania has ratified international treaties: 13 December 1957 European Convention on Extradition and its 1975 and 1978 additional protocols; 1959 European Convention on Mutual Assistance in Criminal Matters; 1970 European Convention on the International Validity of Criminal Judgments; 1972 European Convention on the Transfer of Proceedings in Criminal Matters; 1988 United Nations Convention Against Illicit Traffic in Narcotic drugs and Psychotropic Substances; 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; 2000 United Nations Convention against Transnational Organized Crime.

It establishes procedures such as: (1) exchange of information regarding investigation of criminal act or direct consultations in order to avoid parallel investigation in different countries; (2) submission of the request to start the investigation or undertake the investigation of the criminal act that was committed by citizen of the Republic of Lithuania; (3) submission of the request of the

extradition of citizen of the Republic of Lithuania or other person regarding which the investigation has been undertaken or conviction adopted.

Requirements for forensic examiners are not specified or established under the law, neither are specific issues concerning mobile devices.

***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: Art. 59, part 1 of Law on Recognition and Enforcement of EU Member States Judgements in Criminal Cases, establishes that EIO can be issued in cases when evidence relevant to the case is held by other EU Member State's competent authority, or there are reasonable grounds to assume that evidence are or might be in other EU Member State and there is a need to obtain objects, documents and other items relevant to the case (Art. 97 of CCP), to apply criminal procedure coercive measures (Chapter XII of CPP), to perform pre-trial investigation actions (Chapter XIV of CCP) or perform evidence examination (Chapter XXI of CCP).

***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: Law on Recognition and Enforcement of EU Member States' Judgements in Criminal Cases specifies judgements, orders, acts of arrest that shall be recognized in Lithuania and the requirements under which it shall be recognized. Under Art. 66 of CCP Courts of Lithuania and Prosecutor Office submit requests to foreign authorities or international organization through Ministry of Justice of Lithuania or General Prosecutor Office.

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

Answer: As far as we are aware, there are no cooperation mechanisms or practises established with and between private sector.

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

***37.* Question:** *When data has been made accessible through mobile forensics, are there any rules on how the data must be analysed:*

Regulation on analysis of data obtained by mobile forensics is not specified, thus general rules shall apply for data processing criminal procedure.

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

Art. 4 of Law Enforcement Directive 2016/680 and Art. 3 of Law on Personal Data Processing during cooperation between police and judicial in criminal cases establishes that personal data shall be:

a) processed lawfully and fairly;
b) collected for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes;
c) adequate, relevant and not excessive in relation to the purposes for which they are processed;
d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which they are processed;
f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

- *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)*

Art. 181, part 1; Art. 183, part 3, Art. 218 part 3, Art. 220 part 3, Art. 237 part 3 of CCP establishes that personal data of criminal procedure participants is protected and stored separately from the case material.

Art. 44, part 9 of CCP establishes that right to private life of person and his family, as well as right to inviolability of the home, secrecy of correspondence, telephone conversations and other communications may be restricted only under the Law and according to the procedure provided for by CCP.

Art. 154, part 8 of CCP establishes that data and audio records that are not relevant to the case and are separated from data relevant to the case and case materials, shall not be attached to the case and shall be immediately deleted.

Art. 155, part 1 of CCP establishes that if the ruling issued by Prosecutor has been confirmed by the Pre-trial Investigation, the Prosecutor has the right to enter any State or municipality, public or private authority, company or organization and to demand to get the access to the documents or other information, to make extracts or copies of documents or other information or get written information that was requested if is necessary for the criminal act investigation. But Art. 155, part 3 of CCP establishes that the Prosecutor has the obligation to destroy/delete all information which is not relevant to the investigation of criminal offence immediately.

- *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)*

In case where the expert or the specialist is appointed to perform examination of evidence Art. 180, part 2; Art. 269 of CCP establishes the obligation either for an expert or the specialist to take an oath that they will perform fair expertise and foresees that, in case of infringement of the oath, they

will be the subject to criminal liability. In addition, evidence can be challenged by the accused person or his/her defender during the trial, and all material evidence is inevitably examined by the Court, which is bound by principles that, among other things, help ensure fair trial.

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

The Prosecutor's Office can retain information as name, surname, identification code, address, telephone number, e-mail address, signature, date of request or statement and number of its registration, information indicated in the complaint, request or statement, information of the result of complaint, request or statement, information obtained during complaint, request or statement examination and other information which is necessary for investigation.

Para. 17 of Rules on Personal Data processing in Prosecutor Office establishes that personal data shall not be retained longer than it is necessary for the personal data processing purposes to achieve.

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: No, there are no additional rules or guidelines on the admissibility of electronic evidence specified in Lithuania.

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: Electronic evidence are not subject to any specific rules in criminal procedure in Lithuania. Thus, it is a subject to common requirements, such as: (1) evidence must be obtained in the manner prescribed by law, (2) via lawful means, and (3) such evidence must be verifiable by the proceedings laid down in CCP (Art. 20 of CCP).

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***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: If procedural rules are not followed the court may not consider such information as evidence and may not rely on them while addressing the issue of the guilt of the accused. But indeed it is the Judge's prerogative to decide whether a material object, a document or any other item shall be admitted as evidence in a particular case.

***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: Art. 4 of CCP establishes that the procedure of the criminal proceedings shall be established by the CCP which is in force at the time of conducting the proceedings, and disregarding where the criminal act has been committed, the criminal proceedings in the territory of Lithuania shall be conducted pursuant to the CCP of Lithuania. Thus, the Court, Pre-trial Investigation Judge and other Lithuanian Officers or institutions have authority within the territory of Lithuania.

However, under Art. 20, part 4 of CCP the Court would have the prerogative to decide whether data obtained in this way can be admitted as evidence in the case or whether it shall be inadmissible due to investigators' lack of authority to sanction evidence gathering activities for the Prosecutor regarding location of data.

***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.*

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Answer: There is no case-law yet regarding this question as well as no specific regulation in order to determine possible consequences regarding alteration of metadata during a criminal investigation.

***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: There are no rules specified.

***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: As far as we are aware there are no case-law regarding admissibility of evidence produced using mobile forensics.

***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: There are no requirements specified.

***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: Art. 20, part 1 of CCP establishes that the evidence in a criminal procedure shall be materially obtained in the manner prescribed by law. While assessing data submitted in the case the Court has the obligation to check the reliability of the data by analysing whether it was obtained under the law. Data which was obtained by restricting human rights guaranteed by law (e.g. person's right to respect for private life and the confidentiality of communications) and without following the procedure established by law shall be considered as illegally obtained and as infringing Art. 20, part 4 of CCP. Thus, if data was obtained by failing to comply with Data

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Protection Law or privacy rules itself the Court may refuse to consider such material inadmissible as evidence. Yet, as already mentioned previously, the Court decides in each case whether procedural infringements are serious enough to consider evidence inadmissible. If incompliance with data protection requirements does not result in any direct impact on the reliability of collected evidence, it is likely that the Court will admit the evidence in a case, whereas the data subject can seek remedies via other means.

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: : As far as we are aware there are no case-law regarding rejection of evidence collected via mobile forensics because of its inadmissibility.

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

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

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

Answer: There are no general rules or guidelines on the interpretation and presentation of evidence from mobile forensics. Since evidence from mobile forensics are not separated from other types of

evidence, it has the same probative value as any other evidence if it complies with the requirements set out in Art. 20 of CCP.

Regarding the expert examination, Art. 209, part 1 and 2 of CCP establishes the right for the Prosecutor to order (with the approval of the Pre-trial Investigation Judge) the examination if the Prosecutor decides that it is necessary for the investigation. Art. 286 of CCP establishes that the Court has the right to order the examination at the request of the parties or on its own initiative during the trial. Evidence shall be examined by experts only if it is necessary and if the decision of the Prosecutor or the Court has been made, or the parties have requested it. This includes examining evidence from mobile forensics.

In order to conduct the expert examination, the Prosecutor or the Court may appoint an institution or an individual expert which is listed in the list of experts approved by the Ministry of Justice of the Republic of Lithuania or, if there are no experts listed in the list which have the required experience, an expert not included in the list of approved experts can be appointed too.

Requirements for the experts (Expert code of ethics para 4-12): (1) the expert has to be independent during duty; (2) the expert has to be professional, i.e. to perform expert examination only in his/her field of competence, where he/she has the required knowledge and qualification, and to be aware of laws and other legal acts that regulate carrying out of the examination, and to use only scientifically confirmed, universally recognized and reliable equipment and methods etc.; (3) the expert has to be impartial; (4) the expert has to ensure confidentiality of obtained information; (5) the expert has to be fair while on his duty.

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: No, we are not aware of any such case law.

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***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: No, we are not aware of any such standards or requirements.

***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: No, we are not aware of any such case law.

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: Right to a fair trial is ensured via a number of different principles and processed established in the law, but we are not aware of any rules or guidance specifically relating to a fair trial in case of evidence extracted via mobile forensics.

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

Answer: No such mandatory requirements are established, to the best of our knowledge.

***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: Information about the time duration/limitation period for the extraction of evidence from mobile devices is not specified.

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: Suspect (Art. 21, part 4 CCP): the right to know what they are suspected of; the right to effective defence; the right to interpretation and translation in criminal proceedings; the right to information in criminal proceedings; the right to get medical help; the right to provide information related to investigation or to remain silent; the right to provide objects, documents or other items relevant to investigation; the right to submit requests to the court; the right to challenge the Judge; the right to appeal Pre-trial Investigation Officers', Prosecutor's or Judge's actions and decisions made during criminal procedure; the right to privacy in case the suspect is a minor.

Accused (Art. 22, part 3 CCP): the right to get information of their procedural status; the right to know of what they are accused; the right to effective defence; the right to interpretation and translation in criminal proceedings; the right to information in criminal proceedings; the right to get medical help; the right to provide evidence and participate in its investigation; the right to provide information and submit questions during the trial; the right to provide information about circumstances that are under investigation and provide opinion on other requests submitted in the trial; the right to be silent and refuse to provide information about crime; the right to participate in closing speech, when the defender is absent; there right to appeal rulings and orders; the right to have a defender; the right to privacy in case the suspect is a minor.

Pre-trial Investigation Officer, Prosecutor and the Court: the right to obtain material objects and documents relevant to crime investigation from natural and legal persons (Art. 97 of CCP); the right to detain a person caught committing a crime or immediately after committing a crime (Art. 140 of CCP); **Pre-trial Investigation Officer, Prosecutor:** the right to conduct body search of the suspect, the victim or other persons, if necessary to determine whether there are traces of a criminal offense (Art. 143 of CCP); the right to take samples from suspect for comparison investigation

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(Art. 144 of CCP); the right to conduct search (Art. 145 of CCP), the right to conduct seizure (Art. 147 of CCP);); the right to refuse to investigate if the information about the crime is erroneous Art. 3, part 1 **(**Art. 168 of CCP); the right to conduct investigation, including questioning, and to apply procedural coercive measures (Art. 178 of CCP); the right to enter any State or municipality, public or private authority, company or organization and to demand to get access to documents or other information, to make extracts or copies of documents or other information or get written information if it is necessary for the criminal investigation (Art. 155, part 1 of CCP); **Pre-trial Investigation Officer, Prosecutor, Specialist:** the right to make visual inspection of material objects, documents and other items relevant to investigation (Art. 207 of CCP); **Pre-trial Investigation Officer:** the right to listen or record communications, control other information transmitted via electronic communications networks by the request of Prosecutor and under Pre-trial Investigation Judge's ruling (Art. 154, part 1 of CCP);

The Court: the right to hear the case (Art. 6 of CCP); the right to decide that the case or its material or part of the case material is not public (Art. 9(1), part 2 of CCP); the right to summon the accused if she or he refuses to participate in the trial, to order supervision measures or to change them to more severe ones (Art. 247 of CCP); the right to decide if the case shall be heard or postponed, or suspended when the victim is absent (Art. 251 of CPP); the right to order an expert examiantion (Art. 286 part 1); right to perform any pre-trial investigation act or to authorise and instruct the Prosecutor or the Pre-trial Investigation Judge to perform required acts (Art. 287 of CCP);

Pre-trial Investigation Judge (Art. 173, part 1 of CCP): the right to impose and sanction procedural coercive measures; the right to swear and question witnesses and victims; the right to question suspects; the right to decide on termination of pre-trial investigation; the right to sanction Prosecutor's rulings on termination of pre-trial investigation; the right to sanction Prosecutor's rulings on renewal of terminated pre-trial investigation; the right to examine complaints of participants of criminal procedure.

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The witness (Art. 81 of CCP): the right to testify either in native language or to testify with the assistance of a translator; the right to read testimony protocol and to make changes in it; the right to request to make audio or video records of testimony; the right to write testimony himself/herself; the right to request protection against criminal acts on the grounds and in accordance with the procedure established by law; the right to request reimbursement of incurred expenses; the right to have a legal representative.

The victim (Art. 28, part 2 of CCP): the right to get information on their procedural status; the right to submit evidence; the right to submit requests; the right to challenge the judge; the right to participate in the assessment of his/her special protection needs; the right to get information about the case in the pre-trial investigation and in the trial; the right to participate in the trial; the right to appeal Pre-trial Investigation Officer's, Prosecutor's, Pre-trial Investigation Judge's and Court's procedural actions; the right to appeal rulings or orders; the right to a closing speech.

The defender (Art. 48 of CCP): the right to get the information on the detention report of the suspect or the European Arrest Warrant; the right to participate in questioning of the suspect or the accused, as well as to meet with the suspect or the accused before the questioning or trial; the right to communicate with the suspect or the accused without intervention; the right to participate in actions requested by the suspect, the accused or the defender; the right to participate in any evidence gathering actions with the permission of the Pre-trial Investigation Officer, Prosecutor or Judge; the right to submit questions, ask for explanations and to make statements while participating in questioning, evidence gathering actions and other actions; the right to gather information; the right to get acquainted with procedural documents; the right to submit requests or challenges against or in relation to actions of the judge; the right to appeal Pre-trial Investigation Officer's, Prosecutor's, Pre-trial Investigation Judge's or Court's procedural actions or decisions and participate in the trial while examining these claims; the right to contact the defender appointed in the country where European Arrest Warrant was issued or executed, and to obtain or to submit items and document necessary for defence.

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5.1 The Prosecution

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

Answer: The Police Commissar General of the Republic of Lithuania Order on instructions on collecting, accounting, storage, transfer, return and destruction of seized or confiscated assets, and physical evidence encompasses requirements for storage of physical evidences. However, it does not establish precise requirements or guidance on how to control and deal with mobile forensics. It only establishes general guidance for physical evidence, i.e. Art. 4 establishes that physical evidence relevant to the investigation of a crime must be kept and preserved together with the crime investigation material till the procedural decision will be made. In the event physical evidence has to be placed in storage, it shall be placed at the place specified by the Pre-trial Investigation Officer, the Prosecutor or the Court. Art. 34 establishes general guidelines for accounting and storage of physical evidence, i.e. what kind of physical evidence can be taken to storage, what requirements the storage shall meet etc.

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: Case No.2K-43/2006, 2K-P-221/2008, Nr. 2K-122/2013: "One of the most important condition for assessment of evidence which must be observed by both the first instance and the court of appeal is that each piece of evidence is supposed to be assessed individually, and all evidence as a whole".

Case No. 2K-145-697/2017 (para 5.2): "Art. 20, 276 part 4, 301 of Criminal Procedural Code established general provisions on evidence recognition, analysis and evaluation. However, Criminal Procedure Code does not provide any rules or methods, which would regulate the process of assessing the evidence. Assessment of evidence is considered as a subjective logic process,

boundaries of which are established in Criminal Procedure Code, while judicial proceedings and motives of the final act in the criminal procedure is a special reasoning, where actual data and logical rules are combined".

Case No. 2K-164-458/2020 (para 9): "Main evidence examination rules are established in Art. 20, part 5. It establishes that the court has the right and the obligation to assess the evidence according to their inner convictions based on carefully and individually examined information obtained from each source. The court has the prerogative to decide whether the information has probative value and if the information is sufficient to prove that person is guilty of the crime".

Under Art. 20 part 5 of CCP, the Judge shall assess the evidence with accordance to their inner belief based on careful and individual examination of all circumstances in the case in accordance with the law.

Under Art. 276 part 4 of CCP, in order to examine evidence given in the case, the Pre-trial Investigation Officer or the Prosecutor can be entitled to read the testimony of the accused, the victim or the witness, video or audio recordings of questionings can be examined. A Pre-trial Investigation Officer which conducted questioning could be also questioned as witness himself/herself.

Under Art. 301 part 1 of CCP, Court can only base the decision on the evidence which has been examined in the trial.

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: In Lithuania evidence obtained via mobile forensics is not separated explicitly from other types of evidence, thus case law does not specify the process of assessment of electronic evidence and these evidence are assessed in the same manner as any other data submitted in the case.

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5.3 The defendant and defender

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

Answer: There are no rules or any standards for defendant and his/her right to access and to make copies of the acquired mobile device. However, under Art. 22, part 3, Art. 48 of CCP, defendant and defender have the right to participate in evidence gathering actions, the right to submit questions, ask for explanations and to make statements while participating in questioning, evidence gathering actions and other actions; the right to gather information; the right to get acquainted with procedural documents, etc. These rights do not provide rules relating to mobile evidence explicitly, but can be applied to mobile evidence and processes nevertheless.

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: Art. 183, part 3 of CCP establishes that witnesses' personal information, except name, surname and date of birth, are protected and stored separately from other pre-trial investigation material. Only the Pre-trial Investigation Officer, the Prosecutor or the Court have the access to the personal information during criminal procedure. Art. 198 - 199 and 199 (1) of CCP establish possibility for the witness to request anonymity or partial anonymity to be applied. Anonymity is

granted in case of threat to witness or their relatives' life, health or other interests, or if other established grounds are applicable.

There are no specific requirements regarding witness' capability to testify in terms of mobile forensics.

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: Art. 44, part 9 of CCP establishes that every person has the right that his/her private or family life would be respected, the right to inviolability of the home, secrecy of correspondence, telephone conversations and other communications. These rights may be restricted only under the law and according to the procedure provided for by CCP.

Art. 198 - 199 and 199 (1) of CCP establish possibility for the victim to request anonymity or partial anonymity. Anonymity is granted in case of threat to the victim's or his/her relatives' life, health or other interests, or if other established grounds are applicable.

Art. 20, part 3 establishes that only the information which confirms or denies at least one of the circumstances relevant to the case shall be considered as evidence. As long as evidence obtained via mobile forensics meets the relevant requirements applicable to evidence, e.g. relevancy, the victim has the right to use this evidence obtained via mobile forensics.

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Section 6: Comments

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

Answer: Unfortunately, Lithuanian regulation, court and police practice regarding mobile forensic tools and evidence is very limited. Many issues are by the general regulation on evidence in accordance with the CCP or are not sufficiently covered at all.