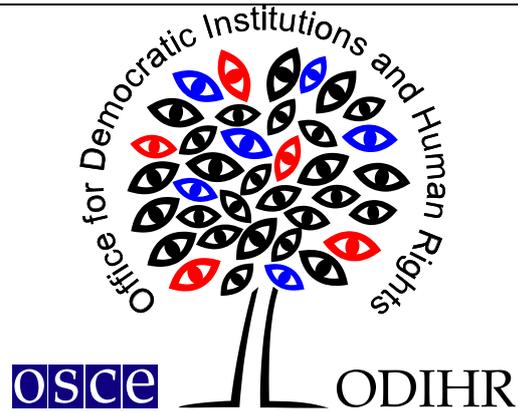


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**OPINION  
ON THE  
DRAFT LAW OF THE KYRGYZ REPUBLIC ON  
FORENSIC EXAMINATION**

**based on an unofficial English translation of the draft Law**

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**Annex 1: Draft Law of the Kyrgyz Republic on Forensic Examination**

## **I. INTRODUCTION**

1. *The draft Law of the Kyrgyz Republic on Forensic Examination (hereinafter “the draft Law”) was prepared by the State Centre for Forensic Expertise under the Ministry of Justice of the Kyrgyz Republic and submitted to the Jogorku Kenesh (Parliament) in September 2012.*
2. *On 24 January 2013, the OSCE Centre in Bishkek received a request from the Minister of Justice of the Kyrgyz Republic to review the draft Law against the background of its compatibility with international standards. The OSCE Centre in Bishkek forwarded the request to the OSCE/ODIHR on 28 January 2013.*
3. *This Opinion was prepared by the OSCE/ODIHR in response to the above-mentioned request.*

## **II. SCOPE OF REVIEW**

4. The scope of the Opinion covers the draft Law of the Kyrgyz Republic on Forensic Examination only. Thus limited, the Opinion does not constitute a full and comprehensive review of all legislation pertaining to forensic examination, or other matters relating to criminal and other types of procedure in the Kyrgyz Republic.
5. In the interest of concision, the Opinion focuses on areas of concern rather than on positive features of the draft Law. The ensuing recommendations are based on international standards and good practices, as found in international agreements and commitments ratified and entered into by the Kyrgyz Republic.
6. This Opinion is based on an unofficial translation of the draft Law which is attached to this document as Annex 1. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to this or other legislation related to forensic examination or other pertinent matters that the OSCE/ODIHR may make in the future.

## **III. EXECUTIVE SUMMARY**

8. The draft Law is commended for stressing the priority to secure human rights in the process of forensic examination. Article 6 of the draft Law states that “(f)orensic examination shall be performed in a manner ensuring equality of citizens, their constitutional rights for freedom and security of person, privacy, personal and family secrecy, protection of the honor and dignity, also other human and civil legal rights and freedoms.” This is particularly important in a system of forensic evidence that allows only certain bodies, e.g. courts, investigators and prosecutors, to request forensic expertise, as stated in the draft Law. There are indications of growing tendencies in such systems to place excessive and

unwarranted reliance on the testimony of such experts<sup>1</sup>, which may affect the universal principle of equality of arms before courts.

9. In light of these and other concerns, it is noted that certain parts of the draft Law would benefit from amendments, to ensure full compliance with the above and other international standards and principles.
10. It is thus recommended as follows:

### ***1. Key Recommendations***

- A. To differentiate between different types of proceedings in the draft Law and specify which provisions pertain to which proceedings i.e. criminal, civil or administrative proceedings; [pars 12-14]
- B. To delete from Article 10 of the draft Law the requirement for the scientific means and methods to be “directly envisaged by law”; [pars 19-20]
- C. To allow the parties to request the forensic expertise directly and not only through the court; [pars 41-43]
- D. To revise Article 13 par 3 so that:
  1. private forensic agencies are not required to employ at least “five experts in different types of forensics”; [par 26]
  2. the areas in which the state agencies maintain exclusive competence are clearly spelled out, bearing in mind that any such restrictions must be limited; [par 27-28]

### ***2. Additional Recommendations***

- E. To add the principles of integrity, confidentiality, as well as technical and professional competence to the list of principles under Article 4; [par 15]
- F. To amend Article 7 so that it clearly spells out which type of interference leads to which type of liability; [par 17]
- G. To Amend Article 12 so as to widen its scope and to include in the draft Law a provision providing for compensation for excessive damages; [pars 23-25]
- H. To revise Article 14 par 3 with respect to the ban on carrying out forensic expertise; [pars 29-30]

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<sup>1</sup> See, for example, studies on practices in Switzerland (Vuille, J. (2013). "Admissibility and Appraisal of Scientific Evidence in Continental European Criminal Justice Systems: Past, Present and Future." *Australian Journal of Forensic Sciences*: 1-9.) and Spain (Lucena Molina, J., V. Pardo Iranzo, et al. (2012). "Weakening Forensic Science in Spain: From Expert Evidence to Documentary Evidence." *Journal of Forensic Sciences* 57(4): 952-963.). In England, the “official” government forensic laboratory has recently been closed (see Wilson, T. J. and A. M. Gallop (2013). "Criminal Justice, Science and the Marketplace: The Closure of the Forensic Science Service in Perspective." *The Journal of Criminal Law* 77(1): 56-77.

- I. To add under Article 14 par 4 that the forensic expert may be questioned in respect of his experience and professional qualifications; [par 31]
- J. To include in the draft Law a provision indicating the procedure for submitting the application for forensic examination and specifying on what grounds such an application should be evaluated, accepted or refused; [par 44]
- K. To insert a provision in the draft Law guaranteeing the right of the parties to examine the expert in open court; [par 47]
- L. To insert a provision in the draft Law setting out the procedure by which a “Forensic Examination Authorization/Order” and a “Multi-Disciplinary Examination Order” are made and ensuring that copies of such orders are served on all parties and that all parties have the opportunity, within a reasonable time, to challenge the choice of the expert or experts and the questions to be asked; [pars 45-48]
- M. To state that the list of objects enumerated in Article 12 par 1 is open ended or alternatively to remove this list from the draft Law; [par 22]
- N. To amend Article 15 as follows:
  - 1) Allow non-citizens to be forensic experts; [par 32]
  - 2) Specify the composition of the Expert Qualification Board; [par 33]
  - 3) Clearly spell out the rules of the evaluation procedure under Article 15 par 2; [par 33]
  - 4) Include possible remedies against the decisions of the Board; [par 34]
- O. To define the difference between “competence certificates” for private forensic experts, and “qualification certificates” for state experts; [par 35]
- P. To delete from Article 17 par 1 the part relating to “extraordinary certification”; [par 36]
- Q. To clarify the safety requirement under Article 10 and Article 21 par 3(9); [par 21]
- R. To revise Article 22 par 3 as follows:
  - 1) Specify which body is responsible for depriving experts of their certificate and the exact grounds for such deprivation; [par 38]
  - 2) Include the possibility of judicial review of such decisions on the deprivation of certificate; [par 38]
- S. To delete from the draft Law criminal liability for violations of procedural formalities, as stipulated in Article 22 par 2; [par 37]
- T. To amend Article 23 as follows:
  - 1) Enumerate the grounds for suspending a forensic expert; [par 39]
  - 2) Revise the ground for recusal of certain medical experts as stipulated in Article 23 par 2; [par 40]
- U. To revise Article 28 par 5 with respect to examinations which require individuals to undress; [par 53]

- V. To insert a provision in the draft Law requiring the individual/body commissioning the expertise to supply all parties with copies of the forensic report; [par 54]
- W. To standardize the terminology pertaining to “participants in the legal process”, “persons interested in the case” and “interested parties”, throughout the draft Law; [par 52]
- X. To clarify and expand the right for the parties to request a re-examination or additional examination under Articles 25 and 32 of the draft Law, and specify the grounds on which such request can be refused; [par 49]
- Y. To clarify the reasons for the parties to be permitted or forbidden to attend a forensic examination, as set out in Article 28 par 1; [par 52] and
- Z. To insert a provision in Article 31 par 2 authorizing the return of unexamined materials in the case of a “Forensic Inquiry Failure Notice” under Article 30. [par 55]

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. Scope and General Provisions of the Draft Law**

11. At the outset, it should be noted that there are no clear international standards specifying how forensic expertise should be regulated in legislation. However, as a specific type of evidence submitted during court and administrative proceedings, it is essential that legislation on forensic expertise does not restrict, but rather enhances general fair trial rights, as set out in Article 14 of the International Covenant on Civil and Political Rights<sup>2</sup> (hereinafter “ICCPR”), including the principle of equality of arms.
12. The scope of this draft Law encompasses criminal, civil and administrative proceedings (as stated in the definition of forensic expertise under Article 2 par 1). It would be worth highlighting that, in general, most of the principles underpinning forensic expert examination may be applicable to any judicial proceedings. However, there are certain aspects of forensic examination which should be regulated differently, depending on the nature of the proceedings involved.
13. Moreover, each type of procedure has its distinct specificity and providing a unified framework for all three proceedings in question could constitute a potential shortcoming of the draft Law. Criminal proceedings, for example, involve the public interest of the State. In civil proceedings, on the other hand, the main interest is pursued by private individuals.

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<sup>2</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, in force from 23 March 1976, acceded to by the Kyrgyz Republic on 7 October 1994.

14. Bearing in mind the wording and meaning of certain provisions of the draft Law, it would appear difficult to apply some of these in non-criminal proceedings. For example, Article 24 allows for forensic expertise only if the need is established by an investigator, prosecutor, pretrial investigative agency or court, independently or “in response to a request of the parties”. While not directly familiar with the details of civil and administrative procedure in the Kyrgyz Republic, it is doubtful whether investigators and prosecutors play a relevant role in, e.g., civil proceedings. At the same time, the wording of this provision would preclude parties in civil proceedings from directly requesting forensic expertise; instead, they would need to request such expertise from a court, which would then request such expertise if it “establishes a need”. Likewise, Article 28 regulating the attendance of the parties during the forensic examination requires a written permission of the body authorizing the forensic examination, which would also appear to limit parties’ direct attendance in such examination. The above provisions would appear to be unnecessarily burdensome and restrictive for parties in, e.g., civil proceedings. Given the different natures of criminal proceedings, on the one hand, and other types of procedures, e.g. civil and administrative, it would therefore, be advisable to differentiate between such procedures in the draft Law and specify which provisions apply to which types of proceedings.
15. Article 4 of the draft Law lists the principles governing forensic examination. However, the list appears to be incomplete. Next to such important principles as legality, human rights, independence and impartiality, forensic examination should also be guided by other principles such as integrity, confidentiality, as well as technical and professional competence. It would be advisable to add these principles to the list enumerated under Article 4.
16. In this context, it is worth stressing that the quality of the expertise and confidence in the credibility of the forensic assessment can be ensured, if it is conducted solely by virtue of scientifically reliable methods. It is, therefore, crucial that expert conclusions and reports are elaborated without any undue interference.
17. The prohibition of such interference is an essential guarantee of the expert’s independence. Article 7 of the draft Law prohibits interference, which is laudable. However, with respect to the legal consequences of such interference, the provision merely refers to other laws, without specifying which types of interference will give rise to liability, and which type of liability it is referring to. The draft Law should either make clear which type of interference is considered improper and illegal, and that it is sanctioned in a proportionate and deterrent manner, or otherwise provide a direct and specific reference to another law(s) which stipulate this. Furthermore, it should clearly spell out which type of interference leads to which type of liability i.e. administrative, civil or criminal liability. It would be advisable to revise this provision accordingly.

18. Article 9 of the draft Law states that norms of professional forensic ethics shall be observed in the performance of forensic inquiries. However, the provision fails to specify where such norms are stipulated and the nature and extent of such norms. In order to ensure clarity, it would be beneficial to include an exact reference to an existing set of such norms.
19. Article 10 stipulates that “forensic inquiries may be made using scientific means and methods if these are directly envisaged by law and not controversial to legal provisions and principles”.
20. Limiting the examination to the methods “directly envisaged by law” appears to be too restrictive. Non-reliable or illegal methods of forensic examination should certainly be excluded, as already specified in Article 10, which states that methods shall not be controversial to legal provisions and principles, and shall be scientifically well-grounded. However, the current provision seems to bar the possibility to use any scientific methods that have not been regulated directly by law. It should be underscored that, most often, science advances more rapidly than legislation. New scientific methods, proven to be scientific, should not be automatically excluded, only because domestic laws have not been amended in a timely manner to regulate them. It would be advisable to revise this provision by deleting the requirement for the methods to be “directly envisaged by law”.
21. Furthermore, Article 10 states that the methods applied should be safe. This formulation is insufficiently precise, as it does not outline the extent of this safety requirement, namely whether such methods should be safe for the environment or the expert, or in another sense. The same requirement is stipulated in Article 21 par 3(9) which pertains to the responsibilities of the forensic expert. It would be beneficial, if this requirement could be clarified in both provisions.
22. Article 12 par 1 sets out the list of objects which could be forensically examined. It should be pointed out that the list provided therein is not complete, in that it does not include numerous types of objects that could be examined forensically. For example, plants, chemicals, photography, trace evidence, medicine and other objects are not included in the list. The provision, therefore, may be interpreted as prohibiting the examination of items which are not enumerated therein, which would unnecessarily limit the scope of forensic examination. It would be advisable to clearly state in the provision that the list is open ended and that any items that need to be examined “for the establishment of facts to be proven” (see Article 2 par 2) may be objects of forensic examination. Alternatively, the list enumerating specific types of objects could also be deleted.
23. Furthermore, Article 12 par 2 provides for the exemption of liability for damages caused to “real evidence and documents” examined, if the expert had permission to cause them. As real evidence and documents are just two items listed under Article 12 par 1, it would imply that all other items such as samples or technologies could never be damaged, or subjected to alterations in their

properties or conditions (see the definition of “damaging the subject of inquiry” under Article 2 par 12). This limitation is also reflected in Article 2 par 12, which merely speaks of damages caused by physical, chemical, or biological methods of forensic examination. To cover all possible scenarios, the scope of Article 12 par 2, and of Article 2 par 12, should be widened.

24. It is worth noting that, in principle, an expert should not be made liable for damages which result from actions necessary to ensure a proper forensic examination. Only those damages which are excessive should entail liability. This principle is reflected in Article 12 par. 2 which stipulates that liability shall not arise, if real evidence or documents are “used to the extent necessary for performing the examination and drawing a report”.
25. While Article 12 par 2 implies that damages caused to real evidence and documents without the permission of the body/individual authorizing the examination shall be compensated, the draft Law lacks any provision pertaining to compensation to the owner of the item for excessive damages caused during examination. This should be provided, especially taking into account that the owner of an item might not be party to the respective court proceedings.

## **2. Forensic Agencies and Experts**

26. Article 13 states that forensic agencies may be state-owned or private. Par 3 of this provision stipulates that private forensic agencies shall employ at least five experts “in different type of forensics”. This requirement appears to be unnecessary and difficult to justify, and would mean, e.g., that a laboratory carrying out blood analyses and employing three experts in biochemistry and haematology would not be able to act as a private forensic agency under the provisions of the draft Law. The number of persons working at the agency would not appear to be a necessary requirement to ensure quality, professionalism, or impartiality of the agencies in question. Furthermore, the reasons for fixing the minimum amount of persons at five, or why all of them would need to be qualified in different areas of forensics is not clear. At the same time, this requirement could well constitute an obstacle for the creation of a number of otherwise very competent and professional private agencies. It is, therefore, recommended to delete this requirement.
27. Furthermore, Article 13 par 3 stipulates that certain types of forensic examinations shall be performed exclusively by state agencies. This provision, however, fails to specify these areas of exclusive state expertise, and merely states that a list of such examinations shall be approved by the Government. It is recognized that, generally, there could be areas where general State or national security issues are at stake and where for reasons of confidentiality or public safety, private agencies should not carry out forensic expertise in such areas. The examination of, for example, certain military weapons, explosives or nuclear materials could fall outside of the scope of such analysis. However, it should be borne in mind that

such areas of exclusive state competence should be very limited and have a formal basis in law.

28. It should also be noted that restricting the areas of work of private agencies in this manner places state agencies and private agencies in asymmetrical positions, and significantly disadvantages agencies which are privately run. Since the areas of state examination are not specified in the draft Law, but are rather decided on by Government in a separate decision, this could potentially create a situation where private agencies are arbitrarily banned from numerous areas of expertise, depending on quite extensive executive discretion. To enhance clarity in this field, and ensure that as much as possible, state agencies and private agencies are treated the same, it is thus recommended to set out in the draft Law which areas of forensic expertise shall lie within the sole competence of state agencies.
29. Article 14 stipulates the nature of forensic experts. Its par 3 sets out that an individual may not carry out forensic expertise within three years after the cancellation of his/her conviction or “dismissal from state service [...] for a disciplinary offence”. It is acknowledged that the credibility of expert evidence is strongly correlated with the professional and ethical background of the expert. However, the three year period following the cancellation of a conviction seems excessive, since such cancellation already requires that a number of years must have passed since the conviction. This provision appears to be unnecessarily harsh and does not take into account the nature of the offence committed and the severity of the sentence imposed.
30. The same also applies with reference to a person’s inability to work as a forensic expert following his/her “dismissal from state service”. Not all disciplinary offences leading to the dismissal of a person from office make him/her unable to provide credible forensic expertise, and for that reason the blanket ban appears disproportionate. It is recommended to amend this Article accordingly.
31. Article 14 par 4 states that a forensic expert may be interrogated only in relation to the report and examination. However, it should be stressed that it is generally accepted for an expert to also be questioned in respect of his/her experience in the field, as well as professional qualifications or academic degree. This should be reflected in the above provision.
32. Article 15 on the professional and qualifying requirements for forensic experts stipulates, in its par 1, that forensic experts shall be citizens of the Kyrgyz Republic. While this may be understandable in the case of state agencies, where a all or a number of experts may have the status of civil servants, it is not clear why non-citizens of the Kyrgyz Republic, if they have the necessary expertise, should not be allowed to conduct forensic expertise for court proceedings. This part of Article 15 should be reconsidered, and ideally deleted.
33. Article 15 par 2 stipulates that the professional level of experts, both state and private, shall be evaluated by Expert Qualification Boards. The draft Law,

however, fails to specify the composition of such boards, and which body appoints them; it further does not spell out the rules and criteria for such evaluation procedure. The main parameters of the composition of the Board and the evaluation procedure should be set out in the draft Law; more detailed provisions can then be laid out in administrative instructions or rules of procedure.

34. It should also be stressed that Article 15 fails to specify possible remedies against negative decisions of the Board. It would be advisable to include such remedies in the Article.
35. Moreover, there appear to be certain discrepancies in the qualification requirements for state and private forensic experts, as stipulated by Articles 15, 16 and 17 of the draft Law. According to Article 16 par 1, forensic experts in state agencies are obliged to pass a qualification test and shall receive “qualification certificates to perform certain types of forensic examination”. At the same time, Article 15 par 3 stipulates that forensic experts in private agencies have to receive a “Competence Certificate”. While these types of certificates appear to be different, the extent and nature of this difference is unclear. It would be beneficial to clarify this matter. Requirements and procedures for acquiring, refusing, suspending, terminating or depriving experts of such certificates should likewise be determined, at least in basic form, in the draft Law
36. Article 17 par 1 states that “in case of reasonable doubts in the adequate level of professional expertise of a forensic expert, he/she may be subjected to extraordinary certification”. Such a possibility is only envisaged for private forensic experts. First, the current formulation is insufficiently clear and foreseeable; it is not apparent in which situations an exception can be made, and what such extraordinary certification would entail (whether this is, e.g., a temporary certification). This could open the possibility for arbitrary application of the law. Second, the fact that such “extraordinary certification” can be carried out only with respect to private forensic experts, once more raises doubts as to the equal footing of state and private agencies. It would be advisable delete this part of the provision.
37. Article 22 regulates the liability of forensic experts and states in its par 2 that this may include, *inter alia*, criminal liability for inadequate and/or untimely performance of a forensic expert’s duty. This would imply that missing a deadline could potentially result in a criminal conviction of the expert, which would appear to be a quite excessive and disproportionate sanction. It would be advisable to amend this provision by deleting the possibility of criminal liability for such minor infractions.
38. Article 22 par 3 states that a forensic expert may be deprived of his certificate, if he/she displays a lack of competence in his/her specialization. The formulation contained in this provision is again quite broad. The Article fails to specify which body shall decide that an expert lacks professional competence, and will then be

responsible for such deprivation. Furthermore, it should be stressed that any such deprivation should always be subject to judicial review. It would be advisable to revise this provision, so that it specifies the relevant body responsible for assessing the competence of experts and the deprivation of the certificate, as well as the exact procedure for it. The provision should further envisage a judicial review of any such decision.

39. Article 23 par 1 stipulates that “the expert shall be suspended from participation in forensic examination and shall immediately stop its execution if there are grounds for this in the procedural legislation of the Kyrgyz Republic”. It is unclear which types of situations would permit such suspension. For the sake of clarity, foreseeability and completeness, such grounds should be enumerated in the draft Law.
40. Moreover, Article 23 par 2 provides for a very strict ground for recusal for a medical expert. He/she cannot participate in the forensic examination of a person to whom he/she “administered medical assistance prior to forensic examination”. This exclusion seems to be too broad. It is worth pointing out that the correct assessment of a health condition or any other medical circumstance, based on a person’s previous medical history, may be useful in preparing an accurate forensic examination. Provided that the confidentiality obligation and the right not to testify about confidential information are respected, it would appear to suffice if the draft Law required an expert to inform the court whether he/she has previously treated a person needing to be examined forensically. Based upon this information, the judge could then decide, on a case by case basis, whether it would be more suitable for such expertise to be carried out by a doctor who had no previous medical contact with the person to be examined or/and whether perhaps the consent of the relevant person should be requested.

### **3. Performing Forensic Examinations**

41. Article 24 of the draft Law lists the grounds based on which forensic examinations may be authorized and performed. Par 1 of this provision states that the “need of a forensic examination is established by an investigator, prosecutor, pretrial investigative agency, or court, independently or in response to an application of interested parties”.
42. In this context, it is noted that Article 6 of the draft Law stresses that forensic examinations shall be performed in a manner ensuring, among others, civil rights and freedoms. This includes the fair trial rights stipulated under Article 14 of the ICCPR, including the principle of equality of arms. Unfortunately, the draft Law does not reflect such equality of arms if it stipulates that forensic examination may only be requested by investigators/prosecutors or courts. In particular, the wording of Article 24 par 1 would not appear to apply to other types of proceedings, e.g.

civil or administrative proceedings, which are specifically included in the scope of the draft Law under Article 1 (see also par 14 *supra*).

43. It should be stressed that in order for the principle of equality of arms to be upheld, parties to all types of proceedings, including defendants in criminal proceedings, should also be allowed to request the forensic expertise directly and not only via a request to the court (see also par 14 *supra*). This possibility should be introduced into the draft Law. Expertise requested directly by the parties would, as a rule, be paid by the parties, and not by the state.
44. Aside from the above point, the draft Law is also not very clear about the procedure based on which parties may apply for forensic examination. It is also not clear on what grounds such application should be evaluated, accepted or refused. This should be clarified in the draft Law.<sup>3</sup> Moreover, in cases where such requests are made to the court, it should be stressed that a judge should always provide sufficient grounds for refusing a request for examination.<sup>4</sup>
45. Furthermore, the procedure for issuing a “Forensic Examination Authorization/Order” is likewise insufficiently detailed. The first reference to the Order is found in Article 12 par 2, but there are no previous provisions indicating how or under what conditions this order is made.
46. This, by extension, also applies to the “Multi-Disciplinary Forensic Examination Order” referred to in Article 27 par 2. There are no provisions indicating how or under what conditions such order is made. Presumably, the procedure is set out in the Criminal, Administrative or Civil Procedure Codes but, in any case, a reference to such procedure should be made in the draft Law.
47. In this context, it is noted that the draft Law also lacks a provision stipulating a procedure whereby questions may be put to forensic experts or to parties to challenge the choice of forensic experts.<sup>5</sup> There is a very vague provision in Article 32 regarding the right of a person “interested in the case” to “challenge or solicit for appointment of forensic experts, demand an additional examination and re-examination” but this is insufficiently detailed. At the same time, Article 32 contains a very clear right for prosecutors, investigators, and courts to interrogate forensic experts. In order to ensure proper accountability of forensic expertise, and

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<sup>3</sup> See e.g. *Fuenzalida v Ecuador*, HRC Communication 480/91, UN Doc CCPR/C/57/D/480/1991 (1996).

<sup>4</sup> For such a case in criminal proceedings, see *Khomidova v Tajikistan*, HRC Communication 1117/2002, UN Doc CCPR/C/81/D/1117/2002 (2004); the author claimed that his confession of guilt had been obtained as a result of being subjected to torture. His lawyer, therefore, requested to call and examine a doctor as an expert witness, to evaluate the injuries sustained as a result of the alleged torture. Without giving reasons, the trial judge refused the request, leading the Human Rights Committee to conclude that there had thereby been a violation of Articles 14(1) and 14(3)(e) of the ICCPR.

<sup>5</sup> For comparison, there are very strong provisions on the notification and challenge of experts and the questions to be asked of them in Article 161-1 of the French *Code de Procédure Pénale*. Such a mechanism to ensure the neutrality and accountability of experts is essential.

equality of arms in criminal and other procedures, it is advisable to specify that parties to proceedings shall also have the right to interrogate forensic experts and challenge the choice of such experts clearly in the draft Law.

48. Moreover, there is also no provision in the draft Law which would require the communication of the contents of a Forensic Examination Authorization/Order (Article 24 par 1) to all parties to proceedings, and other interested parties. Such stipulation should be included to enable challenges to be made within a certain period of time.
49. Furthermore, the provisions pertaining to additional examination and re-examination under Article 25 of the draft Law lack clarity. Article 25 par 1 provides that “(i)f a forensic report is not sufficiently clear or complete, also if new questions arise on previously examined circumstances, an additional examination may be initiated and entrusted to the same or another expert.” The draft Law does not specify to whom the report should appear “insufficiently clear or complete”. It is also not clear which new questions on previously examined circumstances may arise, though this may relate to the “additional issues or subjects of inquiry related to the previous study”, mentioned in the definition of additional examination under Article 2 par 5. Unless this lack of clarity is due to unclear translation, it is recommended to clarify these points.
50. At the same time, the text strongly implies that, as with original requests for forensic examination under Article 24, individual parties to proceedings, including defendants in criminal proceedings, would not have the right to request a re-examination, since Article 25 par 5 holds that “(a) Forensic Re-Examination Authorization/Order shall indicate the reason, and motivation for the investigator, prosecutor, pretrial investigative agency, or court to initiate (it).” Only Article 32 suggests that persons “interested in the case” can “demand an additional examination or reexamination”. However, it is presumed, but not specified in Article 32, that as with the original request for examination, such requests may not be made directly to the forensic agencies, but rather via investigators, prosecutors or a court. Moreover, the grounds for accepting or refusing such a request are not clear. It is advisable to clarify these issues accordingly, and, as with the request for forensic examination, extend the right to request re-examination or additional examination directly from the forensic agency to individual parties to proceedings, depending on the type of procedure (see pars 14 and 43 *supra*).
51. A “multi-disciplinary examination” under Article 27 is initiated when “knowledge in different disciplines is necessary for performing the examination”. This procedure is authorized by a “body/individual” (Article 27 par 2) but it is not stated which body or individual shall authorize such procedure, how such authorization takes place or under which conditions or based on which grounds. This provision should be enhanced by including such details.

52. “Participants in the legal process” may attend a forensic examination, if they are “entitled to attend forensic examinations according to the procedural laws of the Kyrgyz Republic” and if they have “a written permission of the body/individual authorizing the forensic examination” (Article 28 par 1). It would be helpful to clarify who specifically is a “participant in the legal process” for the purposes of this provision and in what way, if at all, such individuals differ from either the “persons interested in the case” referred to in Article 32 or the “interested parties” referred to in Article 24. It would also be useful to further elucidate how such entitlement and permission to attend forensic examination would arise or be denied.
53. Article 28 par 5 states that examinations which involve “unclothing of the individual who is subject to forensic medical examination may be attended only by individuals of the same gender”. It should be borne in mind that Article 6 of the draft Law states that the examination shall be performed in a manner ensuring privacy. Article 28 par 5 should, therefore, make explicit that any such process whereby individuals are obliged to undress, and where this renders visible intimate parts of the body, should, as a rule, not be allowed unless the person to be examined expresses his/her prior consent. The physical examination without the consent of the person shall be undertaken only upon the order of the court<sup>6</sup>.
54. Once the expert report has been completed, there is no provision in the draft Law which would require the individual/body responsible for commissioning the forensic expertise to make the final report available to the other interested parties. Article 29 par 2 merely provides that “(t)he forensic report is executed in two copies. One copy is sent to the body/individual authorizing the forensic examination, and the other copy remains in the forensic agency or with the forensic expert and is kept as envisaged by laws of the Kyrgyz Republic”. The report should be made available to all parties of proceedings within a certain defined period that ensures that both parties are equally aware of the findings of the report, and would provide enough time for such findings to be challenged, if necessary. It is advisable to include such a provision in the draft Law.
55. Article 31 concerns the return of unexamined materials. According to Article 31 par 2 “(m)aterials may not be returned unexamined for the reasons other than those listed in paragraph 1 of this article.” The requirements in par 1 include faults in procedural registration, lack of specialists or equipment, or where a written notice is no longer required. However, par 2 makes no mention of the return of items where a “Forensic Inquiry Failure Notice” has been issued under Article 30 of the draft Law; this provision states that such notice shall be delivered when a question goes beyond the profile of an expert, materials are unfit or insufficient,

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<sup>6</sup> As an exception from such a general rule of authorization by court, physical examinations in cases of *flagrante delicto* could be undertaken upon the decision of criminal investigation bodies, which should then have to report on the physical examination to the court, within a short period of time such as 24 hours. See e.g. the 2013 OSCE/ODIHR Opinion on the Draft Law on Amendments and Additions to the Criminal Procedure Code of Serbia.

there is a lack of appropriate or existing scientific methodologies, or it is otherwise not possible to respond to the question posed. These grounds appear to be wider than those specified in Article 31 par 1. It would thus be advisable to specifically authorize the return of unexamined materials also in cases where a “Forensic Inquiry Failure Notice” was issued.

[END OF TEXT]

**Annex 1:**

Draft

**Law of The Kyrgyz Republic**

**On Forensic Examination**

**CHAPTER 1. GENERAL PROVISIONS**

**Article 1. Scope**

This Law defines the legal basis, organizational principles and key directions of forensic examination in the Kyrgyz Republic, also regulates legal relationship emerging from the performance of forensic examinations.

**Article 2. Key Definitions**

Forensic examination is a process that implies performance of expert inquiry and drawing of an expert conclusion about questions that require specialized expertise in science, engineering, arts or crafts, and that are raised to the expert for establishing facts that need to be proven in a criminal, civil, or administrative case.

Forensic conclusion is a written deduction of the forensic expert on a specific issue, based on analysis of the inquiry findings and on the expert's internal beliefs emerging from finding of examinations performed using his/her specialized expertise. Conclusions may be categorical and probable.

Probable forensic conclusion is a justified hypothesis of the forensic expert on a studied fact. A probable conclusion does not have any evidential significance on its own.

Categorical forensic conclusion is a conclusion containing specific, unambiguous deductions of the forensic expert on a fact.

Additional examination is a forensic examination performed in cases when on the basis of the previous forensic examination the forensic expert failed to solve all the raised issues, or it is necessary to solve additional issues or subjects of inquiry related to the previous study, and performed by the same or another forensic expert.

Forensic report is a procedural documents and a type of evidence containing scientifically justified conclusions on raised questions, and drawn according to the procedure stipulated by the legislation of the Kyrgyz Republic.

Forensic expert competence is availability of examination, knowledge, professional skills and experience of the expert necessary to perform certain types of forensic examinations.

Expert Panel Examination by is a forensic examination performed by several forensic experts from one and the same discipline of forensic science.

Multi-disciplinary examination is a forensic examination performed by experts from different forensic disciplines within their respective competences.

Primary examination is a forensic examination performed for the first time in a case to answer a certain question.

Re-examination is a forensic examination performed when the forensic expert report from the previous forensic examination causes reasonable doubt in credibility of the expert findings, or in case when the primary examination procedure was violated.

Damaging of the subject of inquiry is alterations in the properties and condition of the subject of inquiry resulting from the application of physical, chemical, biological methods of forensic examination.

Forensic competence certificate is a document confirming the competence of an expert in a certain field of forensic examinations.

Forensic specialization (profile) is the process and outcome of acquiring skills for examining items of a certain category, type, and subtype (specialization by item type) or examining items using certain methods (specialization by method).

Forensic activities are activities for organization and performance of forensic examination in order to secure rights and legal interests of participants in a criminal, civil, or administrative process.

Forensic expert is a person impartial to the case outcomes and having specialized expertise in a field of science, engineering, arts, or crafts who is entrusted to perform forensic examinations as envisaged by laws of the Kyrgyz Republic.

Specialized expertise is a system of theoretic knowledge and practical skills in a specific field of science, engineering, arts of crafts acquired through special training and/or professional experience.

### **Article 3. Legislation on Forensic Examination**

The forensic examination legislation of the Kyrgyz Republic is based on the Constitution of the Kyrgyz Republic and consists of the Code of Criminal Procedure and Code of Civil Procedure of the Kyrgyz Republic, Code of Administrative Offenses of the Kyrgyz Republic, this Law and legal acts regulating the organization, administration and performance of forensic examinations, also enacted international treaties signed by the Kyrgyz Republic.

### **Article 4. Principles of Forensic Examination**

Forensic examination shall be based on the principles of:

- legality;
- securing human and civil rights and freedoms;
- independence of forensic experts;
- impartiality;
- comprehensiveness and completeness of inquiry;
- compliance with the professional ethics of forensic examiners;
- availability of scientific and technological means and methods for inquiry.

### **Article 5. Legality of forensic examination**

Forensic examination shall be performed in compliance with the Constitution of the Kyrgyz Republic and other normative legal acts.

Violations of the provision of this Law shall entail liability as stipulated by laws of the Kyrgyz Republic.

### **Article 6. Securing human and civil rights and freedoms**

Forensic examination shall be performed in a manner ensuring equality of citizens, their constitutional rights for freedom and security of person, privacy, personal and family secrecy, protection of the honor and dignity, also other human and civil legal rights and freedoms.

### **Article 7. Independence of Forensic Experts**

Investigative, judicial, also other governmental agencies, individuals, legal entities, and officials may not interfere into the work of forensic experts. A forensic expert shall draw a report on findings of the inquiry based on his/her specialized expertise and deductions.

Those interfering into the work of a forensic expert shall be held liable as stipulated by laws of the Kyrgyz Republic.

### **Article 8. Impartiality, Comprehensiveness and Completeness of Examinations**

A forensic expert shall make examinations based on scientific and practical data, within his/her respective profile, comprehensively, and completely.

Forensic reports shall include provisions enabling their double-checking on the basis of recognized scientific and practical data.

### **Article 9. Compliance with Professional Ethics of Forensic Experts**

Norms of professional forensic ethics shall be observed in the performance of forensic inquiries.

### **Article 10. Acceptability of Means and Methods of Forensic Examination**

Forensic inquiries may be made using scientific means and methods if these are:

- 1) directly envisaged by law and not controversial to legal provisions and principles;
- 2) scientifically well-grounded;
- 3) ensuring effective procedure of forensic examination;
- 4) safe.

### **Article 11. Content of Forensic Activities**

Forensic activities shall include:

- 1) forensic inquiries in criminal, civil, and administrative cases;
- 2) scientific research in the field of forensic science, and methodological support;
- 3) creation of key directions of developing forensic theory and practice;
- 4) unified methodological control over the quality of expert inquiries regardless of the agency the expert belongs to.

### **Article 12. Subjects of inquiry**

1. Subjects of inquiry may include real evidence, documents, items, dead bodies and their parts, animals, samples for comparative studies, systems, technologies, information, also materials of the case for which the forensic examination is provided.

Living individuals may be also subject of inquiry.

2. During examination, real evidence and documents may be damaged with permission of the body/individual authorizing the forensic examination, or used only to the extent necessary for performing the examination and drawing a report. The permission shall be given in a Forensic Examination Authorization/Order.

In case of damage to real evidence and documents with permission of the body/individual authorizing the forensic examination, the forensic agency or the expert shall not pay any damage compensation to the owner.

3. If the subject of inquiry cannot be transported to a forensic agency, the body/individual authorizing the forensic examination shall ensure an unimpeded access of the expert to the subject and enable its examination.

### **Article 13. Forensic Agencies**

1. Forensic agencies may be state-owned and private.

2. State forensic agencies are specialized agencies of authorized governmental bodies set up for ensuring fulfillment of functions of courts, pretrial investigative agencies, investigators and prosecutors, by organizing and performing forensic examinations.

3. Private forensic agencies are specialized agencies that perform forensic examinations as the major type of their activity. Forensic agency shall employ at least five experts in

different types of forensics, for whom the agency is the main workplace, and whose qualifications are confirmed by a competence certificate issued according to an established procedure.

Such agencies shall be accredited for compliance with the national forensic quality standards following procedures stipulated by authorized governmental bodies.

Private forensic agencies may not engage in any other entrepreneurial activity except for forensic examination and services for scientific and technical studies.

Private forensic agencies may perform all types of forensic inquiries, except for examinations performed exclusively by state forensic agencies.

Private forensic agencies may use only the name indicated in their constituent documents and containing words 'non-state forensic examination'.

3. State and private forensic agencies of the same profile shall organize and perform forensic inquiries following a unified scientific approach and methodology of forensic practice, professional training and specialization of experts.

4. State forensic agencies shall perform forensic examinations according to their profile established by authorized governmental bodies.

A list of types of forensic examinations that may be performed exclusively by state forensic agencies shall be approved by the Government of the Kyrgyz Republic.

5. For some types of examinations going beyond the profile/scope of a forensic expert/agency, the body/individual authorizing the forensic inquiry may involve other specialists with respective expertise in addition to forensic experts, following the procedure established by law.

6. Forensic agencies may organize and perform forensic examinations for foreign countries as stipulated by law and pursuant to international treaties that the Kyrgyz Republic is a party to.

#### **Article 14. Forensic Experts**

1. Forensic examination may be performed by a state forensic expert, a private forensic expert or another person who has necessary specialized expertise.

State and private forensic experts are employees of forensic agencies who perform forensic examination as part of their job description.

2. An individual involved as a forensic expert on a case and not employed by a forensic agency shall perform forensic examination as an assignment given by a body/individual authorizing the examination and in compliance with laws of the Kyrgyz Republic.

3. Individuals juridically recognized as legally incapable or with limited legal capability, or individuals who have outstanding or unexpunged convictions may not be involved as forensic experts.

An individual may not be involved as a forensic expert within three years after:

- cancellation or expungement of conviction as stipulated by law;
- dismissal from the state service, from prosecution bodies, other law-enforcement bodies, courts, forensic agencies, in relation to the committed disciplinary offence.
- deprivation of a competence certificate for forensic activities;
- termination of the competence certificate issued for performance of forensic examination.

4. A forensic expert participates in the investigation of the case circumstances only on issues related to the forensic examination he/she is entrusted with, and important for drawing a forensic report.

Investigative agencies, court and participants in the legal process may communicate with the forensic expert only in relation to the forensic examination and his/her forensic report.

A forensic expert may be interrogated only in relation to his/her forensic report and examination he/she made personally.

A forensic expert may not be interrogated prior to drawing a forensic report.

**Article 15. Professional and Qualifying Requirements to Forensic Experts**

1. A forensic expert may be a citizen of the Kyrgyz Republic, who has specialized expertise.

2. Forensic experts in state forensic agencies may be citizens with higher professional education and subsequent training in a concrete field of forensic science, appointed as stipulated by authorized governmental agencies. The professional level of the experts shall be evaluated by Expert Qualification Boards. The professional level of the experts shall be reviewed every five years.

3. Forensic experts in private forensic agencies may be citizens with higher professional education having received a Competence Certificate in a certain field, appointed as stipulated by the Government of the Kyrgyz Republic. The professional level of the experts shall be evaluated during their competence certification according to the procedure envisaged by law.

**Article 16. Certification of Qualifications of State Forensic Experts**

1. State forensic experts shall be qualified after passing a qualification test and shall receive qualification certificates to perform certain types of forensic examinations.

2. Expert Qualification Boards of state forensic agencies shall hold the qualification tests and issue qualification certificates to perform certain types of forensic examinations.

3. The procedure for qualification of state forensic experts, also the procedure of functioning and the membership of Expert Qualification Boards shall be established by authorized governmental agencies.

**Article 17. Certification of Private Forensic Experts**

1. The competence of forensic experts from private forensic agencies shall be certified by Expert Qualification Boards of state forensic agencies once in five years.

In case of reasonable doubts in the adequate level of professional expertise of a forensic expert, he/she may be subjected to extraordinary certification.

2. The procedure and terms of issuance, refusal, suspension, termination and deprivation of Competence Certificates for forensic experts employed by private forensic agencies are established by the government of the Kyrgyz Republic.

**Article 18. State Registry of Forensic Experts**

1. Information on forensic experts employed by forensic agencies are included in the State Registry of Forensic Experts, with the purposes, procedure of formation and use of the Registry established by the government of the Kyrgyz Republic.

2. The investigator, prosecutor, pretrial investigative agency, and court shall entrust forensic examination to experts that is included in the State Registry of Forensic Experts, except for cases envisaged by article 13 (5) of this Law.

3. Information about disqualification of a forensic expert, also on suspension, termination or deprivation of the Forensic Competence Certificate shall be included in the State Registry of Forensic Experts.

**CHAPTER 2. RESPONSIBILITIES AND RIGHTS OF FORENSIC AGENCY DIRECTOR AND EXPERT**

**Article 19. Responsibilities of Forensic Agency Directors**

## ***OSCE/ODIHR Opinion on the Draft Law of the Kyrgyz Republic on Forensic Examination***

1. Forensic agency directors shall:
  - 1) upon the receipt of a Forensic Examination Authorization/Order, entrust performance to a concrete expert or expert panel working in this agency and possessing examination sufficient to cope with the task;
  - 2) inform the expert or expert panel on their rights and responsibilities;
  - 3) on behalf of the body/individual authorizing forensic examination, warn the expert about criminal liability for presenting deliberately misleading forensic report or refusal to present the report, obtain a signed statement from the expert and send it together with the report to the body/individual authorizing forensic examination;
  - 4) ensure the compliance with forensic examination timeline, integrity and quality without infringing expert's independence;
  - 5) after the examination, send forensic report, subjects of inquiry and case records to the body/individual authorizing the examination;
  - 6) ensure conditions necessary for keeping examination and its results confidential;
  - 7) not disclose information obtained in connection with the organization and performance of forensic examination, including information that can prejudice constitutional rights of citizens, represent state or commercial secret or other secret protected by law.

2. The agency director shall ensure the following conditions necessary to perform forensic examination:
  - 1) observance of safety regulations and occupational sanitation;
  - 2) integrity of provided subjects of inquiry and the case records.

3. The director cannot:
  - 1) apply for subjects of inquiry and case records necessary for forensic examination without the Forensic Examination Authorization/Order;
  - 2) invite persons, not working in this agency, to perform forensic examination without the sanction of the body/individual authorizing the examination;
  - 3) give the expert instructions, predetermining content of a concrete forensic report.

### **Article 20. Rights of Forensic Agency Directors**

- Forensic agency directors shall have the right to:
- 1) return unfulfilled the Forensic Examination Authorization/Order, subjects of inquiry and case records, if the agency has no expert of a specific profile, no necessary infrastructure or special conditions required for the examination; the reasons of the return shall be specified;
  - 2) request the body/individual authorizing the examination for including persons, not working in this agency, into the expert panel if they have examination necessary for producing the forensic report;
  - 3) request the body/individual authorizing the examination for inviting a foreign forensic expert;
  - 4) arrange forensic examination with participation of other institutions, mentioned in the Forensic Examination Authorization/Order;
  - 5) delegate part of rights and responsibilities, related to organization and performance of forensic examination, to his/her deputy and head of the agency's structural unit;
  - 6) demand from the body/individual authorizing forensic examination reimbursement of expenses related to:
    - storage of subjects of inquiry by a transport company, except for fines for their delayed receipt by the forensic agency;
    - transportation of subjects after their examination, except for postal charges;
    - storage of subjects of inquiry in the forensic agency after the completion of forensic examination;
    - elimination of aftermaths of explosions, fires and other emergencies resulting from the delivery of particularly hazardous subjects of inquiry to the agency if the body/individual

authorizing forensic examination did not warn the agency director about special rules of handling the subjects if they were not appropriately packed;

- expert's visit to the location of an immovable or untransportable subject.

### **Article 21. Rights and Responsibilities of Expert**

1. The expert has the right to:

1) request director of the corresponding forensic agency for inviting other experts for participation in forensic examination;

2) make statements on misinterpretation of his report or testimony by participants in the legal process that shall be entered in the records of investigative actions or judicial proceedings;

3) appeal, through the due process of law, against actions of the body/individual authorizing forensic examination that violate the expert's rights;

4) study with case records pertaining to the subject of forensic examination and apply for additional records;

5) reword the question set forth in the Forensic Examination Authorization/Order without altering the essence of the task. Following the reproduction of the question in its initial wording, the expert shall note how he/she understands it in compliance with his/her competence and examination;

6) independently choose methods of examination and when appropriate perform scientific researches and experiments in the interests of effective forensic examination;

7) request the court for limiting his/her presence in court to the time necessary for examining evidence important for the forensic report or state the need for performing such examination in the forensic agency;

8) become familiar with record of his/her interrogation and voice observations to be entered in the record, also state in writing his/her answers during the interrogation;

9) consult with other forensic experts if examination is performed by a panel;

10) give an individual opinion while performing forensic examination;

11) specify in his/her report or independently put additional questions concerning essential circumstances that were revealed in the course of forensic examination and were not mentioned in the Forensic Examination Authorization/Order;

12) with permission of the body/individual authorizing forensic examination, attend investigative or judicial actions and enter motions pertaining to the subject of forensic examination;

13) appeal, through the due process of law, against actions and decisions of investigator and prosecutor if they prejudice rights and legal interests of forensic expert;

14) seek compensation of expenses related to the perform of forensic examination;

15) refuse from the perform of forensic examination if:

a) procedure of authorizing forensic examination has been violated, or its performance impossible;

b) given questions are out of forensic expert's competence;

c) subjects of inquiry and case records are improper or insufficient for drawing a forensic report and forensic expert receives a denial letter in response to his/her request for their replenishment;

d) there are no conditions, methodology and equipment necessary for performing examination and drawing the report;

e) his/her life and health are at risk;

f) forensic expert's independence principle has been violated.

Forensic expert also has other rights provided for by a corresponding procedural legislation of the Kyrgyz Republic.

2. Forensic expert has no right to:

## ***OSCE/ODIHR Opinion on the Draft Law of the Kyrgyz Republic on Forensic Examination***

- 1) examine real evidence and case records unspecified in the Forensic Examination Authorization/Order;
- 2) store records of criminal, civil and administrative case, for which forensic examination is performed, outside his/her working space;
- 3) independently invite other experts or individuals to the perform of forensic examination entrusted to him/her;
- 4) establish personal contacts with participants in the legal process without consent of the body/individual authorizing forensic examination, if this can prejudice expert's impartiality;
- 5) independently collect and obtain materials related to the case, which were not provided to the expert according to the procedure established by law;
- 6) provide examination, explanations and proposals on issues that are beyond his/her scope;
- 7) divulge forensic examination results to any other party but the body/individual authorizing the examination;
- 8) destroy subjects of inquiry or significantly alter their properties without the permission of the body/individual authorizing the examination.

### 3. The expert shall:

- 1) commence forensic examination entrusted to him/her by director of the corresponding forensic agency;
- 2) perform complete examination of subjects and case records; provide competent and objective examination on the given questions;
- 3) provide written explanation of impossibility of drawing the report if:
  - given questions are beyond the expert's competence;
  - subjects of inquiry and case records are improper or insufficient for drawing a forensic report and forensic expert receives a denial letter in response to his/her request for their replenishment;
  - modern science cannot answer the given questions;
- 4) recuse himself/herself on the grounds specified in the procedural legislation of of the Kyrgyz Republic;
- 5) inform the body/individual authorizing forensic examination on revealed shortcomings of the procedure of registration of materials intended for examination that influence investigation;
- 6) inform the body/individual authorizing forensic examination about all facts proving the need to expand the scope of examination, including through inviting new forensic experts or perform of other examinations;
- 7) ensure maximal integrity of real evidence; prevent their damage due to the mode of examination;
- 8) not disclose information obtained in connection with the organization and performance of forensic examination, including information that can prejudice constitutional rights of citizens, represent state or commercial secret or other secret protected by law;
- 9) ensure safety of subjects of inquiry and case records;
- 10) not divulge data of case records.

## **Article 22. Liability of Forensic Experts**

1. Forensic expert, on his/her behalf, shall provide forensic report based on appraisal of examination results in compliance with his/her examination and shall be personally responsible for the report.

2. Forensic expert can be subject to disciplinary, administrative or criminal liability for inadequate and/or untimely performance of his/her duty as established by law of the Kyrgyz Republic.

Forensic expert cannot be subject to disciplinary, civil, administrative or criminal liability for an opinion expressed in the line of duty or other actions that are in conformity with his/her professional duties and ethical norms.

3. Forensic expert can be disqualified (deprived of certificate of competence) if he/she displays the lack of competence in his/her specialty.

### **Article 23. Restrictions related to Organization and Performance of Forensic Examination**

1. The expert shall be suspended from participation in forensic examination and shall immediately stop its execution if there are grounds for this in the procedural legislation of the Kyrgyz Republic.

2. A physician cannot participate in forensic examination of a live person to whom he/she administered medical assistance prior to forensic examination. This restriction is also in force during forensic medical or psychiatric examination without actual examination of the person.

## **CHAPTER 3. PERFORMANCE OF FORENSIC EXAMINATIONS**

### **Article 24. Grounds for Authorizing and Performing Forensic Examinations in a Forensic Agency**

1. Grounds for forensic examination include the need to identify facts of a case by performing inquiries based on specialized expertise, except for cases of obligatory forensic examination envisaged by the procedural laws of the Kyrgyz Republic. The need of a forensic examination is established by an investigator, prosecutor, pretrial investigative agency, or court, independently or in response to an application of interested parties, following from availability of specific materials or case records. Forensic examination is deemed initiated from the date a respective Forensic Examination Authorization/Order is made.

Forensic examination is made on the basis of a Forensic Examination Authorization/Order drawn in compliance with the procedural laws of the Kyrgyz Republic,

2. The body/individual authorizing the forensic examination shall provide subjects of inquiry and materials of the case necessary for the examination and forensic conclusion.

The body/individual authorizing the forensic examination shall receive samples for comparative study and shall include them in the case files as envisaged by the procedural laws of the Kyrgyz Republic. If necessary, the samples are obtained with participation of the forensic examiner or a specialist.

3. In case sampling is part of the inquiry and the samples are recovered by the expert using the subjects of inquiry provided for the examination, upon completion of the forensic examination the samples shall be sent to the body/individual authorizing the examination or shall be kept in the forensic agency for a while.

Questions raised to the forensic expert are formulated on the basis of the type of the forensic examination, and on specific facts of the case known by the moment the examination is initiated. The questions shall be concrete and altogether exhaustive.

4. Forensic examination may be performed upon application of a foreign governmental body pursuant to enacted international treaties that the Kyrgyz Republic is a party to.

### **Article 25. Additional Forensic Examination and Re-Examination**

1. If a forensic report is not sufficiently clear or complete, also if new questions arise on previously examined circumstances, an additional examination may be initiated and entrusted to the same or another expert.

2. In case of doubts about the accuracy of the forensic report, a re-examination may be initiated and entrusted to another expert or experts.

3. When authorizing a forensic re-examination, doubts about the accuracy of the primary forensic report may be caused by:

conflict between the report and the materials of the case;  
conflicts between conclusions/reports drawn by several forensic experts;  
violations of the procedural law in the course of the primary forensic examination;  
internal controversy in the report ('Forensic Inquiry Failure Notice');  
incompleteness of the subject inquiry;  
failure to use modern, nor effective methods and methodologies of forensic examination when necessary.

4. Re-examinations may not be initiated for other reasons.

5. A Forensic Re-Examination Authorization/Order shall indicate the reason, and motivation for the investigator, prosecutor, pretrial investigative agency, or court to initiate the re-examination. Materials sent for the re-examination shall include the report from the primary forensic examination.

### **Article 26. Forensic Examination by a Forensic Expert Panel**

1. Forensic examination by a forensic expert panel is initiated in case complex expert examinations are required, and it is performed by several experts of the same specialization (profile).

Forensic examination by a forensic expert panel shall be performed by several or at least two experts of the same specialization (profile).

2. The decision to have an expert panel performing the examination shall be made by the body/individual authorizing the examination or by the forensic agency director.

The expert panel shall agree the purposes, consequence and scope of the future examinations based on the need to answer the formulated questions.

3. Within the forensic expert panel performing the forensic examination, every expert performs the examinations fully, and the obtained results are then jointly analyzed.

Arriving at a common conclusion, the experts draw and sign a joint forensic report or a Forensic Inquiry Failure Notice. In case of disagreement between the expert, every expert or the expert who disagrees with others shall draw a separate report.

### **Article 27. Multi-disciplinary Forensic Examination**

1. Multi-disciplinary forensic examination is initiated in cases when knowledge in different disciplines is necessary for performing the examinations. It is performed by experts of different profiles within their competences.

2. If multi-disciplinary forensic examination requires participation of experts from different forensic agencies, the examination is organized through the body/individual authorizing the forensic examination. The Multi-Disciplinary Forensic Examination Authorization/Order shall necessarily indicate the lead agency that shall organize the examination. The body/individual authorizing the forensic examination shall send all the examined materials to the lead agency. The Multi-Disciplinary Forensic Examination Authorization/Order shall be sent to all participants of the multi-disciplinary examination.

3. The multi-disciplinary forensic examination shall be organized and managed by director of a forensic agency or directors of several forensic agencies.

4. A forensic agency director may make an independent decision on performing a multi-disciplinary examination based on the materials provided according to the Forensic Examination Authorization/Order, and may arrange for such examination.

5. When multi-disciplinary forensic examination is performed by experts of different profiles, every expert shall perform examinations within his/her specialized expertise. The multi-disciplinary forensic report shall indicate the type and scope of examinations performed by every expert, with respective findings and conclusions of the expert. Every expert participating in multi-disciplinary examination shall sign the part of the report containing the description of his/her examinations, and shall bear the responsibility for this part. One of the experts in the expert panel may fulfill the role of an organizer; his/her procedural functions will not differ from those of other experts.

6. The common report shall be drawn by experts competent for evaluating the findings and formulating the conclusion. In the common conclusion is based on finding of one or several experts, this fact should be indicated in the report. In case of disagreement between experts, every expert may draw a separate conclusion on all or some questions causing the disagreement, provided he/she has sufficient knowledge required for the multi-disciplinary examination.

#### **Article 28. Participants in the Legal Process Attending Forensic Examination in Forensic Agency**

1. Forensic examination may be attended by participants in the legal process who are entitled to attend the examination according to the procedural laws of the Kyrgyz Republic and who have a written permission of the body/individual authorizing the forensic examination. In such cases the status of the participants in the legal process and his/her presence shall be indicated in the Introductory part of the forensic report.

2. Participants in the legal process attending the forensic examination may not interfere with the course of the examination yet may give necessary clarifications related to the subject of inquiry.

3. Participants in the legal process may not be present at the phase of forensic report drawing by the expert, or at discussions of forensic experts and formulation of conclusions in case the examination is done by an Expert Panel.

4. In case a participant in the legal process attending the forensic examination interferes with the work of the forensic expert, the latter may suspend the examination and apply to the body/individual authorizing the examination for withdrawing the permission for the participants in the legal process to attend the forensic examination.

5. Examinations accompanied by unclothing of the individual who subject to forensic medical examination may be attended only by individuals of the same gender. This restriction shall not apply to medical personnel participating in the examinations.

#### **Article 29. Forensic Report by an Expert or Expert Panel, and its Content**

1. Upon performance of necessary examinations, the expert(s) draws a written report reflecting his/her deductions, based on the evaluation of examination results according to his/her profile.

2. The forensic report is executed in two copies. One copy is sent to the body/individual authorizing the forensic examination, and the other copy remains in the forensic agency or with the forensic expert and is kept as envisaged by laws of the Kyrgyz Republic.

3. The forensic expert(s) shall sign every page of the forensic report. If the forensic expert is employed by a forensic agency, his/her signature after the conclusions shall be verified by the stamp of the forensic agency.

4. The forensic report shall include introduction, description of examinations, and conclusions, also a signed disclaimer confirming the expert(s) has been notified about his/her criminal liability for deliberately misleading conclusions and for refusal or evasion from

drawing conclusions, and briefed about his/her rights and responsibilities according to the procedural laws of the Kyrgyz Republic.

The forensic report drawn by an expert or by an expert panel shall include:

- time and place of the forensic examination;
- grounds for the forensic examination;
- information about the body/individual authorizing the forensic examination;
- information about the expert(s) entrusted to perform the forensic examination (family name, name and patronymic, education, specialization, length of service, academic degree and academic rank, and position);
- questions raised to the expert or the expert panel;
- subjects of inquiry and materials of the case submitted to the expert for forensic examination;
- information about participants in the legal process attending the forensic examination;
- content and results of the examination and description of the methods used;
- evaluation of the results.

The outline and content of the forensic report, including specific forms for reflecting findings of examination by expert panel, multi-disciplinary examination, additional examination and re-examination are defined by the government of the Kyrgyz Republic.

### **Article 30. Forensic Inquiry Failure Notice**

1. A Forensic Inquiry Failure Notice shall be given in the following cases:
  - 1) if the formulated question goes beyond the profile of the forensic expert;
  - 2) if the materials provided to the forensic expert are unfit or insufficient for giving a conclusion;
  - 3) if the to-date level of scientific methodologies and methods of examination does not permit answering the question unambiguously;
  - 4) if there is no scientific methodology for addressing the question;
  - 5) if the identified series of signs are controversial and insufficient to substantially answer the question.
2. A Forensic Inquiry Failure Notice shall include an introduction, motivation and conclusions, also a signed disclaimer confirming the expert(s) has been notified about his/her criminal liability for deliberately misleading conclusions and for refusal or evasion from drawing conclusions, and briefed about his/her rights and responsibilities according to the procedural laws of the Kyrgyz Republic.
3. A Forensic Inquiry Failure Notice may be used as a reason for forensic re-examination.

### **Article 31. Return of Materials Unexamined**

1. Materials may be returned unexamined for the following reasons:
  - 1) faults in the procedural registration of the materials submitted for forensic examination;
  - 2) lack of respective specialists, equipment, reagents, that shall be immediately notified to the body/individual authorizing the forensic examination.;
  - 3) written notice of an investigator, prosecutor, pretrial investigative agency, or court in case the forensic examination is no longer required.
2. Materials may not be returned unexamined for the reasons other than those listed in paragraph 1 of this Article.

### **Article 32. Ensuing Correctness and Impartiality of the Forensic Report**

Correctness and impartiality of the forensic report shall be ensured by:

forensic expert's obligation to perform a full and comprehensive substantial examination and draw a written conclusion explaining the source and results of the examination in a manner understandable for participants in the legal process;

personal legal responsibility of the forensic expert for the correctness of the conclusions and content of the forensic report;

authenticity and completeness of the materials and information submitted for forensic examination;

forensic expert's right to demand provision of additional information and data in case the initial data are incomplete or controversial, and forensic expert's right to refuse drawing a report in cases stipulated by laws of the Kyrgyz Republic;

forensic expert's right to re-formulate the questions set forth to the forensic examination and address other issues formulated by his/her own initiative;

the right of investigator, prosecutor, pretrial investigative agency, and court to give final evaluation of the forensic report as a piece of evidence;

the right of investigator, prosecutor, pretrial investigative agency, and court to interrogate the forensic expert, to demand an additional examination and re-examination;

the right of persons interested in the case to challenge or solicit for appointment of forensic experts, demand an additional examination or re-examination;

independence of the forensic expert (in performing the examination) from judicial, investigative or other governmental agencies and their officials, also from other individuals or legal entities.

#### **CHAPTER 4. FUNDING, MANAGEMENT AND METHODOLOGICAL AND INFORMATIONAL SUPPORT OF FORENSIC AGENCIES**

##### **Article 33. Funding of Forensic Examinations**

1. The activities of state-owned forensic agencies shall be funded from the budget and other sources that are not prohibited by laws of the Kyrgyz Republic.

2. State-owned forensic agencies shall be authorized to provide forensic examination services in cases stipulated by laws of the Kyrgyz Republic.

3. Payments for forensic examinations performed by other forensic agencies and forensic experts shall be made in compliance with laws of the Kyrgyz Republic.

##### **Article 34. Management and Methodological Support of Forensic Examination**

1. The activities of state-owned forensic agencies are managed by authorized governmental bodies.

2. Methodological support of forensic examinations, also professional training and refresher retraining of forensic experts are provided by state-owned forensic agencies.

##### **Article 35. State Registry of Forensic Examination Methods**

Information about forensic examination methods meeting the requirements of this Law shall be entered in the State Registry of Forensic Examination Methods; its objectives, compilation and use procedures shall be established by the Government of the Kyrgyz Republic.

##### **Article 36. Informational Support of State Forensic Agencies**

1. Regardless of their legal or ownership status, the agencies shall upon request from heads of forensic agencies provide them with information necessary for forensic examination, samples and catalogues of their products, technical and technological documents and other

materials necessary for performing forensic examination, for developing and updating forensic methods and standards. In the same time, state forensic agencies shall ensure non-disclosure of received information that constitutes a state, commercial or another secret protected by law.

2. A state forensic agency shall have the right to apply to court, pretrial investigative agency, or investigator for returning items used as evidence upon the completion of the proceedings, in order to use them for examination, scientific research, or development of methodologies.

## **CHAPTER 5. INTERNATIONAL COOPERATION IN THE FIELD OF FORENSIC EXAMINATION**

### **Article 37. International Cooperation in Forensic Examination**

According to the laws of the Kyrgyz Republic, forensic agencies have the right to establish international links with agencies and services of foreign states that perform forensic examination, for the purpose of joint scientific research, sharing of scientific information and methodologies, professional training and refresher training of forensic experts.

### **Article 38. Forensic Examination Initiated by a Foreign Competent Agency**

1. Forensic examination may be performed at the request from a competent agency from a foreign state that has signed a duly enacted international treaty that the Kyrgyz Republic is also a party to. In such cases the legislation of the forensic examination host country shall apply, unless envisaged otherwise by the duly enacted international treaty that the Kyrgyz Republic is also a party to.

2. Payment of the cost of the forensic examination shall be made as agreed between the client and the performer of the forensic examination.

### **Article 39. Forensic Examination Involving Foreign Forensic Experts**

1. A body/individual authorizing the forensic examination may request involvement of foreign forensic experts according to procedure established by law, at their own initiative or following a request of the forensic agency director.

2. Forensic examination involving foreign forensic experts shall be performed according to the procedure established by the procedural laws of the host country, also by this Law.

3. Payment to foreign experts for participation in the forensic examination and compensation for other costs related to the examination shall be as agreed by the parties.

## **CHAPTER 6. FINAL PROVISIONS**

### **Article 40. Entering into force of this Law**

This Law shall enter into force on the date of its official publication.

The Government of the Kyrgyz Republic shall bring its decisions in compliance with this Law.

**President  
of the Kyrgyz Republic**