

**STRENGTHENING THE FORENSIC EXPERTISE SYSTEM IN  
ROMANIA**

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#### EXECUTIVE SUMMARY

Within the framework of the Matra-Flex program, the Romanian Ministry of Justice submitted the project *Strengthening the capacity of the expertise system in Romania* (MAT06/RM/8/2). With this project, the Romanian Ministry of Justice – in collaboration with the Dutch Ministry of Justice – wants to address pending issues and adjust deficiencies with regard to the *functioning of the forensic system in general and more specifically with regard to the production of forensic expertise*.

IVA Policy Research and Consultancy (IVA), affiliated with Tilburg University, was requested (in line with the Matra Flex fiche) to systematically assess the situation of the forensic expertise system, and to advise how– within the context of the Romanian judiciary and legal system – to address the obstacles and shortcomings in the (forensic) expertise system in order to improve the quality of forensic expertise. The larger goal of the project was to support Romania’s development towards full and adequate participation as a member of the European Union.

The report is based upon both desk and field research. During three field missions in Romania interviews were conducted with representatives of the Romanian Ministry of Justice (Department of European Programmes, Department of European Affairs, Department of Law Drafting); with representatives of the major institutes: National Institute of Forensic Expertise (INEC), National Institute of Legal Medicine “Mina Minoviçi” (INML), Forensic Science Institute (Criminalistic Institute of the Romanian Police: FSI), and the Body of Technical Experts (BTE). Within each of these institutes, both management and scientific staff were consulted. Furthermore, prosecutors and judges were interviewed, as well as representatives of the Prosecutor’s Office of the High Court of Cassation, the Superior Council of Magistracy, the Bucharest Court of Appeal, the Central Bureau of Technical Expertise, the Romanian Bar Association (Bucharest) and Members of the Committee for drafting the new Criminal Code.

One of the key findings was that, unlike the assumption underlying the Romanian request for research and advice, some of the problems are not located in the organizational aspects of the production nor in the quality of the forensic expertise. Moreover, some of the problems in the functioning of the forensic expertise system are directly related to the limited specialized medical and/or technical knowledge of judges and prosecutors, in combination with a lack of transparency in their decision making, related to problems in the legal regulation, and with logistical problems in the communication between different stakeholders.

The present concise, research-based report clarifies the nature of the current obstacles in the (forensic) expertise system in Romania and suggests ways to resolve the current deficiencies in the forensic expertise system.

In presenting the results of the research in chapter 3, we have chosen to structure the identified obstacles from different angles: from a legislative perspective (3.1), from an organizational perspective, focusing on obstacles within and between organizations and institutions that deliver the forensic expertise (3.2), and from the perspective of administrative and judicial stakeholders (3.3). We conclude by presenting an analysis of the obstacles from a perspective of the forensic expertise system as a *network* (3.4).

In chapter 4 we present both conclusions and recommendations. Central to our recommendations is, that we do not advise a fundamental reorganization of the forensic expertise system in Romania, towards the development of one major institution in which all existing institutions would merge. As a network, the forensic expertise system would rather benefit from an improvement of its *coordination*. We suggest, that investing in the coordinating power of the present system can contribute substantially to strengthening both the quality of the organization and the output of the forensic system. Given the different interests at stake it seems most efficient to set up a coordinating body in which representatives of the administrative bodies involved (Ministries of Health, Justice, and the Interior), as well as of the different forensic expertise producing organizations (INEC, the INML, the FSI, and the BTE), and the users / clients (judges, prosecutors, attorneys) are represented. This seems a crucial step towards installing a sense of *collective* ownership and to a certain extent of a joint responsibility for improving the forensic expertise system.

## INTRODUCTION

To ensure an independent, impartial, reliable and efficient judiciary, the Romanian Ministry of Justice developed a *Strategy for the reform of the judiciary*. This *Strategy* (planned implementation between 2005 – 2007), accompanied by an *Action Plan*, addressed the systemic problems within the judiciary, and aimed at adjusting deficiencies and at implementing the *acquis communautaire* of the European Union. The *Action Plan of the Judiciary Strategy*, as developed by the Romanian Ministry of Justice, is a crucial part of the efforts that the Romanian government has undertaken with regard to Romania's accession to the European Union. At this point in time, its implementation is facing delays.

Strengthening the capacity of the forensic expertise system in Romania is a crucial part of this Action Plan. Within the framework of the Matra-Flex program, the Romanian Ministry of Justice submitted the project *Strengthening the capacity of the expertise system in Romania* (MAT06/RM/8/2).

The objectives of this program are:

- to strengthen the relations among governmental bodies of The Netherlands, the Candidate Countries (CC) of the European Union (EU) and the New Neighboring Countries (NNC) to the EU.
- to assist with or work together on the implementation and enforcement of the *acquis communautaire*, and the harmonization of national legislation with the *acquis communautaire*.

The Netherlands, i.e., the Dutch Ministry of Justice, has invested in the bilateral relations by funding the part of the Matra-Flex Programme that is at stake here. The project *Strengthening the capacity of the expertise system in Romania* may be considered an integrated part of the aforementioned 'Strategy'. With the project 'Strengthening the capacity of the expertise system in Romania', the Romanian Ministry of Justice – in collaboration with the Dutch Ministry of Justice – wants to address pending issues and adjust deficiencies with regard to the *functioning of the forensic system in general and more specifically with regard to the production of forensic expertise*.

To underline the importance of the collaboration between the Romanian and Dutch Ministries of Justice, the Dutch Minister of Justice offered his Romanian counterpart the support of Dutch experts in the domain of forensic expertise. The EVD, an agency for International Business and Cooperation within the Dutch Ministry of Economic Affairs, in this case acting for the benefit of the Dutch Ministry of Justice, prepared a problem definition and the research questions in the *Terms of Reference and Tender Instructions: Strengthening*

*the capacity of the expertise system in Romania*, as formulated by the EVD on September 27<sup>th</sup> 2006. Within those parameters, IVA Policy Research and Consultancy (IVA), affiliated with Tilburg University, was requested to prepare a concise, research-based report that clarifies the nature of the current obstacles in the (forensic) expertise system in Romania and suggest ways to resolve the current deficiencies in the forensic expertise system.

This report aims to provide the information in response to those requests. Chapter 1 presents information on the background of the problems as they were initially presented by the Romanian authorities and that informed decisions regarding the project design. Chapter 2 describes the methodology used. In Chapter 3, the main results are presented and in Chapter 4, the most important conclusions are drawn concerning the nature of the problem and recommendations for solutions.

## **1 STARTING POINTS: Problem definition, research questions, goals and context**

### **1.1 Romanian assessment of the situation: Preliminary observations on the disfunctioning of the forensic expertise system**

The availability of high quality forensic expertise and a well functioning forensic system has been identified as one precondition for an adequately functioning judiciary (judges, prosecutors and attorneys). The availability of high quality forensic expertise is an important instrument for the effective implementation of the *acquis communautaires*.

According to the Romanian Ministry of Justice, considerable problems occur in the everyday functioning of the forensic system in Romania. Many of the problems were already identified by the Romanian Ministry of Justice in a Study that was presented to us at the start of the project.<sup>1</sup> These problems refer predominantly to the failing quality of (forensic) expertise reports and/or the lack of technical facilities, the shortness of qualified staff and/or the high workload of experts, to the inefficient organization of the institutional setting and of the infrastructural facilities, and to the complexity of the legal framework. According to a preliminary assessment by the Romanian Department of Justice, information on the nature of the problems is fragmented, and not easily available or accessible. The request of the Romanian authorities was to present recommendations for improving the situation, based upon systematic and focused research, and to formulate guidelines for 'best practices'.

### **1.2 Research questions and goals**

At the request of the Romanian Ministry of Justice, IVA Policy Research and Consultancy conducted a study to systematically assess the situation of the forensic expertise system, and to advise how– within the context of the Romanian judiciary and legal system – to address the obstacles and shortcomings in the (forensic) expertise system in order to improve the quality of forensic expertise. The larger goal of the project was to support Romania's development towards full and adequate participation as a member of the European Union.

In line with request as submitted in the Matra Flex *fiche*, the project has focused on two central research questions:

<sup>1</sup> *Study on the Judicial expertise activity in Romania (2006)*. This report was the English translation of an originally Romanian study.

1. What is the nature of the current obstacles and/or shortcomings in the (forensic) expertise system, both from an organizational and a substantive (forensic-technical) perspective?
2. What is necessary to improve the quality of the forensic expertise and the functioning of the forensic expertise system?

### **1.3 Context: Ongoing reform of the Romanian judiciary**

The request for advice on how to best handle problems currently occurring in the Romanian forensic expertise system cannot be separated from wider and structural problems in the Romanian judiciary and the ongoing reform efforts currently undertaken in Romania to address those problems. The Romanian policy document *Strategy for the reform of the judiciary (2005-2007)* lists various profound problems and deficiencies in the judiciary. Fundamental principles like 'strengthening the rule of law', as well as 'strengthening the independence of the judiciary' are listed as essential in order to achieve what is labeled as a 'modern judiciary' in Romania. The Strategy document lists several activities that should be undertaken. They refer to underlying problem areas that are relevant in this context:

- Guaranteeing the effective *independence* of the judiciary, most notably the strengthening the independence of the Superior Council of Magistracy, implementing the proposed legal reforms and random distribution of cases to magistrates.
- Ensuring the *transparency* of the judicial procedures: improving access to justice for citizens by providing information and 'establishing a new type of relationship with the citizens' in making communication transparent.
- Improving the *quality of judicial system*: establishing coherence in the legislative framework, unifying case law and training magistrates and judicial personnel.
- Increasing the efficiency and accountability of the judiciary: shortening the duration of judicial proceedings and reducing the workload.
- Guaranteeing *free access to justice*: notably introducing new forms of free legal aid.
- Preventing and combating *corruption* within the judiciary.

The problems identified here negatively affect the functioning of the forensic expertise system. The corresponding *Action* plan of the Romanian Government lists several ambitious measures to address these problems. However, the 2006 Report of the European Commission<sup>2</sup> on the state of preparedness of Romania (and Bulgaria) for the EU membership was still fairly critical of the situation by the end of 2006. Our observations during 2007 indicated that the pace of the reforms as laid out in the Action Plan was

<sup>2</sup> Commission of the European Communities (2006), *Communication from the Commission. Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania*. Brussels, 26/09/2006, COM (2006).

lagging behind the proposed schedule. At this point in time we cannot fully assess to what extent the reform objectives will be realized.

While conducting our project missions in Romania between January and June 2007, we observed that deficiencies in the forensic expertise system that were listed initially are not unrelated to some of the larger quality issues in the Romanian justice system. These problems, and the ongoing reform efforts to address them, provide the wider systemic context that needs to be taken into consideration when assessing the malfunctioning of the forensic expertise system on the one hand and presenting directions for change on the other. In our case it certainly influenced the content and complicated logistic preparations of our project and it specifically led to an adaptation of the initial planning and focus of part of our field mission (Chapter 2).

## 2. PROJECT DESIGN AND METHODOLOGY

### 2.1 Project team

The project team consisted of three members covering a range of relevant expertises in this field.

**Anton van Kalmthout** is professor of criminal law and immigration law at Tilburg University. He is also an honorary professor at the State University of Krasnoyarsk (Russian Federation). Since 1993, Van Kalmthout has been active as an expert for the Council of Europe, the Netherlands Helsinki Committee, the Open Society Institute of the Soros Foundation, the European Union, and Penal Reform International. In this capacity he was a member of delegations to various (candidate) member states of the EU (Armenia, Romania, Georgia, Azerbaijan, Lithuania, Estonia, Croatia, Russia, Czech Republic, Slovakia, White Russia, Bulgaria and Macedonia). Under the authority of the above mentioned organizations he wrote comments on draft Criminal Codes, Codes of Criminal Procedure, and Penitentiary Regulations of Armenia, Azerbaijan, Estonia, Croatia and Slovakia. On behalf of the European Union a comment was written on human rights in Hungary. Between 2001 and 2003 he was active as an expert for the European Union to assess the rehabilitation and the legal position of youngsters in Romania. Recently, Van Kalmthout has been appointed as Dutch representative of the *Committee against Torture and Inhuman and Degrading Treatment* of the Council of Europe. Van Kalmthout participated in the third research mission and contributed to the analysis of current legal regulations.

**Hans Moors** is Senior Researcher at IVA Policy Research and Consultancy, affiliated with Tilburg University (UvT) and Associate Professor of Public safety in the School for Management & Governance at Avans University of Applied Sciences. Moors serves as a scientific advisor to the Dutch Ministry of Internal Affairs on issues regarding polarization and radicalization. He used to work as a senior policy advisor. As a researcher and lecturer he held several positions at the universities of Paris (EHESS), Brussels (VUB/ULB), and Amsterdam (UvA). Moors studied (Eastern) European cultural history (MA 1990: Utrecht University), has a post-graduate degree in political philosophy (DEA 1992: EHESS, Paris). He has long time research and consultancy experience in the field of organization and management issues. Moors participated in the second research mission and contributed to the analysis of obstacles in the forensic expertise system, notably from an organizational perspective.

**Renée Römken** (criminology MA, Psychology PhD) is Associate Professor at the International Victimology Institute Tilburg (INTERVICT) and formerly associated as Senior Researcher with IVA Policy Research and Consultancy. She has extensive research experience in various domains of the criminal justice system (police, courts, public prosecution) in the Netherlands as well as internationally (United States - Columbia University in New York -, South Africa - University of the Western Cape -, and Afghanistan), as reflected in her international publications. She is a member of the European Network of Researchers on Violence in the Home and has served as an expert on gender and violence for the Dutch Ministry of Justice and served on international Advisory Boards of the European Commission and the German Government. Römken participated in all the research missions and was as a project leader overall responsible for the project and for finalizing its report.

**Ioan Dumitrescu** (MA and Sociology PhD). He participated on a consultancy basis in the research team. His knowledge of the Romanian context in general and of the judicial system in particular, provided an indispensable perspective to achieve a better understanding of the findings.

For the logistics of the logistical preparations of the missions and collection of the relevant documents we received the generous assistance of Ms. Honoria Dumitrescu (Ministry of Justice, dept. of Legal Drafting), while Ms Diana Popescu (Director of the Dept. of European Programmes) acted as our formal counterpart at the Ministry of Justice.

### 2.2 Forensic expertise and the forensic expertise system: Definition and institutional setting

The call on experts in a legal context is growing due to rapidly growing scientific and technological developments. Two distinct types of legal questions are at stake that require or can benefit from expert knowledge: questions of an (objective) *fact finding* nature (regarding inanimate objects or living organisms) or questions of a more interpretative nature concerning the *culpability and accountability of a person*. In general, two basic types of expertise can be distinguished to draw from in a legal forensic context: technical expertise (often referred to as 'criminalistics' or in Romania also referred to as 'judicial technical' expertise) and bio-medical expertise (including psychiatry). Although the different kinds of expertise can be relevant to answer both types of legal questions, in day-to-day legal practice, technical-forensic expertise is mostly used to answer questions of fact-finding nature. Forensic-psychiatric or psychological expertise is usually called upon to answer person-related questions of accountability. When using the generic term *forensic* in this report we refer to the whole range of any kind of expert knowledge that is called upon to answer questions in a legal (criminal or civil

law) context. Where relevant and necessary we will specify the type kind of forensic expertise.

The term forensic *system* refers to the chain of individual experts, institutions and organizations that take part in and are responsible for the process of producing, applying, evaluating, and improving forensic evidence to be used in court.

In the underlying documents of the Matra Flex project three governmental bodies were identified as *institutional stakeholders* in the field of judicial expertise:

1. The Central Bureau/Local Bureaus for Technical Judicial Expertise (C/LBTJE; Ministry of Justice).
2. The National Institute of Forensic Expertise (INEC, *Institutului National de Expertize Criminalistica*; Ministry of Justice).
3. The National Institute of Legal Medicine (INML, *Institutul National de Medicina Legala 'Mina Minovici'*, Ministry of Public Health).

The work of the first two is in the domain of forensic-technical and/or technical judicial expertise. The third institute is dedicated to the domain of forensic legal medical issues. Representatives of all three institutes have been interviewed for this project.

In criminal legal cases, the prosecutor will initially rely on the expertise as provided by the police. They have their own local technical experts and on a national level, there is the Criminalistic Institute of the Romanian police (*Institutul de Criminalistica*, Forensic Science Institute, FSI). The FSI operates under authority of the Ministry of the Interior. Against the backdrop of the research question and the initial assessments made, it was surprising that the FSI of the Romanian Police was not listed as a major stakeholder to be included in the research project. The reason for this omission has not become clear. The fact that the FSI is funded by and operates under the authority of the Ministry of the Interior and that its activities generally take place at the pre-court level and in the end is presented to the court under the authority of the Prosecutor's Office, might have contributed to this choice. We decided to include FSI as a major stakeholder in the field of the forensic expertise system based on the important part they constitute in the field of Romanian forensic expertise.

### **2.3 Fieldwork: Initial design and adaptations**

The data collection started from the basic assumption that an assessment of the nature of the current obstacles and/or shortcomings in the (forensic) expertise system needs to address both the actual *context in which (forensic) technical expertise is produced*, and the *functioning of the system from the*

*point of view of both producers (institutes, forensic experts) and users (prosecutors, attorneys, judges).*

To that end we conducted both desk and field research, focusing on:

- collecting information on the nature of the obstacles and analysing the various perspectives as provided in the different sources of information. In order to achieve maximum validity and reliability of data we aimed to collect different kinds of data from different sources:
  - reports on the issue commissioned by the Romanian Ministry of Justice;
  - written documentation and information provided by the various stakeholders (annual reports, professional publications, internal management information);
  - relevant legislation concerning forensic expertise;
  - interviews conducted by the researchers and assessment of the viewpoints
- formulating the normative framework used to analyse and present the data (prerequisites)

The fieldwork was divided over three research missions each lasting three days (January 8-10, March 5-7 and June 11-13, 2007). The time planning of the project underwent some changes. Due to circumstances, unrelated to the situation or developments in Romania, the project started later (January 2007) than initially planned (December 2006) which, in the end, contributed to postponement of the finalization in the fall of 2007. Initially, a fourth mission was provisionally planned that would allow to present and discuss the draft report with the stakeholders. After consultation with the Dutch Ministry of Justice this had to be cancelled due to budgetary constraints.

Mission 1 was directed at laying the groundwork. As a first step the relevant respondents were identified. We conducted the first round of interviews with several representatives of the Romanian Ministry of Justice (Dept. of European Programmes, Dept. of European Affairs, Dept. of Law Drafting), public prosecutors, courts (Bucuresti Tribunal), experts of the Forensic Science Institute within the Romanian Police, representatives of major professional stakeholders in the field of forensic expertise (INEC and INML), and the Body of Technical Experts). Based on the available information from the Romanian study on the forensic expertise system, this initial round of interviews was focused on exploring the respondents' perspective of the nature of the obstacles in the Romanian forensic system, and the necessary conditions for change and improvement, both from an organization and infrastructure and from a Romanian legislation point of view.

Two factors hampered the data collection during the first mission. Since the planning of the interviews had been prepared efficiently with the assistance of the Romanian Ministry of Justice, the researchers operated on the assumption that all stakeholders who were invited to be interviewed had been briefed ahead of time by the Ministry of Justice about content and goal of the project. Unfortunately that was not the case. This meant that some of the interviews, although informative on a process level, had a more preliminary character than anticipated regarding the factual information they provided related to the research questions. Secondly, during the interviews of the first mission a few junior staff members of the Ministry of Justice were present out of genuine interest in getting a better understanding of the issues currently at stake in this field. Although we emphasized the independence of *IVA Policy Research and Consultancy* as the executor of the project, we noticed that some respondents were initially hesitant to come forward. This may have been due to both the lack of information and the presence of government officials. We decided that interviews in the follow up missions would be conducted without the presence of any Romanian officials. More generally we encountered a limited sense of 'ownership' of the reform project of the forensic expertise system among our respondents. This was probably also due to the limited information that had been distributed ahead of time about the project. Since we were concerned that this in the end might hamper the level of information we would receive, we discussed our concern with representatives of the Ministry of Justice involved in the Matra Flex project. We were informed that a meeting would be convened with all relevant stakeholders in between the first and second mission in order to inform them fully. This unfortunately did not happen as we were informed upon our return for the second mission. To effectively address this issue we have briefed respondents ourselves during the second and third mission by sending via e-mail a Memorandum about the project and an outline of the questions that we wanted to discuss during the scheduled meetings. For each category of respondents a specific memorandum was written.

Based on the findings of Mission 1, and according to the original research design, the focus of Mission 2 (March 2007) was a systematic investigation of the *organizational* pre-conditions that influenced the ways forensic expertise is conducted among the institutional stakeholders (production of forensic expertise). The Memorandum informed the respondents in advance about the questions we wanted to discuss. In the second research mission information is gathered through separate interviews with representatives of the major institutes (National Institute of Forensic Expertise INEC, National Institute of Legal Medicine (Mina Minoviçi), Forensic Science Institute (Criminalistic Institute of the Romanian Police) and representatives of the Body of Technical Experts. Within each of the institutes, management representatives and scientific staff were interviewed. Furthermore, we conducted interviews with the representatives of four major stakeholders (legislators, judges,

prosecutors and technical experts), and a focus-group interview with representatives of all institutional stakeholders.

One of the key findings of the second mission was that, unlike the assumption underlying the Romanian request for research and advice, some of the problems are not located in the organizational aspects of the production nor in the quality of the forensic expertise. We did receive sufficient indications to conclude that some of the problems in the functioning of the forensic expertise system are directly related to the limited specialized medical and/or technical knowledge of judges and prosecutors, in combination with a lack of transparency in their decision making, related to problems in the legal regulation and with logistical problems in the communication between different stakeholders.

In light of those findings, the goal of the project had to be adjusted. During Mission 3 (June 2007) the focus has been on identification of obstacles and problems in the *legislation* regarding forensic expertise system in Romania as well as obstacles in the day-to-day practice of the judicial system and the way forensic expertise can be accessed and used by lawyers, prosecutors and judges. We conducted interviews with representatives of the Prosecutor's Office of High Court of Cassation, the Superior Council of Magistracy, the Bucharest Court of Appeal, the Central Bureau of Expertise, the Romanian Bar Association (Bucharest) and Members of the Committee for drafting the new Criminal Code. Efforts to interview staff of the Ministry of Public Health went without result.

The Appendix to the report contains the full list of participants with their professional affiliation that we have interviewed during the three missions.

#### **2.4 Limitations**

As indicated, one of the results of our project is that the problems the current forensic expertise system in Romania is facing are more complex and slightly different than initially presented. Because not only the production but also the users' part of the forensic expertise chain were diagnosed as parts of the problem, it was necessary to interview more different parties and stakeholders in the field. The limited time available for the project as a whole allowed us only to scratch the surface of these issues.

Furthermore, the political context during the time of the project was volatile (a change of Ministers of Justice in combination with a seemingly profound discontent among large parts of the Romanian political establishment). It is hard to pinpoint exactly if and how this affected the reliability of the information we received, but it is safe to conclude that it made some participants at times cautious if not strategic in their choice of what information to disclose.

Concerning the collection of documents and reports on the topic it was at times hard to get access to all relevant information. This was due to limitations in available time and some information on existing reports were received at a late stage. The *Peer review report of 2005* that was written by EC experts regarding the state of progress of the Judiciary for Romania's accession was only made available as a summary.

In light of the shifting focus between Mission 2 and Mission 3, and given the fundamental nature of some of the issues that seemed to affect the functioning of the forensic expertise system, the limited time available became even more pressing. The consequence was that we could not address the question of what organizational model of foreign forensic expertise systems might offer a useful scenario for re-organizing the Romanian system. After consultation, these adaptations of the project focus were agreed upon by the EVD as executive department in charge of the project for the Dutch Ministry of Justice and were communicated to the Romanian counterparts.

### 3 RESULTS

In presenting the results, we have chosen to structure the identified obstacles from different angles: from a legislative perspective (3.1), from an organizational perspective, focusing on obstacles within and between organizations and institutions that deliver the forensic expertise (3.2), and from the perspective of administrative and judicial stakeholders (3.3). We conclude by presenting an analysis of the obstacles from a perspective of the forensic expertise system as a *network* (3.4).

#### 3.1 Legal regulation of the forensic expertise system in Romania

##### 3.1.1 Summary of major aspects in legal regulation

Romanian legislation makes a distinction between *judicial technical experts* (Ordinance no. 2 of January 21, 2000) and *forensic experts* (sometimes also indicated as *criminalistic experts*) (Ordinance no. 75 of August 24, 2000). The main provisions concerning forensic expertise are furthermore laid down in the following legal documents: Government Decision no. 368 of July 3, 1998, the Ordinance of Urgence no. 43, 4-4-2002, Code of Civil Procedure code II-III, section II, Code of Penal Procedure, Code II section X and Ordinance no. 1 of January 20, 2000

*Ordinance* no. 2 regulates the organization of judicial and extrajudicial<sup>3</sup> technical expert examination activity as far as it concerns individually operating experts (not affiliated with forensic or criminalistic institutes; see also par. 3.2.4 and 3.2.1 under 4). According to Article 4 of this Ordinance the Central Bureau for Judicial Technical Expertise is responsible for the coordination and supervision, from an administrative and methodological point of view, of the judicial technical expert examination. The Central Bureau operates within the Ministry of Justice. In order to be licensed as a judicial technical expert, the Ordinance requires that the candidate passes an exam, organized by the Ministry of Justice and has to fulfill the conditions that are laid down in Article 10. One of these conditions is that the candidate is a Romanian citizen and has full command of the Romanian language. The other conditions refer to the education required, medical health, 5 years of experience and a blank criminal record.

Those who are licensed as judicial technical experts are registered on a list of the Central Bureau for Judicial Technical Expertise. The list, organized per field of expertise and per county, is published annually in the Official Gazette

<sup>3</sup> Both judicial and extrajudicial expertise can be delivered by the same category of experts. The difference is who is asking for the expertise and for what purpose. Judicial expertise is requested by a judicial authority in order to clarify facts and circumstances of case under investigation. Extrajudicial expertise is upon the request of people outside the judiciary regarding situations which are not under judicial investigation.

of Romania and is sent to the Local Bureaus for Judicial Technical and accounting examinations.

There are some people exempted from the obligation to take the exam, such as members of the Academy, university professors, and lecturers or those who hold a PhD in technical sciences. If no judicial technical experts are available within the requested field, the examinations may also be performed by other specialists who do not have the capacity of judicial technical expert, if they comply with the conditions that are laid down in Article 10 and that are obligatory for all judicial technical experts. This category of experts are addressed as *specialists*. Their names are kept in a special list of experts (Art. 13).

Article 15 states that the expert who is ordered by the prosecution or the court to perform a judicial technical expert examination is obliged to comply with this order, unless s/he has well-founded reasons not to comply. Judicial technical experts who are employed are exempted from their job during the period of investigation and receive a remuneration from the court instead of their usual salary (Art. 16)

Chapter 3 of this Ordinance contains the procedural rules regarding the judicial technical examination. The most important provisions are that the legal stakeholder entitled to order the expert examination (prosecutor or judge) appoints the expert or the specialist, and indicates the object of expert examination, the questions that the expert has to answer and the period within which the expert report has to be presented. The stakeholder who orders the expert investigation also determines the fee and informs the Local Bureau for judicial technical and accounting expert examinations of the name of the person appointed to perform the expert examination. Guidelines for remuneration are not given.

Article 18 determines that the citizens who are the subject concerned both in criminal and civil law cases may request an additional expert or specialist, but only at the party's expense.

Chapter 4 (Art. 26-32) contains provisions with regard to the capacity of extrajudicial technical experts. These experts too have to pass an exam before they are officially registered as technical experts. Their exam is not centrally organized but belongs to the responsibility of the ministries and other central institutions, each in its field of specialty, established according to law.

In Chapter 5 (Art. 32-33) the duties of the Central and Local Bureau for judicial technical and accounting expert examinations are described (see 3.2.1).

Chapter 6 (Art. 34-37) deals with the liabilities and sanctions, of the legal experts. For the extralegal experts no provisions in this sense have been laid down, except the reference in Article 34 to the sanctions that apply because of their civil, administrative or penal liability.

Art. 35 contains a long series of sanctions that can be imposed on technical legal experts who did not perform their expert examination according to the

legal provisions. These sanctions can vary from a written warning or suspension of the right to perform examinations to a withdrawal of the capacity of a judicial technical expert. Finally, Chapter 7 (Art. 37-42) contains transitory and final provisions. The most important provisions are Art. 40 that prescribes that the provisions of the Ordinance must be supplemented by the provisions regarding expert examination of the Civil Procedure Code and the Penal Procedure Code, to the extent that this Ordinance does not provide otherwise. Also important is that the Ordinance, according to Article 41, is not applicable if the expert examination is made by a forensic medical service, by the FSI of the Romanian Police or by a criminalistics laboratory, or by any other specialized institute.

*Ordinance no. 75* of August 24, 2000 contains the provisions concerning the licensing of forensic experts. These are experts whose fields of knowledge and experience belong to the list, summed up in Article 2 (2) and, generally speaking can be characterized as 'criminalistic expertise' (dactyloscopy, trace expertise, ballistics, expertise in explosion and fires, audio-visual/ computer and ICT expertise etc).

To become a licensed expert the candidate has to pass an exam, organized by the Ministry of Justice. Ordinance no. 75 is in many respects similar to Ordinance no. 2. This is especially the case with respect to the above-mentioned requirements that the candidate expert has to fulfill in order to be licensed. However, there are striking differences in the relevant conditions that determine who receives a license:

- to obtain the license the candidate has to have at least 4 years practical experience or has to prove that s/he has followed special studies in the field of the expertise s/he wants to be licensed. For the judicial and extralegal expert examination, a period of practical experience is prescribed for at least 5 years.

- the licensed forensic experts are placed on a list from which the concerned parties may request authorized experts to assist the official experts. This list is drafted per field by the Ministry of Justice and after publication in the Official Gazette of Romania the list is sent to the courts and the Prosecutor's Offices attached to such. It is not clear why the local bureaus are not involved in the same way as prescribed in Art. 13 of Ordinance no. 2 of 21 January 2000.

Article 9 states in what cases and under what conditions forensic experts can lose their license (at their request, death, failing to comply with the requirements prescribed, a conviction as a result of offences related to the exercise of the profession). The question that also arises here is why Article 9 of this Ordinance and Art. 34 *et seq.* of Ordinance no. 2 are not identical.

*Government Decision no. 368* of July 3, 1998 is closely connected to Ordinance no. 75. The Government Decision regards the establishment of the National Institute of Forensic Expertise (INEC) that will be described in more

detail in par. 3.2.1. When comparing the Government Decision with Ordinance no. 75, it is striking that the description of the types of forensic expert examinations that belong to the scope of this institute is partially different from the description of forensic expertise in Ordinance no. 75. Some forensic examinations seem only allowed within INEC (handwriting, banknotes, coins, public debentures, checks, digital prints, palm and fingerprint identification, work accidents), while other types (such as graphic examination of documents, judiciary ballistic expertise, computer examination, expert examination of telecommunication facilities, lie detector), that according to Article 22 of Ordinance no. 75, belong to the capacity of authorized forensic experts obviously do not belong to the domain of INEC. The motivation or logic behind this the distinction between areas that either fall under the authority of INEC or others is lacking in the regulation.

The *Ordonanta de urgenta n° 43* of April 4, 2002 was revised in 2006. The main aim of this Ordinance is the establishment of a national anti-corruption unit, headed by the General Prosecutor at the High Court of Cassation in Bucharest. The national anti-corruption unit is an independent institution, consisting of more than 500 employees, including 45 experts in the following areas: economics, finances, banking, customs, informatics and other areas where expertise is needed to solve criminal corruption cases. These specialists are civil servants.

The *Civil Procedure Code* contains only a few articles on expert examination. These provisions are laid down in Book II, Title III, Chapter 3, Section III, under the heading *Providing Evidence*. Article 201 of Section III states that when the court deems necessary to know the opinion of an expert, may appoint, at the request of the parties or *ex officio*, one or three experts, for the clarification of certain *de facto* circumstances. If parties do not agree to the appointment of the experts, the court will choose the expert in a public session from the expert list as drafted by the Local Bureau for Judicial technical expertise (Art. 202). If the experts disagree, the opinions of each must be explicitly supported by arguments (Art. 210)

It is also important that if the matter is not clarified by the expert examination made, it may order the closure of the expert examination or it may request a new expert examination. A counter examination will have to be requested based on arguments at the first hearing after the submission of the report (Art. 212).

According to Article 201, it seems that in principle only authorized experts can be appointed by the court. The Code however does not contain any reference to the licensing of experts. Probably these are the experts registered in the list of the Local Bureau for Judicial Technical Expertise.

Chapter 2, Section X of the *Penal Procedure Code* contains provisions about expert examination in criminal cases. The main provisions are that the prosecution or the court can ask for an expert examination at the request or

*ex officio*, when this is deemed necessary for the clarification of certain facts or circumstances of the case, in order to establish the truth. In some cases like aggravated murder or manslaughter or when there are doubts regarding the mental condition of the defendant or suspect, expert examination by a psychiatric expert is mandatory. This psychiatric expert examination is performed in specialized medical legal institutions. During the period of psychiatric examination the offender can be placed in a medical institution. Expert examination is also mandatory in cases where the cause of death has not been established and recorded in a forensic report (Art. 116-117). The expert is appointed by the prosecution or by the court. Like in Article 18 of Ordinance no. 2 of 21 January 2000, Article 120 gives the parties the right to request that an expert recommended by each of them will be allowed to participate in the examination.<sup>4</sup> However, there is no provision that this request should be honored by the public prosecutor or the court. The Code does not contain any criteria to that end.

Article 119 makes a distinction between three types of experts: forensic experts, official experts in the respective field and other persons who may only be appointed as expert if special circumstances require it. If the expert examination is to be performed by a 'forensic service', a 'criminalistics expertise laboratory' or by any 'specialized institute', experts of other institutions can be asked to assist (Art. 119).

Article 122 provides that the expert has to present a written report and that in the event of different opinions these opinions must be recorded in the report or in an annex thereto.

As in Article 212 of the Civil Procedure Code an additional expert examination may be ordered by the prosecution or the court, at the request or *ex officio* if the expert examination is not considered to be complete. If the prosecution body or the court has doubts about the accuracy of the conclusions of the expert report, it shall order the performance of a new expert examination. The Penal Procedure Code does not contain any provision with respect to the right of the defendant or the accused to a counter expertise.

*Ordinance no. 1* of January 20, 2000 creates the legal basis for the organization of the activity and the operation of the forensic medical institutions. As will be described in more detail in 3.2., forensic medical examinations are carried out by 1) the National Institute of Legal Medicine (INML), under the authority of the Ministry of Health, 2) the forensic medical institutes within the university medical centers, also under the authority of the Ministry of Health and 3) forensic medical services at the county level (Art. 5) According to Article 16, the forensic medical doctors, who have to perform the forensic medical expert observations and examinations are appointed by the general director of the National Institute of Legal Medicine or by the directors

<sup>4</sup> However, it is not clear if these experts have to be paid by the state or by the parties themselves, as is the case in Art. 18 of the aforementioned Ordinance.

of the forensic medical institutes within the university medical centers. In Article 20 *et seq.* special provisions are laid down concerning the task and duties of the Superior Commission for Legal Medicine, that amongst others, consist of the general director and the deputy director of INML and the directors of the forensic medical institutes of the university medical centers. An important duty of the Superior Commission of Legal medicine is to verify and endorse, from a scientific point of view, at the request of the competent bodies, the conclusions of various forensic medical interventions and to issue opinions on the potential contradictory conclusions of the expert examination. If deemed necessary, the Superior Commission can recommend to fully or partially redo the examination (Art. 25).

An important provision is also Article 26 that states that, to ensure the monitoring of the quality of forensic medical work, joint commissions can be established, formed by forensic medical doctors within the Ministry of Health and of specialists from the Ministry of Justice, to investigate and evaluate the procedural and substantive quality of the forensic investigation that was conducted. These joint commissions may be established whenever there are indications that the forensic medical examination was not performed adequately. The Ordinance also provides for another instrument to assess and monitor the forensic medical activities, i.e., the establishment of the Council of analysis and assessment of the forensic medical activity. This Council is formed by the Minister of Health (president), the Minister of Justice, the Minister of Administration and Interior, the General Prosecutor attached to the High Court of Cassation and the General Director of INML (Art. 29). With respect to the expert examinations the Ordinance does not contain specific provisions but states in Article 34 that the provisions of the Penal Procedure Code and of the Civil Procedure Code have to be applied.

### 3.1.2 Major obstacles in legislation regulation

Obviously several of the legal obstacles, notably where they concern lacking or insufficient regulation, translate into practical obstacles in the area of forensic and/or technical expertise. The practical implications of some of the issues mentioned below will be addressed in more detail in subsequent sections.

- *Fragmentation*: it is striking that the legislation is fragmented and not always consistent or clear in its distinction of categories of experts and their respective responsibilities.
- *Licensing* of individual experts is regulated minimally in the form of an entry exam. No continuing education nor updating of professional expertise is required.
- It is unclear whether and how the procedure of *nominating and appointing experts* in specific court cases is subject to objective external control.
- *Regulating time limits*: especially in criminal law, provisions are lacking with respect to the time limits within which the criminal forensic expertise has to be performed.

- There is no *monitoring mechanism* in place that can guide and check whether experts comply with the regulations.
- The regulation as to *remuneration* of experts is unclear.
- The right to *counter-expertise* is not clear (does the defendant have a right to a second opinion? Or in civil cases: can parties hire their own expert?). This touches directly upon the basic right of access to independent justice and the right to a fair trial (Art 6, European Convention on Human Rights).

## 3.2 The forensic expertise system

### 3.2.1 Description of major organizations and institutions in the forensic expertise system

In Romania, forensic technical investigation is conducted by order of the prosecutors offices, courts or other authorities with competence in the field, or by civil parties in civil law cases, in order to clarify certain facts or circumstances of a case. In fact four different kinds of forensic expertise are distinguished that in any particular case, depending on the nature of the case, can overlap: legal medicine, accounting, technical judicial and criminalistic expertise. According to the legislation in force, the forensic technical research can be carried out by individual technical experts, or by specialized institutions in this field. In civil cases the expertise is usual in the context of establishing facts of a technical nature and in that domain the work of individual experts dominates in Romania.

In criminal cases, the nature of the requested expertise can be for technical reasons and serve the purpose of fact-finding and evidence collection (for example DNA research, voice-analysis, tactile traces etcetera) or medical-psychiatric reasons with regard to establishing the level of accountability or culpability of a person.

Note that the field of the Romanian forensic expertise system relies on expertise produced in forensic institutes as well as on a substantial number of free lance forensic technical experts. The latter are mostly called upon in civil cases, but can play a role in criminal cases as well, depending on the kind of expertise required and the need of individual experts in the particular case. The following organizations are currently important stakeholders in the field of the forensic expertise system:

1. *The Forensic Science Institute* (Criminalistic Institute of the Romanian Police): this stakeholder has the state monopoly at the initial fact-finding level of criminal cases (crime-scene investigation). The police obviously have the responsibility and legal obligation to investigate criminal cases. Given its entrance level of operation the FSI takes up a different position compared to the other institutional stakeholders who usually come into the picture in either civil cases or in criminal cases that are technically more complex and require highly specialized

expertise in certain areas. The Romanian Police has local forensic-technical staff in all counties. The Forensic Science Institute is located in Bucharest. The Institute has a total staff of about 400 persons. It is fully financed by the Ministry of the Interior (under whose authority the Police operates as well). It is a member of ENFSI (European Network of Forensic Science Institutes) so it meets international standards in its operations. They aim most notably to ensure independence and impartiality in the organization of forensic technical work. It is also ISO-certified. It has recently substantially expanded the facilities of its laboratories in Bucharest with generous budgetary support from the Ministry of the Interior and of the EU (Phare). The Institute's Management is working towards improving the quality of the expertise: each forensic expert with the FSI is expected to publish at least one article per year. The management of FSI is actively involved in the development of the *Asociatia Criminalistilor din Romania*, a professional organization that also publishes the journal *Criminalistica*. One of the goals of the Association is the promotion of the field of forensic technical expertise, in particular through development of higher educational facilities (Master's Programme). There is a widely shared agreement among the experts involved in the *Asociatia Criminalistilor* that the pace of technical and scientific developments requires a regular updating of forensic technical expertise of many professionals working in the field.

2. The National Institute of Forensic Expertise (INEC) provides forensic expertise and consultancy, primarily for more complicated forensic technical cases. It operates both in criminal and in civil cases. In criminal cases either the police, the prosecutors or the judges can ask INEC for a report. Sometimes INEC is asked to provide a second opinion in addition to an already available technical police report<sup>5</sup>. INEC mostly provides expertise in criminal cases. The Institute covers two major areas: forensic engineering and forensic identification, each with their subspecialties.<sup>6</sup> The Institute has the following regional institutes operating under its authority: the Bucharest, the Cluj, the Iași and the Timișoara Inter-County Forensic Laboratories. The National Institute of Forensic Expertise also has research facilities. After the recent change in management (end of 2006), the new director and deputy director aim to develop a quality system that monitors more critically the output and quality of the staff's work. They actively promote conducting research that also translates into (international)

<sup>5</sup> GOVERNMENT DECISION No. 368 of 3 July 1998.

<sup>6</sup> Speech and audio examinations, ballistics and firearms examinations, computer examinations, fingerprint analysis, handwriting examinations, image (photo & video) examinations, electronic (telecommunication) devices examinations, documents examinations, road accident analysis.

publications as a way to improve and maintain a high standard of academically based forensic expertise. INEC is also a member of the ENFSI (European Network of Forensic Science Institutes) and as such an internationally accredited organization. The management wants to observe strict standards of independence and impartiality of all its staff. The Deputy Director has recently been appointed as an international accredited expert in the field of audio research. INEC has 47 staff members and is fully funded by the Ministry of Justice.

3. The National Institute of Legal Medicine (INML) provides forensic bio-medical and psychiatric expertise regarding living persons, dead bodies, biological products and corpus delicti.<sup>7</sup> Upon request they also provide medical-legal services (for a fee) to the general public (for example: paternity tests). INML has its main laboratory in Bucharest; five other medical-legal laboratories are in existence (Cluj, Iasi, Targu Mures, Craiova and Timisoara). Together they constitute the National Network of Legal Medicine. Within this Network, all cases are handled that require forensic medical investigation. In total, these medical-legal institutes employ about 190 staff. Their organization is mainly funded by the Ministry of Health (predominantly responsible for funding of salaries). Furthermore they generate income from its work for the police, courts or prosecutors (Ministry of Justice, Ministry of Interior and the Prosecutor's Office), and, more recently research grants. INML received EU support (Phare Program) for a forensic toxicological laboratory and research. The Bucharest Institute has several departments and laboratories<sup>8</sup> and also accommodates scientific research facilities that via the Director of the Institute are directly linked to the University. The INML actively heads the National network of Legal Medicine and in doing so has put in place a well functioning system of checks and balances to monitor the quality of their work. They have received an accreditation by RENAR which is internationally (EU) acknowledged. The Director and Research Director of the INML are active as academic researchers and INML plays an active role in the Romanian Legal Medicine Society that publishes the quarterly *Revista de Medicina Legală (Romanian Journal of Legal Medicine)*, in Romanian, with English abstracts)
4. The Central and Local Bureaus of Technical Experts (CBTE/LBTE) form the organizational structure on an administrative level set up by the Ministry of Justice for individual forensic experts (Central Bureau in Bucharest, and Local Bureaus in each of the 42 counties). The

<sup>7</sup> ORDINANCE No. 1 of January 20, 2000 on the organization of the activity and the operation of the legal medicine institutions.

<sup>8</sup> Clinical legal medicine (with radiology and electro physiology laboratories), legal medical pathology, psychiatry, legal medical psychology and criminology, legal medical identification and serology, legal medical toxicology, tanatology (pathology, tanatochemistry, microbiology, legal medical genetics).

licensing of individual experts is the responsibility of the CBTE. It is its responsibility to fulfill all duties connected with the preparation, performance of the examinations and the publication of the results. The Central Bureau has to organize the professional training of the judicial technical experts and to fulfill the duties set out in this Ordinance regarding the establishment and punishment of any misconduct of judicial technical experts. The main duties of the local bureaus concern: 1) keeping records of the list of technical and accounting experts up to date, 2) at the request of court, prosecutor or parties: suggesting a relevant the expert or specialist who can perform the expert examination, 3) monitoring the timeliness of examinations, 4) paying the fees to experts, 5) supporting the Central Bureau in organizing the exams and 6) drafting and periodically sending the Central Bureau statistical reports regarding the performance of legal expert examinations. The Ministry of Justice has regulated the licensing of individual experts who, after passing the standards set by the professional exam in their area of expertise are allowed to register as an expert.<sup>9</sup> The database contains the names of approximately 7000 experts in the country, divided over 28 different technical specialties. When assigning an expert, judges are expected to randomly choose an expert from the database (list) available to them. The remuneration of experts is only marginally regulated by law. In practice, there are huge differences. Note that, for many experts who are registered with the Bureau, the forensic technical work is often a (minor) part of their work as a free-lance established professional in their field of expertise. The *Body of Technical Experts* (professional organization of technical experts who also work as forensic experts) is one of the main counterparts for the C/L Bureau of Technical Experts.

### 3.2.2 Obstacles among and between organizations/institutions

#### *Division of tasks between institutions*

During the second field mission, a focus-group interview was conducted to establish the level of convergence in views on the kind of changes the forensic expertise system would benefit from in Romania. This focus-group interview was attended by representatives of INEC, the INML, the FSI, and a representative of the Ministry of Justice in charge of forensic expertise. Regarding the question of division of institutional responsibilities between the three major institutions, all parties agreed that the current set-up reflects a well-functioning division of areas of expertise, that corresponds with their involvement in different disciplines in forensic expertise and with different stages in the legal process. We have no indications that this was an

<sup>9</sup> ORDINANCE No. 75 of August 24, 2000 on the authorization of forensic experts.

inaccurate or embellished reflection of the existing situation. Institutional competition was certainly not presented as a problem. Reference was made to strained professional relationships in the past related to turf battles between the Ministry of Interior (in charge of the FSI) and the Ministry of Health (in charge of the INML) regarding toxicological laboratory facilities. Recently, both institutions have competed for EU-funding in an application for financial support to set up a forensic toxicological lab within the Phare programme. In the end, they had to agree on a division of the available support. Currently they do collaborate if necessary, certainly in the field of DNA research. Although there is some overlap in the competence and facilities of all three institutes, in practice, this does not seem to cause serious problems. A collaboration protocol is in the making and efforts are underway to standardize testing procedures (for example in terminal ballistics, handwriting, chemistry).

#### *Monitoring quality*

The institutions vary in the ways they have developed an effective system to monitor and control the quality of the forensic work conducted. In the field of legal medicine (INML), there is a well-functioning system of checks and balances. Within the FSI and INEC, that is less clear although the membership of ENSFI is certainly a step in the right direction since it requires compliance with international standards. We have no information regarding a monitoring system within the FSI. Within INEC, active efforts are underway to implement a more rigorous monitoring system to improve the quality of forensic technical work. Within the Body of Technical Experts, there is concern about the lack of a system to monitor the level of, and the continuing education of individual experts. Current legal regulation of registration as a forensic technical expert (i.e., being listed in the register of forensic technical experts) only requires an entrance exam. There is no obligation to update technical knowledge. This is considered a major constraint of the quality of the work delivered by individual forensic technical experts.

### 3.2.3 Obstacles regarding executive powers

#### *Budget*

All institutes are struggling with the financing structure and budget constraints (all three are funded by different Ministries) and this is considered a bottleneck for those institutions dependent on the Ministry of Justice and the Ministry of Health. Based on the information we received, it seems that the budget of the FSI is treated relatively generously by the Ministry of the Interior. They had been able to expand their laboratory facilities quite substantially, also thanks to EU-based support. It seemed that both the INML and INEC struggle to find the funding they need to answer the forensic legal questions addressed to them. The INML indicates that currently about 220 forensic medical doctors are operating in Romania. The annual case load,

about 140,000 forensic medical cases, therefore represents a structural capacity problem. Limited salaries cause a braindrain of highly qualified experts in the field of legal medicine. The INML would very much like to train more graduate students in forensic legal medicine but lacks facilities.

#### *Independence*

All respondents agree that, in day-to-day practice, the work of their institutes can be conducted relatively independently from the executive branch. At the same time, INEC and the INML indicate that in practice their funding is contingent upon the executive powers. In theory, it is possible to be pushed into certain directions, certainly on the level of managerial decisions regarding hiring personnel. In the past, under the communist regime, this happened regularly. Given the rather slow pace of the implementation of proposed judicial reforms, there is some skepticism towards the administration, concerning their efficiency in handling the reform process. All respondents indicate, however, that a political and cultural change is ongoing in Romania towards increasing respect for their independence. International accreditation underlines that they do manage to develop a *modus operandi* that meets standards of independence.

From an organizational perspective, we have no indications that achieving independence, impartiality, and neutrality constitutes a *structural* problem in the production chain of forensic expertise. The leadership of the institutes is dedicated to ensuring high quality in these respects.

We did receive signals from INEC that there have been *incidents* in which some of the employees have difficulty accepting the new high-level performance standards (notably regarding publications and international work), including the standard of impartiality and/or neutrality. This is attributed to a legacy of a system (under Communism) that did not require thorough technical expertise but prioritized legalistic-criminalistic knowledge. Currently, efforts are being undertaken at INEC to establish a more strict and effective internal system of checks and balances. This has met with resistance of some staff members that according to our respondents identify with the former regime under the Communist government. New management seems to succeed in their efforts to effectively promote and implement change.

#### *Legal regulations*

Disappointment was expressed about the perceived lack of effort so far within the Ministry to develop a more coherent and more adequate legislative framework that fully recognizes the importance of forensic technical and forensic medical expertise. A long-standing legacy in Romania that positions legal expertise as central to forensics is obviously not conducive to encouraging judges and prosecutors to take additional training in forensic technical and forensic medical subjects. Owing to that legacy, the complexity of judicial technical expertise is hardly recognized. This can negatively affect

the appraisal of their work in a legal context. Under the current legislation, a forensic expert who is employed in a state institution (like INEC, the FSI, or the INML) cannot work as a private expert.

#### *3.2.4 Obstacles in interaction between institutes and the judiciary*

##### *Lack of forensic expertise among prosecutors and judges*

Lacking expertise in both the field of forensic technical expertise and in forensic legal medicine among prosecutors and judges is listed by all producers of forensic expertise as a major problem in the day-to-day functioning of the forensic expertise system. It profoundly complicates communication; it is *'like talking to a deaf person'*, according to one respondent. The INML refers to research that indicated that most of the delays in handling cases that require a forensic expert report are caused by miscommunication due to lack of knowledge among magistrates. It leads in practice to requests that are guided by timelines that are technically impossible to meet., and to (additional) requests for analyses and research that do not provide any relevant additional knowledge but are obviously cost-inefficient. The limited knowledge of forensic legal medicine among judges and prosecutors is felt as a structural problem due to the fact that legal medicine is no longer mandatory in law school. This situation is considered *'a huge source of problems'* that urgently calls for renewed attention to training of legal experts, according to respondents from the institutions. These problems were already identified in the Romanian *Study on the Legal Expertise Activity in Romania (2006): 'Malfunctions at court level, lack of communication between courts'*. Prosecutors sometimes inappropriately ask forensic experts to provide answers to legal questions concerning the *'guilt'* or *'responsibility'* of defendants. This goes beyond the experts' technical and legal capacity. The institutions are aware of the high case load of judges that exacerbates the existing problem of limited knowledge/expertise.

##### *Disfunctioning sanctioning system*

There is a sanctioning system (fines) in place but due to lack of knowledge in the field of forensic expertise among magistrates, it is ineffective (see Art. 256 par. 1 of the New Criminal Code). Judges sometimes do not allow enough time to conduct certain time-intensive analyses. This point was brought forward by respondents from all institutions. This can compromise the quality of the work, and make it harder to comply with quality standards when time is severely limited. This problem is exacerbated by the limited capacity in staff in the institutions. The institutions point to individual experts that in effect cause the larger parts of delays in handing in their reports.

##### *Inadequate logistical infrastructure*

Inadequate logistical infrastructure, notably the slow and unpredictable functioning of the postal services of the courts create huge delays. In practice,

it even leads to fines imposed on institutions for failure to meet deadlines. This is also true in cases where there is clear evidence this failure has been directly caused by a disfunctioning mail system from the court. The administration of the courts is considered to be disfunctioning, which translates into a lack of effective communication between courts and institutions. This is considered to be the result of a historically grown culture and failing management, more than of failing legal regulation. According to the INML, earlier efforts to present identified problems to the Ministry of Justice, have not led to improvements.

### 3.2.5. Obstacles related to the position and work of individual technical experts

All institutional stakeholders and the Body of Technical Experts as a professional organization representing the technical experts, mention various problems concerning the quality and the organization of the work of individual experts. In the *Study on the Legal Expertise Activity in Romania* (2006) that was conducted by the Romanian Ministry of Justice, a whole series of problems are listed that also emerged during our field missions: lack of professional training by experts, lack of capacity in certain areas (notably topography), outdated expert list – leaving deceased people on the list – due to failing management of the database. Below we have listed the issues that were put forward during our missions:

- The quality of individual forensic experts is insufficiently regulated and monitoring is virtually non-existent. Individual experts only require an entrance exam – usually regulated by the relevant professional organization – and no follow-up exams or exams to remain registered are in place. This is attributed to ‘a gap’ in Ordinance no. 2. In practice, this negatively affects the quality of some experts’ work.
- The legal licensing arrangement emphasizes judicial/legal knowledge and (limited) criminalistic expertise rather than forensic technical expertise. This is considered a residue of the Russian influence on the forensic science culture that was prevalent during the Communist era until 1989 and has hampered the level of expertise in Romania. Associations of private forensic experts tend to evade from the influence of the Central Bureau of Judicial Technical Expertise. This points at the larger problem of lack of effective regulation and sanctioning of individual experts’ performance in the forensic expertise system.
- Representatives of the professional organizations of forensic experts (Body of Technical Experts) complain about a lack of concerted effort by the Ministry of Justice to provide facilities for continuing education and to effectively address the issue of legal licensing: currently 10% of every expert fee is going back to the Ministry of Justice in order to contribute to a fund to finance continuing education for experts. In

practice the money however flows back to the general cabinet’s budget and is not used for training of forensic experts. This creates profound discontent.

- Absence of clear regulation regarding remuneration. Exact fees are decided on a case-by-case basis by judges. This leads to large differences in practice.
- No age limits to licensing of individual experts are set; the average age of forensic experts in Romania is high (69).
- Capacity problems: the recruitment of new forensic experts is stagnating. According to the Body of Technical Experts, this is a result of the high work load and limited remuneration. The capacity problem is particularly noticeable in new areas in which high-tech communication facilities are used, like cyber crime, international money laundering, international organized crime, human trafficking.
- Some experts work in the institutions and work also as individual experts. They are therefore perceived as compromising their independence.
- The non-compliance of individual experts with several parts of the regulation of forensic expertise, most importantly failing to meet deadlines, is perceived as a problem.

More generally there was a call for legislative reparation of all the issues listed. The discontent of the Body of technical experts about the absence of more effective legislation in Ordinance no. 2, resulted in a lobby for a bill supported by Members of Parliament that was under debate in Parliament by mid 2007. This indicates, at the very least, that there is not much trust among representatives of professional organizations in the administrative efforts to address their concerns in legislation. Apparently only the Body of technical experts supports this bill.

## 3.3 Obstacles identified by administrative and judicial stakeholders

### 3.3.1 Administrative stakeholders

#### Preparing Legislation

The administrative stakeholders are in this case primarily the Ministries of Justice (for technical and forensic-criminalistic expertise) and of Health (regarding forensic medical expertise).<sup>10</sup> The Ministries create the budgetary parameters that allow the forensic expertise system to function. Furthermore they are involved as lawmakers in the ongoing development of the field.

During the second and third missions we conducted interviews with staff members from the Commission of the Ministry of Justice involved in the

<sup>10</sup> The Ministry of the Interior, in charge of the FSI, takes up a separate position since the institute’s investigative role is limited to the pre-trial stage.

process of developing new legislation (Criminal Code and Criminal Procedure Code). The Committee members underlined that forensic expertise was a sub-topic in the scheme of all things to be addressed within the ongoing revision of the Criminal Code and the Criminal Procedure Code. For them, it did not stand out as a problem they needed to address as such.

Unfortunately, efforts during our third mission to address the issue of legislative gaps that had meanwhile been identified and presented to us by stakeholders, did not meet with a response. The problems in the forensic expertise system were considered predominantly as logistic and/or organizational ones. It was suggested that it was the project's (i.e., our) task to suggest a solution instead of asking for information regarding the underlying legislation. This unequivocal distancing gesture seems to indicate a more profound problem of unclarity about the responsibility for/the ownership of the issue. This response stands in stark contrast to the call for legislative measures that was repeatedly heard from various stakeholders, as we have indicated before.

#### *Administration*

Within the Ministry of Justice, the Central Bureau of Technical Expertise is in charge of managing the database containing all relevant data of registered experts that judges or prosecutors can choose from when they need a private expert. The Central Bureau of Expertise is aware of the complaints regarding the problems in the database and most notably the issue of the outdated expertise of some experts. They consider it their responsibility to have a proper (initial) licensing procedure put in place. Yet the Central Bureau of Technical Expertise considers it the responsibility of the professional community to set standards of professional performance. It is unclear who then is in charge of effectively monitoring those standards.

### *3.3.2 Obstacles identified by the judiciary*

#### *3.3.2.1 Prosecutors*

##### *Quality of forensic expertise*

Several prosecutors list mainly quality problems with individual experts, not so much with institutional experts (who mainly come into the picture in criminal cases). The most important problems they identify are: experts not delivering their report in time, lack of quality, lack of independence (the latter is described as a 'taboo' topic). The lack of quality of experts is particularly pressing in more complicated cases in the area of forensic accounting, and international organized crime (money laundering, trafficking).

Some prosecutors complain about the management of the database by the Central Bureau of Technical Expertise (outdated information) and the absence of a sanctioning system for experts who perform badly.

##### *Independence of judges*

Some prosecutors questioned the independence of judges. Complaints were voiced that judges are perceived as allowing defendants' lawyers to use loopholes in the law to request second opinions of different experts. This is an issue in major organized crime cases where money laundering is at stake.

##### *Expertise of judges*

Some prosecutors commented that limited knowledge of judges negatively affects the assessment of the experts' quality of work. They acknowledged that it is an issue with which they themselves also have difficulty.

##### *Legislation*

All prosecutors we interviewed agreed that the current legislation is fragmented. Some indicate in particular that the law leaves too many loopholes for lawyers and for experts to abuse and exhaust the system.

#### *3.3.2.2 Judges*

##### *Workload*

The heavy workload is a structural burden for judges. In the different Divisions of the Bucharest Tribunal, the average case load for a judge ranges between 50 and 80 cases / files. This clearly limits the amount of time any judge can spend in paying time to cases and expertise reports that are more or less foreign to her/his expertise to begin with.

##### *Quality of forensic expertise*

A pressing problem that judges encounter is the failure of forensic experts to meet deadlines: '*They hold courts hostage*' as one judge put it. Again this seems to be more of a problem when working with individual experts. Given the lack of experts in certain areas, the courts are dependent on them. This complicates a response directed at sanctioning them.

##### *Interaction with forensic institutional stakeholders*

Judges complain about the detailed level of information in a case that forensic technical or medical institutes demand at times. Judges are reluctant since they feel it would hamper the progress of the trial. Judges would welcome an independent institution to consult for a second opinion.

##### *Legislation*

The interviewed judges also indicated that the current legislation leaves loopholes for lawyers and for experts to abuse the system. Many forensic technical experts seem to make use of existing legal provisions that allow

them to exceed deadlines. This should be addressed in the new Criminal Procedural Code.

**3.3.2.3 Superior Council of Magistracy**

The National Institute of Magistrates (NIM) operates under authority of the Superior Council of Magistracy and is responsible for the training of magistrates. At this point the Superior Council of Magistracy is aware of the deficiencies in the forensic expertise system. At their request, a judge recently presented an inventory identifying the deficiencies in the forensic expertise system. Unfortunately it only listed problems related to the organization and/or expertise of the work of forensic experts (which are also listed in this report). The issue of limited or lacking expertise *among magistrates* and the question of how to address adequate training in law schools as well as continuing education and training on the job, was not mentioned.

The Superior Council of Magistracy is presented as the *'guarantor of the independence of the judiciary'* and *'has a decisive influence on the initial and continuous training of magistrates.'*<sup>11</sup> However, in our interviews the representatives of the Superior Council of Magistracy seemed unaware of any problems – either incidental or more structural – in this respect.

**3.3.2.4 The Romanian Bar Association**

We spoke briefly with representatives of the Romanian Bar Association. In general they were skeptical about the level of independence and neutrality of the current judicial system in general. There was a high level of disappointment regarding the slow pace with which earlier proposals for change of the judiciary are implemented. Various incidents were presented that gave them reason to question the independence of magistrates from the executive branch (Ministry of Justice). We were not presented with any systematic factual information. However, the fact that the Minister of Justice – as a representative of the executive branch – is a member of the Superior Council of Magistracy, which is responsible for controlling the quality and independence of the magistrates' work, supports this concern about conditions that hamper independence of magistrates vis-à-vis the executive branch. A recent report of the European Commission also underlines the fragility of recent democracy in Romania, the separation of powers and more specifically the persistence of corruption in Romania.<sup>12</sup>

<sup>11</sup> *Conciliul Superior al Magistraturii din Romania/Superior Council of Magistracy from Romania*. Bucharest, 2007, p. 4-5.

<sup>12</sup> Commission of the European Communities (2006), *Communication from the Commission. Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania*. Brussels, 26/09/2006. COM (2006).

**3.4 The forensic expertise system as a network: an inter-organizational perspective on current obstacles**

From an organization and management studies' perspective, the present system of producing forensic expertise in Romania can be considered a service providing, inter-organizational network. We focus on the question of whether the forensic expertise system functions as an inter-organizational network that is adequately coordinated on the network level. From this point of view, the unit of analysis is not the institution or stakeholder involved, but *the network* as a system. In this case we refer to a system of obtaining and applying forensic expertise. In order to clarify the interrelationship between some of the obstacles identified before, we present an analysis of the current situation from this network perspective by using it as an analytical model.<sup>13</sup> We need to emphasize that our mission was not set up as a systematic data collection to apply this model. We use the model as a conceptual tool that allows us *post hoc* to systematize some of the findings in such a way that it simultaneously highlights some core questions that are relevant and useful when considering ways to improve the system.

Secondly, we chose this model for analytical purposes since it allows representing the stakeholders within the current forensic expertise system in Romania as a more or less systematically related series of organizations (network) while acknowledging at the same time the relative autonomous status of the various stakeholders. The model includes both the producers' (forensic/criminalistic institutions and individual judicial technical experts) and the users' / clients' perspectives (judges, prosecutors, and – to a certain extent – defendants' lawyers). As an analytical tool, it can provide insights into what is needed to make the system work more effectively as a network.

In order to assess what the quality of a well-functioning network (and its coordinating-power) requires, table 1 lists the questions that need to be addressed to analyse the functioning of a network.

**TABLE 1 Conditions for the functioning of a network as a service providing inter-organizational coordination system**

	<b>a. Completeness</b>	<b>b. Integrated assignment of tasks</b>	<b>c. Cooperation</b>
<b>1. Resources</b>	Are all external resources taken into account, so that the network can function adequately? (e.g.: financial resources; power-	Does the internal division of resources contribute to the efficient and effective functioning of the network? (e.g.: funding of the separate forensic/criminalistic institutions within the network; infrastructural aspects)	Do the relevant stakeholders / institutions really support the division of resources? Do they cooperate or share resources when

<sup>13</sup> Kenis, P., *Conditions for the Functioning of Networks as Work Systems* (Forthcoming). Tilburg University, Dept. of Organisation Studies. See also: Wilward, H.B., Kenis, P.N., & Raab, J. (2006). Towards the study of network control. *International Public Management Journal*, 9 (3), 203-208.

	relations; legislation; infrastructural facilities and constraints)		necessary or beneficial (for the functioning of the forensic system - the network - as a whole ?)
<b>2. Products/services</b>	Are all necessary products available? (can the institutions and experts deliver the kind of output in the field of forensic technical or forensic medical expertise that is needed?)	Are the transfers between the products/services efficient and effective? (is there a clear and efficient division of tasks and responsibilities between the institutional stakeholders?)	Do the relevant stakeholders / institutions really support the network? (e.g.: do they acknowledge the added value of the network / cooperation between the institutions? Does the network answer the needs and desires of the professionals using the products the network provides?)
<b>3. Clients / Users</b>	Are all types of clients / users identified, and is the network able to provide the expertise required? (recognition of prosecutors, judges' and defendants' interests and needs; timely delivery, etc.)	Does the process of obtaining forensic expertise / expert knowledge within the network match the level of knowledge and/or the practical use of the clients / users? (is effective communication possible between the stakeholders involved about the tasks and responsibilities of each of them vis-à-vis the production and use of the forensic/technical expertise)	Do the different clients / users really support the network?
<b>4a. Internal information</b>	Does the network generate adequate (internal) information / information-flow, regarding (i) resources; (ii) products/output; (iii) the clients / users – given the aims and objectives of the network?		
<b>4b. External information</b>	Does the network communicate with the different clients / users in a way that these clients / users know when, where, and through what channels they have access to the services the network provides? Does this communication underpin the clients' / users' conviction that the network's approach to producing forensic expertise is a useful / advantageous approach?		

This model rests on the assumption that effective coordination of processes within the network is a matter of effective and successful cooperation – its success and effectiveness to be determined not only by the relevant stakeholders in the network, but in particular by the users / clients as well. In this sense the model revolves around the perspective of the user / client (i.e. prosecutors, judges, defendants/lawyers/civil parties).

Furthermore, the model supposes that every functioning network requires three fundamental 'coordinating aspects'. This means that, to assess the quality of the cooperation and coordination within the network all three coordinating aspects have to be accounted for. Nonetheless, these coordinating aspects need to be addressed in endeavours to improve the quality of cooperation and coordination within the network. Any coordination system that lacks one or more of these aspects cannot be considered a well-functioning network defined as a service providing inter-organizational coordination system. These coordinating aspects are: (a) *completeness*, (b) *integrated assignment(s) of tasks*, (c) *cooperation*.

*Completeness* means that all resources and services/ products in the field of forensic technical expertise need to be present within the network, and need to be available to all, different clients / user(s) (i.e. prosecutors, judges, defendants/lawyers/civil parties). However, the mere availability of resources, services, and products does not imply that all these elements are well-coordinated within the network.

The condition of *integrated assignment(s) of tasks* implies (as a corollary) that the network provides an adequate (well-coordinated) connection, junction, and sequence of services and products – from the point of view of the clients / users (i.e. prosecutors, judges).

*Cooperation* is a necessary prerequisite for effective coordination within the network. Cooperation implies not only the awareness of and will to cooperate, but also the existence of a common practice and approach.

Moreover, in every network, there are various elements that need to be coordinated: (1) *resources*, (2) *products / services*, (3) *users / clients*, and (4) *information*. If these elements are not coordinated, the system cannot function properly as a network. If one of these elements is well coordinated from a network's perspective, it does not automatically follow that all elements are well-coordinated.

The combination of the coordinating aspects with the elements to be coordinated – to analyse what is needed for a network to be successful – can help to clarify what is important to improve the functioning of the Romanian forensic expertise system as a service providing inter-organizational network. In chapter 4, we will present our concluding observations that flow from this model concerning its implications 1) for improving *resources* (to provide forensic expertise), 2) for the production of forensic technical or medical *products or services*, 3) for the *users of the forensic expertise system* and 4) for *information exchange*.

#### 4. CONCLUSIONS: NATURE OF OBSTACLES AND SUGGESTIONS FOR IMPROVEMENT

In this project, we focused on two questions. Firstly, what is the nature of the current obstacles and/or shortcomings in the (forensic) expertise system, both from an organizational and a substantive (forensic-technical) perspective? Secondly, what is necessary to improve the quality of forensic expertise, and the functioning of the forensic expertise system in Romania?

We systematically answer both questions in this final chapter. Before we will address more general findings that influence the interpretation of the results of the specific questions.

We will use the results of our study as presented in chapter 3 as the basis for our conclusions. Where relevant, we will also refer to results from the *Study on the Legal Expertise Activity in Romania (2006)*, conducted prior to our study, on 'assessing problems in accessibility of the expertise' and its 'impact on the quality of justice'. It was conducted by the Romanian Ministry of Justice and based on data from 14 Courts of Appeal and three major professional organizations in the forensic field.<sup>14</sup>

##### 4.1 Preliminary concern: The impact of ongoing reform in Romania

Within the limited time available for this project, we consulted as many stakeholders as possible in the field of the Romanian forensic expertise system in order to get a full spectrum of opinions and experiences. This confronted us early on with the question of 'ownership': Almost as a corollary of the fragmentation in the system, it was not clear who – on an administrative level – was responsible for effectively addressing the current problems in the Romanian forensic expertise system. In that respect, we need to contextualize this project against the backdrop of ongoing efforts in Romania to reform the judicial system. The implementation of the *Action Plan* is progressing more slowly than anticipated. Although current developments are encouraging there is a definite need to remain vigilant. Administrative and political 'ownership' is a prerequisite for the implementation of any effort to bring about change.

Another preliminary comment concerns the level of reluctance to share information we sometimes encountered, certainly in the beginning of our project. When presented with this, some respondents attributed it to a legacy of the communist era when the independence of the forensic expertise system was constrained due to a lack of independence of the judicial system. Political changes in Romania that took place in the course of the project (a new

<sup>14</sup> National Institute of Forensic Expertise (INEC), National Institute of Forensic Medicine Mina Minoviçi (INML), Body of Technical Experts.

Minister of Justice took office) created uncertainties among various respondents about the political leadership. The effect was that several stakeholders – quite understandably – seemed to navigate if and how to provide information. We need to underline that any recommendation for reform of the forensic expertise system can only be effective if the Romanian judiciary can meet the basic requirements in its functioning in a democratic state that adheres to the rule of law: it has to function independently from the executive and legislative branches, and act impartially and neutrally toward all stakeholders, in particular toward those who seek justice.

##### 4.2 Current obstacles in the forensic expertise system

The network as a unit of analysis as presented in section 3.3 addresses several levels of the problems within the present forensic expertise system. Below we have systematized the main conclusions concerning the obstacles within the analytical framework of the network-model presented in section 3.3.

###### 4.2.1 Resources

###### Legislative resources

The law needs to offer provisions that guarantee the independence, neutrality, and impartiality of the judiciary, including the forensic expertise system. In general we have to conclude that the current legal regulation of the forensic expertise system does not sufficiently guarantee this independence, both regarding the public prosecutors and judges that order the performance of an expert investigation and of the expert that carries out this investigation.

This is mainly due to:

- 1) the non-transparent way of appointing experts, notably individual technical experts;
- 2) inadequate provisions with respect to the use of private experts, who conduct the majority of forensic technical investigations in Romania;
- 3) a general lack of a well-functioning operational system of checks and balances regarding the quality of the forensic work, except in the INML;
- 4) no requirement for the experts to adhere to an official 'Code of Conduct';
- 5) no uniform disciplinary or monitoring system; and last but not least
- 6) the complexity of the legal system: existing regulations are fragmented; it lacks coherency, clarity, and consistency. Most notably Ordinance no. 2 is lacking in clarity and more generally fails to address certain important issues (most notably: the remuneration of private experts, the assigning of the workload, the legalizing regulations, the certification, and the lack of a system to periodically monitor both the experts' competencies and the quality of their work). As a consequence of the problems identified in the forensic expertise system, it limits access to justice both *de iure* and *de facto*.

#### *Practical and financial resources*

In practice, most networks consider themselves 'complete', essentially because this 'completeness' constitutes the *raison d'être* of a network. On further consideration, nevertheless, they do not really fulfil the condition of 'completeness'. This is also the case with the Romanian forensic expertise system. It seems to be 'complete', as far as the production and range of forensic expertise is concerned. This perception is shared by all three major institutions. The network suffers from 'incompleteness', however, with regard to the administrative practice, and the logistical infrastructure, as indicated above (see section 3.3), especially with regard to the legal provisions.

The system does not function as an inter-organizational network as far as the financing structure (here defined as external resources) is concerned. The institutions and the technical forensic experts are accountable to different Ministries, and likewise are financed from different sources. From an intra-institutional point of view, this may not constitute a problem, as far as the major institutions and the relevant ministries are concerned. However, the point of concern is the lack of coordination between these Ministries and therefore there seems to be no shared sense of urgency to find a solution to the problems. This translates into limited and inefficient communication between professional stakeholders and the issue of how to improve the quality of expertise by reviewing the system of licensing on the one hand, and offering facilities for continuing training of experts and of prosecutors and judges, on the other hand.

Considering the integrated assignment(s) of tasks, both externally and internally, we cannot assess the adequacy of the division of resources and power from a larger (network's) efficiency perspective. This implies that the current uneven assignment of resources between INEC and the FSI, even considering their different responsibilities, does not facilitate the development of a joint perspective. The remuneration of individual forensic technical experts is regulated in such a way that the many financial limitations clearly have a negative influence on the quality of expertise. The current fragmentation and lack of coherence regarding the system to produce forensic expertise hampers an integrated assignment of tasks *within the network*.

The relevant stakeholders (Ministries) and institutions producing forensic expertise seem to support the current division and employment of resources as a matter of fact, although the uneven assignment of financial resources among the main institutions does cause some tensions.

#### *4.2.2 Products/services*

The present system of producing forensic expertise in Romania does make available a full range of products in terms of the areas of expertise. There is

some overlap between the INML and the FSI, between the FSI and INEC, although, in light of their different roles in different stages in the legal process, this overlap is not necessarily a point of concern.

The transfers between products are in accordance with the stages in the legal process in which the institutions and technical legal experts are asked to provide their expertise. These transfers seem to be hampered, however, both by the fact that the definitions of different types of experts are not mutually exclusive, and by the unclear demarcation between the domains of expertise carried out by INEC and/or by individual experts.

The institutions do value and support inter-institutional cooperation and the exchange of expertise, but it is not clear what their perspective is of the added value of considering the forensic expertise system as an integrated production system. At this point in time, their perspective is based on their institution/organization as the 'unit of production'. There is no common meta-institutional practice yet. Only in the domain of post-doc education and training are the first collaborative initiatives underway (*Associatia Criminalistilor*, see section 3.2.1).

As far as we have been able to assess, based on study of relevant documents and interviews, none of the Ministries have an explicit opinion on the added value of inter-institutional coordination as a resource to enhance the effectiveness and efficiency of services provided in the system of producing forensic expertise.

#### *4.2.3 Users / Clients*

All types of users / clients (i.e. prosecutors and judges, lawyers/defendants, civil parties) of forensic expertise within the Romanian system have been identified. Some problems can be pointed out regarding the limitations – *de iure* and *de facto* – of the accessibility to justice for defendants (who of course are also users / clients of the network that produces forensic expertise) in criminal and/or civil cases. The institutions are able to deliver the range of expertise required, and the average level of expertise is high. Deadlines for delivery of expert reports cannot always be met. This is due to the processing time necessary for producing specific kinds of expertise, for which the institutions constituting the network cannot be held responsible.

Although these users / clients underline some problems in the (organization of the) production of expertise, they did not mention any major shortcomings in the usefulness or practicability of the services and products provided by the institutions (see section 3.3.2). From the institutions' point of view, the limited knowledge among prosecutors and judges on forensic technical as well as forensic legal medicine was listed as a major problem. There seems to be a gap between the level of expertise provided by producers and the level of

knowledge of the users / clients (i.e. prosecutors and judges). This leads to unrealistic requests and misinterpretations of forensic reports (see section 3.2.4).

#### 4.2.4 Information

Within the institutions, there is an adequate (internal) information flow regarding resources, products, and clients / users. The INML and INEC are working on the implementation of quality systems and do comply, as members of ENFSI, with international standards. The FSI has already implemented the international quality standards (see section 3.2.1). Certification of technical legal experts accounts for some difficulties, though (see section 3.2.2).

The institutions and technical forensic experts in the network do not communicate well with their clients / users (i.e. prosecutors and judges) from a network's perspective. These clients / users are on average well-informed about the accessibility of the services provided, but limited substantive knowledge on the users' part is however a problem (see section 3.2.4). The institutions seem to be reluctant to raise this issue with the Ministry of Justice.<sup>15</sup>

With regard to individual experts, the information exchange faces several structural problems. The system of registration for the different experts is not coherent. There is no legal provision that guarantees that information on experts in these registers is kept up to date.

In general, the lack of coordination *on a network level* may influence or suboptimize:

- 1) the productivity and power of policy-making – with regards to financial sourcing (adequate division of financial resources) and legal structures (lack of coherence, clarity and consistency) – by the different Ministries, each Ministry in a way creating its own 'policy context' and 'sphere of influence' (see section 3.2.3);
- 2) the implicit power relations between the organizations that provide forensic expertise (see sections 3.2.1 and 3.2.2); and
- 3) the smooth and gradual opening up of the market to forensic criminal and/or medical experts and the emergence of new independent entities in the field of forensic research and investigation.

### 4.3 Recommendations

Bearing in mind what we concluded about the independence, neutrality and impartiality of the judiciary as a precondition before any reform of the forensic

<sup>15</sup> Note that the problem of limited technical, scientific, and/or medical expertise of prosecutors and judges is also a point of debate in the Netherlands.

expertise system can be effective, we want to present the following recommendations:

#### 1. First things first: No reorganization towards a merge

The current problems in the forensic expertise system can be identified on three levels: 1) the legislation underlying the system; 2) the limited knowledge and expertise on the part of the users (judges, prosecutors); and 3) deficiencies in the organization and/or the production and quality of forensic expertise.

Adequate legal regulation and sufficient training of participants are primary pre-requisites for the functioning of any forensic expertise system, regardless of the third aspect – organizational structure. In that respect, improving the legal regulations on the one hand and continuing education of judges and prosecutors on forensic technical and legal medical issues on the other are of primary relevance to improving the functioning of the forensic expertise system. Obviously, this does not imply that prosecutors and judges need to be forensic experts themselves. They need to gather, however, a basic and actual understanding of the kind of forensic research they request, and the time it takes to process, to be able to produce – in a efficient, and cost-effective, but legally sound way – the evidence needed in a criminal or civil case.

Any meaningful collaboration and exchange between representatives of different institutions requires a clear setting of parameters (i.e., legislation) and an understanding of the requirements, possibilities, and limitations of the subject of forensic technical or medical research. Against this backdrop we suggest to not focus primarily on the third aspect, a reorganization of the production part of the forensic expertise system. Although we did observe deficiencies on that level that are definitely in need of improvement, it seems to constitute a smaller part of the problem for two reasons.

- 1) The majority of forensic *technical* expertise in Romania is provided by individual experts. It is in the functioning of that part of the forensic expertise system that we identified a substantial number of the problems, more than in the institutions themselves. For that reason, a focus on finding a resolution through a major *institutional* reorganization only does not fit with the diagnosis of the nature of problem. This is not to say that inter-organizational issues between the major institutes could or should not be improved, but in the larger picture it is not the predominant cause of the obstacles.
- 2) On a more substantive level, the problems in the forensic expertise system are only partially located in the organization of the system to provide forensic expertise. A major part of the problems is located in the users' domain, and is related to

limitations in basic knowledge and expertise among magistrates.

Therefore we do not advise a fundamental reorganization of the production part of the forensic expertise system in Romania, aiming at the setting up of one major institution in which all existing institutions will be included. Looking at the bottlenecks we identified, a major reorganization towards a merge will not necessarily resolve the problem of how to improve the quality of the expertise (the issue of licensing (forensic technical) experts, how to address training of judges and prosecutors regarding forensic technical and forensic medical research) nor the issue of improving communication between professional stakeholders. The fact that none of the institutional stakeholders was in favor of a merge into one major forensic institute is important to bear in mind. Resistance against such an intervention would certainly diminish the chance of its success. The concept of one encompassing forensic institution raised concerns about independence from the executive powers. Apparently, the suggestion for a merge has been discussed before in the late 1990s and was rejected, also due to major budgetary complications.

#### *2. Developing the forensic expertise system as a network: Testing the support for change*

The results as presented in chapter 3 indicate that, if we analyze the current forensic technical expertise system as a service-providing network, we need to look at ways to improve collaboration, exchange of information, and inter-institutional planning and timing of activities. The network currently does not function well as a coordinating system. As a network, its effectiveness would benefit from an improvement of its coordination. We suggest that investing in the coordinating power of the present system can contribute substantially to strengthening the quality of the organization of the forensic system.

The question then is where the coordinating body could be best located: at an administrative level (Ministries) or at the executive level (in / among institutions). The question remains how the independence and impartiality of such a coordinating body can be guaranteed. Given the different interests at stake it seems most efficient to set up a coordinating body in which representatives of the administrative bodies involved (Ministries of Health, Justice, and the Interior), as well as of the different forensic expertise producing organizations (INEC, the INML, the FSI, and the Body of Technical Experts), and the users / clients (judges, prosecutors, attorneys) are represented. This seems a crucial step towards installing a sense of *collective* ownership of and to a certain extent of joint responsibility for the problems. Moreover, it can introduce and implement a joint network perspective within the current system that requires a mutual understanding of the stakeholders of each others' position. For example, the major institutions are not equally provided with technical equipment. The proposed coordinating body could play an important role here in assessing whether if and how the available

technical and laboratory equipment (from an organizational and a financial perspective) could be used in a more efficient way (also to prevent overlap) and which division of labor and/or collaboration would match in that case.

It is advisable to probe the level of support among the stakeholders for any suggested reform strategy and intervention. Given the limitations in terms of time and budget for the current project, we were not able to add another mission in order to present our findings to all major stakeholders, get their feedback and draw conclusions about the level of support for such an approach. Such a mission as a follow-up to the current study seems the most practical next step to take. It would allow to systematically collect feedback information that – if favorable – can be subsequently used to develop an effective system of coordination.

#### *3. Legal revisions*

Achieving coherence and consistency are the prime goals for any reform in the forensic expertise system. It is advisable to make the provisions of current legal documents fit with each other. This is useful, for example, with respect to some provisions in the Code of Civil Procedure (Articles 201-204, and 213) in relation to Articles 15, 17, 20, and 23 of Ordinance no. 2/2000. The same holds with respect to Article 2 of Government Decision no. 368 of July 3<sup>rd</sup> 1998 in relation to Article 22 of Ordinance no. 75 of August 24<sup>th</sup> 2000. In the various legal regulations, different expert categories are distinguished while it is not clear what exactly distinguishes them with respect to their substantive expertise (judicial technical expert, specialist). This relates to the way the term 'forensic' is used as a specifying adjective.

#### *4 Training and continuing education*

It is important to make forensic technical and medical expertise a compulsory subject in law school again.

In the short term, magistrates – both prosecutors and judges – should be trained to develop their abilities to formulate requests for forensic expertise adequately without putting unnecessary requests on the capacity of the forensic system. Also their ability to adequately assess the quality of forensic expertise delivered in a case should be subject of training. The organization of an intervention mechanism for prosecutors as well as for judges is a low-level organizational intervention that can offer major support for magistrates who are struggling with technically complicated expert reports.<sup>16</sup>

With respect to private experts, it is essential to set up a transparent system of continuing training and regular checks of the quality of expertise, for

<sup>16</sup> Intervision (not to be mixed up with 'coaching', or 'consultation between colleagues') is a process within an organization whereby colleagues – systematically, periodically, and embedded in the work-process – assess each others competencies and professional values in relation to their work in order to enhance the quality of the professional performance (See: Brinkmann, R. (2002): *Intervision - Ein Trainingsbuch der kollegialen Beratung für die betriebliche Praxis*. I.H. Sauer-Verlag, Heidelberg).

instance by making use of an expert's portfolio that periodically can be subjected to peer-review. This requires the development of a clear and coherent monitoring instrument, including a sanctioning system.

#### *5. Logistics*

Reform the current logistical infrastructure, notably the functioning of the postal and administrative systems of the courts, deserves serious attention. From a network perspective, this is a clear example of an element that severely hampers efficient internal and external information exchange and communication. Improving this aspect of logistics does not require extensive revision of legal regulations, but serious interventions at management level. It may be useful to reassess the effectiveness of the present postal services. Setting up a special courier service designed for effective and efficient communication between the courts and the producers of forensic expertise seems to be the most direct and least expensive way to avoid unnecessary delays and discontent in the functioning of the system as a whole.

#### *6. Remuneration*

With respect to remuneration, it is advisable to reform and harmonize the current system of remuneration of private experts, and the non-transparent legal regulations this system is based upon. The provisions concerning the mandatory character of the judicial technical expert examination and concerning the loss of salary for those who are employed can have a counter-productive effect, because many experts will try not to comply with this obligation. Public prosecutors and courts can feel pressured to give the examination order to unemployed experts or to persons who do not possess the required expert qualification. For this reason it is advisable to make the provisions with respect to the use of experts more flexible.

Given the risk of further brain drain of well-educated forensic technical and forensic medical experts from Romania, because of low salaries and the poor chances of career development (both within the institutions and as independent forensic experts), it is important to settle for an independent assessment of the level of expertise and the capacity of experts needed in relation to the level and the capacity of forensic expertise available. This assessment should provide the data to underpin the reviewing of the present remuneration system and staffing policy, aimed at providing the forensic institutions with sufficient means (financial resources, talent management, career development) to preserve and/or develop specific fields of expertise that are in high demand. This exercise may help to build up a high-quality service of forensic expertise and counter expertise in the context of a market opening up.

#### *7. Opening up the market*

Several respondents were very outspoken about the advantages to open up the market to forensic criminal and/or medical experts that are research-

based (connected to universities). They could operate as 'independent parties', that is to say, independent of the existing forensic institutions and organizations. They can be consulted independently and it would also facilitate getting a second opinion of a guaranteed high-quality level. It could be interesting to explore the option to allow licensed experts to obtain access under certain conditions to use existing laboratory facilities. Creating more competition between experts is considered as an efficient incentive. This would bring about the development of a self-correcting mechanism that encourages high-quality forensic expertise. Legislative changes are required to make this possible.

## APPENDIX

### PARTICIPANTS DURING CONSULTATION MEETINGS

#### Ministry of Justice

Ms. VIȘOIU, Ileana, Department of European Affairs, Deputy Director  
Ms. SÂRBU, Ramona, Department of European programmes, Staff Member  
Ms. CIUCIU, Ana Maria, Department of European programmes, Staff Member  
Ms. BELEGANTE Violeta, Department of Law Drafting, Head of Service  
Ms. DUMITRESCU, Honoria, Department of Law Drafting, Staff Member  
Mr. MICLAUȘ, George, Department of Law Drafting, Staff Member  
Mr. GEAMĂNU, Radu, Department of Law Drafting, Staff Member  
Ms. GAINA, Counsellor to the Minister of Justice  
Mr. PLOPLEANU, Counsellor to the Minister of Justice  
Ms. TAMAS, Anca, Department of European Affairs, Director  
Ms. POPESCU, Diana, Department of European programmes, Director

#### Prosecutors

Ms. BICO, Alina, International Cooperation Office of the Directorate of Investigation of Organized Crime, Chief Prosecutor  
Ms. CEH, Laura, International Cooperation Office of the Directorate of Investigation of Organized Crime, Chief Prosecutor  
Ms. CIUREA, Angela, International Cooperation Office of the Directorate of Investigation of Organized Crime, Deputy Chief Prosecutor  
Mr. OJOG, Prosecutor  
Mr. DRAGHICI, Prosecutor  
Mr. SINBU, Prosecutor

#### Ministry of the Interior

Mr. POPA, Gheorghe, Dr., Deputy of the General Inspector of the Romanian Police

#### The National Institute of Forensic Expertise (INEC, *Institutului National de Expertize Criminalistice*)

Ms. GRIGOIRE, Camelia, Director  
Mr. GRIGORIAS, Cătălin, Deputy Director  
Mr. BETIU, Grigoras, Chief Engineering department  
Mr. DUMITRESCU, Christian, Chief Identification Department  
Ms. ANTOINE, Chief regional laboratory, Iasi  
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Ms. ANDREI, Laura, Vice President

#### Bucharest Court of Appeal

Ms. CORNEA, Maria Speranta, President

#### Superior Council of Magistracy

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