

*Empowered lives.  
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**Feasibility study on the forensic  
infrastructure  
in the Republic of Moldova**

and

**Findings of the external audit of  
the Centre of Forensic Medicine of  
Ministry of Health  
of the Republic of Moldova**

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**LIST OF ABBREVIATIONS**

CFM – The Centre of Forensic Medicine

ENFSI - European Network of the Forensic Science Institutes

ENFSI WG – European Network of the Forensic Science Institutes Working Groups

IDOM - Institute of Human Rights in Moldova

MoH – Ministry of Health

TFU – Technical-Forensic Unit of the Police Department of the Ministry of Internal Affairs

UNDP – United Nations Development Programme

UNODC – United Nations Office on Drug and Crime

IQAP - International Quality Assurance Programme

## EXECUTIVE SUMMARY

The existence of cases of torture and ill-treatment now days in Europe - in a country like Moldova<sup>1</sup>, is a clear indicator of failure of the present judicial system resulting in impunity for human rights violations and more importantly violations of the right to fair trial. To address this problem and to be more effective the various players in the criminal justice cycle must live up to their responsibilities and denounce cases of torture.

One of the legitimate tools of producing valuable evidence that contributes to the successful prosecution and conviction in such cases is the forensic science. A well-established forensic infrastructure, compliance with the legitimate demand for the quality standards, trained forensic experts and medical examiners are crucial for the ability of the evidence to adequately put the case under review at all stages of the process. Having regard to the importance of the forensic science to establish the truth and secure justice, it becomes essential that this area receives an increasing attention from the Governmental authorities and increased awareness of its value from law-professionals like prosecutors, judges and police officers. Providing a forensic infrastructure that is accessible to all would constitute an essential function of the Government in any criminal investigation and more importantly – ensure a fair investigation and strengthen the evidence where by exceeding the authority or official powers the violence has been used or suspicion of torture exists. In particular, an independent and effective forensic infrastructure with the necessary financial, human and other resources must be available and it is necessary that the forensic infrastructure be conceived in a way that truly aims at the complete and reliable use of a forensic science so the mechanism to investigate promptly and impartially allegations of torture and ill-treatment is put in place and be independent of all stakeholders involved.

With the European Commission support, UNDP is implementing the project “Strengthening the forensic examination of torture and other forms of ill-treatment in Moldova”, aiming to strengthen the forensic infrastructure, to increase fairness and accuracy within the justice system, improve the practice and use of the forensic services as well as improve the quality of evidence presented in criminal trials in order to carry out prompt, thorough and independent investigations into allegations of torture and other ill-treatment.

Two main activities were conducted within the project that relates to the forensic services in the Republic of Moldova:

- assessment of the feasibility and advocacy measures to ensure quality, assessment and plurality of the forensic services;
- provision of support in carrying out external audit for the Centre of Forensic Medicine.

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<sup>1</sup> Report of Amnesty International, Moldova: Torture, discrimination and impunity, July 2011. Submission to the UN Universal Periodic Review, October 2011. To be find here <http://www.unhcr.org/refworld/category,COI,,,MDA,4e3bd7632,0.html>

Both of the activities are closely related to each other and for that reason the common report has been produced and it is divided into two separate sections devoted to each of the activity.

The feasibility study pursues the following major objectives:

- to give an overview of the existing forensic service providers and their role and place in the common forensic infrastructure;
- to collect accurate information concerning the legislation regulating forensic services, activities of the forensic expert, forensic evidence, chain of custody, certification of the forensic experts and other subjects related to the forensic area as well as to point out the deficiencies and weaknesses;
- to look at the quality assurance and used tools to ensure the quality of the forensic expertise, partnership and cooperation with main stakeholders;
- to evaluate the role of the defence;
- to assess the independency of the forensic service providers and forensic experts, the alternative forensic services and possibilities to involve private forensic entities;
- to consider possible structural changes towards the improved forensic infrastructure.

Throughout the study report there are long-term and short-term recommendations made that result out of the observations, consultations and data collected from the interviewed officials and during the on-site visits. The recommendations given hereby concern not only the forensic infrastructure but also the entire law enforcement community and prosecution since these areas cannot be separated and they depend on each other.

The main objective of the external audit of the Centre of Forensic Medicine is to evaluate the overall forensic medicine service currently operating by having analysed:

- the structure, operation and scope of the services provided by the Centre of Forensic Medicine;
- the staff and the work load;
- the availability of adequate, fit-for-purpose equipment, reference materials, data bases, as well as the commitment and the resources for their maintenance;
- the existence of the procedures to ensure integrity and chain of custody of the evidence, handling the samples throughout the forensic process;
- the quality measures taken and future work towards implementation of the quality management system and accreditation;
- the budget, future needs and the priorities of the Centre of Forensic Medicine.

The preliminary findings outlined within the report clearly identify the following shortcomings and weaknesses of the forensic infrastructure in Moldova:

- Absence of a central and independent institutional body that would assume a leadership role on a national level for the country's forensic infrastructure, that would set up, among others, the certification criteria for the experts, provide certification/recertification process for all the forensic practitioners (state and private), work out the recommendations for the long-term and the short-term strategies, provide solutions to common problems, monitor the activities of the forensic experts, investigate cases of experts' negligence or misconduct. As a

result of this absence, the forensic science community is fragmented, unable to identify its own problems, and lacks a cooperative and a common vision for its future development;

- Identified gaps in the legislation, developed an inconsistency between the statutory and the real practice in the area of forensic investigations and equality of arms for the parties in the proceedings;
- Existing restrictions imposed on the private experts, developed a “no free access” to an alternative forensic investigation in some disciplines;
- Lack of uniformed quality standards, no approved and validated methods and procedures that would ensure integrity and identity of the evidence throughout the forensic process, no set work instructions and manuals, no signs of work towards accreditation intentions;
- Lack of sufficient, predictable and stable funding to meet even the needs of a daily work, no adequate equipment, instruments, daily materials, appropriate laboratory and other facilities to conduct basic forensic investigations, insufficient number of staff in some forensic disciplines;
- Lack of external and internal continuing mandatory education and training of the forensic experts, absence of the periodic evaluation procedures of professional competency for the forensic experts.

Thus, the initiative must be shown and preliminary work done to highlight the problems mentioned above and inconveniences on the common stage of the justice system and among forensic service providers within state level in Moldova.

To date, the Government's lack of attention and support for the forensic services in the country requires much more efforts that need to be done to improve the status of the forensic infrastructure for the sake of the fairness of the procedures. It has become obvious that the forensic service has no decisive role, and is not integrated into the national crime prevention governmental frameworks or strategy plans. The Government should therefore start by recognizing the value which the forensic investigation brings into the justice system and start actively supporting the activities and the reforms that are needed to improve the forensic infrastructure in country.

As evidence lies at the heart of the criminal process, and as the implementation of the basic needs of freedom, security and justice requires a common policy, rules and standards relating to forensic processes and procedures, the solutions to the problems are in need for firm decisions and changes in the existing forensic infrastructure. Such transformations could foster efficient administration of justice in Moldova, enhance the trust in justice and the security of citizens, as well as to keep in step with analogical alterations within the EU.

In light of the foregoing and planned reforms of the justice system of Moldova it is recognized that, given the complexity of the issues and the political realities that may pose obstacles to change, some recommendations will have to be implemented creatively and over time in order to be effective.

## List of Recommendations

The following table contains a list of the recommendations<sup>2</sup> arising from the study. They are listed in the order in which they are introduced within the report. It has to be outlined that these recommendations should be looked in the context that they are made and described.

### Legal framework

Within the different subjects of this report the authors has drawn the recommendations suggesting to improve the legislation regulating the forensic area. These changes are crucial to improve the work and the contribution of the forensic infrastructure to ensure prompt, thorough and impartial investigation of torture and ill-treatment cases. Some of these recommendations are not directly related to the forensic infrastructure but are more relevant to the law enforcement and prosecution bodies, and defence lawyers as main users and customers of the forensic services.

The following changes, amendments and corrections are necessary to be introduced within the Criminal Procedure Code, Forensic Expertise Law and the law enforcement daily work practice:

- the criminal process must be initiated immediately when mandatory forensic expertise is required;
- the list of cases where forensic expertise would be mandatory has to be widen;
- a time limit has to be included within which the prosecutor would be obliged to complete the preliminary investigation and issue the decision of whether to open or not a criminal investigation;
- to make clear that a criminal investigation should be opened every time there is a criminal complaint received of torture and/or ill-treatment and the investigation started which would lead to either having the suspect charged with the criminal or misdemeanour offence or in having the case closed. This is in particular important in cases where there is an allegation of torture;
- prohibit the involvement of the specialist and use of the scientific-technical investigation in cases where compulsory forensic expertise is mandatory by criminal procedure code before the criminal case is initiated;
- amend the text of Article 142 of the Criminal Procedural Code to make cost free forensic expertise in all criminal cases where suspects and their defence lawyers requests one;
- include a list of the forensic disciplines in the Law on Forensic Expertise for which a certification should be obtained before practicing with a mandatory inclusion in the State Register of Forensic Experts.

<sup>2</sup> Recommendations have been developed taking into account the situation of August/September of 2011.

**Quality assurance**

Emphasis on quality assurance standards is a major and growing trend in the forensic service providers worldwide. A strong quality system and assurance program is an essential foundation for many forensic institutions. The following recommendations are significant elements to ensure traceable and reliable forensic process within the institution, which staff has appropriate training and possibilities for the continuing education, that evidence is the subject to the analysis conducted according to the validated and approved methods and standard operational procedures, that chain of custody is followed:

- establish routine procedures (Standardised Operational Procedures) to ensure reliable and traceable chain of custody;
- work out the internal procedures and also appropriate follow-up procedures to ensure the efficiency and the usage in the practice of the internationally binding standards such as Istanbul Protocol;
- all forensic providers should implement quality management system according to the internationally recognized standards applicable to the forensic area;
- allocate appropriate financial resources to implement the quality system;
- initiate training for the forensic service providers on quality assurance matters and accreditation;
- use already existing, free of charge, international support programmes and projects on quality assurance matters;
- the forensic service providers should work towards joining and becoming the members of the European Network of the Forensic Science Institutes (ENFSI).;
- identify a priority to have all the forensic service providers accredited;
- organize trainings on quality assurance matters for all stakeholders.

**Partnership and cooperation**

Forensic service providers cannot be seen apart from the stakeholders they are working for and merely the quality level of the forensic service that is given, is as good as the knowledge and the understanding of the stakeholders benefiting from it. Cooperation and partnership between the forensic service providers and their customers is as much important as collaboration among forensic service providers themselves. Following recommendations should be implemented:

- reach an agreement among forensic service providers to foster scientific and technical cooperation and advancement, to enhance the effectiveness and the efficiency of all the forensic institutions;
- implement procedures to achieve better communication between stakeholders and forensic experts;

- established independent forensic board to be the one to solve the issues and problems of cooperation and communication among the forensic institutions, all the customers of the forensic services and private experts, what is consistently important as well, and public.

### **Role of defence**

Defence lawyers often meet unjustified limitations from the prosecutors and forensic experts themselves when requesting an alternative forensic report. Thus the defense is not equal on the common stage of criminal justice system concerning the rights to order expertise or request another, not-state forensic expert to be involved. Within the recent study such recommendations has been drawn:

- develop best practice standards in the area of forensic science by providing appropriate training of all stakeholders involved including trainings tailored to the needs of the defence lawyers;
- make available to defence lawyers the instructions, regulations and any other official documents that contain an approved methodology for forensic science to each discipline where forensic expertise is required;
- amend practice with due regard to fair trial guarantees and the presumption of innocence, so that the defence lawyers enjoy same procedural rights as the accuser- the prosecution;
- amend the text of Article 142 of the Criminal Procedural Code to make cost free forensic expertise in all criminal cases where suspects and their defense lawyers requests one.

### **Independent forensic board**

Administration and oversight of the forensic infrastructure has to be done by the separate board, not by the forensic institutions themselves. In order to arrive at the most effective developments and solutions for the whole forensic infrastructure, a common system (independent forensic board) should be established consisting of the representatives from all the forensic service providers, including private experts and following should be done:

- centralize the certification and re-certification process;
- certification and re-certification has to be done by an independent commission acting within the "independent forensic board".

**Alternative expertise and private experts**

It is a practice, formed and remained from old times, that prosecutors and judges accept reports provided by the state forensic experts as being indisputable and true evidence, excluding the possibility for the accused person to require an alternative forensic expertise supplied by the “independent” forensic expert whose qualification and education is appropriate, except the fact that he/she may not be included in the State Register of Forensic Experts.

- include a list of the forensic disciplines in the Law on Forensic Expertise for which a certification should be obtained before practicing with a mandatory inclusion in the State Register of Forensic Experts;
- amend the legislation to provide criteria based on which the involvement of any forensic expert in any procedures (civil, misdemeanor, criminal) will be decided upon one’s professionalism, qualification, experience and competence rather than solely on the fact that he/she is the forensic expert employed by the state forensic institution.

**Independence of the forensic institutions and forensic experts**

According to this study all forensic service providers in Moldova at best have undeniable administrative dependence from the superior management and are influenced by decisions mainly relating to the budget. For that reason the importance of neutrality, independence and impartiality of the forensic experts are so crucial. One of the forensic institutions - the Technical-Forensic Unit (TFU) of the Police Department of the Ministry of Internal Affairs within the forensic infrastructure of Moldova is a part of the law enforcement institution and is administrated by its main “customer”. This leads to significant concerns related to the independence, objectivity of this Unit and also to its potential to decide on its own budget. Thus this subject has been analysed and such recommendations made:

- make Technical-Forensic Unit (TFU) an autonomous institution within the Ministry of Internal Affairs and separate it from the Police Department as well as remove it from the administrative and direct control of the law enforcement institution;
- develop written inside procedures to defend the independence of experts from possible internal and external influence that aim to alter the result of the expertise;
- move towards the development and implementation of quality management systems and quality control measures according to ISO standards;
- The Centre of Forensic Medicine should be reformed, put out of the common public health system and established as separate and independent state division with wider scope of activities.

**Funding of the forensic service providers**

The shortage of the available financial resources significantly affects the work and the quality of the forensic examinations conducted as out-dated techniques, equipments and instruments are used. The lack of predictable and stable budget prevents forensic service providers from fulfilling the daily work, the planning for future growth or technological advancement.

It is found that the forensic community needs immediate attention from the Government and justice system in general in order to reorganise the existing infrastructure and these actions has to be covered by the appropriate financial investments (state and/or donor).

**One state forensic institution**

Two of the main 3 forensic service providers in the country lack necessary equipment and/or facilities, and staff. To provide the high forensic services, this does not mean that each of the forensic service providers should have every possible piece of equipment. Therefore potential immediate and beneficial action should include the consolidation of the main forensic service providers and providing the structural changes as it would save costs on administrative expenses, allow the forensic infrastructure to become a joint and single strength worse to listen and hear by the State.

- separate the forensic experts from the police culture – physically, philosophically and fiscally and create wholly independent state entity of forensic science consolidating all the forensic institutions, including forensic medicine service;
- establish independent forensic board to resolve and care about the issues related to the forensic infrastructure in Moldova which role is to develop and maintain the forensic expertise as an essential part of justice;
- Specific Board should be organized within the independent forensic board to deal exclusively with the forensic medicine area.

**List of Findings**

The following table contains a list of the findings and conclusions drawn from the audit process of the Centre of Forensic Medicine of the Ministry of Health. The findings reflect the overall state of play of the forensic medicine in the country; more attention has been paid to the weaknesses and inconsistencies influencing the quality and level of services provided. Also some initiatives have been given that must be adopted in any plan to improve specific forensic medicine disciplines and to allow forensic medicine to serve more effectively. Many of the shortcomings and needs identified during the audit require additional discussions, analysis and funding calculations as a lot of them are focused on necessity for the new or expanded facilities, equipment upgrades,

additional staffing, implementation of the new methods, quality system and continued education and training of the experts.

**Scope of services**

The structure of the Centre of Forensic Medicine is appropriate for the functions it currently performs.

One of the biggest weaknesses is the lack of the DNA method in order to identify the persons according to the traces left at the crime scene. Consequently, there is no DNA database.

The structure could be widened, by having a specific unit devoted to the forensic psychiatric and forensic psychological examinations.

**Customers**

The Centre within its limited capabilities seeks to provide the best services for their customers but more improvements are needed in order to optimize the usage of financial resources to avoid unnecessary expenses by conducting the investigations which are not later on collected by the customers. Thus the communication among the Centre and customers are not efficient enough.

The lack of financial resources prevents the development of the Centre of Forensic Medicine and thus the customer does not receive the best service possible what affects the chances to carry out a thorough investigation of a case.

It would be advisable to the Centre of Forensic Medicine to perform a survey to find out the customer views on the services provided, to detect dissatisfaction or get suggestions what should be improved.

**Case load and statistics**

The workloads in - visited regional units of the Centre of Forensic Medicine in the cities of Hincesti and Orhei raise doubts about the level of quality and completeness of the reports issued.

**Staff**

The shortage of the forensic experts is unacceptably high and further steps have to be taken to attract new specialists in this area. The existing number of staff is not proportionate to the number of cases due to be investigated. The forensic experts working in the regional units are overloaded with work.

It is significant to find the way to keep and maintain already current number of the forensic experts and to prevent them from leaving the service.

There is uneven distribution of experts as more forensic experts tend to be concentrated mostly in the big cities and therefore access to the forensic medicine experts is limited or nonexistent in the regions in such way affecting the work of the law enforcement institutions and prosecutors as well.

More training is needed in the area on investigation and reporting the torture and ill-treatment cases as different practices and approaches were detected during the on-site visits.

Additional training is needed for the forensic experts working in the laboratories as well as more of the international experience exchange desired for all of the forensic medicine experts.

### **Facilities**

During the audit the following deficiencies were identified:

- completely inadequate work facilities, storage room and morgue room for the needs of the clinical forensic investigations and medico-legal autopsies in the regional unit of the city Hincesti, working conditions do not comply with any requirements and standards;
- the regional unit in Orhei has a new morgue room but it cannot be used as it is not finished due to the problems of administrative character;
- the central site of the Centre of Forensic Medicine in Chisinau needs some morgue rooms to be renovated, the new ventilation system, appropriate lightening, new tables;
- laboratory rooms do not have enough physical space for proper sample handling and storage, more as well as new laboratory fume hoods needed for the air control;
- the access of the non-staff to the laboratories should be controlled;
- the laboratory facilities are fully occupied and cannot accommodate more staff, new equipment or introduce a new method of analysis.

### **Equipment**

The Centre of Forensic Medicine daily for the laboratory investigations uses outdated equipment what is for now hard to be maintained or calibrated, maintenance is provided only in-house.

The Centre of Forensic Medicine, due to the limited funds, does not have the following basic equipment needed for the regular investigations and considered as a norm for the forensic medicine area:

- digital photo/video cameras;
- different chromatographs for laboratory analysis (like GC/MS);
- functional<sup>3</sup> x-ray equipment to make basic diagnoses or locate the objects such as bullets;
- additional laboratory equipment (microscopes, centrifuges, analytical scales, water distiller and ionizer etc.);
- computers.

For the development of the institution and improvement of the criminal investigations, the DNA method has to be introduced.

The lack of different reference materials (drugs) was also noticed, there were no available written standard operational procedures, the maintenance of the existing equipments is provided on "in-house" bases.

<sup>3</sup> As stated by the management of the Centre the old one exists but it cannot be used due to the lack of the additional equipment needed to process the films.

**Quality assurance**

The following deficiencies affecting the quality of the services provided were noticed, which should be addressed:

- very fragmented evidence on quality matters were observed with no specific and recorded documentation;
- lack of equipment and instruments, suitable to the laboratory facilities and morgue rooms;
- no written standard operational procedures, validated methods, no technical procedural documentation on how to operate instruments and equipments to carry out the tests;
- the document control system is ineffective as staff working in different units has different documents available;
- need for additional documented continuing training for laboratory staff, participation in the proficiency tests and collaborative exercises;
- lack of certified reference materials and collections.

The Centre of Forensic Medicine is collecting the biology material from the unidentified dead bodies without having regulative documentation on reason of collecting, further usage and time for storage.

**Reporting**

Reports of the clinical forensic examinations are short and incomplete, they don't content wholesome information, descriptions and interpretations of the facts as well as no illustrative materials are attached.

**Management and planning**

State financing does not include appropriate support for the forensic medicine service that affects the quality and completeness of the services provided.

The improvement and delivery of more advanced and better quality services are not possible within existing budgetary constrains.

The existing legislation and practice promotes inadequate expenditure of funds, time and staff resources.

**Future prospects**

Besides the findings already described for the Centre of Forensic Medicine the following areas would be important to implement and expand:

- implement DNA method;
- establish national DNA data base;
- develop more modern laboratory services (toxicology, biology) by equipping the laboratories to build more effective capacity;
- create a new unit dealing with forensic psychology and psychiatry;
- implement quality system and acquire accreditation;
- establish computerized data system for the case registration throughout the regional units in the country to monitor the caseloads and to produce fast and reliable statistical data.

## FEASIBILITY STUDY - INTRODUCTION

The statements and the reports from forensic experts play an important role in securing the conviction of the accused persons and therefore much depends upon whether the evidence investigated and put at the basis of the conviction is reliable. Furthermore, in addition to protecting the innocent persons from being convicted of crimes they did not commit, the society needs to be assured that the forensic techniques used are reliable. Forensic service providers, while working closely with the criminal justice system and law enforcement institutions, must remain independent of law enforcement bodies and of any political influence upon them, as well as be objective in order to avoid potential conflicts of interest to serve as an indirect representative of all parties involved such as suspects, victims of crimes, prosecution and defense. Thus, the forensic science is so essential to ensure the justice.

Separate political events in Moldova<sup>4</sup> have outlined already the seriousness of the deficiencies in the present forensic infrastructure. These has been also supported by the opinions and the reports made public by the Council of Europe Commissioner for Human Rights<sup>5</sup>, UN Committee Against Torture<sup>6</sup>, UN Human Rights Committee<sup>7</sup>, and European Court of Human Rights' judgments against Moldova<sup>8</sup> that have all indirectly pointed out the weakness of the forensic investigations where it has had an important role in finding and setting out the truth.

Therefore, within this feasibility study, much attention is put on the importance of having an independent forensic service provider and forensic experts, quality assurance of the forensic expertise and ensured chain of custody, current legal framework, equality of arms and openness of the forensic community and availability of the alternative forensic services and private forensic experts. With regard to the mentioned subjects, only the biggest forensic service providers of the country were evaluated for the purposes of this study.

This study focused primarily on the collection of qualitative rather than quantitative data. This is primarily because the purpose of the study was geared mainly towards the aspects mentioned above and the analysis of current practices related to the existing forensic infrastructure, legal framework, quality measures and accessibility of the forensic services that can not be directly expressed in the quantitative indicators. Also within this study the forensic service and infrastructure starts in the forensic laboratory where an object is received and goes through the procedures, analysis and

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<sup>4</sup> See the Report of the Parliamentary Commission on the investigation of April 2009 events, chaired by Mr Vitalie Nagacevski;

<sup>5</sup> Thomas Hammarberg Report following his visit to Moldova between 25-28 April 2009, to be found here [http://www.ecoi.net/file\\_upload/1226\\_1247652733\\_com-instranet.pdf](http://www.ecoi.net/file_upload/1226_1247652733_com-instranet.pdf)

<sup>6</sup> UN CAT Concluding Observations of March 2010, to be found here <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.MDA.CO.2.pdf>

<sup>7</sup> UN HRC Concluding Observations of October 2009 and Information on implementation of the Concluding Observations as of 18 January 2011, to be found here <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

<sup>8</sup> Corsacov v. Moldova (2006), Gurgurov v. Moldova (2008), Paduret v. Moldova (2010) and other.

interpretation of the results to the presentation of the findings, evaluation and acceptance of the expert's conclusions in court, becoming an evidence. The actions that are being taken at the crime scene is outside the scope of this study but looked at only where a close and indissoluble link in a functional meaning of specific forensic institution is apparent and recognized in connection with the project aims.

## **The Purpose**

The ultimate purpose of this feasibility study is to identify the existing problems in the area of forensic service and to draw up comprehensive and coherent recommendations to improve the whole forensic infrastructure and strengthen the capacity of conducting the objective and reliable forensic investigations.

By implementing the reforms recommended, Moldova can dramatically improve the practice and use of the forensic services; improve the quality of evidence presented in criminal trials and increase fairness and accuracy within the justice system. Of course a formal accounting process should be rendered prior to implementation of any costly reform measures as the analysis of the financial impact was not the subject of this report.

## **The Methodology**

There were few principal methodologies employed during this study. These consisted of the in-depth interviews, discussions, observations and analysis of existing national legislation, regulations as well as case studies and reports provided by international institutions. It must be outlined that a document and "on site" research approach was an integral part of this study as well. This involved consultations with different stakeholders (government officials, judges, prosecutors, lawyers, representatives of NGOs, private entities) of the forensic science in various stages of criminal proceedings. Thus were received many suggestions and various feedbacks, as well as proposals that form the basis for the conclusions and recommendations presented in this study.

[See Annex 2 – List of offices visited and officials interviewed]

## **The Limitations**

There has been detected some limitations and the most important among them are as follows:

- In some cases not all requested information and evidence was obtained to allow for precise conclusions and recommendations;
- due to the lack of accurate data available, it was initially quite difficult to gather actual statistical information on the number and type of the forensic expertise performed from one forensic institution.

## CRIME SITUATION

Located in Eastern Europe between Romania to the west and Ukraine to the north, east and south, the Republic of Moldova with population of 3,560,436<sup>9</sup> as to 1<sup>st</sup> of January 2011 across an area of 33,846 km<sup>2</sup> is a typical European country with the capital Chisinau with 664,700<sup>10</sup> people living in it.

The review of the reports on crime patterns, trends and major threats provides relevant information and reflect main tendencies where necessity of the forensic services might be most required as according to rise or fall of number of crimes, demand for the forensic services is increasing or decreasing.

As the crime rate of the most common types of criminal offences determines the need for the forensic service in a country, these statistics were reviewed. There are, of course, other aspects that influence existence and development of this service, such as common legal and judicial traditions and culture, attitude towards the forensic science as an essential evidence of the proceedings and the understanding of the importance of this area for the investigative, pre-trial and trial stages of a case.

As reflected in the Table 1, the significant increase is detected in the number of total recorded crimes<sup>11</sup> (33%) comparing 2009 and 2010 that directly should affect the workload of the forensic service providers. Certainly it requires deeper analysis of types of crimes to find out which of the forensic disciplines have been influenced due to such an increase.

*Table 1: Recorded crimes, time period 2005-2010*

	2005	2006	2007	2008	2009	2010
Total recorded crimes	27,595	24,767	24,362	24,788	25,655	33,402
from total:						
Homicide	268	255	216	233	240	265
Premeditated severe injuries	395	409	408	385	369	416
Rape	280	268	281	306	264	368
Theft	11,506	9,419	9,724	9,642	9,136	13,646
Robberies and burglaries	1,449	1,102	868	1,161	1,208	1,389
Drug related crimes	2,106	2,101	2,182	2,126	1,879	1,794
Hooliganism	965	848	780	772	767	955

<sup>9</sup> Source: National Bureau of Statistics of the Republic of Moldova, to be found here <http://www.statistica.md/category.php?l=en&idc=103&>

<sup>10</sup> Ibid., <http://www.statistica.md/newsview.php?l=en&id=3319&idc=168>

<sup>11</sup> Source: National Bureau of Statistics of the Republic of Moldova, to be found here <http://www.statistica.md/category.php?l=en&idc=189&>

In addition, the different crime and criminal justice statistics measure different stages of the various proceedings. The authors of this report according to the observations and reviewed statistical information available on the official internet site<sup>12</sup> and from the obtained reports of caseloads of the forensic providers were not able to determine whether the statistics indicated in the Table 1 reflect the registered number of offenses or the number of crimes when criminal case has been initiated. The statistics on crime, indicated in Table 1, are supplied by the Ministry of Interior<sup>13</sup> and might be assumed that they, obviously, reflect the results of the criminal proceedings. However, cases entail a filtering-out and assessment process and the data registered by the Ministry of Internal Affairs evidently shows the situation as it was believed to be at the time when the cases were passed to the public prosecutor.

Thus considering that preliminary investigations which also include forensic investigations are not registered as crimes (in the meaning of the Criminal Procedure Code of the Republic of Moldova) and are not included in the general statistics, this source of data does not provide an adequate foundation for a proper appraisal of the general demand for the forensic investigations.

As separate subject should be highlighted the official statistics on the cases of torture and ill-treatment as they indicate a problem domain in this area and also the demand for the forensic medicine services as well as the important role it may take in a whole process.

According to the data provided by the Anti-Torture Unit of the General Prosecutors Office by July 1 of 2011 the prosecutors had 89 criminal cases opened and in the concrete within the first 6 months of year 2011, the prosecutors have sent 16 criminal cases to courts, in other 47 cases the criminal charges were dropped of various reasons and other 13 cases were suspended. In the same period of time out of 431 of allegations taken into examination, in 325 cases were taken decisions to refuse to open criminal investigation, in 50 cases investigations has been started but in other 56 investigation processes are still pending. 325 cases with allegations of ill-treatment, out of 431, the prosecutor refused to open a criminal investigation, and all 6 cases that where sent to court against police officers charged with torture (article 309/1 of the Moldovan Criminal Code) finished with acquittals<sup>14</sup>. [For more detailed statistics see Annex 1]

The number of official cases by no means reflects the actual scale of the torture and ill-treatment perpetrated in the country and in most these cases cannot be proceeded and have objective appraisal without valuable and qualitative forensic medicine investigation. Wherewith, taking into consideration the fixed number of such litigations, there is need for the forensic clinical investigations and essential role of this

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<sup>12</sup> National Bureau of Statistics of the Republic of Moldova, to be found here <http://www.statistica.md>.

<sup>13</sup> Reference to statistics provided by the National Bureau of Statistics of the Republic of Moldova that it is supplied by the Ministry of Internal Affairs

<sup>14</sup> According to the statistics presented by the Anti-Torture Unit of the General Prosecutor's Office.

process has to be admitted as compulsory within every legal action related to the allegations of torture and ill-treatment.

Further analysis of the forensic infrastructure concerning the statistics is based on the statistical reports of caseloads obtained from the forensic service providers themselves or from the official internet sites.

## **Prevention of torture and other forms of ill-treatment**

Moreover, following its September 2007 visit to Moldova, the European Committee for the Prevention of Torture (CPT) concluded that “the phenomenon of ill-treatment by the police remains of serious proportions”.

The impartiality and quality of the forensic evidence in cases of torture and other forms of ill-treatment has formed the subject of legal argument before the European Court of Human Rights since the first judgment was delivered in 2005. In the case of *Colibaba v. Moldova* (no. 29089/06, 23 October 2007) the Court expressed doubts about the credibility of the forensic medical report, noted with concern that the applicant was taken to the Centre of Forensic Medicine by the police officers who had allegedly ill-treated him and that the applicant's medical examination took place in their presence. In such circumstances, the Court found it difficult to give weight to a medical report based on a medical examination conducted in the presence and under the supervision of the applicant's alleged torturers. In the case of *Padureț v. Moldova* (No. 33134/03 judgment of 5 January 2010), the Court held that forensic medical examination should take place immediately when the allegation of torture is voiced out to secure a proper documentation of injuries. The UN Committee Against Torture<sup>15</sup> and the UN Human Rights Committee<sup>16</sup> that have all indirectly pointed out the weakness of the forensic investigations where it has had an important role in finding and setting out the truth in the of ill-treatment cases. It has been outlined by the legal experts that the discrepancy between the law and the legal practice is unacceptably significant. Lack of training It is particularly important for Moldova do improve forensic services to document exhaustively physical and psychological injuries caused by torture and other forms of ill-treatment in state custody.

In a way impunity is still one of the most serious impediments to the prevention of torture as perpetrators are seldom brought to court and, if they are, then soft sentences that are given for torture is insufficient to prevent torture or other forms of ill-treatment. In a climate of impunity, perpetrators of torture can continue their crimes without risking arrest, prosecution or punishment. Besides adding to the suffering of

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<sup>15</sup> UN CAT Concluding Observations of March 2010, to be found here <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.MDA.CO.2.pdf>

<sup>16</sup> UN HRC Concluding Observations of October 2009 and Information on implementation of the Concluding Observations as of 18 January 2011, to be found here <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

the victims, such a situation leads to a general lack of trust in justice and the rule of law.

## THE FORENSIC INFRASTRUCTURE

The justice system of the Republic of Moldova has long history of usage and practice of the forensic services and it has common features of development, progress and traditions widespread among the ex-Soviet Union countries where the forensic services are provided by institutions within the Ministry of Justice, Ministry of Internal Affairs and Ministry of Health. These institutions form the national forensic infrastructure. Most of the traditional forensic investigations are available and accessible for the law enforcement at the local level as well as a few alternatives within the private sector.

There are no great disparities among the existing forensic service providers but some of them are defined with the respect to available funding, access to analytical instruments and equipment, availability of skilled and well-trained staff. After having visited the main forensic service providers (3 institutions out of 5) in the country, it is quite clear, however, that any approach to change the system needs to be addressed. Although all the forensic service providers are handled by the state, two out of three visited are certainly lacking the resources (funding, staff, and equipment) they need to promote and maintain strong forensic investigation systems and keep supporting the daily activities.

As mentioned before, all the forensic expertise reports and researches are produced and conducted by the experts of the specialised state institutions under the Ministry of Justice, Ministry of Health, and by the Technical-Forensic Unit, as well as smaller subdivisions of this kind in the regions administrated either by the Ministry of Internal Affairs, Centre to Combat Economic Crimes and Corruption, Ministry of Defence<sup>17</sup>, Intelligence and Security Service, or other competent persons appointed as experts by the criminal investigator, prosecutor or the court. Also the Criminal Procedure Code allows in certain types of cases, for the private experts to be involved.

Individual experts, freelancers that work on private basis, may conduct forensic expertise only if they are included in the State Register of qualified forensic experts and the expertise does not relate to criminal offences committed against life, health, liberty and dignity of a person<sup>18</sup>.

The National Centre of Forensic Expertise of the Ministry of Justice represents a coordinating agency in the field of the forensic expertise's theory and practice. It conducts forensic expertise on the basis of the Regulation approved by the

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<sup>17</sup> Not researched within this study as no representative met or interviews conducted as well as no any statistical data obtained.

<sup>18</sup> Article 12 of the Law on Forensic Expertise, No 1086 as from June 23, 2000.

Government<sup>19</sup>. The forensic medical expertise is exclusively in the competence of the Centre of Forensic Medicine of the Ministry of Health. Its activity is also set out by the Regulation approved by the Government<sup>20</sup>.

Knowing that torture often takes place in secrecy, and many torture methods are designed to be as painful as possible without leaving physical marks, the forensic medicine documentation is a key tool to investigate this kind of crimes. As witnessed this is a weak link of used practice by forensic medicine experts in Moldova and additional attention is required. In this aspect also the pressure is put on the State to fulfil obligations under international law to investigate allegations of torture promptly, impartially and thoroughly as it is set out, for example, by the Istanbul protocol. There for so important is to increase the availability of high quality forensic medicine expertise and documentation concerning the allegations of torture, provide access to the forensic medicine documentation as evidence in legal proceedings not only to the prosecution but also to the defense. It has to be made clear among policymakers, legal professionals and public that these requirements are vital to fight impunity for torture.

As the number of registered crimes related to the torture and other forms of ill-treatment is significant so important is to fight impunity by focusing on forensic medicine expertise and forensic evidence that can be used in the prosecution of alleged torture cases in courts. In this area important place and role should be taken by the Centre of Forensic Medicine of the Ministry of Health.

## **The Centre of Forensic Medicine**

Medico-legal autopsies in Moldova are performed at one institution of the forensic medicine – the Centre of Forensic Medicine (CFM) with main central site in Chisinau and smaller units across the country<sup>21</sup>.

According to the Moldovan law, a medico-legal autopsy must be performed if a punishable act has been carried out or is suspected, if the cause of death is not established and the death holds aspects of interest to the police, if the manner of death is unknown, or if an autopsy is considered necessary to prevent suspicion from arising at a later point in time. Within the criminal cases, all legal aspects are governed by the Criminal Procedures Code of the Republic of Moldova, and according to the Article 143 it is defined that medico-legal autopsy is required and is compulsory for the

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<sup>19</sup> Regulation on the National Centre of Forensic Expertise of the Ministry of Justice, No 1052; September 12, 2006.

<sup>20</sup> Regulation on the Centre of Forensic Medicine, No 58; February 4, 2010.

<sup>21</sup> All together there are 35 forensic medicine units of the Centre of Forensic Medicine besides the central site in Chisinau.

determination of the cause of death and the severity and nature of injuries, and these statements form the basis of the work conducted by the Centre of Forensic Medicine. In accordance with the Criminal Procedure Code a forensic expert statement<sup>22</sup> is considered to be a piece of evidence

All the forensic doctors are certified and have been appointed to perform medico-legal investigations, medico-legal autopsies, and forensic clinical investigations. As one of the additional duties performed is death scene investigation.

The CFM consists of 4 separate analytical sections that are referred to specific disciplines applied within the forensic medico-legal area where each of the disciplines concentrate on different types of evidence or procedures, has specific personnel, training needs, equipment and facility requirements. Also, in addition to already mentioned sections, the CFM includes also the Scientific-analytical unit, the Monitoring unit, the Unit of the Forensic medico-legal investigations conducted in Commissions and 35 smaller regional units as well as additional staff responsible for the administrative work and finances.

The Centre of Forensic Medicine provides services in the following disciplines and areas<sup>23</sup>:

- investigations of dead bodies and their parts;
- investigations of the victims and, on the basis of the medical documents and materials from criminal cases, civil cases and other materials, determine the following:
  - the severity of injuries;
  - the state of health, simulation, dissimulation, aggravation, self-harm;
  - disputed state of sexual aggression and incidents of a sexual nature;
  - alcohol and drug intoxication;
  - the age of a person;
  - work disability.
- biological;
- establishment of paternity-maternity (serology);
- abuse of the toxic substances;
- forensic medico-legal traces, identification of skeletal remains;
- histopathology;
- other forensic investigations, in accordance with the applicable law.

The Centre of Forensic Medicine is not involved in or associated with psychiatric either psychological forensic expertise as these are out of the scope of the services provided.

A lot of the resources and a considerable amount of work are dedicated to the detection of the severity of injuries (forensic clinic) on live persons, either in light of

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<sup>22</sup> Art. 93 of the Criminal Procedure Code.

<sup>23</sup> Defined by the Art. 12 of the Regulation on the Centre of Forensic Medicine, No 58 as of February 4, 2010.

the medical documents or the preliminary medical reports. In this field of the forensic clinic, the forensic expert deals mainly with the examination of possible victims. These may be the victims of assault, including sexual assault and child abuse. Forensic doctors may also be called to the crime scene where dead body is found.

During the years of 2007-2010, a total of 37,442<sup>24</sup> medico-legal autopsies were performed, annually it compiles the average number of 9,360.

The area of the forensic medico-legal investigations has significant problems reflecting the insufficient financial resources available, lack of appropriate equipment and instruments to perform analysis and investigations at the acceptable level of quality, shortage of the forensic experts, and insufficient facilities for conducting forensic medico-legal autopsies, lack of training. In addition, the authors of this report have found inconsistencies and limitations in the existing laws and regulations as well as other shortcomings for providing independent forensic medicine services described within this report.

One of the biggest weaknesses in the forensic service is the lack of the DNA analysis. None of the forensic providers in Moldova is conducting the DNA analysis in order to identify the persons that left traces at the crime scenes, to investigate the rape cases and other violent crimes. Consequently there is no DNA database. This important tool for identifying possible suspected persons, to solve variety of crimes is not used. The Centre of Forensic Medicine acknowledges this deficiency and tries to convince the Ministry of Health to allocate the necessary funding.

## **The National Centre of Forensic Expertise of the Ministry of Justice**

The main responsibilities and rights of the National Centre of Forensic Expertise are set out by the Regulation No.1052 of September 12, 2006. According to this regulation, The National Centre of Forensic Expertise has the leading role<sup>25</sup> in the forensic area within the Republic of Moldova and quite a few articles are dedicated to the functions and tasks of this institution as the leading one in this field of services.

The main clients of the Centre are courts and prosecutors office. The forensic investigations are performed according to the assignments put forward by these main entities. All together there are 49 forensic experts<sup>26</sup> employed and during 2010 there were conducted: 1687 forensic expertise reports within criminal cases, 901 within civil

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<sup>24</sup> All the statistical data related to the caseload of the Centre of Forensic Medicine (CFM) hereinafter has been obtained during the external audit and supplied by management of the CFM on July, 2011.

<sup>25</sup> Art.12 Section 3 of the Law on Forensic Expertise No 1086 as of June 23, 2000 and Art. 2 of the Regulation on the National Centre of Forensic Expertise, No.1052 as of September 12, 2006;

<sup>26</sup> All statistical data obtained during the interview with the Director of the National Centre of Forensic Expertise Mr.Gheorghe Cretu, July 5, 2011.;

cases and 610 forensic investigations based on the requests came from private persons. A wide range of the forensic disciplines are covered and, according to the data obtained, 34 different kinds of forensic investigations have been performed annually. The most requested ones are handwriting (total of 681 per 2010), the veracity of the documents (274 in 2010), the circumstances of the traffic accidents (290 in 2010) and other forensic disciplines.

As stated by the director<sup>27</sup> of the National Centre of Forensic Expertise, the institution has insufficient financial funds allocated by the Ministry of Justice and with the existing budget mainly covers the experts' salaries. Daily activities, investigations, materials and maintenance of the equipment are covered from the financial resources received from private persons charged for the forensic investigations conducted according to their requests besides the criminal and civil cases. Thus the Centre is financing the forensic expertise within criminal cases not from a state budget as it should be, but is working on principles more appropriate for a private company than state entity. The Centre's budget is mostly formed of financial means that come from providing forensic services to private entities and within civil cases. These resources are then spent to perform forensic examinations requested within criminal cases, which should have been financed by the State<sup>28</sup>.

One of the tasks that should be mentioned is that the Centre has the obligation to maintain the State Register of the Certified Forensic Experts<sup>29</sup>. As confirmed by the director of the Centre, the electronic Register, accessible to the public and the stakeholders<sup>30</sup>, has been established quite recently and is used only for few years. The forensic experts are added to the Register on the basis of the information provided by the state forensic service institutions and private experts after they have passed the certification procedure. Keeping the Register is more of a formal task for the Centre, as it doesn't perform any tests on the qualification of experts (except on its own experts). It only verifies the documents submitted (except the private experts as there is a different procedure that applies to them), as each of the forensic service providers is responsible for the certification of their own forensic experts.

## **The Technical-Forensic Unit of the Police Department of the Ministry of Internal Affairs**

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<sup>27</sup> Director Mr.Gheorghe Cretu;

<sup>28</sup> Art.15<sup>2</sup>, point 2 and Art.34, point 3 of the Law on Forensic Expertise No.1086 as from June 23, 2000.

<sup>29</sup> Art.1 of the Regulation on the State Register of Certified Forensic Experts No.1147 as from September 22, 2003.

<sup>30</sup> State Register of the forensic experts, to be found here <http://www.justice.gov.md/ro/central-national-expertize-judiciare/>

The Technical-Forensic Unit (TFU) is part of the Police Department structure within the Ministry of Internal Affairs (see Chart 1). The chief of the TFU reports to the chief of the Police Department. This unit does the methodological monitoring over the regional technical-forensic units located at local Police Commissariats in conducting crime scene investigations and forensic investigations. This system was established to provide police with the forensic services and crime scene investigation and has not had major changes since then.

The TFU mainly conducts all the most common forensic researches that includes dactiloscopia, toolmarks, shoemarks and tiremarks, questioned documents, handwriting, drug analysis, traffic accident, firearms and explosive investigations, trace materials, fibers, hair, paint, glass, ballistics and other<sup>31</sup>. Within smaller regional technical-forensic units of the police commissariats are performed investigations which do not require large financial investments in different equipments such as dactiloscopia, handwriting, questioned documents, shoeprints, toolmarks.

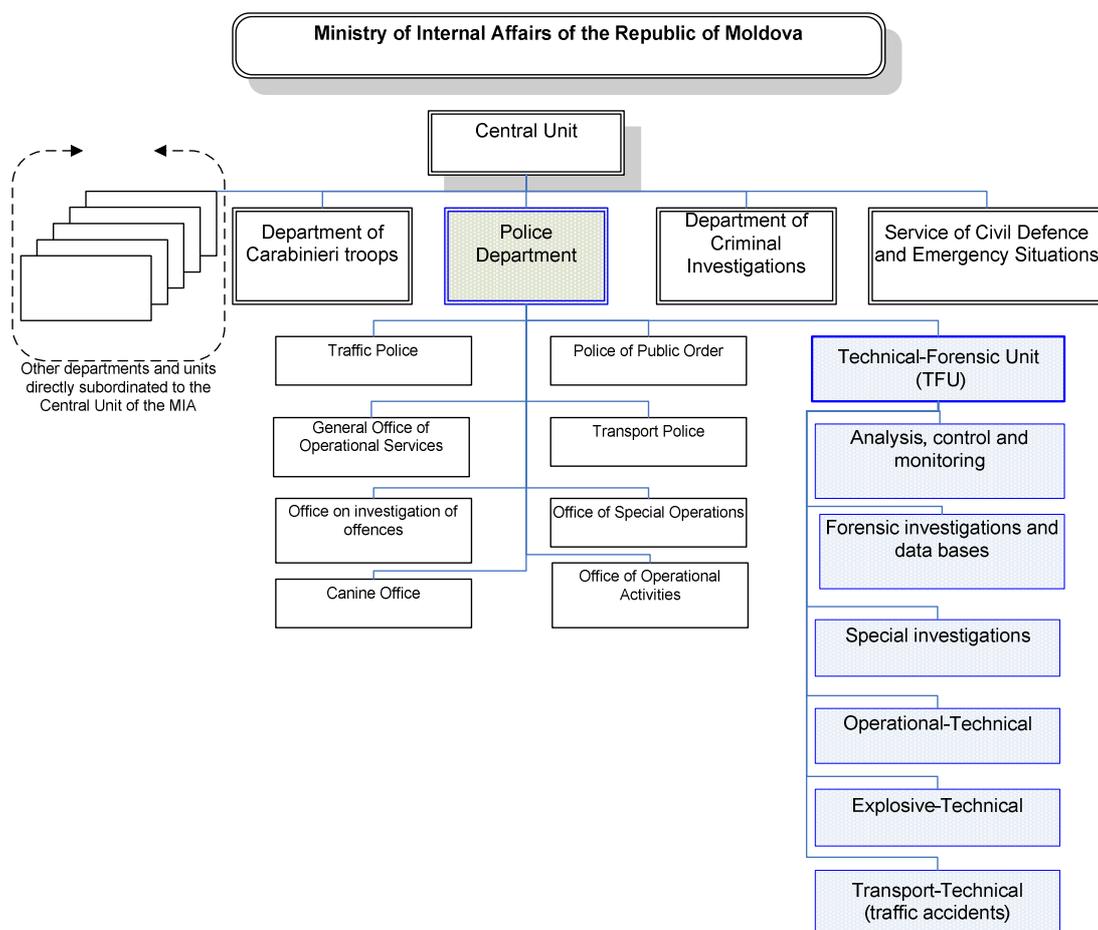
During the time period of 12 months of 2009, the TFU performed 4739 forensic expertise and 6858 scientific-technical investigations.<sup>32</sup>

***Chart 1. The structure of the Ministry of Internal Affairs of the Republic of Moldova***

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<sup>31</sup> Information obtained from the official web page of the Ministry of Internal Affairs. [http://www.mai.md/ru/dtc\\_ru](http://www.mai.md/ru/dtc_ru)

<sup>32</sup> Statistics obtained from the official web page of the Ministry of Internal Affairs. <http://www.mai.md/node/342>



It is very important to note, that the TFU within their scope of services does not perform investigations of DNA and there is no DNA data base. This kind of investigation is not available for the law enforcement institutions and is not used or bought from commercial providers in country but in some high priority cases is requested to be performed abroad<sup>33</sup>.

The TFU is responsible for the maintenance of the automated bullets and cartridges identification system and has the access to the automated fingerprint identification system (AFIS) to verify the latent prints collected at the crime scenes while the system and the ten-print cards, are maintained by another institution of the Ministry of Internal Affairs.

Based on the number of staff involved and the cases investigated<sup>34</sup>, the TFU is the largest forensic service provider in Moldova. Its main customers are investigators from the Department of Criminal Investigations of the Ministry of Internal Affairs<sup>35</sup>, and it

<sup>33</sup> As stated by the management of the TFU the DNA analyses are requested in Romania.

<sup>34</sup> Statistics obtained from the official web page of the Ministry of Internal Affairs to be found here <http://www.mai.md/node/342>

<sup>35</sup> Statement made by the management of the TFU during the interview. June, 2011.

conducts scientific-technical investigations and forensic expertise according to the assignments issued by the investigators of this Department.

All the staff working for the TFU, central office and regional units, are police officers whose criteria for employment, training and continuing education is subject to laws and regulations applicable to the Police.

During the meetings and interviews with the management of the TFU, the management has assured that the unit has no direct or indirect influence exercised on them from the Police management despite the fact that they are directly structurally subordinated to the Police (see Chart 1), being part of the law enforcement institution and in all ways (financially, structurally, administratively) depend from the same source as their main customer. There are no written procedures referring to the experts independence provided to the authors of this study, apart from the general guidelines included in the common legislation regulating activities, rights and responsibilities of the forensic expert.

Although it has been outlined that the unit benefits from an appropriate funding to ensure it provides qualitative forensic services that meet the requests, the significant contributions to obtain new expensive laboratory equipment are done by donors within international funding projects. The TFU is looking for the international partner to establish the DNA laboratory.

Relating to the future developments and plans for expanding forensic area towards the DNA the discussion has been initiated as intentions by both main forensic providers - TFU and The Centre of Forensic Medicine are to have DNA laboratories.

### **Recommendation<sup>36</sup>**

**Short-Term** Taking into account the fact that the DNA is very expensive to implement and maintain due to the expensive equipment and kits used, high requirements for the quality measures and contamination threats, this subject has to be discussed among forensic entities and also within higher level of management to result in the best decision to be taken by the Government.

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<sup>36</sup> The recommendations within the subject have been sorted according to the timeframe to be implemented (short-term or long-term). By "short-term" recommendations, this study means measures that require relatively a short period of time, from 1 year to 3 years, to be implemented and are reasonable as to the costs. By "long-term" recommendations, this study refers to the measures that require both: financial support and strategy reform paper that may need longer than 3 year to be put in practice.

## **The crime scene investigation**

As crime scene investigation is out of the scope of this study, this stage of the forensic process has not been researched in detail. However during the interviews and meetings with the law enforcement representatives, this aspect has been discussed and examined in the context of the regulated procedures to acquire lawful evidence, secure the chain of evidence from the crime scene to the forensic laboratory, set responsibilities of the first responder when arriving at the crime scene, specialists responsible for the technical crime scene investigation and their subordination to the police investigator.

Crime scene investigations are conducted by specialists working within the Technical-forensic investigation units structurally subordinated to the regional police stations of the Ministry of Internal Affairs. The main tasks of the specialists are to collect evidence, pack them, prevent any loss of possible traces, and collect samples at the crime scene, make photos, all in all perform core and basic crime scene investigation. According to the Article 87 of the Criminal Procedure Code the specialists are subordinated to the police investigator and are obliged to follow legitimate orders of the investigator at the crime scene.

Forensic doctors are invited to conduct preliminary investigations of dead bodies in cases of suspicious deaths.

Two different institutions are involved in the crime scene investigation: the specialists working for the Technical-forensic investigation units of the regional police stations of the Ministry of Internal Affairs that is part of the law enforcement system, and forensic medicine experts working for the Centre of Forensic Medicine of the Ministry of Health. The Criminal Procedure Code allows the evidence to be collected by the investigator alone. But then the nature and the process of the collected evidence can be different.

As the evidence recovery and interpretation at the crime scene is the essential part of the forensic investigations and analysis performed by the forensic laboratories and are as good as professionalism of the specialists conducting the crime scene investigation, this part should be covered by specific attention reflected in special Standard Operational Procedures (SOP) approved and used by the crime scene specialists. The authors of this report during interviews were not introduced with such SOPs and additional focus was not put on this scope of the forensic process.

## Private experts and private entities offering forensic services

As mentioned previously, the individual experts, freelancers that work on private basis, may conduct forensic expertise only if they are included in the State Registry of qualified forensic experts and the expertise does not concern criminal offences committed against life, health, liberty and dignity of a person<sup>37</sup>.

At the time this study is produced, there are 24 private experts of different categories certified and included in the State Register<sup>38</sup>. Most of the classical forensic disciplines are covered as these private experts have previously worked for one of the 2 state forensic institutions and have been moved from one section of the Register to another one without any specific procedure. Additionally such forensic areas are represented as building/reconstruction expertise (6 experts certified), traffic accident investigation (1 expert), forensic audit expertise (1 expert), forensic psychology (1 expert).

These experts can be selected either by the prosecutors and the judges relating to the investigations for a criminal case or by one of the parties within a civil case. Their reports are recognized and accepted by the judicial entities just as the reports provided by the experts working for the state forensic institutions.

It should be noted that the legislation has restrictions concerning the forensic medicine area and according to the Regulation on the Centre of Forensic Medicine, the forensic medico-legal investigations and expertise can be performed only by the forensic doctors working for the Centre of Forensic Medicine and employees of the Forensic Medicine Department of the State University of Medicine and Pharmacy "Nicolai Testemițeanu"<sup>39</sup>.

The authors of this report met with the representatives of the private forensic expert bureau SRL "Credibilitate – Birou de Expertise" whose objective is to provide forensic expertise within the criminal and civil cases in different areas and one of their focus is the forensic psychological expertise. This kind of expertise is still new and not very demanded but taking into account the number of torture and ill-treatment cases registered this discipline should be applied more in practice. [More on aspects of use of psychological and psychiatric forensic expertise see Section "Alternative forensic expertise and private experts"].

Such kind of forensic expertise provided by the private experts are allowed by the legislation although not very practised, as emphasis is put on the state forensic service

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<sup>37</sup> Article 12 of the Law no Forensic Expertise, No 1086 as from June 23. 2000.

<sup>38</sup> State Register of the forensic experts, to be found here <http://www.justice.gov.md/ro/central-national-expertize-judiciare/>

<sup>39</sup> Art. 13 of the Regulation on the Centre of Forensic Medicine, No.58. February 4, 2010.

providers and if the forensic discipline is accessible within these institutions there has to be a very strong argument given by the defence within the criminal case to involve the expert from the private sector. According to the information gathered by the authors of this report, such cases are very rare<sup>40</sup>.

One of the areas currently facing problems due to the weak legislation framework is the forensic psychology. The need to have such expertise is considerable because of a great number of cases where such an investigation would be useful in light of the character and nature of the offence and persons involved (ill-treatment cases, child abuse, sexual offences, torture cases) when physical evidence is temporary.

Further on, the subject relating to the private experts, their availability and their role are much more analysed within following sections of this report.

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<sup>40</sup> Statements given by the public defense lawyers during the interview on July 5, 2011 and by the lawyer Mr. Valeriu Plesca on July 7, 2011.

## THE LEGAL FRAMEWORK

The Moldovan legal framework regulates the use of evidence and forensic services primarily through the Criminal Procedure and Civil Procedure Codes, as well as by the Law on Forensic Expertise no. 1086 as of 2000.

There are some more regulations defining the scope of work, the rights and responsibilities of the state forensic service providers, such as;

- Regulation on approval of the Register of Certified Forensic Experts No 1147 from September 9, 2003;
- Regulation on compensation of employees working within the areas of forensic medicine, forensic-technical and forensic-medicine investigations No 122 from February 2, 2007;
- Regulation on the National Centre of Forensic Expertise of the Ministry of Justice No 1052 from September 12, 2006;
- Regulation on the Centre of Forensic Medicine No 58 from February 4, 2010.

All of the above mentioned laws and regulations have been the subject of the research done by the authors of this report and every issue related to the forensic infrastructure in Moldova has been assessed in accordance with the statements included in these legal acts as well as considering the requirements covered by the international documents and standards from this area.

Besides the legal acts, some internal documents issued by the Ministries administrating the state forensic service providers were reviewed, as well as documents regulating the internal procedures issued by the management of the forensic institutions themselves were the subject of the research, as these documents cover and describe such an important for the forensic infrastructure matters in details as the certification process of the experts, the work procedures to be followed and clearing cooperation topics among forensic institutions and the stakeholders.

### Forensic investigation and forensic report as evidence

Criminal Procedure Code states that “evidence”<sup>41</sup> is factual/circumstantial element obtained through legal means that serve to determine the existence or inexistence of a criminal offence, the identification of the offender, the guilt and the most important circumstances to establish the truth. By “legal means” the Criminal Procedure Code states to be:

- the statements of the suspect, accused or charged person,
- the statements of the crime victims, witnesses,
- the forensic reports,
- *corpus delicti* (material evidence),

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<sup>41</sup> Art. 93 of the Criminal Procedure Code, March 14, 2003.

- protocols of any criminal investigations and court hearings,
- documents,
- audio and video recordings,
- scientific and forensic medicine findings.

Through this list of exhaustive legal means by which any criminal investigation gathers evidence, the Criminal Procedure Code attempts to avoid any violation of the right to defence and of the presumption of innocence while securing a lawful conviction for the crime. More specifically, in Article 94 of the Criminal Procedure Code we find those conditions that would lead to the exclusion of evidence from the file: use of violence, threats and other means of constraints; violation of the right to defence or to have an interpreter; by an unauthorised person; from a source that may not be verified in court; by using methods that contravene to scientific regulations; gathered with violation of the criminal procedure provisions and other.

It is therefore paramount that any forensic report concluded in criminal proceedings is in line with the requirements set out by the law and with due regard to the procedural rights of parties involved. Forensic reports constitute one of the legal means by which a criminal charge and conviction can be based upon. It is even more so when the charge concerns torture, ill-treatment, manslaughter, bodily injuries or sexual offences.

Article 97 of the Criminal Procedure Code makes it mandatory, among others, to have a medical forensic report to determine the cause of death and the gravity of the bodily injuries upon which the criminal investigators later base their decision to open or not a criminal case.

Some provisions can be found in the Misdemeanour Code (former Code of Administrative Offences) that was found by the European Court of Human Rights in the case of Ziliberg v Moldova (judgement of 2005) to be of criminal nature and therefore requiring under Article 6 of the European Convention to secure same rights to individuals charged with misdemeanour offences. Article 425 of Misdemeanour Code states the forensic expert report as one of the legal means by which the facts of case can be established and then indicates that same principles of the criminal procedure code are applicable to gathering and handling of evidence in misdemeanour offences.

The Civil Procedure Code, on the other hand, links the gathering of the evidence to the claims that parties in a civil case bring to court. The “evidence”<sup>42</sup> is considered to be circumstantial elements lawfully sourced that serve to determine the truth, to justify the applicant’s claims and the objections of the plaintiff, as well as to establish the facts important to reach a fair solution on the case. By “lawful sources” the civil procedure law means:

- the testimony of the parties involved,
- the affidavits of witnesses,
- the written documents,
- video and audio recordings,
- material evidence,

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<sup>42</sup> Art. 117 Evidence. Civil Procedure Code

- experts' conclusions.

And again, civil procedure law requires that any evidence should be secured with due respect to the rights of all parties involved and in accordance with the requirements set out by the law. Any evidence which was unlawfully obtained or its source cannot be verified, will be excluded from the file.

Same principles of legality and impartiality are included in the Law on Forensic Expertise, scientific and legal medicine findings, No. 1086 as of 23 June 2000. Several of the starting articles of the Law (3, 4, 5 and 7) state that the forensic expertise is based on the principles of legality, independence, impartiality and plenitude of the researches conducted; that the expert should be independent of the parties involved and of the one ordering the report; that due regard is to be given to the human rights and liberties of the person when the expertise is conducted.

To sum up, we see that the procedure (criminal, civil, misdemeanour) law and the Law on Forensic Expertise sets out the principles of legality and admissibility of evidence as well as the procedure to obtain a lawful evidence to support a charge/conviction or claims/objections in a case.

## **The chain of custody**

We find no exact and clearly stated provisions on the chain of custody of evidence or proper handling of evidence. Some exceptions can be found, as for example those mentioned in Article 158 of the Criminal Procedure Code that refers to the *corpus delicti* (material evidence) where an object can be presented as evidence if the following conditions are met:

- detailed description, sealing and other measures taken immediately after the discovery of the object, excluding the possibility of replacing or influencing it by substantial changes that would destroy possible traces or change the characteristics of the evidence;
- the evidence is obtained during the following legal procedures like: inspection; search; seizure of objects; and also passed by the actors of the criminal procedure after the official questioning.

All the conditions mentioned above are of a general nature and set common requirements for any object to be legally recognized as evidence in a criminal case. However, the authors of the report are unable to obtain or get acquainted with the written procedures or instructions that define the measurements, tools and techniques that form the chain of evidence and which should be abided to by the investigators and forensic experts.

As the purpose of the chain of custody is to prove that evidence has not been altered or changed from the time it was collected at the crime scene to its way to the forensic laboratory when it gets handled by the expert, it should include documentation on how and by whom the evidence was gathered, kept, transported, investigated and preserved for any legal procedures. A high importance should be given to the

standardised and approved procedures, protocols within the every stage of a criminal investigation process so that every link is documented at least by the date and by the individual that handled it. If the chain of custody is broken and evidence cannot be accounted in one step of its “journey” from crime scene to the forensic laboratory, it might be rendered as inadmissible and useless to the case.

Moreover it is important due to the regulation put in the Article 159 of the Criminal Procedure Code stating that all evidence, if permitted by the nature and size of the object, should be added to the criminal file and kept with it. All the evidence, for example, obtained during the crime scene investigation (performed by the specialist) should be handed over to the police investigator responsible for the case. After the completion of the written assignment for the forensic investigation the police investigator supplies the evidence with the order for the forensic investigation to the forensic expert, which, in some cases, might be the same specialist performing the crime scene investigation and discovering the same evidence. So the evidence according to the legal provisions “travels” from the crime scene through the hands of crime scene specialist finding, fixing and packaging the object to the police investigator and afterword to the forensic laboratory.<sup>43</sup>

Imperfections of the existing system in handling the evidence with the case file was observed on sites as well as the lack of clearly stated system of the labelling, packaging and transportation<sup>44</sup>. As admitted by the management of the police criminal investigation department<sup>45</sup> the difficulties rises as police investigators has inappropriate facilities where to store the evidence while the case is at the stage of investigation and due to the variety of size and characteristics of the objects to be kept with the case file often they are left unwatched and at the unsafe places. Thus the problems occur to assure the whole chain of custody and it is apparent that present system has its imperfections and obvious is the lack of internal procedures to secure the circulation of the evidence from the crime scene to the laboratory.

Some substantial problems of these characteristics were noticed also relating to sample handling within forensic medicine area as regional units of the Centre of Forensic Medicine don't perform forensic medicine laboratory analysis and all samples are delivered to the central site in Chisinau and, it must be admitted, that it is very apparent the lack of standardised procedures of the sample handling and lack of system proving the existence of reliable and traceable chain of custody as well as appropriate facilities suitable for the storage of samples and evidence. Although the specific article<sup>46</sup> determines that biological samples obtained during the medico-legal

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<sup>43</sup> Netherlands, Sweden and Finland have a system where a crime scene investigator is responsible for requesting the forensic examinations for the evidence collected at the scene. The police investigator receives the ready forensic reports with evidence where a crime scene investigator is able to explain and interpret the forensic reports in relation to the specific crime scene and/or place where evidence has been found and collected. This is an important aspect as the crime scene investigator when collecting the evidence does it with the meaning and knows what kind of the forensic examination this concrete evidence is suitable for and what can be found out.

<sup>44</sup> Acknowledged also by Gheorghe Malic, Head of the Criminal Investigation Department during the interview. July, 2011.

<sup>45</sup> Ibid.

<sup>46</sup> Art. 13., Regulation on the Centre of Forensic Medicine No 58 as from February 4, 2010.

autopsies and investigations of the live persons within the regional units of the Centre of Forensic Medicine should be “packaged properly”. Such article is appropriate if followed by some guidelines on how it should be done, where and in what conditions samples should be kept, what is the system and ways of delivery to the forensic laboratory.

**Recommendation:**

**Short-term** Besides the general requirements set by the Criminal Procedure Code and other Regulations the forensic service providers should establish routine procedures (Standardised Operational Procedures) to ensure reliable and traceable chain of custody especially for the evidence which might be the subject to the external influence and by their nature are not unique and identifiable (biological samples, fibers, drugs etc.).

## The rights and the obligations of the forensic expert

Both, the expert and the specialist can be prevented from entering in a case and do an expert report or provide assistance, if any party in the proceedings proves the expert or the specialist ineligible (conflict of interests, family or personal relationships with any party involved, prior involvement in the case in a different capacity, dependence of any party and other).<sup>47</sup>

The main obligations of the experts involved in a criminal procedure is to include in the report answers to the questions addressed to them that reflect their own opinions, to separate their expert opinion from the ones identified in manuscripts or computer programs, to refuse from providing an answer that oversteps their field of expertise or whether the materials provided for the expertise are insufficient to form conclusions, to secure the confidentiality of the information they come across while doing the expertise or participating in a case and to appear before the criminal investigator or the court to answer the questions from the parties in the proceedings including about their proficiency, experience and education.<sup>48</sup> The experts involved in a civil procedure must present their explanations before the court as many times as they are required to do so. The court may fine the expert with up to 500MDL (aprox. 25 Euro) and oblige to cover its own expenses if the expert fails to appear before the court with no reason, changes the conclusions provided in writing in the report during a court hearing, refuses to do the forensic report when he/she is obliged to or refuses to present the materials used for the report<sup>49</sup>. The Law on the Forensic Expertise No. 1086 adds that the expert has the obligation to undertake an exhaustive research and present well-founded and objective conclusions; to provide additional explanations if required by the authority that appointed the forensic expertise; to withhold from conducting a

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<sup>47</sup> Art. 89 of the Criminal Procedure Code, art. 151 of the Civil Procedure Code.

<sup>48</sup> Art. 88 paragraph 3 of the Criminal Procedure Code.

<sup>49</sup> Art 154 of the Civil Procedure Code.

forensic expertise if there are circumstances that makes him/her ineligible; to secure the maximum integrity of the objects and materials put for examination<sup>50</sup>.

While performing a forensic expertise, the experts have the right to see materials on file that may help them answer the questions addressed, to ask for supplementary documents and ask questions to any party involved in the case, to provide conclusions and information on issues that they have not been asked about but which, in the expert's opinion, may help find out the truth in the case<sup>51</sup>. The expert may as well withheld from proceedings with the forensic expertise before consulting the parties or the authority that ordered it, if the expertise would alter significantly the nature and the quality of the materials put up for the examination<sup>52</sup>. The Law no. 1086 adds that the expert may appeal to court the action of the authority that ordered the forensic expertise if this order violates the expert's rights; to request that the forensic expertise be conducted in a commission or be a complex expertise; to express his/her own objections to wrong interpretations given to his conclusions by the parties in the case; to refuse to conduct the forensic expertise<sup>53</sup>.

This last one right of the experts, to refuse to conduct a forensic expertise when appointed by the court or prosecutor, is legitimate only under certain circumstances<sup>54</sup>:

- when there was a violation of the procedure when a forensic expertise was ordered which renders the expertise as such impossible to be done or prevents it from being done,
- the questions addressed to the expert oversteps his field of expertise,
- the materials presented for the expertise are insufficient,
- the expert lacks conditions, methodology and technical capacity to do the expertise,
- there is a danger to the expert's health and life which overcomes the usual risks of the profession,
- failure to deliver the payment for the expertise.

In any other circumstances, any refusal to perform a forensic expertise that is overstepping these grounds may impose a sanction on the expert or he/she may be obliged by the court to perform the forensic expertise. For example, *in the case of Eugenia Barbarosie against the National Centre of Forensic Expertise*, the Supreme Court of Justice agreed with the applicant that the refusal of the defendant to perform the forensic expertise on the equipment (part of the criminal investigation) is unlawful, oversteps the grounds provided in Article 11 of the Law on Forensic Expertise and violates the equality of arms for the parties involved, in particular for Eugenia Barbarosie. The Centre was obliged by the court's decision to perform the forensic expertise required and produce the report<sup>55</sup>.

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<sup>50</sup> Art.10, Law on Forensic Expertise No 1086 as of June 23, 2000.

<sup>51</sup> Art. 88, Criminal Procedure Code

<sup>52</sup> Ibid., Art. 154.

<sup>53</sup> Art. 9, Law on Forensic Expertise No 1086 as of June 23, 2000.

<sup>54</sup> Ibid., Art. 11.

<sup>55</sup> See case file no. 3r-576/08 Eugenia Barbarosie against National Centre of Forensic Expertise, Supreme Court of Justice decision of 10 April 2008.

## The procedure of ordering a forensic expertise

We have seen that the Law on Forensic Expertise No. 1086 differentiates between the report of forensic expertise and the concluding report with scientific or legal medicine findings. The Criminal Procedure Code does the same by having two different sections that prescribe the procedure of having any of the two reports produced in a criminal case. Section VI states that when there is an imminent danger of losing evidence or altering the facts of the case, the criminal investigator may order a concluding report to be done by a specialist.

The article 139 of Criminal Procedure Code states that a concluding report under such circumstances would be done typically by the specialist that works for the criminal investigation unit. Although a chance that it may be done by other specialist from other institutions as well, is not totally excluded. The practice indicates that it is indeed the specialist of the criminal investigation body that produces the concluding reports in a criminal case when is needed and **this comes directly against Articles 88 and 86 of the Criminal Procedure Code that makes unfit a specialist that is dependent on any of the parties in a case.**

Either the criminal investigator or the court present the materials and the information, states the object, questions and the time limit by which the specialist is bound in producing the report. If the examination of the suspect or the victim is mandatory, the court or the criminal investigator will secure their presence. All the scientific or legal medicine findings will be included in the concluding report. If these are found incomplete or the conclusions unclear, a forensic expertise will be appointed *ex officio* or at the request of the parties involved<sup>56</sup>.

Section VII states that a forensic expertise is ordered by the criminal investigator or the court *ex officio* or at the request of the parties involved to establish the circumstances with evidentiary importance for the criminal case within the criminal process. Such circumstances have been recognised to be the cause of death, the gravity of bodily injuries, the physical and psychiatric state of health of the suspect or the accused, the age of the accused or the victim, the physical or the psychiatric state of health of the victim or the witness<sup>57</sup>. In the decision ordering the forensic expertise, it should be indicated<sup>58</sup>:

- the authority or the party requesting the forensic expertise;
- the reasons to have an expertise;
- the documents, materials and objects put at the disposal of the expert indicating in what circumstances these were found and collected;
- the questions for the expert to answer;
- the name of the institution and the name of the expert;
- the time limit within which the report should be completed and presented.

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<sup>56</sup> Articles 139 – 141 of the Criminal Procedure Code.

<sup>57</sup> Ibid., Articles 142- 143 .

<sup>58</sup> Ibid., Art. 144.

The expert and the parties involved in the proceedings are informed about this decision and they are allowed to object to the questions, ask that additional questions be considered and recommend their own expert to take part in this forensic expertise<sup>59</sup>. This decision becomes mandatory for the expert.

It has been identified during the interviews with the representatives of the prosecutor's office and lawyers, that rarely are the parties in a criminal case informed in due time about a forensic expertise being ordered. The practice has been formed that the criminal investigator and the prosecutor use same set of questions in analogous cases to include in their decisions ordering forensic expertise, inform the parties and their lawyers after the forensic report has been produced and presented, and then either avoid responding to lawyers' requests for an additional expertise or submit the criminal case to the court with the requests unsolved, leaving it to the court to decide.<sup>60</sup> Either way, such a deficient practice leads to a violation of a reasonable time for investigation and examination of a case, violates the presumption of innocence, strips the victim of the right to an effective remedy and the proceedings of its fairness.

### **Recommendation**

**Short-Term** Practice should be amended with due regard to fair trial guarantees and the presumption of innocence, so that the defence lawyers enjoy same procedural rights as the accuser- the prosecution, in obtaining reliable forensic evidence as Criminal Procedure Code prescribes. Make use of trainings and disciplinary proceedings for the investigators and prosecutors who act contrary to the Criminal Procedure Code.

There are four categories of forensic expertise: in commission, complex, additional and counter-expertise<sup>61</sup>. *Forensic expertise in commission* is conducted by two and more experts that have same profile, work together on the research and provide collegial answers to the questions. Those experts with different opinion from the one formed by the majority, may write a separate opinion and attach it to the report (civil procedure) or present their own individual reports (criminal procedure). If an institution is appointed responsible to conduct a forensic expertise in a case, the head of this institution is at liberty to decide how many experts will be involved to reach collegial conclusions within the time limit imposed to satisfy the questions addressed. *A complex forensic expertise* means that two or more experts of different profiles are involved to secure those conclusions that criminal investigation is seeking to confirm or infirm. The expert will only sign those parts of the report that illustrates his/her proficiency, area of expertise. *Additional forensic expertise* is requested when the report is unclear or incomplete. The expertise will be redone by the same expert or by the other one. When the conclusions presented by the expert are unfounded, or where there are doubts on their righteous, or where the procedure has been violated, a *counter-forensic expertise* may be requested from other expert(s). During this

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<sup>59</sup> Ibid., Art. 145.

<sup>60</sup> Statements made during the interview that has been conducted on 5 July 2011 by the authors of this report with Ms Natalia Molosag and her colleagues from the Public Defence Lawyers; with Institute of Human Rights in Moldova (IDOM).

<sup>61</sup> Article 146 – 148, Criminal Procedure Code; Articles 156, 157, 159 of the Civil Procedure Code; Articles 15/3 – 18 of the Law on Forensic Expertise No 1086 as of June 23, 2000.

forensic expertise, one can question the methodology used by the previous experts. The decision ordering counter – forensic expertise shall explain the reasons for it and previous expert(s) can be questioned without being part of the new forensic expertise.

To sum up, it might be concluded that all of the laws and regulations mentioned above covers most of the necessary requirements for the forensic experts to conduct objective and reliable forensic investigations and expertise. Even more the regulations<sup>62</sup> governing the activities of the state forensic service providers and forensic experts relating to their responsibilities and obligations overlap and in some of the details are different. They are not aligned and harmonised among each other what can be explained by the difference in the dates adopted and by the lack of the coordination and communication between forensic institutions in such important matters. It was also noted by the authors of this report that there were no one unified communication system established and no efforts put to solve the common problems. The only activities done are rare written correspondence at the Ministries level as the forensic institutions are managed by different governmental' entities.

**Recommendation** In order to arrive at the most effective developments and solutions for the whole forensic infrastructure, a common system (independent forensic board) should be established consisting of the representatives from all the forensic service providers, including private experts.

The Criminal Procedure Code sets out that the requests for the mandatory forensic expertise<sup>63</sup> be drawn within an opened criminal case but it does not oblige the investigator to initiate the criminal proceedings in such a case. It was found out by the authors of this report that in cases where the mandatory forensic expertise is requested (particularly it is essential for the determination of the nature and degree of injuries<sup>64</sup>) the criminal case is initiated only after the preliminary forensic investigation, requested by the police outside the criminal procedure, was produced. Such a clinical forensic medicine investigation is done according to all the requirements of the forensic investigation but legally it cannot be called and perceived as a forensic expertise and the document produced – as the forensic report. Based on this document police may request the prosecution to initiate the criminal case and according to the Article 143 of the Criminal Procedure Code, a forensic expertise will be conducted again.

In several cases like torture cases the cause of the injuries has to be determined as soon as possible to avoid inconsistencies as the forensic expertise cannot be repeated due to the obvious healing processes that occur to the person's state of health. In this situation and by using this exact practice the forensic expertise can only be performed on the basis of the preliminary report and other medical documents obtained that after all influence the completeness and quality of the forensic expertise in whole.

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<sup>62</sup> Criminal Procedure Code .

Law on Forensic Expertise No 1086 from June 23, 2000.

Regulation on the National Centre of Forensic Expertise, No.1052 from September 12, 2006.

Regulation on the Centre of Forensic Medicine No 58 from February 4, 2010.

<sup>63</sup> Art. 143 of the Criminal Procedure Code.

<sup>64</sup> Acknowledged by the management of the Centre of Forensic Medicine Mr.Padure and Mr.Cuvsinov as well as found out by the authors by looking through the cases and reports of the clinical forensic medicine.

Unfortunately, in this area mean deficiencies were detected by the authors as well (see also section on the quality matters and forensic expert and specialist below).

The current practice used by the law enforcement entities and subsequently also by the forensic service providers contradicts the statement made by the judges of the Supreme Court of Justice<sup>65</sup>. According to them, in cases where the mandatory forensic investigations should be performed according to the Criminal Procedure Code<sup>66</sup>, the criminal case must be initiated immediately to secure the forensic evidence and its admissibility in court.

### Recommendation

**Short-Term** The criminal process must be initiated immediately in accordance with the provisions laid out in the Criminal Procedure Code in regard to those cases when mandatory forensic expertise is required.

The list of the mandatory forensic expertise should be expanded with the following ones:

- torture and ill-treatment;
- to determine the signs indicating upon the sexual offense;
- drug cases;
- explosives, fire arms, munitions.

It is not only the murder that is treated by the society as an egregious criminal offence against a person. Sexual abuse, torture, ill-treatment and other forms of violence is also perceived as grave offence against one's integrity that can only be effectively prosecuted if a charge is based on reliable forensic evidence. Due to the specificity of this crime, the forensic evidence should be obtained in due time, before the physical and biological evidence is left to alter and disappear, leaving the criminal to escape responsibility. It is even more important that such evidence is secured in cases of torture, child sexual abuse and incest, which unfortunately is reported quite often. This study has identified poor equipment and materials that there are at the disposal of forensic experts to meet the need of reliable evidence in cases as are torture and sexual offences.

There is no doubt that the interests of justice call for an expedient and thorough investigation of any arguable claim of ill-treatment or torture and as it has been stated on various occasions, **forensic evidence** is one of primary information that shall be promptly secured<sup>67</sup>. In the first torture case decided by the European Court against Moldova, **Corsacov v. Moldova**<sup>68</sup>, the Court noted that the *"...medical report of 28 February 2000 drafted by an independent commission of four experienced forensic doctors, appointed by the Prosecutor's Office..."* to be of *"...strong probative value as to the way in which the applicant's injuries were caused"*<sup>69</sup>. Having established the importance of the forensic evidence in an ill-treatment case, the Court later had the

<sup>65</sup> The interviews held with Mrs Raisa Botezatu, currently chairwoman of the Supreme Court of Justice.

<sup>66</sup> Art. 143 of the Criminal Procedure Code.

<sup>67</sup> See, among others, the case of Tanrikulu v. Turkey [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq. and Gül v. Turkey, no. 22676/93, § 89, 14 December 2000;

<sup>68</sup> no. 18944/02, 4 April 2006;

<sup>69</sup> Ibid., para 58;

opportunity to explain what does “promptly” means for such evidence to be secured in an investigation. In the case of **Gurgurov v. Moldova**<sup>70</sup> the Court found that the delay of eight days between the alleged ill-treatment took place and the day a forensic doctor could examine the victim, is inexcusably lengthy and resulted in the lose of physical evidence. One year after Gurgurov case, the Court found three days to be too long in the case of **Paduret v Moldova**<sup>71</sup> to secure forensic evidence when there was a reasonable argument to believe the victim was subjected to torture. This is exactly why it is recommended to expand the list and to include specific reference to torture cases and the sexual offences where a forensic expertise should be made mandatory and immediate.

Any criminal charge on drug offences without a forensic expertise, which would determine the exact amount, quality and exact quantity of the drugs discovered upon a person, would not stand the requirements of lawfulness and fairness of the proceedings. Without such expertise, no conviction can be lawful. To ensure that the Government fights against drug use lawfully, it should be made mandatory to have a forensic expertise on every piece of drugs to firstly identify the type and whether it is prohibited and then the exact amount of it upon which depends the sentencing. Similarly, forensic expertise is important in any cases related to the explosives, firearms and munitions.

#### **Recommendation**

**Short-term** The Criminal Procedure Code should be amended to widen the list of cases where forensic expertise would be mandatory.

There is no time limit in the Criminal Procedure Code that would oblige the prosecutor to open the criminal investigation. The practice currently indicates that any criminal complaint would be examined as a petition and subject to preliminary investigation. Any investigatory steps and reports of scientific-technical findings concluded during this preliminary stage may have not evidentiary quality for the court and therefore renders the risk of exhausting the materials or altering their nature if subject to forensic expertise outside an open criminal investigation<sup>72</sup>.

#### **Recommendation:**

**Short-Term** To include into the Criminal Procedure Code a time limit within which the prosecutor would be obliged to complete the preliminary investigation and issue the decision of whether to open or not a criminal investigation. This time limit should be reasonably short with due regard to the fact that a wide range of forensic expertise materials are alterable or perishable and in certain situations is impossible to perform a repeated expertise on the same object.

<sup>70</sup> no. 7045/08, 16 June 2009;

<sup>71</sup> no. 33134/03, 5 January 2010;

<sup>72</sup> Statement made by Mr. Igor Dolea, Head of the Criminal Procedure and Forensics Unit, Law Department, Moldova State University and Leading Expert of the Institute for Penal Reform.

**Short-Term** To make it clear in the Criminal Procedure Code that a criminal investigation should be opened every time there is a criminal complaint received of **torture and/or ill-treatment** and the investigation started which would lead to either having the suspect charged with the criminal or misdemeanour offence or in having the case closed. This would render efficient gathering of evidence, in particular producing forensic expertise that is issued within a criminal proceedings and has the evidentiary value for the purposes of the criminal law<sup>73</sup>.

## The role of the forensic expert and specialist

Criminal Procedure Code regulates the involvement of both – specialist and forensic expert but there are still differences, for example, in a result provided as one of them produces forensic expertise report and other – report of scientific-technical investigations. According to the Article 1 Section 2 of the Law on Forensic Expertise the scientific report of findings has the same legal value as evidence, as is the forensic report given by a forensic expert. Although the Criminal Procedure Code does not contain such a clear formulation it just states that findings given by a specialist does not substitute the forensic expert report<sup>74</sup> and that in case the report of specialist is found incomplete or the conclusions unclear, a forensic expertise can be appointed *ex officio* or at the request of the parties involved<sup>75</sup>. Thus the Law on Forensic Expertise creates more detailed conditions relating to the recognition of these two documents as evidence.

Based on the scientific-technical report obtained during the preliminary investigation done by a police the criminal case can be initiated and on the same object the forensic expertise requested (what is mandatory if the forensic expertise is compulsory<sup>76</sup>). As stated by the Article 1 point 2<sup>77</sup> the scientific-technical investigation is done using the same terms, methods and equipment as the forensic expertise. So if the criminal case has been opened, the same investigation should be done but at this stage it is requested as a forensic expert report, performed by a certified forensic expert. From the interviews held, the authors of this study are inclined to assume that after the criminal case is opened, the repetition of the forensic expertise is not performed on substance in most of the cases. It is just a new document that is issued with a changed heading while the description and conclusions remain the same from the previously conducted scientific-technical investigation.

The involvement of the forensic expert and the request for the forensic expertise can be done only and exclusively within the criminal proceedings – stage of the investigation and court trial.

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<sup>73</sup> Statement made by Mr. Igor Dolea, Head of the Criminal Procedure and Forensics Unit, Law Department, Moldova State University and Leading Expert of the Institute for Penal Reform.

<sup>74</sup> Art.87 of the Criminal Procedure Code.

<sup>75</sup> Ibid., Art. 141.

<sup>76</sup> Ibid., Art.143.

<sup>77</sup> The Law on Forensic Expertise, No 1086 as of June 23 2000.

Thus technically there are no difference between the scientific-technical investigation and the report of findings issued by a specialist and forensic expertise and forensic expert report. Although before the criminal case is **initiated the involved specialist has no specific duties, responsibilities and rights, as he/she would have during the criminal proceedings, no imposed mandatory requirements for the competency level, qualification or certification and other measures demanded by the law, for example, from the forensic expert**<sup>78</sup>. The specialist involved in a case, under the provisions of the Criminal Procedure Code,<sup>79</sup> at the trial stage has similar rights, responsibilities and duties as does the forensic expert and there are no significant differences.

The authors of this study were unable to find any criteria set out by the forensic service providers which would clarify at which point the specialist, who has no certificate in the forensic discipline, obtains the rights to issue the report of a scientific-technical findings.

Thus taking into the account the fact that the report of scientific-technical findings given by the specialist and the forensic expert report has the same evidential value<sup>80</sup> (no matter if it is within the already opened criminal case or before the case is initiated) there is a risk that within the pre-trial and court trial stages is taken as an evidence the poor quality findings given by the specialist who may be without appropriate skills and qualifications.

As it has been noticed by the authors of this study, such scientific-technical investigations are requested very often and performed even more than forensic expertise<sup>81</sup>, and the findings given by the specialist serves as the basis for the prosecutors decision to initiate or not the criminal case even when the compulsory forensic expertise is requested and the criminal case should be initiated immediately.

However there are opinions that the reports issued by the specialist and the expert are treated as having one and the same evidentiary value by the prosecution. This leads to a situation where in some cases the criminal or misdemeanour charges are based only on a specialist report with no further forensic expertise<sup>82</sup>. Since there is a practice to appoint the specialist from within the investigation unit, then any charge based on this specialist report only, may violate the presumption of innocence and the equality of arms<sup>83</sup>.

To make a clear distinction between the report on scientific-technical findings issued by the specialist and the forensic expertise conducted by the forensic expert within the

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<sup>78</sup> Opinion expressed by Mr. Igor Dolea, leading expert of Institute for Penal Reform, during the interview and later supported by the judges of the Supreme Court of Justice whose opinion was sought by the authors.

<sup>79</sup> Art. 87 of the Criminal Procedure Code.

<sup>80</sup> Art. 1<sup>2</sup>. point 2 of the Law on Forensic Expertise, No 1086 as of June 23 2000.

<sup>81</sup> As statistical data shows, for example, the Technical-Forensic Unit of the Police Department of the Ministry of Internal Affairs during the 2009 has performed 6858 scientific-technical investigations and 4739 forensic expertise. [<http://www.mai.md/node/342> ]

<sup>82</sup> Statements made during the interview that has been conducted on 29 June 2011 by the authors of this report with Mr I. Dolea. Head of the Criminal Procedure and Forensics Unit, Law Department, Moldova State University and Leading Expert of the Institute for Penal Reform.

<sup>83</sup> Ibid.

Criminal Procedure Code and to avoid the practice when preliminary investigations by specialists are made before the criminal case is initiated the authors of this report suggest to implement the changes in the Criminal Procedure Code and the Law on Forensic Expertise. The amendments have to set a new regulation and initiate the new practice that in cases when mandatory forensic expertise is requested according to the Article 97 of the Criminal Procedure Code the request to perform investigation by the specialist can not be permitted as a criminal case has to be initiated immediately and a forensic expertise requested.

The notice should be taken regards the Article 1<sup>2</sup> point 2 of the Law on Forensic Expertise stating that a scientific-technical investigation is conducted according to the same rules, methods and using the same equipment as a forensic expertise. So there is no dissimilarity either in performing one or another, thus, technically these procedures are identical but the procedural meaning and dissimilarity, if scientific-technical investigation is done as a preliminary investigation before the criminal case is initiated, is incredibly substantial as the report on findings issued has no any procedural significance. When the criminal case is opened it obligates an investigator or prosecutor to demand the forensic expertise and the process already done once has to be formally repeated over again in order to conduct the forensic expertise and obtain the forensic expertise report. Thus in majority of the cases the involvement of the specialist before the criminal case is initiated is meaningless and has no legal base and reason. It raises doubts as well as on the effective use of the services provided by the forensic entities, on a usage of the yet limited financial and human resources.

### **Recommendation**

**Short-Term** The risks by having involved the specialist and requesting the scientific-technical investigation in cases where compulsory forensic expertise is mandatory by criminal procedure code before the criminal case is initiated, should be avoided. As the first step to improve the situation, changes should be made in the Criminal Procedure Code and also in the Law of Forensic Expertise, and to the way the police are used to work by narrowing the scope of the preliminary investigations conducted before the criminal case is open.

## **Certification/re-certification of the forensic experts**

The person that solicits to receive the qualification of a forensic expert in a particular field must be employed as expert- intern of one of the forensic expertise institutions listed in the Article 12 of the Law no. 1086, to study in-depth the legislation regarding forensic expertise, develop theoretical knowledge and practice skills necessary for this profession. At the end of the internship, the candidate is subjected to an examination before the qualification commission. The members of the commission are approved by the decision of the head of the forensic expertise institution where the intern-expert conducted his internship<sup>84</sup>. The qualification commission has to have at least 3 experts

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<sup>84</sup> Article 35 of the Law on Forensic Expertise No 1086 as of June 23, 2000.

of highest category of the same profile as that solicited by the candidate. Experts from other institutions may be included in the commission. The candidate is offered the opportunity to conduct a forensic expertise as part of his evaluation<sup>85</sup>.

The assessment of the proficiency and quality of the forensic experts' work is conducted **once** in 5 years by a Commission formed by the head of forensic expertise institution where the expert works in<sup>86</sup>. The proficiency assessment is mandatory and free for the employees of the state institutions. Private experts must pay to be evaluated and submit themselves to the Commission formed by the National Centre of Forensic Expertise<sup>87</sup>. Evading the proficiency assessment may result in a decision to withdraw one's quality of forensic expert<sup>88</sup>.

Each institution has its own Commission with the exception of the Centre to Combat Economic Crimes and Corruption and Secret Services. These two institutions submit their experts to the Commission of the National Centre of Forensic Expertise of the Ministry of Justice<sup>89</sup>.

Members of the Commissions are leading experts in the field of forensic expertise, experts of highest category with scientific degrees, heads of the institutions and a representative of the Ministry<sup>90</sup>.

The performance criteria are set out in the Law on Forensic Expertise No. 1086 and in the Regulation No. 393 of 22.12.2004<sup>91</sup> are:

- the level of acquired knowledge and professional qualification;
- the quality of the forensic expertise reports and the concluding reports with scientific or legal medicine findings;
- the attitude towards the job;
- years of experience within a particular field of expertise;
- the results of scientific accomplishments (publications, invention, other);
- the candidate would submit copies of five to seven reports conducted in the last year for every field of expertise. Each report should be evaluated and the opinion provided to the Commission.

In light of these criteria, the candidate may be given a higher category. There are four categories of experts and to be awarded the next higher category, the candidate needs to meet the requirements for the category and pass the proficiency evaluation:

Forensic expert of 3<sup>rd</sup> degree is awarded to candidates that have:

- one year of experience or three years for forensic medical experts and forensic psychiatric experts;
- in-depth theoretical knowledge and practical skills;
- knows well the legislation regarding forensic expertise and scientific, legal medicine findings;

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<sup>85</sup> Ibid.

<sup>86</sup> Article 37 of the Law no. 1086; Section 3, 4, 6 of the Regulation on forensic expert's certification no. 393 of 22.12.2004 approved by the Ministry of Justice;

<sup>87</sup> point 31 of the Regulation no. 393 of 22.12.2004.

<sup>88</sup> point 9 of the Regulation no. 393 of 22.12.2004.

<sup>89</sup> point 7 of the Regulation no. 393 of 22.12.2004.

<sup>90</sup> Article 37 of the Law no. 1086; point 4 of the Regulation no. 393 of 22.12.2004.

<sup>91</sup> Article 36 of the Law no. 1086; point 5 of the Regulation no. 393 of 22.12.2004.

- within the specialization period conducted, various forensic expertise, examinations and researches at a higher level.

Forensic expert of 2<sup>nd</sup> degree is awarded to candidates that have:

- five years of experience or has the right to perform forensic expert report in two different field of forensic expertise or has trained at least one forensic expert;
- in-depth theoretical knowledge and practical skills in different fields of forensic expertise and related science, knows well the legislation regarding forensic expertise and scientific, legal medicine findings;
- performs forensic expertise, examinations and researches at a high level,
- done presentations at scientific conferences and seminar;
- conducted training and self-instruction courses;
- the feedback on the reports identifies no negative conclusions or errors, contradictions;
- the reports are performed in line with the requirements set out for them.

Forensic expert of 1<sup>st</sup> degree is awarded to the candidates that have:

- has ten years of experience or has the right to perform forensic expert report at least in three different fields of forensic science or has trained at least two forensic experts or has published at least two scientific works in the last five years or has a PhD degree in the field;
- in-depth theoretical knowledge and practical skills in different fields of forensic expertise and related science, knows well the legislation regarding forensic expertise and scientific, legal medicine findings;
- performs forensic expertise, examinations and researches at a high level;
- done presentations at scientific conferences and seminar;
- conducted training and self-instruction courses;
- the feedback on the reports identifies no negative conclusions or errors, contradictions;
- the reports are performed in line with the requirements set out for them.

and the Forensic expert of the superior degree is awarded to the candidates that have:

- twelve years of experience or has the right to perform forensic expert report at least in five different fields of forensic science or has trained at least three forensic experts or has published at least three scientific works in the last five years or has a PhD degree in the field;
- in-depth theoretical knowledge and practical skills in different fields of forensic expertise and related science, knows well the legislation regarding forensic expertise and scientific, legal medicine findings;
- performs forensic expertise, examinations and researches at a high level;
- done presentations at scientific conferences and seminars, including at international level;
- conducted outstanding training and self-instruction courses;
- the feedback on the reports identifies no negative conclusions or errors, contradictions;
- the reports are performed in line with the requirements set out for them<sup>92</sup>.

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<sup>92</sup> points 22 – 26 of the Regulation no. 393 of 22.12.2004.

No one can overstep one category but can ask for an earlier proficiency evaluation to be awarded next higher category<sup>93</sup>.

The proficiency evaluation consists of a conversation type question-answer and examination of the submitted reports and documents<sup>94</sup>. All of this is documented in the protocol of the Commission's session. Members of the Commission, upon the results of the conversation, vote to offer the next higher degree to the expert. With a simple majority of minimum 2/3 of the members present, the Commission adopts the decision that justifies the candidate's correspondence to the requirements for the category offered<sup>95</sup>. The head of the institution approves by his/her order the Commission's decision within a month from the day the evaluation took place. If the expert disagrees with the Commission's decision, he/she may appeal against it to the Ministry by lodging a request for a new proficiency evaluation within the same or other Commission<sup>96</sup>.

The right to perform forensic expertise in one or more fields of expertise, can be withdrawn from the expert as a result of the negative (unsatisfactory) proficiency evaluation, at the proposal of the head of the forensic expertise institution where the expert works or on the basis of the final conviction of the court for a criminal offence<sup>97</sup>. The right to perform forensic expertise can be withdrawn at the proposal of the head of the institution when the expert<sup>98</sup>

- shows systematic, irresponsible attitude towards the forensic expertise and violates the methodology approved to perform this type of forensic expertise,
- may not perform his/her duty due to health reasons, confirmed properly by medical documents,
- shows incompetence: negative feedback is received upon the quality of the produced reports,
- did not practice as forensic expert in the last five years.

The Ministry of Health by the order no. 75-p1 of 2<sup>nd</sup> June 2011 approved the Regulation of performance evaluation for chemists and doctors to which forensic medical experts are subjected to as well. This Regulation has similar provisions to the Regulation no. 393 of 22.12.2004 approved by the Government and presented above. However, additionally, for the forensic medical experts only, the Regulation of 2<sup>nd</sup> June 2011 sets out in Annex No. 2 the members of the proficiency evaluation Commission to serve for the next four years<sup>99</sup>:

- competence and obligations of chairman and vice-chairman of the Commission as well as organisational aspects of having a proficiency evaluation of the experts;
- Central Commission of the Ministry that examines any conflicts and appeals;

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<sup>93</sup> point 11 of the Regulation no. 393 of 22.12.2004.

<sup>94</sup> point 14 of the Regulation no. 393 of 22.12.2004.

<sup>95</sup> point 16, 17 of the Regulation no. 393 of 22.12.2004.

<sup>96</sup> point 18, 19 of the Regulation no. 393 of 22.12.2004.

<sup>97</sup> point 27 of the Regulation no. 393 of 22.12.2004.

<sup>98</sup> point 28 of the Regulation no. 393 of 22.12.2004.

<sup>99</sup> point 23 Annex nr. 2 to the MH Order nr. 75 – p1 of 02.06.2011 sets out the Commission for the proficiency evaluation of forensic medical experts. They are: Gheorghe Baciu, chairman and university professor, Ion Cuvsinov vice-chairman, Vasile Sarpe secretary, Eremia Zotea, Mircea Revenco, Grigore Mutoi, Valeriu Tetercev and Ion Catrinici.

- the proficiency evaluation Commissions have sessions once in three months;
- Commission's decisions are valid only if  $\frac{3}{4}$  of members are present;
- upon the candidates request the head of the institution will issue a reference letter one month before the Commission's session to include information on quantitative indicators and performance for the last three years, on moral qualities, on respect for labour law and ethics;
- the head of the institutions subject to the proficiency evaluation only their managerial skills;
- those who reached their age of pension will not be subjected to the proficiency evaluation and will continue to work within the last category awarded until the day of dismissal.

To sum up the above described, the certification has an essential importance as the expert performance legitimacy and competence are based on meeting this criteria.

It can be admitted that the forensic medicine area has the most detailed rules for the certification process and requirements for the re-certification procedure for the forensic doctors approved by the Ministry of Health.

All other forensic institutions are following their internal regulations relating to the certification and this process is conducted and also controlled by the commissions established by the managements of the entities. The authors of this report were not able to obtain the regulations on certification and recertification from the Technical-Forensic Unit of the Police Department of the Ministry of Internal Affairs.

Some of the shortcomings have been detected in connection with the Regulation of the National Centre of the Forensic Expertise. As already mentioned this institution should act as a leading one<sup>100</sup> in the forensic infrastructure of the country but due to the limited resources this task is not fulfilled. The Regulation contains several points stating the tasks to be fulfilled with reference to the following documents:

- The Regulation on Training and Qualification of Forensic Experts of the Republic of Moldova<sup>101</sup>;
- The Uniform Regulation on certification of Forensic Expert of the Republic of Moldova<sup>102</sup>.

None of these regulations at the time of study<sup>103</sup> has been developed and approved although there should be no doubt that these documents are crucial for setting the same requirements for all forensic experts working for different forensic service providers, including private ones.

It can be concluded that for the National Centre of Forensic Expertise it is difficult to be a unifying link for the whole forensic infrastructure in the country and to be able to fulfil the tasks as the leading institution - to gather other state forensic service providers as well as representatives from the private sector and by establishing a

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<sup>100</sup> Art.12 Section 3 of the Law on Forensic Expertise No 1086 as of June 23, 2000 and Art. 2 of the Regulation on the National Centre of Forensic Expertise, No.1052 as of September 12, 2006.

<sup>101</sup> Art.11 Section 8 of the Regulation on the National Centre of Forensic Expertise, No.1052 as of September 12, 2006.

<sup>102</sup> Art.11 Section 9 of the Regulation on the National Centre of Forensic Expertise, No.1052 as of September 12, 2006.

<sup>103</sup> July-August, 2011.

fruitful partnership to work out so important regulations and conduct the training, qualification and certification of the forensic experts according to the set criteria. Therefore, the development of the independent forensic board (see section Independent Forensic Board) that would take care of the overall and general tasks the all forensic service providers are interested in would be an important contribution in development of the forensic area in order to set the common competence, qualification criteria for the certification process, the tests and exams to be passed to get a certificate, requests for continuing education, proficiency testing, skills monitoring to be re-certificated for all forensic experts. In this way it could be provided for a common system on certification of forensic experts, common quality level reached and the exact requirements set for the every forensic discipline at least in terms of the time to be trained to become an expert. Because now by the authors of this study has been identified that there are no exact training programs developed and approved, concrete procedure and time frame set for the person to be fulfilled to become an expert in any of the forensic disciplines (except forensic medicine). Each of the forensic service providers does it in its own way thus the remarkable dissimilarities might be detected in the performances by the forensic experts from different forensic institutions within the same forensic discipline.

The experience has shown for several years already that one forensic institution cannot bear all the tasks although the legal basis exists and requests usage of such regulations already since 2006.

Also it would be recommended that demand for such documents and usage regulating the training, qualification and the certification, re-certification process should be included in the Law on Forensic Expertise as it applies to the all forensic community rather than it is now when these references are stated only in the Regulation on the National Centre of Forensic Expertise of the Ministry of Justice. In this case the demand for these regulations might be related only to the activities of the National Centre of Forensic Expertise although the titles refer to the Republic of Moldova widening the exploitation of these papers.

#### **Recommendation**

**Short-term** The certification and re-certification process should be centralized and led by the independent commission consisting of respected professionals in a particular forensic area who also take part in developing standards for training and experience that are required before an candidate can become certified in a particular forensic discipline. Based on the same principles but separate commission should be established for the forensic doctors.

**Long-term:** These independent commissions should be organised within the “independent forensic board” and conduct written and practical examination on already existing and used good practice exploited by the state forensic institutions.

### **The requirements for the forensic expert reports**

The Report of the forensic expertise is always presented in writing and signed by all the experts involved. It shall state the name of the experts and their proficiency, what materials have been used, what investigations have been done and what questions were addressed. The expert has the obligations to identify and address even the circumstances that he/she feels important for the case but unidentified as such by the parties. It should also have in attachment the *corpus delicti* (material evidence), graphics, sketches, photos and other that support the conclusions made by the expert.

The Centre of Forensic Medicine has confirmed that according to an internal regulation No. 6, only forensic medical reports on manslaughter has sketches attached to it.<sup>104</sup> Several of the lawyers interviewed confirmed that the reports they received as defence lawyers had no attachments at all.<sup>105</sup> As well as authors of this report assured that just few of the forensic doctors' reports are accomplished by the sketches and according to information gathered this is done case by case without any system.

As mentioned previously there is a need for the follow-up procedure at least to perform monitoring after issuing the internal regulations to ensure that requests set in this case by the regulation No.6 are respected by the forensic doctors. All in all the implementation of the quality system would set the criteria to comply with.

If there are circumstances that make it impossible for the expert to provide conclusions, he/she must explain the reasons. The expert's reasons, provided in writing shall be presented to the parties involved within 3 days for feedback. The lawyers interviewed for the purposes of this report remembered none of the situations where a forensic expert would state to be impossible to perform the expertise required.<sup>106</sup>

The report of the forensic expertise will be always the subject of scrutiny from the court and parties involved. It has been stated above the forensic expert have the obligation to produce a high quality report that express his objective, impartial and exhaustive opinion on the issues put before him. The report as evidence will be examined through admissibility criteria set out for evidence in Article 94, 95 of the Criminal Procedure Code and Article 122 of the Civil Procedure Code. That is: to be lawfully obtained, done by an authorised person, using an approved methodology and with no deficient, erroneous conclusions. The report of the forensic expertise is not mandatory for the court or the parties in the proceedings and it may not stand alone on the basis of a criminal conviction. It should always be considered in light of all the evidence produced before the court. The court must always present its reasons for rejecting a report.

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<sup>104</sup> Statements made during the interview that has been conducted on 28 June 2011 by the authors of this report with Mr Ion Cuvsinov Director and Mr A. Padure Deputy Director of the Centre of Forensic Medicine.

<sup>105</sup> Statements made during the interview that has been conducted on 5 July 2011 by the authors of this report with Ms Natalia Molosag and her colleagues of Public Defender Bureau; and with Institute of Human Rights in Moldova (IDOM).

<sup>106</sup> Statements made during the interview that has been conducted on 5 July 2011 by the authors of this report with Ms Natalia Molosag and her colleagues of Public Defender Bureau; and with Institute of Human Rights in Moldova (IDOM).

The case-law of the Supreme Court of Justice indicates that forensic medical reports may not form an object of separate civil proceedings when it has been produced and been recognised as evidence in other proceedings<sup>107</sup>. To reject as inadmissible a forensic expert report, any party should refer to the admissibility criteria set out in the procedure codes and plead before the court within the proceedings at hands. Additionally, if the report is faulty and has grave erroneous findings, an action could be brought to review the proficiency of the expert that may result in the withdrawal of the forensic expert status and dismissal. According to the head of the Centre of Forensic Medicine, in 2009 there were three cases where forensic experts have been disciplinary sanctioned for issuing a bad quality report<sup>108</sup>. A report of bad quality is considered by the leadership of the Centre of Forensic Medicine to be the one that is in violation of the methodology, has wrongful interpretation of the results and is based on a non-exhaustive (superficial) research. In one of these cases the expert has been dismissed and in the other the expert suffered a bonus cut from his salary<sup>109</sup>.

To sum up the above described the requirements for the expert report and set standards are detailed enough and demanding the very exact and specific forensic expert report to be issued with all the essential data to be included to conduct the judgement of the report in the later legal proceedings. Although the system should be improved by **the follow-up procedures to monitor the quality of the reports, particular references to the written, validated and approved methods used and more materials added like sketches, photos to strengthen the evidence especially in cases where repeated forensic analysis and investigations of the objects are impossible** due to the nature, character, quantity of the object or destructive methods used. All these requirements can be fulfilled by implementing the quality system.

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<sup>107</sup> See case file no. 2ra-1276/09 decision of the Supreme Court of Justice of 18 September 2009 in the case Ion Bulhac against Center of Legal Medicine.

<sup>108</sup> Statements made during the interview that has been conducted on 28 June 2011 by the authors of this report with Mr Ion Cuvsinov Director and Mr A. Padure Deputy Director of the Centre of Forensic Medicine.

<sup>109</sup> Ibid.

## QUALITY ASSURANCE AND QUALITY MANAGEMENT SYSTEM

Maintaining and increasing professionalism within the forensic infrastructure requires attention to a wide range of issues. Many are related, either directly or indirectly, to the quality matters like written procedures and guidelines, competency of staff, equipments used and other. Professionalism includes quality assurance measures such as accreditation and certification.

For the purpose of this study, “accreditation” should be understood as being a formal assessment and recognition by an impartial authority that a forensic institution is capable of meeting and maintaining the defined standards of performance, competence and professionalism. An accreditation programme involves an independent third-party scrutiny which covers issues such as whether the laboratory facilities are adequate, whether the personnel have the appropriate education background and opportunities for continuing education to perform assigned tasks satisfactorily, and, whether the forensic institution has a quality assurance programme and the degree to which the programme strives for excellence as measured by proficiency testing, periodic assessments, and other factors affecting reliability and accuracy of expertise results.

The standard for the accreditation of the forensic service providers has been established by the ISO/IEC 17025:2005 “General requirements for the competence of testing and calibration laboratories”<sup>110</sup> which is mostly known and accepted among European forensic institutions. In some particular forensic disciplines another established standard is applicable, the ISO/IEC17020: 1998 “General criteria for the operation of various types of bodies performing inspection”<sup>111</sup>.

During on site visits all regional forensic providers were interviewed on quality assurance matters and activities relating to subjects covered by above mentioned standards such as staff selection and training, facilities, sample handling, laboratory equipment, procedures and methods, quality monitoring. It has been identified that none of the forensic institutions has made it a priority to implement quality system and achieve accreditation according to the standards representative in the forensic practice as it has not been mandatory by legislation or requested by stakeholders.

Certain individual components are present in all visited institutions and it may not be claimed that there are no signs of quality assurance visible at all. However, these are too much fragmented and far from the meaning of the proper “quality system” as one would expect from such institutions. Some of these mechanisms partially cover expert certification, competence level, and training, instruments’ and equipment regular metrology.

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<sup>110</sup> To be found here [www.iso.org/iso/catalogue\\_detail?csnumber=39883](http://www.iso.org/iso/catalogue_detail?csnumber=39883).

<sup>111</sup> To be found here [http://www.iso.org/iso/iso\\_catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=29342](http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=29342)

All forensic service providers have definite systems for expert certification and re-certification as it is mandatory by regulations<sup>112</sup> and confirmed by the State Register of Forensic Experts maintained by the National Forensic Expertise Centre where all the certified forensic experts must be listed. The Register is public and accessible to all stakeholders. The Law on Forensic Expertise includes certain requirements for the person to become an expert and criteria to be reached<sup>113</sup> but these cannot be considered sufficient due to the lack of further essential elements to maintain and verify the competence of experts and forensic institutions – the competence should be demonstrated by documented proficiency testing, skill maintaining schedules, monitoring and continuing education. Each of these proficiency aspects bears a financial burden but extra tests are inexpensive compared to the costs that an error can cause, including the cost of having incarcerated a wrongfully convicted person. Some proficiency tests are ready to be used free of charge and are offered by the United Nations Office on Drug and Crime (UNODC), International Quality Assurance Programme (IQAP) within the organized International Collaborative Exercises. Here, for example, Technical-Forensic Unit of the Ministry of Internal Affairs could receive unknown drug test samples, perform analysis and send the results back to the UNODC to assess their own performance and, if necessary, take corrective actions. Thereafter TFU could perform regular testing of their own work and build confidence in the quality of what they are doing.

The exception to be mentioned here however is the forensic doctors since they have a specialized system of annual mandatory training, which is applicable to all doctors in general. Within the training programmes the forensic doctors are obliged to attend a training of 350 hours a year which directly relates to their professional activities<sup>114</sup>. This system is incomplete as mandatory training does not reach all the experts working within forensic medicine and the absence of educational training is evident in such areas as toxicology or biology.

Most of the methods used by all the forensic service providers are recognized to be outdated. The procedures applied for decades with reference to different unidentifiable sources such as literature and methodological guidance published years ago during the Soviet Union time, are no longer appropriate for the today forensic science. Of course it can be admitted that also new equipments and instruments has not been obtained and used, but, for example, the new drugs and psychotropic substances has reached the “market” and these ones request the new way of analysis and methods to be implemented.

The style and type of work has been passed on in a form of tradition from experienced experts to the new ones. This type of transfer of experience can be permitted just for some period in the so called classical forensic disciplines, for instance, dactiloscropy, tool marks, shoeprint comparison etc., but it would not be an entirely permissible routine for the disciplines where analytical and scientific approach is needed and

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<sup>112</sup> Law on Forensic Expertise Art.8 Sec.1; Law No 1086 from June 23, 2000, and the Regulation on adoption of Register of the State Forensic Experts. Regulation No 1147 from September 9, 2003.

<sup>113</sup> Ibid.

<sup>114</sup> Statements made during the interview that has been conducted on 28 June 2011 by the authors of this report with Mr Ion Cuvsinov Director and Mr A. Padure Deputy Director of the Centre of Forensic Medicine.

specific equipment must be used such as in biology, chemistry, toxicology. There is no evidence of maintained written standard operational procedures or technical procedures of sample preparation, controls, standards and calibration procedures. **It is necessary to initiate radical changes in this area and set a mandatory requirement for standard setting operating procedures, instructions or methods** for performing examinations, development and validation of in-house methods if necessary, directions for running instruments as well. These statements have also been supported by the opinion and the report made public by the Council of Europe Commissioner for Human Rights<sup>115</sup> where it is outlined that the forensic doctor reports are not complete and are missing important additional strengthening of the evidence. The absence of the rigid methodological instructions has been noted by the outside stakeholders, as well.

The requirements for the metrology are only partially covered. These are requested by legislation<sup>116</sup> but it is done outside any commonly used system, relates to no quality system and does not apply to all areas of forensic science where the instruments used by experts could affect the outcomes of the forensic examination.

In an overall assessment, the following major problems have been identified:

- the lack of validated and documented procedures and methods;
- Inappropriate reference materials and standards are used and data bases of these materials are not maintained where necessary;
- no written procedures have been developed to protect evidence from being lost, cross-transferred, contaminated, and/or deleteriously changed;
- absence of any traceable calibration procedures;
- insufficiently documented training programmes that would include competency testing, comprehensive proficiency testing programmes;
- none of the forensic service providers participate in the proficiency tests and collaborative exercises;
- absence of any documented investigations of negligence and misconduct in order to create accessible complaint file with following corrective activities.

While accreditation of the forensic service providers is not a guarantee against errors, it is a programme that requires laboratories to have and follow written policies to monitor the quality of their work. Accreditation requires forensic institutions to evaluate their operations and, if problems are identified, they must be addressed, root because identified, preventive measures taken, and problems anticipated before they occur.

In order to properly prepare a forensic institution for the quality system implementation and afterword for the accreditation inspection and, most importantly, ensure the understanding and support from the personnel for this process, additional

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<sup>115</sup> Thomas Hammarberg Report following his visit to Moldova between 25-28 April 2009, to be found here [http://www.ecoi.net/file\\_upload/1226\\_1247652733\\_com-intranet.pdf](http://www.ecoi.net/file_upload/1226_1247652733_com-intranet.pdf)

“22. ... No photographic evidence was included with the report. According to the Commissioner's medical expert, the injuries revealed by the autopsy clearly indicate that the person was beaten. However, based solely on the evidence recorded in the report, the Commissioner's expert considers that it is not certain whether the beating alone was the cause of the person's death.”

Such findings are commented for two more cases by the T.Hammarberg.

<sup>116</sup> Law on Metrology Art.12 Sec.1; Law No 647 from November 17, 1996.

training is needed to raise the awareness on the requirements for the standards and advantages of the quality assurance system. Such training is initially essential to build up a general acceptance of this system from the experts as the system would be as good as the personnel responsible for the quality system maintenance.

### **Recommendation**

**Short-term:** To initiate training for the forensic service providers on quality assurance matters and accreditation; Start the implementation of the internationally adapted standards applicable to forensic science.

**Short-term:** To use already existing, free of charge, international support programmes and projects on quality assurance matters (like those offered by the UNODC or ENFSI WG).

The need to establish common standards and request quality assurance for the forensic service providers has been highlighted also within the EU as the use of one certain evidence in different judicial processes within the EU has significantly increased. It is stressed that particularly important it is to introduce common standards for the forensic science areas related to such sensitive issues as are the personal data, DNA profiles and dactiloscopic data. This request is confirmed by the specific EU Council framework decision on accreditation of the forensic service providers carrying out laboratory activities<sup>117</sup> which purpose is achieved “by ensuring that forensic service providers carrying out laboratory activities are accredited ... as complying with EN ISO/IEC 17025”<sup>118</sup>. It would be only compelling to the Government of Moldova to initiate the process towards accreditation of the forensic service providers through appropriate regulations and take necessary steps to comply with the provisions of this Framework and be along with the rest of the Europe, thereby demonstrating the dedication in maintaining and developing Moldova as the country of freedom, security and justice.

### **Recommendation**

**Short-term** Quality management system should be implemented as one of the crucially important priority. It can be achieved for some forensic disciplines in a rather short term with the support of the Government and additional funding. This would allow achieving an immediate, substantial and positive impact towards the improvement of the practice and delivery of the forensic services in Moldova.

Also forensic medicine area has a significant number of serious, internationally recognized documents governing investigations performed in this field<sup>119</sup>. Some of

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<sup>117</sup> Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities to be found here <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:322:0014:0016:EN:PDF>

<sup>118</sup> Ibid., Art.1 Sec.2.

<sup>119</sup> Protocol for preventing Arbitrary Killings through Adequate Death Investigation and Autopsy (called “Minnesota Protocol”).

Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Istanbul Protocol).

United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/.12(1991).

these documents should be implemented within the existing legislation. These documents, mostly known as Protocols, highlight the important role of medical professionals in the documentation of torture and set out the detailed guidelines on methodology to obtain medical evidence, including the recommended content of medical reports and thus they can be called as standards that should be followed and have crucial role in the quality assurance matter within the forensic medico-legal autopsies.

The authors of this study have learned during the on-site visits into the two of the regional units of the Centre of Forensic Medicine<sup>120</sup>, while performing the external audit procedure, that it is not enough to issue written orders<sup>121</sup> obliging the forensic medicine experts to follow the requests set out in the Istanbul Protocol, give out printed copies of this protocol, and expect that from now on all the ill-treatment cases will be investigated and documented as defined in the mentioned document, but at the same time not to provide the forensic doctors with the appropriate equipment – photo camera, at least, to fulfil the basic requirements. Printing out the documents and forwarding them to the personnel doesn't solve the problem. The Centre of Forensic Medicine should establish quality assurance and quality control procedures to ensure the accuracy of the services provided and, of course, the work performed by the forensic experts.

For a forensic service provider to achieve overall ISO/IEC 17025:2005 accreditation, it will need to apply for the accreditation for a defined scope of analytical methods. Nevertheless, the accreditation for just one method requires full compliance with the full quality management standards embedded within the entire ISO 17025 standard. These aspects of the standard influence the quality of all procedures (scientific and administrative) used throughout the forensic institution. Compliance with the ISO 17025 also covers the major demands for the forensic entity to be in line with the relevant requirements of the general quality management ISO 9000 series of standards.

Once a forensic institution has achieved accreditation, it is not a once-and-for-all award. It must be maintained and renewed at regular intervals through regular internal or even external audits by the specific certification/accreditation body. As a result of the audits, non-compliance can be brought up and the institution will need to demonstrate that these have been addressed in an appropriate manner. Serious non-compliance (or others not cleared in a timely manner) can result in the accreditation being withdrawn.

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Harmonization of the performance of the medico-legal autopsy. Issued by the European Council of Legal Medicine and adopted by the General Assembly in London in 1995 .

<sup>120</sup> Regional unit of the Centre of Forensic Medicine located in the cities of Hincesti and Orhei. July, 2011.

<sup>121</sup> Order No. 1 din 05 January 2009 regarding the specific requirements towards the way the medico-legal examinations are performed in ill-treatment cases and order no. 10 of 13 October 2009 regarding some requirements towards the way the autopsies of the individuals that have died in custody or after excessive use of force by law enforcement, should be performed.

**Recommendation**

**Long-term:** Set out as primary goal to acquire accreditation at least for one of the forensic investigation methods and work on implementation of the quality system within the whole institution.

During the meetings with the representatives of the forensic service providers it was highlighted that there are limited opportunities to obtain information from the international forensic science sources or to exchange experience. The international cooperation between the forensic institutions is narrowed down to irregular visits to similar institutions in Russia or Belarus and very rare visits to other EU countries. To have the Moldavian forensic institutions aligned to their peers within the EU community, the forensic service providers must have a chance to maintain and increase the level of professionalism within the wider forensic science community. It is essential to ensure that institutions have the opportunity to follow up the new trends in forensic science. It would be valuable to have closer integration into the forensic networks and associations, for example, such as the European Network of Forensic Science Institutes (ENFSI).

The ENFSI has been established with the purpose of sharing knowledge, exchanging experiences and coming to mutual agreements in the field of forensic science. The ENFSI is recognized to be an expert group in the field of forensic sciences by the EU and has been granted a number of benefits and rights to represent the forensic community throughout Europe by strengthening and consolidating the forensic science. One of the aims is to “encourage all ENFSI laboratories to comply with the best practice and the international standards for quality and competence assurance”<sup>122</sup>. Any efforts to have the forensic service providers of Moldova join ENFSI will be welcomed. This membership with this institution shall encourage Moldovan forensic institutions to obtain the accreditation and would expand the international cooperation as well as offer possibilities to receive external assistance to establish quality procedures.

Currently there is a forensic cooperation initiative from the ENFSI by which those ENFSI members that have already achieved ISO/IEC 17025 accreditation, provide direct help to those ENFSI members that have not yet achieved that accreditation. The target group is the ENFSI members that have started or are just about to start their work on setting up their quality management systems. Accredited ENFSI laboratories act as mentors/teachers for the non-accredited ENFSI laboratories. In this way, the non-accredited laboratories do not have to “re-invent the wheel” but enjoy support and assistance to build good quality management systems.<sup>123</sup>

**Recommendation**

**Short-term:** The forensic service providers should work towards joining and becoming the members of the European Network of the Forensic Science Institutes (ENFSI)

An increasing emphasis should be set on meeting the quality assurance standards and accreditation for the forensic services. As of today, it is obvious that at least for the

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<sup>122</sup> About ENFSI to be found here <http://www.enfsi.eu/index.php>

<sup>123</sup> Information to be found here <http://www.enfsi.eu/page.php?uid=179>

Centre of Forensic Medicine and the National Forensic Expertise Centre there are no funds available in need to carry out the process to completion. These two forensic service providers in particular, now face stagnant budgets and rising caseloads in some disciplines. There are substantial fees and additional expenses associated with the accreditation process that have to be covered by the forensic service provider. It may be the case that external funding should be sourced by the Government to meet this need.

**Recommendation:**

**Short-term:** To allocate additional financial resources to implement the quality system according to the internationally recognized standards applicable to the forensic area.<sup>124</sup>

**Long-term:** It should be made as a priority to have all the forensic service providers accredited.

It must be highlighted that if evidence or forensic investigations are mishandled or improperly analyzed, or if there any suspicion of bias, incompetence, lack of appropriate internal quality procedures, than the judge can be misled in reaching his/her judgement which could then result into a wrongful conviction. The completed quality management system with an adequate certification system of the forensic experts is therefore essential and necessary to perform reliable forensic service. The next step should be to organize appropriate training programs for all the stakeholders to explain the value of the quality assurance programs and accreditation.

**Recommendation:**

**Long-term** Organize trainings on quality assurance matters for all stakeholders, tailored to the specific needs of particular professional groups if applicable.

Relating to the quality assurance and implementation of the quality system, the forensic medicine area has significant number of serious, internationally recognized documents governing investigations performed in this field. Partly due to the collaborative efforts of high qualified medical professionals and specialists in this area who since 1980s have established requirements for documentation of investigations.

Between 1984 and 1988 a human rights group in the US, the Minnesota Advocates for Human Rights, consulted with forensic experts and drew up the "Protocol for preventing Arbitrary Killings through Adequate Death Investigation and Autopsy" (called "Minnesota Protocol"). United Nations (UN) has incorporated Minnesota Protocol into general principles for the prevention of deaths and adequate medico-legal investigations that were drafted and then adopted by UN Economics and Social Council (Resolution 65) and General Assembly in 1989. In 1991 the UN published the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which includes the principles and a number of protocols to provide States with technical guidance for the conduct of investigations as well as a model autopsy protocol. The appendices contain charts and diagrams to assist with post-mortem detection of torture and the reporting of injuries consistent with torture.

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<sup>124</sup> For example, ISO/IEC 17025:2005 and ISO/IEC 17020:1998.

Afterwards the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the **Istanbul Protocol**, was approved and is set of international guidelines for documentation of torture and its consequences. It became an official UN document in 1999.

The Istanbul Protocol provides comprehensive, practical guidelines for the assessment of persons who proclaim torture and ill treatment, for investigating cases of alleged torture, and for reporting the findings to the relevant authorities. Thus, it is an important instrument in the fight against torture – the effective investigation and documentation of torture helps to expose the problem of torture and to bring those responsible in court. The Principles contained in the Protocol reflect important international standards on the rights of torture survivors and obligations to refrain from and prevent torture.

International law requires also Moldova to investigate allegations of torture and to punish those responsible.

The mass protests that have occurred in Moldova post parliamentary elections in April 2009, which have resulted in numerous cases of ill-treatment and torture, have outlined already the seriousness of the deficiencies in the present forensic infrastructure. These has been also supported by the opinions and the reports made public by the Council of Europe Commissioner for Human Rights<sup>125</sup>, the UN Committee Against Torture<sup>126</sup> and the UN Human Rights Committee<sup>127</sup> that have all indirectly pointed out the weakness of the forensic investigations where it has had an important role in finding and setting out the truth in the of ill-treatment cases. It has been outlined by the legal experts that the discrepancy between the law and the legal practice is unacceptably significant. The ill-treatment and torture cases illustrate this perfectly well through uneven application of the Istanbul Protocol during forensic medical examinations.<sup>128</sup> This may explain the fact that in 325 cases with allegations of ill-treatment, out of 431, the prosecutor refused to open a criminal investigation, and all 6 cases that where sent to court against police officers charged with torture (article 309/1 of the Moldovan Criminal Code) finished with acquittals<sup>129</sup>.

The Istanbul Protocol highlights the important role of the forensic medicine experts in the documentation of torture and sets out detailed guidelines on methodology for obtaining medical evidence, including the recommended content of medical reports. During interviews with management of the Centre of Forensic Medicine the Istanbul Protocol was recognized and it was assured that existing procedure of medico-legal investigations is similar to described methods in Istanbul protocol, and that specific training has been conducted for the forensic experts. But during on-site visits and

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<sup>125</sup> Thomas Hammemberg Report following his visit to Moldova between 25-28 April 2009, to be found here [http://www.ecoi.net/file\\_upload/1226\\_1247652733\\_com-intranet.pdf](http://www.ecoi.net/file_upload/1226_1247652733_com-intranet.pdf)

<sup>126</sup> UN CAT Concluding Observations of March 2010, to be found here <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.MDA.CO.2.pdf>

<sup>127</sup> UN HRC Concluding Observations of October 2009 and Information on implementation of the Concluding Observations as of 18 January 2011, to be found here <http://www2.ohchr.org/english/bodies/hrc/hrco97.htm>

<sup>128</sup> Opinion expressed during the interview with Ms Rita Tamm Human Dimension Officer/ Senior Rule of Law Adviser, conducted on 4 July 2011 by the authors of this report.

<sup>129</sup> According to the statistics presented by the Anti-Torture Unit of the General Prosecutor's Office.

interviews with the forensic experts the authors of the report ascertained that even if the torture case would have to be investigated and forensic experts are well informed about the requirements of the Protocol they would not be able to fulfil them as they lack digital photo cameras to record the evidence and the reports would differ in content and in terms of volume.

Within EU, for example, one of the criteria, which a medical-legal autopsy has to fulfil, are established internationally and accepted among other bodies by the Council of Europe as a recommendation for the member states - Recommendation No. R (99) 3 of the Committee of Ministers to Member States on the Harmonisation of Medico-Legal Autopsy Rules<sup>130</sup>. The Recommendation sets the need for investigation, description, photographic documentation and sampling during medico-legal autopsy to follow primarily medical and scientific principles and simultaneously consider legal requirements and procedures as well as outlines that adoption of uniform guidelines on the way autopsies are to be carried out and on the way autopsy reports are to be established are the most of importance now days.

**Recommendation**

**Short-Term** The Centre of the Forensic Medicine should work out the internal procedures and appropriate follow-up procedures to ensure the efficiency and the usage in the practice of the internationally binding standards such as Istanbul Protocol and other in order to provide thorough investigations of the torture or ill-treatment cases.

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<sup>130</sup> Council of Europe. Recommendation No. R (99) 3 of the Committee of Ministers to Member States on the Harmonisation of Medico-Legal Autopsy Rules. Strasbourg: Council of Europe. Forensic Science Int 2000.

## PARTENRSHIP AND COOPERATION

Forensic service providers cannot be seen apart from the stakeholders they are working for and merely the quality level of the forensic service that is given is as good as the knowledge and the understanding of the stakeholders benefiting from it. Cooperation and partnership between the forensic service providers and their customers is as much important as collaboration among forensic service providers themselves. For now, as observed and also acknowledged by the forensic service providers<sup>131</sup>, they don't have a dialogue among each other and don't work on further strengthening their working relationships.

It is obvious that the forensic service providers don't interact among each other and don't share the development plans and the strategies as all of them have their own future visions. Working under different ministries does not promote cooperation as too many administration levels have to be overcome. This situation has been confirmed by the few forensic entities. Some communication occurs within the individual casework from time to time but it depends on the requests coming from the stakeholders than the forensic services themselves. Therefore, **there is a need for more consistent and harmonized requirements and actions immediately to be taken.**

Although discussions and various sorts of agreements have been made<sup>132</sup>, initial problems have not been resolved and after some period of time no significant changes have been noticed.

### Recommendation

**Short-term:** There must be an agreement reached among forensic service providers to foster scientific and technical cooperation and advancement, to enhance the effectiveness and the efficiency of all the forensic institutions in order to improve the services they provide. The agreement should have the significance on a ministry level.

**Long-term:** The would-be-established independent forensic board could be the one to solve the issues and problems of cooperation and communication among the forensic institutions, all the customers of the forensic services and private experts, what is consistently important as well, and public. Thus, there could be an entity speaking out for the whole forensic community.

Forensic services has significant impact on the security matters and thus the forensic service providers should be well informed of the priorities set out by the law enforcement institutions and problems they face consequently rising from the forensic work performed. To be successful the good working relationships should be established.

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<sup>131</sup> Confirmed by the management of the Centre of Forensic Medicine.

<sup>132</sup> During discussions with forensic service providers and stakeholders it was confirmed that several written orders has been issued on the bases of identified problems in order to adjust the work and communication among forensic service providers and police investigators but subsequent follow up and effectiveness of these documents has not been valuated.

Some of the issues identified stem from a lack of communication with police investigators and other stakeholders within justice system. One forensic service provider reported<sup>133</sup> that they are not told when police decides, without waiting the results of the forensic investigation, not to run the case for further investigation or defendants have pleaded guilty, or prosecutors have decided not to prosecute the case. Thus, forensic institution waists time analyzing evidence on cases that have been on some stage adjudicated already. Also very classic are situations when management of the forensic institution is asked to handle “rush requests”<sup>134</sup>. These kinds of requests tend to disturb the day-to-day operations of the institutions. Even though the specific communication is needed when high priority cases has to be conducted out of the regular turn. As a solution might be to have monthly meetings with the representatives of the prosecutor office and law enforcement agencies in order to prioritize cases and discuss major problems.

Also it was stated by the management of the Centre of the Forensic Medicine that often there are situations when issued reports on scientific-technical findings (work procedure the same as for the forensic investigation) are not collected by the police so the huge work done is the waste of time, financial and human resources. It is inadequate to the situation when there is significant lack of finances.

The forensic service providers need to educate the stakeholders using their services that include law enforcement structures, prosecutors, and judges and, of course, the defense lawyers as well as general public and policymakers.

It is notable that forensic service providers devote its efforts to educate and train some of the stakeholders within criminal justice system. All of them work especially on training for police investigators as this category supplies most of the cases. But as observed and confirmed during the interviews it cannot be characterized as being an established and worked out communication mechanism where forensic institutions take an active role in helping all customers of the criminal justice system that use scientific evidence, understand the conclusions that can be drawn from the forensic investigations as well as the limitations of these investigations. Fore example, prosecutors and defense lawyers might benefit more from the training focused on the interpretation of and requirements for evidence, understanding the statements and conclusions given by a forensic expert.

In addition, it was also approved by the public defenders, that lawyers and even judges have insufficient training and background to understand fully the reliability of the forensic evidence, to value the reports. Very often they (experts' reports) are not questioned or not allowed by judges to be questioned by the defense as the reports are accepted as compelling and judges fully rely on the forensic reports, especially this is relevant in relation to the forensic doctor reports<sup>135</sup>.

It was found out by the authors of this study that the forensic service providers tend not to provide surveys of the stakeholders in order to clarify the customers' opinions in relation to the problems they have with their current situation. The surveys may

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<sup>133</sup> During the interviews, it has been confirmed by the forensic doctors of the Centre of Forensic Medicine.

<sup>134</sup> Confirmed by all the forensic service providers during the interviews.

<sup>135</sup> Statement given by the prosecutors interviewed.

include an understanding and interpretation of the expert report, possibilities of the forensic disciplines, what they (stakeholders) are missing and what they would like the forensic infrastructure to be. These kind of subjects can be brought successfully into light by such a survey and consequently some of the deficiencies could be corrected and the shortages eliminated before they become threatening to the entire forensic infrastructure.

### **Recommendation**

**Short-term:** The forensic institutions should implement procedures to achieve better communication between stakeholders and forensic experts. Regular training programs for all stakeholders are needed on requests for quality of evidence (packaging, traceability), value of evidence, possibilities and limitations of the forensic investigations, result interpretation in order to reduce unnecessary caseloads, backlogs, to raise added value of expert statements etc.

During interviews with the stakeholders it has been stated that for the prosecutors and judges it is impossible to value the forensic reports as in most of the cases stakeholders don't have scientific background and they don't have to know anything about forensics specifically and in this way it is not the task of the legal system by evaluating the forensic services to correct the problems of the forensic infrastructure. Thus so important are the quality measures to be implemented, the independence assured, additional financial resources allocated and devoted to improve the level of the quality of the forensic services provided now.

## ROLE OF THE DEFENSE

Interviews with the forensic service providers and the stakeholders revealed inconsistency in the legal practice regarding the role of the defense lawyers in putting forward forensic evidence in the proceedings. Defense lawyers often meet unjustified limitations from the prosecutors and forensic experts themselves when requesting an alternative forensic report. If in a civil case the lawyer is in charge of the case then in a criminal case he/she depends entirely on the will of the prosecutor and when there are doubts on the conclusions made by the state forensic expert, there are little chances that the defense lawyer will have an alternative report without the prosecutor's agreement. Other limitations for the defense lawyers concern the understanding of the forensic science and the existing limitations for the involvement of the private experts, the interpretation of the forensic experts' reports and statements, including even the disclosure of the information to the defense lawyers on different stages of the criminal proceedings, access to the methodology used by the experts in producing the forensic report to question the appropriateness of its use to a particular set of circumstances and other.

### Recommendations

**Short-term** To develop best practice standards in the area of forensic science by providing appropriate training of all stakeholders involved including trainings tailored to the needs of the defense lawyers.

The physical evidence is one of the important factors assessed by the defense lawyers and forensic service providers should be interested in supplying admissible and reliable forensic evidence through forensic conclusions and reports as it is an essential component of the criminal justice system. Thus the defense should be acknowledged and allowed to question the development, the chain of custody, the methods used for the analysis of the evidence, especially ones that purports to identify any specific individuals as suspect of a crime (dactyloscopy).

But in order to properly assess the evidence the lawyer should have access to the necessary information and to be sure of the quality measures taken within the forensic laboratory and competency and professionalism of the forensic expert conducting the forensic expertise. The set of these two conditions should be proved by the forensic institution, which should allow their reports to be examined and questioned by the defense lawyers. It is so that prosecution and defense have different responsibilities and established practices of the disclosure of the data related to the forensic investigations usually expand upon those differences by assigning the broader disclosure obligations on the prosecution than on the defense. **Thus, the policies should be adapted by the forensic service providers at some level, to promote the openness in operational procedures, and data, related to the forensic analysis of the evidence, should be available for the cross-examination.**

According to the Criminal Procedure Code<sup>136</sup> the suspects (defense lawyers) has the right to request forensic expertise on its own initiative but in this case they should bear all the costs related to it. This condition significantly affects the equality of arms and the presumption of innocence in proceedings, which should be fair and aimed to find the truth, since not everyone is able to cover the costs of a forensic expertise. To this is added the fact that usually all physical evidence subject to the requested expertise is kept by the law enforcement or the prosecution. This provision (specially if the public lawyer is involved) contradicts to the principle that all the costs within a criminal case and directly related to the investigation should be covered by the State. We therefore identify the situation as being a case of an incomplete criminal investigation, where forensic expertise is unavailable to suspects (having public lawyer) who cannot afford the forensic services. In such cases **the State should provide funding specially targeted for the forensic science to make available to the suspects to request a forensic expertise when it is necessary in the interests of justice, costs free, according to the Art.142 of the Criminal Procedure Code.**

It is also important, from the point of the defense lawyers, that the forensic experts' reports can be scrutinized by the specialists and scientists from the outside of the forensic community<sup>137</sup>. Currently, such scrutiny is not part of the legal practice today and allowed only in some rare cases. Although forensic experts are certified and represent a specific category of actors in the criminal proceedings, there are still many other types of specialists to whom defense lawyers may turn for additional assistance in understanding the forensic evidence and evaluating the forensic experts' reports. Current practice shows that this is used rarely and also not very appreciated by the prosecution and judges<sup>138</sup>. This practice should be expanded and actors involved should recognize that **academic staff and practicing scientists who do not have forensic background but whose activities and qualifications demonstrate an understanding of the particular forensic discipline can contribute to the full and proper evaluation and examination of the forensic evidence.** It must be understood that while there are structures such a Technical-Forensic Unit of the Ministry of Internal Affairs subordinated to the law enforcement entity the defense lawyers will not rely upon forensic experts employed by the law enforcement and will seek for private ones, independent experts to consult with or to request for additional forensic expertise.

The training provided by the forensic institutions to the police officers, prosecutors, and judges must be extended to include also the representatives of the defense.

### **Recommendation**

To make available to defense lawyers the instructions, regulations and any other official documents that contain an approved methodology for forensic science to each discipline where forensic expertise is required.

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<sup>136</sup> Art. 142.

<sup>137</sup> In some rare cases this is done and allowed at the stage of trial. Statements made by the private expert Mrs. Rusnac (psychologist) from SRL "Credibilitate – Birou de Expertize" and forensic doctor Mr. Baci, PhD.

<sup>138</sup> Statements made during the interview with Public Defense Lawyers "Avocatii Publici" and lawyers from IDOM (Moldova Institute for Human Rights).

To amend the text of Article 142 of the Criminal Procedural Code to make cost free forensic expertise in all criminal cases where suspects and their defense lawyers requests one.

## ALTERNATIVE FORENSIC EXPERTISE AND PRIVATE EXPERTS

Forensic experts that perform expertise in civil, misdemeanour and criminal cases on various issues, including ill-treatment, sexual assault and domestic abuse, have outlined that the overall assessment is that private forensic expertise is not prohibited but also not encouraged. The Supreme Court's caseload overturning judgements on the basis that the forensic expert's report was issued by a private expert not included in the State Register is appreciated as a discouragement to the development of an independent forensic expertise<sup>139</sup>. The field of psychological forensic expertise has been outlined as being the most difficult to accomplish. On one hand because of the lack of experts that would sit in Exam Commission to decide on individual requests to be issued with the licence in psychological forensic expertise and on the other hand due to the fact that psychological forensic expertise is not acknowledged as a field of forensic science<sup>140</sup>. It has to be outlined that this kind of expertise is widely used within EU and quite a lot of countries has acknowledged the importance of this tool to investigate violent crimes by maintaining the different systems of registration and licensing of specialists working in this area.<sup>141</sup>

Regarding the use of forensic psychiatric expertise it is brought in play more frequently and involvement of such experts within criminal proceedings are accepted by a prosecutor or court although for now none of these experts are included in the State Register. Experts of this discipline comes from the Psychiatric Hospital based in Costiujeni near Chisinau and two faculties of psychiatry in State University of Farmacy and Medicine " one named "Medical Psychiatry, Narcology and Psychology established in 1946 and the other one - "Psychiatry and Narcology for Doctors Continuing Education" working since 1984.

An explicit restriction has been imposed on the private expert from being involved and providing a forensic expert reports in a criminal case, by Article 12 of the Law on Forensic Expertise. It states that forensic expertise can be conducted also by private experts included in the State Register of the Forensic Experts except the expertise within the criminal cases related to the offences against life, health, freedom and

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<sup>139</sup> Opinion expressed during the interview with Mr M. Gheorghita (Director) and Ms Rusnac (leading psychological expert) of the SRL „Credibilitate – Birou de Expertise” private centre of forensic expertise, conducted on 30 June 2011 by the authors of this report.

<sup>140</sup> Ibid.

<sup>141</sup> In order to use the title Forensic Psychologist in UK, it is needed to be registered with the [Health Professions Council \(HPC\)](#). This will involve completing Stage 2 of the Society's Diploma in Forensic Psychology or equivalent qualification that has been approved by the HPC. Also within British Psychological Society there is Division of Forensic Psychology who takes care of this area as well as maintains the register of practitioners working and conducting such expertise (<http://dfp.bps.org.uk/>). In Netherlands to practice as a forensic psychology expert you have to be assessed, tested by the specific commission and afterwards included in The Netherlands Register of Court Experts (<http://english.nrgd.nl/>). Department of Psychology of University of Helsinki is having a special course and training program specially designed for the forensic psychology and after the completing the course and taken practice the person can conduct forensic investigations in this field. In Latvia there are 7 forensic psychology experts registered in the Forensic Experts Register (4 as private forensic experts, 3 as state forensic experts) (<http://www.ta.gov.lv/index.php/lv/17/717/index.html>).

values of the person. Taking into account that the conditions mentioned above cover most of the cases, the participation of private experts in the criminal proceedings, even when included in the State Register, is limited to almost impossible.

The situation appears to be different within the civil cases as in these situations the opportunity to choose an expert and have him/her admitted by the court to produce a forensic expert report is enjoyed by the parties who are more flexible to do so. While within the criminal cases, as we saw above, the choice of an expert and the possibility to have a different one than that from a state forensic institution, depends entirely on the opinion of the prosecutor. Such difference may be explained by the fact that the accused persons under certain conditions are convicted on the bases of the forensic expert's report and really much depends upon whether the conclusions obtained by the expert are reliable to support the conviction. It is therefore a practice, formed and remained from old times, that prosecutors and judges accept reports provided by the state forensic experts as being indisputable and true evidence, excluding the possibility for the accused person to require an alternative forensic expertise supplied by the "independent" forensic expert whose qualification and education is appropriate, except the fact that he/she may not be included in the State Register of Forensic Experts.

It should be noted that the domestic legislation has restrictions with regard to the forensic medicine field that allow the forensic medico-legal investigations and expertise to be performed only by the forensic doctors working for the Centre of Forensic Medicine and employees of the Forensic Medicine Department of the State University of Medicine and Pharmacy "Nicolai Testemițeanu"<sup>142</sup>.

Such a restriction limits the possibilities for any party involved in the proceedings to choose a forensic expert and request for the additional opinion from other persons to give an expert statement in the forensic medicine area.

As one of the solutions to widen the area of the forensic medicine services and involve other specialists could be to share some of the tasks of the clinical forensic investigations to determine the degree of injuries, for example, in cases of suspected child abuse, with the general category of medicine doctors (paediatricians). The specific cases mentioned are very sensible and should be done once by the first doctor performing the examination to protect the child from the repeated investigations.

This practice would facilitate the work and case loads of the Centre of Forensic Medicine as well as reduce the proportion of the expenditures spend now to fulfil this function. Of course the specific and additional training is needed for the hospital doctors to conduct the appropriate level quality examinations of live persons and to issue forensic reports as well as improvements in the legislation to make possible the procedure to include them in the Register of State Forensic Experts and to accept these reports as evidence.

### **Recommendation**

**Long-Term** The legislation should be amended to provide criteria based on which the involvement of any forensic expert in any procedures (civil, misdemeanor, criminal)

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<sup>142</sup> Art. 13 of the Regulation of the Centre of Forensic Medicine, No.58 of February 4, 2010.

will be decided upon one's professionalism, qualification, experience and competence, which is confirmed by one's inclusion in the State Register of Forensic Experts, rather than solely on the fact that he/she is the forensic expert employed by the state forensic institution.

In particular this should concern the forensic expertise in legal medicine and psychiatry/psychology. The legislation should provide a real opportunity for the parties in the proceedings to have their say on the choice of the expert and when in disagreement with the decision made to have their own expert included to perform the forensic expertise.

It would be also that some professional representatives of the university Cathedras of Medicine (not all but some in particular fields of medicine – example: for cases of medical liability and detection of severity and nature of injuries) are certified and allowed to perform forensic medicine examinations/reports, which would exclude State's monopoly currently instituted by the Centre of Forensic Medicine<sup>143</sup>.

The Supreme Court's case-law also indicates that the issue of certified forensic experts enlisted in the State Register versus experts and specialists, has come across in many cases. The Supreme Court of Justice has firmly argued that any forensic expertise should be conducted and produced by certified experts enlisted in the State Register<sup>144</sup>. So, for example, *the criminal case against S. Cazacu on charges of grave bodily injuries*, the Supreme Court of Justice overturned the judgement of acquittal because it was based, among other things, on the forensic psychiatric report performed by an expert who was not certified to perform such expertise and was not enlisted in the State Register<sup>145</sup>. *In the case of V. Bogoros* the Supreme Court of Justice considered that the report of a private forensic expert from SRL "Credibilitatea – Birou de expertise" on the calculation of debt and penalties may not be considered as evidence because the expert is not certified. The judgement was overturned and the case sent back for a new examination<sup>146</sup>.

Of course it should be only supported that no person (private or state) should be allowed to practice in a forensic discipline as a forensic expert without certification. However, there is a need for a list of specific forensic disciplines approved by the Government to which this condition will be applied to, in order to avoid unnecessary restrictions on other areas, which can be practiced and requested very occasionally. Such a list of the forensic disciplines could be established within already existing Law on Forensic Expertise.

**Recommendation** Within the Law on Forensic Expertise to be included a list of the forensic disciplines for which a certification should be obtained before practicing with a mandatory inclusion in the State Register of Forensic Experts.

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<sup>143</sup> Statement made by Mr. Igor Dolea, Head of the Criminal Procedure and Forensics Unit, Law Department, Moldova State University and Leading Expert of the Institute for Penal Reform.

<sup>144</sup> See case file no. 2ra-419/11 Marcel Prisacaru against Constantin Cius, Supreme Court of Justice decision of 20 April 2011; case file no. 2rae-79/09 IM " Venetos Imobil" SRL against SC "Viscont Grup" SRL Supreme Court of Justice decision of 16 April 2009.

<sup>145</sup> See case file no. 1ra-693/10 Supreme Court of Justice decision of 22 June 2010 in the criminal case against S. Cazacu on charges of grave bodily injuries.

<sup>146</sup> See case file no. 3r-1587/10 of V. Bogoros, Supreme Court of Justice decision of 15 September 2010.

The existence of the certification should not create a presumption of admissibility of the forensic expert's report as evidence. Similarly, the absence of the certification should not create a presumption of inadmissibility in order to exclude the report as evidence when it refers to specific forensic disciplines.

## **INDEPENDENCE OF THE FORENSIC SERVICE PROVIDERS AND EXPERTS**

For many decades in Moldova forensic infrastructure and the forensic service providers have not experienced major structural or administrative changes that would influence their operational function - the way, the manner and the nature of work or relationship with the main forensic service “end users” – law enforcement officials, prosecutors, judges.

During interviews it was confirmed that hardly any modifications reached the forensic service when the new Law of Forensic Expertise (2000) and the new Criminal Procedure Code (2003) came into force. Every one of these aspects let the forensic services operate as usual without making any effort to change at least slightly in the existing system of the forensic institutions. The forensic infrastructure is stagnating because of the inefficient attention paid from the State and Government and underestimated by the judicial system.

Exceptional political events of April 2009 in Moldova sent a message to the community that there were significant concerns relating to the possibilities to manipulate with the forensic data reflecting the fragile line between the independence and the impressibility of the forensic expert; furthermore demonstrating the influence that forensic investigation results and their incorrect interpretation as well as pressure on the forensic investigation process itself may have on political processes<sup>147</sup>.

According to this study all forensic service providers in Moldova at best have undeniable administrative dependence from the superior management and are influenced by decisions mainly relating to the budget.

For that reason the importance of neutrality, independence and impartiality of the forensic experts are so crucial. The law enforcement agencies and prosecutor offices consequently must comply with these values and undertake to respect and support them.

### **Technical-Forensic Unit of the Police Department of the Ministry of Internal Affairs**

The forensic service providers, while working closely with the criminal justice system and law enforcement institutions, must remain independent of the law enforcement bodies and of any political influence upon them, as well as be objective in order to avoid potential conflicts of interest to serve as an indirect and impartial representative of all parties involved such as suspects, victims of crimes, prosecution and defense.

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<sup>147</sup> Valeriu Victor Boboc's death (April 7, 2009) and the first announcements of the cause of his death to the public and media.

The Technical-Forensic Unit (TFU) of the Police Department of the Ministry of Internal Affairs within the forensic infrastructure of Moldova is a part of the law enforcement institution and is administrated by its main “customer”. This leads to significant concerns related to the independence, objectivity of this Unit and also to its potential to decide on its own budget.

Due to the nature of TFU location within the law enforcement institution (see Chart 1) as well as other forensic experts working directly for regional police commissariats<sup>148</sup>, forensic experts often inevitably have close, collegial relationships with the law enforcement structures conducting investigations of crimes. In addition, some of the forensic experts come from law enforcement background. As a result, in some cases the forensic experts may see their role as part of the crime-fighting team as opposite to the demand to be objective and independent. Therefore reasonable and plausible is the assumption that a forensic expert working for TFU and within regional police commissariats and responding to a request from a law enforcement official who is his/her colleague from the same institution may feel pressure or even have incentive to alter the evidence in a manner favourable to the prosecution that would be unacceptable in any case. For example, how can a forensic expert working for TFU that is under the administrative and financial control of the Police Department or a forensic expert working in regional police commissariats impartially evaluate evidence from police shooting or crime related to the police malfeasance? Of course, in some circumstances, the nature of forensic analysis will be unaffected by such factors but these aspects should not be left without attention.

Some of the forensic disciplines provided by the TFU have made this structure a monopoly holder as many forensic investigations (latent print investigation, firearms, and drugs) are created in a longer term by law enforcement system and they don't have significant uses beyond this system. Yet it is certainly not an argument in favour of existing organization and TFU should be removed from the direct influence of the law enforcement structures.

Such conflicting system is more likely to bring up public mistrust and claims of cover-up, whether perceived or real. The aim and soul of the forensic investigation is to find the truth based on the facts found out from the evidence, not the fight against crime what is the main objective of the law enforcement institution.

As a starting point to achieve major improvements in the future while keeping the already active incorporation would be to make TFU an autonomous institution within the Ministry of Internal Affairs and separate it from the Police Department, define it as the same level structure as the Investigation Department, reducing as a result the impact and the dependence from the main “customer”. For the TFU together with other forensic experts and also crime scene investigators working for the regional police commissariates should be taken apart from the existing structure and defined as a separate and independent component within the Ministry of Internal Affairs.

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<sup>148</sup> Forensic investigations in disciplines such as dactiloscopia, toolmarks, shoeprints are conducted also by certified forensic experts working within regional police commissariats and they are directly subordinated to the local management. TFU is carrying out only methodological oversight of their forensic work. The basic duty of these experts is to perform crime scene investigations but as specialists.

In this context, the head of TFU would have an equal influence with others in this system on matters involving the unit. TFU also would be able to set its own priorities with respect to cases, expenditures, set their own budget priorities and would not have to compete with the parent law enforcement structures within the Police Department.

This reform is needed to effectively assure objectivity and impartiality. Of course such an intermediate solution is not the best one and immediate structural changes are needed but in this case social aspects has to be evaluated, like – allowances, social guarantees and other. These structural changes should not have an impact and worsen the status or benefits what are available for the forensic experts now.

As long term priority the development of one independent institution should be set where all present forensic service providers would be united. Thereby it would be easier to maintain the high degree of scientific objectivity that is essential for good operation. The quality of the provided forensic service would be higher than it is possible now, because there would be no dependence on the budgets of the other organization with their inevitable competition for available funds under the common system. Although TFU insists that their funding is appropriate and it is evident as funding of the law enforcement institutions has been given preference in recent years in Moldova compared with that of the other forensic service providers in country; however the forensic services should be independent of the law enforcement institutions in order to remain impartial and to avoid the appearance of impropriety and conflict of interest.

It has to be indicated that the Ministry of Internal Affairs (MoIA) has worked out the reform concept<sup>149</sup> approved by the Government to reform the existing system and structure of the Ministry. The document provides the structural and conceptual changes of the MoIA in order to come closer to the EU police working standards, to ensure more qualitative services to the public, to gain more trust, to optimize the resources by decentralization. The decision is generally acceptable and appropriate.

The document is manly focused on the reform of the police forces and forensic structures or forensic experts separately are not mentioned. Assuming that forensic experts working within TFU and other smaller scientific-technical units located at the regional police commissariats can be considered as a “police” (as they all are police officers) the requirements and conceptual solutions of this paper should be extended to the forensic experts as well.

Although the forensic experts conducting forensic examinations according to the assignments of criminal investigators (also police officers) can not be regarded as a police in the general meaning as this category has specific legislation to follow – certain sections from the Criminal Procedure Code, the Law on Forensic Expertise, strict obligations, duties and responsibilities. This fact raises the question too – where is the dividing line separating the “police officer” from the “forensic expert”, when the person should follow the Law on Police and when the Law on Forensic Expertise as

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<sup>149</sup> Government Decision on the Conception of reforming the Ministry of Internal Affairs and its structures, Gov. Decision No. 1109 of 06.12.2010; to be found here <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=337008&lang=2>

both of them are bounding; in the case of professional negligence according to which law the person should be punished. Thus the content of the reform conception further reinforces the greater need to remove the forensic experts from the police competence and working area. In this case the forensic examinations can and should be distinguished from the crime scene work as these procedural activities can be performed by the criminalists – crime scene investigators side by side working together with police at a crime scene just looking for and fixing, and packaging evidences for the onward transmission for an independent forensic expertise.

### Recommendation

**Long-term** TFU should be removed from the administrative and direct control of the law enforcement institution (Police Department) as the forensic experts should function independently from the law enforcement and it's administrators.<sup>150</sup>

Within EU countries forensic service providers are organised in different systems and there are no one unique model that would be suitable for all. The most common are 4 models:

- Fragmented forensic infrastructure;
- Central state forensic institution within Ministry of Justice and forensic experts within law enforcement;
- Central state forensic institution within law enforcement (Ministry of Internal Affairs);
- One forensic institution (including forensic medicine).

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<sup>150</sup> In a few EU countries the discussion relating to the improvement of the forensic infrastructure has taken place. From those countries Estonia has chosen the new and progressive way – all the forensic service providers has been merged and one forensic institution established at the Ministry of Justice. The Estonian Forensic Science Institute provides examinations covering forensic medicine and all other forensic disciplines, the existing infrastructure has received the state support and the new building has been constructed. More information can be finding here [www.ekei.ee](http://www.ekei.ee) .

The same intentions have been going on as well in Lithuania and Latvia. Lithuania has postponed the decision of changing the forensic infrastructure till 2014. In Latvia according to the request of the Cabinet of Ministers the external audit has been done to all the forensic service providers by the State Chancellery in 2009. The final report states that the all forensic service providers working at the Ministry of Interior State Police and Ministry of Justice lab as well as the Centre of the Forensic Medicine Expertise have to be merged and one institution established at the Ministry of Justice in order to avoid the overlapping of functions and to save expenses. The final decision and order of Cabinet of Ministers has to be made next year. More information can be found at <http://www.mk.gov.lv/lv/vk/funkciju-audita-komisija/zinojumi/> (in Latvian).

All of the mentioned countries as ex-Soviet Union states have similar historical and legal traditions concerning the forensic infrastructure with Moldova and has the same structural arrangement of the forensic service providers. Thus the changes initiated in these countries carefully discussed, analyzed and adapted could be applied to the Moldavian justice system as these countries have similar historical background and Moldova could work towards the new attitude and development of the forensic infrastructure.

Model	Country	Notes
Fragmented forensic infrastructure	Spain Latvia Lithuania	Forensic service providers are working within different state entities such as police, border guard, customs and they are administered by the different Ministries, but still introducing the system where forensic experts are certified, monitored and registered by one board independent from all forensic service providers.
Central state forensic institution within Ministry of Justice and forensic experts within law enforcement	Sweden Netherlands Ireland	Forensic institution administered by the Ministry of Justice plays an important role as a leading forensic institution in a country. In this case the forensic entity within law enforcement takes care only of technical forensic investigations (dactiloscropy, toolmarks, shoeprint comparisons etc.) not requiring technically advanced equipments and instruments, laboratories. Primary work of these forensic units is to perform a crime scene investigation.
Central state forensic institution within law enforcement (Ministry of Internal Affairs)	Finland Slovakia Czech Republic Hungary Poland	In this case forensic service providers are part of the law enforcement but still having a particular place in a system with own budget and sufficient powers to set their priorities and way of development. In Finland forensic experts working in this institution are civilians, not police officers. Most of these countries has implemented the quality systems according to ISO 17025 and have worked towards providing the high level service and ensuring independent investigations by strict requirements set for the forensic institution it self as well as for a competency of forensic expert.
One forensic institution (including forensic medicine)	Estonia Non EU - Georgia	In both countries these institutions are working under Ministry of Justice.

## The Centre of Forensic Medicine of the Ministry of Health

The independent, objective and scientific opinions of the forensic medicine experts in a way educate society, inform public and give answers to raised questions concerning suspicious deaths and egregious crimes sensitive to the community and particularly forensic experts performing medico-legal investigations are main persons in the human rights issues that concern torture cases, ill-treatment or suspicious death cases.

The Centre of Forensic Medicine (CFM) provides forensic medicine services and is subordinated to the Ministry of Health (MoH) of the Republic of Moldova. The MoH has only the right to monitor the way the CFM<sup>151</sup> operates and has no direct impact on the institution itself. But it is apparent that CFM has strong administrative dependence from the MoH in matters such as budget issues and availability of the financial resources has direct correlation with the independence of the institution. The Centre of Forensic Medicine falls between the cracks and it is evident that this institution is not truly claimed by law enforcement, public health or traditional medicine where law enforcement sees this service as a public health, public health – as law enforcement, and traditional medicine scarcely acknowledges existence of this institution. The CFM is last on the list of MoH to enjoy attention in many aspects it crucially needs, simply because the Ministry has many institutions providing health care to live people that face their own shortages and problems. This imbalance affects considerably the set of priorities in the area for MoH.

In addition and most importantly is the fact that the Centre of Forensic Medicine shall be secured in its independence from any political influence in order to avoid potential conflicts of interest and serve as an impartial representative of the dead, standing for those who are no longer able to speak for themselves.

**Recommendation:**

**Long-term:** The Centre of Forensic Medicine should be reformed, put out of the common public health system and established as separate and independent state division with wider scope of activities related not only to the classical forensic medicine services such as medico-legal investigations but with a completely new approach perform independent investigations of medical errors, doctor bias and other – be as independent support and instrument also for Ministry of Health and Ministry of Justice.

Throughout the meetings and interviews with all forensic service providers in the country, we were not presented with one document or written procedure regulation ensuring the independence of forensic experts; apart of some general guidelines found in common legislation regulating the activities, obligations and responsibilities of the forensic expert. None of the institutions have worked out procedures to protect experts employed from the inside or outside possible influence. Both the Criminal Procedure Code and the Law on Forensic Expertise, have indirect and general provisions on the independence of a forensic expert.

As one of the main and strongest argument put forward about the expert's independence from the forensic providers is that reliance on criminal responsibility for the presentation of knowingly false conclusions (expert statement), regulated by Article 312 of the Criminal Code<sup>152</sup>. This criminal offense determines different levels of criminal penalties starting from fines and up to the maximum of 5 years imprisonment in case of serious consequences produced as a result of this crime. Additionally the management (director) of the forensic institution has a duty within the every forensic investigation to explain to the expert his/her rights and obligations upon which the

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<sup>151</sup> Regulation on the Centre of Forensic Medicine No 58 from February 4, 2010.

<sup>152</sup> Criminal Procedure Code Art.88 Sec.4; Code No 122 from March 14, 2003.

expert later on certifies with his/her own signature in the every forensic report he/she produces<sup>153</sup>. By far this is not enough, as all the responsibility is transferred on to the expert while such duties are to be shared in some way with the forensic institution's management. There should be instructions formulated for the experts about the course of action to be taken if he/she believes that an attempt has been made to subvert their findings or judgments. Such measure are most of all necessary to protect the forensic institution's reputation and to remove any possibility to suggest that the approach might have been successful as well as to provide a clear action in such cases for experts to protect themselves and inform management of such attempts.

### **Recommendation**

**Short-term** Besides general provisions included in the legislation, there is a need for a developed written inside procedures to defend the independence of experts from possible internal and external influence that aim to alter the result of the expertise.

According to the Article 149 Sect.3 and Article 150 Sect.2 of the Criminal Procedure Code the forensic expert accepting the assignment for the expertise from the entity requesting it has to be informed of his/her rights and duties<sup>154</sup> as well as the criminal liability. The forensic expert is obliged<sup>155</sup> at the **every** forensic report produced to include the paragraph describing the rights and duties and sign it thereby certifying that he/she is aware of the above mentioned responsibilities. The signature given in the every forensic report issued is more the formality and obviously only has the procedural meaning. It is more than clear that if the forensic expert is working for the state forensic institution and his main work duties are to conduct the forensic examinations by not giving the signature he/she can not forget the rights and obligations set by the Criminal Procedure Code. Although now according to the requirements being in force without this part the report can be recognized as inapplicable and not taken into consideration.

During the meetings with the forensic service providers and having discussions relating to the independence of the forensic experts from the law enforcement and prosecution it was highlighted and reasoned that this procedure prevents the forensic expert from giving a knowingly false conclusions and by this means he/she is protected from any kind of pressure – by warning of the consequences. But due to the formal character of this procedure and the fact that all the responsibilities are transferred to the forensic expert this cannot be accepted as an argument to ensure the independency of the forensic experts.

Basically in order to avoid this formality it would be enough for the forensic expert to give such a signature once – when he/she gets certified and is included in the Register of State Forensic Experts, and if needed to repeat the process within the re-certification. Such signature could be requested every time from the private forensic experts or experts invited by initiative of the parties as their availability for this process is rather infrequent.

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<sup>153</sup> Ibid., Art.149 Sec.3 and Art.151 Sec.2.

<sup>154</sup> Rights and duties of the forensic expert are regulated by the Art.88 and criminal liability – Art.312 of the Criminal Procedure Code.

<sup>155</sup> Ibid. Article 151 Sect. 2

But it should be mentioned that the Criminal Procedure Code<sup>156</sup> specifies also that the chief of the forensic institution is not allowed to give indications to the forensic expert relating to the process of the expertise and content of the report.

Among many, one of the important tools to ensure the independence of the forensic service provider and its' experts is also the implementation of quality management system according to some of the standards used in the forensic area. For example, ISO/IEC 17025:2005<sup>157</sup> management requirements mitigate conflicts of interest (section 4.1.4) by requiring a demonstration of professional independence from other parts of the parent institution and freedom from internal and external pressures (section 4.1.5). The requirements of this standard also scrutinize the forensic structure's organizational relationships, focusing on the position of the forensic service provider within the parent institution and the reporting relationship between management, quality assurance program personnel, and technical operations. Finally, such standard in addition addresses the authority of forensic experts whose work affects the examination of evidence and the reporting of the results, the qualification of supervisors, and the presence of a quality system manager responsible for quality assurance and reporting directly to the forensic institution management.

### Recommendation

**Short-term** Move towards the development and implementation of quality management systems and quality control measures according to ISO standards appropriate for the forensic science disciplines in order to get accreditation.

Besides the above mentioned, there is a special article relating to the forensic experts independence is as well included in the Law on Forensic Expertise:

*“Forensic expert can not be dependent directly or indirectly on person or institution requesting forensic investigation, on parties or other persons, interested in the outcome of the case.”<sup>158</sup>*

According to this article the forensic experts working within TFU are in circuitous conflict because they are employed by the same state institution as are the investigators requesting the forensic investigations.

The organization and management of the institution must be such that the forensic experts are completely free to investigate evidence and give their professional scientific judgement. There must be no commercial or financial pressures that might influence the quality of the work.

Throughout the meetings and interviews with main stakeholders – prosecutors and judges as well as defense lawyers, was confirmed that they are unable to judge the reliability of forensic experts statements, particularly in a forensic medicine area<sup>159</sup>, and, consequently, forensic results are almost always accepted on its first appearance without regard to whether the forensic service provider lacks appropriate written procedures, methods, independent oversight, or adequately trained and qualified

<sup>156</sup> Ibid. Article 149 Sect.3

<sup>157</sup> ISO/IEC 17025:2005 General requirements for competence of test and calibration laboratories.

<sup>158</sup> Law on Forensic Expertise Art.4 Sec.1; Law No 1086 from June 23, 2000.

<sup>159</sup> Gurgurov v. Moldova (2008)

experts. Therefore for today's situation it would be for better to have a possibility to request forensic medicine investigation to be conducted by some other alternative source.

Although by implementing some of the recommendations given within this report in the shortest possible time by the support from the State and the justice system itself a pressure on this subject might be reduced and even some deficiencies pointed out by international evaluators corrected.

## FUNDING OF THE FORENSIC SERVICE PROVIDERS

Article 34 of the Law no. 1086 states as sources of income for the institutions of forensic expertise to be the funding from the state budget and the financial means acquired as payments from legal entities and persons for having conducted a forensic expertise, researches and other work. When a forensic expertise is ordered in a civil case, the court puts the obligation of payment in advance on the party that requested it. Forensic expertise in criminal cases is funded from the budget except when any of the parties requests an alternative forensic report.

During the meetings with the forensic service providers it was stated that shortage of the available financial resources (except the Technical-Forensic Unit of the Ministry of internal Affairs) significantly affects their work and even in some cases might have influence on the quality of the investigations performed as out-dated techniques, equipments and instruments are used. The Centre of Forensic Medicine as well as the National Centre of Forensic Expertise acknowledged that they lack predictable and stable budgets and this lack of the funding prevents mentioned forensic service providers from fulfilling the daily work, the planning for future growth or technological advancement. Thus, the forensic institutions should look for other donors – available EU funds, UN funds.

During the interview the head of the Centre of Forensic Medicine, we have learned that the Centre currently is underfunded and over requested to perform forensic medical expertise. The Centre is the only authorised forensic medical institution in Moldova that meets the needs for this type of forensic expertise. The leadership of the Centre acknowledged that because of being underfunded, with limited personnel, it takes more time for them to produce the forensic medical reports and due to the time constraints imposed by the prosecutors and courts, the reports usually suffer in quality<sup>160</sup>. To meet the pressure and satisfy the requests received, the priority is given to case of manslaughter and grave bodily injuries and a shorter description of methodology is included in the report. The Centre is dependent on the budget resources and fees acquired for their services. Although each year a budget planning is performed and presented to the Ministry of Health including some future and development perspective, the Centre receives only the resources that have been allocated within the state budget. This is usually much lower than the amount requested.<sup>161</sup> It was also stated during the meetings as well as demonstrated by the number of case load during previous years that demand for the forensic medicine investigations has increased, but funding has not kept pace with this increasing demand so the budget is stagnant as well as the number of the staff.

**Many of the recommendations of this report which aim to provide effective forensic expertise and especially effective documentation of torture and ill-treatment cases**

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<sup>160</sup> Statements made during the interview that has been conducted on 28 June 2011 by the authors of this report with Mr Ion Cuvsinov Director and Mr A. Padure Deputy Director of the Centre of Forensic Medicine.

<sup>161</sup> Ibid.

**within the responsibility of the Centre of Forensic Medicine depend on adequate resource allocation and thus, the services provided by the forensic institutions should be compensated at a fair level.**

It is clear that many of the shortcomings and needs identified by the authors of this report, particularly of the Centre of Forensic Medicine<sup>162</sup> and the National Centre of Forensic Expertise of the Ministry of Justice<sup>163</sup>, require additional funding, new expanded facilities, equipment, upgrades and additional staffing.

Of course some of the recommendations, taking into account the overall financial constrains of the country, can be implemented within the existing budgetary constrains but it will only slightly improve the situation, but completely deny the possibility of the development of the forensic infrastructure.

Two of the main 3 forensic service providers in the country lack necessary equipment and/or facilities. To provide the high forensic services, this does not mean that each of the forensic service providers should have every possible piece of equipment. Therefore potential immediate and beneficial action should include **the consolidation of the main forensic service providers and providing the structural changes as it would save costs** on administrative expenses and also on such forensic areas as chemistry, toxicology, possible future DNA analysis and other. This effort would allow a specialized equipment to be bought once, instead of having it on several locations, but used for the same analysis.

#### **Recommendation**

**Short-Term:** The forensic community needs immediate attention from the Government and justice system in general in order to reorganise the existing infrastructure and these actions has to be covered by the appropriate financial investments (state and/or donor).

The criminal justice system relies on the forensic services and the limited resources of the forensic infrastructure are under increasing strain as the demand for scientific evidence and also new type of evidence (DNA) continues to grow. To the extent that the forensic institutions are unable to meet the needs of their customers in a timely manner, with reliable reports produced, with analysis made with appropriate equipment, with the new methods implemented, the efficiency and effectiveness of the entire criminal justice system can be affected. Besides it must be ensured that any kind of pressure on the forensic institutions never reduces the accuracy and quality of the work, for that could result in injustice.

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<sup>162</sup> According to the information provided by the management of the Centre of Forensic medicine during the 2010 were obtained 12 computers and 3 sets of instruments for medico-legal autopsies (total EUR 7500.00) , 2011 – gas chromatograph for EUR 42290.00.

<sup>163</sup> The annual budget of the National Centre of Forensic Expertise of the Ministry of Justice covers mostly salaries and social taxes. The money is earned by providing expertise in civil cases where expenses are covered by one of the parties and by private persons requesting forensic investigations. This source is used to cover daily expenses.

## POSSIBLE STRUCTURAL CHANGES TOWARDS ONE STATE FORENSIC INSTITUTION

The forensic infrastructure in Moldova lacks the necessary governance structure to rise from its current stagnating situation and, as observed by the authors of this report, none of the forensic service providers is actively dominant in this scope. None has clearly showed the need for change or presented a vision supported by all forensic actors to accomplish it. Although mandate has been given to the National Centre of Forensic Expertise of the Ministry of Justice within its Regulation<sup>164</sup> stating its leading role in theory and practice of the forensic expertise. The National Centre of Forensic Expertise confirmed that due to inefficient available financial sources it is unachievable to devote staff to fulfil the obligations and duties provided in the Regulation<sup>165</sup>, as it would be done on the expense of the other similarly important tasks.

According to the current situation it is obvious that such duties assigned to one of the forensic service provider – the National Centre of Forensic Expertise is too burdensome to be fulfilled and to be shared out to other collegiate institutions as nothing declared has real financial cover.

Actually at the moment none of the forensic service providers would be appropriate location to take over the leading role as the forensic services must serve more than just law enforcement and if they do then it must be done on an equal and independent level, and it must be accessible equally to all stakeholders – police officers, prosecution and defense within the justice system. Thus taking into account also financial resources and measures of economy, and other capacities it would be advisable in a longer time frame to move towards one state forensic service entity.

Also the current situation with the Technical-Forensic Unit (TFU) of the Police Department of the Ministry of Internal Affairs is not acceptable and law enforcement institutions should not have controlling administrative, budgetary, or managerial relationships to the TFU. The TFU in a longer time perspective should be removed from its current dependence from the law enforcement.

Thus, as a solution it should be considered the establishment of the one state forensic institution where all the forensic disciplines including forensic medicine could be merged in one.

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<sup>164</sup> Law on Forensic Expertise, Art.12 Sec.3; Law No 1086 from June 23, 2000. And Regulation on National Centre of Forensic Expertise of Ministry of Justice, Art.2 and Art.4 Government decision No 1052 from September 12, 2006. Within the Law on Forensic Expertise and Regulation it is stated that the National Centre of Forensic expertise has a leading role in the area of forensic theory and practice in the country and responsibility for developing effective methods and giving guidance on its usage. As a main tasks are declared collection and analysis of providing forensic expertise and scientific and technical research, development and implementation of measures to improve the forensic investigation process, provide studies of the scientific achievements of the other countries within the forensic scope and other.

<sup>165</sup> Ibid.

As this kind of institution cannot be principally pertaining to the law enforcement as potential conflicts of interests might appear in some cases, the first conclusion is that the Ministry of Internal Affairs would not be the right structure. However it might be either the Ministry of Justice or a totally independent entity from any Ministries<sup>166</sup>.

The institution must be funded, independent and provide high quality expertise to increase the value of the forensic services and push effectively improvements for the forensic disciplines as crucial parts of the justice system. Concerning the management - it has to be led by the professionals of the forensic area with abilities to develop strategies for the improvement of the forensic services in the country, to provide strong support to establish a mandatory accreditation, develop and provide programs to improve the understanding of the forensic disciplines for all stakeholders involved<sup>167</sup>.

To sum up, the following advantages of the one state forensic institution consolidating all the forensic disciplines, owned now by the different structures and administrated by the various ministries, can be highlighted:

- the forensic infrastructure would have the certain place and role in the criminal justice system as the equivalent entity among law enforcement and prosecution office, and other customers;
- the independency of the forensic infrastructure would be strengthened;
- as the independent entity the forensic institution would avoid the administrative, financial and legal dependence what it faces now;
- the separate state forensic institution would have an opportunity to represent the infrastructure as one and single body, speak in one voice, work out a strategy of development, set the priorities of the area in order to emphasize to the Government the importance and role of the forensic science;
- the State would have a clear vision to whom and where the funds dedicated to the development of the forensic infrastructure has been allocated, who is responsible of the area and from which to require accountability of acquiring the financial resources, in order to avoid the current system where due to the structural location more advantages are granted only to the one forensic service provider;
- the financial, administrative and human resources would be saved;
- the forensic infrastructure would have the uniform and equal opportunity to develop and improve the forensic disciplines, not to maintain the fragmented system and invest for several times on the same very expensive

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<sup>166</sup> Estonia as one of the advanced and forward looking European countries has established the one forensic institution combining all forensic disciplines – starting from the forensic medicine to the classical forensic examinations. The Estonian Forensic Science Institute is the only one institution providing the forensic services in the country. More to be found here <http://www.ekei.ee/36548>.

<sup>167</sup> Estonian Forensic Science Institute is led by the Board consisting of the five members representing the main stakeholders; - Ministry of Justice, Ministry of Interior, Supreme Court, Prosecutors Office and State Police.

equipments, quality system, training and education of the staff for the different forensic service providers;

- it would facilitate the work of the law enforcement and the prosecution as they would not have to communicate with the different forensic service providers to organise the examinations within one criminal case and often on the same objects (evidence) among several institutions and in most of the situations take a role of an intermediary.

Of course such a decision will arise many administrative and legal questions, not the least of which will be the budgetary constraints. But if the judicial system itself, the state and the Government is going to recognize the current problems of the forensic infrastructure and how it influences the rule of law and justice, political and budgetary constraints should not discourage this forward-looking action, mostly because the consequences may cost much more.

### **Recommendation**

**Long-term** Separate the forensic experts from the police culture – physically, philosophically and fiscally and create wholly independent state entity of forensic science consolidating all the forensic institutions, including forensic medicine service, that will be publicly funded and yet available to all stakeholders.

Many of the recommendations included in this report are tightly tied to this conclusion as at this condition many problems might be cleared such as independence of the forensic experts and forensic institutions, financial constrains eased, common standardized operation procedures used, finances saved on quality system implementation, accreditation, equipment and facilities, every day support activities, maintenance of equipment and instruments, introducing DNA method and establishing a DNA data base, continued education of the forensic experts, administrative expenses and many other. Of course, initial investments would be needed but the added value and the gained benefit will be worthwhile and very cost-effective in a longer term perspective.

To avoid any criticism of being a monopoly holder, from such an institution, the forensic community should be governed by the separated independent forensic board and the oversight should be housed outside the forensic disciplines themselves.

### **Independent forensic board**

After having had multiple meetings and interviews with the stakeholders and forensic service providers on ways to improve the forensic infrastructure in Moldova, the expert team recommends to create an independent regulatory board to facilitate or oversee the delivery of the forensic services. Such a board may include people from inside and outside of the forensic community and other stakeholders in the criminal justice system, including prosecutors, defense lawyers and private forensic experts, forensic doctors, academic scientists, law professors from universities.

The forensic service needs strong governance to adopt and promote an aggressive, long-term agenda to help strengthen the forensic service usage in country. This authority must be strong enough and independent enough to identify the directions where forensic community should move and have one voice for all forensic providers to be heard by the Government, law enforcement institutions, prosecutors and judges and justice system. This independent board must be able to create appropriate incentives for the forensic community to adopt and adhere to best practices and be able to apply the necessary sanctions to discourage bad practices. It must be able to identify quality standards and enforce them to be implemented.

One potential function of this board would be to act as a commission for looking through complaints and allegations concerning the serious misconduct or negligence tolerated by forensic experts and exercise a certain influence on experts' further activities. As for now possibilities to complain are very limited and there is no exact procedure for stakeholder (prosecutor, defense lawyer) to complain about unprofessional or unethical actions of the forensic experts and to initiate independent and objective hearing of the case except to ask for a criminal case to be opened on the basis of Article 312 of the Criminal Code for knowingly present false expert opinion. Such an option however is much more complicated procedure as any criminal charge needs to be proved to secure a conviction. For all these reasons, an independent forensic board would be a solution for assessment of forensic expert professionalism and ethical conduct that may result in the exclusion of the expert from the State Forensic Experts Register and the annulment of his/her certification. Currently, the legislation doesn't foresee any legal ways to ensure high quality of the forensic expert's work, other than the criminal charge from the Criminal Code mentioned above. Some tools are available to the managers of the forensic institutions through the re-certification process, and established certification commissions<sup>168</sup> and as an employer, but it is our view that the forensic institutions cannot and should not police themselves. The independent forensic board could ensure that in these occurrences the follow up investigations, if needed, are referred to the proper entity and conducted in an appropriate manner.

It is also recommended that an ethical code be adopted for the forensic experts. It could be created by the forensic board to make clear the role of a forensic expert as a neutral, objective person, and not as an instrument working for one side, as is the prosecution or the police. Of course there is no reason to doubt that many forensic experts understand their ethical obligations and rely on them in their daily work, but without such a code it is unclear whether and to what extent forensic experts are required to adhere to ethics as a condition and criteria for evaluating their work. This code shall be binding for private forensic experts as well as for the state ones, and to the technical personnel working in the forensic laboratories, performing day-to-day simple operations but important enough to support the forensic expertise.

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<sup>168</sup> Art. 18 of the Regulation on the State Register of Forensic Experts as of September 22, 2003. According to this article the National Centre of Forensic Expertise based on the decision of the certification commission has the right to remove the forensic expert from the Register and cancel his/her certificate.

Gathering all of the above mentioned, such a forensic board could play a crucial role in the following areas:

- develop recommendations for long-term strategies to build up strong and reliable forensic infrastructure;
- serve as an authoritative voice of the forensic service providers to the Government;
- initiate the legislative changes if and where needed;
- function as a mechanism to identify issues and needs of particular disciplines and provide national leadership to improve the practices of the forensic services;
- maintain the state register of the certified experts;
- perform the certification and re-certification of the forensic experts through tests and exams on legal and professional matters;
- set a minimum qualifications for the forensic expert, declare the requirements for the continuing education;
- protect the independence of the forensic experts and institutions;
- establish and promote the best practices, set the goal for quality assurance implementation, identify standards and enforce them;
- investigate allegations of serious negligence and misconduct, decide on suspension or annulment of certificates in cases of serious errors;
- create and approve an ethical code for the forensic experts.

The independence of this board is most essential factor and must be guaranteed by certain place and role that it will occupy within the system of justice. Its status must be described in detail and appropriate place found within state entities. Few of EU countries<sup>169</sup> already have such bodies and common practice is that they are placed within Ministries of Justice.

Mostly used forensic methods, techniques, processes are within regulatory of management of the forensic service provider or in case of Technical-Forensic Unit – law enforcement entity which part TFU is. Thus, in assessing the strengths, weaknesses, and future needs of forensic services, and in making recommendations for improving the use of forensic possibilities in the country, no one has direct impact to fix all of the deficiencies in this area by developing common strategy and solutions, best practice manuals, recommend standards for working procedures. Although National Centre of Expertise of Ministry of Justice has legal rights to perform this duty<sup>170</sup> – nothing is done in the area because of a significant lack of financial resources and additional staff. Accordingly such a board would be an essential tool of reforming the current forensic infrastructure.

### **Recommendation**

**Long-Term** Independent forensic board should be established to resolve and care about the issues related to the forensic infrastructure in Moldova which role is to develop and maintain the forensic expertise as an essential part of justice.

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<sup>169</sup> Slovakia, Macedonia, Latvia

<sup>170</sup> Regulation on National Centre of Forensic Expertise of the Ministry of Justice, Art.2 and Art.4.

However forensic medicine area might have a different approach and solution in this situation, as it is build on other principles of initial education program, requests for professional specialization, undergraduate education - residency later and accepted values from common medicine system for continued education and training. But any way it should have some independent monitoring and oversight to be performed.

It might be a system similar to Norway for example where oversight of the scope is done also by specific independent board but fully specialized just in the forensic medicine disciplines – Norwegian Board of the Forensic Medicine<sup>171</sup>. Although this kind of Board should be administratively and structurally linked to the main independent board which functions and tasks are described above. Such a forensic medicine board could perform external quality control over the whole area, to control medico-legal documents issued by the forensic experts in forensic toxicology, clinical forensic medicine or even forensic psychiatry, initiate and conduct external audits of the Centre of Forensic Medicine, investigate allegations of serious negligence and misconduct, set the quality standards to be followed and request quality system implementation in the area. The Board members could be the foremost experts in their respective fields and of course be academically active.

### **Recommendation**

**Long-Term** Specific Board should be organized within the independent forensic board to deal exclusively with the forensic medicine area.

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<sup>171</sup> More information can be find here <http://www.justissekretariatene.no/en-gb/Innhold/The-Commission-for-Forensic-Medicine/>

## EXTERNAL AUDIT – INTRODUCTION

The daily practice of the forensic doctors extends far beyond the questions related to the medicine and often involves dealing with political entities, mass media, law enforcement, judicial system, healthcare systems, and families of the deceased and members of the general public. They serve as expert consultants to investigators, courts, prosecutors, and defense. The evidence of said are consequences of the events taking place in Chisinau, Moldova on April, 2009<sup>172</sup>.

Therefore forensic medico-legal investigations need to be performed in a timely manner and performed correctly and professionally the first time when they are done. A functional, high-quality forensic medicine service requires the promotion of professionalism in the performance of the forensic medico-legal autopsy, as well as the development in the facilities, equipments, internal procedures and the associated investigation of the circumstances pertinent to the violation of the rights of persons to life and health, what specially includes cases of torture, ill-treatment or violent death.

Recognizing that significant improvements are needed in the forensic medicine area, within the project implemented by the UNDP with the European Commission the external audit was made in the Centre of Forensic Medicine of the Ministry of Health of the Republic of Moldova.

Findings and conclusions drawn from the audit process reflects the overall state of play of the forensic medicine in the country and gives some initiatives that must be adopted in any plan to improve specific forensic medicine disciplines and to allow forensic medicine to serve more effectively. Clearly, many of the shortcomings and needs identified during the audit require additional funding for new or expanded facilities, equipment upgrades, additional staffing, and continued education and training.

The forensic medicine services provided now days by the Centre of Forensic Medicine is neither uniform nor complete. It is apparent that quality of service varies from one region to another as it depends on such indicators as staff, facilities, equipment, funding or a combination of these factors. In order to ensure high quality (excellent) investigations throughout all the regional units, the forensic medicine services must be improved.

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<sup>172</sup> In April 2009 as a result of mass protests against allegedly forged parliamentary elections, over 300 youngsters were arrested and ill-treated by the police that has resulted in deaths and serious bodily injuries. Uproar of the police brutality and courts unlawful decisions applying arrest, draw the attention of the international community, in particular of the Council of Europe Commissioner of Human Rights and UN Special Rapporteur against Torture. The events of April 2009 formed object of the investigations from national bodies as well. A Parliamentary Commission on Investigation of April events was formed and chaired by Vitalie Nagacevski, And NGOs efforts that monitored the events have resulted in a Report issued by the Soros Foundation highlighting multiple deficiencies in criminal justice system. The cases of ill-treatment have been taken to the prosecutor office and then to court, but no police officer was ever convicted. More information to be found here <http://www.soros.md/publication/2010-09-23-3>.

But it was observed during the audit that there are talented and dedicated people working in the forensic medicine area, and the work they perform is vitally important. They are often short of different resources; they lack the sound policies and national support from the state. It is clear that improvements, both systematic and science based, are need in this discipline, establish enforceable requirements for quality standards, and promote best practices and their consistent application, the area needs stable and regular financial contributions.

It must be outlined that many issues related to the forensic medicine area and to the state of play of the forensic medico-legal investigations what concerns the analysis of legal framework, certification/re-certification of the forensic doctors and forensic experts working in the Centre of Forensic Medicine, independence, quality matters are described within the Feasibility Study of the forensic infrastructure [Section 1 of this report].

This Section is manly devoted to the specific issues such as:

- the structure, operation and scope of services provided by the Centre of Forensic Medicine;
- staff and work load;
- availability of adequate, fit-for-purpose equipment, reference materials, data bases, and commitment and resources for their maintenance;
- quality assurance, procedures to ensure integrity and chain of custody of evidence, samples throughout the forensic process;
- education and continuing training opportunities for the forensic medicine experts, training available in this area for police officers and other criminal justice practitioners;
- budget, future needs and priorities of the Centre of Forensic Medicine.

## **Purpose of the external audit**

By analyzing all the issues, the main goal of the audit was to:

- describe the main customers;
- analyze case loads and the staff sufficiency;
- assess the present facilities and deficiencies;
- evaluate equipment and need for the new one;
- look through the existing quality measures;
- evaluate the funding available;
- describe findings and give some initiatives for the improvement.

## **Methodology**

To compile the questions necessary for inventory and gather information necessary to perform audit and complete the final report, the document review was done, on-site meetings were scheduled with management of the Centre of Forensic Medicine,

interviews conducted and different laboratory, morgue and other facilities toured. There were also the forensic medicine experts interviewed working in the regional units in the cities of Hincesti and Orhei. Also few meetings and visits were conducted with heads of separate units located in the central office of the Centre of Forensic Medicine in Chisinau.

Representatives of the legal justice system and different stakeholders who provided views and judgments based on practice were interviewed: judges, prosecutors, criminal police investigators, representatives of the international organizations and NGOs, defense lawyers, independent private experts and forensic science practitioners. [See Annex 1 for a complete listing].

Besides the meetings and interviews, the authors of this report reviewed legislation regulating the work of the forensic medicine experts and area, instructions, international protocols and standards related to the forensic scope, opinions and the reports made public by the Council of Europe Commissioner for Human Rights<sup>173</sup>, UN Committee Against Torture<sup>174</sup>, UN Human Rights Committee<sup>175</sup>, and European Court of Human Rights' judgments against Moldova<sup>176</sup> that have all indirectly pointed out the weaknesses of the forensic investigations in cases it had had an important role in finding and setting out the truth.

The review system and contents partly are based on the recommendations included in the UNODC Forensic service and infrastructure assessment toolkit<sup>177</sup>.

Topics discussed with the staff were chosen from the developed questionnaire [Annex 3] in order to draw a summary. This questionnaire covered such subjects: existence of written procedures, instructions, protocols and standards; availability of basic instruments, equipments, supplies; major instrumentation deficiencies; security practices; evidence control and handling procedures; facilities; health and safety; reporting and management and planning.

## Limitations

The current external audit has taken place over a relatively short period of time:

- two meetings with the management of the Centre of Forensic Medicine;
- one day devoted to the on-site visits (regional units of the Centre of Forensic Medicine located in the cities of Hincesti and Orhei);
- one tour through the central site of the Centre of Forensic Medicine in Chisinau.

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<sup>173</sup> Thomas Hammarberg Report following his visit to Moldova between 25-28 April 2009, to be found here [http://www.ecoi.net/file\\_upload/1226\\_1247652733\\_com-instranet.pdf](http://www.ecoi.net/file_upload/1226_1247652733_com-instranet.pdf)

<sup>174</sup> UN CAT Concluding Observations of March 2010, to be found here <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.MDA.CO.2.pdf>

<sup>175</sup> UN HRC Concluding Observations of October 2009 and Information on implementation of the Concluding Observations as of 18 January 2011, to be found here <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

<sup>176</sup> Corsacov v. Moldova (2006), Gurgurov v. Moldova (2008), Paduret v. Moldova (2010) and other.

<sup>177</sup> UNODC Forensic service and infrastructure: Criminal justice Assessment toolkit. New York, 2010, to be found here [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/\\_Forensic\\_services\\_and\\_infrastructure.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/_Forensic_services_and_infrastructure.pdf)

As mentioned before, time constraints only allowed for the authors to visit 2 regional units of the Centre of Forensic Medicine when more would be needed.

Consultation work has been conducted with a wide range of stakeholders and organizations to check and obtain the approval for the findings that are being proposed as part of this report.

Nevertheless, the specific short time frame of the audit procedure has provided a natural limit to the work that could be delivered and thereby the authors strongly believe that further consultations with the stakeholder groups should form an important part.

However the following findings within the report provide a valid foundation for the further development if analyzed and considered in the future.

## THE CENTRE OF FORENSIC MEDICINE

There is just one state forensic medicine institution in Moldova – the Centre of Forensic Medicine, responsible for all kinds of medico-legal investigations.

Legislation provides the framework and authority to investigate deaths that have occurred under particular suspicious circumstances. Medico-legal autopsies per 2010 in Moldova are performed in one forensic medicine institution with main central site in Chisinau and smaller units across the country<sup>178</sup>. Regarding the criminal cases, all legal aspects are governed by the Criminal Procedure Code of the Republic of Moldova and, according to Article 143, it is defined that a medico-legal investigation is required and compulsory for determination of the cause of death as well as the severity and nature of injuries and these statements form the bases of the work conducted by the Centre of Forensic Medicine.

All the forensic doctors are certified and have been appointed to perform medico-legal death investigations, forensic clinical investigations. There are also forensic experts certified in toxicology, biology, serology working at the institution.

One of the additional duties is death scene investigation as these experts are the only professionals in this area.

### Scope of services

The main function of the Centre of Forensic Medicine is to provide unbiased, legally and scientifically defensible determinations of the cause and manner of death, interpret the nature and mechanism of injuries, determine the significance of these injuries, collect evidence for other forensic analysis that may serve as evidence, conduct toxicology analysis, histology, all in all, provide essential information to law enforcement officials, prosecutors, judges.

The Centre of Forensic Medicine provides services in the following disciplines and areas<sup>179</sup>:

- investigations of dead bodies and their parts;
- investigations of the victims and, on the basis of the medical documents and materials from criminal cases, civil cases and other materials, determine the following:
  - the severity of injuries;
  - the state of health, simulation, dissimulation, aggravation, self-harm;
  - disputed state of sexual aggression and incidents of a sexual nature;
  - alcohol and drug intoxication;

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<sup>178</sup> All together there are 35 forensic medicine units of the Centre of Forensic Medicine besides the central site in Chisinau.

<sup>179</sup> Defined by the Art. 12 of the Regulation on the Centre of Forensic Medicine, No 58 as of February 4, 2010.

- the age of a person;
- work disability.
- biological;
- establishment of paternity-maternity (serology);
- abuse of the toxic substances;
- forensic medico-legal traces, identification of skeletal remains;
- histopathology;
- other forensic investigations, in accordance

The Centre of Forensic Medicine consists of 4 separate analytical sections, which are referred to specific disciplines within the forensic medico-legal area. Each of the disciplines concentrates on different evidence types or procedures, has specific personnel, training needs, equipment and facility requirements. There are also Scientific-analytical unit, Monitoring unit, Unit of the Forensic medico-legal investigations conducted in Commissions and 35 smaller regional units as well as additional staff responsible for administrative work and finances. The regional units perform forensic examinations of the deceased, especially medico-legal autopsies, and investigations of living persons for the purpose of issuing reports or findings on demands from the police, prosecutors and courts.

The Centre of Forensic Medicine covers most of the forensic medicine investigation areas and, as an essential justice institution, plays an important role in rule of law. The structure of the Centre is appropriate for the functions performed and consists of the necessary minimum (medical, laboratory investigative, administrative and technical support units). As a future perspective for development, it might be discussed **the possibility to widen the scope by having one more unit to cover forensic psychiatry and forensic psychology**. These areas have been identified as crucial for the investigation of torture and ill-treatment cases, sexual assault cases and others where not only physical consequences should be evaluated but emotional ones as well. Thus, the Centre would be able to offer much broader scope of services and make a greater contribution to the investigation process. However, it has to be accompanied with a proper training program for the law enforcement officers and prosecution to develop the understanding of essential issues, aims and usage of these specific disciplines. Of course, the appropriate specialists have to be found and certified as well.

The scope of services does not include DNA analysis, which nowadays is the core of the forensic science and is used as an important tool for identification of possible suspects and in solving a variety of crimes.

### Findings

The structure of the Centre of Forensic Medicine is appropriate for the functions it currently performs.

One of the biggest weaknesses is the lack of the DNA method in order to identify the persons according to the traces left at the crime scene. Consequently, there is no DNA database.

The structure could be widened, by having a specific unit devoted to forensic psychiatric and forensic psychological examinations.

## Customers

The main customers of the Centre of Forensic Medicine are the law enforcement institutions – primarily police; also prosecutor's offices and courts. In a way all of them are dependent on the reports issued by the Centre in order to proceed with the criminal investigations. They are interested in the results, quality level ensured and availability of the forensic doctors.

The Centre within its limited capabilities seeks to provide the best services for their customers but it has to be admitted that the scope of services as well as the quality level has not experienced any changes during the last years and due to the insufficient financial resources, the Centre has not been able to offer any significant upgrades in the area. Some steps have been taken to transform the forensic medicine service after the April 2009 events, regarding the investigation of ill-treatment and torture cases. But, as observed by the authors of this report, they have been more of an administrative nature; e.g. some new documents have been issued<sup>180</sup>. The shortage of the resources and lack of staff and appropriate training are the main reasons preventing the forensic medicine area from on-going development and improvement, from taking full advantage of tools available in this area – starting from the simple one like digital photo of the corpse or injuries and ending with the digital X-ray equipment.

The services provided upon the requests from the law enforcement institutions, prosecutors or judges are free of charge as far as these concern the investigation of criminal cases. The only exception is the Art.142 of the Criminal Procedure Code stating that the suspects (defence lawyers) have the right to request forensic expertise on their own initiative but in this case they should bear all the costs related to it. [See also Section 1 Legal framework] The clinical forensic investigations performed on the basis of the person's own request, are charged with a fee as are all the investigations performed within civil proceedings.

The forensic medicine expertise and investigations are requested by written assignments prepared by the customers following a certain form and content where they have to give a small description of the case, indicate the person to be examined or investigated as well as point out the questions to the expert. Forensic experts provide advice to the customers in priority cases as well as consultations, where available, to the police or prosecutors to obtain the maximum possible from the investigations.

The reports are issued within the shortest possible time but it depends on the scope of discipline as backlogs are observed in some of them. Also, it was stated by the management of the Centre of Forensic Medicine that often there are situations when the issued reports have not been collected by the police so the performed work has been a waste of time, financial and human resources. It is inadequate in the situation

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<sup>180</sup> Order no. 10 of 13 October 2009 regarding some requirements towards the way the autopsies of the individuals that have died in custody or after excessive use of force by law enforcement, should be performed.

when there is a significant lack of finances. Also there is no procedure worked out what activities should be taken in such cases, neither possible solution offered.

The situation also is different between the regional units and central site, the turn around time (the average time a case remains in the Centre before being reported) is different as well. The turn around time in many cases depends on the laboratory investigations, which are conducted only in Chisinau at the central site for the whole country where all the samples are sent in. The forensic experts working in the regions are not able to issue the reports without receiving the results of analysis.

[See also Section 1 Partnership and Cooperation]

### Findings

The Centre within its limited capabilities seeks to provide the best services for their customers but more improvements are needed in order to optimize the usage of financial resources to avoid unnecessary expenses by conducting the investigations which are not later on collected by the customers. Thus the communication among the Centre and customers are not efficient enough.

The lack of financial resources prevents the development of the Centre of Forensic Medicine and thus the customer does not receive the best service possible what affects the chances to carry out a thorough investigation of a case.

It would be advisable to the Centre of Forensic Medicine to perform a survey to find out the customer views on the services provided, to detect dissatisfaction or get suggestions what should be improved.

## Case load and statistics

During the years of 2007-2010, a total of 37,442 medico-legal autopsies were performed, annually it compiles the average number of 9,360<sup>181</sup> and so the number of medico-legal autopsies has remained remarkably constant per year for the mentioned period of time. All together there are 43,631<sup>182</sup> deaths registered during 2010 in Moldova and during the same year 9,715 medico-legal autopsies performed. Thus the frequency of the medico-legal autopsy performed in Moldova during this period is approximately 22% of all deaths, which is quite high indicator<sup>183</sup> as all the suspicious

<sup>181</sup> All the statistical data related to the caseload of the Centre of Forensic Medicine hereinafter has been obtained during the external audit and supplied by management on July, 2011.

<sup>182</sup> Source: National Bureau of Statistics of the Republic of Moldova, to be found here <http://statbank.statistica.md/pxweb/Database/EN/02%20POP/POP04/POP04.asp>

<sup>183</sup> According the information from the internet site of the European Council of Legal Medicina (<http://www.eclm.org/html/>) such data can be gathered:

Denmark: During the 1996-2005 period, a total of 14,990 medico-legal autopsies were performed. This makes a medico-legal autopsy frequency of between 2.4% and 2.8%.

Germany: At the 2003 the average is 5% of all deaths are the subject to the medico-legal autopsies.

Norway: 4%

Sweden: 6%

deaths are subject to the medico-legal autopsies conducted by the Centre of Forensic Medicine. Out of the annual 9,360 investigations of dead bodies, forensic medicine experts perform approximately 2800 medico-legal autopsies in Chisinau alone. Although medico-legal autopsies are one of the main functions the clinical forensic examinations are quantitatively the dominating part of the workload of the Centre. [See Table 1] So the busiest area is clinical forensic investigations where forensic medicine expert deals mainly with examining victims. These may be the victims and perpetrators of assault, including sexual assault and child abuse, torture and ill-treatment cases.

**Table 1 Case load<sup>184</sup>**

Discipline	2010	2009	2008	2007
Clinical forensic identifications (live persons or documents)	32 968	31 530	31 524	32 379
Medicolegal autopsies	9 715	9 232	9 249	9 246
Toxicology	10 011	8 426	7 311	7 277
Biology (number of samples)	58 274	54 767	54 889	48 639

61 forensic medicine experts<sup>185</sup> working for the Centre of Forensic Medicine has certificates to perform death investigations of bodies and according to Table 1 it means that average number of bodies examined by one expert compile 159 per year. But the numbers are different in Chisinau and in the regional units. [See Table 2]

**Table 2 Case load in regions<sup>186</sup>**

case load for 1 expert	2010	
	Regional unit in Hincesti	Regional unit in Orhei
Medico-legal autopsies	382	357
Crime scenes	32	67
Clinical forensic medicine (Forensic medical examination of live persons and/or according to med. documents)	1068	1154

According to the Table 2 and also the evidence gathered during the on-site visits prove that a lot of medico-legal autopsies are done by the regional units and forensic doctors working there are overloaded with cases as they have to perform not only medico-legal autopsies but also do clinical forensic examinations of persons to detect injuries and according to the police requests conduct crime scene investigations where dead bodies

Finland: 24%

<sup>184</sup> Data obtained during the audit of the Centre of Forensic Medicine. July, 2011.

<sup>185</sup> State Register of the forensic experts, to be found here <http://www.justice.gov.md/ro/central-national-expertize-judiciare/>

<sup>186</sup> Data obtained during interviews with forensic medicine experts working in regional units of Orhei and Hincesti cities.

are found. In some places<sup>187</sup> the only one forensic doctor is available and he/she covers the entire region 24/7 and is replaced by the colleague from the neighbor region during the vacation time. It is obvious that when the investigations and medico-legal autopsies performed exceeds some threshold (for example, above 300 autopsies per year), there might be a tendency for a forensic medicine expert, no matter how skilled he/she is, to do the job partially or even make mistakes and involve errors in judgment.

### Findings

The workloads in visited regional units of the Centre of Forensic Medicine in the cities of Hincesti and Orhei raise doubts about the level of quality and completeness of the reports issued.

## Staff

The forensic medicine investigations operate between law and medicine therefore these investigations require a high level of competence, professionalism and ethics. The work itself is critical and has a widespread impact on the criminal and civil justice systems, as well as in some ways on the families of the deceased, the community, and issues of public health. The basis for a quality death investigation system is through the integrated practice of various highly trained and qualified professionals.

Staffing levels are one of the key indicators of a forensic institution's ability to meet demands of main customers. Staff in the Centre of Forensic Medicine includes the forensic experts of different categories, technical support personnel, managers of laboratories and administrative staff. [See Table 3]

*Table 3 Staffing*<sup>188</sup>

Number of staff	Number of staff hired	Number of positions	Staff missing %
Forensic doctors (experts)	82	114	28%
Mid-level medical personnel	46	62	26%
Receptionists	21	22	4%
Assistants-sanitarians	23	25	8%
Morgue sanitarians	28	44	42%
Others	15	18	17%

As of 2011, there are 88 certified forensic medicine experts in different disciplines in Moldova<sup>189</sup> and all of them are employed by the Centre of Forensic Medicine either on

<sup>187</sup> Cities of Hincesti and Orhei. July, 2011.

<sup>188</sup> Data obtained during the audit of the CFM July, 2011.

full-time or part-time bases; some of them are working as professors or lecturers for the State University of Medicine and Pharmacy "Nicolai Testemițeanu" and working for the Centre of Forensic Medicine only as the part-time forensic experts<sup>190</sup>.

It must be highlighted that problem is particularly acute outside the capital. Many regional units have only one forensic expert<sup>191</sup> working on full time bases and during his/her absence this person is replaced by a colleague from a neighboring region what clearly affects the workload. The Table 3 shows a great number of vacancies for the forensic experts which is not acceptable if high quality work is requested for the existing number of cases to be investigated.

The forensic experts working in regions are loaded with much more work than experts working in central site in Chisinau, as their scope of duties include not only dead body investigations in morgue, sample collecting but also crime scene investigations and clinical forensic medicine investigations of live persons' injuries where reports are drawn up investigating a person or according to medical documentation. [See Table 2].

The numbers reflected in the Table 2 show the large amount of work processed by **one** forensic medicine expert working in one region which is far too many to request the appropriate quality level for every case or to do more than minimum necessary.

The limited availability of the forensic medicine experts performing medico-legal investigations, especially in regions, shows that many current experts are exceeding acceptable caseloads and they are very different from region to region. The potential hazards of this practice include errors, reduced quality, incomplete investigations, not fully documented investigations, manpower burnout and attrition. This situation can result even in wrongful prosecutions, faulty attributions of blame, impunity in cases of torture, ill-treatment, homicides. It is therefore imperative that each investigation is conducted correctly and professionally.

The possible risks and unacceptable situation was also discussed and confirmed during the interviews with the management of the Centre of Forensic Medicine and acknowledged during on-site visits in two regional units located in the cities of Hincesti and Orhei.

The troublesome shortage of qualified staff is arising also from the fact that the new forensic experts are not joining the forensic medicine community as this year only 6 new experts<sup>192</sup> will be educated and certified. This number of the new forensic medicine experts is not enough to improve the situation and maintain the forensic medicine investigation loads at acceptable level. Thus **the shortage of the staff is absolutely the most important problem in Moldovan forensic medicine at the present time and a new system should be implemented to increase the number of the forensic medicine experts.**

Moreover, it is significant to find the way to keep and maintain already current number of the forensic medicine experts and to prevent them from leaving the service. Thus

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<sup>189</sup> State Register of the forensic experts, to be found here <http://www.justice.gov.md/ro/centrul-national-expertize-judiciare/>

<sup>190</sup> Statement made by the management of the Centre of Forensic Medicine.

<sup>191</sup> Staff placement and structure report, submitted by management of the Centre of Forensic Medicine during audit.

<sup>192</sup> Statement made by the management of the Centre of Forensic Medicine

creation of a stimulating intellectual environment at the Centre with seminars, case discussions and research projects as well as some kind of career planning with sub-specialization is probably of decisive importance in order to encourage the forensic experts to remain active in the field and still to wish to improve their skills. Besides, the forensic medicine experts are given scant opportunity for the professional activities, such as attending conferences or seminars, what could help strengthen the professionalism and offset some of the disaggregation. The fragmented nature of the activities raises the worrisome prospect that the quality of evidence investigated and contents of reports can vary unpredictably in different regions.

During on site interviews it was noticed that mid level medical personnel, although the college level education is requested, has no appropriate level of education to take the position. But in order to ensure the work process the persons without correct education are accepted and hired.

Also as the Table 2 shows the most number of vacancies available are for sanitarians. This technical-support staff is important to provide admissible working conditions for the forensic experts, for example, to conduct the medico-legal autopsies. The situation must be improved by attracting more staff.

Unfortunately, to sum up the above said, it shows that there is uneven distribution of the experts. The forensic experts tend to be concentrated mostly in the big cities like Chisinau and Balti, therefore access to the forensic medicine experts is limited or nonexistent in the regions. Consequently, in addition to the increasing number of forensic experts, a plan for more even geographical distribution also needs to be drafted. Thus, very important step is to ensure appropriate distribution of the forensic experts throughout the country so they are readily available in adequate number to perform qualitative investigations.

Since currently there is an insufficient number of certified forensic experts to adequately staff the service, the policies should be established to help attract doctors into the practice of forensic medicine and train additional forensic medicine experts. Simultaneously it is imperative to build and support by far better infrastructure, to hire more additional full-time forensic experts and help retain the practicing forensic experts with competitive salaries and reasonable workload. It is necessary to recruit young experts into forensic medicine. The higher level authorities have to take responsibility for finding financial means so that the appropriate persons can be recruited into this field. The incentives and programs should be developed to help the Centre of Forensic Medicine to attain these goals and this problem has to be examined at the higher level of the Ministry of Health.

Some training is provided for the forensic medicine doctors annually; it is required to take 350 hours of training per year to maintain the certificate and this rule is followed by all the forensic medicine experts. Nevertheless, this training should have more wider scope, not only be limited to the in-house training and training provided by the local State University of Medicine and Pharmacy "Nicolai Testemițeanu". More training is needed in the area on investigation, reporting and documentation of the torture and ill-treatment cases as different practices and approaches were detected during the on-site visits. This training should be followed by monitoring and regular inspections to assure that the requirements of the Istanbul Protocol are respected equally in all of the units and by all forensic experts.

Additional training and opportunities to attend more courses are needed for the forensic experts working in the laboratories whose main task is to conduct the different kind of analysis (toxicology, biology). The experts from this area have less opportunity to gain new skills and experience. Also more of the international professional events should be attended as well as the latest literature on the forensic medicine obtained and made available for the forensic experts.

The staff of the Centre of Forensic Medicine is providing also training for the law enforcement institutions and prosecution. The forensic experts of the regional units organize such trainings on more regular bases than the central site in Chisinau<sup>193</sup>. Relating to the torture and ill-treatment cases, it is important for prosecutors and even lawyers to know how torture can be medically documented and what the physical and psychological symptoms of torture are. As recognized in the Istanbul Protocol, all parties involved need to work closely together to effectively investigate and document acts of torture. Medical evidence will help to prove that torture has occurred.

### **Findings**

The shortage of the forensic experts is unacceptably high and further steps have to be taken to attract new specialists in this area. The existing number of staff is not proportionate to the number of cases due to be investigated. The forensic experts working in the regional units are overloaded with work.

It is significant to find the way to keep and maintain already current number of the forensic experts and to prevent them from leaving the service.

There is uneven distribution of experts as more forensic experts tend to be concentrated mostly in the big cities and therefore access to the forensic medicine experts is limited or nonexistent in the regions in such way affecting the work of the law enforcement institutions and prosecutors as well.

More training is needed in the area on investigation and reporting the torture and ill-treatment cases as different practices and approaches were detected during the on-site visits.

Additional training is needed for the forensic experts working in the laboratories as well as more of the international experience exchange desired for all of the forensic medicine experts.

### **Facilities**

The law enforcement institutions as well as criminal justice system in general have high expectations of the forensic medicine service as this tool is used on regular bases to investigate the different crimes. This reasonable expectation now should lead to the need for higher standards such as appropriate laboratory facilities, morgue rooms, quality assurance and quality control, accreditation, on-going education and training,

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<sup>193</sup> Statements made during the interviews by the forensic medicine experts from regional units in Hincesti and Orhei.

supplemented by a highly skilled work force. However, the facilities and work environment is often a rate limiting factor what was also observed during the external audit of the Centre of Forensic Medicine. It is important, therefore, to have a suitable work place, especially in the forensic medicine area, which allows for and supports efficiency, growth, proficiency, and safety.

The Centre of Forensic Medicine occupies one part of a building, and premises are shared with the State University of Medicine and Pharmacy "Nicolai Testemițeanu". The regional units are located in different places and in most cases according to agreements occupy the facilities owned by the local hospitals and/or municipalities.

At the main building of the Centre there are all the laboratories and morgue rooms located. The building is outdated and most of the facilities are neither fit-for-purpose for the laboratory requirements, nor adequate for the forensic medicine needs. Some laboratories (biology, toxicology) have been renovated to suit the requirements, the rooms are clean and well maintained, still additional space would be needed to provide appropriate sample handling, storage and assure the chain of custody. In the laboratories the various processes are separated and there are separated rooms for instruments, sampling and office work. But increasing technological requirements and renovations to accommodate more staff are reaching the point where the facilities could no longer handle more changes for possible future growth, also in case if some new equipment would be obtained. So the laboratory facilities are not allowing for an increase in the number of analysis or staff, neither implementation of a new type of forensic discipline to be performed or new equipment to be installed. Thus the existing facilities are not completely suitable for the implementation of, for example, such type of the forensic discipline as the DNA analysis.

The access to the laboratories at the central site in Chisinau is secured and main doors are kept locked. However, the flow of evidence to the evidence control room in the central building allows non-laboratory staff to travel through the toxicology laboratory. This can be problematic for safety, efficiency, and other reasons. Two solutions could be recommended. One option would be to have those who are not laboratory staff escorted from their point of entry to drop off evidence and back out of the building when their visit is complete. The second option would be to create an area for interface with non-laboratory staff directly adjacent to the laboratory or storage rooms and create a direct path from the building entry to the laboratory.

The morgue facilities in Chisinau are sufficient but still investments and improvements have to be done (renovation needed, new tables, appropriate lightening). The lack of proper ventilation system is a major deficiency at the moment.

More problems were detected during the on-site visits in the regional units of the cities Hincesti and Orhei. The facilities used by the Hincesti regional unit are completely inadequate and do not comply with any requirements, they are outdated, no special conditions are available, no basic sanitary requirements are provided although used also by the local hospital. At the time of visit, on the only morgue table side by side, were lying undressed dead body with open wounds from a criminal case and a dead person from the hospital – both waiting for the further processing. The forensic expert and the hospital pathologist share the same limited space and only one morgue table.

The sample storage fails to meet any requirements. Not even a fridge is available to keep the samples until they are delivered to the laboratories at the central site in Chisinau as the laboratory services are provided only there, so the storage is and should be essential. Due to the high temperature outdoors at the time of the visit (approx. +25C), the only possibility to ventilate the rooms (including the morgue and storage room) is to keep all the doors open. The undersized work, morgue and autopsy area of the regional unit in Hincesti district, in the opinion of the authors of this report, might affect the safety and efficiency of the working processes. So the health and safety as well as security are other areas of serious concern.

Different situation has been observed in the city of Orhei where facilities are better and the new morgue room has been renovated but not finished due to the unsolved problems with the local municipality. However, the working offices and already used morgue room could be of a better condition. But in both places visited, the rooms are clean and maintained as good as possible.

As noted, findings include deficiencies ranging from general ones (with overall facility impact in regional units) down to isolated items (with simple remedies at the central site). The lack of a proper ventilation system for the laboratory and morgue sections is one of the most significant deficiencies noted what might be also considered a major health and safety concern. Correction of this deficiency is considered of high importance. Efficiency issues in the laboratories are predominantly related to the need to provide safe and effective office and laboratory environments for the staff. This is directly related to the amount of functional space within each of the units and the basic need for more space. More physical space is required for the laboratory staff, examination of evidence, scientific instrumentation, and equipment.

It should be clearly stated that if the simple quality requirements are to be met (chain of custody, safety and sanitary, etc.), then medico-legal autopsies and other laboratory analysis can only take place in a room specially equipped for this purpose (well lit and ventilated), with specialized personnel. More important it is for the morgue rooms as an autopsy is only done once and no repeated investigation is possible. The public and victims, families of the dead should be confident that a throughout and professional forensic medicine investigation is to be conducted regardless of the region in which a death or any other criminal offence involving this kind of investigation occurs.

### **Findings**

During the audit the following deficiencies were identified:

- completely inadequate work facilities, storage room and morgue room for the needs of the clinical forensic investigations and medico-legal autopsies in the regional unit of the city Hincesti, working conditions do not comply with any requirements and standards;
- the regional unit in Orhei has a new morgue room but it cannot be used as it is not finished due to the problems of administrative character;
- the central site of the Centre of Forensic Medicine in Chisinau needs some morgue rooms to be renovated, the new ventilation system, appropriate lightening, new tables;

- laboratory rooms do not have enough physical space for proper sample handling and storage, more as well as new laboratory fume hoods needed for the air control;
- the access of the non-staff to the laboratories should be controlled;
- the laboratory facilities are fully occupied and cannot accommodate more staff, new equipment or introduce a new methods of analysis.

## Equipment

During the visits to the laboratories and regional units of the Centre of Forensic Medicine, it has been observed that this institution is poorly equipped<sup>194</sup> and in some places and stages inadequately housed as well, especially considering the scope of the provided services and taking into account the importance and role of this Centre. It is obvious that the Centre has no financial support and there are no contributions done according to the requirements, expectations and demands imposed by the legal system for the effective work process, quality level, turnaround time and the case load [See Annex 4]. The financial resources invested are insufficient to improve the general situation, to replace the old equipment used and improve the efficiency of the service. The Centre has to be able to purchase scientific equipment for new technology as it becomes available. If equipment is not replaced on a regular basis, the laboratories of the Centre cannot provide well-based and reliable services to the law enforcement and prosecution.

As observed by the authors, most of the laboratory equipment is outdated and almost impossible to maintain and keep in working condition. Carrying out investigations with the outdated equipment the Centre of Forensic Medicine soon is likely to face severe problems as it is almost impossible to guarantee reliable and qualitative toxicology and other analysis. It is of utmost importance as the Centre is the only laboratory carrying out such forensic investigations. This state of play at some point may raise concerns over the poor examination of the samples as well. Besides the mentioned, the Centre lacks the appropriate reference materials for the drugs, for example. Thus the interpretation of the results is limited and no reliable substances for the equipment calibration available. There are no written standard operational procedures for the analysis performed, no evidence that the staff has appropriate training to work with even the old, existing equipment.

To improve the situation, the Centre of Forensic Medicine has bought the new gas chromatograph, but still – the new equipment requires a new attitude as the new

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<sup>194</sup> Also confirmed already in 2009 by the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova, A/HRC/10/44/Add.3, February 12, 2009, para 67. and para 90.

“Similarly, forensic examinations to assess torture allegations are the exception rather than the rule and are often carried out too late. They also tend to only record the marks without indicating how they were caused. Also, the State Forensic Institute is underequipped.”

methods have to be developed and validated for the instrument to be used properly and efficiently, it requires increasing investment of the staff time as well.

The Centre needs support and financial investments from the state or possible donors to ensure that appropriate equipment is used to conduct fast and effective analysis. As the equipment becomes obsolete more quickly nowadays, the replacement cycles for the laboratory equipment should be written and approved by the Government in order to plan the budget and ensure that the equipment is functional and there are clear plans for the future development, for example, for the chromatographs the replacement cycle could be 5-8 years. Generally it is necessary to develop the replacement plan for the laboratory equipment and the plan for the totally new instruments to introduce new technologies and analysis like DNA. There is need even for such basic equipment as computers as the insufficient number of computers affects the normal and uninterrupted work process of the experts.

Looking at the budget<sup>195</sup> annually allocated to the Centre of Forensic Medicine, it can be concluded that the equipment is the last aspect when it comes to reliable funding. The everyday operating expense levels are almost automatically applied from year-to-year and even significantly reduced; while the expenses for the equipment must be specifically justified annually and the amounts spend are very insignificant [See Annex 4]. The Centre does not have a budget for ongoing replacement and upgrading of the laboratory equipment; it must seek and justify these funds each year<sup>196</sup>. It is generally unable to justify a constant funding stream that would allow developing long-term plans for replacing the equipment.

As forensic analysis are becoming more comprehensive, the cost for a single item of equipment exceeds the average annual equipment budget of the Centre – what can be seen from the amount spend on the gas chromatograph on 2011 (43185.00 EUR). The general impact of this type of approach is retarding the movement to the new, more reliable and efficient equipment and that should be changed.

### Findings

The Centre of Forensic Medicine daily for the laboratory investigations uses outdated equipment what is for now hard to be maintained or calibrated, maintenance is provided only in-house.

The Centre of Forensic Medicine, due to the limited funds, does not have the following basic equipment needed for the regular investigations and considered as a norm for the forensic medicine area:

- digital photo/video cameras;
- different chromatographs for laboratory analysis (like GC/MS);
- functional<sup>197</sup> x-ray equipment to make basic diagnoses or locate the objects such as bullets;

<sup>195</sup> Annual budget analysis for the period of 2008-2011, performed by the author.

<sup>196</sup> Statement made by the management of the Centre of Forensic Medicine during the interviews.

<sup>197</sup> As stated by the management of the Centre the old one exists but it cannot be used due to the lack of the additional equipment needed to process the films.

- additional laboratory equipment (microscopes, centrifuges, analytical scales, water distiller and ionizer etc.)
- computers.

For the development of the institution and improvement of the criminal investigations, the DNA method has to be introduced.

The lack of different reference materials (drugs) was also noticed, there were no available written standard operational procedures, the maintenance of the existing equipments is provided on "in-house" bases.

## Quality assurance

In general, during the audit relating to the quality system there was little evidence to be found and most of the questions looked through relating to the quality matters [See Annex 3] were not covered and answered, characterizing such quality indicators as written procedures, validated methods, documented procedures on equipment checks and quality control checks, documentation or evidence on participation in proficiency tests or collaborative exercises. Also no evidence were observed on procedures and management methods to error prevention, procedures to provide records which enable the quality of any results to be demonstrated historically in order if something should go wrong the errors can be tracked and modifications made to the process to reduce the likelihood of a recurrence, i.e. implement corrective actions.

Although the Centre has strong practice in the cases of complex investigations when the expertise is performed by the forensic medicine expert commissions what is really welcome and good measure as several professionals are involved to conduct the examination. But it was also made known by the management of the Centre that quite often are requested the re-examinations and in some of the cases the resulting conclusions are different from the forensic report already issued. As stated by the forensic medicine experts the quality of reports issued is checked not frequently and irregularly and more is practiced for re-certification process when forensic medicine expert gets some feedbacks to prevent errors in the future. Thus some measures are taken to assure that the examinations and reports issued stay at the certain quality level.

The more serious quality checks are done if some complains have been received but no records are made and follow-up procedures implemented. Thus the quality monitoring should be planned and done on regular bases to detect quality problems, also the audit procedures should be implemented to perform regular checks at least on reports issued. The client complains and quality incidents are not recorded, the documents are not available where the auditors could see what corrective actions have been taken to rectify the problems. It would be recommended to work out the common form for recording the complains

The Centre performs several kind of chemical analysis where the certified reference materials would be needed (drugs) but as observed no reference materials are

available. As an alternative to this situation could be participation in an interlaboratory proficiency exercise, but this also is not done. Thus it raises doubts how equipments are calibrated and what results are received. The Centre is not performing any of methods either inside or outside for assuring confidence in results.

Methods used are the standard ones and as acknowledged by the laboratory staff no in-house methods are used. But no evidence was presented on the documentation that standard methods used are applied properly and consistently, no instructions on the use of particular models of equipments were demonstrated.

As observed during the visits the staff working in the regional units has different information and instructions available, the common system is not used and the staff is not fully informed of the already existing orders on how the work should be performed. Thus the document control system is not in a place.

Accreditation of the Centre of Forensic Medicine is unobtainable goal at the current conditions. Although some important elements exist yet it is not enough to consider it as a system - the Centre performs calibration of equipment and instruments as it is requested by the law<sup>198</sup>; the experts has to be certificated and once in a 5 years pass the re-certification; part of the chain custody system is covered by set requirements for the samples to be identified.

The quality system for such an institution as the Centre of Forensic Medicine is more than necessary as the services provided has significant value and meaning on the legal system and justice. Therefore the quality system should be implemented and accreditation should be received. The accreditation would state that the institution has an appropriate governing processes, adequate staff, equipment, training, suitable physical facilities and the reports that it produces are reliable and accurate. [See also Section 1 Quality assurance and quality management system]

According to the Art.10 point 1 of the Regulation on the Centre of Forensic Medicine all the responsibilities and duties relating to the quality measures have been entrusted to the Deputy Director of the Centre. In order to work towards the quality system implementation and accreditation the quality manager for the institution and technical managers within the laboratories should be appointed solely to deal with the quality matters.

### **Findings**

The following deficiencies affecting the quality of the services provided were noticed, which should be addressed:

- very fragmented evidence on quality matters were observed with no specific and recorded documentation;
- lack of equipment and instruments, suitable to the laboratory facilities and morgue rooms;
- no written standard operational procedures, validated methods, no technical procedural documentation on how to operate instruments and equipments to carry out the tests;

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<sup>198</sup> Law on Metrology Art.12 Sec.1; Law No 647 from November 17, 1996.

- the document control system is ineffective as staff working in different units has different documents available;
- need for additional documented continuing training for laboratory staff, participation in the proficiency tests and collaborative exercises;
- lack of certified reference materials and collections.

The Centre of Forensic Medicine as an institution having specific character and area of work has a possibility to build different data bases in order to create investigative bases for the possible further actions connected with the case. One of the most important data bases is the biology sample data base where samples are collected from the unidentified dead bodies. For now the data base has no legal bases as there are no outside or inside regulatory documents stating the reason of collecting such samples, the usage, and the time frame for storage. Although the collected material is no question of huge importance the regulative documents has to be produced. Bearing in mind that DNA in some period of time will be established; such a data base can become an important tool for the identifying persons and solving the crimes. By DNA evidence countless old and cold cases can be resolved as this method has proved its investigative and evidential value in solving violent, high profile crime all over the world.

#### **Findings**

The Centre of Forensic Medicine is collecting the biology material from the unidentified dead bodies without having regulative documentation on reason of collecting, further usage and time for storage.

## **Reporting**

In accordance with good medical practice, international standards used in the forensic medicine and also as requested by the Criminal Procedure Code, the report of the forensic medicine expertise has to contain all the relevant observations and negative findings, describe as much as possible of the investigations and examinations conducted, so that another forensic medicine expert at another time is in as good position as possible to come to conclusions. The report is the one of the major end results of the forensic medicine process and they should not be underestimated as they always should involve precise description of the procedures performed at the first time and concerning the every analysis or investigation performed by the Centre of Forensic Medicine.

As explained by the management during the audit a clear distinction is made between a comprehensive summary of the observations (facts) on the one hand, and a forensic interpretation (opinion) on the other. The expert is asked to interpret the findings on the basis of current scientific knowledge and his experience and to answer all useful questions that could contribute towards discovering the truth. If various different interpretations are possible, he/she must explain why one or none of these interpretations/hypotheses is preferred. In many cases the examinations cannot be repeated and if it is requested they are done solely according to the report issued and other medical documents.

As observed during the audit the reports issued within the clinical forensic area are not the reflection of all the possible objective observations and are not followed by an extensive interpretation. The reports checked were rather short; no visual information attached; no wide descriptions available. Also it casts doubts that in case the reports as forensic medicine findings are issued within the preliminary police investigation when criminal case is not initiated yet and forensic medicine examination is assigned later on with the same questions the expert report is at the same poor quality level and does not provide all the information needed for the investigation and prosecution.

It was also explained that the practice at the central site in Chisinau is so that when clinical forensic investigations on live ones are conducted and injuries detected the reports are written by an assistant and the forensic medicine expert just does the final checking of the conclusions on a computer screen. Assistants are writing the reports according to the handwritten notes done by the forensic medicine experts. This practice gives an explanation why reports are so short – assistants are not the right persons to do the description work and write conclusions or interpret the facts. Due to the limited number of computers available and large numbers of the clinical forensic examinations the forensic medicine experts are not able to devote the appropriate time to draw up the wholesome reports. Thus the risks of possible mistakes exist and a way too much depends on the knowledge and experience of the assistant. Such practice can not be permitted in cases of torture and ill-treatment when preliminary examination is the most important and reports issued have to contain not only comprehensive descriptions of injuries and interpretations but also illustrative materials.

The above said can be supported by the several other official reports and observations conducted by the other international experts during last years.<sup>199</sup>

### **Findings**

Reports of the clinical forensic examinations are short and incomplete, they don't content wholesome information, descriptions and interpretations of the facts as well as no illustrative materials are attached.

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<sup>199</sup> Thomas Hammarberg Report following his visit to Moldova between 25-28 April 2009, to be found here [http://www.ecoi.net/file\\_upload/1226\\_1247652733\\_com-intranet.pdf](http://www.ecoi.net/file_upload/1226_1247652733_com-intranet.pdf)

“22. ... No photographic evidence was included with the report. According to the Commissioner's medical expert, the injuries revealed by the autopsy clearly indicate that the person was beaten. However, based solely on the evidence recorded in the report, the Commissioner's expert considers that it is not certain whether the beating alone was the cause of the person's death.”

Such findings are commented for two more cases by the T.Hammarberg.

Also confirmed already in 2009 by the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova, A/HRC/10/44/Add.3, February 12, 2009, para 67. and para 90.

“Similarly, forensic examinations to assess torture allegations are the exception rather than the rule and are often carried out too late. They also tend to only record the marks without indicating how they were caused. Also, the State Forensic Institute is underequipped.”

## Management and planning

The Centre of Forensic Medicine is managed by the Director and Deputy Director in specific areas like quality control and monitoring, development of the institution and others stated in the Regulation on the Centre.

The Centre of Forensic Medicine has its own annual budget, which is assigned to the institution by the Ministry of Health. But during the audit process it was found out that due to the limited resources within the whole health system of the country the Centre has no effect on the decisions coming from the Ministry of Health on the financial policy and allocation of resources.

Part of the frustration and difficulties in the Centre of Forensic Medicine's experience results from the fact that they are not truly supported by the Ministry of Health financially or indirectly by the law enforcement, prosecutor's office. This might be partly explained with the fact that the forensic medicine itself cannot be seen as part of the public health or traditional medicine system. As according to annual budgets of the Centre of Forensic Medicine for last 3 years it is obvious that to date Ministry of Health has focused limited attention or even no attention at all on the service of the forensic medicine and investigations provided by this service. Although traditionally these investigations for no doubt serves the interests of the state (government) since assuring security of the citizens, fair justice, objective and reliable medico-legal investigations are one of the a basic function of the Centre and has to be financed by the State budget. The government itself (Ministry of Health) should recognize the value of this specific service for criminal justice and actively support via appropriate funding. Decrease in the finances has affected the previously described situations relating to the equipment and facilities. Thus the development of new methods or investments in the new laboratory equipment are next to impossible as the Centre is under-resourced and understaffed, what likely makes it difficult for the Centre to do as much as it could to inform law enforcement institutions, provide strong evidence for prosecutions and avoid errors that could lead to imperfect justice. Thus, improving and delivery of more advanced and better quality services are not possible within existing budgetary constrains.

As one of the most important issues must be mentioned that a lot of resources might be saved if criminal procedure is changed as stage of preliminary investigations has be excluded. According to used practice nowadays police investigators before to open a criminal case performs preliminary investigation in order to collect necessary documents, materials and testimonies to argument the criminal case opening to the prosecutor consequently to launch pre-trial investigation within legal Criminal Procedure. Within this first stage performed out of the frame of legal regulations police investigators are requesting to perform initial forensic medicine investigations (according to Criminal Procedure Code this process can not be preserved as forensic expertise) and if the *corpus delicti* is confirmed the criminal case is initiated and the forensic expertise assigned again. Because of this process the forensic medicine experts are loaded with extra work as these preliminary investigations are followed by request for the forensic expertise and the whole process is repeated (more according to the medical documents and the report issued before). Such way resources are misused,

time spend counter productively and victims annoyed as some times they are called repeatedly. However, in the future other ministries (justice, interior) should also contribute to the financing of forensic medicine or support the ambitions and efforts of the Centre of Forensic Medicine to get additional funds. Otherwise the high standard of medico-legal service, teaching and especially the efficient working of the legal system can not be guaranteed.

### **Findings**

State financing does not include appropriate support for the forensic medicine service that affects the quality and completeness of the services provided.

The improvement and delivery of more advanced and better quality services are not possible within existing budgetary constrains.

The existing legislation and practice promotes inadequate expenditure of funds, time and staff resources.

### **Future prospects**

The Centre of Forensic Medicine has a lot of ways and possibilities for the future growth and development but some of them are crucial to be implemented as soon as possible in order to expand the service and its future prospects. Developments in biological and chemical areas, image capture and X-ray technologies if implemented and used could provide opportunities to consider additional ways of using conclusions and results of the forensic medicine examinations.

Besides the findings already described for the Centre of Forensic Medicine the following areas would be important to implement and expand:

- implement DNA method;
- establish national DNA data base;
- develop more modern laboratory services (toxicology, biology) by equipping the laboratories to build more effective capacity;
- create a new unit dealing with forensic psychology and psychiatry;
- implement quality system and acquire accreditation;
- establish computerized data system for the case registration throughout the regional units in the country to monitor the caseloads and to produce fast and reliable statistical data.

All of these possible developments should be discussed with stakeholders and priorities set to address law enforcement priority areas and to deliver appropriate high-quality results. Establishment of the DNA data base would require specific legal base where such areas have to be regulated: from whom and for what crimes the DNA samples are taken, by whom they are taken; procedure of acquiring the unidentified DNA profiles from crime scenes and objects in the DNA data base; for how long DNA samples and unidentified DNA is kept in a data base; conditions on the international DNA data exchange and other.

There is therefore a need to determine the areas where forensic medicine services can potentially make an impact and to define forensic priorities regarding crime types. The recent priorities highlighted cover torture and ill-treatment case investigations thus the future technological implementations should give a maximum input to deal with these problems. Although to do this effectively, there is a need to consider and define the framework for the future development and delivery for the forensic services. This will ensure that future strategy focuses on developing and delivering a high quality and effective forensic capability, for the benefit of the criminal justice system and the public.

**ANNEX 1****The number of torture and ill-treatment cases registered  
within first 6 months of 2011**

art.  From Criminal Code	Overall number of allegations pending in prosecutor's procedure		Overall number of refusals to open criminal investigation based on art.275 pct.1)-3) din Criminal Procedure Code		Overall number of refusal to open criminal investigation on other reasons		Number of criminal investigations started		Number of allegations pendings examination by 01.07.2011	
	complaints	Prosecutors initiative	complaints	Prosecutors initiative	complaints	Prosecutors initiative	complaints	Prosecutors initiative	complaints	Prosecutors initiative
art.309	14	7	12	7	1	-	1	-	-	-
art.309/1	98	39	76	32	2	1	14	1	6	5
art.328 alin.2),3)	206	52	149	40	3	-	18	3	36	9
art.368	2	11	-	2	-	-	2	9	-	-
art.370 (with violence)	1	1	-	-	-	-	1	1	-	-
<b>TOTAL:</b>	<b>321</b>	<b>110</b>	<b>237</b>	<b>81</b>	<b>6</b>	<b>1</b>	<b>36</b>	<b>14</b>	<b>42</b>	<b>14</b>
<b>TOTAL:</b>	<b>431</b>		<b>318</b>		<b>7</b>		<b>50</b>		<b>56</b>	

**ANNEX 2**

The list of officials and persons interviewed

	Name	Position	Institution
1.	Viorel Soltan	Deputy Minister	Ministry of Health
2.	Ion Cuvsinov	Director	The Centre of Forensic Medicine, Ministry of Health
3.	Andrei Padure	Deputy Director	
4.	Valentin Alexandru Starinski	Forensic Doctor	
5.	Dumitru Cobiscan	Forensic Doctor	
6.	Veaceslav Ceban	Acting Director	Department of Penitentiary Institutions
7.	Gheorghe Malic	Head of Criminal Investigation Department	Ministry of Interior
8.	Nicolae Bodrug	Head of the Unit	Technical-Forensic Unit of the Police Department of the Ministry of Interior
9.	Raisa Botezatu	Judge, head of the Criminal Board	Acting Chairman of the Supreme Court of Justice
10.	Oleg Sternioala	Chairman	Buiucani District Court, Chisinau
11.	Lilian Apostol	Representative of Governmental Agent Department	Ministry of Justice
12.	Anatol Munteanu	Director of the Centre for Human Rights	Ombudsman
13.	Ion Caracuian	Head of the Anti-Torture Unit	General Prosecutors Office
14.	Claude Cahn	Human Rights Adviser	UN Office in Moldova
15.	Rita Tamm	Senior Rule of Law Adviser	Organization for Security and Co-operation in Europe, OSCE Mission in Moldova
16.	Igor Pivovar	Legal Adviser	Human Rights and Democratization Programme OSCE Mission in Moldova
17.	Vanu Jereghi	Director	Institute for Human Rights

18.	Holger Hembach	Advisor to the Prosecutor General	General Prosecutor`s Office
19.	Gheorghe Cretu	Director of the National Centre of Forensic Expertise	Ministry of Justice
20.	Natalia Molosag	Public Defender	Deputy Dean of the Chisinau Bar Association
21.	Ion Guzun	Programme coordinator, Member of the National Preventive Mechanism	Centre of legal Resources
22.	Ana Racu	CPT Member, Moldova	
23.	Igor Dolea	Member of the Superior Council of Magistracy Expert Institute for Penal Reform	Head of the Criminal Procedure and Forensic Chair, Law Department, Moldova State University
24.	Vladimir Cojocaru	Main Specialist	General Inspection and Analytical Activity Department, Department of Penitentiary Institutions
25.	Ilona Burduja	Deputy Head	Medical Department, Department of Penitentiary Institutions
26.	Svetlana Clivada	Private Expert	Psychological expertise
27.	Mihai Gheorghita	Private Expert	Bureau of Expertise "Credibilitate"
28.	Ludmila Popovici	Executive Director	RCTV Memoria
29.	Valeriu Plesca	Lawyer	
30.	Victor Zaharia	Chairman	National Legal Aid Council

### ANNEX 3

#### The list of questions for the external audit of the Centre of Forensic Medicine

<b>Customers</b>
What are main customers?
Is the procedure to request examination, analysis, live victims the same for all customers?
Are customers charged for services?
What are the rights to refuse the case? What are the criteria used?
Are there discussions between expert and customer on type of analysis, questions to answer?
Is there any agreement (written or oral) on a deadline for providing the report?
Do customers inform the laboratory if expertise is no longer required?
Are forensic finding used other than for criminal proceedings? For which purposes?
<b>Caseload</b>
What is the number of cases submitted to the laboratory per year (= number of requests from the customer that may include forensic investigations in one or several forensic disciplines)?
One case may include several exhibits/samples, what is the number of samples submitted to the laboratory per year?
What is the turnaround time? (=the average number of days/weeks a case remains in the laboratory before being reported.)
Are those data available for the different disciplines? If yes, the set of questions above can be used to gather this information.
<b>Staff</b>
What are the duties and responsibilities of staff members with relevant university degrees?
Is staff without relevant degree in science assigned with the same duties and responsibilities?
How many are technical staff graduates with a diploma from technical schools?
Is the number of staff sufficient for the caseload?
If not, in which disciplines is additional staff needed?
What incentives exist to retain experienced staff?
Are training opportunities available to scientific staff?
How are training needs identified?

Is there a requirement for regular participation in training courses?
Is training provided in-house? Is training provided externally? Is the training basic or advanced? What training courses are available?
Do the training courses have curricula? Are training courses documented?
Are training courses evaluated periodically? By whom? Are evaluation reports of the various training courses available?
Does the laboratory have access to scientific information/ literature/ books? Does the laboratory have internet access for laboratory staff?
Does the laboratory provide training for law enforcement officers (e.g., police officers)? Is this awareness-raising training? Does it include practical parts, e.g., on initial actions at the scene? Does the laboratory provide forensic training for crime scene investigators?
Is there any current or planned external assistance to upgrade forensic capabilities?
<b>Facilities and sample handling</b>
Are the laboratory facilities fit-for-purpose/adequate for the functions and analysis performed?
What is the size and layout of the unit?
How many laboratory rooms are there?
Refrigerated and clean body storage facility; room, which is clean, to undertake dissection, with fixed or movable tables, related instruments, facilities and with adjacent change rooms including shower facilities; special storage space for retained organs and tissues, skeletal tissue.
How is the access to the evidence storage room controlled? Are special storage conditions (e.g., low temperature) available, if needed?
Would the facility allow for an increase in the number of analyses and/or new types of analyses to be performed?
Does the laboratory have access to appropriate utilities and supplies?
What security measures are being used in the laboratory?
Is entrance to the laboratory restricted and is access controlled?
Are visitors required to register when entering the laboratory?
Are the doors to the laboratory locked?
Are appropriate measures in place and used to ensure safety and health of staff (e.g., fire suppression equipment, safety showers, eye washes, chemical fume hoods)?
Do hazardous chemicals have warning labels?

Do employees have periodic medical check-ups?
How are samples handled in the laboratory during <b>examinations</b> and <b>analysis</b> ?
Is each sample labeled with a unique number?
How is the integrity of evidence documented (chain of custody)?
What contamination prevention measures are used in the laboratory?
Is there any current or planned external assistance to upgrade laboratory facilities?
Are there plans to expand/move facilities in the next 2-3 years?
<b>Laboratory equipment, procedures and materials</b>
Which techniques are available in the laboratory?
Which techniques are in use?
Photography: digital or analogue, black and white or colour, polaroid
Microscopy
Chromatography (e.g., TLC, GC, HPLC)
Histology
Radiography (e.g., for fractures, foreign body identification—metallic fragments, dental evaluation and comparison)
Other
Is the equipment appropriate for the analyses needed?
Is equipment lacking for any essential analyses?
Is all laboratory equipment in good working order?
Are supplies and spare parts available for the equipment?
In the event of a malfunction, is there backup or alternative equipment available?
Is there an uninterrupted supply of consumables, chemicals, gases and solvents?
How are these materials obtained?
Are there any difficulties faced in purchasing and getting these materials?
How is the equipment maintained?
Has the laboratory a maintenance service contract?
Is maintenance provided in-house?
Is maintenance provided by vendors or instrument suppliers?
Have scientific staff been trained and are competent to use the available equipment?
For recently acquired equipment, has initial training been provided with the equipment?
Does the laboratory have written procedures for the analyses performed in the laboratory and operation of equipment available?
Have these procedures been validated? Are the validations documented?

Is there a manual with Standard Operating Procedures (SOPs)?
Does the laboratory have access to reference materials necessary for casework? Are they certified reference materials? Where does the laboratory obtain its reference materials? Who is authorized to use the reference materials?
Are reference collections used in the laboratory? What are those collections: Drug samples of known origin? Others?
Is there any current or planned external assistance to improve technical resources of the laboratory?
<b>Databases</b>
In the forensic medical field, are autopsy databases or photography databases of injuries from post mortem or clinical cases being maintained?
DNA data base, sample data base from unidentified bodies.
No, plans or intentions to create one.
<b>Quality assurance</b>
Does the laboratory implement quality measures? Has a quality manager been appointed? What are the duties and responsibilities of the quality manager?
For each forensic discipline, does the laboratory have written procedures? Are scientific staff offered training opportunities? Are these documented?
Does the laboratory use validated methods for casework? Does the laboratory conduct equipment checks? Calibration? Regular maintenance of equipment?
Does the laboratory participate in proficiency tests and/or collaborative exercises?
Is casework evaluated or reviewed? Prior to being responsible for casework, does scientific staff complete proficiency tests and/or collaborative exercises?
What are the measures in place regarding the number of duplicate analysis to be carried out?
If the laboratory is not yet accredited, has the laboratory begun the accreditation process with an accreditation body? What are the disciplines being in the process of accreditation? What is the name of the accreditation body? What is the target date for accreditation?
Does the laboratory receive external assistance to establish and improve its quality procedures?
<b>Management and planning</b>
How is the laboratory financed? What parameters are used when developing the budget? How is budget planning and control organized? Does the laboratory conduct internal reviews (e.g., monthly, quarterly or annually) of the budget? How does the laboratory control costs?

Does the laboratory require customers to pay for service? If so, is this Payment based on the requested analysis?
Are there sufficient resources for consumables to carry out routine work and to maintain/replace equipment
Are there sufficient resources for quality procedures/ improvements/ accreditation? Is funding for support programmes (e.g., research and development, training, participation in scientific conferences) available? From internal or external funds?
Is there structured training for laboratory staff? Is there succession planning (i.e., is there a mechanism to replace managers and staff who resign or retire)? Does the laboratory encourage/support its staff to participate regularly in regional/international scientific meetings and conferences?
Does the laboratory collect metrics/statistics (e.g., <b>caseload</b> , turnaround time, number of staff, etc.) and are these statistics used as a management tool?
Is there (or have there been) nationally/internationally funded assistance programmes provided to the laboratory?
<b>The scientific community</b>
Do the forensic service personnel regularly participate in scientific meetings and conferences related to their discipline or expertise? Obtain examples of recent participation.
Do the forensic laboratories cooperate with other forensic laboratories? Do forensic personnel contact other experts? If so, on which subjects, for which purposes, and what type of communication is used (e.g., e-mail)?
Do forensic personnel meet regularly with other experts to discuss common issues? If so, how often do they meet and how is the participation supported by the laboratory management? Is the laboratory a member in the applicable regional network of forensic service providers? If so, what is the name of the network and what are its objectives/activities? What is the type of cooperation: Training? Exchange of techniques/procedures? Casework? Research? <b>Quality assurance</b> ? Other? (Specify.)
Do the forensic service providers cooperate with non-forensic, scientific laboratories? With academia?

## ANNEX 4

### The list of equipments and instruments obtained during the period from 2008-2011 by the Centre of Forensic Medicine

			EUR pc	EUR Total
<b>2008</b>				
	Microscope E3-4Д	1	3110.00	3110.00
	Binocular Microscope	2	712.00	1424.00
	Microscope with photo camera	1	3677.00	3677.00
	Notebook computer	1	935.00	935.00
	Microtomes	2	6230.00	12460.00
	Computers	5	265.00	1325.00
	Sterilizing Cabinet ГП-20	1	550.00	550.00
	Sterilizing Cabinet ГП-80	1	580.00	580.00
	Thermostat TC-80	2	525.00	1050.00
	Conditioner	1	310.00	310.00
	Distiller	2	690.00	1380.00
	Instrument set for the autopsies	3	480.00	480.00
	<b>TOTAL 2008</b>			<b>27281.00</b>
<b>2009</b>	Prozhestor ?	1	580.00	580.00
	Computers	12	355.00	4260.00
	Instrument set for the autopsies	1	575.00	575.00
	Trolley anatomical	10	370.00	3700.00
	Tables anatomical	2	3520.00	7040.00
	Magnetic Water Bath	1	305.00	305.00
	Stand for microtome blades	2	810.00	810.00
	<b>TOTAL 2009</b>			<b>17270.00</b>
<b>2010</b>	Computers	12	440.00	5280.00
	Instrument set for the autopsies	3	810.00	2430.00
	<b>TOTAL 2010</b>			<b>7710.00</b>
<b>2011</b>	Gas chromatograph	1	43185.00	43185.00
	<b>TOTAL 2011</b>			<b>43185.00</b>