



## Scientific proof in criminal justice

### Summary of work

Presented by Jean-Marie HUET

Director of the Criminal Matters and Pardons Directorate

Rachida DATI, French Minister of Justice, brought together European practitioners and experts in Lyon to discuss the theme of “scientific proof in criminal justice”.

Against the current background of enhanced European cooperation in judicial matters and the creation of a “European judicial area”, it is important to examine the feasibility and appropriateness of pooling both the advantages offered by scientific progress in judicial matters and the resources available in terms of structures and know-how.

This conference provided an opportunity to consider scientific proof in criminal matters from a European perspective by examining its quality (from the identification of clues at the crime scene to their presentation at the criminal trial) and the role of the various players involved in their handling (police officers, experts, judges and law officers, lawyers) at all stages in the criminal proceedings.

With the support of Professor HIMBERG, we have reviewed the main scientific progress made in the field of criminal proof.

Due to the development of scientific progress, the professor highlighted the need to exert caution in the way these elements of proof are considered in criminal proceedings.

These technological developments should not lead to the conclusion that their probative value is absolute, as a margin of error should always be taken into account.

He stressed in this context that it was necessary for these developments to be supported by an increasing number of databases and more exchanges between laboratories allowing comparisons to be made and knowledge developed in specific areas thus limiting the risks of error inherent to this type of proof.

I am firmly convinced that these necessary developments shall require closer links between judicial and scientific institutions which will be achieved with the support of European bodies.

Professor CHAMPOD also confirmed in his presentation the need to be circumspect in the consideration of scientific proof, since it is inevitably relative and a “matter of probability”.

His speech highlighted the underlying challenges of integrating scientific proof into the criminal field.

In this context, he drew our attention specifically to the need for each player involved in the proceedings, be they judicial authorities or experts, to be aware of their particular role, from the gathering of proof to its use in the proceedings, without exceeding it: an expert’s opinion should not be considered as absolute truth but as an element subject to the appreciation of the judicial authorities which ultimately interpret the results of the investigation.

To achieve this, Professor CHAMPOD stressed the need for closer links between these players and called for greater communication between them and increased transparency in the drafting of reports. The objective for the judicial authorities is to become more involved and fully aware of the relativity of this proof, but also to be more sensitive to the way experts form their opinions.

He also bemoaned the fact that these difficulties are inevitably amplified on an international level due to the increased number of existing norms and applicable standards in the different states.

He concluded by stating that, in spite of the links established between laboratories with regard to the standards used for analytical procedures, the “laissez-faire” strategy associated with the expert’s decision-making process continues to create difficulties in terms of cooperation and the use of scientific proof in another state.

Mr NOBLE’s speech confirmed these analyses and the crucial role of international players, particularly INTERPOL, in improving judicial cooperation.

According to Mr NOBLE, who helpfully added to and confirmed the opinions of the previous speakers, the only way of obtaining technical and scientific analysis results with a greater probative value is by sharing information and expert evaluation on an international level, due to understandable technical and legal differences.

In this context, the presentation of the responses to the questionnaire sent to the Member States provided us with a greater understanding enabling us to assess the diversity of the existing legal systems and gain more detailed knowledge of the way in which they operate.

We identified organisations within the various Member States which differ in their ways of dealing with the sampling phase and the analysis phase (different statuses of laboratories and experts for example), but above all we focused on securing high-quality technical and scientific investigations through, in particular, quality control approaches and laboratory accreditation processes with regard to community standards.

As for the value placed on scientific proof, whilst for most of the Member States who responded the probative value of scientific proof is no greater than that of other forms of proof, it is often considered as the key to criminal proceedings.

These responses, which are a useful tool for practitioners in that they specify the operating methods of the existing judicial systems, could provide initial information relating to a given legal system and it could be beneficial to distribute them among the Member States.

The French Presidency therefore plans to make the responses available on its Website in a downloadable version.

On the first day of this meeting, this general approach was appropriately supplemented by the work completed in workshops in which more specific issues were addressed. Particular consideration was given to the conditions underpinning optimised exchanges of information to improve cooperation between the EU Member States with a possible harmonisation of practices in the longer term.

In the context of this work, we began by reviewing the different ways of dealing with the crime scene in the workshop chaired by Mr Jan de KINDER.

The general conclusion reached was that numerous similarities exist between the Member States as regards dealing with the crime scene in relation to the gathering of scientific proof, the protection of the crime scene and the quality and traceability of samples.

It was revealed that all the systems represented have police officers trained in simple sampling techniques for crimes associated with mass delinquency as well as more specialised techniques which may be used to deal with more serious or complex cases.

Certain states have also developed the role of crime scene coordinators who are capable notably of informing investigators about new possibilities for scientific investigations and guiding them in their choices.

The work carried out in the workshops also highlighted the constant concern shared by all the Member States with regard to improving the packaging, preservation, traceability and transportation of samples.

In this respect, with regard to protecting the crime scene, it was considered desirable to develop European guidelines of best practices based on existing models.

We could also consider the possibility of extending these considerations to actual ways of dealing with the crime scene.

In the second workshop chaired by Ms Dominique SAINT-DIZIER, we focused on differences between technical standards, on the way laboratories operate, on the status of experts and on assessing the impact of these aspects on European cooperation conditions in this field.

With regard to scientific analyses of traces and clues, the work has highlighted the pre-eminence of governmental laboratories in analysis activities, even if the Member States also call upon external players (universities, independent experts and even laboratories from other countries). The complementary, rather than competing, nature of these players has therefore been highlighted.

As far as technical and scientific police laboratories are concerned, the discussions focused on the concept of accreditation, which is pivotal when considering a European dimension of laboratories and experts.

The concept of accreditation was outlined first of all: accreditation applies to analysis methods and laboratory practitioners. These accreditation procedures, which mainly concern the processes used, extend to laboratories which are referred to as “accredited”.

The challenges underlying accreditation were considered essential. Since it enables a state to place its trust in the quality of the data obtained from analyses carried out in another Member State, accreditation takes precedence over exchanges of data and exchanges of experts, or in other words appealing to a foreign expert.

This raised the question as to whether it would be appropriate to make the accreditation of experts compulsory at European level.

The experts considered that the process was underway thanks to the motivation of laboratories and that it would be difficult to impose a deadline for the fulfilment of this aim.

With regard to the status of experts, the work highlighted numerous differences between the Member States (selection, training, appraisal, etc.) which could make it difficult to call upon a “European expert”: the expert may find it difficult to identify the precise procedural framework of his/her evaluation provided for a state whose judicial system he/she is not familiar with or may be required to justify at length his/her qualifications as an expert from another state.

Although it is extremely interesting and could fulfil real expectations in the field, the concept of a European expert needs to be evaluated and considered in more depth in the context of subsequent debates at European level.

However, the lack of a European expert's status should not mean that expert skills cannot be offered; they should be obtained from wherever they exist. This involves placing emphasis on the pooling of expert resources in the context of which the ENFSI could be a leading player. The governmental laboratories which are ENFSI members could then act as consultants with the national judicial authorities wishing to call upon a foreign laboratory.

Finally, in the third workshop chaired by Professor CHAMPOD, issues related to the integration of scientific proof in criminal proceedings were addressed.

In view of the principle of freedom of proof in criminal justice, the discussions highlighted the benefits of giving further consideration to the ethical limits of resorting to a particular type of proof, the scientific validation of certain types of expert evaluation, for example by establishing a "quality regulator", and the reconciliation of rules on the admissibility of proof between the states.

A number of suggestions were put forward to guarantee the position of expert, such as the setting-up of an accreditation procedure, the validation of ethical rules and standards, if applicable by an independent structure, and the reconciliation of national standards. The setting-up of a European code of conduct could be useful in this respect.

The participants highlighted the benefits of pooling expert evaluation capacities, for example by creating a "European register of experts" allowing for the appointment of experts from another state, and the benefits for the latter of following training on the judicial system and proceedings of the state whose judicial authorities appointed them.

The participants stated that it would be helpful to organise close discussions between the judge, the expert and the association of the parties in order to define the expert's assignment more easily. They also highlighted the importance, for the presentation of the report, of defining balanced communication methods taking into account the various levels of accessibility of the players involved in the proceedings.

They examined on a broader basis the implications of resorting to scientific proof with regard to exercising the rights of the defence, compliance with the principle of a level playing field and the principle of giving a hearing to both sides, which presupposes that the defence is able to appoint independent experts or have the latter appointed without the cost of the evaluation being an obstacle. As regards the cost of resorting to scientific proof, the participants stressed the importance of the position of the judge and his/her appreciation in striking a balance between cost control demands, quality requirements and the need to consider document requests presented by the defence.

These exchanges also highlighted the need to provide judges and players involved in judicial proceedings with adequate technical training in scientific proof.