

Summary

Introduction

'Forensic research' or 'forensic science' refers to investigations (typically technical in nature) conducted for fact-finding purposes in criminal proceedings. The vast majority of these investigations involve forensic technical research. DNA testing (that is, examining human biological traces) is by far the most common type of research performed within this category. Within the Dutch criminal system, forensic technical research has traditionally been carried out by the Netherlands Forensic Institute (NFI).

Indeed, for a long time the NFI was the sole provider of forensic services in the Netherlands. Since the beginning of this century, several other private forensic institutes have been established, the largest being The Maastricht Forensic Institute (TMFI), Verilabs, FOX-IT, the *Forensische Polikliniek Kindermishandeling* [Forensic Child Abuse Outpatient Clinic] and Independent Forensic Services (IFS). These institutes partly deliver the same products and services as the NFI, including for the police and judicial authorities. Services are provided to others (private individuals, lawyers and companies) as well.

If the police or judicial authorities ask the NFI to conduct a forensic investigation, this is financed from the funds made available under the judicial authorities' budget. In 2011, this amounted to EUR 71.6 million, 70% of which (EUR 50 million) was designated for forensic case investigation. There is no separate invoicing or payment when the NFI performs forensic research at the instigation of the police or the judicial authorities. Arrangements in the form of Service Level Agreements (SLAs) have been made with the police and Public Prosecution Service, to keep them from indiscriminately utilizing the NFI.

Forensic investigations conducted by private institutes are separately invoiced on a case-by-case basis. Thus, if the police and judicial authorities engage private institutes, the costs need to be covered in a different way than investigations performed by the NFI.

In October 2008, several parties in the Standing Committee on Justice asked that the position of private forensic research institutes within the criminal system be examined. The Minister responded that the position of these institutes did need to be looked at further, and he decided to initiate a pilot. As part of this pilot, the police and judicial authorities were given additional opportunities for furnishing assignments to private investigation agencies instead of the NFI. A budget of EUR 3.5 million was provided for spending on investigations meeting one or more of the following criteria: (1) speed; (2) a shortage of capacity at the NFI; (3) second opinions; and (4) certain specialist investigations. The pilot officially started in the autumn of 2009. To be eligible for financing, an application had to be filed with a *Landelijke Toetsingscommissie (LTC)* [National Review Committee] created for this purpose.

The pilot was evaluated by Pro Factor, a public administration/legal consultancy firm.

Experiences relating to the process

The pilot was formally launched in late 2009. It took some time, though, before the pilot really got off the ground. Information about the pilot was provided in an unstructured and incomplete manner until at least September 2010. Hardly anyone was aware of the pilot. The situation did not significantly improve until October 2010, nearly a year after the pilot was launched. The number of applications then rose considerably. Not all of the parties concerned were fully equipped for the pilot from the beginning. These parties were not only unfamiliar with the pilot itself, but also with the procedure which needed to be followed to submit an application. In sum, the pilot's start was less than promising.

Those active in the field were afraid that the application procedure at the LTC would be time-consuming, but that turned out to go faster than expected. Generally speaking, the LTC's decision-making periods were not a problem. The application itself did not require an excessive amount of time, either. The police and judicial authority employees who regularly drew up applications had to spend quite a bit more time on this, however.

The pilot included several new elements for the police and judicial authorities which were not typical of the forensic investigations performed by the NFI. For example, quotations had to be requested from the private institutes, and the police needed to pay the private institutes' invoices upfront. People were not used to this, which led to complications. The applicants barely examined the quotations. The police and judicial authorities did not feel that they were capable of substantively judging these. Having to pay invoices upfront caused irritation (in times of cutbacks, liquidity considerations do not always allow for payment upfront) and incomprehension on the part of the police, and also made the logistical process there rather chaotic. Invoices were lost and/or paid late, posing difficulties for the private institutes.

The investigations

The LTC received a total of 298 applications for financing forensic investigations by private institutes. Of this number, 91% were granted, 6% were rejected and 4% were withdrawn. A number of applications were rejected for tactical, substantive reasons. The LTC was not convinced in those instances that a forensic investigation would aid the fact-finding process. The proportionality criterion was applied in these cases, with the LTC concluding that the costs outweighed the benefits. As well as testing the applications against the criteria of speed, shortage of capacity, second opinions and specialized knowledge, the LTC also tested the reasonableness of the applications in terms of proportionality and subsidiarity. Those in the field were not informed of this test of reasonableness. Moreover, the LTC may have engaged in more than just a test of the applications' reasonableness based on subsidiarity and proportionality. The LTC rejected applications on substantive grounds, while a test of reasonableness usually just assesses whether or not a decision (or an application in this case) could have been made on reasonable grounds, and that they did reach this decision in the correct manner.

Application of the 'speed' and 'specialized knowledge' criteria proved to be the most controversial. The private institutes felt that the LTC did not always recognize their particular expertise. The LTC tested the speed criterion against the importance for the criminal investigation and fact-finding, and rejected an application which would have resulted in quicker prosecution of the suspects.

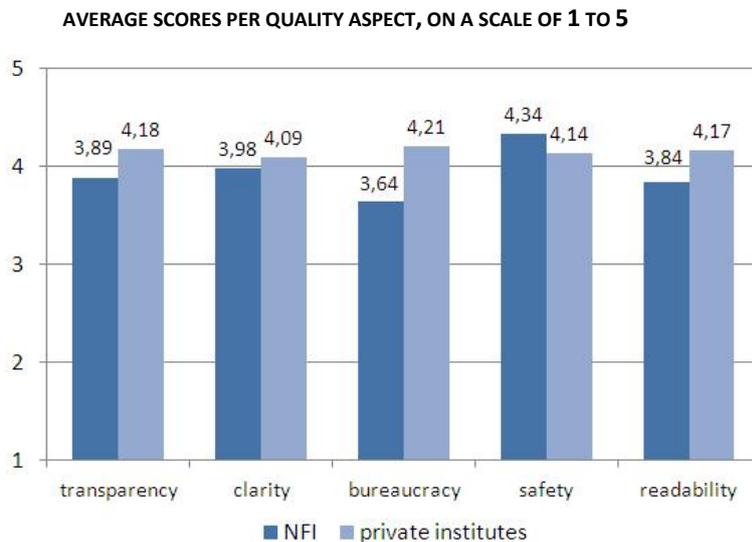
By a wide margin, most of the applications granted (36%) came from Amsterdam. Applications were received from virtually all court districts or corresponding police regions, although sometimes just a few from each. In far and away the most cases (more than one-third), an investigation was outsourced to a private institute because the NFI did not have any available capacity. Verilabs was most often used (54%). The issues raised in the pilot were not very diverse. More than two-thirds of the cases related to DNA testing. On average, the investigation cost about EUR 7,500. The highest costs (more than EUR 100,000) were incurred in criminal cases in which multiple forensic investigations were conducted.

Ultimately, 73% of the original budget of EUR 3.5 million provided by the Minister for the pilot was taken advantage of. The full amount was not expended, partly because of late invoicing in combination with the cash accounting system applied by central government.

Experiences

Many respondents viewed the speed of the investigations and reports by private forensic institutes as a very positive aspect of outsourcing to these institutes. An objective comparison between the delivery periods of the private institutes and the NFI is not possible, because different products were distinguished.

The following diagram shows the average scores for the NFI and the private institutes on various quality aspects distinguished in the survey. These aspects were scored on a scale of 1 to 5, with 1 being extremely negative and 5 being extremely positive.



Strikingly, the private institutes scored better than the NFI on four of the five aspects. Three caveats must be mentioned in this regard. First, these reflect *subjective* scores, that is, the opinions of the applicants. Some aspects (such as 'readability' and 'bureaucracy') are subjective almost by definition, while others are not. An aspect such as the safety of the investigative material, for instance, can be assessed objectively. This occurs as part of ISO certification as well. Nevertheless, as with feelings of physical safety in daily life, a subjective judgment about investigative material safety is important. If there are doubts about safety, that could present an obstacle to outsourcing cases to private institutes.

Second, officials who obviously had no faith in the quality and safety of private institutes did not participate in the pilot. Hence, those who did submit applications in connection with the pilot do not constitute a representative random sample. Still, it is clear that the 'users' in the pilot were generally very satisfied with the outsourcing of forensic research to private institutes.

Third, issues such as readability and clarity play a subordinate role in the fact-finding process and probative value for the courts. A very accessible report with a very unambiguous result ('the trace found was unmistakably Suspect X's') must be beyond any substantive doubt. Quality and adherence to scientific standards and requirements are paramount. There is no reason to assume that the forensic investigations carried out by private institutes fall short in this regard. Aspects such as readability do therefore promote efficient and effective use of forensic research by the police and judicial authorities.

Consequences

As part of the pilot, forensic research was outsourced to private institutes in a total of 268 criminal investigations. What would have happened with this research if it had not been conducted by private institutes and financed by the LTC? Many of the criminal cases concerned would have probably gone nowhere. Because the pilot involved relatively few cases (the total case investigation budget utilized represented about 2% of the NFI budget for this), the effect of the pilot was insignificant at the meta-level. Yet, the pilot covered over 250 cases relating to muggings, robberies, stabbings, homicides and sex offences – crimes which certainly cannot be categorized as 'trivial'.

The pilot had a derivative effect on the NFI. On the one hand, the NFI had already autonomously been working for a long time on improving internal work processes, customer focus and throughput times. These efforts had undeniably generated positive results. The pilot was not the driving force behind this. The impact of the emergence of private institutes on the NFI should not, however, be downplayed either. Without private institutes, the NFI would be a monopolist lacking any incentive to be competitive. This could once again lead to an inward-looking institute which does not have to work to keep customers satisfied.

One of the major consequences of the pilot was that many applicants at the police and judicial authorities gained experience with private forensic institutes for the first time. Unfamiliarity had bred contempt. The pilot changed the attitude of many applicants. Because of their positive experiences concerning such quality aspects as speed, readability and customer focus, in combination with the quality of the investigations (in terms of technical issues, too), many applicants were glad to do business with private institutes. The instinctive preference for the NFI which many applicants had before the pilot seems to have disappeared now for a substantial portion of this group. Familiarity bred affection, in other words.