



A comparative legal appraisal of civilian oversight and governance on Internal Security Forces in the Netherlands

INTEGRATED REPORT

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Content

Index of comparative tables and additional figures	5
Chapter 0. Definition and Description of ISF's	6
An Introduction	6
0.1. The National Police of the Netherlands (NPN)	6
<i>0.1.1. A brief historical note</i>	6
<i>0.1.2. The actual situation of the NPN</i>	8
0.2. The Central Criminal Investigation Service (Rijksrecherche)	10
0.3. The Royal Marechaussee (KMar)	11
0.4. Investigating Officials of the Netherlands	13
<i>0.4.1. General Investigating Officials</i>	13
<i>0.4.2. Extraordinary Investigating Officials (BOA's)</i>	14
Chapter 1. Core principles, Constitution and Oversight of ISF's	21
Limitations to HR, Police Role in Fundamental Laws and Core Principles	21
1.1. Short historical overview	22
<i>1.1.1. The power of the king</i>	22
<i>1.1.2. The start of parliamentary democracy</i>	22
1.2. The constitutional framework in the Netherlands	23
<i>1.2.1. The fundamental rights of citizens</i>	23
<i>1.2.2. The Government</i>	24
<i>1.2.3. The State General (Parliament)</i>	24
<i>1.2.4. High Councils of State</i>	26
<i>1.2.5. Law and Administration</i>	27
<i>1.2.6. Judicial Organisation</i>	28
<i>1.2.7. Provinces, municipalities, the administration of the Dutch Antilles, the Conservancies and the other public bodies</i>	29
<i>1.2.8. The revision of the constitution</i>	29
Chapter 2. Parliamentary Oversight of IFS's	31
Duties, Remit and Powers	31
2.1. Parliamentary Enquiry Committees	34
<i>2.1.1. Parliamentary Enquiry Committee IRT-affair Van Traa (1994)</i>	35
<i>2.1.2. Parliamentary Enquiry Committee IRT-affair Kalsbeek (1998)</i>	37
2.2. Court of Audit	37
2.3. The National Ombudsman	38
Chapter 3. Judicial Oversight of ISF's	39
Duties, Remit and Powers	39
3.1. The Public Prosecutor's Office	41
<i>3.1.1. Organization</i>	41
<i>3.1.2. "Out of Court settlements"</i>	42
<i>3.1.3. Oversight on ISF's</i>	45
3.2. The judge-commissioner ("rechter commissaris")	46
3.3. The court system	47
Chapter 4. Structure, Remits and Oversight functions of Ministries in charge of ISFs (Interior / Justice)	50

Duties, Remit and Powers	50
4.1. Oversight by the “Cabinet”	52
4.2. Oversight on ISF’s by Ministry of Interior and Kingdom Relations	53
4.3. Oversight on ISF’s by Ministry of Security and Justice	53
<i>4.3.1. The Directorate-General Police and Safety Regions</i>	55
<i>4.3.2. The National Coordinator for Security and Counterterrorism (NCTV)</i>	56
<i>4.3.3. The Inspectorate Security & Justice</i>	58
4.4. Oversight on ISF’s by Ministry of Defence	60
<i>4.4.1. The Defence Organisation</i>	60
<i>4.4.2. The Inspectorate Security of Defence</i>	60
<i>4.4.3. The Commander of KMAr and his staff</i>	61
Chapter 5. Internal Oversight Mechanisms and Inspectorates of ISF’s	63
Duties, Remit and Powers	63
5.1. General internal oversight on ISF’s	67
<i>5.1.1. The Independent Complaint Commission</i>	67
5.2. Oversight within the National Police	68
<i>5.2.1. Internal hierarchical oversight</i>	68
<i>5.2.2. The National Unit Control of the Force</i>	70
<i>5.2.3. Bureau for Security, Integrity and Complaints (VIK)</i>	70
<i>5.2.4. Assessing violence used by ISF’s: the blue chamber</i>	72
Chapter 6. The state at the Local Level: The Representative of The State (Prefets, Governors) in unitary or mixed countries	75
Duties, Remit and Powers	75
6.1. The subnational levels of governance of ISF’s	76
<i>6.1.1. The 12 provinces</i>	77
<i>6.1.2. The 431 municipalities</i>	77
<i>6.1.3. The 10 regional mayors</i>	79
6.2. The 25 Safety Regions	80
6.3. The 40 Safety Houses	80
Chapter 7. External Independent Oversight Mechanisms on ISF’s	82
Duties, Remit and Powers	82
7.1. The National Ombudsman	84
7.2. College for Human Rights	88
7.3. The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children	89
7.4. The Dutch Safety Board	90
7.5. Oversight Commissions on Detention Care (CTA)	91
Chapter 8. The Involvement of Citizens and Local Authorities’ Involvement in internal Security	92
Duties, Remit and Powers	92
8.1. The transformation of the role of the Mayor	94
8.2. Municipal Extraordinary Investigating Officials (BOA’s)	96
8.3. The Dutch Centre for Crime Prevention and Safety (CCV)	97
8.4. The Dutch Security Monitor	97
Chapter 9. Video Surveillance, personal data, and Rights And Duties of Law Enforcement Officers	99
Personal data, Video Surveillance.....	99
Rights and Duties of Law Enforcement Officers/Code of Ethics	99
9.1. Dutch Data Protection Authority (DPA)	102
9.2. Camera-surveillance	104

9.3. Trade Unions in ISF's	105
9.4. Professional Codes, "Code Blue"	106
Chapter 10. Conclusions	108
Bibliography	110
Articles and Books	110
Documents	115
Internet Sources	115

Index of comparative tables and additional figures

Figure 1: Organizational chart of the National Police of the Netherlands, 9

Figure 2: Organizational chart of the Central Criminal Investigation Service of the Netherlands, 10

Figure 3: Organizational chart of the Ministry of Defence, included the Royal Marechaussee, 12

Figure 4: Organizational chart of the Ministry of Security & Justice of the Netherlands, 54

Figure 5: Number of positions of leadership per organisational unit, 68

Figure 6: Number of investigations run during the period 2012-2014, 71

Table 0: List of ISFs (internal security forces) in selected EU member states and Turkey, 16

Table 1: Core constitutional oversight principles over ISFs (internal security forces) in selected EU member states and Turkey, 21

Table 2: Oversight Powers on Internal Security Forces of Parliaments in Selected EU Member States and Turkey, 31

Table 3: Judicial Oversight Mechanisms in Selected EU Member States and Turkey, 39

Table 4: Structure, remits and oversight functions of Ministries in charge of two main types of ISFs (ministries of Interior, of Justice, of Defense) in Selected EU Member States and Turkey, 50

Table 5: Individual and collective performance management system in selected EU member states and Turkey, 63

Table 6: Oversight of Governors in Selected EU Member States and Turkey, 75

Table 7: Independent External Oversight Mechanisms with investigation powers in Selected EU Member States and Turkey, 82

Table 8: Oversight and consultation at the local level: Citizen and Local Authorities in Selected EU Member States and Turkey, 92

Table 9: Data protection and Other Legal Arrangements and Considerations in Relation to Civilian Oversight in Selected EU Member States and Turkey, 99

Chapter 0. Definition and Description of ISF's

An Introduction

In this introductory chapter we consider all Internal Security Forces (ISF's) in the Netherlands with a civilian or a military status, national or local. As a IFS we understand: any public organized group of uniformed personal with policing powers (national, regional, municipal) on land or sea (coast guards, village guards, forest guards), including fiscal police. We don't include private (security or investigating) services, nor intelligence services while the latter have no enforcement powers in the Netherlands.

Furthermore, we use the notion "*Security*" in relation to those matters related to problems of criminality and public order, commonly related to the central competences of "police". We use the term "*Safety*" in relation to those matters related to problems of disasters and crisis, in which police is acting together with other safety-agencies, as e.g. the fire-brigade and medical care. To a certain extent this distinction is arbitrary, but solves quiet well linguistic issues.

In this report we mention repeatedly the Ministry of Security and Justice. In Oktober 2017, the Ministry of "Security and Justice" was renamed Ministry of "Justice and Security". For a good comprehension of this report, and to avoid confusion, we call this Ministry in this report still Ministry of "Security and Justice", while this is the common nominator (V&J) in the Netherlands.

We use the notion of FTE (Full Time Equivalent) in this report. This notion indicates the hours worked by one employee on a full-time basis. The concept is used to convert the hours worked by several part-time employees into the hours worked by full-time employees. In other words: FTE doesn't refer to persons, but to working time, which can be expressed in numbers after the comma.

0.1. The National Police of the Netherlands (NPN)

0.1.1. A brief historical note

Over time, the Netherlands changed from a strongly locally anchored police system towards a centrally steered national system (a so-called "unified" police system) throughout a long evolution.

1. The Royal Gendarmerie (*Koninklijke Marechaussee*, abbreviated KMar) force was already installed in 1814 in the Netherlands by William I, replacing the French Gendarmerie. The force was part of the Land Forces. The Gendarmerie was the only police force in certain smaller cities as Venlo at the beginning of the 19th century. The personnel of the Gendarmerie stayed in barracks, forming a "mobile force", centrally steered with a military structure.

Bigger cities (of 25,000 inhabitants or more) had their own Municipal Police (*Gemeentepolitie*). In 1945, immediately after WWII, the Netherlands knew chaos. A lot of houses were bombarded and the police was very weak. The Mayor of the municipality was "Head of the Police" and responsible for his Municipal Police. The Municipal Council could demand that the Mayor would give more attention to the police. The Mayor was responsible for public order and the prosecutor was responsible for the judicial (criminal) aspects. The administrative leadership for the Municipal Police was in the hands of the Minister of Interior.

2. In 1945 the government decided that the Municipal Police should stay in the larger cities, while the “Police of the Kingdom” (*Rijkspolitie*) was installed¹. This new force became active in smaller cities and municipalities. The administrative supervision for this new force was in the hands of the national Minister of Justice. Consequently, a new police system was introduced, composed of the Municipal Police and the “Police of the Kingdom” (*Rijkspolitie*). Apart from those two forces, the KMar stayed active for military missions.

3. In April 1993, the Dutch police was reorganised. The “Police of the Kingdom” was abandoned again. The work in the municipalities without municipal police was rendered to the new Regional Police (*Regiopolitie*) and other tasks were transferred to the “National Police Service Force” (KLPD). At that time, the Dutch police system resembled strongly that of England & Wales, with 25 autonomous regional forces which were territorially limited, each with its own police leadership, complemented with *Central National Services* (KLPD). The police chief had the daily command over his Regional Force.

The regional triangular consultation between the Mayor of the largest municipality of the region, de local Public Prosecutor and the Chief Constable of the Regional Police determined the security policy within the region. Besides, each municipality had the right to its own triangular consultation with its own Mayor. Each Region Police force was subdivided in a number of districts, and each had a district chief. Each district was further composed of a number of local entities. The number of police officers was determined by the number of inhabitants of the region and the frequency of crime on the territory of each region. At the occasion of the reform all tasks concerning the civil aviation were transferred to the KMar. In 1998 this KMar became an independent part of the army². Since that time the force is not considered anymore as part of the police system.

4. Despite the reform of 1993, the system continued to generate criticism. In the end, the Government decided in January 2013 to reform again the system. This ultimate reform defined the actual form of the police system and concluded the discussion on the organisation of the police in the Netherlands.

All parts of the police system were included in one force: the National Police of the Netherlands³, except for KMar which is part of the army and no longer part of the police. From that moment on, the National Police functions under the authority of the new so-called Minister of “Security and Justice”. The 25 regional forces and the KLPD were restructured into 10 subnational (“regional”) entities (plus one for the Dutch Antilles, so 10+1=11), a National Entity, a Centre of Police Services and the Police Academy⁴. The regional entities of the National Police are the backbone of the new police system. The headquarters of the National Police is in The Hague.

¹ In fact a part of the KMar was transformed into the *Rijkspolitie* on the one hand, while another part stayed KMar, in the pure sense of the word a military force, on the other.

² Today KMar is considered to be part of the military, but can deliver services in the framework of the Police Law, e.g. a forensic team during a short period, contributing to the control of EU-outer borders, and tasks of military police outside the Netherlands.

³ As we will see further, The Royal Marechaussee (KMar) is part of the Ministry of Defence and no part of NPN.

⁴ Law of July 12, 2012 installing a new Police Law. The academy is a part of NPN, but with a separate budget from the Minister of Security and Justice, steered and managed by the national police itself.

0.1.2. The actual situation of the NPN

The National Police (NPN) is a separate legal entity and a legal person. It is led by a Chief Commissioner (“*korpschef*”, hereby translated as “Chief of the Force”), in charge of the operational management and administration of the organisation. The Netherlands has no a priori requirements to meet this task, as e.g. a governor, prefect or magistrate. The “Chief of the Force” is a high ranked public servant, proposed by the Minister of Security & Justice and appointed by the Council of Ministers. This procedure is “closed” and thus not transparent for public debate, which has led in the past to criticism. Mostly he is stemming from the police-organization itself, but this is no prerequisite. The first Chief of the Force e.g. came from the AIVD, the intelligence service of the Netherlands. The actual Chief started his career as a low ranked officer and made promotion to the top within the police.

He reports to the Minister of Security and Justice, represents the police functionally and officially⁵. The Chief of the Force leads the National Police through the “Force Command”, which also consists of the Deputy Commissioner and three other members of the leadership of the National Police.

The Police Act of 2012 launched a major reorganisation of the Dutch police, merging 25 autonomous regional forces into one national police force, consisting of 10 regional entities and a Central Unit. The Central Unit deals in particular with organised crime, terrorism and serious violence. It conducts major operations, and ensures security and protection of the Royal House and other VIPs. The integrity policy is also dealt with centrally.

The 10 regional police entities, each one managed by a Chief Constable, deal with the day to day policing, enforcing the Criminal Law and maintaining public order locally⁶. Law enforcement policies of the regions are established by a Regional Board, consisting of the Mayor of the largest municipality of the region (the so-called “*regioburgemeester*”), the chief constable of the Regional Entity of the NPN and the local chief of the Prosecutor’s Office. The actual territories of the subnational (regional) entities of the NPN equal to the new geographical limitations of the judicial system.

A Regional Entity is divided into several Districts, each led by a District Chief. The Districts consist of a number of local Teams. The number of police employees in a given region is determined by the number of inhabitants and the level of crime in the region and differs considerably from region to region (approx. from 300 to 5,000). Each District is composed of: Basic Teams, an Investigation Unit and a so-called “Flexible Team”⁷.

In case of crisis the police collaborates with the fire brigade and medical ambulance services within the so-called “Safety Region”. The Mayor and the Public Prosecutor have the

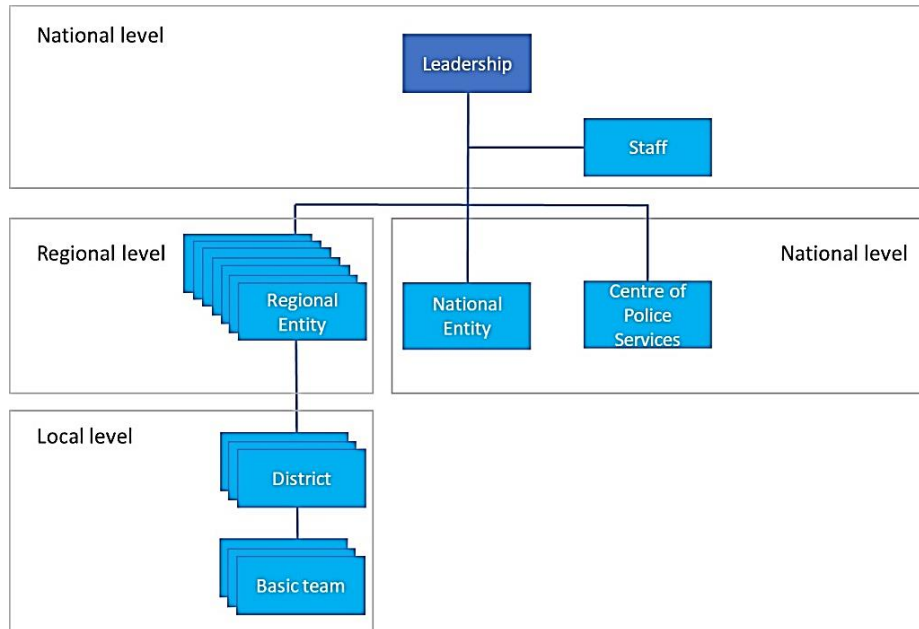
⁵ On the reason why this became a task for the *Ministry of Security and Justice*, we elaborate more in detail in chapter 4, point 4.3. Oversight on ISF’s by Ministry of Security and Justice.

⁶ Police officers are authorized to perform their duties throughout the entire country. However, police officers who are assigned to a regional entity refrain from acting outside their assigned area unless action is reasonably necessary, on the basis of a statutory rule, or under instruction or with consent of the competent authority over the NPN.

⁷ The tasks of Basic Teams are: first point of contact, delivering first aid and non urgent reports steered by the central dispatching, investigation of frequent crime and enforcement (of juvenile violence, events, hotel and catering industry, mental health care, traffic, surveillance of foreigners, environmental and executive tasks). Basic Teams have investigative capacity for tackling frequent delinquency. The Investigative Unit of a District is responsible for high impact crime. It delivers support to the Basic Teams.

supervision on the local commitment of the police. These two parties make agreements in the local “triangular consultation” with the police. Within this consultation the priorities are determined, based on the Integral Security Plan of the municipality and the national priorities.

Figure 1: Organizational chart of the National Police of the Netherlands



The *National Entity* is to a large extent the heritage of the former KLPD. It is composed by a staff, a National Operational Centre, a National Investigative Unit, a National Information Service, a National Service for Operational Collaboration, a Service for Infrastructure, a Service for Surveillance and Protection, a Special Force and a National Management Team for planning and capacity management. Apart from that, the NPN has a national concern service, the Centre of Police Services. In this centre an important part of support tasks is covered. The management of the NPN is focused on human resources, facility management, finances, provision of information and communication. The Police Academy, the training centre of the police, is provisionally no formal part of the national police, but over time it seems to be more and more absorbed by the organisation.

The NPN is competent to enforce the laws of the Netherlands, to maintain public order (prevention) and to deliver services to the population. It is also the Investigating Service of the Prosecutor’s Office. Police-officers carry weapons.

The operational capacity of the *Dutch National Police* is in 2020 51,267 FTE (prognosis). The global budget 2020 is 6,264,396 €⁸. The most recent edition of the *European Sourcebook*, (already published in 2014), mentions a ratio of 230 police officers (civilians not included) per 100,000 inhabitants in 2011 (thus before the last reform) in the Netherlands. The average of this ratio for all participating countries was 386 during that year. In other words, the Netherlands scores largely under this average. Eurostat mentions a global number of 39,735 police officers in the Netherlands in 2012⁹.

⁸ See http://www.rijksbegroting.nl/2020/voorbereiding/begroting,kst264845_12.html

⁹ See http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_plce&lang=en

The narrative part of this report deals to a large extent with the NPN, while this force absorbed over time most of the ISF’s in one organization. All of the following chapters are related to this force.

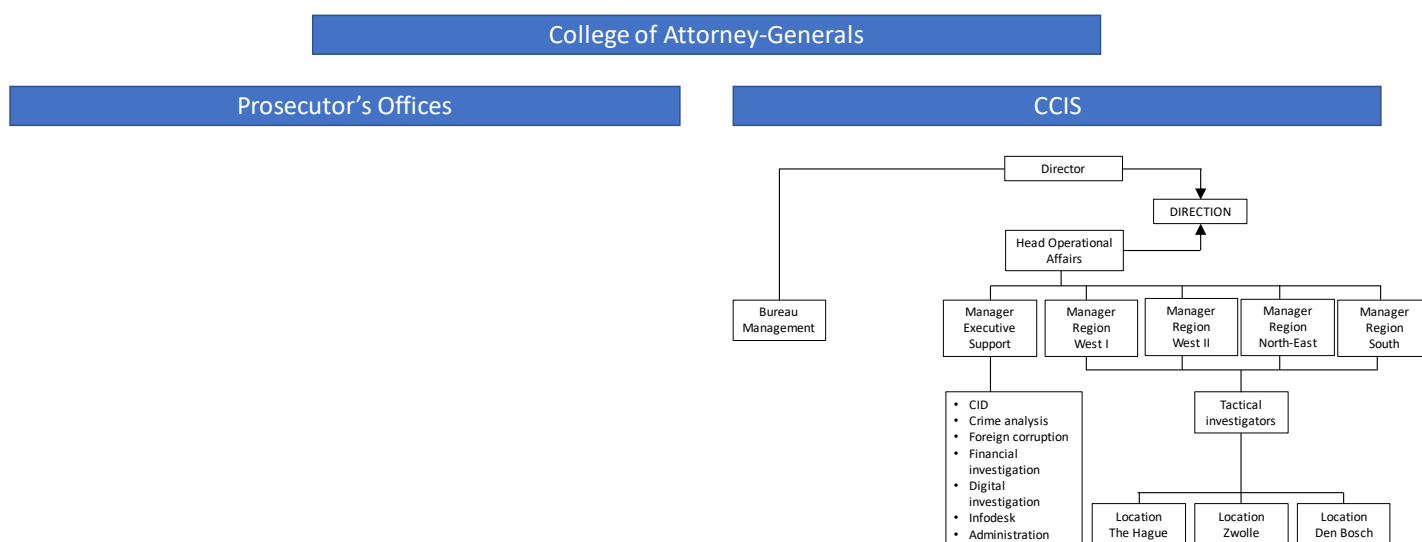
0.2. The Central Criminal Investigation Service (*Rijksrecherche*)

An important part of the Ministry of Security and Justice is the Netherlands Public Prosecutor’s Service. We discuss the organisation of the prosecutor’s offices in Chapter 3 (Judicial Oversight, point 3.1. The Public Prosecutor’s Office). The Central Criminal Investigation Service (*Rijksrecherche*, abbreviated CCIS) is part of the NPN, because its members are police-officers, but falls directly under the authority of the Public Prosecution Service of the Ministry of Security and Justice and not under the “Chief of the Force”.

The Central Criminal Investigation Service is activated on the basis of criteria determined by the College of Attorney-Generals (on January 8th, 2002). The Coordination Commission of the CCIS decides whether or not the Service will investigate in particular cases and for which period. This Commission is composed by an Attorney-General, the Head of the national Prosecutor’s Office and the Director of the CCIS. It is assisted by the national coordinating prosecutor of CCIS. The direction of the CCIS is assured by a Director, a Head Management and a Head Operational Affairs. Consequently the CCIS limits itself to acts punishable by Criminal Law. Because of this relationship, the CCIS is considered to be *impartial* from the NPN, functioning as a oversight body of the NPN and steered by the public prosecution.

Due to this impartial status, the CCIS can do its work confidentially. The objective of the National Criminal Investigation Service is to make an important contribution to safeguarding the integrity of the government in general, and thus also to that of ISF’s. Ultimately, the National Investigation Service wants to maintain public confidence in the government.

Figure 2: Organizational chart of the Central Criminal Investigation Service of the Netherlands



The CCIS investigates alleged cases of criminal conduct within the Government, such as when a public servant is suspected of a criminal offence, like fraud or bribery. A case may involve a police officer or a staff member at the Public Prosecution Service, but it could equally be a civil

servant at central, local or provincial government level, who is under investigation. In addition, the CCIS is always called in when someone is killed or wounded following the use of firearms by the police. The Department also launches an investigation in the event of a detainee's death in prison or at a police station. The Service counts +/- 100 FTE and makes use of intrusive investigating means.

A large part of the oversight concerns the concrete functioning of the NPN, the norm conformity and (eventual) procedural mistakes executed by the force, with the objective to promote conformity to norms, or the drafting of guidelines and educational packages.

Three kind of research executed by the CCSI should be distinguished: (1) *factual investigations*, with the question whether or not an additional research should be executed; (2) *disciplinary investigations*, questioning if police-officers are whether or not guilty of neglect of duty; (3) *criminal investigations*, which are executed under the supervision of the Prosecutor's Office. The last category is by definition executed by the Central Criminal Investigation Service. These investigations should be distinguished from disciplinary investigations because the police can appear as suspect or as witness in such an investigation.

In the narrative part of this report we only return to the CCIS in chapter 4 (point 4.3.4.). After all, it is a very small force, with a specific mission and therefore cannot be considered as a "general" ISF.

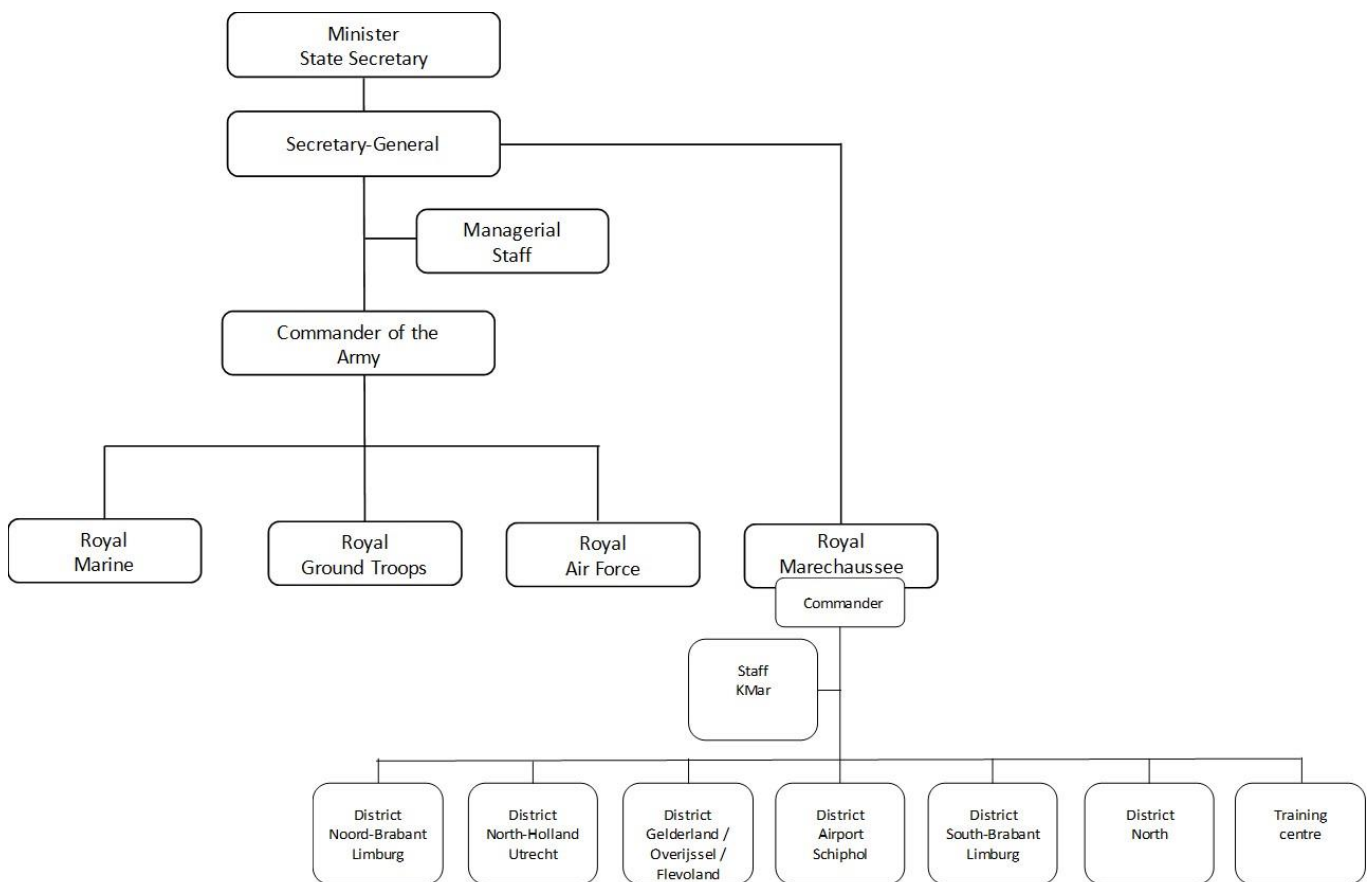
0.3. The Royal Marechaussee (KMar)

KMar is a police organisation with a military status (Gendarmerie) and is part of the Ministry of Defence, thus not under the responsibility of the Minister of Security & Justice. From this point of view KMar is functioning autonomously from NPN. There are of course coordination mechanisms, which we describe in chapter 4 paragraph 4.4. KMar is one of the four services of the Armed Forces of the Netherlands, besides the Royal Ground Army (KL), the Royal Air Force (KLu) and the Royal Navy (KM)¹⁰. KMar acts as the police of the armed forces¹¹.

¹⁰ Since 2005 these different components are no longer independent organisations. All operational units are organised into 3 operational commands (OPCO's): the Ground (CLAS), Air (CLSK) and Sea (CZSK) commands. They are part of the Ministry of Defence and function under the Commander of the Armed Forces (CDS).

¹¹ So there exists no separate "Military Police" in the Netherlands.

Figure 3: Organizational chart of the Ministry of Defence, including the Royal Marechaussee



KMar also conducts traditional police functions in civil society (law enforcement, public order, security and border control etc.), based on art. 4 of the Police Law of July 12, 2012 and the Safety (BES Islands) Act 2012 (Article 5). Consequently, members of KMar have the same investigating competences as the NPN. The tasks and competences are far beyond the military organisation and 95% of the personnel is active in civilian police-tasks. These tasks can be as well national as international. KMar functions under the authority of the Secretary-General of the Ministry of Defence, except when KMar is active abroad for other than police-tasks for military personnel. While the management of KMar is attributed to the Minister of Defence, the authority lies in the hands of the responsible authority for specific tasks. E.g. matters concerning foreigners and surveillance are executed under the supervision of the Minister of Justice and Security. The Prosecutor's Office has the supervision on investigations. Mayors are responsible for the maintenance of public order and safety.

Most common tasks are: Police tasks in military forces and in places under the authority of the Ministry of Defence; (civil) airports; support, assistance to and collaboration with the NPN; surveillance of the outer-borders of the Schengen-area (also participation in Frontex), e.g. trade and smuggling of human beings; internal surveillance of foreigners on the national territory; participation in peace missions abroad and assistance to local police forces there, close protection and security of the members of the royal family; surveillance and security of the Bank of the Netherlands and escorting its money-transports; the surveillance of the house of the Minister-President; the collaboration in the basic police-care on the Dutch Antilles.

After a number of terrorist attacks in Europe, the Dutch government decided to form a “High-Risk Security Squadron” (HRB-Squadron) within KMar (about 400 members) for specific surveillance tasks (e.g. governmental buildings, Jewish institutions). The same Squadron can become operational during highjackings or kidnappings.

In the narrative part of this report we return regularly to KMar, while it can be considered as a “general” ISF with specific functional missions. An interested reader should turn to chapter 4 (paragraph 4.4.) for the most important material on KMar.

0.4. Investigating Officials of the Netherlands

0.4.1. General Investigating Officials

Apart from the agencies mentioned already, the Netherlands has so-called “Investigating Officials”. These officials have important tasks in the enforcement of specific laws and the detection of criminal facts. The Netherlands makes a distinction in “General Investigating Officials” and “Extraordinary Investigating Officials” (BOA’s).

General investigating officials are, besides members of the NPN¹² and KMar, detectives of (1) the “*Intelligence and Investigating Tax Service*” (FIOD) of the Ministry of Finance¹³, (2) the “*Inspection of the Ministry of Social Affairs and Employment*” (ISZW) of the Ministry of Social Affairs and Employment, (3) the “*Intelligence and Investigation Service of Environment and Transport*” (ILT-IOD) of the Ministry of Infrastructure and Water, and (4) the “*Food and Goods Authority*” (NVWA) of the Ministry of Agriculture, Nature and Food Quality. These four agencies were the result of a lot of successive reorganisations and combinations of a large number of inspectorates in different societal domains in 2013. The functioning of these four services is regulated in a general law¹⁴. They transmit their observations to functionally specialized prosecutor’s offices.

(1) The members of the “*Intelligence and Investigating Tax Service*” (FIOD) of the Ministry of Finance are armed. They can arrest suspects, execute searches, command extraditions, and permit the entrance of private houses without consent of the inhabitants. They are active in cases of fiscal fraud, financial and economic crimes, money-laundering, customs-fraud (e.g. smuggling of drugs or cigarettes)¹⁵, financing of terrorism, anti-corruption and the combat against organized or organisational crime. The FIOD has 1,500 members of personnel, spread on 14 different localities in the Netherlands. FIOD works together with the NPN and KMar, Europol and OLAF. The FIOD works as well in a proactive as reactive way.

(2) The “*Inspection of the Ministry of Social Affairs and Employment*” (ISZW) is the inspection of the Ministry of Social Affairs and Employment. It is the combination of the Labour Inspectorate, the Inspection of Work and Income and the Social Intelligence and Investigation Service (SIOD). ISZW works together with the NPN, KMar, FIOD and the prosecutor’s office

¹² The National Police can appoint “voluntary officials” in the framework of their work as “general investigating officials”.

¹³ The FIOD is the investigating service of the Tax Service of the Netherlands. Since 1999 is the FIOD combined with the Economic Control Service (ECD) of the Ministry of Economic Affairs in one service: the FIOD-ECD.

¹⁴ Law on Investigating Services, January 1st, 2013.

¹⁵ The *Custom Service* of the Netherlands of the Ministry of Finance is engaged in the surveillance of import and export of goods in the Netherlands. They are dealing with the collection of taxes and the stopping of illegal goods at the borders of the country. Members of the service are considered to be “extraordinary investigating officials”.

and has its own intelligence unit. The inspection is active in fraud on the labour market (“black labour”), the enforcement of labour circumstances and conditions (“exploitation of labour”, respect of minimum wages), allowance fraud, fraud in social insurance, subsidy fraud, identity fraud and trade in human beings. ISZW acts to a large extent on complaints by citizens and has less repressive means than FIOD. They can draw official protocols with their observations and sent them over to the prosecutor’s office.

(3) ILT-IOD is the “*Intelligence and Investigation Service of Environment and Transport*” of the Ministry of Infrastructure and Water. ILT-IOD executes criminal investigations concerning serious forms of organized crime, with (often) international financial and trade constructions, leading to damage to environment and society. ILT-IOD investigates the amount suspect transactions have produced and searches for so-called facilitators into criminal activities, more specifically into illegal border-crossing waste, illegal behaviour in transport, serious intoxications of the soil, illegal trade in dangerous products and items of integrity in real estate. In the framework of its activities, ILT-IOD runs informers.

(4) NVWA is the “*Food and Goods Authority*” (NVWA) of the Ministry of Agriculture, Nature and Food Quality. The agency controls the compliance of enterprises in the domain of pharmaceuticals, food, consumer goods, animal wellbeing, butcheries, ...

Since the global reform of 2013 of these general investigating services, it became clear that in fact only the FIOD is fully competent to function according the lines which were set out by the Dutch government. The other agencies should probably be more considered as “Extraordinary Investigating Services”.

We illustrate the position of these General Investigating Officials by inserting a table concerning the FIOD, while it is the agency that collaborates most regularly with other ISF’s, has intrusive investigating powers and members are armed. In the narrative part of this report we don’t come back to these agencies, while it would lead us too far from our central interest.

0.4.2. Extraordinary Investigating Officials (BOA’s)

Besides a number of members of inspectorates, which have a more preventative function, the Netherlands installed so-called “Extraordinary Investigating Officials” (BOA’s). We present them in this chapter because they possess police competences using legitimate force in public space and the right to arrest. The distinction exists between public and private BOA’s (for example hired by GS4). The latter category is no subject of this report, as we do not treat private security organisations.

BOA’s are sworn officials which are competent in specific and limited domains of criminal acts. Examples are: municipal enforcers, parking lot controllers, foresters, environmental officials, conductors and social inspectors. Most of the time BOA’s have functions in the domain of public order, security and quality of life. A part of them can execute forms of violence and force, sometimes they use handcuffs, batons, pepper-spray and handguns.

At this moment there are 23,500 BOA’s in the Netherlands. In 1994 a legal basis for BOA’s was introduced in the Code of Criminal Procedure (art. 142). Oversight of BOA’s is a task of the police, ultimately of the Ministry of Security and Justice.

Some of them are working within the National Police, though without a rank inside the organisation. BOA's of the police have, as other "Extraordinary Investigating Officials", certain competences, e.g. stop & search, arrest of suspects en law-enforcement of specific illegalities, but they are not police personnel. The Minister of Security and Justice can attribute certain competences of police-officers to them, as e.g. the use of violence, to execute their police task. BOA's of the police are normally uniformed and carry the police logo. Not all of them are wearing a uniform. When they are working in civil clothing, they are obliged to legitimate themselves.

Not all BOA's have the same competences¹⁶. A specific regulation determines the police- and violence competences BOA's dispose of in different domains. Mostly they have the competence to: stop a suspect, to identify a suspect, to draw a protocol with evidential value, to arrest a suspect, to enter places (according to the law), to enforce the administrative law, to enforce the regulation concerning drinking and catering, to command, ... Oversight of this type of BOA's is foreseen in the police-entity they are working in.

BOA's are also engaged by municipalities, which work in the public domain (e.g. shoplifting). In Chapter 8 (point 8.2.) we go deeper into this subject, were we explain the complex oversight on these local officials.

¹⁶ The framework of their competences is laid down in a policy brief.

Table 0: List of ISFs (internal security forces) in selected EU member states and Turkey¹⁷

internal security forces		Countries	
		Italy	Netherlands
National or Federal (in Federal countries) civilian status police	Name:	State Police	National Police of the Netherlands (NPN)
	Existence of force(s)	YES	YES
	Number of national/ fed police forces	1 (State police)	1 (Territorially organized State Police: regional units, districts, basic teams)
	Affiliation (Primary)	MoI	Ministry of Security and Justice (MoS&J)
	Status (civilian/ military)	civilian	Civilian
	Jurisdiction (crimes/ territory):	All crimes All territory	All crimes All territory
	Armed/ unarmed	Armed	Armed
	Territorial competence	National (cities= YES /countryside= YES)	YES / YES
	Crimes (that can be investigated)	All crimes	All crimes
	Personnel (police officers)	XX	51,267 FTE (2020)
	Personnel (non-police officers)	XXX	10,840 FTE (2018)
	Personnel Total	XXX	61,229 FTE
	Initial training for basic officers (nb of months in academy/Training center):		36 month (5,040 study-hours)
National or Federal (in Federal countries) military status force such as Gendarmerie	Name:		Royal Marechaussee (KMar)
	Existence of force(s)	YES	YES
	Number of national/ fed gendarmerie forces	1 (State police)	1 (functionally subdivided)
	Affiliation (Primary)	MoI / MoD	MoD
	Status (civilian/ military)	civilian	Military
	Armed/ unarmed	Armed	Armed
	Territorial competence	National (cities= YES /countryside= YES)	YES / YES

¹⁷ Definition of ISFs: any public organized group of uniformed personal with policing powers (national, regional, municipal) on land or sea (coast guards, village guards, forest guards), including fiscal police.

	Crimes (that can be investigated)	All crimes	By law all crimes, in practice specific tasks (e.g. border-control)
	Personnel (police officers)	XX	5,352 FTE (2018)
	Personnel (non-police officers)	XXX	597 FTE (2018)
	Personnel Total	XXX	6,189 FTE (2018)
	Initial training for basic officers (nb of months in academy/Training center):		48 to 60 months, depending on the trajectory chosen (Bachelor degree)
“State police” (in Federal countries) or regional force (in unitary States)	Name:		/
	Existence of force(s)		NO
	Number of regional police forces		/
	Affiliation (Primary)		/
	Status (civilian/ military)		/
	Territorial competence		/
	Crimes (that can be investigated)		/
	Armed/ unarmed		/
	Personnel (police officers)		/
	Personnel (non-police officers)		/
	Personnel Total		/
	Initial training for basic officers (nb of months in academy):		/
Border and Coast Guard (if	Name:		/
	Existence of force(s)		YES ¹⁸

¹⁸ The Netherlands Coastguard is a small network organization that execute tasks of 6 different Ministries by different Ministries, more specifically (Ministry of Infrastructure and Water Management; Ministry of Defense; Ministry of Security and Justice; Ministry of Finance; Ministry of Economic Affairs and Climate Policy; and Ministry of Agriculture, Nature and Food Quality).. Most of the personnel is employed by those Ministries and the Coastguard has only a very small own staff. In essence most of the tasks of the Coastguard fall within the domain of safety at sea: Monitoring, handling and coordinating national and international Distress, Urgency and Safety radio traffic; Maritime assistance and Search and Rescue; Limiting and dealing with the aftermath of disasters and incidents; Wherever necessary, implementing vessel traffic services (buoys, vessel traffic service, instructions); Maritime traffic research; Clearing out explosives. A few enforcement tasks are delivered by the

in charge of policing duties, to the exception of Defense duties)	Number of national/ fed gendarmerie forces		/
	Affiliation (Primary)		/
	Status (civilian/ military)		/
	Territorial competence		/
	Crimes (that can be investigated)		/
	Personnel (Coast Guards officers)		/
	Personnel (non-CG officers)		/
	Personnel Total		/
	Initial training for basic officers (nb of months in academy/Training center):		/
National Investigation force (only if separated from other police or gendarmerie forces)	Name:		Central Criminal Investigation Service (<i>Rijksrecherche</i>)
	Existence of force(s)		YES
	Number of national/ fed investigation forces		1
	Number of national/ fed police staff		1
	Affiliation (Primary)		Public Prosecution Service of MoS&J
	Status (civilian/ military)		Civilian
	Territorial competence		Whole country
	Crimes (that can be investigated)		Criminal acts of civil servants; Deadly gunfire by police-officers
	Personnel (police officers)		~ 100 FTE
	Personnel (non-police officers)		/
	Personnel Total		~ 100 FTE
	Initial training for basic officers (nb of months in academy/training center):		See NPN
	Name:		Intelligence and Investigating Tax Service (FIOD)

Coastguard: Maintaining law and order (police); Monitoring import, export and transit of goods (customs); Upholding laws regarding environment, sea fishing, nautical traffic, ships equipment and offshore activities and Border control. The Royal Marine (Defence) delivers the director. For these reasons, we don't include the Coastguard in our oversight on ISF's in the Netherlands.

Fiscal / Customs force	Existence of force(s)		YES
	Number of national/ fed fiscal or border police		1
	Affiliation (Primary)		Ministry of Finance
	Status (civilian/ military)		Civilian
	Territorial competence		Whole country
	Crimes (that can be investigated)		Fiscal fraud; Financial & economic crimes; Terrorism; Corruption
	Armed/ unarmed		YES
	Personnel (officers)		~ 1,500 FTE
	Personnel (non-officers)		/
	Personnel Total		~ 1,500 FTE
	Initial training for basic officers (nb of months in academy):		Diploma prerequisites during recruitment; Internal training in investigating competences (3 months).
Municipal or metropolitan police	Name:	Municipal	/
	Existence of force(s)	Yes	NO
	Number of municipal police forces	X	/
	Affiliation	Mayor	/
	Status (civilian/ military)	Civilian	/
	Armed / unarmed		/
	Territorial competence	city	/
	Crimes (that can be investigated)	All crimes	/
	Personnel (officers)		/
	Personnel (non-officers)		/
	Personnel Total		/
	Initial training for basic officers (nb of months in academy):		/
	State sponsored armed personnel in CITIES (not included in any of the above)	Name:	
Existence of force(s)			YES
Number of WatchGuard			In bigger cities and municipalities, very diverse

such as watchman for streets, open markets and neighborhood	Affiliation (Primary)		Municipalities
	Affiliation (Secondary)		NPN > MoS&J
	Status (civilian/ military)		Civilian
	Territorial competence		Municipalities
	Crimes (that can be investigated)		-Public order -Security -Quality of life -...
	Armed/ unarmed		NOT ALWAYS
	Judicial competence (investigation)		YES (limited)
	Personnel (police officers)		/
	Personnel (non-police officers)		~ 23,500 FTE
	Personnel Total		~ 23,500 FTE
	Initial training for basic officers (nb of months in academy):		Basic training (6 months) + 6 Specific training-programs ¹⁹

¹⁹ Beleidsregels Buitengewoon Opsporingsambtenaar, Staatscourant, July 10th, 2017.

Chapter 1. Core principles, Constitution and Oversight of ISF's

Limitations to HR, Police Role in Fundamental Laws and Core Principles

Table 1: Core constitutional oversight principles over ISFs (internal security forces) in selected EU member states and Turkey

Oversight Principles & internal security forces	Countries		
	Italy	Netherlands	...
Constitution/ date	Yes / 1948	Yes / (1814) 1848	
Constitution drafted under military rule	No	No	
Supremacy of law asserted	Yes	Yes	
Restrictions on supremacy of law / types	No No type	General Measures of Administration by Government	
ISFs role specified in constitution	No	No	
Protection of free exercise of liberties: ISF mission	Not an ISF's mission	Not explicitly for ISF's, but implicitly a consequence	
ISF subordination to Civilian Authority	Yes	Yes	
Internal/External security definition	No definitions of internal / external security	-“National Security” mentioned, but not defined ²⁰ -Warfare is included	
Principle of accountability of all administrations / specific mention of accountability ISFs	No	Yes, National Ombudsman	
	No	No	
Any declaration of HR annexed to constitution	?	HR are explicitly included in constitution	

²⁰ In fact, this notion refers mostly to the domain of intelligence-services and not to that of ISF's.

1.1. Short historical overview

1.1.1. *The power of the king*

In 1804 Napoleon Bonaparte crowned himself as emperor and created the Kingdom of Holland. In 1810 he appropriated the territory to France. Already in 1812 Bonaparte is defeated in Russia and loses more and more territories in Europe, including the Netherlands. Willem Frederik (later called William I), the son of the King William V, is invited to return to accept the crown. On March 29th, 1814 a majority in Parliament votes the draft of a new constitution and William I becomes the new King.

In this constitution, the position of the King is described, who has at that moment a lot of power vis-à-vis the 55 members of Parliament (called the “State General”, at that moment constituted of one Chamber). Parliament had the right to introduce proposals for laws, to approve or reject them, and a limited right to draw a budget. In reality, the King can easily circumvent these rights and a real control on the acts of the King himself is in fact non-existing. Nevertheless, the initial constitution includes already a number of freedoms, e.g. the freedom of religion.

Since then, the constitution has been revised several times. Already in 1815 was this the case because of the unification of the Netherlands with Belgium. This called for a new state construction. One of the changes was the division of the “State General” in the First (Senate) and Second (House of Representatives) Chamber. The freedom of press and the right of petitioning were added. Also after these reforms the King kept a lot of power.

In the neighbouring countries kingdoms are contested and revolutions come about. In 1830 Belgium shall become again independent. Furthermore in 1847 there is rioting in the northern provinces of the Netherlands, because of excessive food prices and unemployment. To avoid a revolution King William II accepts that he will have less power.

Until 1917 only men who paid a certain amount of taxes were allowed to participate in elections. After a reform, all men were able to vote and women received a passive right to vote. It takes until 1919 before women have full right to vote actively.

1.1.2. *The start of parliamentary democracy*

A new constitution is drafted in 1848 by Johan Rudolph Thorbeke. This is considered today as the start of parliamentary democracy in the Netherlands. Thorbeke became famous because of his expression: “*We want a police that we see as less as possible and hear as few imaginable*”. In spite of his explicit ideas, until today ISF’s are not mentioned explicitly in the constitution²¹. In other words: their missions are a consequence of the broad guidelines included in the constitution.

The most striking change is that the First Chamber (also called “the Senate”) becomes more and more the guardian of the quality of law-making and transforms in a “Chamber of

²¹ E.g. article 90 of the constitution stipulates that the government has to promote the international legal order. Consequently, the Netherlands concretizes this by sending the military troops to conflict area’s, giving development aid and protecting fundamental rights. After this phase, during the reconstruction, Dutch police-officers are sent to the region.

reflection”, that gives an ultimate judgement on drafts of new laws²². The real political weight shifts to the Second Chamber which is considered to be the real House of Representatives. In 1956 the actual size of both Chambers is determined: the First Chamber counts 75 members²³, the Second Chamber 150²⁴. MP’s of both Chambers cannot be prosecuted or brought before court because of the things they debated orally or by writing within Parliament.

In 1983 the constitution is dramatically modernized and the division in chapters is changed, texts are rewritten and redundant articles disappear. Consequently, the actual constitution deals with eight items: (1) The fundamental rights of citizens; (2) The government; (3) The State General (parliament); (4) The Council of State, the Court of Audit, the National Ombudsman and the Permanent colleges of Advice; (5) Law and Administration; (6) Judicial Organisation; (7) Provinces, Municipalities, the administration of the Dutch Antilles, the Conservancies and other public bodies; and (8) the revision of the constitution.

Important changes are the prohibition of capital punishment and the prohibition of discrimination. Today the constitution of the Netherlands includes the complete state construction in a general way, leaving the concretization to subsequent laws. It describes who is in power and how this is executed in practice, the role of the King (Queen) and Ministers, how laws have to come about, how judges have to proceed and what municipalities and provinces have to do. The influence and power of citizens in the state is also stipulated. Fundamental rights do not deal with the rights between citizens, but the right of citizens is stipulated by limiting state interference. After the fundamental review of 1983 the constitution was only adapted on minor points.

1.2. The constitutional framework in the Netherlands

1.2.1. The fundamental rights of citizens

Most of the fundamental rights are included in chapter 1 of the constitution: *the right to equal treatment of each citizen*.

As a consequence, discrimination (on religious, philosophical, political, racial, gender, or all other ground) is prohibited (art. 1); the right to participate in elections (art. 4); the right to introduce a demand to competent authorities (art. 5); the right to live according to one’s religion (art. 6); the freedom of press (art. 7); the freedom of association, with restrictions in the framework of maintenance of public order (art. 8); the freedom of meeting and manifestation, with restrictions in the framework of traffic or the prevention of rioting (art. 9); the right to privacy (art. 10); the right to physical integrity (art. 11); the right of no-entrance in a house without consent, with exceptions (art. 12); the right to confidentiality of mail, phone-calls and telegraph, with exceptions (art. 13); protection of expropriation, with exceptions in the framework of general interest (art. 14); the prohibition to deprive someone of his freedom, with exceptions (art. 15); the prohibition to condemn someone without the existence of prior criminal law (art. 16); the right to his lawful judge (art. 17); the right to administrative appeal (art. 18);

²² The *Council of State* plays an important role in the process of law-making. It is up to this council to give an advice on the initial text of a bill. Afterwards as well the government as the Second Chamber can adapt the text of the proposition for a law. It can take 5 to 6 years before a bill becomes a law. Because of this long duration, it is to the First Chamber to judge finally the last version.

²³ MP’s of the First Chamber are indirectly elected by members of the Provincial States (themselves elected directly), who elect in a second stage the members of the First Chamber.

²⁴ MP’s of the Second Chamber are directly elected.

the obligation of the government to promote sufficient employment (art. 19); the assurance of financial safety and the spreading of welfare by government (art. 20); the care for housing and the protection of the environment by the government (art. 21); the government takes measures for the promotion of health care (art. 22); and the care for schooling (art. 23).

National laws concretize more in detail these rights. Also international treaties protect these fundamental rights. Most of these arrangements are deduced from the Universal Declaration of Human Rights (UN). It is clear that certain of these fundamental rights imply the intervention of ISF's, in terms of the promotion and defence of them, as well in terms of the enforcement of the exceptions stipulated in the law (e.g. in the framework of maintenance of public order or in case of crime).

1.2.2. The Government

The Netherlands is a parliamentary monarchy. The constitution implies still an important amount of articles concerning the Royal House (art. 24-41). In the framework of these articles decisions have to be taken by the State General (Parliament), the Council of State or the Council of Ministers in specific circumstances.

The government includes the King and the Ministers (art. 42)²⁵. The Minister-President and the other Ministers are assigned and dismissed by royal decree (art. 43). Ministers have their own administrations (ministries), but it is possible to appoint Ministers without a ministry (art. 44). The Ministers form the Council of Ministers (art. 45), which is presided by the Minister-President. It is this Council that deliberates and concludes concerning the general policy and the unity of the country. It is possible to nominate and dismiss Secretary-Generals (art. 46), which work in collaboration with a Minister. Laws and royal decrees are signed by the King (art. 47).

Mostly the government is the result of the formation of a majority in parliament. This means that different parties make a coalition of political parties to succeed to have 76 of the 150 seats in the Second Chamber. Notwithstanding that, the Netherlands have a certain tradition of minority Cabinets. The constitution itself doesn't mention the existence of political parties.

1.2.3. The State General (Parliament)

The State General represents the whole population of the Netherlands (art. 50). It is composed by the First and Second Chamber (art. 51). Both assemblies function for a period of four years (art. 52). Members must have the Dutch nationality, are at least 18 years and dispose of their political rights (art. 56). During elections the members of the Second Chamber are directly elected by the electorate of those who reached the age of 18 years (art. 54), with minor exceptions. The members of the First Chamber are elected by the members of Provincial States, which are in turn directly elected by the population (art. 55). Membership cannot be combined with being Minister, State-Secretary, member of the State Council, the Court of Audit, the National Ombudsman, member of the prosecutor's office or attorney-general of the Supreme Court. Each Chamber decides on the nomination of new members (art. 58). Members accept their function by swearing an oath (art. 60). Each Chamber nominates a President amongst their members (art. 61), who leads the assembly.

²⁵ In reality, the function of the King is limited to the role he has during the formation of a new Cabinet (government) and the assignment and dismissal of Ministers and State Secretaries.

Each Chamber can be dissolved by royal decree (art. 64), which implies the organisation of new elections. The assembly functions until the new assembly is meeting. Each year the government explains extensively before the combined Chambers the policy to be developed (art. 65). The meetings are public (art. 66). At least 1/10th of the present MP's can ask a session behind closed doors. A decision can only be taken when there are more than half of the members present. Decisions are taken by majority of votes (art. 67).

Ministers and State-Secretaries answer orally and by writing on informative questions, except when this is detrimental to "National Security" (art. 68), which is not further clearly defined in constitution itself. Members of government have access to the assembly and may participate in the deliberations (art. 69). The Chambers can invite them to be present. The right to enquire can be decided by law (art. 70). MP's or governmental members cannot be prosecuted for the things they said or wrote in their function (art. 71). It is up to the Chambers to vote a regulation on internal order (art. 72).

In short: MP's have certain rights, laid down in the constitution, in order to carry out their duties as well as they can. Important issues are almost always dealt with in plenary sittings, for instance general (political or financial) considerations, debates about important topical issues and deliberations on bills and budgets. Final decision-making also takes place in plenary sittings, e.g. voting on bills, amendments and motions.

MP's have the right to propose bills themselves, or to amend bills proposed by the Government. Ministers and State Secretaries must inform the House of Representatives adequately. MP's have the right to ask questions to members of the Government and to call them to account. They can propose motions to give their opinion on the policies of the Government, to ask the Government to take action on a certain issue or not, or to express themselves more generally about certain matters or current developments.

The Government is obliged to provide both Chambers with the necessary information, to enable Parliament to scrutinise the work of the Government properly. This obligation is laid down in the constitution. Debates are held according to an established pattern. First, the floor is given to the spokespersons from the political groups in the House of Representatives. The Minister or State Secretary replies. This is called the first stage. In most cases, not all the questions have been answered yet and the first stage is therefore followed by a second stage in which the MP's are given the floor again, and the member of the Cabinet replies. If questions remain which have not been answered satisfactorily, a third stage may follow. After the debate has been closed, the House of Representatives will take a decision by voting²⁶. There are three methods of voting, namely by show of hands (by political group), by roll-call or by secret ballot.

The committees of the House gather in one of the nine smaller meeting rooms along with ministers and state secretaries. Two thirds of the debates in the House with the Ministers and State Secretaries take place in committee meetings.

The *parliamentary committee of enquiry* is a particular type of temporary committee of the House. It is the most powerful instrument the Dutch Parliament has at its disposal to carry out its duty to scrutinize the work of the government. During the past thirty years, the House of Representatives carried out ten parliamentary enquires of which various parliamentary

²⁶ As far as legislation is concerned, a bill adopted by the House of Representatives must be approved by the First Chamber (Senate) in order to become law. The Senate does not have the right to amend a bill but can only adopt or reject it. The Senate can also scrutinize the work of the Government, but does not often use this instrument.

committees of enquiry gained fame. They always managed to bring new facts to light. A parliamentary enquiry is not only held to establish who is responsible for what has gone wrong, but also to get a clear picture of an issue, in order to develop improved policy.

Parliamentary enquiries have however not often been held on the functioning of ISF's, with one important exception that will be treated in Chapter 2 (point 2.1.).

Witnesses called by a committee of enquiry are obliged to appear before the committee of enquiry. This holds true for Ministers and State Secretaries as well. Witnesses are questioned under oath. This means that they can be prosecuted for perjury if it turns out that they have not been telling the truth. Hearings are held in public, a process that often takes several weeks. They attract a lot of attention from the public and the media. The House of Representatives realizes that the public nature of the hearings may be painful for the witnesses. Nevertheless, the House claims that the public nature of the hearings is typical for a parliamentary enquiry.

1.2.4. High Councils of State

These are bodies regulated by the constitution, which carry out their tasks independently of the Government. The *Council of State*, the *Court of Audit* and the *National Ombudsman* are three of the five "High Councils of State" (the others being the First Chamber [Senate] and the Second Chamber [House of Representatives]). It is striking that the Dutch constitution doesn't include explicitly instruments for parliamentary or governmental oversight on ISF's, as in other countries (e.g. Belgium, with its Standing Police Monitoring Committee or the Supervisory Body for Police Information Management). Also specific parliamentary (guidance) committees on ISF's are absent in the Netherlands. Nonetheless, we will point to the National Ombudsman as an important oversight body on ISF's in the Netherlands, included explicitly in the constitution. In other European countries the ombudsman has no competence on the functioning of ISF's, which counterbalances the fact that the Netherlands has no specific parliamentary instruments for oversight on ISF's, as chapter 2 will illustrate.

(1) The *Council of State* or a division of this Council is consulted concerning bills deposited by the government or by the State General itself (art. 73). The Council of State will investigate on the disputes of governance decided by royal decree and proposes its decision. The law can determine in which disputes the Council of State has to judge. The King is president of the Council of State. Members of the Council are nominated for life. They can ask to be dismissed (art. 74). The law stipulates how the Council is organised, composed and what are its competences. Other tasks can be designated to the Council by law (art. 75).

Sometimes the Council of State in the Netherlands is criticized because of the fact that it is and the highest administrative judge and an advisory body of Parliament and of the government at the same time. From this point of view the Council of State exercises functions of the three different powers of the "trias politica" (legislative, executive and judiciary). After a judgment of the *European Court for Human Rights* the Netherlands was obliged to install a separate *Administrative Jurisdiction Department*. Today the Council of State comprises: (a) the Advisory Department, which provides support to the Advisory Division in its work. The Department is divided into sectors staffed by legislative experts and support staff; (b) the Administrative Jurisdiction Department, made up of units comprising lawyers and support staff, assists the Administrative Jurisdiction Division in its work as an administrative court; (c) the Support Services Department, which includes the personnel, ICT, and library and record units;

(d) the Management Support Department provides administrative and other assistance to the Vice-President and Secretary. It includes the Communication Unit.

The Vice-President is in charge of the running and organisation of the Council as a whole. As well as members, the two Divisions have State Councillors and Extraordinary Councillors, and at present there are about 60 State Councillors working within the Council. The maximum number of members and State Councillors that may work in the two Divisions simultaneously is limited by law to ten. Members and State Councillors are appointed on the basis of their expertise and experience in legislative, administrative or judicial matters. They are drawn from the ranks of academia, public administration, the judiciary and government. Members and State Councillors who work solely in the Administrative Jurisdiction Division must have legal background. The Council of State has a support staff of about 630 people, some 300 of whom are lawyers.

(2) The *Court of Audit* is designed by the constitution to control the expenses and incomes of the country (art. 76). The Court of Audit checks whether the Dutch central government spends public funds economically, efficiently and effectively. Its statutory task is to audit the revenue and expenditure of central government. The Court reports on its work once a year to parliament on Accountability Day (the third Wednesday in May). Parliament can use its audit opinion to grant the Government discharge, thus releasing it from responsibility for its implementation of policy. The Court also reports separately to Parliament so that its members can decide on the effectiveness of each Minister's actions during the previous year. The Court of Audit audits dozens of policy fields, from special needs in education and the replacement of the F-16 fighter aircraft to measures to overcome the credit crisis. In chapter 2 (point 2.2.) we come back on the functions of the Court of Audit in oversight on ISF's.

(3) The *National Ombudsman* is an independent and impartial institution (art. 78a). He assesses complaints about all aspects of public administration, defends the interests of the citizen and monitors the quality of public services in the Netherlands. The status and responsibilities of the National Ombudsman are established by the constitution (art. 78a). An Act of Parliament was passed in 1981 to define the tasks and authority of the ombudsman. In chapter 2 (point 2.3.) we elaborate on the function of the Ombudsman in relation to ISF's.

(4) *Permanent Colleges of Advice* are established by law (art. 79) to deliver support in matters of legislation and administration of the country.

1.2.5. Law and Administration

As soon the Second Chamber adopted a bill or decided to deliver a proposal, it is sent to the First Chamber, which considers the text. A limited number of MP's of the Second Chamber can defend it in the First Chamber (art. 85). A bill becomes law as soon as the State General adopts the text and it is empowered by the King (art. 87).

A real "separation of powers", according to Montesquieu ("*trias politica*"), does not exist in the Netherlands. A formal law cannot be established by Parliament alone, but needs also the consent of the executive power (art. 81): "*The establishment of a law is realized by the Government and the State General together*".

Moreover, the Government has the autonomous competence to establish material law and regulation by means of "*General Measures of Administration*", promulgated by royal decree

(art. 89). Often this is called the inversion of the “trias politica”: formal law determines only the general direction of policy in framework law, while de concrete norm is established by the application of these “General Measures of Administration”.

An important instrument for Parliament to influence Government is the (unwritten) “rule of confidence”: when parliament has no longer confidence in the government, it is always possible to introduce a motion of distrust and oblige the government to dismiss when the motion is accepted.

Some additional articles deal with the international jurisdictions (art. 90) and treaties (art. 91). Also concerning warfare are a few articles included (art. 96). It is in this framework that the existence of the army is stipulated (art. 97), under the command of the Government, which has to inform Parliament (art. 100).

The legal status of functionaries is laid down in art. 109 of the constitution, which is translated in the Law on Functionaries. This law contains the guiding principles for the disciplinary law applied to all functionaries (art. 125 of the law), also for officers of ISF’s.

1.2.6. Judicial Organisation

Article 112 stipulates that disputes concerning civil rights and claims are the task of the judiciary. Administrative appeal must be guaranteed (art. 115). Also the sentencing of criminal acts is up to the judiciary (art. 113). Disciplinary matters are up to the government, and need to be regulated by law. Deprivation of the liberty of free movement can only be decided by the judiciary as a sanction. Capital penalty is abolished (art. 114). The constitution stipulates that the organisation of courts and tribunals of the judiciary have to be decided by law (art. 116).

The Netherlands has no constitutional Court. It is *not* up to the judge to test if a law is consistent with the constitution (art. 120). Consistency is considered to be a matter of the legislator. De First and Second Chamber and the Government are expected to make laws that are not conflictual with the constitution, also because it is up to the *Council of State* to deliberate about this question before the voting of a new law. In practice, disputes on this question are limited to the interpretation of the constitution not on the execution of it. This matter gave rise to a vivid actual debate between lawyers and in Parliament. Today, a proposition for a change in the constitution is debated²⁷. If citizens feel their constitutional rights threatened they can always turn to the National Ombudsman.

Also the composition and competence of the judicial power is subject to the law. Ruling by courts must be public (art. 121).

The treatment of a criminal case at the level of the Prosecutor’s Office, without the ruling of a judge, is possible in the Netherlands. This is by some observers considered to trespass the “separation of powers”. The prosecutor’s office functions under the authority of the Minister of Security and Justice and is consequently part of the *executive power*, while sentencing is considered to be an exclusive task of the judicial power (judges). Therefore some say that the prosecutor puts himself on the seat of the judge in treating criminal cases this way.

²⁷ Explanatory memorandum, Proposal for the law of the member Halsema concerning the statement that there is a proposal under consideration to change the Constitution, intended for the implementation of the right to a review of the laws of a number of provisions of the Constitution by the courts. See: <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3akh3v57xr>

The members of the *Supreme Court of the Netherlands* are designated by the Second Chamber (art. 118). It is the highest court in the fields of civil, criminal and tax law in the Netherlands. The Supreme Court is responsible for hearing appeals in cassation and for a number of specific tasks with which it is charged by law. The main task of the Procurator General of the Supreme Court is to provide the members of the Supreme Court with independent advice - known as an “advisory opinion” - on how to rule in the cassation proceedings before them. The Director of Operations and his staff are charged with facilitating the tasks of the Supreme Court and the office of the Procurator General. The Supreme Court, the Procurator General and his office and the Director of Operations form a single organisation. Complaints of improper behavior on the part of judges must be submitted to the Board of the judge’s court. In case of disagreement with the procedures at this Board, a further complaint can be lodged with the Procurator General of the Supreme Court. Court decisions are excluded from this procedure, since they are open to appeal and possibly to appeal in cassation. A longstanding provision of the constitution (art. 199) stipulates that occupants of high office (members of parliament, ministers and state secretaries) are to be tried by the Supreme Court for offences committed in the course of their duties. A ten-judge court hears cases of this kind. In such cases the Supreme Court is the court at first and last instance. This means that no appeal, in cassation or otherwise, from the Court’s decision is possible. The Procurator General of the Supreme Court is responsible for the prosecution of persons charged with public office offences²⁸.

1.2.7. Provinces, municipalities, the administration of the Dutch Antilles, the Conservancies and the other public bodies

The administrative division of the country is regulated in the constitution. Provinces and municipalities can be abrogated and new can be installed (art. 123), as well boundaries can be changed, by law.

The governance of these is the competence of the provinces and municipalities (art. 124). Provinces are governed by “Provincial States”²⁹, municipalities by “City Councils”³⁰ (art. 125). Members of these “Provincial States” and “City Councils” are directly elected by the population for a period of 4 years (art. 129). They don’t have to own the Dutch nationality (art. 130). They stipulate respectively provincial and municipal regulations (art. 127).

The organisation of provinces and municipalities, the composition and competences of their administrations and oversight is subject of a law (art. 132). A priori oversight on their regulations is prohibited. A very similar arrangement is included concerning the governance of the provinces and municipalities in the Dutch Antilles³¹. Art. 133 determines the competences of *Conservancies* (water-boards)³².

1.2.8. The revision of the constitution

²⁸ It should be noted that the Procurator General cannot institute criminal proceedings of this kind. Rather, they must be instituted by royal decree or by a resolution of parliament. This has never yet taken place.

²⁹ Including so-called “Commissioners of the King”. Such a commissioner can be installed to execute a governmental instruction (art. 126).

³⁰ The governance is executed by the “College of Mayor and Aldermen”.

³¹ Bonaire, Sint Eustatius and Saba.

³² A conservancy is a regional public body that is administratively responsible for the water in a specific area, an important issue in the Netherlands, where an important number of land is under the water-surface.

These articles are seldom used and determine the procedures to follow in case of a revision of the constitution.

Chapter 2. Parliamentary Oversight of IFS's Duties, Remit and Powers

As elaborated in chapter 1, the Dutch constitution doesn't include instruments for parliamentary oversight on ISF's. Some of the bodies foreseen in the constitution as '*High Councils of State*' do nevertheless have explicit oversight on ISF's, and will be presented in this chapter more thoroughly. More precisely we elaborate in depth on the *Parliamentary Enquiry Committees* (with specific attention to those treating ISF's like the "IRT" Affair), the *Court of Audit* (for questions on the state budget) and the *National Ombudsman*.

Table 2. Oversight Powers on Internal Security Forces of Parliaments in Selected EU Member States and Turkey

Oversight Powers of Parliaments		Countries		
		Italy	Netherlands	...
National Parliament: number of chambers			2	
Regional Parliaments:	YES / NO		NO	
	number		/	
Do Regional Parliament have oversight powers on ISFs? / Division of powers with national Parliament on ISF			NO /	
Status of protection of MPs for actions taken as MPs during their activities	Government can bring MP to court Yes /no?		NO	
	Judiciary can bring MP to court Yes/non?		YES (with agreement of Parliament)	...
Discussion and Approval of State Budget	Yes		YES	
	Non		/	

Control of finances of ISFs by Parliament/ means of control			YES	
ISFs national yearly plan submitted to Parliament		No (but the Government program has to be approved by the Parliament at the beginning)	YES	
Participation of civil society actors in the parliamentary oversight of ISFs	Yes/No		NO	
	if yes, list and number of mechanisms		/	
Parliamentary Request of Information from government on ISFs		Yes	YES	
Parliamentary Inquiries, Questions & Interpellations of government on ISFs		Yes / Yes	YES	
Are Inquiries / Questions & Interpellations used on a weekly basis in parliament on police matters?	Yes : each week		Weekly, going from very small/local items, to general policy	
	Yes : each month			
	No : less than each month			
One parliamentary Committees covers internal security forces		Yes	NO	
One parliamentary Committees is <u>specialized</u> on ISFs <u>only</u>		Yes	NO	

Parliamentary investigation on ISFs is ongoing when a judicial proceeding relates to the same issue?		Yes / No?	YES	
Parliamentary investigation on ISFs: list of main legal limitations			No investigative competences of a investigating judge	
Publicity of parliamentary oversight and investigation reports on ISFs		Yes / Yes	YES	
Special parliamentary commissions (PC) related to access to classified information (CI)		Existence: Yes/no?	NO	
Power limitations of special PC to access CI			NO	
Degree of publicity of conclusions of special PC to access CI (total, medium, none)			Total (some exceptions)	
Parliament has its own ISFs investigation mechanism/body		Yes/ No	NO	
Ombudsman is appointed by the Parliament		Yes/ no	YES	
Ombudsman has power to investigate the ISFs?,	Yes, all matters		YES	
	Discipline		YES	
	Penal crime		YES	
Ombudsman resource for ISF oversight Dedicated investigative staff? (yes, no)			YES YES	
	a) ordinary reports Yes/no		YES	

Ombudsman delivers to the Parliament:	b) extraordinary reports, Yes no		YES	
Ombudsman is	a) the National Authority for the Prevention of Torture Yes/no		NO (= commissions for detention care)	
	b) controls detention facilities and detention practices of police Yes/non		NO	
Court of Accounts: competence for police Yes, no		Yes	YES	
Remit of Court of Accounts	Control of compliance to law	Large scope, with both preventive control of legitimacy and accounting control	NO	
	Control of efficiency of government policy	Large scope, with both preventive control of legitimacy and accounting control	YES	
Publicity of Court of Accounts reports (total, medium, none)			Total	
Court of Accounts: Exception on control of security/intelligence policies		No exception	No exception	

2.1. Parliamentary Enquiry Committees

Apart from parliamentary instruments like MP's asking questions to members of the Government calling them to account (interpellations) or proposing motions (resolutions), the parliamentary committee of enquiry is the most powerful instrument of oversight of the House or Parliament in the Netherlands. Parliamentary Enquiries on ISF's have been rather scarce in the last 30 years. The only one worth mentioning which had a huge impact on the policy of ISF's is the Parliamentary Enquiry Committees of 1994 (and subsequently the one of 1997) ("IRT" file).

As pointed out in chapter 1, the right of the Parliament to organise a Parliamentary Enquiry Committee was installed in the Constitution in 1848. Since 1850 this right was further elaborated in the *'Bill on the Parliamentary Enquiry'*. The first Parliamentary Enquiries were organized in the 19th century in order to inform MP's with knowledge on specific themes. The "oversight" function gained only importance since 1983, when MP's tried to detect political responsibilities in specific policy domains. Since that date several Parliamentary Enquiries were organised (but not on ISF's).

The law on the Parliamentary Enquiry Committees was completely updated in 2008. A particular note on the competences of such Committees is necessary here. The Committee obtains the *theme* of the investigation from the Chamber. The committee has no large investigative competences, as for example in some European countries, where such a committee has the same investigative competences of the investigating judge. After closure of the Parliamentary Enquiry a report with the findings of the Committee is established, leading to a debate between Chamber and Committee. In a later phase, the findings are discussed with the political "Cabinet" (Government), in order to draw conclusions and new policy guidelines.

A lighter form of parliamentary oversight on governmental policy is the right of the First and Second Chamber to install parliamentary "Research" (*onderzoek*). Because this right is not foreseen in the constitution and not written down in any law, problems of achieving confidential information here are multiple. Concluding: parliamentary Research is a much lighter oversight instrument than the Enquiry, and is seldom used in ISF matters.

The second Chamber only ordered one Parliamentary Enquiry Committee concerning the functioning of ISF's (more precisely the police), namely the "IRT-affair in 1994". Afterwards, in 1997, the Parliamentary Enquiry Committee "Kalsbeek" was mandated with the evaluation of the implementation of recommendations outlined in the report of 1994. So these two Committees were interconnected. We present both Parliamentary Enquiry Committees separately in detail, while they led to fierce policy guidelines.

2.1.1. Parliamentary Enquiry Committee IRT-affair Van Traa (1994)

The Parliamentary Enquiry Committee on "investigative methods", known as the Committee Van Traa (the name of the President of the Committee Maarten Van Traa, socio-democratic party), was installed on December 6th, 1994 by the president of the Second Chamber, after a debate in the Chamber on November 6th 1994. Prior to the installation the Ministers Van Thijn and Hirsch Ballin resigned. The Committee was intensively active between December 6th and February 1st, 1996.

The recommendations of this Committee led to new laws and to rules, also to the reorganization of certain aspect of police functioning. In the debate in the Chamber in May 1996 the motion was accepted to evaluate the new laws and rules after two years by means of a new Parliamentary Enquiry Committee (see underneath).

What was the reason for installing this Committee? The enquiry committee was dealing with a problem in the former police-organization, at that time still based on regional forces. More specifically, the so-called "Interregional Research Team" (IRT) Noord-Holland/Utrecht was the subject of debate. This team was an interregional collaboration structure of some police forces including Amsterdam and Utrecht. This team was using intrusive investigative methods like "controlled shipments" of drugs (under supervision of police and justice without

interference). The objective was to penetrate in the criminal organization in order to reach the (criminal) top and arrest only the highest ranked criminals in the organization.

By the end of October 1993 the police chief of the Amsterdam police force discovered certain investigative police practices he couldn't agree with, for which he did not want to take responsibility. He reported these practices, after turbulent discussions with the police officers involved in this team, to the Prosecutor's Office. This led ultimately to the abolishment of the IRT team in 1993. This was not without consternation, accusations of corruption were directed to the Amsterdam police force and the Chamber decided a in depth research of this team. Tasks of this Parliamentary Enquiry Committee were to analyse: (1) type, frequency, gravity of serious organized crime; (2) the application in practice, the rightfulness according to the rule of law, justified and efficient character of the investigative methods; and (3) the organization and functioning of oversight on research techniques of the police.

This Committee worked for more than a year, analyzing different documents and collecting various interrogations and testimonies. On February 1st 1996 the Committee transmitted its final report to the Second Chamber (Report Committee police investigation, 1996). A massive crisis in investigative methods was its most pertinent conclusion. This crisis was, according to the Committee, composed of next elements:

1. Norms and values were lacking. As well the legislative as the judiciary apparatus failed in setting norms for investigative techniques in serious organized crime, leaving too much discretionary power to the individual police officer;
2. The lack of a clear understanding of responsibilities: Who had the responsibility for what kind of police action? According to the Committee, competences and responsibilities of officers involved in investigation were diffuse in the Netherlands;
3. Problems concerning leadership and oversight: The public prosecutor being officially leading the investigation, regulated by law, in practice this was not always the case leaving the police officers with too much independence in decision-making (police discretion).
4. The Committee further stipulated that a too strong accent was placed on community policing in disfavor of investigation (Schaap et al., 2017).

This Committee had a lot of influence on policy making concerning the organization of the police investigation in the Netherlands. Huge innovations in the "Code of Criminal Procedures" originated in this Committee. All investigative methods were described in an exhaustive way, like the inventory of the so-called "Specific Investigative Competences" introduced in the new Law (*Bijzondere Opsporingsmethoden*, BOB). However, this Committee should not be considered as the predecessor of the new national police organization, installed in 2012. Though the mandate of the Committee did not reach that far, multiple causes and problems were assigned to the organization of the regional police system.

Some ferocious discussion points were cleared in this Committee concerning the position of the regional police force manager, both police Ministries (see chapter 4) and most of all the prosecutor's office and the chiefs of police. De facto was the concrete functioning of the police system under research.

2.1.2. Parliamentary Enquiry Committee IRT-affair Kalsbeek (1998)

The second Parliamentary Enquiry Committee was installed to evaluate the improvements after the first IRT-Committee. This Committee was installed on November 18th 1998 under presidency of Ella Kalsbeek (socio-democratic party) and concluded that, since the recommendations of the Committee Van Traa, the police and justice organization had to deal with great uncertainties and worries about the “Specific Investigative Competences” (Law BOB). There was a great lack of systematic implementation of the new rules. The second Chamber discussed the report in July 1999 with the Parliamentary Enquiry Committee and in December 1999 with the Minister of Justice.

The core task of the Committee was to analyze the state of the art, based on available documents and contacts with investigating officers. Key question was “*is the crisis in organization of the investigation in the Netherlands dealt with?*” The conclusion was that those occupied with investigation in daily life did not recognize the crisis presented in the report of the Parliamentary Enquiry Committee. In fact, police and justice had made an effort to comply to the boundaries that politicians had set and their policy guidelines, losing face because they had shown to be unable to set boundaries themselves. Difficult decisions were passed to higher ranked officers, in order not to make mistakes. The Committee concluded that professionals tried to be reflexive on how to deal with new investigative methods, but that they failed to do this in a systematic and organized way. Insight coming from best practices were not shared between the various organizations.

2.2. Court of Audit

As outlined in chapter 1, The *Court of Audit* controls the expenses and incomes of the country (art. 76), including the state budget and the budget on police. According to some observers the reports the Court of Audit on the performance of the criminal court system was very critical to all parties involved, including the public prosecution and the police.

The Court of Audit stipulated: “*Now the Minister of Security and Justice is also responsible for the national police organization, he has every opportunity to improve the situation. We therefore recommend that the Minister develops policy for the criminal justice system as a whole in order to achieve desired and prevent undesired performance and effects. The policy should be consistent with that of the parties in the system*”. Secondly, the Court advised the Minister to develop an information strategy for the criminal justice system, based on the principle that management should enable the achievement of desired performance and the prevention of undesired performance. And thirdly the Minister should periodically inform the House of Representatives of desired and undesired performance in relation to available capacity to the parties concerned, so that society knows what can reasonably be expected from and is achieved by the respective parties.

Very recently, in February 2020 the Audit Court made a report concerning the picture that the managers of the NPN have of the number of police officers who can actually be deployed. According to the Court police management has an incomplete picture of the police strength. It concluded that there is no clear understanding of who is available and able to work. In practice, the ability to deploy and plan police officers varies from one regional entity to another and from one basic team to another. This exerts pressure on the police’s ability to perform their duties in certain regions. As part of this audit, the Netherlands Court of Audit analysed data available on the NPN in the period mid-July 2018 to mid-July 2019. The analysis revealed that on average

police officers could be deployed for 71.4% of their time. Leave, sickness absence and training accounted for the remainder of the time. The figure varies from one basic team to another. The deployment of all basic teams ranges from 64.4% to 77.8%.

As described in chapter 4 in the comparative table, the budget of the police is prepared by the Minister of Security and Justice, Defense and Finances but finally approved by the Second Chamber.

2.3. The National Ombudsman

As already mentioned in chapter 1, the Dutch constitution doesn't explicitly include instruments for parliamentary or governmental oversight on ISF's. Also specific parliamentary (guidance) committees on ISF's are absent. Nonetheless, we have to point to the National Ombudsman as an important oversight body on ISF's in the Netherlands, included in the constitution. The primary mission of the National Ombudsman is to safeguard the rights of all citizens in dealing with administrative authorities, helping them by investigating their complaints. We treat the National Ombudsman in chapter 7, point 7.1. extensively.

Chapter 3. Judicial Oversight of ISF's Duties, Remit and Powers

Table 3. Judicial Oversight Mechanisms in Selected EU Member States and Turkey

COURTS		COUNTRY		
		Italy	Netherlands	...
Courts functions and independence guaranteed in constitution		Yes	YES	
Judges appointment/ careers overseen by an Higher Authority independent from government		?	YES	
Any ISFs agents judged in military court?		No	NO military courts have jurisdiction on policing activities	
(if yes) Military judges are military personnel?		No	/	
(if yes) judged under military penal code		No	/	
JUDICIAL COURTS OVERSIGHT				
Do any ISFs agents benefit of any special "legal protection" before or during investigation?		No	NO	
ISFs agent sanctions: aggravated compared to ordinary citizens.		Yes	NO	
Existence of restrictions to courts' investigation powers:	By administration, police,	No	NO	
	By army	No military courts have jurisdiction on policing activities	No military courts have jurisdiction on policing activities	

Oversight powers of Judiciary over police investigators regarding:	investigation	Yes, strong	YES	
	arrests	Yes (including temporary detention, that has to be Reported to Prosecutor and confirmed by GIP)	YES (including temporary detention, that has to be Reported to public prosecution and Judge Commissioner)	
Special accreditation by judiciary for “investigation officers”		No. Just a functional position	NO	
Formal assessment of performance of investigating officers by public prosecutor or magistrate		Not formally (no marks or written assessments)	NO	
Restrictions	Scope of investigations on ISFs ?	No	ALL	
	due to “national interest”?	Yes (concerning information covered by office secrets or State secrets)	NO	
ADMINISTRATIVE COURTS OVERSIGHT				
Citizen challenging decrees, regulations, circular, orders etc...		Yes	YES	
Checking powers conferred to government / ISFs		Yes Constitutional powers of Government under the jurisdiction of the Constitutional Court & ordinary + administrative courts.	YES	
GOOD PRACTICES				
Do administrative court decisions have an impact on regulatory action of Administration	Yes,		YES	
	no		/	

The Public Prosecution Service and the courts together make up the ‘judiciary’. In this chapter we discuss the judicial oversight of the public prosecutor on ISF’s (more particular the police) and the oversight instruments of judges. As the Supreme Court is already treated in chapter 1, we will not analyse this institution again in this chapter.

3.1. The Public Prosecutor’s Office

3.1.1. Organization

The Public Prosecution Service is part of the Ministry of Security & Justice and responsible for all judicial aspects of penal investigations. Because of the Law on the Judicial Organization, the Public Prosecution Service is considered to be part of the judicial power. The Public Prosecution Service determines whether or not someone has to be brought before penal court as a consequence of the Penal Code. Only in very rare cases the Minister can give an “indication” to the Public Prosecution Service, after he asked the advice to the college of Attorney-Generals on this matter. When a Minister decides not to prosecute someone, he has to inform Parliament of this decision. Apart from such extraordinary circumstances, in almost all cases, the Public Prosecution Service is responsible for investigating and prosecuting criminal offences on behalf of society at large and enforcement of criminal law. It is the only institution that decides who has to appear before a criminal court and on what charge.

The Public Prosecution Service’s main tasks are:

- Supervising the police in the investigation of criminal offences;
- Prosecuting criminal offences and bringing suspected offenders before the courts;
- Dealing with criminal offences without involving the courts.

The Public Prosecution Service concerns itself only with criminal law and has no involvement in civil matters (such as rent disputes, labor issues or divorce proceedings). The Public Prosecution Service is a national organization divided over ten regions which employs around 5,000 people in the Netherlands, including some 800 public prosecutors. The ‘justiciary office’ (*arrondissementsparket*) in a given region is located at the district court serving that region. Every office of this kind is headed by a Chief Prosecutor.

In this framework, we have to mention some important issues on the *relationship between the Ministry of Security and Justice and the public prosecution*. Who is responsible for oversight on the public prosecution? The Ministry of Security and Justice is *politically* responsible for the functioning of the Prosecutor’s Office (Law Judicial Organisation - ‘*Wet op de Rechterlijke Organisatie*’). This section of the law also provides that the Minister may give general and specific instructions regarding the exercise of the duties and powers by the Public Prosecutor.

As mentioned in chapter 0, The Ministry of Security and Justice is responsible for the NPN and shall determine national policy priorities. The legislator has, however, by the attribution of responsibilities to members of the Public Prosecutor created a certain distance between the public prosecution officials and the Minister. The prosecution is not part of the Ministry, and shall be autonomous with respect to the Minister. The latter is full political responsibility for the actions of the prosecutor and therefore empowers aforementioned general and specific guidance to give on the exercise of the duties and powers of the Public Prosecutor (Art. 127 Law Judicial Organisation).

The College of Attorney-Generals exercises supervision over the public prosecutors offices (art. 140 Criminal Procedure Code). This College, in turn, holds the Minister to provide information that it needs to wear its responsibility (Art. 129 Law Judicial Organisation). When cases of national concern or regarding the national “Chief of the Force”, the physical distance between the prosecutor, the Advocate General and the Minister at the hearing, is significant. The public prosecutor has the possibility to, in response to the information provided during the hearing, adjust the penal provision (*straf-eis*) or the requisitory. In addition, the “magistrate liability” (*magistratelijkheid*) is inherent to the position of the public prosecutor and to that of the Attorney-General. This indicates that the complainant does not only pursue a vigorous investigation but, to some extent, takes into account the interests of the defence in her/his judgement, in order to develop a “fair” opinion on the case. The public prosecution as well as the Attorney-General possess a position that exceeds the interests of the individual case in favour of a global perspective of “doing justice for society”.

3.1.2. “Out of Court settlements”

The Public Prosecution Service may decide to bring a case before the court but, specifically in the Netherlands, it also has various options for the treatment of a criminal case itself, without turning to a judge.

The public prosecutor is allowed to take that decision because the Dutch system is based on the *opportunity principle*. Since February 1st, 2008 the Law ‘Public Prosecutors Sanctions’ (*OM-afdoening*) provides an “out of court settlement” (*buitengerechtelijke afdoening*) by means of imposing a sanction (or penal ordinance) (*strafbeschikking*) by the public prosecution itself, after investigation by the police³³. So the public prosecution can for example issue an administrative penalty for antisocial behavior or fine someone for noise nuisance. They can also issue a “police penalty” for so-called “P offences”, which are offences like speeding that used to be punished with on-the-spot fines. In the case of an agreement on the “settlement” between the public prosecution and the offender, the case is not brought before court. Suspects who accept the sanction thereby admit their guilt. And if they decide to reject the sanction, they can have their case brought before the court. This is only possible for minor criminal cases, such as criminal damage, vandalism, shoplifting and traffic violations. This ‘out of court settlement’ is called “As soon as possible” (*ZSM*) (*Zo snel mogelijk*) in the Dutch system, which (literally) means “*careful, fast and tailor made*”.

The Public Prosecution Service itself decides on the sanction imposed once it has been established that the suspect is guilty of the offence in question (Art. 257a clause 2 & 3 Criminal Procedure Code). The OM may impose a range of penalties. Examples include:

- a fine;
- an alternative sanction (of up to 180 hours);
- a driving ban (of up to 6 months);
- payment of compensation to the victim;
- an anti-social behavior or intervention order (such as a football banning order or mandatory participation in a drug rehabilitation program).

³³ Art. 257a, Criminal Procedure Code.

The Public Prosecution Service may not impose a prison sentence; only a court is authorized to do so. This “out of court settlement” can, in contrast to the already existing transaction, be considered to be a one-sided fault finding (*eenzijdige schuldvaststelling*).

An appeal against such a settlement is possible. But observers mention that in many cases suspects admit to the accusations (even if they are not guilty), because a procedure before court may cost them so much more than the proposed settlement (fine). Suspects have the ability to oppose against a punishment imposed (Art. 257e clause 1 Criminal Procedure Code). An appeal is no longer possible if the suspect has waived his right to object or met the punishment. In case of opposition of the accused the case is reassessed. Following this reassessment, the punishment may be withdrawn, modified or the offender may be summoned to appear at a hearing. If the defendant is summoned to the hearing, the normal judicial procedure in court starts. The offender needs a lawyer in this case, and we have to stress here on the oversight position of *lawyers* in order to respect rights of the offender, legality and legitimacy of each case. A published evaluation (2016) indicates that counsellors often have no time to do their job. The report further showed that in a substantial number of cases investigated the official report (police record - PV) was even missing at the moment the sanction was imposed.

The public prosecutor may also decide to allow the offender to make a payment instead of prosecution (*transactie*). If the person agrees and pays, the prosecution will not proceed any further. Failure to pay means the person will have to appear in court after all.

These “out of court settlements” originated to remedy the judicial delay in cases. In order to obtain a ‘quick’ punishment, the competence to sanction was handed over from the judge to the public prosecution in the Netherlands. That is why most “out of court settlements” are decided very quick after the criminal offence (within six hours after the arrest). In exception of a “normal” procedure, they are imposed by the “ASAP-round table” (*ZSM tafel*). This is a process by which the public prosecutor together with the police, probation, victim and the Child Protection Board come to a decision on the resolution of the case at the earliest stage possible. This decision may also be a punishment, besides dismissals or orders. Due to the flexibility of the procedure, ASAP is known as a “Swiss army knife”. All criminal cases that lend themselves to this kind of settlement discharged by a punishment are executed this ASAP-way, unless contra indications. An important condition for punishment is that there is sufficient evidence. If there is doubt about the guilt of the accused no punishment can be enacted. Also “Municipal Extraordinary Investigating Officials” (see chapter 8, point 8.2.) can impose an “out of court settlement”, without the public prosecution. And even institutions or persons entrusted with public duties, e.g. water-boards, municipalities and provinces can impose an “out of court settlement” (Art. 257b clause 3 and 257c clause 2 Criminal Procedure Code). The Public Prosecution Service oversees the quality of these settlements issued by police or public bodies or individuals in a more general way. The public prosecution provides general guidelines and gives instructions regarding the imposition and execution of the punishment.

There is one national officer nominated specifically for these “out of court settlements³⁴”. His task is to monitor members of the Public Prosecution at the “Central Judicial Collection Agency” (*Centraal Justitieel Incassobureau*) (CJCA). The CJCA (under Art. 2.1 of the “decision settlement by the public prosecution”) (*wet OM-afdoening*) assists in issuing criminal orders. Some observers call this a bit strange while it is a national organization that collects the money of all the fines imposed on offenders.

³⁴ <https://zoek.officielebekendmakingen.nl/stcrt-2012-26833.html>

Data show that some of the partners run approximately 200,000 cases through the process of ASAP each year. That means about two-thirds of the total inflow of criminal cases. The number of cases run through the ASAP process are extended: the limitation to the most common crime is “manifestly void”. Not all information (evidence) and necessary documents were available at the time of the treatment, which is a great lack of transparency and makes oversight for lawyers almost impossible. The “out of court settlement” differs in a number of respects from a trial by the court, at a public hearing. One of the issues is the non-disclosure, and, hence, difficult to organise oversight on these kind of measures. The judge decides, after all, matters in a public meeting, in a public statement, and gives a motivation for his decision. Moreover, a part of the court's decisions will be published. This makes the control of the public and the press possible. In a “out of court settlement” this is not the case: there is no public treatment. The decision is not public, it is not justified and will not be published. This makes monitoring of the “out of court settlement” very hard.

Sometimes, the public prosecutor decides not to prosecute a case (dismissal) (*sepot*). This may occur if there is, for instance, insufficient evidence to achieve a conviction or if the suspect has not been identified. A prosecution may not go ahead if the evidence was obtained unlawfully, or if the suspect cannot be held accountable because they have psychiatric problems or because they acted in self-defense. The public prosecutor may reason, on public interest grounds, not to initiate or not to continue prosecution proceedings. A victim may object to a decision not to prosecute by lodging a complaint with the Court of Appeal. If the Court says the complaint is well founded, the Public Prosecution Service has to start a prosecution.

The public prosecutor may also attach *conditions* to the decision not to prosecute, and the perpetrator must abide by these conditions. A person may, for example, agree not to enter the street where his victim lives. If he does not stick to the agreement, a sanction will be imposed after all. If the public prosecutor decides that none of these options are appropriate, the suspect has to appear before a criminal court. He summoned: a letter stating when the case is to be heard and giving a description of the offence or offences with which he is charged. Relatively minor offences are heard in a court presided over by a single judge. More serious or complicated cases are heard by three judges.

Millions of offences are committed in the Netherlands. Which cases should be given priority? To some extent these decisions are taken at national level. The College of Attorney-Generals, the highest authority in the Public Prosecution Service, sets the parameters for investigation and prosecution policy. A public prosecutor understands the local context and what is expected of the Public Prosecution Service in its efforts to combat crime. Individual public prosecutors also have to make choices. They have to comply with national policy, but they must also take local circumstances into account.

As will be explained in chapter 6, in order to prioritize in the local context the Public Prosecution Service takes part in regular “triangular consultations” with local Mayors and police representatives to discuss ways of tackling crime to promote public security and the use of police resources. The Public Prosecution Service works with various other groups: local authorities, the probation service, prison authorities, the child protection board, victim support services and road safety groups, and with lawyers and the business sector.

When it comes to common crimes such as theft, vandalism and threatening behavior, cooperation among these partners can be intensive. The Public Prosecution Service also works

with other parties (such as the police, the probation service and victim support services) in ‘community safety partnerships’ led by the municipality. Here the partners discuss complex matters, such as how to deal with habitual offenders, young offenders, radicalized young people, psychologically disturbed individuals and perpetrators of domestic violence. They also discuss opportunities to do more than simply imposing penalties. After all, offenders are often dealing with multi-dimensional problems. Besides imposing a sanction, a public prosecutor can also set conditions which must be met, such as the completion of a treatment program. This combination of punishment and rehabilitation is aimed at reducing criminal conduct as much as possible in the future.

We shortly mention two other institutions under the auspices of the public prosecutor. The first one is the “National Office for Serious Fraud, Environmental Crime and Asset Confiscation” (*Functioneel Parket*), responsible for tackling fraud and environmental offences, and handling complex criminal cases, mostly started by the FIOD (see chapter 0). It also serves as the Public Prosecution Service’s centre of expertise on confiscating proceeds of crime. Secondly, the Central Criminal Investigation Service (CCIS) (*“Rijksrecherche”*) (see chapter 4 point 4.3.4) as part of the NPN, but falling under the authority of the Public Prosecution Service, as described in chapter 0. finally the “National Service Centre” (DVOM) is a service provider which performs operational management tasks for the Public Prosecution Service in the fields of human resources, finance, information management and facilities management.

3.1.3. Oversight on ISF’s

As sketched out in chapter 1, The Public Prosecution Service is the authority for the police regarding criminal law enforcement, while the Mayors are the authority when maintaining public order is at stake (art. 141 sub Criminal Procedure Code). Except for cases when violence with deadly consequence is committed by police officers (see chapter 5 point 5.2.4), police officers charged of having committed a violation of the law do not have any special protection or treatment in the lawsuits. They are treated like any other offender. The Penal Code does not contain in the Netherlands, like in Italy, specific series of crimes committed by police officers / officials in the line of duty.

The Code of Criminal Procedure establishes a direct functional dependence of police officers to public prosecutors during an investigation. This is a functional dependence, because the police officers continue to depend to the executive branch, in terms of hierarchical organization and discipline. But for the investigative activities, the Prosecutor’s Office can make use of police investigators freely, independently of the executive power. These strong powers of supervision of the police investigators held by the Prosecutor’s Office concern both the phase of pure investigation and the phase of execution of the orders of arrest.

Judges have no say in oversight of the police. They do not follow their actions and have no direct contacts. Judges consider controlling the police a task of the Prosecutor’s Office. The only way judges interfere with police officers (misconduct) or investigation errors of for example extravagant violence or bribe, is when the officer appears before court (like any other citizen). The only way oversight on a judgement of judge will be done is by means of appeal (and then judge of appeal) can reconsider the case.

In case of *flagrante delicto* or necessity, related to the investigation, the police may execute temporary arrests independently, but these provisional measures must be communicated to the public prosecution within 48 hours. If the arrests are not approved by the Prosecutor’s Office

nor the judge commissioner (*infra*) within the next 48 hours, they are revoked and lose any effectiveness. In fact, due to the specific arrangement in the Netherlands, the “out of court settlement”, police and the Prosecutor’s Office work very closely together (without a judge being at stake). Throughout this period the public prosecutor ensures that the police-officers follow all the rules and procedures laid down in law and take account of all relevant information. The Prosecutor’s Office has ultimate responsibility for investigations and – especially where serious offences are concerned – it (Article 12 par 2 Police Act) issues instructions and “provides guidance” in criminal investigations to the police officers. In some cases they must first obtain permission from the court (judge-commissioner) (see *infra* chapter 3 point 3.2.).

The Prosecutor’s Office is also responsible for supervising criminal investigations carried out by other authorities, such as the municipal social services. It also supervises the “General Investigating Officials” (see chapter 0), as the “*Intelligence and Investigating Tax Service*” (FIOD) of the Ministry of Finance, the “*Inspection of the Ministry of Social Affairs and Employment*” (ISZW) of the Ministry of Social Affairs and Employment, the “*Intelligence and Investigation Service of Environment and Transport*” (ILT-IOD) of the Ministry of Infrastructure and Water, and the “*Food and Goods Authority*” (NVWA) of the Ministry of Agriculture, Nature and Food Quality (Article 148 par. 2 Criminal Procedural Code).

3.2. The judge-commissioner (“*rechter commissaris*”)

A judge-commissioner is a judge, who is appointed for life in an autonomous position, which makes him not vulnerable for political interference. While in certain European countries an “*investigating judge*” is leading the criminal investigation when he is seized by the prosecutor, in the Netherlands the “*judge-commissioner*” is not leading the investigation. His most important task is to supervise the *legality* of the police investigation. A judge-commissioner can never delegate his competences to other partners in the criminal chain, even when investigative actions have to be taken abroad. A judge-commissioner is dependent for his salary of the Minister of Security & Justice (controlled by the Minister of Finance), but these ministers have no say at all in the content of an individual decision. On managerial level, the administration of the Minister (in Dutch “*Directoraat-Generaal Rechtspleging en Rechtshandhaving* (DGRR)”) regulates some aspect of efficiency, but if quota are not respected, there are no punishments foreseen.

With the introduction of the Law strengthening the position of the magistrates in 2011³⁵, the judiciary (*magistratuur*) received a greater supervisory role in the police investigation. Members of ISF’s can only act in specific matters (e.g. arrest, searches, ...) after explicit mandate delivered by the judge-commissioner. These mandates always originate in common agreement between the judge-commissioner and the public prosecutor’s office in charge.

The task of the magistrate is defined in art. 170 paragraph 2 of the Criminal Procedure Code. He is charged in particular with the performance of supervisory powers in relation to the investigation, officially granted by Law in criminal cases, on demand of the Prosecutor’s Office, or of the accused and his/her counselor. The Law divides his supervisory powers into several categories. First, monitoring the lawfulness of the use of certain powers. Second, keeping general overview on the progress of the investigation. Thirdly, keeping balance between investigative interests and defense interests. Finally, the judge-commissioner also monitors the integrity of the investigation.

³⁵ *Law strengthening the position of the magistrates*, December 1st, 2011, *Stb.* 2011, 600.

The judge-commissioner is appointed by the president of the court during the investigation that is carried out by the police, to make decisions on matters for which the prosecutor has no powers, like the arrest of suspects and the search in private homes. In case of searching home, the magistrate himself is in charge and must be present (with his/her registrar). Furthermore, the magistrate must decide what items should be seized, and may order measures (to) to keep public order around the crime scene.

In 2000 the legislator established a legal framework for the use of various specific (intrusive) investigative powers (“*Bijzondere opsporingsmethoden*”), like infiltration and systematic observation (to be ordered by the judge-commissioner). Telephone tap was already regulated by law before 2000. The explanatory note (“*Memorie van Toelichting*”) with the Law states explicitly that the magistrate can also play an active role in the investigation tasks themselves. This magistrate can for example initiate a pre-trial (Art. 185 paragraph 1 Criminal Procedure Code). This magistrate can furthermore appoint experts to create a report on the defendant, aiming at information of the court before the final trial. This report is made during the period in which the defendant resides or in his house or in custody when the case is under investigation. The court may, on the basis of this report, and when the criminal facts are proven by the judge of investigation impose an appropriate punishment. The magistrate reviews the detention of the accused within three days after taken into custody and counted fifteen hours from the arrest. The magistrate shall review the legality of the warrant and the execution of the detention. If the magistrate finds the police custody to be unlawful, he can order the immediate release of the suspect, according to art. 59a paragraph 5 Criminal Procedural Code.

3.3. The court system

The court system in the Netherlands comprises different areas of law and a variety of bodies. Courts in the Netherlands deal with:

– *Civil law (also known as private law)*

This is an umbrella term for the law dealing with conflicts between individual members of the public and/or organizations. The government is working to achieve faster and simpler procedures for straightforward civil disputes. The civil jurisdiction regulates the litigations between individuals, or between individuals and the public administration, based on the defense of a subjective right.

– *Criminal law*

Criminal law deals with offences ranging from minor infringements such as failure to stop at a red light to serious offences such as drug trafficking, theft and murder. Cases are brought before the courts by the Public Prosecution Service. The criminal jurisdiction strives to achieve the public interest to basic institutional values are safeguarded, imposing a penal sanction to those who have committed a crime.

– *Administrative law*

Administrative law prescribes the rules that public authorities must keep to in their decision-making and regulates relations between government and citizens. The most important of these rules are laid down in the General Administrative Law Act (AWB). The administrative jurisdiction protects the “legitimate interests” of the citizens who have been damaged by an act of public administration, thus ensuring a just administration.

The Courts of the first two types make up the so-called “ordinary jurisdictions”, whereas the administrative Courts, the Supreme Court, military courts and other lower courts make up the “special jurisdictions”.

The Ministry of Justice and Security is responsible for maintaining the rule of law in the Netherlands providing people legal protection. But judges are independent and cannot be dismissed by the Minister of Justice and Security, except in case of malfeasance or incapacity.

Most cases start at a district court, except where the “out of court settlement” became a daily practice. The costs, the formal nature and the complexity of judicial proceedings often discourage private individuals and commercial companies from taking cases to court. This certainly applies when the costs are higher than any money that might be awarded. To make it easier to resolve these cases within the legal system, the government wants to make the procedures for straightforward disputes between members of the public and/or organizations (that is, civil disputes) faster and less complicated.

To safeguard the quality of the system and to make the courts accessible to everyone, the Netherlands is divided into jurisdictions. This division determines, among other things, which district court will hear a given case. The Netherlands is divided into 11 districts, each with its own court divided into a maximum of five sections. The sections always include the administrative section, civil section, criminal section and sub-district section, but family and juvenile cases are often put into a separate fifth section. Cases are heard by a single judge. Every district court has a limited jurisdiction sector, which hears cases such as employment or rent disputes, and civil cases involving claims of up to €25,000. This sector also hears cases involving minor criminal offences (misdemeanors). In cases of civil law, involving rents, hire purchase and employment are dealt with by a sub-district judge. In criminal cases, minor offences are also dealt with by a sub-district judge, who usually delivers an oral judgment immediately after the hearing. More intricate cases can be heard by a single judge or by a bench of three judges, depending on the complexity or seriousness of the case.

Appeals against judgments passed by the district court in civil and criminal law cases can be lodged at the competent Court of Appeal. There are four courts of appeal, handling criminal cases, civil cases (such as divorce), Canton cases (such as dismissal) and tax. They deal with appeals from the District Courts, re-examining the case and giving their own verdict. In addition to criminal and civil cases, the Courts of Appeal also deal with appeals against tax assessments in their capacity as Administrative Courts. Their decision may be contested by appealing in cassation (i.e. for the verdict to be overturned) to the Supreme Court of the Netherlands. Appeals against administrative law judgments at the competent specialized administrative law tribunal - the Administrative Jurisdiction Division of the Council of State, the Central Appeals Tribunal or the Trade and Industry Appeals Tribunal, also known as Administrative High Court for Trade and Industry, depending on the type of case. Appeals in cassation in civil, criminal and tax law cases are lodged at the Supreme Court of the Netherlands (see chapter 1).

Besides these courts, the Netherlands has a number of *other judicial bodies*.

1/ The “*Netherlands Commercial Court*” (NCC) was created on the 1st of January 2019. The NCC District Court is a chamber in the Amsterdam District Court. A matter may generally be submitted to the NCC where all of the following requirements are met: (i) the action is a civil - or commercial matter within the autonomy of the parties and is not subject to the jurisdiction of the Subdistrict Court or the exclusive jurisdiction of any other Dutch chamber or court; (ii)

the matter concerns an international dispute; (iii) the parties to the proceedings have designated the Amsterdam District Court as the forum to hear their case or the Amsterdam District Court has jurisdiction to hear the action on other grounds; and (iv) the parties to the proceedings have expressly agreed in writing that court proceedings will be before the NCC in English.

2/ If the courts do their work properly, they are dependent on experts. So judicial bodies need a reliable register of persons with the right expertise: this is present in the institution the “*Netherlands Register of Court Experts*” (NRCE). Is an expert needed to testify in a criminal case? Then a judge, a lawyer, or the Public Prosecution Service, for instance, can consult this register. The NRCE lists experts in areas such as DNA testing, forensic psychology, psychiatry or handwriting analysis.

3/ There are three special tribunals in the Netherlands that deal in specific areas of administrative law. The *Central Appeals Tribunal* deals in the area of social security and the civil service. The *Trade and Industry Appeals Tribunal* is based in the Hague and deals in the area of social-economic administrative law and with appeals regarding specific laws, such as the Competition Act or the Telecommunications Act. The *Administrative Jurisdiction Division of the Council of State* is based in the Hague and hears appeals by members of the public, associations or commercial companies against decisions by municipal, provincial or central governmental bodies.

4/ In The Netherlands there is no separate military court as the military justice system is embedded in the civil justice system. A *special chamber for military affairs* is reserved for military in criminal matters (in Arnhem). The prosecutors and two of the three judges are civilian. The third judge is a military member in the rank of Colonel. By law it is possible to have deployable Court Martials, but in practice this never happens. The Netherlands Military Criminal Code provides that national criminal law (both general criminal law and military criminal law in particular) continues to apply to the Netherlands Armed Forces also outside the State’s borders. It, therefore, also applies to Dutch military while deployed in a UN peacekeeping operation. Additionally, the military disciplinary code also applies wherever Dutch military operates. For the purpose of prosecuting military, the Netherlands military police in criminal cases answers to the Dutch public prosecutor. It, therefore, does not answer to a military commander. Criminal charges of Sexual Exploitation and Abuse can be brought against the military by the civil public prosecutor for military matters.

5/ A next institute is the “*Central Appeals Court for Public Service and Social Security Matters*” that deals with appeals in cases involving public servants and social security cases. The “*Administrative Court for Trade and Industry*” hears cases relating to socio-economic administrative law. The “*Administrative Jurisdiction Division of the Council of State*” (*Raad van State*) is the highest administrative court. This court decides on development plans, gas storage in the soil and large wind farms. In addition, the State Council handles immigration cases on appeal. The Council of State however, is not part of the organizational structure of the judiciary, so we do not elaborate on this body. The “*Council for the Judiciary*” is the central contact point for the judiciary and also acts as its spokesperson in the political and public debate. The Council protects the common interests of the judicial bodies and oversees provisions applying to courts across the board. It also supervises operational management and financial administration.

Chapter 4. Structure, Remits and Oversight functions of Ministries in charge of ISFs (Interior / Justice)

Duties, Remit and Powers

Table 4. Structure, remits and oversight functions of Ministries in charge of two main types of ISFs (ministries of Interior, of Justice, of Defense) in Selected EU Member States and Turkey.

		Countries		
ISFs		Italy	Netherlands	...
Territorial organization	Nature of force: National, Federal, "state" regional forces	National forces	National forces NPN: Complete territory; KMar: Country, especially Schengen borders & international police missions.	
	Any territorial / crime related overlap in areas (of jurisdiction)?	Carabineers / Police areas not mutually exclusive + additional local polices (both provincial & municipal)	No explicit territorial division of labour	
Affiliation	1st type of force: National or State/regional police	Police dependent on MoI	NPN dependent on MoS&J	
	2nd type of force: Gendarmerie, Coast Guards or municipal	Carabineers / coast guards functionally dependent on the MoI but formally dependent on the MoD (military status guaranteed) / No Coast Guards in ISF	KMar dependent on MoD / Coast Guard is no ISF ³⁶	
Budgetary con	Police	Police: Yes	NPN: YES (MoS&J)	

³⁶ The Netherlands Coastguard is a small independent civil organization with own tasks, competences and responsibilities. The Coastguard has a staff of 48 employees. Most of the personnel is employed by different Ministries (Ministry of Infrastructure and Water Management; Ministry of Defense; Ministry of Security and Justice; Ministry of Finance; Ministry of Economic Affairs and Climate Policy; and Ministry of Agriculture, Nature and Food Quality). In essence most of the tasks of the Coastguard fall within the domain of safety: (1) responsible use of the North Sea; (2) provide services that contribute to safety and security at sea; and (3) upholding (inter)national laws and duties. For these reasons, we don't include the Coastguard in our oversight on ISF's in the Netherlands.

	Gendarmerie/ Carabineers	Carabineers: just for ISF's coordination in IS missions	KMar: YES (MoD)	
ISF's Budget organization	Mol / MoJ	Mol: Public Security Department, Mission 'Public order and security'	NPN: MoS&J, Directorate- General Police and Safety Regions	
	MoD	MoD: General Directorate of General Services	KMar: Support Commando MoD	
ISF's Budget preparation procedure		Budget prepared by Budget Services of Mol / MoD, approved by CNOSP and presented as annexes of State Budget	Budget prepared by MoS&J, MoD; approved by Second Chamber.	
Head(s) of ISFs		2 heads. Police under Mol. Carabineers under MoD.	NPN: "Chief of the Force", under MoS&J; KMar: "Commander" under MoD.	
Appointment/ dismissal of	national or state police head / discretionary revocation by gov?	Council of Ministers, after proposal of Mol / YES	Proposition of MoS&J, nomination by Council of Ministers. / NO	
	national gendarmerie head / discretionary revocation by gov?	Council of Ministers, after proposal of MoD and belief of the Chief of the Army / YES	Proposition of MoD, nomination by Council of Ministers. / NO	
Civilian ISF: national head or state head (profile)		Prefect	"Chief of the Force". He is presented by the Minister of Security & Justice. The council of Ministers appoints him ³⁷ .	
Gendarmerie national head (profile) / if military: Land Forces or Gendarmerie General?		General of the Army / ?	"Commander". / KMar He is presented by the Minister of Defense. The council of Ministers appoints him ³⁸ .	
Appointment/ dismissal	municipal		National decision, after advice of Prosecutor's Office & regional Mayor	

³⁷ The procedure is 'closed' (not public). The actual head is someone who grew in the police from bottom to top. This is no prerequisite. Former "Chiefs of the Force" had other careers outside the police. E.g. G. Bauman, the first "Chief of the Force" of the NPN, came from the intelligence service of the Netherlands (AIVD).

³⁸ KMar stays outside the commando-line of the military because of its police-task and needs to stay independent. Therefore, the Commander functions under the direct command of the Secretary-General of the Ministry of Defence. It is the tradition that the "Commander" is a former member of KMar.

of LOCAL heads of ISFs	Other		/	
Policies (ordinary crimes)	Policy formulation	Mol: National Committee for Public Order and Security /	MoS&J: Directorate-General of the MoS&J.	
	Daily work orientation	Prefectures: Provincial Committees for Public Order and Security	Regional Mayors: regional triangular consultation (see chapter 6).	
One general law which defines ISFs roles and applies to All ISF?		Yes	YES, concerning NPN (Police Law), other ISF's have their own legal basis.	
Office/ unit in charge of	Inspection	Police: Mol Central Inspection Office / Carabineers: General Command Inspection Head and Local Commanders	NPN: Inspectorate Security & Justice (MoS&J); KMar: Inspectorate Security of Defence (MoD); See also Internal Oversight (chapter 5).	
	Sanctions	Police: Chief of the Police / Carabineers: Regional Commander	NPN: "Chief of the Force" / KMar: "Commander"	
Specific gendarmerie academies / civilian professors		Yes / Yes	Yes / Yes (not exclusively)	
Representative of gov. at local level (if any)		Prefect	/	

4.1. Oversight by the "Cabinet"

The system of Government in the Netherlands is based on solid constitutional principles (see chapter 1), providing a framework where the government and its members are subject to a high degree of political accountability to Parliament and to the democratic process. The government (Council of Ministers), selected and led by the Prime Minister, must always enjoy confidence by Parliament. Being a collective body, considerable importance is attached to trust, collegiality, consensus and unity within the Government.

At the same time, Ministers are vested with discretionary powers in respect of their particular Ministries and fields of competence, while also being personally accountable for their acts before Parliament. This system places a large degree of responsibility on the members of the Government. The development of policies, strategies and guidelines are particularly important in such a system.

Under the Dutch constitution the Government ("Cabinet") is composed of all governmental Ministers. Its job is to take decisions on overall government policy and promote the coherence of policy. The rules of procedure deal with the Cabinet's composition, powers and working methods. Article 26 of the constitution states that the matters discussed at Cabinet meetings are to be kept secret. The minutes of meetings are made public after 20 years.

The Cabinet is presided by the Prime Minister and generally meets once a week, typically on Friday. If necessary, it can also convene at other times. Sometimes a Cabinet meeting may be preceded by a meeting of the Council of Ministers, which includes the Ministers Plenipotentiary of Aruba, Curaçao and St Maarten.

The Director-General of the *Government Information Service* (RVD) is in charge of speaking to the media about what is discussed in Cabinet meetings. Complex or technical subjects are not addressed directly in Cabinet meetings, but are first discussed in a committee comprising those Ministers who are directly involved. In general, the same rules apply to these committees as to the Cabinet itself. The Prime Minister also presides Cabinet committee meetings. Special ministerial consultations have been set up for a number of topics.

In addition to the Cabinet committees there are a number of ministerial consultative bodies. The main difference between these and the committees is that the former are temporary, in principle lasting only for the duration of the government's term in office. Ministerial working groups are formed to address a particular issue or subject. These, too, are chaired by the Prime Minister.

Underneath we limit ourselves to those Ministers which have specific competences on oversight on ISF's.

4.2. Oversight on ISF's by Ministry of Interior and Kingdom Relations

The Ministry of the Interior and Kingdom Relations (BZK) is one of the eleven ministries of Dutch central Government. The Minister and his civil servants formulate policy, prepare legislation and regulations, and are also responsible for coordination, supervision and policy implementation. The Ministry deals with the following issues:

- Democracy and the rule of law;
- Public administration;
- The quality of personnel and management within central government;
- The Dutch constitution and the system of constitutional government;
- The partnership with Curaçao, St Maarten and Aruba;
- Public housing and government buildings.

Before the transition towards the NPN, most of the oversight functions on ISF's were in the hands of the Minister of Interior and Kingdom Relations in the Netherlands. Together with the establishment of the NPN itself, the oversight structure changed dramatically³⁹. Today it is the political responsibility of the new *Minister of Security and Justice* to organize oversight on ISF's and no longer that of the Minister of Interior and Kingdom Relations. It is the *Minister of Security and Justice* who is determining the national priorities of the police. Leadership of the NPN lies concretely in the hand of the "Chief of the Force"⁴⁰.

4.3. Oversight on ISF's by Ministry of Security and Justice

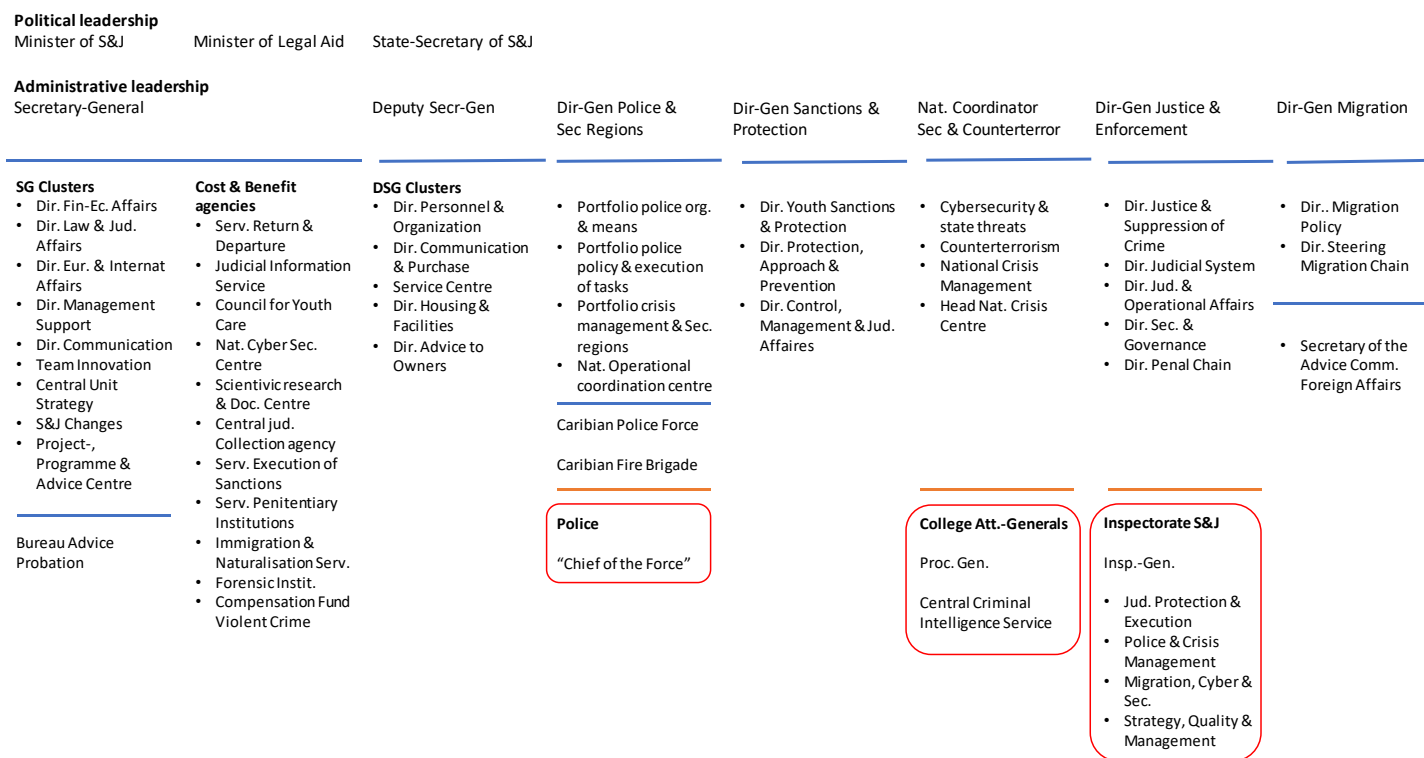
On October 14th, 2010 the Ministry of Justice was renamed *Ministry of Security and Justice*. The idea behind this change was to have one department that could steer the complete judicial

³⁹ Law of July 12, 2012 installing a new Police Law.

⁴⁰ The general police-tasks are described in art. 3 of the Police Law of 2012 and in art. 141 of the Code of Penal Procedure.

chain from the start (prevention) to the final phase (execution of sanctions). The consequence of this logic was that the Directorate-General “Security” of the Ministry of Interior and Kingdom Relations was transmitted to the new Ministry of Security and Justice. Ultimately, this meant that the Ministry of Interior and Kingdom Relations had no competence anymore on police matters⁴¹.

Figure 4: Organizational chart of the Ministry of Security & Justice of the Netherlands



The Ministry of Security and Justice is responsible for maintaining the rule of law in the Netherlands. The Ministry is working towards a safer, more just society by giving people legal protection and, where necessary, intervening in their lives. It gives people also new prospects: for example, it helps prisoners return to society and provide support for victims of crime. Generally spoken, the Ministry is competent for law, prevention, law-enforcement, sentencing and victim-care. It is also this Ministry that became political responsible for the functioning of the Prosecutor’s Offices and the NPN. The Ministry of S&J determines national priorities in these domains.

The judiciary, which consists of judges and public prosecutors, is not a department of the Ministry of Justice and Security (see chapter 3). Yet its organisations are directly linked to the Ministry. The National Coordinator for Counterterrorism and Security (Nationaal Coördinator Terrorisbestrijding en Veiligheid, NCTV) falls within the responsibility of the Ministry of Justice and Security. The Minister of Justice and Security is also responsible for the police.

After having consulted the Board of Attorney-Generals and the regional Mayors (see chapter 6), the Minister of Security and Justice sets the national policy objectives for the NPN (Article

⁴¹ In the meanwhile, in Oktober 2017, the Ministry of Security and Justice was renamed Ministry of Justice and Security. Lawyers pleaded for this change in nomination, without further consequence, because they think that Justice is more important in a constitutional state than Security.

18 of the Police Act 2012), as well as the policy objectives for the regional unities and the Central Unit (Article 20 of the Police Act 2012). The Minister divides the resources across the different components of the NPN. The Minister is also responsible for adopting administrative documents, such as the budget, multiannual estimate, financial statements, management plan and annual reports.

The Minister can give the “Chief of the Force” both general and specific instructions for the execution of his/her tasks and powers (Article 31 of the Police Act 2012). The power to give instructions relates solely to the powers of the “Chief of the Force”, and not to the operational duties of the NPN, which are performed under the responsibility of the regional authorities (Mayors or Public Prosecutors). The Minister approves a National Security Plan, after consultation with the regional Mayors (see chapter 6) and the *Directorate-General Police* of the Ministry for a period of 5 years. This Plan is send to Parliament for notification.

Article 103.1 of the 2012 Police Act provides that within five years from the entry into force of the Law, the Minister of Security and Justice is to send to Parliament an evaluation of the efficacy and effects of the law in practice. In 2013, the evaluation was assigned to a specially established independent *Evaluation Commission*. The results of the evaluation were published in November 2017. While recognising the benefits of the creation of a centralised national police, the Evaluation Commission concluded that the 2012 Act led to a structure in which multiple roles lie in the hands of the Minister of Justice and Security: the Minister determines the national priorities, chairs the National Consultation Board and is for some tasks the competent authority of the National Unit; the Minister proposes and approves the police budget, negotiates labour agreements and appoints various supervisors (management, inspections accountants etc.).

In the light of its findings, the *Evaluation Commission* made a number of recommendations, that the various roles (policy, operational and supervisory functions) should be clarified; that the “Chief of the Force” of the NPN should be given more freedom in providing policy-related, managerial and staff direction and in steering the budget process, as is customary for independent legal entities. The Evaluation Commission also requested that the ministerial designation of powers (e.g. the Minister’s power to give the Chief of the Force general and specific instructions) should be clarified. Further, the Commission also called for a more effective and efficient supervisory regime over the police, through the establishment of external audits instead of ad hoc measures and to making a better and coordinated use of the complaints procedures for the organisation as a whole.

4.3.1. The Directorate-General Police and Safety Regions

This Directorate-General of the Ministry of Security & Justice is the steering body of the Ministry concerning ISF’s. It is *not* organized in directions, but works with portfolio’s. In other words: collaborators work for all directors.

– The portfolio *police-organisation and means* is a support service for the police. This portfolio supports the responsibility of the Minister of Security & Justice to realize an annual budget, a management plan, a financial estimation over different years and to determine the content of the yearly report of the police. The portfolio contains also items as personnel, housing, ICT and investments;

- The portfolio *police policy and execution of tasks* controls the final responsibility of the Minister in all items of the police-organisation, execution of tasks and primary processes. It is at this level that arrangements are drawn concerning performances within the existing framework;
- The portfolio *safety regions, crisis management and control room* aims to improve the quality of control rooms by realizing upscaling, standardization and the implementation of a new way to work. This program sustains also the responsibility of the Minister in the domain of information sharing between safety-regions and in case of alerts. The portfolio contains also the realization of the ICT-infrastructure and the connections between police, safety-regions, medical services and the KMar. The Minister is also responsible for the functioning of disaster and crisis management. Crisis management and fire brigades are organized in a decentralized way. The Minister is not responsible for individual safety regions, which are under the supervision of the municipalities. So did the Ministry of Security and Justice develop a national framework to improve transparency and consensus about the work of Safety-Houses, but left room for local initiatives (see chapter 6, point 6.3);
- The *National Operational Centre of Coordination (LOCC)* has important functions in information dispatching by means of the Multidisciplinary Operational Image, plan development & advice, and coordination of support.

4.3.2. The National Coordinator for Security and Counterterrorism (NCTV)

The National Coordinator for Security and Counterterrorism is part of the Ministry of Security and Justice. It is the mission of the administration to protect the Netherlands from threats that could disrupt Dutch society. Together with the partners within the government, the research community and the private sector, the NCTV ensures that the Netherlands' critical infrastructure is safe and remains that way. Since the establishment of the NCTV, central government has had a single organisation that deals with counterterrorism, cyber security, national security and crisis management. The NCTV collaborates with (private) partners in the security sector. The focus is on preventing and minimising social disruption.

The main tasks of the National Coordinator are:

- Making the Netherlands cyber secure;
- Preventing attacks and combating terrorism and extremism;
- Making the Netherlands resilient to threats from state actors;
- Analysing and reducing identified threats;
- Providing surveillance and protection for persons, property, services and events, as well as for vital sectors;
- Expanding and strengthening cyber security;
- Making property, persons, structures and networks more resistant to threats; and
- Ensuring effective crisis management and crisis communication.

“*National Security*” is central in the functioning of NCTV. The letter from the Minister of Justice and Security to the President of the House of Representatives of April 18th, 2019 contains a description of the way the NCTV cooperates with private and public partners. The focus is on protecting democratic processes and institutions, countering undesirable foreign interference targeting diaspora communities and an approach to economic security in the framework of a “National Security Strategy” (NSS). Such a strategy is considered to be dynamic and multifaceted and requires a flexible approach. This National Security Strategy

(NSS) specifies all national security interests that must be protected, as well as how these interests are currently under threat and how these risks and threats can be minimized. The strategic cycle of the NSS – which repeats every three years – enables the Netherlands to continually protect itself against the development of threats and risks and intensifies the national security approach in a future-proof manner.

On April 20th, 2018 the Dutch Minister of Security & Justice presented to the government a wide National *Cyber Security* Agenda (NCSA). The agenda consists of seven challenging ambitions which collectively will contribute to a secure, digital Netherlands. Security in the digital domain is a top priority for the cabinet. This is why the cabinet committed to a structural extra investment in cybersecurity. The NCSA sets out the framework for the next step required in cybersecurity. The joint direction is laid out and various measures are considered collectively. This enhances the impact of public and private actions.

The *National Cyber Security Centre* (NCSC) is a joint venture between governmental bodies and business enterprises aimed at forging an integrated approach to cyber security. The Dutch Government Computer Emergency Response Team (GovCert), which since 1 August 2011 has fallen under the National Coordinator for Security and Counterterrorism (NCTV), will serve as a basis for the new Centre. The Centre combines tactical and operational knowledge and expertise from the Government and business sectors. By doing so, it gains a clearer understanding of threats and developments and is better able to help deal with incidents and make decisions in digital security emergencies.

The *Cyber Security Council* (CSR) is a national advisory body of the Dutch Government and the business community (through the Government) composed of high-ranking representatives from public and private sector organizations and the scientific community. The CSR undertakes efforts at strategic level to bolster cyber security in the Netherlands.

In the Netherlands, local or regional crises are usually dealt with by the local or regional authorities, such as the municipality or safety-region. If a crisis goes beyond regional level or reaches national scale, such as major flooding or a pandemic, the central government comes into play. The Minister of Security and Justice is the coordinating minister for crisis management. He or she is also responsible for strengthening national security in close collaboration with the other Ministries. The NCTV assists the Minister in carrying out this task.

The National Coordinator for Security and Counterterrorism (NCTV) coordinates the fight against terrorism in the Netherlands. The approach to counterterrorism is defined in the national counterterrorism strategy. The objective is to reduce the risk of terrorist attacks and to limit any damage following a possible attack. The NCTV coordinates the efforts of all parties in the Netherlands that have a role in counterterrorism. In combatting the current threat of jihadist terrorism (violent extremism), the NCTV coordinates the implementation of the Netherlands comprehensive action program to combat jihadism. The NCTV also cooperates with other Governments and in international partnerships, such as the European Union and the United Nations. In this framework, there is the *Counterterrorism Alert System* that warns governmental institutions, police, emergency services and business sectors against a (possible) terrorist attack.

4.3.3. *The Inspectorate Security & Justice*

The establishment of the Inspectorate S&J within the Ministry of Security and Justice is a logical consequence of art. 2 of the ‘Organisational Decision’ concerning this Ministry, taken in 2011. As the Ministry of Interior and Kingdom Relations had no longer competences over police, the oversight institute of the police moved as well to the Ministry of Security and Justice. The Inspectorate exists since January 2012 as the result of the combination of former administrations concerning Public Order and Security (situated within the Ministry of Interior and Kingdom Relations) on the one hand and the Inspectorate ‘Execution of Sanctions’ (*strafuitvoering*) (of the former Ministry of Justice) on the other hand. The Inspectorate S&J functions under the direct responsibility of the Secretary-General of the Ministry of S&J.

De missions of the Inspectorate S&J are multi-fold and cover the broad domain of security and justice, more precisely the sector national security, national police, execution of sanctions, youth, asylum and migration-policy. With this agenda, the Inspectorate became one of the most important bodies of oversight in the Netherlands. Personnel has former police experience or have other educational skill (e.g. criminologists or statisticians). The operational tasks of the Inspectorate S&J are clustered in two domains of oversight, which have more or less the same weight and size. Each has its own director of the programme. Both directors steer the inspectors, which do the investigations. The Inspectorate S&J counts about 80 FTE, spread over the different domains. The heads are appointed by the Minister of Security & Justice, who also can dismiss in case of necessity.

The Inspectorate is active in:

1. The domains of oversight which belong to the Ministry of S&J:
 - Oversight on the execution of and compliance to the legislation attributed to the Ministry and the policy-domains that result from that;
 - Rendering advice *on its own initiative* or *on demand* to the Minister or the Secretary-General concerning those subjects that are their competence. In other words, it is *possible* that the Inspectorate functions proactively without former permission of the Minister;
 - Fulfil oversight-tasks demanded by the Minister to his Inspectorate. In daily life certain items are presented in the Strategic Plan of the Ministry and these issues get priority. Because the Minister has to monitor a lot of these priorities, the spare room for own initiative of the Inspectorate is narrow.
2. The enforcement-tasks described in chapter 9 of the Youth Law.

The investigations of the Inspectorate are not initiated by demands or complaints of citizens. For these matters it is up to the National Ombudsman to act. When a complaint reaches the Inspectorate, and this seems to be justified, this *could* be the motive for investigation, but it appears that this is seldom the case.

The Inspectorate has following components:

1. The Direction Oversight⁴²;
2. The Direction Strategy and Innovation;
3. The Staff Bureau Inspectorate S&J.

⁴² The Direction Oversight executes the tasks of oversight which are the consequence of the working plan of the inspectorate, also called “working programme”.

To work in an effective way, the Inspectorate S&J collaborates actively with other inspectorates of the country. It participates also in structural collaborations, e.g. the Council of Inspectorates⁴³. This Council promotes a code of good oversight, in which a number of principles are central: independency, professionalism, transparency, selectivity, incisiveness and collaboration.

The Inspectorate S&J controls the quality of the police, with the objective to perceive risks in the domain of security and justice. The Inspectorate is *not* engaged in the promotion of the conformity to the norms of individual investigating officials. Individual behaviour of police-officers is evaluated within the force itself, as we will develop in chapter 5 (point 5.2.3). When it comes to the specific oversight on police, a number of 11 FTE is operational within the Inspectorate. 9 FTE are engaged in the oversight on the implementation of the police reform. 2 FTE engage in the oversight on police education⁴⁴. It is important to understand that the Inspectorate is keen on the execution of police tasks and the quality of the police work, but looks also if the police is a loyal partner in the judicial chain.

The Inspectorate can gather information, evaluate and intervene on the basis of the Law on General Administration (art. 5:12 to 5:21). On the basis of these instruments, members of the Inspectorate can demand, enter, take and even arrest in case of non co-operation. It are no police-officers, but have large investigating powers, except when it comes to the use of legal force. Furthermore, it is not up to the Inspectorate to sanction, that is a task of the “Chief of the Force” himself. Inspectors have a lot of interviews and can place someone under sharpened supervision.

The Inspectorate defines itself as independent. In academic circles this independency is not always taken for granted, because the Inspectorate doesn’t define its own agenda but need coverage from the Minister for the topics it will treat, personnel is paid by the Minister and also dismissal and promotion is dependent from this executive power. In fact it is the Inspector-General of the Inspectorate who appoints his staff, but he himself is accountable to the Minister. The Inspectorate claims nevertheless independency because it edits reports autonomously from the Minister.

The Inspectorate S&J publishes its findings, conclusions and recommendations in public reports and discusses these with the competent authorities and political responsible persons. The reports are presented to the Minister of Security and Justice. The working processes of the Inspectorate were recently officially described in a “Protocol on the way to work”⁴⁵. To reach maximal impact of their reports, the Inspectorate uses different forms of interventions, e.g. administrative conversations or law-enforcement measures.

⁴³ The Council of Inspectorates is composed by the Inspectors-General and heads of the collaborating inspectorates. Since 2007 this council meets on a monthly basis. Engaged inspectorates are: the Agency of Telecommunications, the Inspectorate for Health Care and Youth, the Inspectorate of Environment and Transport, the Inspectorate of Education, the Inspectorate of Governmental Information, the Inspectorate of Social Affairs and Employment, the Inspectorate Security Defence, the Inspectorate Security and Justice, the Food and Goods Authority, the Inspectorate on the Mines. Further more a number of inspectorates can participate: the Inspector-General of the Army, the Authority on Nuclear Security and the Inspectorate of Developmental Cooperation.

⁴⁴ The Inspectorate is responsible for oversight on the quality of these educational programmes, as well for the examining of candidates.

⁴⁵ Conform to the “Designation for Inspectorates of the Country”. The designations start from the principle that Inspectorates are able to come to an impartial and independent judgement because of their professionalism and expertise. This should provide sufficient guarantees for the independent functioning of inspectorates. Some question this point of view.

Until the end of 2019 the police was in a phase of transition. During this transition period, the Inspectorate concentrated on the most important tasks of the police, more precisely on the maintenance of public order and criminal investigation. By means of this form of oversight the chief of the force and the Minister get an image of the practice of the police, which permits adjustments. It delivers also important input to the Minister to inform the House of Representatives.

The Inspectorate delivers only statements concerning the steering of the force, not concerning specific forms of management. To this aim, the Inspectorate can make audits (concerning the quality of one of the police tasks), thematical investigations (a specific aspect in different unities), incidental investigations (at the occasion of a high-impact incident)⁴⁶ and follow-up research (a repetition of former investigations).

When a mistake is detected by the Inspectorate, this will be communicated to the leadership of the force and it is considered as part of his professionalism to make use of this information. He can treat it internally or refer it to his *Bureaus for Security, Integrity and Complaints* (VIK's, see chapter 5, point 5.2.3.). It is seldom the case that the Inspectorate detects criminal cases. Besides that, there is always the oversight organised by the Attorney-General of the of the *Supreme Court of the Netherlands* who can intervene in these cases. A specific plan coordinates the division of labour between the Inspectorate and the Supreme Court.

4.4. Oversight on ISF's by Ministry of Defence

4.4.1. The Defence Organisation

With a workforce of some 58,000 FTE, the Ministry of Defence is one of the biggest employers in the Netherlands. The Netherlands Ministry of Defence comprises the Central Staff, 4 armed forces services (one of them is KMar), Defence Material Organization and the Joint Support Command. The Minister of Defence is at the head of the Defence Organisation. The Secretary-General is responsible for civil leadership duties. The Chief of Defence is responsible for preparing and executing operations carried out by the armed forces services.

The Central Staff is based in The Hague and develops the Defence policy. In broad terms, it directs the Ministry of Defence's activities, allocates the Defence budget and monitors Defence spending. The commanders of the armed forces Services ensure that Defence policy is implemented. The Central Staff also advises the Minister of Defence, in his or her capacity as a member of the Cabinet. The Minister of Defence is responsible for the overall Defence policy. The Secretary-General is responsible for civil leadership duties. The Chief of Defence is the most important military adviser to the Minister of Defence and supervises the commanders of the Navy, Army and Air Force.

The Chief of Defence (CHOD) holds the highest military position in the Defence organisation. In this capacity, he is the most senior military adviser to the Minister of Defence. On behalf of the minister, he is responsible for preparing and executing military operations carried out by the Netherlands armed forces.

4.4.2. The Inspectorate Security of Defence

⁴⁶ Most of these investigations are initiated by the Minister or the State Secretary of S&J.

The Inspectorate Security of Defence is led by an Inspector-General Security. This Inspectorate bundles all competences of former inspectorates within Defence. The installation of the new Inspectorate is the consequence of a critical report of the *Dutch Safety Board* (see chapter 7) concerning specific accidents in Mali in 2018, demonstrating that checks and balances needed adjustments. An important report was produced by a special commission “Van der Veer”, titled “*It needs and can be safer*”.

The Inspectorate controls the social and physical security in Defence. It is up to the Inspectorate to appreciate the implementation of policy and the execution of regulation in practice. The Inspectorate investigates also serious incidents. When things are not functioning according to prospects, it is up to the Inspectorate to find out why it is that way and how this can be improved. To that end, the Inspectorate can ask for information, analyse data, interrogate and verify facts. The Inspectorate has access to all the components of the Defence organization and can participate in all meetings. The Inspectorate Security of Defence stands outside the formal organisation structure and is directly accountable to the Minister of Defence. This position enforces its independency.

It is the mission of the (relatively new) Inspectorate to organize these functions itself, giving priority for the most important risks. The Minister and its State-Secretary can ask the Inspectorate to investigate into serious incidents. The Inspectorate claims to investigate in an independent way. The Inspector-General informs the Minister directly concerning the findings, the judgements, advices and other relevant data. In the Inspectorate a mix of military and civilian personnel is working, stemming from all divisions of the army and of other Inspectorates of the country. 25 FTE are working within the Inspectorate.

Besides the installation of the Inspectorate, a new Safety Board is installed, in which operational commanders and heads of all defence-units are represented. They stay explicitly responsible for the safety within the whole organisation. Also, the Inspector-General Security is member of this board.

4.4.3. The Commander of KMar and his staff

The KMar falls under the responsibility of the Minister of Defence, who is responsible for the management of the KMar and for determining the size, the composition and the required degree of readiness of the KMar. The KMar has a force commander, namely the Secretary-General of Defence, on behalf of the Minister of Defence. The Commander of the KMar has command of the organisation on behalf of various Ministries. These are the Ministry of the Interior and Kingdom Relations, the Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of Justice and Security. Management of and authority over the KMar are separated. The Minister of Defence is responsible for overall management, personnel, materiel and finances.

Like the National Police, KMar has a corps manager. That role is fulfilled by the Secretary-General of the Ministry of Defence, with a mandate from the Minister of Defence. The Commander of the KMar has specialised personnel for various tasks, such as border control, criminal investigation, foreign missions, surveillance, police assistance or other types of assistance, and training. During operations, the KMar often works with other elements of the Netherlands armed forces and various partners, such as the NPN, at home and abroad.

KMar has a staff, its own training center and 25 brigades⁴⁷. The staff supports the Commander in the performance of his duties. KMar personnel complete training courses and programs at the *Royal Netherlands Marechaussee National Centre for Training and Expertise*. The brigades carry out all of the operational tasks of KMar. The brigades are part of the National Tactical Command. A number of these brigades have a specific task or surveillance area. KMar has a *Special Security Missions Brigade* (BSB), which does security, observation and has arrest teams. The BSB is deployed whenever rapid and specialist action is required. Furthermore, KMar has *High Risk Security Platoons*. These units guard and protect sites in the Netherlands that are most likely to be the targets of attacks. Examples in this regard include a number of government buildings and certain social institutions. The *Identity Fraud and Documents Centre of Expertise* (ECID) is the national point of contact for document and identity fraud.

The *National Centre for Training and Expertise* trains KMar members. There exists a basic, officer's and specialist training. The *National Tactical Command* (NTC) is the operational headquarters of KMar. It gathers and analyses information that is of importance to the performance of the force. The NTC supplies this information to the brigade teams in the Netherlands in the form of work orders. The *Criminal Intelligence Team* gathers information about serious crimes. Informers, individuals who secretly provide information, are the most important sources. The information obtained enables the Criminal Intelligence Team to prevent crimes and facilitate to track down suspects.

Inside KMar the *Section Integrity and Internal Investigations* (SIO) runs penal and disciplinary investigations inside KMar concerning integrity infringements.

⁴⁷ KMar has 25 brigades. These brigades perform security and military police tasks in their respective regions. For the performance of military police tasks, a number of brigades are based at barracks, air bases and seaports. 24 brigades are based in different parts of the Netherlands. One brigade is permanently stationed on Curaçao in the Caribbean, with a base on the island of Aruba. KMar detachments are also part of international police units deployed by NATO.

Chapter 5. Internal Oversight Mechanisms and Inspectorates of ISF's Duties, Remit and Powers

Table 5. Individual and collective performance management system in selected EU member states and Turkey

		COUNTRIES	
INSPECTION AND AUDIT		Italy	Netherlands
Non-ISF Audit and inspection service / status vis-à-vis ISFs	Mol / MoJ	Police: Mol General Inspectorate of Administration (IGA) / external	NPN: Inspectorate Security & Justice (MoS&J)
	MoD:	Gendarmerie: MoD Central Office for Administrative Inspections (ISPEDIFE) / external	KMar: Inspectorate Security of Defence (MoD)
Appointment of Non-ISF heads of audit and inspections service	Mol / MoJ:	IGA: PM after proposal of Mol	Council of Inspectorates (policy-driven, not file-related)
	MoD	ISPEDIFE: PM after proposal of MoD.	Council of Inspectorates (policy-driven, not file-related)
Reporting line of Non-ISF inspection and audit service	Mol/MoJ:	IGA reports to the Ministry of Interior	Inspectorate Security & Justice (MoS&J) reports to Ministry
	MoD	ISPEDIFE reports to the Ministry of Defense	Inspectorate Security of Defence (MoD) reports to Ministry
Non-ISF body starts <u>investigation</u> without authorization of Minister of Interior		?	National Ombudsman can do that always based on complaints; Also inspectorate can take own initiative
Non ISF body starts <u>audit</u> without authorization of Minister of Interior		Yes, IGA	National Ombudsman can do that always based on complaints; Also inspectorate can take own initiative
Guidelines or standards for conducting inspections / publicity	Guidelines	Yes	Yes, very broad policy lines
	Publicity	No	NO, reports afterwards are public
Security forces inspections			
Inspection and Audit services <u>internal</u> to ISFs	Mol & MoJ:	Police : Mol Central Inspection Office (UCI).	NPN: Audits: National Unit Control of the Force; Complaint related: Bureaus for Security, Integrity and Complaints (VIK's)
	MoD:	Gendarmerie: Vice-General Commander (delegated by General Commander)	KMar: Section Integrity and Internal Investigations (SIO)

Reporting line of inspection services of MoI/ MoJ (police)		Mol Department of Public Security	NPN: "Chief of the Force"
Reporting line of inspection services of Gendarmerie		Carabiniers' General Command	KMar: "Commander"
Reporting line of inspection services of local police		?	Not applicable
Discipline and sanctions			
Disciplinary sanction regime regulated by ...	National police/ state police	-Police: Disciplinary Committee (with trade union representatives)	For all ISF's: Independent Complaint Commission
	Gendarmerie	Carabiniers: Discipline Military Regulation	For all ISF's: Independent Complaint Commission
	Municipal police	?	Not applicable
Disciplinary investigations	National police / State Police:	Police official charged by Disciplinary Committee	NPN: Bureaus for Security, Integrity and Complaints (VIK's)
	Gendarmerie/Carabiniers:)	oral investigations by a special advisory committee (only for the most severe sanctions)	KMar: Section Integrity and Internal Investigations (SIO)
	Local police	?	Not applicable
Disciplinary inspection without order of GD of police/ Gendarmerie	National police / State Police:		YES, according to Barp
	Gendarmerie /Carabiniers		YES
Ordinary <i>versus</i> special mechanism to register complaints against ISFs at Police / Gendarmerie	National police / State Police:	Ordinary service	Hierarchical line / National Ombudsman can do that always based on complaints;
	Gendarmerie /Carabiniers	Ordinary service	Hierarchical line / National Ombudsman can do that always based on complaints;
Disciplinary sentencing	National police / State Police:	Disciplinary Committee (but the execution orders compete to the Chief of Police or Carabiniers' General Commander)	Independent Complaint Commission
	Gendarmerie /Carabiniers		Independent Complaint Commission
Penal investigation by inspection mechanism: -decision to start, -monitoring & -reporting to		All 3 by public prosecutor and judge of instruction ⁴⁸	3 x Prosecutor's Office
Performance management			

⁴⁸ With suspension of disciplinary proceedings and penal sanction automatically imposed.

Do ISFs remunerate their agents on condition of reaching objectives (measured by pre-determined indicators), in the form of "performance bonuses" or "variable salary"? (which forces?)	National police / State Police:		NO
	Gendarmerie /Carabiniers		NO
	Local Police		Not applicable
If yes above Which ISFs agents are remunerated on condition of reaching their objectives (measured by pre-determined indicators), in the form of "performance bonuses" or "additional money"?	- officers (basic agents/Gardian de la Paix): -(if yes less than 10% of their income, -from 10 to 30%, -more than 30%		/
	- local managers/chiefs, for ex. commissaires, (District/region/ province) (if yes -less than 10% of their income, -from 10 to 30%, -more than 30%		/
	-Heads of central directorates (Ministry): if yes -less than 10% of their income, -From 10 to 30 % -More than 30 %		/
Remuneration according to the objectives (measured by predetermined indicators) agents have reached, in the form of "performance	- to a team = yes / no		NO
	- individually, agent by agent = yes / no		NO

bonuses" or "variable salary "? are given:			
Is individual performance (measured by predetermined indicators) taken into account to obtain a promotion?	Yes (For)		NO
	No (For)		NO
What are the main indicators that are used to assess performance?	- the number of crimes and Felony?		/
	- the number of interventions by agents, of detentions (police custody/garde à vue), or arrests?		/
	- clearance of crimes (number or rate of solved crimes)?		/
	- number of convictions by courts of perpetrators?		/
	- user satisfaction for service at the police station, users trust in police measured by survey		/
	- the number of citizens' complaints against the ISFs agents		/
	- the satisfaction of locally elected officials (measured by a survey).		/

If External Performance indicators of ISFs are used (such as Survey on Crime victims, satisfaction or trust)	Survey on crime victims, satisfaction or trust: yes / no,		NO
	Surveys conducted by an external body?		NO
Do the ISFs chiefs sign "performance contracts" (do they commit themselves to achieving quantified objectives in a contract) with the ministry when they start their job?	-the national directors of the ISFs,		NO
	- the Directors of the main specialized departments [Judicial police, public order, logistics, training, legal affairs etc), or of regions		NO
The reported crimes, information about the victims counted are:	- automatically , with no additional operation of any agent		/
	- manually , by entering them into a dedicated software,		/
What is the date of the first legal text that introduced "performance bonuses" or "variable compensation"	Civil servants		/
	National /state police		/
	Gendarmerie		/

5.1. General internal oversight on ISF's

5.1.1. The Independent Complaint Commission

The legal status of all functionaries in the Netherlands is laid down in art. 109 of the Constitution, which is translated into the Law on Functionaries. This law contains the guiding principles for the *disciplinary* law applied to all functionaries (art. 125 of the law). On the boundary of internal and external oversight we have to mention different regulations of complaints by citizens (Police Law 2012, chapter 7). These regulations offer citizens

possibilities to claim accountability from individual ISF's-officers during specific actions. The regulations are partially an internal matter of the ISF's, but there is also a more external component when it comes to a pursued formal procedure.

This component is assured by the advice delivered by an *Independent Complaint Commission* (“*Onafhankelijke Klachtencommissie*”) and (sometimes) even intervention by the National Ombudsman. The Complaint Commission advises the chief of the force concerning the way to handle a complaint⁴⁹. For the National Police art. 67 of the Police Law defines the composition of this Complaint Commission. It are former judges or former prosecutors, which are appointed in ad hoc commissions. The functioning of such a commission can be compared with a kind of court. Mostly the Complaint Commission interferes when a complaint was not treated to satisfaction. It is up to the Minister of Security and Justice to regulate more precisely concerning the treatment of complaints against members of ISF's. On a yearly basis the Complaint Commissions reports in a public document concerning the registered complaints and decisions. In these publications is pointed also to structural shortcomings in the organisation.

5.2. Oversight within the National Police

5.2.1. Internal hierarchical oversight

Internal guidelines exist for steering of the NPN and responsibilities are determined concerning the deployment of capacity, how police-officers should intervene and what the result should be of these interventions⁵⁰. Police-officers are working as much as possible according standardized procedures and quality criteria, without impacting the necessary professional room of manoeuvring of each member of personnel and the need for tailor-made responses. Internal oversight is assured by the managerial line. 915,5 FTE dispose of leadership within the NPN and share this hierarchical oversight.

Figure 5: Number of positions of leadership per organisational unit

Leadership in FTE	Operational strength	Non-operational strength	Total strength
Regional units	732,5	23	755,5
National unit	72	3	75
PDC		67	67
Staff and Directions		19	19
	804,5	112	916,5

Oversight on the personnel and leadership within each *regional unit* lays with the leader of the unit and its staff. Each regional unit has its own responsible chief (head of a sector), which is accountable to national leadership and three other leaders of the unit. Together they are responsible for the total police-care within a regional unit. This task is exercised during the functional consultation and the periodical moments of evaluation on internal oversight under their command. When a police chief needs advice in a specific case concerning a collaborator, he can claim support from the *Bureau Security, Integrity and Complaints* (VIK, infra point 5.2.2.). Before the last police-reform Mayors intervened in this form of oversight, which is no

⁴⁹ In last instance a complainant can always ask for a criminal procedure or claim a procedure of civil law.

⁵⁰ Plan of set-up of the National Police, Ministry of Security and Justice, 2012.

longer the case. This makes the chief of a unit more manager than ever before. Leadership on the level of a *district* is a responsibility of the ‘chief of a district’. He is in immediate contact with the chiefs of the basic teams and his own personnel of the district. On the level of the *basic team* internal hierarchical oversight is assured by the chief of a team. In bigger teams, it is possible that a second chief of a team is in place. In really big teams it is possible that also an operational specialist participates in the leadership. The chief of a team is the fixed spokesman for the Mayor en the prosecutor concerning matters of policy and operational matters. In bigger municipalities or cities with more basic teams, this role is the responsibility of the chief of the district.

The NPN manages internally capacity-problems by means of a dashboard of performances. This dashboard makes the occupation, holydays and sick-leave of each of the operational entities visible. Based on this information the force can make decisions in relations to the expectations of the policy-maker⁵¹. No premiums (related to certain “results”) are given to individual members of the personnel) nor certain quota should be reached by them. Night- or weekend work or “irregular” work can lead to additional income, but none of these remunerations are related to certain results. Before the last reform to the NPN, the regional forces signed so-called “performance-contracts” with the Ministry of Interior and Kingdom Relations, which in fact had no legal basis. It was clear that this system led to a number of perverse effects and the system is today completely abandoned.

The operational strength of the different entities of the NPN is based on the “Budget Distribution System” (*Budget Verdeelsysteem*, BVS), elaborated by the Ministry of Security and Justice. The distribution is decided according the so-called “distribution of strength and means” (AmvB). The first decision is directed towards the necessity of operational capacity at the level of the national and supporting service. The rest of the capacity is distributed in a second phase to the regional entities, based on percentages of the total “rest capacity”, transposed afterwards in FTE’s. The percentages are more or less fixed⁵², according to the (historical) system that existed before the reform (regional police), but the Minister can deviate from these within certain limits, e.g. in dedicating extraordinary capacity for the struggle against cybercrime.

Apart from that, the *Ministry of Security & Justice* formulates performance-indicators in the domains of national priorities, which are determined for a period of 3 years. The Ministry focusses in first instance on political agreements in relation to migration. While output-indicators seemed to be unrealistic in these domains, the Ministry switches to outcome-indicators today. This implies that the evaluation cannot be realized within short-term but over a longer period⁵³.

For Mayors are the national priorities less important. They make their own agreements with the NPN and the Prosecutor’s Office and expect the police to act according to these agreements. These include the domain of public order and local security matters, but also increasingly forms of organized crime. Examples are: number of suspects in cases of trade of human beings;

⁵¹ In this context we mentioned already the study of the Court of Audit (see chapter 2, point 2.2.).

⁵² The BVS is build on so-called objective environmental characteristics, as (number of): inhabitants, non-western inhabitants, non-western inhabitants between 15 to 30 years, regional potential of clients, families with a low income, density, presence of catering services, surface, geographical mobility, border municipality, problematic neighborhoods.

⁵³ The *Ministry of Finance* is looking at the cost of police-personnel (operational deployment). Therefore it makes use of the number of cases that are registered at the level of the Prosecutor’s Office and also the national police priorities.

number of cases in the domain of cybercrime. In these guidelines also percentages are used, e.g. 40% of the cases were successfully treated in court or otherwise.

In short: to a certain extent performance-indicators are still used on the level of the distribution of capacity, but at no moment they impact the individual assessment of a member of the NPN.

5.2.2. The National Unit Control of the Force

The National Unit Control of the Force (*Afdeling “Korpscontrol”*) is part of the NPN. The Unit informs the national leadership and is part of its staff. This Unit has a team Planning & Control on the one hand, and a team Auditing & Quality on the other. To strengthen the independent position of the team ‘Auditing & Quality’, the team is part of the Unit. The Unit is led by the Head of the Sector, who is at the same time head of one of the teams. The capacity of the Unit is in total 26 FTE of non-operational personnel. It is the mission of the Unit to challenge the leaders of the force and unities to succeed in reaching the objectives and to make the priorities more sharp.

At the same time, the Unit conducts audits and supports the development of effect-measurements, which should lead to integrated insight in and advice over those aspects where there seems room to learn and to improve. The Unit supports in a direct line the director of the Staff of the force in his capacity of controller of the force. There exists a direct reporting towards the chief of the force. Specific fields of attention are distributed to different police chiefs concerning national themes and they prepare the policy under the guidance of the Operational Direction. It is up to the Unit Control of the Force to test the feasibility of these prospective views. It is to the director of the Unit to gather relevant data concerning the realisation of national policy priorities and reports on these. Members of the Unit consider the capacity of their organisation as minimal, while the Unit is responsible for all internal auditing functions within the force.

5.2.3. Bureau for Security, Integrity and Complaints (VIK)

The Law on Functionaries is translated for the police in a specific measure (Barp), which contains the legal status of police-officers, in which disciplinary sanctions, the general norm for discipline, measures and procedures are described. Art. 76, part 1 of Barp regulates the application of disciplinary sanctions. The most severe sanctions are described in the General Regulation for Functionaries (ARAR): deprivation of promotion and displacement, lowering the scale of salary and, ultimately, dismissal. The chief of the force installed a national concertation concerning the seriousness of the disciplinary sanctions, to avoid arbitrary sanctioning, based on jurisprudence. If one doesn't agree with the sanction he can turn to an external commission that advises the competent authority (i.c. the chief of the force). If this doesn't lead to an agreement, one can turn to the regular Labour Court, in last instance to the Council for Appeal.

A Bureau for Internal Investigations functioned before the police reform under the authority of the Minister of Interior. It treated complaints introduced against individual officers. Today the procedure for the treatment of internal investigations is written down in a special Protocol (2013). The existence of this Protocol has its legal ground in art. 47 of the Police Law. It is the consequence of the integrity policy adopted when a suspicion of *neglect of duty* by a member of personnel is reported. The Protocol is limited to the general guidelines concerning the procedures to follow in case of an *internal investigation*. Each investigation is in practice

different, but the steps which are outlined in the Protocol are clear, resulting in a written report at the end. The Free University of Amsterdam (VU) developed a yearly monitoring system for these internal investigations. Complaints are frequent (about 10,000 per year) and deal with the way police officers treat citizens. When a complainant wants to go into appeal, he can go to the independent Committee for Complaints (see higher), which decides then. When there is still no satisfaction, he can turn to the *National Ombudsman*, who functions then as an instance of appeal.

In case a criminal investigation runs at the same time as an internal disciplinary investigation, the Prosecutor's Office has to be warned. It is up to the magistrate to decide whether or not a criminal file will be opened. After that, it is to the competent authority (i.c. the "Chief of the Force") to decide to close, postpone or continue the internal disciplinary investigation. A criminal investigation against a member of personnel can be conducted a priori, after, but also simultaneously to an internal investigation. In practice, it is preferable to wait for the outcome of the criminal investigation⁵⁴. In other words: an official proceeding can be used in both procedures, which avoids that investigating acts have to be repeated. After the finalisation of the criminal investigation it is possible to interrogate again the subject in the framework of a internal investigation, because neglect of duty is not by necessity identical to a criminal act. The competent authority has, also when dealing with a case that is not yet sentenced before a criminal court, his own responsibility for the treatment of cases concerning neglect of duty.

*Figure 6: Number of investigations run during the period 2012-2014*⁵⁵

Sum of the number of investigations	Year		
Kind of Investigation	2012	2013	2014
Disciplinary	311	315	272
Disciplinary & Criminal	139	85	65
Explorative	373	335	286
Explorative & Disciplinary	27	22	13
Explorative & Disciplinary & Criminal	4	0	2
Explorative & Criminal	42	23	23
Criminal	451	499	533
Total	1,347	1,279	1,194
Number of dismissals	214	218	156

⁵⁴ The competent authority may make use afterwards of the police data gathered in the criminal investigation for the disciplinary sanctioning.

⁵⁵ This table shows that most complaints against individuals lead to an "explorative" criminal investigation. In most of these cases a formal denunciation for suspicion of a criminal act is required. Foremost the biggest part concerns unauthorized use of violence (going from harassment to deadly incidents) by the police. Disciplinary matters deal with the suspicion of neglect of duty, which needs further investigation. Also acts within the private sphere (e.g. the use of drugs, driving under influence of alcohol, ...) can be considered as neglect of duty. When this neglect of duty is considered to be serious, dismissal is the most serious sanction. It is possible that the perpetrator gets this disciplinary sanction in combination with a criminal sanction (e.g. community service). Other sanctions, and more frequent, are reprimands, financial fines, deduction of salary or withdraw of holiday. The prosecutor's office has always the possibility to suit the officer if the office considers that expedient. This leads often to a certain frustration in case of firearm incidents. When self-defence cannot be withheld, the accusation becomes automatically "attempt of homicide", according to police-officers themselves "a juridical no-mans land", because the difference between an officer who made a mistake in judgement and a "normal" criminal becomes very small this way. When the final internal report concludes that it is a case of neglect of duty, this can result in a decision by the competent authority, mostly a disciplinary sanction. This can be a reason to communicate externally concerning this outcome.

Today the functioning of the Bureau for Internal Investigations is to a large extent decentralized. Each unit of the National Police has a Bureau for Security, Integrity and Complaints (VIK), also called “*the police within the police*”. These Bureaus investigate on the level of incidents. They have no role in the attribution of a sanction. In case of serious breach of integrity (mostly during the execution of the police-tasks) the VIK investigates. VIK’s are executive units. They investigate the actual facts and give advice to HRM lawyers.

VIK’s execute three important tasks:

- “V” stand for security, which means in this context “screening of the personnel”. For the HRM service VIK’s screens all members of the personnel. Dependent of the level in the organisation different levels of screening are to be applied;
- “I” stands for integrity, which means in this context “internal (penal and disciplinary) investigations”;
- “K” stands for the treatment of complaints. On annual basis there are about 12.000 complaints to be treated.

The personnel of these VIK’s are police-officers. They execute, under the supervision of the prosecutor’s office, investigations into suspicious criminal acts of police-officers and – under the supervision of the competent authority, i.c. the chief of the force – disciplinary investigations into neglect of duty. The general impression in the force is that sanctioning is severe, dismissals are frequent. Sanctioning is not only applied for officers in lower ranks, but also for police leaders.

VIK’s cannot correct nor sanction themselves in disciplinary matters. That is up to the competent authority, in other words: the chief of the force or the unit. The VIK leads only the investigation into the facts, makes a report and submits that to the competent authority. A police-officer can, after an investigation of a VIK (and eventually the advice of the Committee for Complaints), be disciplinary sanctioned.

5.2.4. Assessing violence used by ISF’s: the blue chamber

Every year, around 30 violent acts are investigated and assessed by police officers in criminal law and approximately 13,000 violent acts are registered⁵⁶ within the national police itself. It is precisely these 30 who receive the most public attention, especially when films circulate on social media. As the police has the legitimate use of force (violence) it is necessary to make this power to use violence explicit in legislation. In order to assess if (or not) the violence used is legitimate and has been lawfully used, specific legislation is available.

The powers of police officers and the preconditions within which they can use violence lawfully are described in Article 7 of the Police Act 2012. The power of violence may be used *'if the intended purpose justifies this, also in view of the dangers associated with its use and that goal cannot be achieved in any other way. If possible, the use of force is preceded by a warning.'* The use of the power of violence *'must be reasonable and moderate in relation to the intended purpose'*. Article 9 of the 2012 Police Act states that by the ‘Administration Act’ (*algemene maatregel van bestuur*) an internal police instruction stipulates when the act of violence is lawful and legitimate. This ‘Official Instruction’ for the Police, the Royal Netherlands Marechaussee and other investigative officers indicates when the use of force was legitimate

⁵⁶ Data from Central Criminal Investigation Service, see www.om.nl

(by means of some parameters about lawful violence) . Article 7 of the Police Act 2012 and the Official Instruction together provide the instructions for violence for the use of violence by the police. This aforementioned laws and regulations relate to *all* investigative officers with a power of violence. In addition to police officers, these are the special investigative services (BODs) such as SIOD and FIOD, special investigative officers (BOAs), such as enforcers employed by the municipality, and parts of the armed forces when they perform police tasks, in particular the Royal Netherlands Military Constabulary.

It is very important that police officers have the confidence to act as professionals in their work. That they can learn from the use of force, that they are not directly judged on the admission that things could have been better and continue to develop as professionals. The system helps police executives to focus on professionalism. The system benefits employer ship by providing insight into the frequency, facts and circumstances of the use of violence by police officers. This allows the manager to focus more on the professionalism of the employees. The entire internal assessment process is aimed at professionalism and only when the assessment of a violence use is doubtful, the case is sent to the public prosecution, in order to proceed before court.

It is also very important that citizens involved in an incident in which police officers used violence are aware of the safeguards ensuring its assessment. That they know that there are always opportunities to file a complaint if there are questions about the process or the assessment itself. In addition, the possibility is open in all cases to submit a request to have an application for violence assessed for regularity by the public prosecution and the judge.

Very recent (end of October 2019), the House of Representatives approved an “Act on the use of violence and force by investigative officers”⁵⁷. This Act was sent to the House of Representatives by the Minister at the end of December 2016. In the coalition agreement, the cabinet has added the denomination of a specific court for violent police acts that require an assessment by the judge⁵⁸. Furthermore, a specific court of Justice is appointed to assess *all* Article 12 Procedural Code complaints. This specific court is sometimes referred to as 'blue room', referring to the military court. However, the designated court is fundamentally different from the military court because it only concerns a court where the assessment of police violence is clustered.

The penal provision proposed in the Act is based on the question whether there is a culpable violation of the instructions for violence. This means that it is only determined after the act of violence whether there has been unlawful use of force or not. The principle that police officers have the legitime power to use violence is *included* in criminal law itself (instead of only an ‘instruction’ from the Public Prosecution Service). This makes it transparent for both the police officer involved and the citizen involved.

In this new Act, the legislator has also amended the instructions in the “Official Instruction” for reporting, testing and assessing violent acts (by means of a standardized list of criteria, to be used by all police unities). In the proposed amendment, the instructions are specified in such a way that they form the basis for a uniform assessment method. To reach this uniformity, an assessment framework has been developed that contains the legality criteria on the one hand and the craftsmanship criteria on the other. These were developed on the basis of the criteria used by the ‘National Ombudsman’ to assess the reliability of government actions. The

⁵⁷ Parliamentary piece 34 641 nr A, modified proposition of Act, October 2019.

⁵⁸ Parliamentary piece 34641 nr. 7, amendment, November 2018

craftsmanship criteria can therefore also be referred to as the ‘decent criteria to assess police violence’.

An example of this uniformity is the nomination of the official to whom a violence report must be reported. In the former ‘Official Instruction’ this was 'the superior', a multi-interpretable concept. The new Act changes this into 'the assistant public prosecutor', who is expected to make a judgment with some distance. In the Act conditions have been included to assess (justified or not) acts of violence used by the police. The Act proposes to assess a narrower part of the violence committed by police before the criminal court (in favor of more internal assessment). In case of internal assessment the task to assess lies in the hands of the highest official of the police, the ‘chief of police’ (of each police unit). He therefore bears the responsibility to set up the accountability and assessment of violent acts in accordance with the applicable instructions. The current “Instruction” did not mention the assessment of violent acts, let alone by whom this had to be done, so this is an improvement. This is an essential provision because it creates an obligation for the police to assess violent acts, including those that are brought under criminal law for assessment of their lawfulness.

The new Act further instructs a ‘Commission violent police acts’ to be installed in every Police Unit (10). This Commission advises the ‘Chief of Police’ on specific cases. Those violent acts that are subject to registration go through an assessment process within this Commission including a judgement of the professional skills of the police officer having used violence, the circumstances and the context. At least one of its members is *external* to the police assessing violent acts police officers committed. The latter takes into account the perspective of the citizen. All violent acts with deadly consequence are finally assessed by the ‘auxiliary public prosecutor’, before a transfer to the ‘blue chamber’ is imposed. This designated court has the great advantage that the criminal-law assessment of whether a police officer has committed violence within the frameworks set for it is executed in one place, the place where expertise is guaranteed. It is equally clear to both the police officer involved and the citizen concerned where the assessment takes place.

Chapter 6. The state at the Local Level: The Representative of The State (Prefets, Governors) in unitary or mixed countries

Duties, Remit and Powers

Table 6. Oversight by Governors in Selected EU Member States and Turkey

Governor		Country		
		Italy
How is government represented locally? (if it is the case)		Prefect is representative of all Ministers	CdK: NO oversight on ISF's; Mayors: Do NOT represent government, but have personal responsibility in the areas of public order and public safety, local triangular consultation; Regional Mayors: DO REPRESENT partially government AND local Mayors: regional triangular consultation; regional policy-plan	
Role / ISFs		Direct and coordinate State administrations in the province / Provincial authority of Public Security	CdK: representative of the government; Mayors: Individual responsibility to safeguard local order; Regional Mayors: Accountability to other Mayors; National Consultation Security and Police (LOVP)	
Missions:	Public order/ security	In charge of national interest and public order.	Regional Mayors: Accountability top/down and reverse	
	Decides local policing missions	Leads ISFs, defines their missions, collects their reports.	Defines regional/national security plan; police capacity in municipalities	
	Head of all ISFs units in his province (police, gendarmerie, intelligence, anti riot police ...)		NO, only police reports to regional Mayor	
Heads of provincial ISFs reporting to the Prefect or Governor		Yes. Police, Carabinieri and other national police forces.	NO	

Formally assessing regional/provincial heads of ISFs (regarding performance & quality of work)	Not in a formal or institutionalized way (no marks).	Not formally	
Power to Inspect and sanction (Discipline)	No formal powers on inspections or discipline.	No formal powers on inspections or discipline	
Power to curtail individual liberties without prior decision of a judge (ID checks, home search...)		NO	
In time of crisis: Military is restricting governors' role on policing	None	NO	
Role vis-à-vis Private sector: enforcement of laws, control of personnel, control of companies	Responsibility for enforcement of private security legislation & power of licensing / control of private security companies and personnel is a duty of provincial offices of Police (<i>Questure</i>)	Responsibility lies by MoS&J	
FEDERAL STATES			
Any instrument for central government representation at state level?		/	
Mechanism for inter states coordinating about ISFs?		/	
Subjects on which sates coordinate regarding ISFs (training, performance, information sharing, else)		/	

6.1. The subnational levels of governance of ISF's

The Dutch system of public administration consists of three layers of government: national government, provinces and local governments in 431 municipalities. Priorities, strategies and practices for policing in the Netherlands are heavily influenced by the circuits of power between this complex set of actors and their policing mandates.

At the national level, the Ministry of Internal Affairs and the Ministry of Justice were both responsible for internal security and criminal justice until 2010 when the new Ministry of Security & Justice integrated both tasks in one department. General crime policies are developed at the national level, while community and citizen-based policing is negotiated at the local and regional level reflecting the Dutch tradition of legitimating policing policy through consultation and negotiation in localities.

6.1.1. The 12 provinces

The Netherlands is divided into 12 provinces: Drenthe, Flevoland, Friesland, Gelderland, Groningen, Limburg, North Brabant, North Holland, Overijssel, Utrecht, Zealand and South Holland. Each province is administered by an elected provincial council. The Head of a provincial council is not a governor⁵⁹, as one would expect⁶⁰, but a Commissioner of the Queen (CdK). The CdK is appointed by Her Majesty the Queen of the Netherlands and represents the royal authority in a province and is thus to be considered as the representative of the Government in the province. The CdK is the president of the Provincial States⁶¹, but is formally not member of them. The CdK is also president and member of the Provincial Executive⁶².

The tasks and competences CdK's are included in the Provincial Law. Besides that, CdK can have specific tasks in his/her portfolio. The CdK is accountable to the Provincial States. In other words: the tasks of each CdK can vary. These can be subdivided in two categories: provincial tasks and tasks for the Kingdom. Apart from these tasks, the CdK has oversight on public order and security. This means in practice that the CdK, in case of disasters, acts as coordinator of the disaster management⁶³, but has no solid competences in the domain of ISF's.

Provincial tasks are the oversight by the CdK on the quality of policy- and decision-making processes in his province, in first instance regarding administrative integrity. It is the CdK who assures the orderly appointment of mayors and advises the city councils concerning the nomination. In case of complaints concerning the procedures, it is the CdK that treats them. Tasks for the Kingdom fall mostly in the promotion of collaboration between different institutions and organizations in the province. The visits the CdK pays to municipalities are also considered as a task for the Kingdom. The CdK also advises the government concerning the policy with regard to a province. Each the CdK delivers a report to the Provincial States.

6.1.2. The 431 municipalities

Each province is further subdivided into municipalities, each with a council, elected at the occasion of municipal elections. The Mayor of a municipality is appointed by the Queen. There are 431 municipalities.

Local governments have formal responsibility for public safety within municipal boundaries, and this has been the case ever since the first Local Government Act in 1851. Local governments consist of three independent bodies: the Mayor, having legal responsibility for public order and public safety within municipal boundaries⁶⁴, the City Council and the Board of Mayor and Aldermen. It is the Mayor's *individual* responsibility to safeguard local order⁶⁵. In order to do so, Dutch Mayors may give orders to the police⁶⁶ and have been granted various

⁵⁹ Within the Kingdom, countries as Aruba, Curaçao and Sint Maarten have each a governor who represents the King and is fiduciary of the government of the Kingdom. The 12 provinces in the Netherlands itself had until 1848 a "Governor of the King". Later they were called Commissioners of the Queen (CdK).

⁶⁰ The position of a "prefect" is non existing in the Netherlands.

⁶¹ Provincial States are since March 11th, 2003 the collective of Representatives at provincial level.

⁶² The Provincial Executives is the management board in each of the 12 provinces.

⁶³ The National Crisis Centre (NCC) of the National Coordinator for Security and Counterterrorism (Ministry of Security & Justice) operates as national coordination unit when crises in connection with disasters affect several policy areas.

⁶⁴ This has been set up in the first Local Government Act of 1851

⁶⁵ Local Government Act, section 172

⁶⁶ Police Act, 2012, section 11.2

powers to address specific threats to security over the past twenty years. Mayors of Dutch municipalities are not directly elected but are appointed by the Crown for a six year term⁶⁷, and are not consequently subject to direct popular-democratic pressures. Dutch Mayors apply for their position by responding to an official vacancy published by the Minister of Interior Affairs. Once the CdK selects them as a potential candidate, they go through a formal procedure including interviews with a selection of Council members and finally appointment by the King. Mayors are supposed to “stand above” politics and guard the quality and outcome of local political- and policy processes. Although they are usually affiliated with a political party, their job is not to be a politician but a professional administrator.

The Dutch police system was, until recently, characterized by two types of dualism: a distinction between administrative policing (maintenance of public order and public safety) and law enforcement on the one hand and between authority⁶⁸ and control⁶⁹ on the other. Authority refers to the ability to order police personnel to deploy a task in a specific area (operational policy). Control refers to taking care of the overarching organizational and financial aspects of the police organization (organizational management). Control of the Dutch police has for the most part been in the hands of the national government, who kept the budgets and capacity division in their portfolio.

When it came to the local level the police had two managers. Both the Mayors and the Public Prosecutor were able to instruct the police on operational matters as well to influence some aspects of control. The Mayor had the authority and some control on police personnel maintaining public order and safety (administrative policing). The Public Prosecutor held authority and some control over the criminal investigation activities carried out by the police (law enforcement). These matters were negotiated and harmonized as much as possible in the “triangular concertation” between the Mayor, the Public Prosecutor and the Police Constable⁷⁰.

However, the balance of powers over policing changed in 2012 when the national police system was introduced in the Netherlands. The critical implication of this was the abolition of the power of the 25 regional Mayors. Nevertheless *all* Mayors kept authority over local police work, based on Local Government Act in 1851. In practice, this implies that Dutch Mayors nowadays only have the ability to order police personnel to deploy a task in a specific local area (authority) and lost their influence on the overarching organizational and financial aspects of the police organization (control).

As Mayors have the statutory responsibility for local order and public safety they still hold a degree of discretion in setting local policy agendas. The Minister of Security and Justice is seeking convergence between national policing priorities, as stipulated in the national security plan, and local policing priorities, as stipulated in local and regional security plans. However,

⁶⁷ The appointment procedure in the Netherlands is a long debated matter. In the early 2000s some political parties regarded the procedure as undemocratic and proposed a more direct election of the Mayor either directly by the people or by the City Council. A constitutional change to allow this failed to pass the Senate in March 2005. Recently this matter has become a topic of political debate again while Parliament took the first legal step towards a potential change in the constitutional law describing the procedure for appointing Dutch Mayors.

⁶⁸ In Dutch: Gezag

⁶⁹ In Dutch: Beheer

⁷⁰ The Police Act of 2012 (art. 13) determines that there has to be regular local consultation between the Mayor, the Public Prosecutor and the local police basic team. In practice this seems to be the case in bigger cities (almost weekly), while in smaller municipalities this triangular consultation is much less frequent and happens in case of incidents. In most cases it is there reduced to a so-called “police consultation”, in absence of the prosecutor. Consultation on the level of districts appears to become more and more frequent.

this collaboration between local governments and the national police is subject of change as decisions about core business of the NPN have been shifted upwards to national level during the current reorganization of the Dutch police system.

The shift towards centralization grants the constitutional-legal authority to control all aspects of police work to the Minister of Security and Justice which has, in turn, provoked considerable controversy. Commentators have heavily criticized the new power balance between the Minister and the “Chief of Force” on the one hand and the increasingly limited power for Mayors to steer local police work on the other. They have argued that the consequence of the reform will be to push Dutch policing further away from involvement in preventive strategies in local neighborhoods and maintaining public order and safety (administrative policing)⁷¹ and towards law enforcement using a rather crime fighting style of policing instead of the former Community Oriented Policing style.

As a consequence of this constitutional arrangement policy agendas for policing in metropolises, as Amsterdam and Rotterdam, are the outcomes of a negotiation between many stakeholders with potentially rival mandates, including Mayors and other local administrative bodies, the national Minister of Security and Justice, the national “Chief of the Force” and the regional Public Prosecutors. Variegation in the policing agendas pursued in different cities can be understood as the outcome of these negotiation processes.

6.1.3. The 10 regional mayors

Each Mayor is in the Netherlands the emanation of local elections. The Mayors of the 10 biggest cities (Amsterdam, Groningen, Maastricht, Nijmegen, Haarlem, Utrecht, Tilburg, Den Haag, Eindhoven and Rotterdam), in one of the territories of the 10 regional police-units, are called by Law “regional Mayors” (*regioburgemeesters*). They have a specific function in relation to ISF’s. In each region this regional Mayor functions as the administrative contact-point, as well for the *Minister of Security and Justice* as for the other Mayors of the region. The role of a regional Mayors is very divers: he acts within the regional unit as advisor, initiator, coordinator and mediator. He gives his perspective and there where it is needed, he decides. This can be necessary in drawing a regional policy-plan or when he has to decide in discussions on capacity between Mayors. The legal basis therefore is art. 39 and art. 56 of the Police Law 2012.

The regional Mayor is designated for a period of 4 years by the Minister of Security and Justice, after recommendation by the Mayors of the region. The regional Mayor and the head of the Prosecutor’s Office have regular consultations with the leadership of each regional police unit.

The regional Mayor renders accountability concerning the execution of his tasks to the other Mayors working in the municipalities of the regional police unit. At least 4 times per year the Minister has a consultation with the regional Mayors and the president of the College of Attorney-Generals concerning the management and the functioning of the police. During this consultation two other Mayors of municipalities of less than 100,000 inhabitants (of each territory of a regional unit) are included. This *National Consultation on Security and Police* (LOVP) leads to national policy-objectives, after consultation of the College of Attorney-Generals (art. 18). These national policy-objectives are translated in objectives per unit.

⁷¹ To be clear, ‘administrative policing’ in this context means the maintenance of public order (as contrasted with the enforcement of the criminal law)

Before the introduction of these objectives the regional Mayor reacts on these, after hearing all the other Mayors of the region. It is the responsibility of the regional Mayor to include the national policy-objectives in the regional policy-plan.

6.2. The 25 Safety Regions

The Netherlands is subdivided in 25 Safety Regions. The most important tasks⁷² of a Safety Region are:

- The prevention and the combat of fires. The fire brigade is part of the Safety Region. Next to combatting fires, the fire brigade advises municipalities, but also citizens and enterprises concerning the prevention of fires. The fire brigade becomes also operational in case of accidents with dangerous substances and the savings of men and animals;
- To prepare for risks, disasters and crises. This takes different forms: thinking about the construction of escape routes in residential areas, or making agreements concerning tackling incidents. Care-takers are prepared 24 h / 7 days;
- Coordination, mastering and combatting disasters and crises. If there goes something wrong, fire brigades, medical intervention units, police and municipalities work together. Each of these partners has its own tasks and responsibilities in these circumstances.

The administration of a Safety Region is composed by all Mayors of that regions. One of them is appointed by royal decree as president. Mostly, this is the Mayor of the biggest city. The administration of the Safety Region is responsible for the maintenance of the fire brigade, the medical services, the preparation for fires and the organization of the struggle against disasters and crises. All presidents of the 25 Safety Regions form the national Safety Board. This Board discusses on national level questions on safety. As written in chapter 4 the Minister of Security and Justice is not responsible for individual Safety Regions, but organizes at least twice a year a consultation with the Safety Board.

Each Mayor is responsible for the good approach of a fire, disaster or crisis in his municipality. When the incident trespasses the municipal boundaries, then it is up to the president of the Safety Region to act. Safety Regions are financed (85%) by the Municipal Fund of municipalities. Only 15% is coming from national government.

6.3. The 40 Safety Houses

In the Netherlands the concept of Safety Houses has been developed to deal with complex issues and to reduce nuisance, domestic violence and criminality by multi-agency identification of problems and solutions and the joint implementation of the latter. These are partnerships involving the criminal justice system, mental health services and local authorities (municipal partners and board). A “Safety House” is not literally a building, but the name for the partnership between several agencies.

Today there are about 40 Safety Houses, but their number will decrease to 25 due to merging. Some partners participate in all of them: local authorities, police, prosecution services, child protection agency, probation services and welfare services. Some partners are not yet represented in all Safety Houses, such as general social welfare and addiction care.

⁷² Law concerning Safety Regions of February 11, 2010.

Safety House participants deal with complex cases. These are defined by the following criteria: there are multiple problems in one or more areas of living that will result in criminal behavior and/or nuisance or further social decline; cooperation between partners in multiple areas is required to achieve an effective approach; the problem is influenced by and has an impact on the family and social system and/or the immediate social environment (or is expected to have an influence on it); and there are severe local or area-specific safety problems, which require a multiple service response approach.

The major areas of work for Safety Houses involve juvenile offending, domestic violence, care packages for release detainees and recidivism. As mentioned in chapter 4, the Ministry of Security and Justice leaves room for local initiatives. Since January 2013, the steering of the Safety Houses is up to the municipalities, which are responsible for the coordination of the regional collaboration in the Safety Houses. The national contribution is no longer that of the Prosecutor's Office, but that of the municipalities. This shift and decentralization makes that Safety Houses are more and more active in the domain of care and safety, e.g. in the decentralization of youth care.

Chapter 7. External Independent Oversight Mechanisms on ISF's Duties, Remit and Powers

Table 7. Independent External Oversight Mechanisms with investigation powers in Selected EU Member States and Turkey

		Country	
Independent oversight bodies		Italy	Netherlands
Ombudsman /Defender of rights and ISFs	General body with a specific department for ISFs: YES/ NO	No National Ombudsman (only Local Ombudsmen against malfunction of local administrations)	YES National Ombudsman (parliamentary body) /
	Specialized body for oversight of all ISFs: YES/ NO		NO
Additional independent bodies (except if mentioned at bottom of table):		OSCAD, only for hate crimes & discriminatory acts, not independent from Police or Carabineers,	- National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children; - Dutch Safety Board
Ombudsman/ defender of rights	- Head of body: independent/ gov= YES/ NO (please explain mechanisms in narrative)		YES
	- Head of body: appointed by Parliament, Executive, else?		By Parliament
	- Head of body: an ISF member/Mol administrator, YES NO		NO
	- Staff size (total, all personnel)		~ 170 FTE
Powers of Ombudsman: Investigation of ISFs	- Investigation powers over all ISFs? : YES/ NO		YES
	- Investigation powers over all ranks? YES/ NO		YES
	- Need of authorization (of any other authority) for investigating if a judicial investigation is ongoing: YES/NO ?		NO
	- Investigation staff composition: Own investigation staff : yes / no		YES

Ombudsman & Sanction of ISFs' agents	-Ability to indict (send to court): YES/NO ?		NO
	-Ability to sanction (disciplinary): YES/NO ?		NO (naming & shaming)
	-Right to be informed upon disciplinary decisions on individual cases (after a recommendation to ministry in charge of ISFs): YES/NO?		YES
	-Right to be an observer in ISFs disciplinary commissions?		NO
Audit by Ombudsman	-Access to government documents: unlimited, little limitations (list), many limitations		YES / No limitations
	-Competence to publicly advise government on policy (not only individual cases), such as racial bias, training curriculum or else: YES/NO?		YES
Publicity of Ombudsman's work	Publicity of -audit reports - of investigation reports - of datasets (possible to download excel format or else)		YES
Personal data protection	Guarantor Authority for the Protection of Personal Data (see table 9)		Dutch Data Protection Authority (DPA) (see chapter 9, point 9.1.)
Prisons/ detention centers managed by ISFs?		No	See internal oversight: National Unit Control of the Force
Specialized body against Torture		No national board: EU Torture Prevention Committee (CPT)	YES, working with CPT
National body for inspections of all places of detention managed by ISFs (including	Specific body: YES/NO?		YES
	Status:		Oversight Commissions on Detention of Detainees
	Appointed by:		MoS&J

police stations, gendarmerie)	Powers: inspection of ISFs detention cells? YES/ NO		YES
	Advise government YES/NO?,		YES
	Provide legal assistance YES/NO?		NO
	Publicity of reports YES/NO?		Annual report to the Chief of the Force
National consultative body for HR protection	Existence: YES/ NO		YES
	Status: UN focal point in country: YES/ NO		College for Human Rights
	Appointed by: PM, Mol, MoJ, other?		Independent, MoS&J
	Power to advise about ISFs: YES/ NO		YES
Human rights of minorities protection body with competence on ISFs: - Remit - Powers - Capacity	Dedicated body: YES/NO?	UNAR against racial discriminations:	See National Ombudsman
	Status:	- National Public Agency /	/
	Appointed by:	-Board directed by a responsible nominee by PM	/
	Powers: investigate YES/NO?	-Powers of investigation, stimulation, legal assistance, divulgation	/
	Advise government YES/NO?,		/
	Provide legal assistance YES/NO?		/
	Publicity of reports YES/NO?		/

7.1. The National Ombudsman

The National Ombudsman is an institution appointed by the House of Representatives for a period of six years. Its independency and impartiality lies in the way this body is institutionalised. The Ombudsman has no political link what so ever as he is not appointed by a Minister but by the House of Representatives and his tasks are described by an Act of Parliament. The Minister of the Interior and Kingdom Relations manages the budget of the National Ombudsman, but in practice the independence and impartiality of the National Ombudsman is respected (this means no interference from minister nor staff nor administration).

He assesses complaints about all aspects of public administration, defends the interests of the citizen and monitors the quality of public services in the Netherlands. An Act of Parliament

(Act National ombudsman) was passed in 1981 to define the tasks and authority of the Ombudsman. The first Ombudsman started in 1982. Until 1999, the function of National Ombudsman was not included in the Constitution. From that year on, the National Ombudsman became constitutional body.

The National Ombudsman is accountable and reports to the House of Representatives (Second Chamber) and presents his report and findings every year. The Minister of the Interior and Kingdom Relations manages the budget of the National Ombudsman, the independence and impartiality of the National Ombudsman is respected. The General Administrative Law Act (AWB) sets out what the Ombudsman can and can not do; what complaints he can handle for example. In 2020 the National Ombudsman, supported by a professional organization with 170 employees and two substitute Ombudsmen and a general manager. The staff consists of complaint clinicians, researchers and staff.

Most independent administrative bodies, Ministries and a large number of municipalities (209) fall under the jurisdiction of the National Ombudsman. Those bodies without an ombudsman of their own - which applies to provinces and water-boards - fall under the jurisdiction of the National Ombudsman.

Also the prosecution authorities fall under the jurisdiction of the Ombudsman, though it is not always clear to determine which actor is covered by the Ombudsman in which case. After all, if there are appeals, objections or other legal remedies open, it is difficult to determine if the Ombudsman can still support citizens. In practice, this search for competences is still a daily puzzle for the general manager of the National Ombudsman.

In essence, the National Ombudsman is empowered to scrutinize the manner in which public sector authorities fulfil their statutory responsibilities. An investigation may be instigated at the Ombudsman's own initiative or as a consequence of a complaint from a member of the public. The National Ombudsman is concerned with virtually every area of public administration, from governmental Ministries and their executive agencies (such as the Tax and Customs Administration), to the bodies which administer social benefits, the police, water-boards, provinces and municipalities. Since October 10th 2010, the National Ombudsman also handles complaints relating to administrative agencies on the islands of Bonaire, Sint Eustatius and Saba, which are now "special municipalities" of the Netherlands in the Caribbean. He will advise where appropriate and can refer cases to the relevant public administration. He is alert to potential conflicts and will propose solutions to improve relations between the parties. The National Ombudsman helps governmental authorities to improve their own processes and procedures based on the findings of his investigations and published reports. The strategy of the National Ombudsman is based on four core values:

1. *Alertness*: the National Ombudsman is a modern, alert organization with a professional staff who knows what citizens may expect from the government. The Ombudsman encourages public sector authorities to respect the rights of the citizen and to improve their own procedures and processes accordingly;
2. *Engagement*: the National Ombudsman takes a proactive approach to contact with the general public. All complaints receive careful attention and are treated with respect;

3. *Creativity*: the National Ombudsman encourages open discussion on any problems, providing encouragement and assistance to government authorities as they seek creative solutions or improvements;
4. *Accessibility*: the National Ombudsman is accessible to all. Communication with the public is straightforward and relies on various channels, including social media. Anyone who has a complaint about the public administration of the Netherlands can contact the National Ombudsman. The complaint may be submitted in writing (a letter), by phone or online. The Ombudsman may refer the complainant to another competent authority. He may advise the complainant about how to proceed. In all cases, his aim will be to resolve the problem quickly. To that end, he will wish to hear both sides of the story.

There are several ways in which the National Ombudsman can deal with a complaint:

1. *Provide information* on possible official complaints or appeal and refer to the relevant bodies. The National Ombudsman is the last resort institution, if an official appeal is still running, he cannot intervene, and has to inform the citizen about that;
2. *Analyzing* the complaint concretely considering whether the complaint is justified or not, resulting in a recommendation to the relevant administrative body;
3. *Intervention*. The Ombudsman will contact the public administration concerned to discuss the possibility of a rapid resolution. He will encourage the authority to contact the complainant directly by phone, letter or email in order to arrive at an outcome which is acceptable to all concerned;
4. *Mediation*. The Ombudsman acts as an independent mediator between the complainant and the public administration. He may invite the parties to meet face to face. He will attempt to improve relations, clarify any points which require clarification, and may suggest ways in which to solve the problem amicably;
5. *Investigation and written report*. The National Ombudsman is concerned with virtually every area of public administration, from governmental Ministries and their executive agencies (such as the Tax and Customs Administration), to the bodies which administer social benefits, the police, water-boards, provinces and municipalities. He can research (in practice he will give an order to research to his staff or -very often- to the competent force to investigate, namely the police) also on “misbehaviors”, regulations and Acts of public administration (like being to late and lazy with complaints from citizen, not being ‘client driven’, not being polite etc, ...). He does not investigate penal crimes. When this is mentioned to him by the citizens he is obliged to hand these over to the public prosecution and a judge will treat the case in court eventually. If the Ombudsman decides to investigate a complaint in detail, he will ask both parties to provide further information. They are under a legal obligation to do so. Each party is given the opportunity to respond to the other’s point of view. The Ombudsman will then formulate his findings which are presented in a written report. This type of report is published (online). In other words: the Ombudsman cannot impose anything, but he can mediate, research in depth and hand over his conclusion to the responsible administration in order to take action, eventually to sanction, and inform the citizen of his judgement. Not responding to a report of the Ombudsman is a form of sanctioning, in terms of “naming and shaming”;

6. *A letter.* Where the outcome of an investigation is of interest only to the complainant, the Ombudsman may opt to present his findings in the form of a letter. He will also do so if he is unable to arrive at any firm conclusions. Letters are not published;
7. Bundling *complaints* and allegations and establish *thematic research* not involving individual cases but rather certain policies or practices on a more general, broader level. Some complaints address different bodies and concern the Minister who is responsible.

The Ombudsman has the power to decide on further investigation but can also pass the complaint to other services in order to check possibilities. The latter is done in a large majority of cases, where the Ombudsman takes the complaint seriously and mediates or calls attention when the interest of an individual is harmed by policy decisions or practices. The Ombudsman takes more into account in his assessment than criteria of legislation and jurisprudence, namely also factual and contextual aspects. The approach is always in the interest of the public, stressing his independent position in order to serve all citizens for which a helpful attitude of the Government is needed. This is especially important in the criminal process, which is in principle independent from the free will of the citizens (prosecution, arrestation, being a victim).

Research points out that the National Ombudsman receives many complaints about police, much less about the public prosecutor and barely any concerning the judiciary. The National Ombudsman is not a judge and vice-versa. Supervision of judges falls under the Attorney-General and ultimately to the Supreme Court. But complaints about administrative activities of the Judiciary resort under the Ombudsman: ambiguous letters, not keeping appointments, delays. Seizure is not the competence of the National Ombudsman, nor is prosecution.

The actors in the field of criminal proceedings take many decisions and are very active, and in particular the police performs many activities where no judicial procedures are available. That is the reason why citizens complain more on police actions, that are sometimes not transparent and not specified in any Act. Arrangements from the public prosecutor's office and the courts are all foreseen in law (because of their far-reaching decisions in practice).

Police complaints contain the lack of information and concern methods used more precisely in ZSM practices, where police officers take the tasks of public prosecuting, arresting and sentencing citizens (*administrative decision of fine*). For example, having to stay one night longer in a police cell because of no lawyer available, no explanation on the amount of fine nor the consequences for one's criminal record if the perpetrator accepts the fine.

The thematic researches mentioned (supra) occur 15 times a year, with regular attention for police and public prosecution. The National Ombudsman published an important study on "Police Violence" (2013). In 2015, a critical report was published on the practice of hostage-taking, criticizing the conduct of district judges. Recently a report on seizure was completed. Several reports were written on the lack of police knowledge of their own (legal) competences. On a large scale unauthorized and unjustified searches were executed in citizens' private houses. Anonymous tips that led to great search actions were not verified by the police, so the Ombudsman concluded that the law was violated. The most recent report of the National Ombudsman (2018) points to complaints of citizens because of the deficient protection of fundamental rights by the authorities in respect of privacy sensitive information and the right of demonstration by Mayors and police. The report mentions also complaints against ethnic profiling by the NPN and the KMar.

The effectiveness of the studies and the activities of the National Ombudsman, in terms of leading to policy guidelines, are highly estimated. The study by Van der Vlugt (2011) - which specifically analyzed the effects of rulings and recommendations of the Ombudsman on police matters - claims that 90% of the recommendations are followed. It is important here that the Ombudsman requires an explicit response to the recommendations, which means that policymakers cannot avoid it. Besides recommendations, the Ombudsman provides judgments in his report for the Chamber, no official reaction is requested here, so debate is in this case not mandatory.

For the upcoming years the following themes concerning ISF's will be treated by the National Ombudsman are :

1. Cooperation between police and citizens. Who actually does what and makes the decisions? Is it always clear to citizens where to turn to? It is clear who to call for more information on a case?;
2. The way 'Safety Houses' (see Chapter 6, point 6.3) work. This a network of all parties regarding safety and security issues, where it is often not clear to the citizens who is treating what kind of information;
3. As long as there is no oversight body concerning the execution of the 'International protocol annexed to the UN Convention against torture and inhuman treatment' OPCAT), the National Ombudsman is appointed to follow all complaints. There does exist internal supervision, but that is not enough;
4. Topics already researched like police violence, hostage-taking and seizure are followed up closely;
5. As the execution of penalties resorts in the Netherlands under the ministerial responsibility (Security and Justice) and no longer under specialized supervision of the prosecution, political considerations can play a role. The National Ombudsman has to assure that these practice is legitimate and does not affect citizens rights.

Observer's reflection on these reports is that they are very efficient in amelioration policy guidelines. The National Ombudsman supports governmental authorities to improve their own processes and procedures based on the findings of his investigations and published reports.

7.2. College for Human Rights

The College for Human Rights is functioning within the framework of a specific Law College for Human Rights. Citizens can sent their anonymous complaints concerning discrimination and infringements on human rights to the College, which has institutional links with the National Ombudsman (see underneath). To a certain extent both institutions complement each other.

The College functions on its own initiative in those matters it encounters and in the spending of its budget. In this College are working 9 members of the College and 50 professionals with very variable expertise: lawyers, researchers, policy- and communication advisors, members of the financial staff and ICT-collaborators. The organisation is steered by the members of the College, who are advised by a Council of Advice. Under the members of the College functions

the director, who runs the Bureau, in which the departments Front Office & Judgements, Research & Advice and Management are represented. This organisational structure should ensure a relative degree of independence.

The members of the College are responsible for the mission, vision, strategy and the policy of the College. They are people with a large variety of working experience, knowledge and societal background. They are appointed by the King. The members of the Council of Advice gives its appreciation on the annual policy plan. The Council also advises the Minister of Security & Justice concerning the nomination of the members of the College. Permanent members of the Council are the National Ombudsman, the president of the Dutch Data Protection Authority (DPA) en the president of the Council for Jurisprudence. The Bureau is responsible for information, research, advice, treatment of the judgements and the management of the College.

Citizens can sent their anonymous complaints concerning different forms of discrimination and the significance of human rights to the College. In case of a complaint, the College will test it referring to the legislation. The College renders advice in case of a complaint and explains how procedures are working. Sometimes a complainant is redirected to another body. If the complaint is dealing with discrimination, the College will start a procedure without asking any fee. From that moment on the complaint is no longer anonymous. The case will end finally in a judgement, which is not formally or legally binding, but in 80% of these cases the judgement is accepted by the defendant. Judgements are always public.

7.3. The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

During the nineties several organizations pleaded for the installation of a national rapporteur on trafficking in human beings. In 1997 the European Union recommended the appointment of national rapporteurs in the so called The Hague Declaration. As of November 15th, 2013 the independent position of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children is preserved by a formal Dutch law. The Rapporteur is *not* part of the Ministry of Security and Justice.

Today, the “*National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children*” reports on the nature and extent of human trafficking and sexual violence against children in the Netherlands, and on the effects of the government policies pursued. The reports contain information on relevant regulations and legislation, as well as information on prevention, criminal investigations regarding human trafficking and sexual violence against children, prosecution of perpetrators and victim support. They also contain policy recommendations aimed at improving the fight against human trafficking and sexual violence against children. By doing so the Rapporteur also contributes to implementing the Sustainable Development Goals regarding Human Trafficking and sexual violence against children.

The Dutch Rapporteur works independently and reports directly to the Dutch government. It is up to the government to respond to Parliament. The reports of the Rapporteur are public. The Rapporteur is not a complaints body and has no power of criminal investigation. The Bureau of the Rapporteur keeps in contact with and gathers information from authorities, organisations and individuals involved in the prevention and combating of human trafficking and sexual violence against children and in giving assistance to victims. For their information, the Rapporteur and his staff have access to criminal files held by police and judicial authorities. Because human trafficking and sexual violence against children often have an international

element to them, the Bureau also has many contacts abroad and co-operates with international organisations.

The National Rapporteur is dedicated to establish a scientifically-based approach. The National Rapporteur promotes efforts to combat trafficking in human beings and sexual violence against children in practice and in policies and legislation and endeavours to increase public awareness of the phenomena. He pursues this objective by conducting thorough research and by publishing reports in which he addresses relevant issues from a wide range of perspectives and translates developments in both the Netherlands and other countries into specific recommendations.

7.4. The Dutch Safety Board

Besides the Safety Regions (see chapter 4) and the Safety Houses (see chapter 6) a “Safety Board” was established. In the last decade of the twentieth century, the call for a fully independent investigative body became increasingly urgent. As a response, the Dutch Transport Safety Board was formed in 1999, with a mandate to carry out and report on all investigations in the transport sector under its own name. It was explicitly decided that investigations should focus on the lessons to be learned from accidents, excluding the question of liability. The House of Representatives perceived the need to provide more sectors with a permanent investigative institute. This situation would avoid the need to set up a temporary commission after every incident. After a few major incidents, the Dutch government submitted a proposal for the Kingdom Act which formed the basis for the establishment of the Dutch Safety Board.

The Dutch Safety Board was installed on February 7th, 2005 after the launching of a specific law on February 1st, 2005⁷³. The Board is considered to be an independent administrative body of oversight, which operates independently from the Dutch government and other parties. As the Board decides for itself which incidents and subjects it will investigate, it focuses primarily on cases where citizens depend on other parties to guarantee their safety, such as the government, businesses or institutions. While the Ombudsman (see chapter 2) is only competent to investigate complaints on administrative law, the Safety Board can also deal with big crises and threats to national security.

To maximise the safety gains achieved, the Safety Board has wide-ranging powers to conduct investigations. For instance, investigators can enter buildings to collect information and take equipment with them to conduct additional technical investigations. Under Dutch law, every person is obliged to provide all cooperation necessary to investigators in the execution of their duties. When the investigators work abroad, they do so based on the arrangements in treaties and European directives, or pursuant to the laws and regulations of the country in question.

As mentioned, the Dutch Safety Board is fully independent in its governance and operations. It often happens, however, that other bodies are also conducting investigations at the same time on the same incident. Coordination protocols are in place to ensure that parallel investigations run smoothly. E.g. a coordination protocol between the Dutch Safety Board and the Dutch Public Prosecution Service was installed.

The investigations of the Board are intended not only to ascertain direct causes but also to consider structural safety failings and administrative processes that have an impact on safety.

⁷³ The Dutch Safety Board Act took effect on 1 February 2005. This Act governs both the investigation of accidents and the structure of the Board. It also describes how the Board must handle material collected as part of its investigations.

The purpose of all Board investigations is to learn from the incidents and to make recommendations in order to improve safety. Its investigations do not address issues of blame or liability.

The Board is authorised to conduct investigations in nearly every area and sector. In addition to incidents in the aviation, railway, chemical and petrochemical industries, the Board investigates incidents in the construction and health-care sectors, as well as military incidents for the Ministry of Defence. The Dutch Safety Board can also carry out investigations into how Dutch parties are dealing with incidents abroad that have consequences extending to the Netherlands. In certain cases, the Board is under an obligation to carry out an investigation. At an international level, the Board plays a role in carrying out safety investigations under international treaties and European legislation. Where necessary, the Board works in conjunction with foreign investigative bodies.

Investigating incidents and disasters to prevent them from happening again is the most important task of the Dutch Safety Board. This task is performed by around 70 FTE under the leadership of the General Secretary. Most of these staff are investigators. The Dutch Safety Board is a small, professional organisation that places high demands on the quality of its reports. Three core values are key to the Board's work: independence, transparency and expertise. The organisation is characterised by open and critical dialogue as well as a high degree of independence and integrity.

7.5. Oversight Commissions on Detention Care (CTA)

The Dutch police arrests yearly about 400.000 people, which are detained within police cells. The Oversight Commissions on Detention Care are in charge to inspect the way the police is taking care of these people. This is regulated in national and international law. In 2004 a Bill introduced by the Green Party to the installation of an oversight commission on police cells in each of the former police regions. Since the police reform the former commissions are transformed into ten Oversight Commissions on Detention Care (CTA): one for each regional unit of the National Police. CTA's are composed by independent members who are appointed by the Minister of Security & Justice, by means of an open application and after presentation of the Mayor engaged and the prosecutor. Members cannot be police-officers and should have a reputation of impartiality and independence. The functioning of these commissions is regulated by Resolution Management of the Police (art. 24, part 5).

These commissions execute oversight on the mandatory and necessary facilities in these cells. The total detention care includes housing, safety, care, treatment and transport of detainees. CTA's render unannounced visits in these locations and report about their observations to the police and formulate recommendations concerning necessary improvements. Members of the commissions have always access to the cells after identification and can interview all detainees. They are held to secrecy. On an annual basis the commissions make a report to the Chief of the Force. It is his responsibility to inform the Minister about the findings of the commissions and to report on the consequences he gave on the recommendations of the CTA's.

A national platform (the National Platform Detention Care) exists, where knowledge and experiences of CTA's are exchanged. 4 of the 10 presidents of the CTA are elected in this national platform by all members of CTA's.

Chapter 8. The Involvement of Citizens and Local Authorities' Involvement in internal Security

Duties, Remit and Powers

Table 8. Oversight and consultation at the local level: Citizen and Local Authorities in Selected EU Member States and Turkey

		Mechanisms for Citizen and Local Authorities Engagement in Security Policies	
Oversight at the local level		Italy	Netherlands
Local accountability if existence of municipal police :	Municipal ISF accountable to : mayor, metropolitan mayor. YES NO	Provincial and Municipal police, involved in the IS tasks (urban security issues)	No Municipal Police, BOA's (see also chapter 0)
Local accountability to mayor of National or State (Regional) police force / gendarmerie	Legal duty of National (Federal) or Regional forces to :		
	- take orders from mayor YES NO		YES, if regional Mayor
	- Mayor is part of local decision making for local policing issues (not only prevention in general): YES, NO,		YES, regional Mayor
	- inform mayor about any critical event YES, NO,		YES
	- Regular information sharing with mayor : A) mayors' office has access to all police data about crime by law, B) selected aggregated information (ex: tables for selected crimes), C) no obligation to share		NO
			YES
			/
National councils for prevention	Name	National Committee for Public Order and Security	Dutch Centre for Crime Prevention and Safety (CCV)
	Affiliation		MoS&J
	Chair		Independent
	Representation of locally elected persons (mayors, ...)		NO

Local councils for prevention/ Chair	City level: YES / NO		NO
	Metropolitan level: YES / NO		NO
	Higher (Regional, provincial) level: YES / NO		NO
Local councils for prevention / chair / citizens	Name of consultation mechanism:	Provincial Committee for Public Order and Security / Prefect	NO
	Chair:		NO
	Representation of citizens, users of services: (weak, medium, high)		NO
Partnerships for Local security plans (periodicity)/ role of mayor	Municipal / metropolitan plans: YES, NO		YES
	Role of mayor: weak, medium, high		High, if it is a regional Mayor
	Higher (regional, provincial) plans: YES NO		YES
	Role of mayor: weak, medium, high		High, if it is a regional Mayor
Legal status of consultation of ISFs with local population	Consultation mandatory: YES, NO		NO
	Taking into account consultation conclusions: binding? YES NO		NO, depending on policy of the Mayor
	Not mandatory, but consultation mechanism exist: YES, NO		YES
	Consultation periodization: every 1 year, 2 years, 3 years?		Depending on the Mayor
Integration of consultation into local prevention/ policing plans	Legally codified process for taking into account citizens' inputs: HIGHLY/MEDIUM/LOW	LOW: No exact legal definition of the process of integration.	NO
ISFs make local use of satisfaction	Legal status: Compulsory, allowed (optional), prohibited		YES > Security Monitor: general policy instrument

surveys (victims, front desk at police station)	Usage: systematic, frequent, rare (some individual initiatives), never		
National tools of government for examining citizen's expectations / date of 1 st usage	Victim survey: regular basis, from time to time, never (DATE)	National victimization	Security Monitor (since 1993, earlier annual, today bi-annual)
	Police satisfaction survey: regular basis, from time to time, never (DATE)		Security Monitor (since 1993, earlier annual, today bi-annual)
	Other surveys (fear, etc...): regular basis, from time to time, never (DATE)	security survey (with local disaggregation upon request) by ISTAT / 1997	Lot of scientific secondary analysis & Central Bureau of Statistics based on the Security Monitor (1993)
Local tools of mayor for examining citizen's expectations / (date of 1 st usage)	Victim survey: regular basis, from time to time, never / (DATE)		Security Monitor at municipal level (1993)
	Police satisfaction survey: regular basis, from time to time, never / (DATE)		Security Monitor at municipal level (1993)
	Other surveys (fear, etc...): regular basis, from time to time, never / (DATE)		Lot of scientific secondary analysis & Central Bureau of Statistics based on the Security Monitor (1993)
NGOs involved as think tanks in local security issues	Names:		
	Consultation by local authorities: YES NO	Italian Forum for Urban Security (FISU)	On very local level
	Consultation by national authorities: YES NO	European Forum for Urban Security	/

8.1. The transformation of the role of the Mayor

As we explained already in chapter 6 (point 6.1.) until 2010 the Ministry of Interior and Kingdom Relations and the Ministry of Justice were both responsible for internal security and criminal justice at national level. From 2011 on, the new Ministry of Security and Justice integrated both tasks in one department.

General crime policies are developed at the national level, while community and citizen-based policing is negotiated at the local and regional level. Local governments have formal responsibility for public safety within municipal boundaries, and this has been the case ever since the first Local Government Act in 1851. Local governments consist of three independent bodies: the Mayor, having legal responsibility for public order and public safety within

municipal boundaries⁷⁴, the City Council and the Board of Mayor and Aldermen. It is the Mayor's individual responsibility to safeguard local order. In order to do so, Dutch Mayors may give orders to the police⁷⁵ and have been granted various powers to address specific threats to urban security over the past twenty years. Mayors of Dutch municipalities are not directly elected but are appointed by the Crown for a six year term⁷⁶, and are not consequently subject to direct popular-democratic pressures as in other European countries.

Dutch Mayors apply for their position by responding to an official vacancy published by the Minister of Interior Affairs. Once the Commissioner of the Queen selects them as a potential candidate they to go through a formal procedure including interviews with a selection of Council members and finally appointment by the Queen. Mayors are supposed to “stand above” politics and guard the quality and outcome of local political- and policy processes. Although they are usually affiliated with a political party, their job is not to be a politician but a professional administrator.

The Dutch police system was, until recently, characterized by two types of dualism: a distinction between administrative policing (maintenance of public order and public safety) and law enforcement on the one hand and between authority (in Dutch *gezag*) and control (in Dutch *beheer*) on the other. Authority refers to the ability to order police personnel to deploy a task in a specific area (operational policy). Control refers to taking care of the overarching organizational and financial aspects of the police organization (organizational management). Control of the Dutch police has for the most part been in the hands of the national government, who kept the budgets and capacity division in their portfolio.

Before the police reform of 2012, the local level the police had two managers. Both the Mayors and the Public Prosecutor were able to instruct the police on operational matters as well as influence some aspects of control. The Mayor had the authority and some control on police personnel maintaining public order and safety (administrative policing). The Public Prosecutor held authority and some control over the criminal investigation activities carried out by the police (law enforcement). These matters were negotiated and harmonized as much as possible in the ‘triangle concertation’ between the Mayor, the Public Prosecutor and the Police Constable. However, the balance of powers over policing changed in 2012 when the NPN was introduced. The critical implication of this being the abolition of the power of all Mayors, to exercise control over local police work (they remained authority).

This implies that Dutch Mayors nowadays only have the ability to order police personnel to deploy a task in a specific local area (authority) and lost their influence on the overarching organizational and financial aspects of the police organization (control). As Mayors have the statutory responsibility for local order and public safety they still hold a degree of discretion in setting local policy agendas. The Minister of Security and Justice is seeking convergence between national policing priorities, as stipulated in the national security plan, and local policing priorities, as stipulated in local and regional security plans. However, this collaboration between local governments and the national police is subject of change as decisions about police

⁷⁴ This has been set up in the first Local Government Act of 1851, section 172.

⁷⁵ Police Act, 2012, section 11.2

⁷⁶ The appointment procedure in the Netherlands is a long debated matter. In the early 2000s some political parties regarded the procedure as undemocratic and proposed a more direct election of the Mayor either directly by the people or by the City Council. A constitutional change to allow this failed to pass the Senate in March 2005. Recently this matter has become a topic of political debate again as parliament took the first legal step towards a potential change in the constitutional law describing the procedure for appointing Dutch Mayors.

core business have been shifted upwards to national level during the current reorganization of the Dutch police system.

The shift towards centralization grants the constitutional-legal authority to control all aspects of police work to the Minister of Security and Justice which has, in turn, provoked considerable controversy. Commentators have heavily criticized the new power balance between the minister and national police chief on the one hand and the increasingly limited power for mayors to steer local police work on the other. They have argued that the consequence of the reform will be to push Dutch policing further away from involvement in preventive strategies in local neighborhoods and maintaining public order and safety (administrative policing)⁷⁷ and towards law enforcement using a rather crime fighting style of policing instead of the former community oriented policing style.

As a consequence of this constitutional arrangement policy agendas for policing are the outcomes of a negotiation between many stakeholders with potentially rival mandates, including Mayors and regional Mayors, the national Minister of Security and Justice, the national Police Chief and the regional Public Prosecutors. Variegation in the policing agendas pursued in different cities can be understood as the outcome of these negotiation processes.

8.2. Municipal Extraordinary Investigating Officials (BOA's)

As said, today there are no municipal police forces anymore in the Netherlands. There exists nevertheless a broad network of “Extraordinary Investigating Officials” (*Buitengewoon Opsporingsambtenaren* - BOA's). Some of them are working within the NPN, though without a rank inside the organisation (see supra Chapter 0, point 0.4).

BOA's are also engaged by municipalities, which work in the public domain. The intention is to facilitate police-work. The operational steering and oversight of these municipal BOA's lays in the hands of the police, but this is not always realized. An absence of arrangements concerning “*who does what*” and “*who controls the functioning*” can be observed. Formally the police should check whether BOA's execute their investigating tasks correctly and respect the rules of collaboration with and instructions from the police.

A recent evaluation by means of a survey of Mayors and council members showed that in a majority of municipalities BOA's are active. It seems that the NPN has influenced the trend to engage BOA's in municipalities, while the police was no longer eager to concentrate on petty crime and social disorders, BOA's filled that gap. Moreover, Mayors say that because of the police-reform towards a NPN, they have less possibility to determine priorities in the domain of street-crime. These concerns are far from the national priorities, which are directed towards high-impact crime. This is the reason why municipalities started BOA-teams, which can more easily directed towards municipal concerns.

The presence of BOA's is positively evaluated by the police itself, specially the collaboration between them and the beat-officers. Problematic seems to be information-exchange and aspects of privacy. There seems a growing cleavage between the central information system of the police and the municipal dismemberment of information as a consequence of the installation of

⁷⁷ To be clear, ‘administrative policing’ in this context means the maintenance of public order (as contrasted with the enforcement of the criminal law)

BOA-teams. In the long run, observers wonder if BOA's are not to be considered as the heralds of a new municipal police.

A survey research, directed to citizens, pointed out that the population has no explicit opinions concerning these municipal enforcers. Most respondents answered "neutral" on questions posed and there are almost no differences between the results in different municipalities. BOA's themselves concluded during interviews that the esteem of the population of their professional group is rather low, deducing that from their street-contacts. Street-contacts are characterized as "normal", without too much problems. Nevertheless, BOA's refer to condescending confrontations and remarks by higher classes.

To assure the quality of BOA's, they are put under oversight of a supervisor. It is his task to control whether or not BOA's are executing their task in an orderly way. These supervisors advice the Minister of Security and Justice, who decides on the deliverance of licences.

It is up to the prosecutor's office to check if BOA's fulfil the formal requirements of the regulation ("*Besluit Buitengewoon Opsporingsambtenaar*") and if they execute correctly their investigating and police competences.

8.3. The Dutch Centre for Crime Prevention and Safety (CCV)

The Dutch Centre for Crime Prevention and Safety (CCV) is working to maintain safety and quality of life in the Netherlands. It strives to make safety policy effective and achievable. To this end it provides knowledge, tools, informational material and tailor-made advice to help to create a safe living environment, a safe work environment and a safe way of living. Prevention is always the starting point.

The CCV is an independent foundation that helps to identify security problems and to resolve them. We do this for example on behalf of entrepreneurs, healthcare institutions, housing corporations, ministries, municipalities and police. Assignments range from organising knowledge transfer and promoting collaboration to providing tailored advice and process guidance.

The CCV manages a number of effective tools, including the "Safe Living" police certification, the Conducting Business Safely certificate, the Going Out Safely quality indicator and neighbourhood mediation. Neighbourhood mediation has been improving the quality of life and safety for some 20 years and encourages a pleasant relationship between neighbours. Disputes between neighbours and conflicts in the neighbourhood are resolved by volunteers who mediate on request and do so free of charge. At the start of 2017, 233 municipalities were using neighbourhood mediation.

Over time the CCV became the obvious partner for all safety professionals in the Netherlands. CCV has contacts with local authorities, police, inspection bodies, supervisory bodies, enforcement agencies, business owners, trade associations, corporations and other relevant community organisations. Consequently, it has a wide network of experienced and committed partners. Through this network, CCV can address current developments and safety issues that occur in practice.

8.4. The Dutch Security Monitor

The Security Monitor is since 2019⁷⁸ a bi-annual population survey concerning security, quality of life and victimization. Large attention goes to nuisances in neighbourhoods, disrespectful behaviour, prevention measures, the functioning of the police and the municipal security policy. Because the monitoring is based on one and the same methodology, it is possible to obtain clear numbers concerning the experiences of security, as well on national, regional and municipal level. The Security Monitor is considered to be an important aid for all policy-levels during the optimization of the security policy.

The survey is based on an extremely large number of respondents (65,000 yearly). It is executed by the Central Bureau for Statistics and I&O Research. Regional police-unites and municipalities can subscribe to participation. The questionnaire contains 12 fixed modules. Flexible modules can be added concerning specific local situations. All participating municipalities and other policy-levels get an extensive analysis delivered by the Central Bureau for Statistics.

⁷⁸ Until 2017 the Monitor was a yearly survey.

Chapter 9. Video Surveillance, personal data, and Rights And Duties of Law Enforcement Officers

Personal data, Video Surveillance

Rights and Duties of Law Enforcement Officers/Code of Ethics

Table 9. Data protection and Other Legal Arrangements and Considerations in Relation to Civilian Oversight in Selected EU Member States and Turkey

Data protection and Other Legal Arrangements		Country		
		ITALY	NETHERLANDS	
Data protection authority Name:	Remit covers: (all ISFs all ISFs files)		Dutch Data Protection Authority (DPA) See point 7.4. (Broader than ISF's)	
	Head of body: independent NO-YES (please explain mechanisms in narrative)		YES	
	Head of body: appointed by Parliament, Executive, else?		Nomination by Royal Decree by MoS&J	
	Head of body: an ISF member/MoI administrator/ judge, else?		Independent (Former Mayor)	
	Staff size (total all personnel)		~ 185 FTE / For ISF's 1 contact-person	
Powers: Investigation	Investigation powers over all ISFs files? : YES/ NO		YES	
	Need for authorization (of any other authority, government or judiciary) for investigating: YES/NO ?		NO	
	Investigation staff composition: Own investigation staff : yes / no		YES	
	On site investigation powers: Yes / No		YES	

Sanction	Ability to indict (send to court): YES/NO ?		YES	
	Ability to sanction (disciplinary or penal): YES/NO ?		NO	
	Right to be informed upon disciplinary decisions on individual cases (after a recommendation to ministry in charge of ISFs): YES/NO?		YES	
	Right to be an observer in ISFs disciplinary commissions?		NO	
Audit	Access to government documents: unlimited, little limitations (list), many limitations		YES	
	Competence to start an audit without government authorization YES/NO, and publicly advise government on policy (not only individual cases): YES/NO?		YES (Auditing police forces)	
Publicity	Publicity of audit reports Publicity of investigation reports Publicity of datasets (possible to download excel format or else)		YES (Research reports, advices and annual reports)	
Video surveillance				
Video surveillance laws/ mechanisms	Law, regulation (YES, NO)		YES / Dispersed laws, Policy-document by Dutch Data Protection Authority (DPA)	
	Video surveillance footage considered personal data?		YES	
	Specific mechanism for assessing legality of		YES	

	video surveillance (YES, NO)			
Who is in charge of purchasing video surveillance equipment:	Government, YES/NO,		YES	
	ISFs: YES/NO,		YES	
	Municipality: YES/NO,		YES	
Mechanisms for complaint by citizen:	national level YES/NO		YES	
	municipal level YES/NO		YES	
Rights of ISFs officers				
Right to collective interest representation	Police	Police: has the right to unionize from 1981.	YES	
	Gendarmerie/Carabineers	Carabineers: have no right to collective interest representation (military status).	YES	
	Police Local	Local police: ?	Not applicable	
Rights to free legal assistance if indicted (during job)	Free legal assistance for penal issues provided by employer	No modern Codes of Ethics adopted, but two different Codes of Conduct:	YES ("pool" of lawyers)	
	Free legal assistance for disciplinary issues provided by employer		YES ("pool" of lawyers)	
Adoption code of Ethics / Date	Police	State Police : 1985 (Presidential Decree no. 782/1985)	NPN: 2013 (new) ("Code Blue")	
	Gendarmeire/ Carabineers	Carabineers: 1986 (Code of Military Discipline: Presidential Decree no. 545/1986)	KMar: 2000 (new)	
	Local police	?	Not applicable	

	Ethics part of selection process: YES/NO		YES	
	Ethics part of curriculum: YES/NO		YES	
Adoption of European code of Police Ethics / date		Not yet formally adopted.	NO	

9.1. Dutch Data Protection Authority (DPA)

As a consequence of the European legislation concerning European General Data Protection Regulation (GDPR), the Dutch Data Protection Authority (DPA) supervises processing of personal data in order to ensure compliance with laws that regulate the use of personal data, as other authorities do in different European countries. It deals with a large domain of oversight: databases of employers, municipal services, medical files, ... DPA functions on the basis of the Government Information (Public Access) Act (WOB), which regulates access to information held by public authorities, including by the NPN and the KMar. The tasks and powers of the Dutch DPA are described in the General Data Protection Regulation (GDPR), supplemented by the Dutch Implementation Act of the GDPR. DPA has a staff of ~185 FTE and is led by a former Mayor⁷⁹.

The authorities proactively publish information on their activities and respond to requests for information from the public. Anyone can submit a request for information under the WOB. As a main principle, government information is public, but there are exceptions to this provided for in law. The absolute grounds for refusal include state security, unity of the Crown or special personal data. Also, in some cases, the law enforcement authorities have grounds for refusal, for example, regarding the information on ongoing investigations. In those cases, the authorities weight the interest that is protected by the ground for refusal in relation to specific data against the general or public interest for information.

The NPN refuses to provide the information which gives insight into confidential investigative strategies and methods. Concerning legality and accuracy of police-files, substantive information on specific criminal investigations is only made public after the consent of the Public Prosecution Service. In addition, there are rules for communicating with the media. Furthermore, the Police Data Act and the General Data Protection Regulation apply to the processing of personal data by the National Police and the KMar. These Acts place restrictions on the provision of such data.

The WOB provides access to public information. This applies also in respect of the law enforcement agencies which, however, subject to their particular tasks are further restricted to providing information to the public, for integrity or investigatory reasons etc.

The tasks and powers of the Dutch DPA can be roughly divided into the next sections:

Supervision

- Undertaking investigations assessing compliance with the law (Art. 55 and 58(1) GDPR). In case of a violation of the law, the Dutch DPA can use its enforcement powers (Art. 58(2), 83 and 84 GDPR). For e.g. by issuing a fine.

⁷⁹ See: <https://www.groene.nl/artikel/de-tragedie-van-het-privacytoezicht>

- Conducting prior consultations (Art. 36(1) GDPR). Controllers have to consult the Dutch DPA prior to processing where a data protection impact assessment (DPIA) indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
- Assessing codes of conduct (Art. 40 GDPR).
- Certification by encouraging the establishment of data protection certification mechanisms and of data protection seals and marks, for the purpose of demonstrating compliance with the GDPR of processing operations by controllers and processors (Art. 42(1) GDPR).
- Handling complaints from data subjects who consider that the processing of personal data relating to them infringes the GDPR (Art. 77 GDPR) and mediating in disputes with data controllers (Art. 36 Implementation Act).

Providing advice

- Providing advice on legislative proposals and draft texts of general administrative regulations that wholly or significantly deal with the processing of personal data (Article 36(4) GDPR). The Dutch DPA provides both solicited and unsolicited advice and consults with the legislature.

Providing information, education and accountability

- Providing information on how to interpret privacy legislation.
- Providing general information regarding the protection of personal data on this website and by telephone.
- Publication of annual reports.

International assignments

- Cooperation with the other supervisory authorities concerned when the Dutch DPA is the lead supervisory authority (Art. 60 GDPR).
- Mutual assistance: rendering all necessary assistance to the supervisory authorities of other EU member states if this is requested (Art. 61 GDPR).
- Joint operations with the supervisory authorities of other member states (Art. 62 GDPR).
- Consistency mechanism: in order to contribute to the consistent application of the GDPR throughout the European Union, the supervisory authorities cooperate with each other and, where relevant, with the European Commission (Art. 63, 64 and 65 GDPR).
- Participating in various international and European fora, such as the European Data Protection Board (EDPB).
- Membership of the joint supervisory bodies for Europol, Eurojust and European information systems.

Guarantees regarding the proper performance of its tasks

In the execution of its powers, the Dutch DPA is bound by the standards enshrined in the General Administrative Law Act:

- Individuals can object to, and appeal against, decisions of the Dutch DPA with the administrative court.
- Individuals can submit a complaint about the Dutch DPA with the National Ombudsman.
- The Freedom of Information Act applies to the activities of the Dutch DPA.
- As an administrative body, the Dutch DPA is also bound by the general principles of proper administration.

International tasks and activities

Personal data are increasingly processed on a global scale, for a variety of reasons and purposes. International cooperation between data protection and privacy enforcement authorities is therefore of great importance, to ensure everyone's personal data are properly protected. The Dutch Data Protection Authority (Dutch DPA) cooperates considerably on an international level and participates in a number of international fora, especially within Europe.

- The Dutch DPA is a member of the European Data Protection Board (EDPB). This is an independent European body, which contributes to the consistent application of data protection rules throughout the European Union, and promotes cooperation between the EU's data protection authorities. The EDPB is composed of representatives of the national data protection authorities, and the European Data Protection Supervisor (EDPS).
- Supervision police and justice: The Dutch DPA is a member of the following supervisory bodies on behalf of the Netherlands: Europol Cooperation Board; Joint Supervisory Body Eurojust; Eurodac Supervision Coordination Group; Visa Information System Supervision Coordination Group; Customs Information System Supervision Coordination Group and Joint Supervisory Authority; Schengen Information System II (SIS II) Supervision Coordination Group.

The board of the DPA consists of a chairman and up to 2 other members. Both the chairman and the members are appointed by Royal Decree upon nomination by the minister of Justice and Security. The term of office for the chairman and the other members of the board is 5 years. This term is renewable by 5 years after re-appointment. The course of business and the responsibilities of the board are laid down in the management regulations.

DPA has a very broad mission, which is not limited to ISF's. It has an external inspector who controls the legality of the treatment of personal data in police-systems. DPA treats also complaints in this framework. DPA has a contact-point within the NPN, the public servant for the protection of data. He is responsible for the internal compliance on the General Regulation on Data Protection (*Algemene Verordening Gegevensbescherming, AVG*) and that of the Law Police Data (*Wet Politiegegevens, Wgp*). The latter is a special law which regulates the treatment of personal data by the NPN, the KMar, the Central Criminal Investigation Service and General Investigating Officials. DPA monitors permanently whether or not ISF's act according to the law. Therefore the agency carries investigation on its own initiative, sometimes based on tips from informers.

9.2. Camera-surveillance

Although camera surveillance, especially in public places, has been an important focal point in the public debate on privacy in the Netherlands, the Dutch have more or less accepted the phenomenon and nowadays almost every municipality has at least one camera watching over its citizens. In the Netherlands, camera surveillance is not as common as, for instance, in the United Kingdom, where an estimated one and a half million cameras have been installed but, especially in city centers, the camera density is quite significant.

It proved to be very difficult to make general statements on the legal foundations for camera surveillance in The Netherlands. Hardly any legislation exists that contains the word 'camera' or CCTV-control. The most relevant laws prescribe the appropriate ways to process personal data (*'persoonsgegevens'*) gathered with cameras, and not the installation or the use of the cameras themselves. In almost all cases, several laws are applicable. They prescribe the processing of personal data and the sharing of information. The key issue always is to balance between protection of privacy and the intended purpose of the camera. Any limitation of privacy

is legal only if necessary to achieve the intended goal(s). This follows from the European Convention of Human Rights and from the Dutch Constitution. This means that camera surveillance has to be necessary, which in turn means that the cameras have to be proportional (not extending beyond the intended goal) and subsidiary (less invasive instruments do not deliver the desired results).

In addition, a legitimate basis for the use of camera surveillance or the data acquired with it is needed. In specific cases, this basis can be found in an explicit legal basis, sometimes in an implicit legal basis. The Police Law of 2012 (*Politiewet 2012*) offers an implicit legal basis for camera surveillance by the police, but only if fundamental rights of citizens are ‘slightly’ affected. Specific legal bases for camera surveillance have been found in the Municipality Law (*‘Gemeentewet’*) and the Criminal Procedure Code (*‘Wetboek van Strafvordering’*).

In the meanwhile, video-surveillance is a domain under oversight by the Dutch Data Protection Authority (DPA). The Authority compiled the rules from the Law on Privacy and the Law on Police Data in a policy-document. The document covers the use of camera-surveillance by private and public organisations for the protection of persons and goods and the use of camera-surveillance by municipalities for the maintenance of public order. The same document contains the rules for drones, dashcams and other smart camera’s.

Camera-surveillance in public places is only permitted in *public spaces* if this is necessary for the maintenance of public order and to investigate into criminal acts. Art. 151c of the Municipal Law determines the norms for this. In this case, citizens have to be warned that they enter a CCTV-zone, not only for the registration of images, but also for monitoring which is not recorded. Non respect of this rule is punishable. The decision to install and use public camera-surveillance is up to the city-council and the Mayor, while the latter is the primary responsible for public order in the municipality. It is the NPN that is responsible for the treatment of the images, based on the Law Police Data (*Wet Politiegegevens*, Wpg). This is the reason why the Municipal Law (art. 151c point 3) the operational steering is in the hands of the police.

9.3. Trade Unions in ISF’s

More than 90% of National Police employees are members of police trade unions. There are four national unions: the Dutch Police Union (NPB, 24,827 members), General Christian Police Union (ACP, 23,810 members), the General Dutch Police Association (ANPV, 6,559 members) and the Association of Middle-Ranking and Senior Police Officers (VMHP, 1,030 members). They consult directly with the Minister of Security and Justice on matters of general interest to the legal status of police officers and also enter into collective labour agreements for the police sector. When the National Police integrity policy has consequences for the legal status of police officers, these police unions are consulted. There are also five regional police unions, which do not enter into direct dialogue with the Minister.

KMar officers may join military unions which are part of the public administration personnel bodies. These consult directly with the Minister of Defence. Before the Minister decides on matters of general interest to the legal status of military officers and civil servants, including the general rules concerning the implementation of human resources policies, these will be consulted. The military unions do not provide any public information about their members.

Police trade unions negotiate concerning labor-conditions, remunerations, training, uniforms, working-hours, leave and promotions with all levels within the NPN and KMar, and the Ministry of Security & Justice. The highest level of negotiation is the Central Organized Police Consultation, with on the one hand the Minister and the “chief of the force”, and on the other hand the 4 national trade unions. Collective bargaining agreements are negotiated and formulated for the sector and published by the Government after conclusion. A real form of “co-managing” is however is absent.

9.4. Professional Codes, “Code Blue”

A new professional “code of conduct” (“Code Blue”) was introduced in 2013 within the National Police, starting from the central values of the organisation: integrity, reliability, courageousness and bonding. In the code is stipulated what the force means with these values. The code came about after consultation with members of the force, experts and a representation of the population. Also the Chief of the Force was active in it’s establishment, while he functions as holder of the domain integrity within his organization. The *Bureaus Integrity and Security* (VIK’s) (see chapter 5, point 5.2.3.) have an important task in the execution this framework. VIK’s are supposed to organize informative sessions to higher the level of prevention and awareness, apart from the investigations they carry out. Also the Direction Operations and the Direction HRM are engaged in the promotion of “Code Blue”. At the level of the regional units, the responsibility lays at the direction of these units.

The Customs-Service has no own bureau for integrity. The *Bureau Integrity and Security* of the FIOD is active for the whole Tax Service, thus also for the Customs. The Customs have a central coordinator integrity, who has the central task the development of the management concerning integrity.

Inside KMar integrity-policy is the responsibility of the ‘Cluster Integrity’. Apart from the section Complaints, the sections ‘Integrity and Internal Investigations’ (SIO) are part of this cluster. The Sector Integrity advices concerning questions on integrity. The Sector contains 4 FTE: an advisor social integrity, two advisors corporate integrity and a coordinator of the confidence-persons within KMar. SIO runs penal and disciplinary investigations inside KMar. The integrity policy of KMar focusses on protecting, stimulating and enforcement.

The policy developed in different phases. While in the beginning the policy was directed towards the treatment of infringements, from 2000 on the focus was placed on prevention and the establishment of P&O-instruments, educational programmes and leadership. Also a toolbox is developed with a management-model and a dilemma-game. In the actual phase, the accent is put on the promotion of moral professionalism, or the promotion of these collaborators that make the right moral choices during their work. In 2014 KMar organized an inventory of risks and how to master them.

In 2019, Council of Europe’s Group of States against Corruption (GRECO) published a report in which it called for measures to prevent corruption in the Netherlands in respect of persons entrusted with top executive functions, including Ministers, State Secretaries, political advisors; and in respect of members of law enforcement agencies: the National Police and the KMar.

GRECO considers as particularly important to introduce rules for lobbying and post-employment functions. Furthermore, top executives should be required to report situations of conflicts of interest as they occur and they should be obliged to declare personal assets at regular

intervals for transparency and public scrutiny. GRECO acknowledges a strong commitment to integrity matters within the police services in the Netherlands, which generally enjoy a high degree of national public trust. Nevertheless, Dutch Police has not been spared from integrity violations: leaking of information and connections with organized crime groups, for example, have been subject of considerable media attention. The report also stresses the obligation upon police officers to report various forms of corruption related misconduct within the service, and not just criminal offences in general.

A report of the ‘Research and Documentation Institute of the Ministry of Security and Justice’ (WODC) on *Organized Crime and Integrity Violations* refers to a total of 80 cases within ISF’s, including the National Police and KMar, as well as FIOD and customs, that could be linked to organized crime within a period of five years (40 cases within the police). In 2017, 121 persons have been dismissed as a result of integrity breaches.

Chapter 10. Conclusions

In this conclusion we emphasise some main findings that merit extra attention.

- (1) The ISF's system in the Netherlands is **not complex**. Besides some smaller bodies with specific tasks, the backbone of the system is formed by one national police force (NPN), a smaller military corps (KMAR) and a local oriented 'light-blue' capacity of (public) wardens with police competences and (not always) legal use of force. The country is divided into 10 (plus one) police entities and administrative and judicial territorial boundaries correspond, which ameliorates cooperation between the administrative and the judicial authorities.
- (2) The Dutch system moved away from the principle of the “**separation of powers**” (legislative, executive and juridical power). This means that the government (executive power) has a more far reaching role concerning the organization of ISF's and oversight on police than in other Napoleonic countries.
- (3) The national police is steered by one “Chief of the Force”, who is accountable to one Minister (of Security and Justice). This means that counterbalances in terms of checks and balances (like in other EU countries) are absent and **central steering** is obvious. This was the main objective of the police reform in 2012, to avoid 23 different forces, each with their own practices.
- (4) As the police reform aimed at efficiency and financial balance, the system is **transparent**, very well organized and **efficient**. Every detail of functioning, tasks, oversight, territorial division, complaints, policy guidelines and daily police life are regulated. This “overregulation” leads sometimes to an unclear picture of the actual legal conditions, while the regulatory framework is often also changing. What is regulated today can be different the following day. So, it is necessary to keep up with every modification, and this means a lot of administration and bureaucracy for police officers.
- (5) The local **municipal autonomy of Mayors**, anchored in the Communal Law, was largely **restricted** after the police reform and national government vested its hegemony. Tensions between priorities of the “Chief of the Force” and the Minister on the one hand and municipal needs from the local Mayors on the other are accommodated in the figure of the “regional Mayor”. Nevertheless, local Mayors still dispose of a certain autonomy in the domain of local public order, peace-keeping and security and are accountable to the City Council and the population, not to the central level. So local priorities stay important. In order to reconcile these locally oriented needs with the demand for police capacity (a national competence), the “regional Mayor” has to negotiate in the Round table together with his/her colleges on police capacity and deployment. It is obvious that the results of these meetings are not always positive for the own municipality. Mayors do not have competences over a “region”. This construction (the national Minister obliging Mayors to steer on a “regional” level) is **artificial** and to some extent frustrating for Mayors of smaller municipalities.

- (6) As a consequence of the police reform Mayors feel they have no longer grip on police capacity and start their **own “force”** of **“light-blue officials”** (see chapter 8 Municipal Extraordinary Investigating Officials). These ‘BOA’s’ are paid by the Mayor and so he is able to take priorities and security concerns of the local citizens into account. In this regard consultation and agreement on tasks division in the so-called “concertation triangle” are very important.
- (7) Concerning **oversight** on ISF, we note a strong orientation towards forms of internal oversight, with less external oversight on the police force. Because the steering is so centralized and disciplinary issues are dealt with internally (VIK’s), the role of the National Ombudsman is of utmost importance, who has an independent parliamentary role. This position gained a lot of autonomy and respect in the Dutch system, although the Ombudsman can not sanction. This national figure is easily accessible for every citizen, concerning all complaints on administrative bodies and procedures.
- (8) Citizens have no longer the same close contact with “their police” and **community policing** seems to be abolished after the reform, or contained in small neighbourhood teams. Participation of citizens in policy-making is, due to the “consultation” tradition in the Netherlands, common good. Almost each Mayor organises “public hearings” with citizens, city administration and members of the Board of Aldermen on different topics regarding local policy and municipal priorities on a regularly basis. Mayors are accessible during opening hours for individual talks and have a performant complaint procedure on almost everything concerning the quality of life in their municipality. On the contrary, police-agencies are not so accessible anymore for citizens after the reform. The 24/24 permanence 7/7 was abandoned, and a physical police reception desk is often lacking to deliver direct help or register citizens’ declarations.
- (9) The reception is staffed with agents of private security firms (like GS4) informing the population coming to the reception desk to make an appointment later (sometimes only possible within one week) concerning the offence that happened to them. Complaints, declarations of crime and disorder or administrative questions have to be sent by internet, leaving a particular part of the population out of service. Police is no longer visible in the streets, and if they are, not accessible for chats with the population as they only deal with serious forms of crime, leaving the smaller stuff to BOA’s. This creates an impression to citizens that police “does not care” about them. There do exist beat-officers, but observers claim that they spend half of their time or more inside on paperwork.

In short, after the reform, centralisation and efficiency became the central concerns.

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