# Parliamentary oversight on police in Belgium

**Paul Ponsaers, emeritus professor in criminology, Ghent University**

# Content

# Chapter 1: General introduction

## *1.1. The forms of oversight we include in this report*

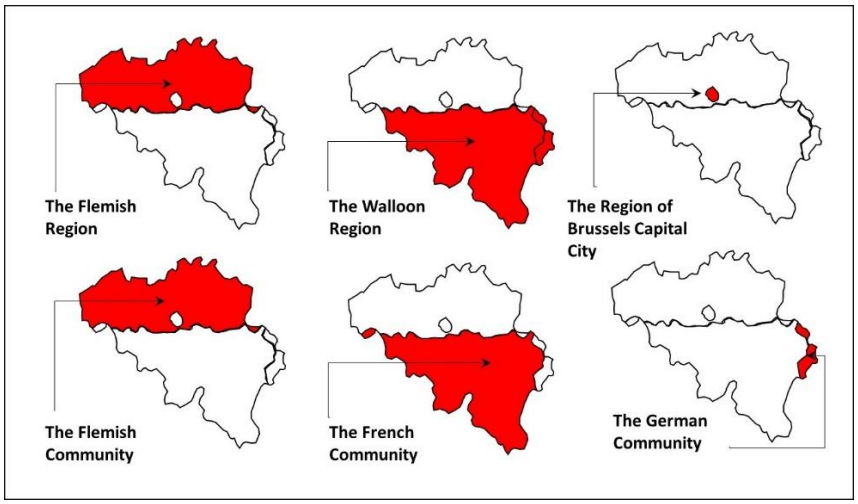
It is our mission to report here on parliamentary oversight in Belgium on police. Therefore it is important to clear out from the beginning what we will include in this report and not. Our central question is : "*What are the strengths and what are the limitations to Parliamentary oversight in Belgium, which are critical and should we try to measure*?"

### 1.1.1. Focus on the Federal Parliament

From 1993 on the unitary Belgian State was slowly transformed into a Federal State. Whereas the majority of federal states are established by a process of association, the Belgian Federation was born through a process of disassociation. The competences of the former unitary, national state were reshuffled into different logics.

Apart from the fact that Belgium still has a Federal government and Parliament, the two groups of federal bodies which are superimposed in the same territory. These are the communities and the regions:
- Belgians acknowledge three *communities*, the Flemish community, the French community and the German speaking community. They have competence in everything that relates to education and culture in its wider sense.
- Belgium also consists of three *regions*, the Flemish region, the Walloon region and the Brussels region whose competences are essentially in the socio-economic sphere.

*Graphic 1* : Regions and communities in Belgium after 1993




The consequence of this process of dissociation is that Belgium has different Parliaments on each level. (1) the Federal Parliament and government; (2) the Flemish Parliament and government (because the region and community are identical); (3) the French region has a

Parliament and government; (4) the Walloon community as a Parliament and government; (5) the German community has a Parliament and government; and (6) the region of Brussels Capital City has a Parliament and government.

While police stayed a federal competence, it is only on the level of the Federal Parliament that oversight on police is realized[1]. This is the reason we focus in this report on the oversight of the Federal Parliament.

The Federal Parliament has two chambers: the Chamber of Representatives on the one hand, and the Senate on the other. The Chamber and the Senate function independently of each other. The composition of both chambers results from parliamentary elections. This has changed in 2014, at the occasion of the so-called 6th State-reform (Ponsaers, 2016)[2]. Today only the 150 MP's (the Chamber) are chosen for a period of 5 years[3]. At the occasion of parliamentary elections there is the obligation to vote for all Belgians from the age of 18 years, except for those who don't dispose of their civil and political rights. The direct election of members of the Senate was abolished[4].

### 1.1.2. Focus on oversight on police

State-power is divided in Belgium in three powers: the legislative, the executive and the juridical power. Each of these powers controls and limits the others. This principle of the "separation of powers" is not explicitly included in Belgian constitution and not absolute[5].

- The federal *legislative power* produces laws and controls the executive power. This power is executed by the federal Parliament. Parliament is assisted in this control-function by the Court of Audit. The Federal Parliament has some judicial powers. Firstly, it can decide on the prorogation of parliamentary immunity of one of its members. Secondly, it can install a parliamentary enquiry-commission. The Chamber of Representatives also engaged in the assignment of candidates for certain judicial functions (e.g. judge in the Constitutional Court).
- The federal *executive power* governs. This power makes sure that laws are applied and followed in certain circumstances. The government (ministers and state-secretaries, nominated by the King) exercises this power. The government has also the right to take the

[1] We should mention that increasingly certain political parties are in favour of a separation of the police into regional forces. This is not the case today, so we limit ourselves to the competences of the federal parliament on police-matters. Nevertheless, the actual Flemish government has installed recently a own minister of Justice.

[2] Ponsaers, P. (ed.) (2016). "De communautarisering of de deconstructie van de soevereine staat", *Panopticon* , 37 (4), 249-259.

[3] Before the election lasted for 4 years.

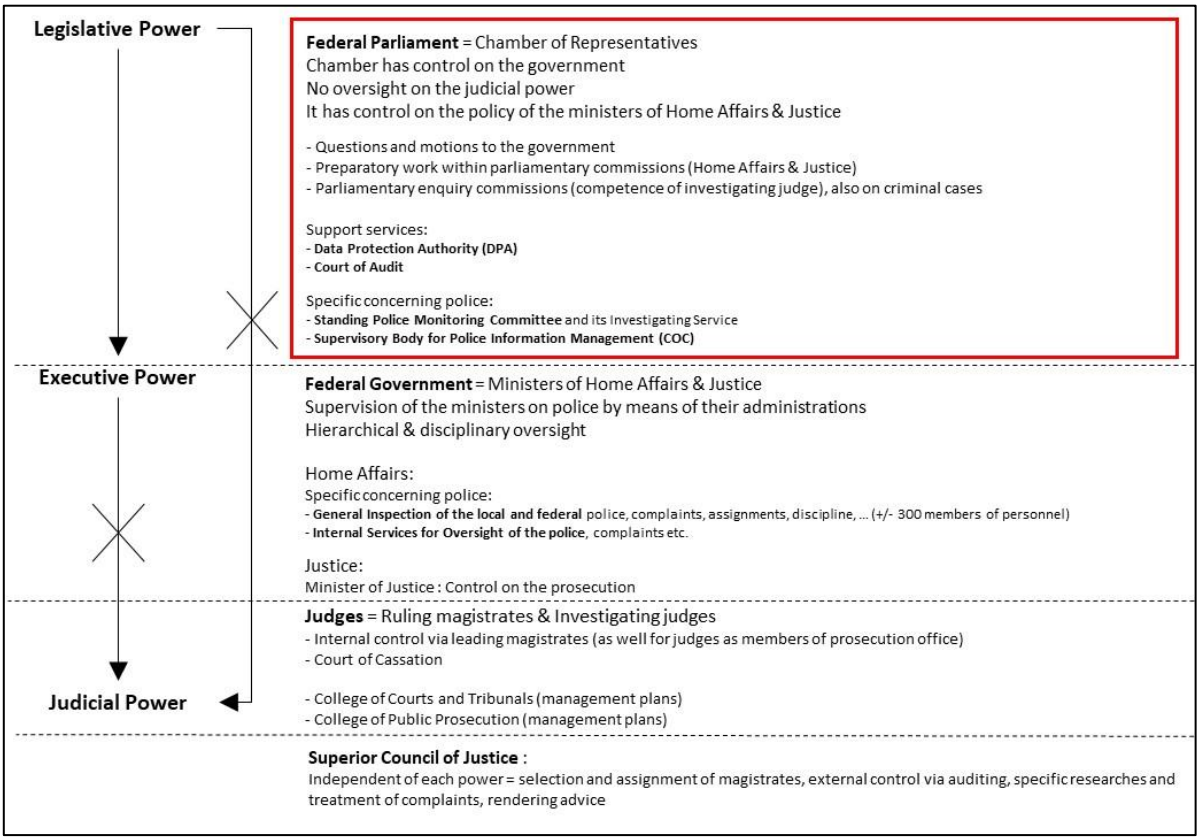
[4] For the sake of clarity: Belgium has three kind of elections: (1) Federal elections (for the Chamber of Representatives); (2) Elections for the regions and communities (the Flemish Parliament, the Walloon Parliament, the Parliament of the region of Brussels Capital City, the Parliament of the German community. At the same time the elections for the representatives for the European Parliament are organised. (3) Municipal and provincial elections, for the composition of the city councils an provincial councils.

[5] The "separation of powers" is also an important principle at the level of the regions and communities. They both dispose of a legislative and executive power. In contradiction to that, the judicial power is only a matter of the federal authority.

initiative for law-making, which shall be discussed, amended and voted afterwards within Parliament. Furthermore, the minister of Justice has a positive right to injunction and can order the prosecutor's office to investigate and/or prosecute in a specific individual judicial file. He has no negative right to injunction.

– The *judicial power* decides in case of disagreement or criminal acts by means of its courts and tribunals. It controls and advises on legislation and eventual contradictions with the constitution. It also mediates in conflicts between different powers. The judicial power also controls the legality of the acts of the executive power. To support the independence of the judicial power the High Council of Justice intervenes since 2002 in the nomination of magistrates[6].

*Table 1* : Separation of powers in Belgium in oversight on police




In essence parliamentary control is installed to make it possible to define the political responsibility of the government. It is one of the corner-stones of a parliamentary democracy (Boeksteeg, 2004)[7]. It concerns the way the parliament (the legislative power) controls the government (the executive power) and asks for political accountability. When these power-relations are not respected, parliamentary democracy becomes weak, certainly when we are dealing with police, one of the instances of a state that has the monopoly of legal violence. Police is part of the executive power and has to behave in a loyal way in accordance with the

[6] Because the multitude of exceptions on the principle of "separation of powers", certain observers speak of a "collaboration of powers", or even a "mixture of powers".

[7] Broeksteeg, J.L.W. (2004). *Verantwoordelijkheid en aansprakelijkheid in het staatsrecht* (dissertatie Groningen), Deventer: Kluwer.

competent ministers (the minister of Home Affairs and of Justice). But it is up to the Parliament to assess that governmental responsibility and to control it. This is what this report on Belgium is about.

In this report we go into four important distinctive features of parliamentary oversight. First we describe the functioning of the Belgian federal parliament when it comes to police-matters. Secondly we go extensively into the federal parliamentary enquiries which were held in Belgium on police. Thirdly we detail a specific and unique form of parliamentary control, by means of the Standing Police Monitoring Committee. In fourth instance we mention shortly the recent Supervisory Body for Police Information of the Belgian parliament. In the end we draw conclusions on the basis of our research.

### 1.1.3. Focus on the reform of the Belgian police

It is important for the reader to have a good grip on the police organisation in Belgium for the further reading of this report. The origin of the Belgian municipal police goes back to 1795 when the French occupiers set up the municipalities, thereby giving short shrift to the existing land divisions that went back to the Ancien Régime. All the municipalities became independent in 1800 and continued to exist from the independence of Belgium in 1830. At that time there were 2,776 municipalities. Some were very small. On 1 January 1977, a large-scale, municipal merger was carried out, whereby initially 589 municipalities were left over (Van Outrive et al., 1991)[8]. The Flemish Region has today 308 municipalities, the Brussels-Capital Region 19, and the Walloon Region 262. In principle, each of these municipalities had their own municipal police force prior to the reform of 1998 (infra).

The Gendarmerie was a legacy from the period when France occupied Belgium (1794-1815) and should also be seen as a Napoleonic heritage. At the moment of the independence in 1830, the Constitution stated that '*the structure and authority of the Gendarmerie will be regulated by law*'. Only in 1957 a law on the Gendarmerie was passed. Demilitarisation of the police force came much later, in 1992.

While both the above-mentioned police forces were created prior to Belgian independence, this was not the case with the criminal police at the public prosecutor's office (GPP). From 1870 on the magistracy started to complain about the limited impact the municipal police and the Gendarmerie had on the level of crime. The discussion regarding the creation of a criminal police dragged on for a long time and it was only in 1919, shortly after the end of WWI, that a "judicial police at the public prosecutor's office" was set up.

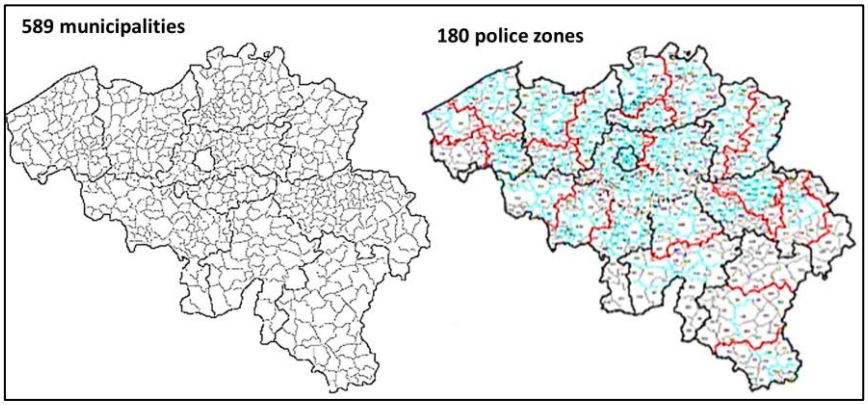
Contrary to other European countries, it is striking that no clear, geographical or functional division of tasks between the above-mentioned police forces was ever set up. This resulted in creating a atmosphere of competition between the three forces. One of the most striking examples of this struggle between forces and withdrawing information, was the Dutroux case. The notorious child abductor and murderer Marc Dutroux was arrested on 13 August 1996. It became clear that the

[8] Van Outrive, L., Cartuyvels, Y., Ponsaers, P. (1991). *Les polices en Belgique, Histoire socio-politique du système policier de 1794 à nos jours* , Bruxelles : Vie Ouvrière, pp. 336.

police had lost a lot of valuable time during the investigation. The Dutroux case seriously affected public opinion and great pressure was put upon the politicians. Dutroux's escape from the court building at Neufchâteau proved to be the straw that broke the camel's back (Ponsaers & De Kimpe, 2001)[9].

The so-called "Octopus Agreement", dated 23 May 1998, gave rise to the fundamental reform Act towards an "Integrated Police Force on Two Levels" (WGP) of 7 December 1998. Since the introduction of the act, Belgium has two types of police: A local police force (absorbing the municipal police and the local branches of the gendarmerie) and a federal police force (absorbing the criminal police and the supra-local branches of the gendarmerie). The local and federal police together make up the *integrated police*. Approximately 47,000 men and women are employed by the police. Approximately 39,000 are operational police officers. Within the framework of this reformed system, there are "functional links between the two police levels" that are provided for by law. With respect to financing, the federal police are integrally financed nationally, while the local police are largely financed from the local municipal budgets (Cachet et al., 2008)[10].

*Graphic 2* : Municipalities and local police zones in Belgium

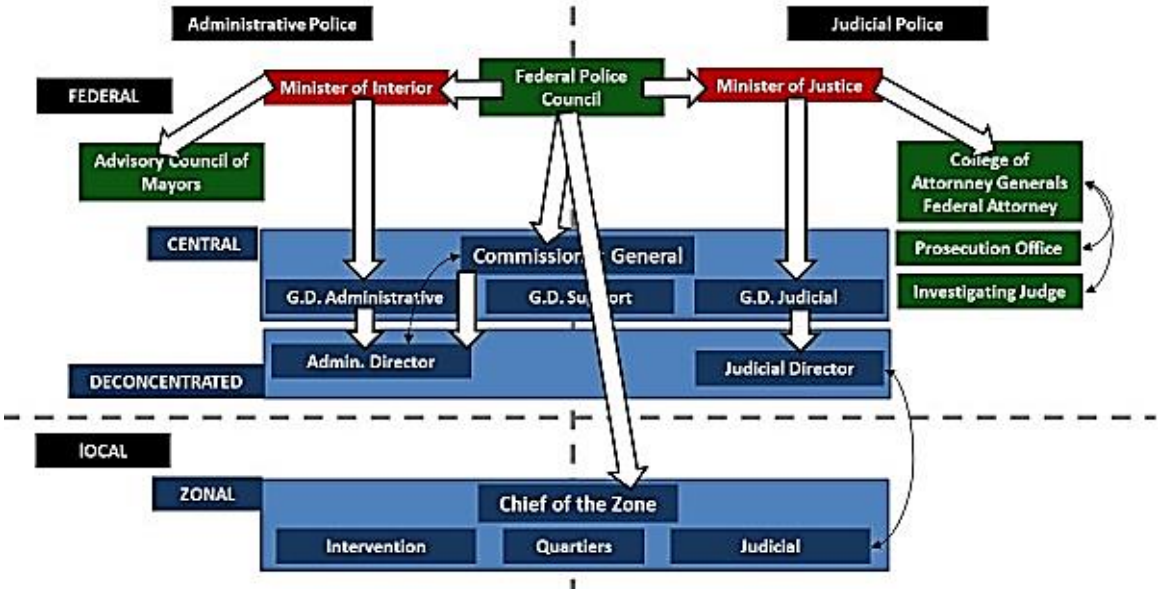



This reform was the first fundamental police reform in the history of the Belgian police (Bruggeman et al., 2010)[11]. The police organisation actually started at the federal police on 1 January 2001, with the local police starting one year later. At both levels - federal and local - the forces have a substantial autonomy, although that does not take away the fact that they together must ensure '*integrated community policing*". It is noticeable that the WGP has *not* given further specification to the allocation of tasks between the federal and local police forces, apart from the general statement that the local police is responsible for local and simple matters, while the federal police has to handle supra-local and complex cases. The act (WGP) lays down

[9] Ponsaers, P., De Kimpe, S. (2001). *Consensusmania - Over de achtergronden van de politiehervorming*, Leuven/Leusden: ACCO, pp. 283.
[10] Cachet, L., De Kimpe, S., Ponsaers, P., Ringeling, A. (eds.) (2008). *Governance of Security in the Netherlands and Belgium* , Den Haag: Boom Juridische Uitgevers, Reeks Het groene gras, pp. 356.
[11] Bruggeman, W., Easton, M., Devroe, E., Ponsaers, P. (2010). "Conclusie : Kijken naar de toekomst van de politie", in *Evaluatie van 10 jaar politiehervorming* , Bruggeman, W., Devroe, E., Easton, M. (eds.), Panopticon Libri n°4, Antwerpen-Apeldoorn: Maklu, 281-285.

the functional connections between the two levels. Responsibilities for operational, integrated community policing lies at the feet of the ministers of Home Affairs and Justice.

*Graphic 3* : The police organisation in Belgium after the reform of 1998




The system comprises actually about 180 very diverse local zones[12]. According to many, some of them are too small. Small police zones have difficulty in achieving the desired uniform quality and breadth of community policing. Although there is currently little interest in making zone mergers obligatory, which could affect the complex and sometimes vulnerable relationships between the local and federal police forces, scale corrections at the local police are possible for those zones that strive on a voluntary basis for up-scaling. After 10 years of reform, the federal police was considered to function too bureaucratic and was reorganized, simplified and rationalized, bringing the number of the 27 de-concentrated unities to 12, at the scale of the provinces. As is illustrated by the graph above, both components of this police structure have no internal hierarchical relation. All the lines of command pass by the federal and/or local authorities.

## *1.2. The forms of oversight we don't include in this report*

The following (infra) bodies of oversight are only mentioned in this paragraph and not further elaborated in this report. So has Belgium ombudsmen, as well on federal, regional as municipal level. While the federal ombudsman is not competent in matters of police and justice, we mention this instance only briefly here.

The federal ombudsman[13] is an independent and impartial institution, which investigates upon complaints by citizens concerning the functioning of federal administrative authorities. He is

[12] There is broad consensus about the necessity to upgrade the scale of the zones. This happens today, on a voluntary basis.
[13] Law of March 22, 1995 concerning the installation of federal ombudsmen.

no part of the federal administration and researches complaints in a impartial manner. He is also the chairman of the network for ombudsmen. He is not bound by instructions of other authorities and assigns himself the personnel of his service. The federal ombudsman is only allowed to investigate complaints concerning federal administrations. He is not competent for complaints concerning municipal, provincial or regional institution, nor on those which deal with police or courts and tribunals.

Each year the ombudsman makes a report for parliament. This contains statistical data, an analysis of the treated complaints and the recommendations that follow. When the Chamber of Members of Parliament demand the federal ombudsman a research concerning the functioning of an administration, this results in a report containing the observations made and the recommendations to improve the functioning of the administration. Only municipal ombudsmen can receive complaints from citizens concerning municipal administration, including the local police. These complaints are treated by means of mediation, or transmitted to the Standing Police Monitoring Committee or the General Inspectorate, or the judicial authorities. Municipalities and cities organize on voluntary basis a ombudsman service or not. Our interviews pointed out that only in bigger and regional cities such a service is functioning. In any case, this is no form of parliamentary oversight.

Besides that, there exist in Belgium also other forms of oversight on police, e.g. the General Inspectorate of the federal and local police. The General Inspectorate of the federal and the local police functions under the common supervision of the ministers of Home Affairs and of Justice[14]. In this way, the General Inspectorate is part of the executive power, and not of the legislative power (as the Standing Police Monitoring Committee is). A respondent of the General Inspection explains: "*In fact we are an organ of the ministers of Home Affairs and of Justice, of the executive power. They have power over the General Inspection and define the broad guidelines of the organisation of the inspection. They both ask audits which we execute and we do investigations which could be helpful for both departments. It is a form over oversight on the functioning of the police. Moreover, the minister of Home Affairs is also responsible for the daily inspection. Afterwards comes the advice of the department of Justice".* For this reason we don't include this institution in this report.

Also the Coordination Unit for Treat Analysis (CUTA), an instance that coordinates the Belgian police and intelligence services and which makes the evaluation of the terrorist and extremist treats. It is functioning under the authority of the government, more precisely of the ministers of Home Affairs and Justice and is from that point of view a matter of the executive power and not of parliamentary oversight. We should make the remark that it is nevertheless the parliamentary Standing Intelligence and Security Monitoring Committee that functions as the oversight body of CUTA. From that point of view there is parliamentary oversight, but more on intelligence services than on police.

Furthermore, it is obvious that we don't go into forms of hierarchical oversight within the police itself, nor into oversight by means of disciplinary procedures. Both forms of oversight function

[14] Art. 3 part 1 Law on the General Inspection.

under the supervision of the executive power (the ministers of Home Affairs and of Justice) and cannot be considered as forms of parliamentary oversight.

In another way this is also the case for the oversight realized by the judge in criminal court, who judges criminal acts committed by police-officers. This is of course a form of oversight by the judicial power, far from the intervention by parliament.

# Chapter 2: The organisation of the federal parliament in Belgium

## *2.1. The organisation of the Chamber of Representatives in federal parliament*

### 2.1.1. The president

The president of the Chamber of Representatives acts as the spokesman of the Chamber. He leads the activities after consultation of the presidents of the political fractions, leads the debates during plenary sessions and maintains order. He decides on the susceptibility of texts and formulates the questions on which the Chamber has to vote and organizes these votes. He doesn't intervene during the debates. He can invoke the advice of the Court of Legislation concerning a bill. The president is chosen by the plenary assembly. Mostly he is member of the majority. The actual president of the Chamber was former president of the parliamentary enquiry commission on the terrorist assaults of March 2016 in Brussels. He is well introduced in police matters.

### 2.1.2. The plenary assembly

The assembly equals the 150 directly elected representatives. During plenary sessions discussions are about governmental declarations, bills en amendments, budgets, … During plenary sessions MP's can formulate interpellations and oral questions to the ministers.

In principle the Chamber gathers publicly according to the constitution. Minutes are approved and published and available via internet. A lot of what is discussed in Parliament is broadcasted on television. The plenary assembly can meet behind closed doors when the president or at least ten members ask this. This procedure is unusual. A limited number of questions are in principle treated confidentially and not public, mostly these matters are related to nominations, designations, naturalisations of persons. Members who participated in such a debate are bound by secrecy.

### 2.1.3. The commissions

The Chamber has different thematic commissions. Within these commissions the activities of the plenary assembly are prepared (bills, resolutions, proposals to install an enquiry commission, proposals to revise the constitution, …). These matters are discussed, amended and voted within the commissions. The report on these discussions is agreed upon within the commission and then submitted to the plenary assembly. The commissions also control the government by means of interpellations and oral questions. The sessions of the commissions are public. Citizens can follow the debate from the platform. Often these sessions are also broadcasted on television.

The Chamber has different commissions. One of them is the commission on Home Affairs, Security and Administration, which deals to a large extent with police matters. Another is the commission of Justice. Besides different other commissions, there is also a guidance committee concerning the functioning of the Standing Police Monitoring Committee as the Standing Intelligence and Security Monitoring Committee. Later we come back on this.

Some examples of the commission of Home Affairs, Security and Administration make the functioning clear. The minister of Home Affairs repeatedly declared already that he wants bigger and more robust police zones, but he refuses to make this mandatory. He received a extensive report from the General Inspectorate, where was concluded that there is enough capacity, but that leadership is weak. In other words: the initiative is to the municipalities on a voluntary basis.

In June 2018 decided the commission of Home Affairs that it is mandatory that every municipality has a Local Integral Security Cell (LISC), where the mayor, the local police, de prevention and social services work together to tackle radicalisation. At that moment already 228 municipalities (of the 589) had already installed such a cell on a voluntary basis. The bill was the initiative of the minister of Home Affairs. His appeal for a less rigid distinction between administrative and judicial interventions was without further consequence.

Another central theme within the same commission is that on the "core tasks" of the police. The minister of Home Affairs has a plan to include more private security organisations for specific tasks, which don't imply the use of violence. This should diminish the workload of the police, according to the minister. The theme was a returning issue in the commission, where still a lot of reluctance was present.

## *2.2. The competences of the Chamber of Representatives in federal Parliament*

### 2.2.1. Constructing a governmental majority

While the most important task of a parliament is governmental oversight, the condition for being able to do that is the existence of a government. Without a government, the Parliament cannot function. In reverse, without the consent and confidence of the (majority of the) Chamber of Representatives a government cannot work. This means in Belgium that at least 76 (a majority of the 150 seats) MP's have to support the government after a debate on the governmental declaration, which is finally sanctioned by a resolution, and in turn can be amended. The formation of such a majority is in Belgium mostly the consequence of a coalition of different political parties and consequently of their MP's. It are those MP's that form the majority, while the other form the opposition.

### 2.2.2. Controlling the government

It is only this Chamber that asks accountability from the government, eventually can withdraw its confidence in the ruling government or minister(s) by introducing a resolution of distrust. In

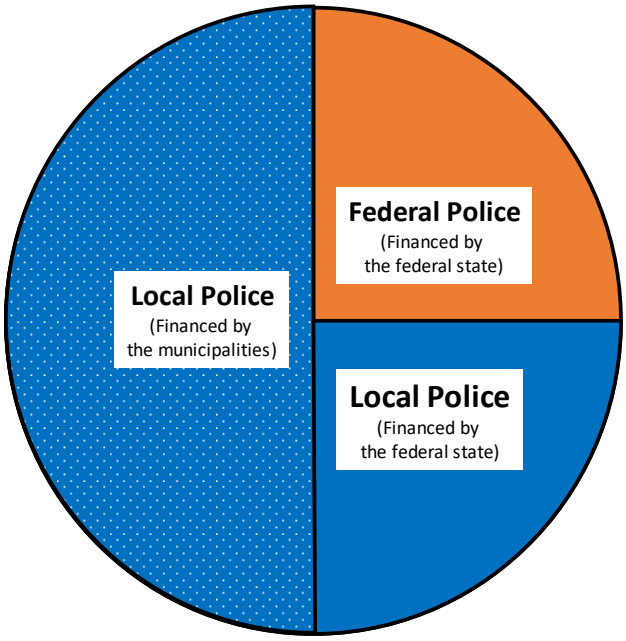
reverse, it is possible that the government asks the Parliament, by means of a resolution, to restore the confidence.

So-called "interpellations" are the most important means of control MP's dispose of. During such a interpellation a MP demands an explanation of one or more ministers concerning the policy under study or regarding a specific situation. To make it possible that the minister can prepare his answer the request has to be introduced some days before the question will be dealt with during the plenary session. After discussion of an "interpellation" it is possible that one or more resolutions are introduced whereby the MP asks the government to take specific action in relation to the subject discussed. An "interpellation" can be very critical for the government and the answer on it is mandatory. The MP can insist to clarify the position of the government. An "interpellation" causes mostly some stress, because the media are present and report on the matter.

### 2.2.3. Controlling the state finance

It is the Chamber of Representatives that is competent for the finance of the federal state. Only the Chamber can approve the budget. Each year a budget is voted within the Chamber which permits the government to make expenses and to have revenues (e.g. taxes). When it comes to police-matters, the financial control op Parliament is without any doubt the most intrusive.

*Graphic 4* : The mixed financing of the police in Belgium after the reform of 1998




Today the federal budget for police amounts largely 1,7 billion euro. 709 million concerns federal subsidies to local zones, which equals roughly 1/3$^{th}$ of the expenses of the zones. The other part is paid by the municipalities themselves. Zones get also a certain income from the traffic fines and certain zones get additional federal support for recruitment of personnel. The police reform of 1998 had as consequence that the total amount of personnel (local and federal) increased to about 40,000 persons (which equals 3,7 police-officers per 1,000 inhabitants). The consequence is that the cost of personnel is taking the biggest part of the budget and that investments are scarce, representing only 5%. During the period December 2013 and May 2018 the capacity of the federal police decreased with 394 persons. The budget for 2018 was 15% lower than in 2012 and 7,5% lower than in 2014. The capacity of local police forces is much more stable.

The Court of Audit assists the Chamber in the control of the Parliament on the police budget. Hereunder we comment on a few central issues the Court of Audit examined concerning police.

(1) Whereas the objective of the police reform was to provide the population with a basic police service of the same quality nationwide, two years later it appeared in a report of the Court of Audit in June 2004 that this objective cannot be met unless additional measures were taken. Furthermore the Court observed that the federal authority has not made sure that the minimum staff assigned for each police zone was sufficient to provide this minimum level of service. According to the Court's estimates the standard regarding the minimal staff was insufficient to ensure this in more than one out of four police zones.

(2) The police reform of 1998 implied a more planned and integrated approach of the safety policy. To that end a National Security Plan, prepared by the ministers of Home Affairs en of Justice at regular intervals, had to be submitted by the ministers to the Chamber of Representatives in plenary assembly, in addition to the budget of the police. Concerning the National Security Plan the Court of Audit made a report in June 2005. The Court concluded that not all conditions were in place to implement it. The Court of Audit observed that reporting to Parliament about the National Security Plan remained incidental. The Minister of Home Affairs concluded from the audit that the direction taken by the Government still needed to be developed and better framed in regulations. He added that he advocated an evaluation of the National Safety Plan conducted in association with Parliament and that he was in favour of further developing a transparent security policy and determining the responsibilities and priorities of all active parties. Since then, the Court of Audit nor the Chamber returned on the issue in a systematic way.

(3) In February 2015 the Court of Audit examined the role of the federal police services in the selection procedures of the operational framework as well as of the administrative and logistic framework (civil staff). The Court concluded that the procedure is time-consuming and is not immune to a subjectivity bias. Moreover, the selections of administrative and logistic staff were not always implemented with due care, which led to multiple infractions and deficiencies.

### 2.2.4. Making laws

The Chamber, together with the Senate, is competent for constitutional matters. Only the Chamber of Representatives is competent for all other legislation. The Court of Legislation assists the Chamber in this task.

A MP can introduce a bill. Such a bill is preceded by a clarification in which he/she explains the objective of the proposed law. When a MP introduces a bill, he/she has to ask the assembly to take it into account. When this is accepted, the president sends the proposal for discussion within the appropriate commission of the Chamber. Also the government can introduce such a bill. Bills can be amended by MP’s. Finally each bill is voted within Parliament. We will go in more detail into this subject concerning police when we discuss the legalistic outcome of parliamentary enquiries.

### 2.2.5. Gathering policy information

MP's can formulate questions as well orally as in writing. Most questions are treated within one of the commissions of the Chamber. Important questions are raised during plenary sessions of the Chamber. Sometimes they are bundled in a debate on an actual theme. On a yearly basis MP's ask ± 1,500 oral and ± 2,300 written questions. It is up to the minister engaged whether or not to respond to a question (not mandatory). From this point of view, a question is something fundamentally different as an "interpellation". A question cannot lead to a resolution.

When it comes to police-matters a typical example is the question a MP raised concerning the number of police-officers is working in Belgium in detail[15]. The minister gave a answer to the MP, warning that Belgium has not a uniform method of calculation concerning the police capacity and that it is not possible to give a precise number of police-officers per 1,000 inhabitants. He stressed at that occasion that the local chief of police has to take care that his personnel is present in the streets. But, given the dispersity of the local police landscape, a mathematical oversight is not possible.

During the preparation of new legislation the Chamber or its commissions can organize hearings of external persons or institutions. This is an important way to make members of the civil society part of parliamentary work. Commissions can also install parliamentary enquiry commissions to research societal problems. The most striking example is the enquiry commission on disappeared and murdered children (the so-called Dutroux-case). Based on the results of this enquiry commission police and justice were profoundly reformed (we come back on this item). It is on the basis of all gathered information they can take legislative initiative.

### 2.2.6. Other tasks

Besides the competences mentioned, the Chamber has also other tasks, e.g. the nomination of the national ombudsman, the investigation of petitions of citizens, the designation of the counsellors of the Court of Audit, the granting of the Belgian nationality to foreigners, …

[15] Question asked by Flor Van Noppen (N-VA) to the minister of Home Affairs concerning the number of police-officers (January 1st, 2009).

# Chapter 3: Parliamentary enquiries on police

The federal Chamber has a right to execute enquiries, based on article 56 of the Constitution, by means of parliamentary enquiry-commissions. This right exists already from the Belgian independency in 1830. This right is regulated by the law of May 3th, 1880[16], which was changed by the law of June 30th, 1996. In this way the Chamber controls the actual government and the policy of former governments. Such an enquiry delivers a lot of information, which can lead to the improvement of the existing of new laws.

## *2.1. The installation of an enquiry-commission*

An enquiry-commission can be installed on the initiative of one or more members of parliament. In this proposal they describe the task of the commission as precisely as possible and that proposal is treated as a normal bill, which means: treatment within the engaged commission of the Chamber, possibility to amend it, research and approval by a normal majority in plenary session. The consequence is that there will be no parliamentary enquiry-commission against the will of the majority. Parliamentary enquiry-commissions are considered to be essential control instances of parliament in Belgium.

In certain cases, the societal pressure can be that important, that members of parliament have no other choice than to install such a commission. Each time there is virulent debate in the Chamber concerning the precise task of a parliamentary enquiry-commission. What has to be researched and investigated, and what not? Mostly this question is guided by the fact if there is simultaneously a judicial (independent) investigation concerning the same matter and whether of not both investigations hinder each other. Further questions are: What are the specific assignments? Mostly the question of the political responsibility is explicitly included. Which ministers are possibly engaged? Also the timing (the duration) and the composition of the enquiry-commission are part of the negotiations.

It is important to observe that mostly members of the opposition are participating in enquiry-commissions. One wants to avoid that members of the opposition contest the commission permanently, making a calm functioning impossible and giving a bad impression to the public. In certain cases even members of the opposition are designated as vice-presidents. Nevertheless, it is the common mores that the presidency itself is chosen amongst the majority. But even on this implicit rule there were exceptions in the past. Members of the enquiry-commission are chosen amongst and by the plenary assembly. No minimum nor maximum numbers are determined a priori. Notwithstanding that, a proportional representation is taken into account when it comes to the weight of political “fractions”. It is the commission itself that designates its president and vice-presidents.

[16] Before the law of May 3th, 1880 the chamber had to make each time a specific law to install a parliamentary enquiry-commission.

## *2.2. The competences of an enquiry-commission*

The parliamentary enquiry-commission has the same competences as a investigating judge[17] in a criminal case (Devroe et al, 2017)[18]. Mostly a parliamentary inquiry-commission uses only a part of these competences, e.g. hearing witnesses under oath, confront witnesses, seize and confiscate documents, order searches and visit places. For certain investigating acts the commission has to ask the intervention of the first president of the Court of Appeal, who will designate the competent magistrates for these tasks. From that moment on, the engaged magistrates function under the guidance of the president of the enquiry-commission.

The commission can also call upon the help of the Standing Police Monitoring Committee and the Standing Intelligence and Security Monitoring Committee, the oversight bodies on police and intelligence services that depend directly from parliament[19]. Enquiry-commissions are also often assisted by "experts", mostly academics with a certain reputation and experience in research and policy, or experienced magistrates. The meetings of the enquiry-commission are generally public, except when other decisions were taken.

Members of the enquiry-commission are obliged to respect secrecy concerning classified information received during non-public meetings. The observations are written down in a public report, that is discussed in the plenary session of the Chamber. It is the Chamber that draws conclusions and recommendations concerning eventual political responsibilities. In most of the cases it is the intention to improve policy and structures for the future[20].

## *2.3. The frequency of enquiry-commissions*

During the first half of the 20th century parliamentary enquiry-commissions were rarely installed. The instrument is more frequently used from 1980 on, with the installation of enquiry-commissions concerning a number of tragic events. Of course, this parliamentary instrument is

[17] This means: the arrest of a suspect, the interrogation of suspects or witnesses, the assignation of someone, the search of the house and confiscation, the designation of an expert, tracing and tapping of telecommunication or internet, the search on the body, placing someone under observation and the visit of places.

[18] Devroe, E., Malsch, M. Matthys, J. & Minderman, G. (2017) *Toezicht bij strafvorderlijk overheidsoptreden*, WODC rapport, Den Haag.

[19] The Standing Police Monitoring Committee en its Investigating Service are functioning under the direct supervision of the parliament. This Committee is controlling police and other law-enforcement agencies on their own initiative or on demand. The personnel of the Investigating Service stemming from police forces, and transferred tot his service. They are paid by the Standing Police Monitoring Committee and no longer by their former service. The investigators operate under the guidance of the College, 5 councillors, mostly (but not necessary) magistrates, of the Committee. This College is led by their president, who is by definition a magistrate. There is no hierarchical relation between the members of the College and they decide fraternally. The councillors have all the competences of a police-officer. Deze laatste relatie is echter niet hiërarchisch: het College van raadsheren beslist steeds collegiaal. The Standing Police Monitoring Committee is controlled by a parliamentary guidance-commission (for more information: consult the chapter regarding the Standing Police Monitoring Committee).

[20] Besides parliamentary enquiry-commissions, parliament can decide to install "Special commissions". Such commission treat important and delicate matters, but have less competences than the normal enquiry-commission. That is the reason why they are more rapidly installed. During their existence they can be reformed into a enquiry-commission.

not only used for police-matters. In the table underneath we present the parliamentary enquiry-commissions since the Belgian Independency in 1830 up to today which dealt with police-matters. In total there have been 29 enquiries in the Chamber, of which 6 concerned police-matters, and 8 in the Senate, of which 2 concerned police-matters.

*Table 2* : Overview of parliamentary enquiry-commissions in the federal parliament dealing with police-matters (Chamber and Senate)

**Enquiry-commission in the Chamber**
1985: Commission on the Heizel-drama (football-disaster): The causes and circumstances of the drama.
1988: Commission on the Brabant Killings I (mass-murders in shopping malls): The struggle against banditry and terrorism.
1992: Commission trade in human beings: Enquiry on the development of a structural policy concerning trade in human beings
1995: Commission on the Brabant Killings II (mass-murders in shopping malls): Changes in the functioning of police and justice
1996: Commission Dutroux (massive case of paedophilia): How the investigation was done by police and justice
2016: Commission assaults: The reaction of government on the terroristic assaults in Brussels on March 22nd, 2016

**Enquiry-commissions in the Senate**[21]
1980: Commission on private militia's: Problems in maintenance of public order and private militia's
1996: Commission Organized Crime: Enquiry into organized crime in Belgium

In total there were thus 8 parliamentary enquiry-commissions on police. None of the enquiry-commissions of the regions or communities was dealing with police-matters. Logic, while police is not their competence.

## *2.4. The outcome of enquiry-commissions on police*

### 2.4.1. The enquiry-commission of the Senate on Private Militia's

The Commission[22] was being presided by the Dutch-speaking social-democrat Wijninckx and operated from June, 19th 1980 until July 10th 1981. Origins of its installation were the rise of extreme right militias that popped up in Belgium by the end of 1970 (Ponsaers, 2017). Its purpose was to detect why the Act against private militia wasn't enforced. Other goals were analysing the alleged power abuse, conflict of interest and state undermining practices within the national Gendarmerie, as rumours existed on a direct link between extreme right militia and this national police force. This Commission was important as it was the first to analyse certain parts of the Belgian police system. The result of the parliamentary activities in this Commission were disappointing. A messy meaningless report was produced in June 1981, the Commission was called "amateurish, without significant in-depth debate" and did not lead to any policy measures. It became apparent that MP's hadn't enough knowledge on police matters (Capelle, 1982). Nevertheless, a positive result was that the awareness of MP's on police matters grew. The procedures the commission developed stood example for Commissions to come.

[21] While since 2014 the Senate has no right anymore to run enquiries, we mention only those enquiry-commissions installed during the period 1831-2014 dealing with police-matters.
[22] The full name of this commission is '*The study of problems of public order in general and in particular on the execution of the Act of July 29th 1934 prohibiting private militia adding to the Act of January 3rd 1933 on production, trade and possession of arms and trade in munition".*

### 2.4.2. The enquiry-commission of the Chamber on the Heizel tragedy

On May 29th, 1985 one of the biggest disasters in football history occurred in Brussels, called the 'Heizel tragedy'. During the *football match Liverpool-Juventus Torino, just before the* final of the Europacup, Liverpool supporters stormed the (than neutral) stage partition full of Juventus fans. Heavy violence and riots were the logic consequence. Thirty-nine fans died and more than 400 were injured. This commission[23] was installed under presidency of the French-speaking social-democrat Robert Collignon. This Commission led to early elections in October 1985, while some federal Ministers took their consequences and resigned.

The Commission came to her conclusion very quick, already on July 9th, 1985. Again, the report was disappointing, while a real diagnosis of the causes why police did not function well was missing (Ponsaers & De Kimpe, 2002). It became nevertheless clear that one part of the stadium was under supervision of the Gendarmerie national, while the other part was under supervision of the municipal police, both forces not working together. The Commission investigated this lack of cooperation even sharper, and a new "unity of Command" was installed in case of big events in the future.

A concrete result however was the creation of the "*Football Law*" (so-called Law Tobback). The establishment of a "disaster plan" for events housing a huge amount of visitors and certain risks possible, was made mandatory. Also, the Heizel stadium was completely rebuilt.

Closely linked to the activities in the parliamentary Enquiry Commission, the penal process followed in 1988 and 1989. No Ministers were convicted at that occasion.

### 2.4.3. The enquiry-commission of the Chamber on the Brabant Killings I

The judicial investigation on the Gang which committed the Brabant Killings[24] staying unsolved, the discussion of the functioning of police and justice in Belgium flared up. Within public opinion, this case led to great unrest and feelings of insecurity and therefore a new parliamentary enquiry was installed, called the *"Parliamentary Inquiry on the way the fight against banditry and terrorism is organized".* The Dutch speaking Christen-Democrat André Bourgeois was president. The enquiry commission started on May, 24th 1988, with the main task to investigate how the police and justice system operated during the investigation of the acts attributed to the Gang of the Brabant Killings. One of the main questions was if this Gang had as their main objective to destabilize democratic institutions and if any links occurred between members of the Gang and public institutions. This Inquiry was in fact a prolongation of the enquiry on "private militia". The exhaustive draft report was published on April 30rd 1990, the final report on May, 2nd (Parliamentary research, 1988).

[23] Full name *"Parliamentary Enquiry Commission on the causes, the context and the lessons to be learned from the tragic events occurred on Wednesday May, 29th 1985 during the football match Liverpool-Juventus Turijn".*
[24] The Gang killed 28 persons. The attacks of the Gang started in 1982; the latest raid occurred in 1985, during a raid on a supermarket in Aalst.

The main finding was that the three police services (gendarmerie national, municipal police and criminal police) functioned in a non coordinated way and did not work together. Distrust between police officers mutually and between magistrates and police officers was huge, with even tensions within one police force. The police lacked capacity and means to tackle organized crime. The need to install a legal framework on the use of more intrusive methods of investigation, like infiltration and the use of informants, telephone tapping and provocation became very obvious. Police was not organizing 7/7 in order to respond to all events and complaints, so wasn't able to deliver a quick provision, and the national police alarm did not efficiently operate.

The Commission recommended to reorganize the police education and to install new regulations and rules in order to remove rivalry between police corpses. For the first time in Belgian history to reform police. The ideas on reform were still unclear, but during the coming years they will crystallize. In any case, this commission delivered pioneering recommendations for the later police reform in Belgium. In first instance, the three different police forces were untouched, but territorially organized according to the existing judicial jurisdictions.

The findings of this enquiry led (in June 1990) to a very ambitious governmental plan, the so-called '*Pentecost Plan I'.* The Gendarmerie was demilitarized by law, meaning a transfer of management from the Minister of Defense to the Ministers of Interior and Justice (each for their own competences). The municipal police forces were in great need of modernization, by decent equipment and professionalization and an adequate police training. The objectives were to install community-oriented police, charged with primary care to citizens. The merging of the criminal police with the Gendarmerie was not yet proposed.

The so called '*Law on the Police Function'* created common ground for the three existing forces, giving one regulation on police competences for police-officers of the three forces. Division of labor, core tasks and the so-called '*Pentagon Concertation*[25]' found their place in this Law.

The "*Pentecost Plan*" installed a national institute with a support function for the three police services, the *'Federal Support Police Unit',* which was installed in 1994. This body added to an efficient improvement of the collaboration and coordination of the different police forces. In 'security covenants', specific engagements attained by concertation, were agreed concerning objectives and arrangements between the three police services.

In 1992, the successive government installed the '*Pentecost Plan II',* still a result of the final report of the 'Brabant Killings' enquiry. This Plan added police care for victims, modernization of police infrastructure and decreasing administrative burden for police officers. Politicians pleaded increasingly for collaboration between different municipal police forces. The global structure of the Belgian police system however stayed intact. By the end of 1994 most of the policy intentions of the *Pentecost Plan II'* had led to different new Laws.

[25] This means a local concertation between the Mayor, the Public Prosecutor and representatives of the three police forces.

Successive ministers of Interior broadened this policy of collaboration with the setting up of so-called '*Inter-police Zones*', local formalized collaborations between different forces on a voluntary basis on the same territory, being together responsible for the care to the local community living on this territory.

Last but not least: The May 1988 parliamentary enquiry commission into the approach taken to tackling organised crime and terrorism (or the 'first commission of enquiry into the Brabant killings' for short) drew a number of conclusions regarding parliamentary oversight on police. This resulted in the installation of the Standing Police Monitoring Committee, *"[...] An external body with the task of monitoring all those with policing powers should be established, as internal oversight has been found wanting. [...] This oversight body would have a supervisory role rather than any disciplinary function. In other words, it would be in charge of monitoring how police duties are performed and should report regularly to the Government and to Parliament"*.

Conclusion: This parliamentary enquiry commission and the successive governments did opened the way to the reform of the architecture of a new police system and provided an important instrument for parliamentary oversight (Reform in 1998, supra).

### 2.4.4. The enquiry-commission of the Chamber on trade of human beings

In 1992 a book was published by a known journalist (Chris De Stoop), "*They are that kind*". In the book the author described the way young girls were forced into prostitution. He was the fist to made the network of international trade of women public. Public pressure made that a proposal to install a parliamentary enquiry was introduced. The commission "*on the development of a structural policy, aiming to sanction and abolish the trade of human beings*" resulted from on December 23th, 1992. The commission functioned under the presidency of the Social-Democrat Johan Vande Lanotte. Because trade of human beings is complex, the commission focussed on trade of women and sexual abuse (Parlementair Onderzoek, 1993-1994).

While the theme was very sensitive for pressure, most witnesses were heard behind closed doors and the commission took the decision to deviate of the normal rule of public treatment. During the activities of the commission it became also clear that the work of the designated experts lacked a legal and organisational regulation (De Ruyver, 1998). The commission made clear arrangements with the media and the debates could be held in a serene atmosphere. To this the anonymity of the witnesses profited, also of the rights of defence of possible prosecuted persons was guaranteed. The commission made a written protocol with the General-Attorneys concerning the right to consult judicial files by the commission. All participants complied strictly to the protocol. On March 18th, 1994 the commission presented its report to the Chamber.

The commission concluded that, as long as the causes (economic inequality) are not removed, the phenomenon would not disappear. The commission observed that networks of traders in human beings use gaps in the existing legislation, more specifically in the legislation on

foreigners and in social law, e.g. concerning political asylum, marriages of convenience, legal persons and au pair.

Concerning the functioning of the police, the commission drew different conclusions. The classical investigations methods were considered to be insufficient to obtain correct and complete information. It was necessary to install a service for internal oversight within each municipal force, under the supervision of the chief of police. The commission considered that the disciplinary regulation of police was deficient. Disciplinary law seemed often to be confused with penal law, there was not enough oversight on the application of disciplinary measures and a deontological code was missing. A profound reform with uniform rules and policy was necessary.

The commission also concluded that police was to a large extent unmighty against organized crime and the risk for fading norms after long employment with this specific environment were present. The commission asked for a rotation mechanism, and police-officers should not be exposed during a long period in this zone of risk. Furthermore, the commission observed that those services which were engaged in investigating in prostitution and trade of human beings were almost exclusively composed by men. The employment of female officers was encouraged.

Because not all infringement could be tackled by means of penal law, the commission pleaded for an approach within social law, insofar the practices were not mingled with violence, complaints of minors and trade of human beings. According to the commission, this was the way to improve the social position of sex-workers. The absence of collaboration between different governmental levels (federal, regional, local) corroded the efficiency and gave rise to misuse. A collaboration was demanded between the federal and regional authorities, which should make possible to coordinate the policy concerning the delivery of licences to stay and to be employed in the country. Also a better collaboration between different administrative services was necessary.

One can conclude that this commission succeeded to make a structural analysis of the problem. The commission was not focussed on the search for perpetrators and those who were responsible for disfunctions. The penal cases the commission had observed were transmitted to the competent judicial authorities. The most important outcome was the Law on the Trade of Human Beings of April 13th, 1995. By means of this law trade and smuggling of human beings became punishable as well in penal law as in the law concerning foreigners and the victims of this trade were recognized.

### 2.4.5. The enquiry-commission of the Chamber on the Brabant Killings II

On June 13th, 1996 the Chamber approved the installation of a second "*Parliamentary enquiry commission concerning the mandatory adaptations to the organisation and functioning of police and of justice, as a consequence of the problems which became manifest during the investigation on the Brabant Killings*". The presidency was taken by the Dutch speaking Christen-Democrat Tony Van Parys. On October 14th, 1997 the commission rendered its report public, one year before the police reform of 1998.

This second commission on the Brabant Killings had as specific task to execute "an investigation on the investigation". The commission worked further on the conclusions of the first commission concerning the same gang. During this period there was another parliamentary enquiry commission working (on the Dutroux-case, see later) (parlementair Onderzoek, 1997-1998), to which the commission on the Brabant Killings II often referred. The commission stressed in its report the fact that the prosecutor's office had insufficient oversight and leadership on the functioning of the police. The commission pleaded for the installation of a structured federal prosecutor's office. The leadership of this new federal office had to be independent and not function under the authority of the Attorney-Generals.

Again the commission pleaded for the simplification and uniformization of the disciplinary procedures for the members of the different police services, referring explicitly to the "*coming reform of the police*". For the commission it was up to the magistrates to take initiative concerning judicial tasks of the police-officers. The magistrate who neglected this should be asked to render accountability. Investigating magistrates should be involved, according to the commission, in the determination of the number and the selection of police officers working on a specific file. Moreover, sanctions should be possible when police services withheld information.

The same commission stipulated that it was no longer necessary to transcribe all registered phone calls, which led to an impressive backlog. There were also questions concerning the way police was running their informers. A lack of control was observed, because territorial dispersity. In this way some of these informers succeeded to manipulate police services.

The commission was convinced that the problems wouldn't disappear when magistrates refused to take the real lead during judicial investigations, and judges that distrust between de criminal police and the gendarmerie national is "*a legitimate ground for the integration of police services*". The way is opened to reform with this judgement, at least when the magistrates are willing to assume leadership.

### 2.4.6. The enquiry-commission of the Chamber on the Dutroux case

The events during the summer of 1996 make clear that the functioning of the public prosecution and the police stayed problematic at the occasion of the case of the child abductor and murderer Marc Dutroux. Two girls are liberated out of a cellar. For two other girls help comes too late. The investigation points out that they were murdered some months earlier and their bodies were fount in August 1996 in the garden of Dutroux. The bodies of still two other girls were found in September of the same year. Fast it becomes clear that there are an amount of mistakes made during the investigation.

The parliament doesn't accept any longer immobilism and resistance to change. This leads to the installation of an enquiry commission under the presidency of the Dutch speaking Liberal Marc Verwilghen concerning "*the way police and justice conducted the investigation in the case of Dutroux-Nihoul and C*°". The commission should conclude clearly on the necessary

adaptations to the functioning of justice and police. A first report was deposed on April, 14th 1997 and the last followed on February 16th, 1998 (Parlementair Onderzoek, 1996-1997).

Between the work of the commission on the Brabant Killings II and this new commission were a lot of overlaps. This was not a pure hazard, while both of them had to look to the functioning of police and justice during judicial investigations. The public expectations were high when this new commission started. The functioning of this commission was to a large extent contradictory to that on the trade of human beings. The sessions of the commission were all public, with the assistance of the media and a lot of external pressure. The problem of the simultaneous treatment of a judicial and parliamentary enquiry became frequently clear. The more MP's started to realize that the activities of the commission became deficient after some time, leaks could be observed of confidential information towards the press, the confidence of the magistrates decreased and the proposals were less unanimous.

The report of this commission contained on the one hand the bottlenecks of the investigation into the murdered and missed children, on the other hand it was this commission that formulated a declaration of intention and proposals concerning the reform and modernization of police and justice.

The commission did two central observations concerning police. It concluded that the mutual rivalry between different police service was contra-productive effect on the investigations. The more the investigating magistrate led the activities, the more this competition disappeared. The use of special intrusive investigation methods stayed problematic. The use of them were not professional: magistrates confined themselves to the control of the legality and informers made use of the rivalry op police services. Specially the non-registered informers deemed to be problematic.

The observations of the commission were translated in different recommendations. The commission was aware of the fact that a simple demand for more collaboration was insufficient, while former commissions already did. The commission spoke out in favour of a qualitative and integrated police-care, structured on two levels, with on the hand on federal level the integration of the existing police forces in one structure, and with on the other hand a community oriented police, divided in inter-police zones. A decentralised structure should be put in place, giving local authorities room for autonomous functioning. In very raw lines this became the matrix for future reform of the police. Also should be given more attention to the improvement of the oversight on police by the Standing Police Monitoring Committee.

The proposal of the commission stayed nevertheless vague and could be interpreted in different ways. The government was not on the same line concerning the precise interpretation of a police reform. The government asked refinement to another "expert"-commission it installed. This "expert"-commission was asked to deliver an concrete implementation plan of the recommendations. In the report of the last "expert"-commission, where also representatives of the different police services were participated, the idea of one integrated police service, structured on to levels (federal and local) gained field. The local forces should form a zone of three to four municipalities. The federal police combined executive and support services.

The escape of Dutroux on April 23th, 1998 increased international pressure. During his transport from the court to the prison he succeeded to escape. The public anger reached its climax. Citizens were gathering massively in "White Marches" in the streets of Brussels. Prime Minister Jean-Luc Dehaene organized an urgent consultation. The ministers of Justice and of Home Affairs resigned. The commander of the gendarmerie national took the same consequence. An unavoidable reform presented itself. The Prime Minister reached a agreement on May 23th, 1998 at the occasion of a special arrangement between parties of the majority and the opposition and members of Parliament and the government. The Law of December 7th, 1998 was the logic consequence of these events.

### 2.4.7. The enquiry-commission of the Senate on organized crime

On 18 July 1996 the Senate took initiative to install a parliamentary enquiry commission concerning organized crime in Belgium. The objective was to do "*a research about the size, the nature and the seriousness of the organized crime in Belgium; the way the phenomenon can be tackled: and to draw conclusions and recommendations aiming at the realisation of this objective*" (Parlementaire commissie 1998-1999). The commission referred to the parliamentary enquiry commission in the Netherlands concerning the same subject (commission Van Traa). The commission had two co-presidents, the Dutch speaking Christen-Democrat Hugo Vandenberghe and the French speaking Social-Democrat Roger Lallemand.

In its conclusions the commission observes that Belgium doesn't possess a clear and consistent image of criminal organisations. In comparison to other neighbouring countries the commission observes a backlog in knowledge. The commission did important work in specific sectors, more precisely in the meat-, diamond and oil industry.

The commission stated that the participation with criminal organisations should be better defined and should be more severely sanctioned. The means of investigation should be adapted and a more adequate definition should be formulated to terrorism. The commission also pleads for more elbow-room for the prosecutor's office. The commission states further that the approach of organized crime may not be narrowed to a problem of penal law. Also the administration has to take adequate measures. The delivering of licences and concessions can be improved and should be concerted with other services.

To problem of access to information is linked to different aspects which can be understood because of dismemberment of databases, services and places. The commission stated that this worries its members while the coordination and collaboration between several services and actors is detriment, whether they are of administrative, police or judicial nature. Each of them disposes of fragmented information, which makes an efficient combat against organized crime impossible. A multidisciplinary approach is precondition. The commission pleads for a concentration of information.

The commission also demands a better feedback to local police forces by the judicial authorities. Information as private phone numbers and financial data should be better accessible. The commission observes that the new law concerning the federal prosecutor's office encountered to a large extent the difficulties. The commission stressed the necessity to

have a better law on special intrusive investigating methods. This led to the Law on these methods (Ponsaers, 2003).

The commission also stressed the implementation of witness protection programmes. Concerning a new law concerning suspects who regret their acts and want to collaborate with justice doesn't find a majority.

### 2.4.8. The enquiry-commission of the Chamber on the assaults of March 2016

After the attacks on the national airport Zaventem and the metro station in Maalbeek Brussels the parliamentary enquiry commission "*on the circumstances having led to the terrorist assaults of March 22nd, 2016 at the airport of Brussels-National and the metro-station Maalbeek Brussels, including the evolution and the enforcement of the fight against radicalisation and the terroristic threat '* (Parliamentary Enquiry, 2017) was installed. President was the Dutch speaking liberal Patrick Dewael.

The commission resulted in four reports: two on service delivered to the victims, one on the security architecture and one on radicalization. The commission resulted in an agreement on the conclusions and recommendations concerning the security architecture, which is - from a police point of view - the most important issue. A lot of disfunctions concerning the global security architecture were determined by the Commission. The new police structure was not subject of the debate, but the question was how the police structure links with greater parts of the global security architecture.

The commission identifies missing opportunities to dismantle the present terroristic networks. Causes were the lack or inefficient efforts in terms of capacity and means; insufficient collaboration between police services; no information sharing between police units, security services, intelligence and judicial services; insufficient procedures and regulations; limited international cooperation and the complete lack of an integral security approach. The commission pleads for a real security chain, away for "islands" where each step is linked to the next one. Information exchange and cooperation between services and governments, also on international level, is crucial according to the commission for a adequate law enforcement, where a pro-active approach and prevention are crucial. Again, the main lack is the culture of information sharing between security services.

Fifteen 5 years after the Police Reform, aimed at a more performant information sharing, partitions and walls still exist hindering a performant and efficient collaboration and information sharing. The information position of the security services, so mentioned by the commission, in radical environments and on social media, is still restricted. Information has to circulate fluidly between federal and local police units, the five specialized federal counter terrorism units, the prosecutor's office, the local police, intelligence services and also the prison administration. The commission pleads for a "cross informational database" as a supplementary tool for an integrated data management between different security services.

The Commission points at certain disfunctions within the federal police and proposes structural reform, which leads to drafted bills, more precisely on:

- The enforcement of the role of the commissioner-general of the federal police. Striving for consensus with the directors of the administrative and judicial police (like today) is still the fundamental idea. The commission recommends that the commissioner-general of the federal police solely decides in absence of consensus. The Commission further advises that the federal police needs to abandon the strict division between administrative-judiciary police, a point of view which is new within the Belgian police system;

- The minister of Justice and the college of attorneys-general need to be involved in daily management and important decisions on the judicial pillar of the federal police;

- The management of the federal police capacity need to be fully in place, in a way that all tasks can be executed in an efficient way. Today only 11,000 of the 13,500 positions are filled in. There is a need to address specific profiles and an more active diversity policy;

- The five deconcentrated specialized investigating units of the federal police are redesigned by the commission. Their functioning and internal collaboration must be optimized. The commission stresses in this regard the need for one operational culture and strategy within these counterterrorist units;

- The central counterterrorist unit of the federal police does not function in an optimal way due to capacity shortage, lack of management, leadership and internal structuration. In practice this division does not function as the coordinative and supportive body she needs to be for the five deconcentrated specialized investigating units of the federal police. It is the sharp recommendation of the commission that the central division will be reorganized;

- The Commission pleads for a legitimate and accountable system of prioritization based on an optimal information position;

- Dismissals of the prosecution's offices on terrorist files need at least to be motivated.

The commission stresses the importance of administrative performance by local police and local authorities in the framework of prevention and follow up on cases. Even the local police has an important role to play in case of terrorist threat. Community policing and neighborhood work within local police services is an important source of information concerning radicalization of citizens and needs to be re-valued. The position of beat-officers in neighborhoods in local forces needs to be more attractive to police recruits. Sometimes the scale of certain local police zones is in hindering this. Again here, voluntary fusions and associations between police zones need to be encouraged. A broader active diversity policy is needed within the police force; police officers of immigrant roots have valuable knowledge and expertise and often specific access to certain sources.

The commission concludes that very few exchange exists between judicial authorities like the police in investigating cases and the prosecutor's office on the one hand and administrative authorities on the other hand. Regional bodies and institutions, play an important role, according

to the commission in the prevention of radicalization (like education, sports, integration, care and well-being, youth,…). The commission recommends to legally consolidate the collaboration with the local authorities and the administrative authorities of the local police.

Therefore a transparent policy architecture and a clear management and decision-making structure is needed, where the role of the federal, regional and local authorities is commemorated. In last instance, it is important to mention that the the enquiry-commission on the assaults of March 2016 transformed itself in a guidance committee, charged with the follow-up of its own recommendations, which has, ultimately, implications for the future functioning of the Belgian police system.

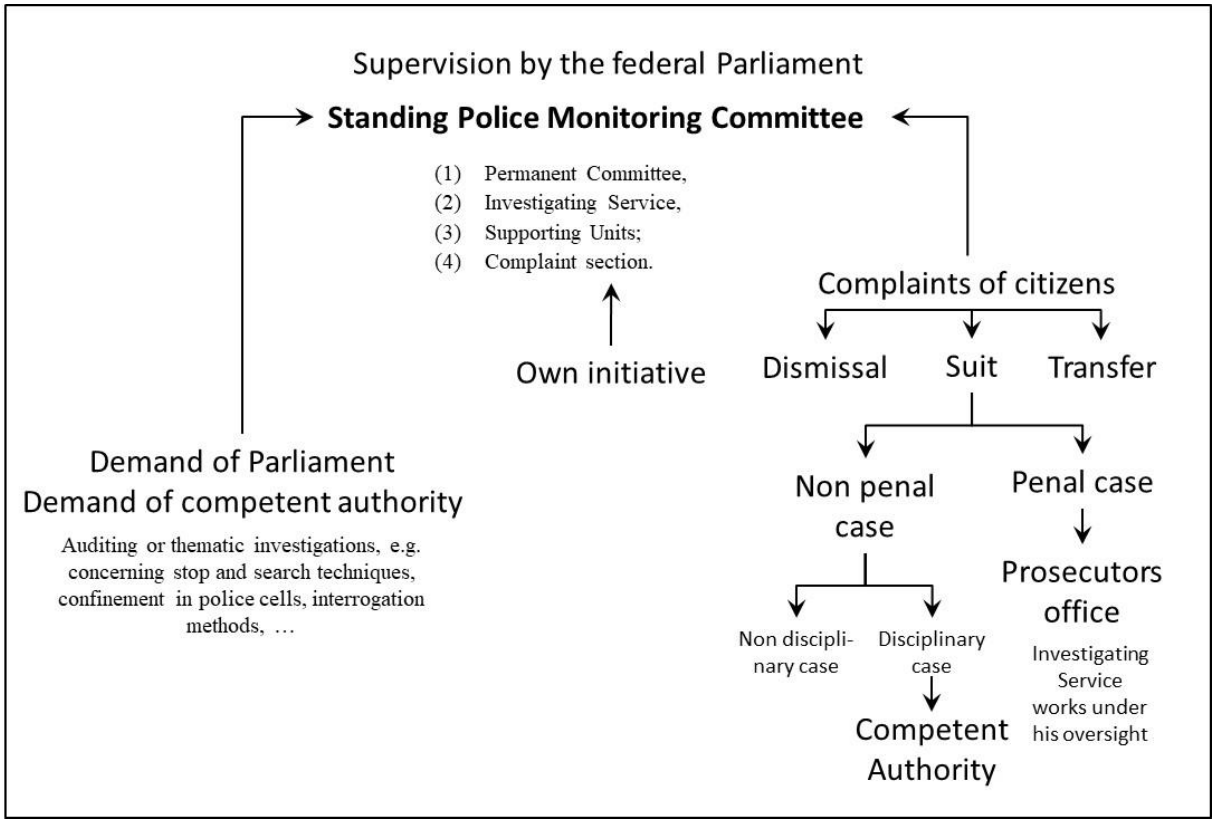
# Chapter 4: Parliamentary oversight on police by means of specific instruments

## *4.1. The Standing Police Monitoring Committee*

### 4.1.1. A unique parliamentary instrument in Europe

The Standing Police Monitoring Committee was installed by the Law of July 18, 1991. This was to a large extent the consequence of the parliamentary commission of the Chamber on the Dutroux case. These law deals with the oversight on police and intelligence services, also on the Coordination Unit for Threat Assessment. It is an external institution, as well towards the executive power, as towards the police forces[26]. The Committee is composed of four components: (1) a Permanent Committee (the "College"), (2) a Investigating Service, (3) supporting units and (4) a complaint section[27].

*Graphic 5* : Different inputs and treatment by the Standing Police Monitoring Committee




[26] See: http://www.comitep.be/NL/index.asp?ID=Intro
[27] See: http://www.comitep.be/NL/index.asp?ID=Org

The Permanent Committee ('College") is composed of five members, assigned by Parliament[28] for a period of 6 years[29]. This means that the Permanent Committee is directly depending on Parliament, which creates a unique position in the world, besides Canada. The Permanent Committee is conducting investigations into the activities and the functioning of police services[30], as well on its own initiative as on request of the Parliament or of competent authorities[31].

Of all these investigations, the Permanent Committee draws a confidential report[32], but the Permanent Committee can decide to make these reports (partially or completely) public after some time[33]. The Permanent Committee treats also complaints concerning the functioning of the police services[34]. These cases have a more specific nature than the investigations on its own initiative or on request. The Permanent Committee has the independent competence to decide to suit or not a complaint, or to transfer the complaint to another instance[35]. When during investigation becomes clear that the complaint has a possible penal nature, the Permanent Committee has obligation to inform the prosecution office or the investigating judge and to transfer the complete file[36] to the magistrate. This is also the case when the acts under observation are possibly under disciplinary scrutiny. If this is the case, the competent authority has to be informed[37].

The president of Chamber of Representatives can demand the Standing Police Monitoring Committee to research on specific items. In that case the Committee will research intensively a specific aspect. An example is the question which was raised after riots in Brussels on November 11th, 2017 to research the six police zones of the region of the Brussels capital city in respect of the maintenance op public order. In response to this, the Standing Committee delivered a extensive report on the collaboration between the different police zones.

### 4.1.2. The role of the Investigating Service

[28] Art. 4 part 1 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[29] Art. 6 part 1 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[30] Art. 9 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[31] Art. 8 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[32] Art. 9 part 3 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[33] Art. 13 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[34] Art. 10 part 1 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[35] Art. 10 part 2 and 3 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[36] Art. 22 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[37] Art. 23 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.

While the Permanent Committee is only composed of 5 members, the execution of the investigations mentioned above is confined to the Investigating Service, under the supervision of the Permanent Committee[38].

The Investigating Service deals also with another type of investigations, more precisely researches the service possible penal acts, committed by members of police services[39]. In this circumstances, the members of the Investigating Service work no longer under the supervision of the Permanent Committee, but under that of the magistrate who is responsible for the investigation[40]. It is the Permanent Committee that designates the investigators who will treat the case[41].

This moment, the Investigating Service is composed of 48 members, led by a director-general, who has two assistant directors-general. All of them are assigned by the Permanent Committee for period of five years, which can be renewed. Some members are stationed by a police service or an administration. They need to have at least 5 years of experience in the domain of policing[42]. All the members have the competence of an officer of judicial police and are assistant officer of the public prosecution[43], which enables that they can treat the cases mentioned above. Furthermore, a number of research procedures are regulated. E.g. a person who has to be interrogated, can be called in writing or even summoned[44]. Information that is considered classified had to be rendered, except when it concerns a running judicial investigation[45]. The assistance of the public force (i.e. the police) can be revoked for the execution of different tasks[46]. In last instance, the members of the Investigating Service are allowed to enter places were police-officers execute their duty. Documents and items can be confiscated[47].

[38] Art. 15 part 1 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[39] Art. 16 part 3 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[40] Art. 15 part 2 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[41] Art. 20ter Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[42] See : http://www.comitep.be/NL/index.asp?ID=Org#3
[43] Art. 21 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[44] Art. 24 §1 and 2 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[45] Art. 24 §2 part 2 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[46] Art. 25 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.
[47] Art. 27 Law regulating the oversight on police and intelligence service and the Coordination Unit for Treat Assessment.

*Table 3* : The evolution of started criminal investigations on demand of the public prosecutor and the investigating judge and complaints from the population (treated by the Investigating Service and researches of oversight during the period 2016-2018) [48]

| | 2016 | 2017 | 2018 |
|---|---|---|---|
| Criminal investigations | 127 | 138 | 81 |
| Complaints (all) | 2663 | 2733 | 2965 |

### 4.1.3. The role of the parliamentary guidance committee

As well the Standing Police Monitoring Committee as the Standing Intelligence and Security Monitoring Committee are accountable to a parliamentary guidance committee. Members of the opposition can become member of this guidance committee. The committee has specific competences, more precisely to propose the designation of the members of the oversight bodies to parliament, to receive the reports of those bodies and to take initiative accordingly vis-à-vis the parliament and the competent ministers. Furthermore the members have the right to consult the files that are under investigation by both bodies, to discuss matters which are related to police and intelligence services. Again it should be stressed that in individual files confidentiality reigns. The guidance committee is also the place where parliamentary discussions are held concerning new initiatives for law.

In 2014 a new regulation is accepted concerning the composition of the guidance committee. From now on every political fraction has at least one representative in the committee. When the new composition is realized on November 13th, 2014 a long lasting discussion starts concerning the secrecy members of parliament are supposed to apply. In the past there were leaks to the media and there is a deliberation on the question whether or not the members have to sign a document to guarantee confidentiality. Some of the members even mention that all persons involved should endure a security screening. In the end was decided not to go that far and to count on the professionalism of all members.

During an important amount of interviews we held with members of the guidance committee we concluded that the dialogue within the committee is considered to be constructive[49]. The activities are called “profound”, “professional” and “critical”. The members are satisfied with the culture of discussion in the committee. They say that it is helpful that the meetings of the guidance committee are behind closed doors. “*There is no reason anymore to play political games*”. Also: “*There is no reason anymore to score*”. The respondents experienced a certain comradeship beyond the boundaries of political parties. Everybody asserts that there is nobody beyond the law, neither the members of the committee. Some ask for a more frequent assembly of the committee (now it is in practice 2 or 3 meetings a year).

[48] Source: Different annual reports of the Standing Police Monitoring Committee. See: http://www.comitep.be/NL/index.asp?ID=Reports

[49] Ponsaers, P. (2017). "De strijd om de controle op politie en inlichtingendiensten", *Cahiers Politiestudies, Herinneren en vergeten in de politie*, nr. 45, 79-114.

A real monitoring of the consequences given to the recommendations formulated by both Standing Committees does not exist. Some members of the guidance committee consider this as a important shortage. Sometimes the members of the committee have the impression of reacting not timely. The investigations of both Standing Committees take a long time and go slowly. It happens that after a meeting of the committee a session is planned with the Premier or Vice-Premier. In other words: there is clearly a dialogue between members of the executive and legislative power.

### 4.1.4. The evaluation ot the Standing Police Monitoring Committee

Other respondents from outside the guidance committee[50] stresses that Belgium is under severe scrutiny, compared to other European countries. "*I hear and feel daily that police-officers feel inhibited. We have a culture where police is almost that controlled that they cannot act independently without the consent of a authority, whether it is a judicial or administrative one, or of the Standing Police Monitoring Committee. This is now already some years the case and this is still becoming more severe. We have a lot of control agencies. In certain sensitive domains, where the application of special (i.c. intrusive) investigating methods, the control is very strong. We have internal commissions, validating commissions. This is not only because of the rule of law, but also because the fear of police-officers to make procedural failures*". It is important here to make the distinction between the judicial and the administrative missions, a heritage of the imperial Napoleonic period in Belgium. In a large number of other European countries, this distinction is less important. This is the reason why administrative sanctions are treated by the mayor (in more severe case by the minister of Home Affairs), and judicial sanctions are treated by the magistrate. "*Penal investigations are executed under supervision and leadership of the prosecution office. The results in a very short distance between police-officers and magistrates. Both know each other very good because they often collaborated for years. This is a potential danger*".

The respondent explains further what are the typical additional control-mechanisms in Belgium. He makes clear that there are three institutions which are engaged in parliamentary control: (1) the privacy commission, (2) the Standing Police Monitoring Committee and (3) the recently installed control-institution on police information (COC) (see further). He calls the amount of services that are responsible for parliamentary control "unique". "*These control institutions are important and are perceived by the police services as real inspectors who are above the police. The Standing Police Monitoring Committee has proved to be solid. It already exists since '91 and is engaged in three kind of complaints: (1) those which are not of a penal nature; (2) the oversight researches (auditing or thematic investigations, e.g. concerning stop and search techniques, confinement in police cells, interrogation methods, …); (3) pure penal (or criminal) judicial investigations, where the investigators have the competence of officers of judicial police*". The last category are those cases were the Investigating Service of the Standing Police Monitoring Committee (about 50 persons with a police background and competences) function under the supervision of the prosecutors office.

[50] He is member of the prosecution office, former counsellor of the Standing Police Monitoring Committee, member of the COC (Control of the Police Information) and the Privacy Commission.

We asked the respondent whether or not there is overlap with the functioning of the General Inspectorate. He answered: "*The General Inspectorate does in general terms somewhat the same as the Standing Police Monitoring Committee. The General Inspection has also a disciplinary competence and intervenes also in assignments and promotions, but does also audits, while the Standing Police Monitoring Committee compares the functioning of the police on the working floor with the written law. The Standing Police Monitoring Committee is not a auditing service in the real sense, while the General Inspection researches if something is alright, not by necessity in relation to the written law".*

There exists a protocol between the Inspector-General of the General Inspection and the Standing Police Monitoring Committee. In this protocol the division of labour between both institutions is elaborated. We asked if this repartition of labour is clear for the citizens and other instances. The respondent answered negatively on this question. "*The relationship between the Standing Police Monitoring Committee and the General Inspection has been a critical point from the start, partially because of personal insight of leaders. Today the relation is better. This is the result of the existence of this protocol. But today still, authorities can sent their demands to one or another service, while there competences <u>are</u> partially overlapping. I think that this division of labour should be still be more explicit. It is not sane what happens today. The difference between authorities and parliament. In general the General Inspection is an instrument of the authorities, while the Standing Police Monitoring Committee is an instrument of parliament. This difference should be more elaborated. I even think that the Standing Police Monitoring Committee should be able to ask support from the General Inspection. In other words: today there is division of labour, but no collaboration. There are matters in which the General Inspection is working excellent, e.g. auditing, but the Standing Police Monitoring Committee will never ask to work together in this framework with the General Inspection".*

In other words: the division of labour between both services is of a administrative and bureaucratic kind. When the ministers ask for specific investigations or controls, the services follow the protocol to divide the work in a fair way. In any case, questions stemming from the parliament are to be executed by the Standing Police Monitoring Committee, which several times per year accountable to parliament. Another respondent[51] states: "*I think that there are a lot of oversight institutions on police. Some of them work better than others. The most obvious problem is the lack of coherence. We have too much oversight and not enough clarity who has which precise mandate and what planning has to be followed. E.g. one of the central policy-orientations is the elaboration of an integrated and integral security, which has to be evaluated. But it is unclear who is going to evaluate this. In the meanwhile the government started its policy, but the decision on the evaluation is still not taken. One should have decided that the Standing Police Monitoring Committee was going to take the lead in this evaluation. The Standing Committee and the General Inspection work with a different finality for different authorities. It is not clear in what way they are interconnected. E.g. when a chief of police has to be evaluated, it is not sure that the deciding committee will take the reports and controls of the Standing Police Monitoring Committee and the General Inspection into account. The coordination and integration between those instances is absent. Everyone uses its own tools to execute controls. The parliament has the Standing Police Monitoring Committee, the ministers*

[51] President of the federal police council.

*of Home Affairs and Justice have the General Inspection, and apart from that you have the different internal services for oversight of the local and federal police. By the way: the last one mentioned is not functioning according to the standards. The federal internal oversight started much too late. The relation between the internal oversight and the control services is also unclear. Moreover, the police has a general negative perception of control".*

We asked if this unique Standing Police Monitoring Committee is functioning now according to the standards. The answer on this question is ambivalent. "*In earlier days the Standing Police Monitoring Committee was much more functioning adequately. In those days there were more structured investigations and publications. That disappeared today to a large extent. I think that the Standing Police Monitoring Committee played its role better in the beginning. There are now less constructive conclusions and controls, while you would expect that it would go both ways: firstly, what goes wrong, but also, what is functioning well and how can we improve things. That is the value of control. Now it became more and more an incident-driven instance, which is underemployed in a structural manner. It became more an ad hoc instrument when there are problems. What is the sense of control? Is it about the organisation? About the activities? About the production? About the results? Mostly the Standing Police Monitoring Committee is dealing with the functioning of the services, less with the results that are achieved in society. In this framework it should be important to monitor the satisfaction of citizens. Therefore, we make a difference between control and evaluations. The satisfaction of the population is no longer measured. At the occasion of the drafting of a new policy-document on integrated and integral security, I asked the Standing Police Monitoring Committee of what information they disposed on this matter. It was terrifying little. They have a lot of information on incidents, but few structural reports. We are well informed concerning controls on paper, but because of the negative functioning, the effect is immobilizing".*

Is the Standing Police Monitoring Committee doing enough? Can we draw lessons from former experiences? The same respondent answers this negatively. "*About the coherence of the instruments (control, discipline, evaluations, assignments / promotions / renewals of mandates, etc.) the Standing Police Monitoring Committee never made a global report. It should be the role of the parliament to inform and (re-)orient the use of that instrument. The Standing Committee never took that role and that is a missed opportunity".*

We asked whether the personnel of the Standing Police Monitoring Committee is highly motivated and educated. We got an interesting answer: "*When it comes to the Investigating Service of the Committee, we don't have always the best people. I see that there are a few frustrated members, who manifest themselves in a non reasonable way. It should be the top of the police organisation in terms of quality, but the people who want to work within this Investigating Service are not the result of that kind of mechanism. Nobody who has a successful career within the police asks to work for this service. You should attract people, there should be a career-plan. There should be people with experience. It is good that there are collaborators with police experience, but attract them within a career trajectory is not existing. There is a negative selection of frustrated people. They don't receive internal guidance or training. There have been attempts to work together with similar services internationally. But there are not may similar institutions and each country has its own model. I think that the European parliament is interested in such an evolution. But that implies a certain agreement*

*in vision. When I consider what kind of domains of new competences the European parliament is assuming, they could install a Standing Police Monitoring Committee at European level. Now they invoke a service that does investigations on customs and financial affairs for the European Commission. But that service is perfect for financial investigations, but not for the tasks of a Standing Police Monitoring Committee. For the execution of the European legislation one could easily take initiative that is complementary to the Belgian one. Then you have something where the actual Belgian Committee can play a role in the framework of Europol. But also a committee at European level is necessary for the implementation of European measures, more precisely where she works collaborates with national Justice and the national police forces*".

We insisted on the theme of coherence between evaluation, control and discipline. "*You have internal oversight in the zones and disciplinary oversight in case of defective functioning. You have a federal disciplinary instrument with the disciplinary council which intervenes when it concerns serious cases. This is considered to be a heavy and bureaucratic apparatus. But matters of discipline are different than control. Discipline is sanctioning, while control is the evaluation of constructive and destructive initiatives. Control can end up in discipline or in judicial investigations, but that is mostly not the case. Discipline has a certain influence on the system of control, on the maintenance of discipline, and the principles of community, progressivity and proportionality. With these instruments it is possible to remediate certain missteps. Discipline is important for those cases one doesn't want to go to the judge. According to me there is no relation between the Standing Police Monitoring Committee en de Disciplinary Council. The Standing Police Monitoring Committee never evaluated the disciplinary system and that is strange for a instrument of oversight working for the parliament*".

Concerning the question whether in Belgium sanctioning is swift and serious, all respondents agree:

"*Frequent sanctioning is absent. Certainly at the highest level*"[52].

"*Mistakes are seldom rectified or sanctioned. In the Dutroux-case*[53]*there were sanctions taken. I think that sanctions are taken when there is manifest reluctance. There is of course a difference between ignorance, reluctance and negligence. It is possible that people make mistakes. One cannot know everything. That is what I call negligence. Ignorance exists when people are hired for a specific function and are not prepared for that by means of guidance programs. We talk of reluctance, then there should be sanctions taken. I think that there is not enough coherent sanctioning. The non-application of the law is to me a serious infringement. Also under- and over-policing are part of that. We know the improper use of infiltrators and informers. I think that we don't learn enough in specific cases and that there is not enough sanctioning. This can be on individual level, but also on structural level, because it is possible that the individual police-officer is responsible, but is also possible that the organisation (and the leaders of it) are punishable because of the lack of guidance and steering of their personnel. I think we lost a part of this during time. The collective responsibility of police leaders is important. Everyone*

[52] Chief of local police zone.
[53] A case of child abuse, that was highly exposed by the media.

*has the right to make mistakes. But this has to be avoided. But when it comes to manifest reluctance or ignorance one can expect that there is a reaction. I never met a chief of police against whom sanctions were taken because of that. This is one of my most important frustrations. We have intrusive control agencies, but we are too lenient in the sanctioning of individual disfunctions and also in our collective approach of specific cases. The Standing Police Monitoring Committee should detect over-diligence, but also negligence (doing not enough efforts). When there is a shooting incident, the committee starts an investigation. When it comes to extreme violence the system is functioning, but for other disfunctions, it doesn't work. A clear example are thefts during searches and confiscations. Until now I didn't notice any consequence in terms of making an inventory of confiscated goods"*[54].

### *4.1. The Supervisory Body for Police Information Management (COC)*

The Supervisory Body for Police Information Management (abbreviated COC) is the autonomous federal parliamentary body in charge of monitoring the management of police information and also the data controller for the integrated police service, the Passenger Information Unit and the General Inspectorate of the Federal and the Local Police[55]. The Supervisory Body for Police Information Management is a collateral institution of the Federal Parliament. It is vested with extensive supervisory and monitoring powers over the various services and organisations. These powers relate to all the aspects of information management by the aforementioned institutions.

The Supervisory Body is a small-scale organisation. It is composed of three members-advisers who make up the *executive committee* (DIRCOM) and who have been appointed by Parliament for a term of six years. Their mandate is a full-time one with the result that they no longer form part of their original corps. The COC is chaired by a magistrate and also seats a magistrate from the public prosecutor's office and one expert.

The Supervisory Body also has an *investigation agency* which again numbers three members, two of whom to hail from the police services and a third one to be an expert. They each bear the title of investigating commissioner and are appointed by DIRCOM for a term of six years.

And last but not least, there is the *support service* which also seats 4 members: one executive assistant, 2 lawyers and one IT specialist. These members too are appointed by DIRCOM.

With its ten-member structure, the COC is vested with the *statutory task* of monitoring and supervising the following organisations and services in the vast field of data management and information technology:

1. The entire integrated police service, i.e., the Federal Police (more than 50 units) and the local police corps (in excess of 180 police zones), or some 240 units in total numbering about 50,000 members of staff;
2. The General Inspection of the Federal and Local Police (AIG);
3. The Passenger Information Unit (Bel-PIU).

[54] President of the federal police council.
[55] See: https://www.controleorgaan.be/nl/controleorgaan

The general privacy law on data-protection[56] provides certain rights to citizens. Amongst those the right for access, to rectify or to delete certain data. When it comes to police data, the law is more restrictive, but assures that citizens can consult in an indirect way their rights by means of the oversight body. It is precisely this right that COC has to assure. In other words, COC is competent to access the police databases and to verify the authenticity.

[56] Law on data-protection of July 30, 2018.

# Chapter 5: Conclusions

Belgium has with certainty the most oversight bodies on police in Europe. Police is, as we state, 'overcontrolled'. The role of the Parliament, a unique construction in Belgium, is one of the most important oversight institutions in that regard. Without denying the important work performed by Parliament during the execution of its regular parliamentary work ("interpellations" by MP's of the government, the dialogue with government by means of "questions", the functioning of regular parliamentary commissions, the support of the Court of Audits and the Court of Legislation, …) we have to acknowledge that the most important form of parliamentary oversight on police in Belgium is the establishment of different successive parliamentary *enquiry commissions* on the subject of police. It is clear that because of these commissions the MP's in the Chamber of Representatives deepened their knowledge in police-matters and learned to know in a cumulative way the bottlenecks of the system.

The successive recommendations of these commissions resulted in a complete new legal framework for the police, ultimately in the reform of the police system. Not only that, a complete set of new laws on specific items was delivered after each of these enquiry commissions. We mention here, by means of example, the football-law; the law on the police function; the law on intrusive investigating methods; the law on trade in human beings; …

Moreover, the commissions not only produced new legislation that made it possible to modernize the Belgian police, but they also monitored (and repeated their critics on) the implementation of their recommendations in practice, and - if necessary - stressed their point of view and the policy to be followed. This way of functioning wouldn't have been possible without the existence of a large number of parliamentary enquiry commissions.

Another important acquis of these commissions is the fact that Parliament provided itself with a number of important oversight bodies, as the Standing Police Monitoring Committee and the Supervisory Body for Police Information Management, which resulted in their turn of the same commissions. These parliamentary oversight bodies provides the Parliament reports and evaluations, which permit a permanent form of oversight, like the parliamentary guidance committee on the Standing Police Monitoring Committee, which functions as a regular parliamentary commission.

In this way, Parliament is no longer dependent of the information members of government want to deliver, but has its own instruments for the development of a desired policy. This leads to the observation that Parliament in Belgium is the most important body (institution?) motor for oversight on police. Moreover, the fact that a parliamentary enquiry runs simultaneously with a judicial investigation seems to be no embarrassment for success.

It should be stressed that this form of parliamentary oversight cannot function without teamwork between Parliament and government. It is clear that the implementation of the recommendations of the parliamentary enquiry commission needs to be assumed by the

government. The most striking example of this observation lies in the fact that only after the initiative of the Prime Minister to bring
(1) members of the Parliament and of the government; and
(2) members of the political majority and of the opposition;
around the table, the police reform in Belgium was possible. This demonstrates the general consensus which has to become apparent to make such a structural intervention possible. A prerequisite for this consensus and the will to succeed is without any doubt the fact that public pressure is present by civilian interference which makes acting urgent and mandatory.

Oversight implies different aspects. Three of them are: (1) gathering information, (2) evaluation and (3) intervention (sanctioning). All of the oversight bodies in Belgium, whether they belong to the legislative or executive power, perform the first two aspects mentioned. Parliamentary oversight bodies, e.g. the Standing Police Monitoring Committee, cannot sanction. It is always to the competent administrative or judicial authorities to intervene at this level. Administrative authorities belong mostly to the local government (Mayor) and the city council. Because of that, it is logic that these authorities have their own oversight bodies (e.g. General Inspectorate, internal oversight bodies of local police forces, disciplinary bodies, …) and complement by necessity these of Parliament. It is precisely the interplay of the different oversight instances that assures a solid framework. Belgium has a rather complex police system, which makes also oversight a complex matter.

As transparency is somehow missing, this is a hinderance for citizens, wondering whom to address their questions to. This fragmentation of oversight bodies results even in different databases (e.g. of complaints) of different bodies executing oversight. Also data on the ultimate decision taken in specific cases and files is dispersed in different databases. In respect to this question, it is important to mention that, as well for parliamentary enquiry commissions as for the functioning of the Standing Police Monitoring Committee, transparency is guaranteed, because of the public character of their findings. This is not always the case for oversight bodies of administrative and judicial authorities.

Returning to the central research-question in the introduction of this report, we respond on the question: "*What are the strengths and what are the limitations of parliamentary oversight which are critical and what should we try to measure?*". Bearing in mind this conclusion, we recommend:

- To monitor the recommendations of parliamentary enquiry commissions and their oversight bodies in terms of what has led to law making and practical implementations and (most essential) what not. Such a scoreboard doesn't exist for the moment and is most important to create a comprehensive oversight of the work (to be) done.

- In order to increase transparency for citizens, another scoreboard would be handy. Accessible flyer mentioning the different competences of each of the oversight bodies (federal, regional and local) dealing with police complaints would be handy. An inventory with the type of complaints (violence used by police officers in an disproportionate way, complaint not noted ad police desk, no follow up on administrative or judicial personal dossiers, etc….)… indicating the body (with contact-

persons) to turn to, would be a guiding manual in the complexity and fragmentation of oversight bodies on police matters.

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# Graphs and Tables