

Improvement of Civilian Oversight of Internal Security Sector Project

ICOISS Phase II



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PARLIAMENTARY OVERSIGHT IN BELGIUM

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Reference to the Description of the Action	
Component	C. Civil Society and Media
Activity	C.2 A minimum of 5 parliamentary meetings and discussions on civilian oversight held with the participation of 30 Members of Parliament
Output	C.2. Report of the parliamentary discussions on civilian oversight
Description	• Presenting a description of Parliamentary oversight in Belgium



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The Belgian System of Parliamentary Oversight of the security sector

The Belgian political system in a nutshell

Belgium is a parliamentary democracy. The basis of all laws is the Constitution. It has no executive head of state. The King has no formal authority apart from representing the state and signing laws (which he is not allowed to refuse or amend). He is not sovereign as he pledges allegiance to the Constitution.

Real executive power resides with the prime minister of the federal government, who is sworn in by the King, after obtaining a majority vote of confidence in the newly elected parliament.

Belgium has a bicameral parliamentary system, a Chamber, also called the House of Representatives (the Lower House) and a Senate (the Upper House). Despite the historical terminology, most legislative power now resides in the Lower House, while the Senate only retains specific competences regarding the Constitution and the relations between the Belgian communities. Members of parliament do not pledge allegiance to the King, only to the Constitution.

Belgium has three linguistic communities: the Flemish community (56 %) is Dutch speaking, the Wallonian community (34 %) is French speaking, the German community is German speaking (0,6 %). The inhabitants of the Brussels capital region (10 %) are mainly French speaking. The Brussels public institutions are bilingual Dutch/French.

In the federal parliament (House and Senate) all members of parliament speak their own native language Dutch or French at all times. All sessions of committees and plenary have permanent simultaneous translation. When a member of the German speaking community is elected in the national parliament, he/she is speaking French when speaking without prior notification. When he/she so advises the services beforehand, he/she can speak German with proper simultaneous translation provided at the expenses of the parliament.

The House and Senate have permanent committees according to the rules and procedures. These rules and the number of Committees can be changed by a majority vote in the plenary.

All issues pertaining to the specific rights of linguistic communities and to the use of languages by public services can only be changed by a special majority, consisting of a majority within each separate language group in the parliament and a 2/3 majority vote overall for the entire parliament.

Genesis of the present legal framework for parliamentary oversight of security services

Belgium is one of the first countries in the world to establish a system of parliamentary oversight of security services in 1991. This did not come from any wise foresight, but out of the specific circumstances surrounding the abysmal performance of these security services from the '70s to the early '90s of the previous century.

1. The intelligence services

In the '70, during the heights of the Cold War, consecutive Belgian governments constituted intelligence services, without ever providing a legal framework. Several ministers expanded the security services, according to what they perceived as their needs on an ad hoc basis.

There was no clear mandate, no clear legal boundaries, no precise definition of what the intelligence services were supposed to do. Everything started by establishing 'intelligence departments' within the national police. Up until 1991, officers in the intelligence services were officially 'police officers' assigned to do intelligence work.

This gradually created a situation where officers had a career in intelligence while still being officially members of the police, but never having worked in the police proper.

At the end of the Cold War, these intelligence services needed a new purpose. When trying to define that new role, the government had to admit that there never had been an official purpose or legal framework of these services.

During this period of transition after the Cold War, several scandals broke out in the media about gross cases of misbehavior of these services over the previous years.

Not only were they wiretapping on a regular basis without any legal framework allowing them to do so, but several intelligence officers and specific departments within the intelligence services had been using gathered information for other purposes than national security. Individuals were being blackmailed on a massive basis for private gain, while relevant information on real security matters was never used appropriately.

2. The police services

The same period, the '70s tot the '90s, was also the time that saw the emergence of the trade and use of illegal drugs. Just like with the intelligence services, specific antidrug brigades had been established within the national police, without a proper legal framework.

In a similar vein as with the intelligence services, the police developed a methodology on an ad hoc basis without proper check of legality and constitutionality. Consecutive ministers allowed for this system to be 'institutionalized'.

At a certain moment the antidrugbrigade began to develop operations of entrapment and of phonetapping, again without any legal framework. Things developed to a point where seized quantities of drugs were put back on the market – allegedly to track down and catch drug gangs.

After a number of years, without proper oversight from the government and unbeknownst to the parliament, these operations became lucrative selling operations in their own right. Things were finally exposed when some police officers could no longer resist the temptation to transform their illegal proceeds into a visibly opulent lifestyle.

It was thanks to zealous fiscal inspectors and the courage of some investigative journalists that a scandal broke out, leading to the disbandment of the existing antidrug brigades and the conviction of several officers to lengthy prison sentences.

These two scandals, in both police and intelligence services, led to the development of an elaborate system of parliamentary oversight that is still operational today.

Conclusion

The Belgian system of parliamentary oversight is one of the first of its kind in the world, not because of some wise foresight of the political institutions but out of profound embarrassment, on both national and international level.

In the meantime no problems were arising in the military (apart from a corruption scandal in the procurement department of the army). Therefore Belgium developed a system of parliamentary oversight of the security sector that does not include the defense department.

General characteristics of the Belgian system

Parliamentary oversight of the security services is not direct, but functions through an intermediary control mechanism within the police and intelligence services. Two permanent committees have been established within both the police and the intelligence services that report directly to the parliament.

Within the context of the bicameral parliamentary system, it was decided best that each separate parliament, House and Senate would have oversight of the Police and Intelligence services separately.

The legal framework of parliamentary oversight is defined by the 'Law of 18 July 1991 for the regulation of oversight of Police and Intelligence Services and for the Coordination Institute for Threat Analysis (as amended and reorganized on 1 April 2011)'.

The quality of the oversight hinges on two crucial elements:

1. The earnestness of the staff recruited for the office of these two permanent control committees within the Police and Intelligence Service
2. The earnestness of the members of parliament to actively engage in the work of the oversight committees in the House and Senate respectively

Control mechanism within the institutions

The Permanent Committee for Control of the Police Service (**Committee P**) consisting of five members and one secretary position and the Permanent Committee for Control of the Intelligence Services (**Committee I**)

1. Members must be Belgian citizens
2. In possession of their full civil rights
3. Minimum 35 years of age
4. Reside in Belgium
5. Relevant experience of 7 years minimum
6. Have a security clearance for access to confidential data
7. Renewable terms of six years
8. Have no other paid mandates
9. Membership in only one of both committees

The Committees P and I have at their disposal their own staff for inquiries and operations. They can also appoint ad hoc officers of the Police or Intelligence Services for specific tasks, in coordination with the superior officers of these officers.

A yearly report on all findings to the parliament is mandatory. Other reports in between can be delivered on an ad hoc basis when the Committees so desire or when the parliament orders them so.

In practice, parliamentary oversight is organized by the establishment of a **Follow-Up Committee on the Committee I in the Senat** and a **Follow-Up Committee on the Committee P in the House of Representatives**.

The members of parliament appoint amongst their own seven members to be members of these Follow-Up Committees. Once appointed, the seven members appoint among their rank a Chairperson.

The Chairperson prepares the agenda, presides meetings and organizes meetings, visits, contacts and collection of information on behalf of the Follow-Up Committee.

Individual members of the Follow-Up Committee can not personally contact members of the Committees P and I. This can only be done after deliberation and majority vote in the Follow-Up Committee. Contacts are organized by the Chairperson, but the Follow-Up Committee can also delegate one other member for specific tasks.

Handling of confidential data

The police and intelligence officers, members of the Committees P and I, all have security clearance and therefore can access all confidential data as they see fit. Breaches of confidentiality are dealt with according to the relevant laws.

This is not the case for the members of parliament. They can access confidential data after deliberation in the Follow-Up Committee, having heard the officers of Committees P or I accordingly.

While the members of parliament are bound by the same laws as any other citizens, they do enjoy parliamentary immunity from prosecution. However, divulging confidential material to the press by a member of parliament does not absolve cooperating journalists from judicial prosecution.

The problem arises what to do with an elected member of parliament who breaches confidentiality regulations. In that case, they will be barred from membership of the Follow-Up Committees, pending a decision of the plenary to eventually lift their parliamentary immunity.

This has not occurred since the law on parliamentary oversight exists since 1991, mainly for two reasons. It is established political culture that political parties do not retain members of parliament in breach of confidentiality as candidates for the next election. It is considered political suicide for a member of parliament to breach confidentiality legislation because it will make it impossible for him/her to function further in the parliament, as no colleague will cooperate.

This still leaves open the possibility that a member of parliament might decide to take such a step. It is not yet clear what would happen if this occurs.

Results

Overall, the system of parliamentary oversight has proven quite successful. In twenty two years time, the overall public image of both the police and intelligence services have improved significantly.

In opinion polls on public trust of institutions, they now rank higher than the media and politicians. Scandals do still erupt every now and then, but compared to the situation in the beginning of the '90s, they are small scale.

The establishment of the system of parliamentary oversight has evolved into a quite symbiotic cooperation between the institutions and the parliament. Improvement has also come from a new transparent communication culture, developed and aided by the parliamentary oversight.

Scandals no longer erupt because some journalist exposes misdoings; nowadays the police and intelligence services take care to be the first to communicate to the press and the parliament.

The system of parliamentary oversight also had a substantive pre-emptive effect on the police and security services, in that they have developed a culture of internal prevention of misbehavior.

Also, it turns out that the parliamentary Follow-Up Committees decide by consensus in almost all cases. Decisions by majority vote have been extremely rare and occurred mostly at the start of the system of oversight.

The system is far from perfect. It functions quite well within the Belgian political context. It is far from given that a copy/paste of such a system would produce the same results in other countries, with a different history, a different political culture and a different socio-economic context but it can provide many examples of good practice.

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