

**International Conference “The Belgian police ... A centre of excellence”
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Workshop Law Enforcement

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Ladies and Gentlemen,

When the organisers of this conference asked me to say a few words about law enforcement to this police audience, I gladly accepted, because I believe it is absolutely necessary to draw attention to the specific concerns of the administrative police whenever possible.

Whether it concerns the local police, the federal police, the ministry, a mayor or a governor, anyone bearing responsibility for public security, strives towards the same goal. But a chain is only as strong as its weakest link. The administrative authorities have to take responsibility as well and support you in the excellent job you are doing, not by leaving the problems to the police, but by addressing them together with the police, by providing the necessary means, by negotiating with the judicial authorities, by helping you to communicate with the media, and by taking into account police advice before taking unrealistic decisions.

We all know this: an incident is stronger than an argument. But that should not keep us from saying what we stand for and how we want to proceed. I believe this is an excellent occasion to do so.

You are working in the field, while I am just a “dusty” civil servant. It is not my intention to tell you from behind my desk how you should do your job. However, I would like to discuss, based on my own experience, what I regard as evolutions in the field of public order and national security and as challenges for the future.

I would like to discuss the following issues:

1. Police Capacity
2. Liability
3. Special methods
4. Conclusion

1. POLICE CAPACITY

When we talk about police capacity in the field of public order, we cannot but say a few words about football. A positive evolution in that area can be noted, but I still believe we need to stay alert here. For the past three seasons, police capacity for football matches in Belgium has dropped by about 30 percent. That is a positive evolution owing to the more efficient functioning of the police organisation, combined with a firm administrative prosecution policy, but I still believe we have to remain modest about this progress.

Football still takes up (too) much of the public order capacity, not only the capacity of the police zones directly concerned, but police capacity throughout the country, both local and federal. We should not be under any illusions as to this: today, in our country, hooliganism is very limited. Today's hooligans in Belgium are still the same as those five years ago, only have they grown older, found a job, raised a family, are paying the mortgage of their houses etc. So even if the phenomenon is relatively limited today, we have to keep in mind that this can change very quickly. We need to stay alert.

And this is exactly the question that I would like to put forward here, not only about football, but also for any event or risk we are confronted with. A short strike in a prison might not cause a major problem, but what about a three-week nationwide prison strike? What about the increasing number of security escorts for all those VIPs and those – real or presumed – VVIPs? What about long-term protection for magistrates under threat, exhausting our police capacity for individual cases, a police capacity that was intended to serve the entire community? What if we are faced with massive roadblocks using heavy materials like trucks or containers?

And what will we do in case of an important terrorist attack on our territory? There are no concrete indications that this will happen in the near future, but neither can we exclude it. And let me assure you: at that moment, police services will see their protection and surveillance missions increase substantially and it will be very difficult to reduce them quickly afterwards.

When discussing police capacity there is one vital question to keep in mind: are we capable of managing a long-term crisis situation of national scope, without hampering basic police service? Do we dispose of a sufficient capacity of well-equipped, well-trained and sufficiently experienced units and do we dispose of the necessary solidarity mechanisms? The necessary capacity, not only for those moments when everything is on fire (scramble procedures), but also for long-term missions, taking several days, weeks or even months.

It is a difficult paradox: we have to make sure that we keep as few passive reserves as possible, but at the same time we have to be capable, whenever needed, of mobilising a large capacity for long-term missions and major riots. This is my question to this centre of excellence today. Law enforcement is one of the six tasks of the local police's minimal services to the population and it is also one of the most important support tasks for the federal police. We have evolved from the rigid requisitioning system of the original integrated police law of 1998 to a more pragmatic system of interdistrict solidarity ("*Arrosol*"), to mortgaged capacity ("*HyCap*"), to the Intervention Corps and to certain forms of lateral support. And was it a good idea to transfer the non-specialised capacity of the General Reserve to the Intervention Corps? That might be an interesting issue for the discussion time

2. LIABILITY

The organisers of this workshop insisted that I should say something about the legal framework of the administrative police. I would certainly like to do so, but this is not the right place to teach a law course. So what I propose to do, is discuss a certain number of evolutions I recently noted.

A first evolution has to do with the administrative police's liability, in the first place the mayor's liability.

Most often a mayor's role is underestimated, not only by external people, but also by the mayor himself and by the people surrounding him. This can well be understood, since mayors in Belgium are not civil servants, but politicians with an important societal mission that reaches far further than security and safety matters. In the triangle formed by the police, the judicial authorities and the mayor, only the police and the judicial authorities are "professional" partners (meaning: security is their core-business), while for the mayor, security and safety are only a few of his many tasks and concerns.

That is the *actual* reality, but opposite to that, there is what I would call the *legal* or *judicial* reality. The legal reality is that the mayor has an extremely important responsibility for police matters, as well as matters of civil safety, the fire brigade, prevention, integral security and the coordination between all disciplines and services. More and more we see that legal courts hold mayors liable in concrete cases, both in penal and civil law.

While previously law courts seemed to be satisfied with the question: "What has been done, has it been well done?", nowadays the question seems to be: "Did one do what ought to have been done?" This is not a simple task. Each evacuation of an airport e.g., causes enormous economic and social consequences, but if you refrain from doing it, a judge can hold you liable as well.

This evolution is very problematic for mayors, and you all know as much as I do: the same principle holds for what I just called the "professional partners". Many of you are familiar with the judgement by the Mons Appeal Court on October 10th, 2005, sentencing the Belgian State and the City of Liège of "*négligence fautive*". The Court found both the Public Prosecutor and a Police Commissioner guilty of "*négligence fautive*". The case was about a man who was known to violently abuse his successive female partners during many years and who had already been convicted to 6 months effective imprisonment and 3 years suspended. The man kept behaving aggressively against one of those women, but the Public Prosecutor did not have him apprehended again and the police did not provide effective protection for the woman under threat. Finally, the aggressive man threw a bottle of vitriol at the face of the woman, who became heavily injured. The Court then ruled that the Public Prosecutor and the (administrative) police could have prevented this tragedy.

3. SPECIAL METHODS FOR THE ADMINISTRATIVE POLICE?

Here is a second evolution which I would like to draw your attention to. It used to hold that: "What is not forbidden, is allowed". But these days more and more the opposite holds: "What is not explicitly allowed, is forbidden". This evolution is strongly influenced by the European Convention on Human Rights. Any interference in one's private life can only be allowed if it is necessary in the interests of national security, insofar as it is in accordance with a law that is accessible to the persons involved and that is sufficiently precise.

Legal framework concerning public order and national security, has seen major evolutions during the past 10 to 15 years: the 1992 Police Law, the 1992 Privacy Law, the 1998 Integrated Police Law, the 1998 Intelligence Services Law, the 1998 security classification and security authorizations Law, the 1998 Football Law (since last month extended to the entire territory), the 1998 Federal Public Prosecutor Law, the 2003 Terrorist Crimes Law, the 2003 Judicial Special Methods Law, ("*BOM*"), the 2004 Benelux Treaty concerning cross-border police intervention, the 1999 Municipal Administrative Sanctions Law (modified in

2004, 2005 and 2007), the modifications in 2006 of the Drugs Law, the 2006 Threat Analysis Law, and soon perhaps the Intelligence Special Methods Law (“*BIM*”).

Today’s question is: what if certain issues are not (yet) regulated by law?

Since the 1992 Privacy Law and the 1992 Police Law, we dispose of a global framework that ensures that the gathering and registration of information is confronted with the legitimate goals of the administrative police action and to the principles of necessity and proportionality and to the concrete importance of the information process. But can this global framework be considered sufficient regarding the requirements of accessibility and foreseeability meant by the European Convention of Human Rights? I fear this is a growing problem for the administrative police. The more legislation develops in other domains (judicial police, intelligence services, the new camera law...), the more we will be confronted with the lack of specific regulations for the administrative police.

I will illustrate this with an example.

My example is about sending mobile film crews to happenings, demonstrations or other high-risk events, in order to make images of incidents and thus identify the hard core of groupings participating in such events. The discussion is: how are we going to approach this, from a judicial point of view or from an administrative point of view?

Judicial road

If we take the judicial road, then, in principle, one should first obtain the Public Prosecutor’s permission to execute an observation with technical means (in accordance with the 2003 Judicial Special Methods Law (“*BOM*”), because in our example a certain category of persons is explicitly aimed at. The problem here is that the Public Prosecutor will only judge about the *judicial* purpose of the measure: are there serious indications that major criminal offences will be committed, legitimizing the observation? And do these offences belong to the priorities set by the Public Prosecutor’s Office? Last year we have seen a case in which the magistrate refused to allow the police to use cameras during a specific happening, while, according to me, there were very good reasons to gather as much relevant information as possible about the members of the extremist groupings participating in that demonstration.

Hence it follows that an operation that could be of major importance for public order maintenance and during which information can be gathered concerning groupings of special importance for public order are judged here by an authority that does not have to take into account the concerns of the administrative police! I am not referring here to the various services within the police organisation – also judicial services can do the observation – but I am referring to the authority that has to decide about something bearing importance on the public order, while this authority is in fact only competent for the judicial part.

Furthermore, on the view of the public order, a happening does not stand on itself, but information gathered during an event today can also be of importance while preparing tomorrow’s events. When at a certain moment there are major tensions between two population groups (e.g. foreign populations that are both represented on our territory) and, on the way to a demonstration between those groups, one finds a number of Molotov cocktails, then you know that a minor incident might lead to serious riots. In such high-risk situations, the identification of the hard core of trouble makers is essential for public order, not only for

that specific event, but for future events as well. When at a certain moment trouble makers mask their faces and commit vandalism, it is important to be able to have images of that person when he or she was not masked yet. Furthermore, sometimes it is too dangerous to apprehend the hard core during the event itself, because this could add fuel to the fire, so to speak, implying that it is better to opt for identification afterwards.

I believe it can be of importance for law enforcement to apply certain special methods, but when we can only base ourselves upon what is explicitly allowed by the law, then we have to use the instruments of the judicial police, judged by magistrates that are only responsible for the judicial part, not for public order.

Administrative road

The second option is that of the administrative police. At this moment, a directive by the Minister of the Interior (MFO-3) **allows** making video images or photos of high-risk events, to register incidents, to identify the persons involved, and to perform selective observations using cameras when dealing with groupings listed by this Minister. This possibility was made use of for example during the 2006 trial in Bruges against the members of a terrorist organisation and also while preparing bomb spotting actions. Images were taken according to the existing directives.

So that specific possibility does exist in practice, but on the other hand we have to take into account the evolutions in the legal landscape as well, and to try to get more effective legal arms for the future. It seems desirable to me to develop specific legislation for the use of a limited number of special methods to administrative police ends, such as the use of cameras, the use of police informants, the possibility to infiltrate certain private meetings and the possibility to use a false name, for instance to log on to websites or to be the addressee of the grouping's periodical or magazine.

There already exists a law proposal in which such competences are assigned to the intelligence services, but in my opinion that is not the right way. The intelligence services goals are different from those of the administrative police. For the police, it is important to know **WHAT** will happen, **WHEN** and **WHERE** it will happen and **WHO** will participate in it (event management), while intelligence services should concentrate on long-term tendencies and should answer the **WHY** question. Personally I believe democracy demands to not only leave these kinds of methods to the intelligence services, but also to assign a limited number of special methods to the administrative police ("*BAM*"). In the framework of the administrative police we can establish a clear link with a concrete interest for the public order, with short-term threats towards persons or towards our critical infrastructure.

Recently in Belgium, we have seen that persons were sentenced by the Correctional Court (Penal Court of First Instance) for being a member of a terrorist organisation, but were at the same time released by the judges, pending the definitive decision by the Court of Appeals. In such cases, it is not even possible to organise a judicial observation, due to the simple fact that the investigation is finished. A similar problem we have witnessed with foreigners, who were assigned to a fixed residence by the Minister of the Interior. Even if there might exist good security reasons to systematically observe these persons, no law provides that possibility. The actual law proposal provides in allowing the intelligence services to do so, but personally I am convinced that one should rather consider to allow the police services to organise systematic observations with technical means, in the domain of the administrative police.

The idea is not to organise a police state, but to merely provide the necessary legal instruments for the administrative police, in order to concentrate our efforts on the hard core trouble makers. I am convinced that this is the best possible guarantee for regular and peaceful civilians to freely execute their rights and liberties.

4. CONCLUSION

In the De Ruyver Commission's report, presented this morning, one can find some recommendations about optimising the use of the capacity, especially for football and for unexpected events (scramble procedures). It has also been found that repeated prison strikes lead to problems and that a minimal service by the prison guards themselves is requested.

Those findings and recommendations are, of course, correct, but they only expose part of the problem. Indeed, other long-term missions can be thought of, for which we will inevitably have to mobilise a large police capacity. I think we should be alert for that.

Besides this, the Commission also recommends focusing more on the hard core of troublemakers, amongst others by the use of evidence teams, or in other words by using mobile camera teams. I fully support this recommendation, but I do find, however, that sometimes there are differences of opinion with the judicial authorities. From a strictly legal point of view, there is a gap between penal procedures on the one hand, and doing nothing on the other hand and I believe that is not acceptable. I plead therefore for a separate legal framework for the special methods in the scope of the administrative police.

Furthermore, I have also spoken about the liability of, amongst others, the mayor and the police. On that point of view as well a professional police organisation is essential. And as we have been able to conclude at this conference, our police organisation has at least already laid the foundations of the building for excellent police functioning.

Finally, I would like to draw your special attention to one of the technical index cards attached to the Commission's report, namely the document concerning the administrative police's information management. We still wrestle with a historic backlog in the field of the administrative police. It should therefore be a priority for the new government to eliminate this backlog as soon as possible and to provide one integrated police informatics platform, both for the judicial and for the administrative police. We have to be able to ensure that the right information ends up at the right place. Pending the realisation of this integrated informatics platform, I think we should provide the District Information Crossroads (AIK/CIA) and the Deconcentrated Coordination and Support Directions (CSD/DCA) with all necessary means, such that they be capable to let all information, important to the administrative police, circulate effectively and in real time towards and within the administrative pillar, not only bottom-up, but also the other way round, both from and to the services on the field.