THE BELGIAN CIVIL INTELLIGENCE SERVICE: ROLES, POWERS, ORGANISATION AND SUPERVISION

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Abstract

This article gives a detailed view of the Belgian civil intelligence service: State Security.
The author describes the legal framework (1). Only since the nineties has the Belgian Parliament become actively involved in the matter. As a result, a comprehensive set of rules has come into being, clearly setting out the powers of the service. Today the service has eight, in some cases highly diverse, roles (3): it undertakes security screenings, for example, it is responsible for protecting VIPs, and it participates in legal investigations. But just like every civil intelligence service, its main role is to collect and analyse information relating to the security of the country. However, it is not the only body that does this. Although officially Belgium has only one other intelligence service (i.e. the military intelligence service), there are many other authorities that fulfil similar functions or tasks (2).
This contribution also describes in detail the powers of State Security in its work (4) and examines the organisation and management of the service, and the authority over it (5). Finally, supervision of the functioning of the intelligence service is discussed. Contrary to what is generally assumed, there are many authorities that can supervise the work of State Security or an aspect of it.

Keywords: civil intelligence service; roles; powers; organisation; supervision

15 October 1830. Belgium is 19 days old when the provisional government appoints five Administrators-General. One of them is appointed as head of Public Security (*Openbare Veiligheid – Sûreté publique*), the predecessor of the Belgian civil intelligence service. The service is given extensive policing powers. But the reason for its

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existence can be summarised in just a few words: the consolidation of the young Belgium. Since then the roles, powers, organisation and supervision of the service have continually changed. This evolution falls outside the scope of this article.[1] In this contribution we will only look in detail at the current position of the service, which is today referred to as State Security (*Veiligheid van de Staat – Sûreté de l'État*).

1. THE LEGAL FRAMEWORK[2]

Belgium has long awaited the development of a sound legal framework for State Security. Not until the nineties, in response to the results of a parliamentary enquiry on the fight against organised crime and terrorism, did the legislature undertake four important initiatives: the Act of 18 July 1991 governing the supervision of the police and intelligence services (Review Act), which organised parliamentary supervision of the work of State Security; the Act of 30 November 1998 governing the intelligence and security service (Intelligence Services Act), which sets out authority over and management of the service, and its roles and powers; the Act of 11 December 1998 on classification and security clearances (Classification Act), which governs the procedure for access to classified documents, and the Act of 11 December 1998, establishing an appeal body for security clearances (Appeal Act), which set up an independent administrative court.

The fact that the legislature did not take on its responsibility until late in the day does not mean that the civil intelligence service had to operate in a legal vacuum up until this time. There were a substantial number of royal decrees and ministerial orders, and many directives, some of them secret. Many of these rules still apply today.

Moreover, there has been increasing regulation in the field of intelligence work over the last few years. The two most important laws are undoubtedly the Act of 3 May 2005, which amended the Classification Act to enable security screening in a very wide range of sectors, and the Act of 10 July 2006 on the analysis of threats (Threat Assessment Act), which set up a Coordination Unit for Threat Assessment (*Coördinatieorgaan voor de dreigingsanalyse – Organe de coordination pour l'analyse de la menace*).

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1 VAN OUTRIVE, L., "Intelligence Services in Belgium: A Story of Legitimation an Legislation", in J.-P. BRODEUR, P. GILL and D. TÖLLBERG (eds). *Democracy, Law and Security, Internal Security Services in Comtempory Europe,* Hampshire, Ashgate Publishing Limited, 2003, 30–60 and LIBERT, R., "De geschiedenis van 175 jaar Veiligheid van de Staat", in COOLS, M. et al. (eds.), *De Staatsveiligheid. Essays over 175 jaar Veiligheid van de Staat,* Brussels, Politeia, 2005, 23–47.

2 The most complete and up-to-date collection of the rules concerning the functioning, powers and supervision of the Belgian intelligence services, can be found in the *Intelligence Services Codex. Functioning, powers and supervision* (*Codex inlichtingendiensten. Werking, bevoegdheden en toezicht*) issued by the Belgian Standing Intelligence Agencies Review Committee.

2. POSITION OF STATE SECURITY IN THE WORLD OF INTELLIGENCE AND SECURITY

The 1998 Intelligence Services Act stipulates that there are only two intelligence and security services: State Security, which is the civil intelligence service, and the General Intelligence and Security Service of the Armed Forces (GISS) (*Algemene Dienst inlichting en veiligheid van de Krijgsmacht – Service Général du Renseignement et de la Sécurité des Forces armées*), its military counterpart.

One of the main roles of the two services is to collect information on specific threats to the democratic constitutional and welfare state, and in the first instance to inform the government about them.[3] In turn the government can take or direct the necessary political, diplomatic, legal, administrative or even military measures.

But even if there are only two intelligence services according to the law, there are clearly also other authorities and even private organisations that (in part) perform the same *function*, monitor the same *phenomena*, develop the same *activities*, have the same *powers* and/or deliver the same *products* as State Security.

First of all, there is the 'administrative police', a function set up to prevent crimes (thus also crimes against the internal and external security of the State) and which is mainly fulfilled in Belgium by the federal and local police. Of course these services also have to collect information, and monitor certain people, groups or events that also attract the attention of the civil intelligence service.

But the 'judicial police' as a function also shares a common denominator with the intelligence function. Originally, this judicial function could be described as investigating crimes already committed. As such, there are few overlaps with intelligence work. But over the last few decades the difference between the two sectors has become blurred in a number of areas,[4] e.g. the way in which the fight against terrorism is conducted. This development is mainly the result of two legislative initiatives: since 1998 the Belgian judicial authorities have been able to conduct proactive investigations, and since 2003 Belgium has also had broad criminal provisions against terrorism. The combination of these two laws means that the judicial authorities over the last few years have been able to undertake *preliminary studies* to determine whether they can start a *proactive investigation* into actions that could *possibly* be classified as *preparation* for certain crimes or *attempts* to this end. In other words, the link with a possible

3 The position of State Security in the intelligence and security world is generally assessed on the basis of this 'intelligence role'. As will be seen further, the service also fulfils other important roles. If we look at the service from the point of view of these roles, we might arrive at a completely different view.

4 PONSAERS, P., "Omtrent de verhouding tussen politie- en inlichtingendiensten", in M. COOLS et al. (eds), *De Staatsveiligheid. Essays over 175 jaar Veiligheid van de Staat,* Brussel, Politeia, 2005, 339 en VAN LAETHEM, W., "De verhouding tussen inlichtingendiensten en het gerecht gisteren, vandaag en morgen", *Vigiles* 2007, no. 1, pp. 1–6.

crime is very weak. This activity is strongly oriented towards pure intelligence work. Nevertheless, it could still just be described as *intelligence-led policing* where the purpose remains the prosecution of a crime. But sometimes a further step is taken, and preliminary studies are undertaken into phenomena for which there are no specific criminal provisions (or not yet) and where the judicial authorities deal with existing descriptions of crimes in a creative way. This is the case in Belgium in the fight against radicalism and against harmful sectarian organisations, for example. In addition, the federal police also have what is referred to as the Terror Programme. This 'expertise and analysis service' undertakes profiling and analyses the motives underlying terrorist recruitment and the financing of terrorism. It also analyses threats and advises the authorities on the measures to be taken. Here the distinction between the role of an analytical service and an intelligence service is no longer clear.

Alongside the police and the judicial authorities there are a number of administrative authorities that have been specifically created to monitor phenomena that are also monitored by State Security. Sometimes State Security forms part of these services. For example, there is the *Administrative Coordination Unit for the Fight against Harmful Sectarian Organisations*, which investigates the development of illegal practices by sects and proposes countermeasures, and the *Human Trafficking Information and Analysis Centre*, which collects, manages, transfers and analyses information in order to combat human trafficking… More important, however, is the *Coordination Unit for Threat Assessment* (CUTA), which has been operational since 1 December 2006. It undertakes strategic and specific evaluations of terrorist and extremist threats in and against Belgium. It is important to emphasise that, unlike State Security, none of these administrative services can gather information on the ground themselves. They can only analyse on the basis of information or intelligence provided to them, and inform and advise the competent authorities.

Finally, many private intelligence firms also operate in Belgium.[5] In theory they can only operate on Belgian territory if they have been licensed by the Minister of the Interior.

3. EIGHT DIFFERENT ROLES

State Security may only take on roles that are set out in a law passed by Parliament, or which have been entrusted to it by the King in implementation of such a law. The government can not assign new roles to the service without due process.

In total we can identify eight highly diverse roles, most of which have been incorporated into the 1998 Intelligence Services Act. When fulfilling all these roles, State

[5] See in this respect, Standing Intelligence Agencies Review Committee, *Activity Report 2003*, 30 onwards. The activity reports of the Standing Committee I can be consulted on www.comiteri.be.

Security must always "*contribute to the protection of individual rights and freedoms, as well as to the democratic development of society*".[6] This requirement can be seen as the incorporation into law of the idea that "*Democratic praxis imposes its own limitations on the measures necessary for its own preservation.*"[7]

3.1. INTELLIGENCE ROLE WITH REGARD TO SPECIFIC THREATS TO THE CONTINUED EXISTENCE OF THE DEMOCRATIC CONSTITUTIONAL AND WELFARE STATE

In brief it can be said that one of the main roles of State Security is to collect information on potential or real threats to the continued existence of the democratic constitutional and welfare state, to analyse this information and if necessary to inform the relevant ministers in time.

The legal description of this role of State Security is somewhat more complex, and it demonstrates that this service must show a very wide 'interest' in people, groups and events. It also makes clear that the intelligence service must be active at a time when there is not necessarily a threat. In a best-case situation, it operates in an exploratory way so that the political, administrative, judicial, diplomatic or even military authorities can respond long before the threat becomes real. But the role of the service does not of course stop when a threat is imminent or has manifested itself. The intelligence service continues to be an involved party, even though it may then shift the emphasis of its work.[8]

It is important to note that the role of State Security here is limited to collecting, analysing and distributing information and intelligence. The service has no power to counteract the detected threats. It does not take any action, and its members do not have police or judicial powers. They inform the members of the government so that they can make decisions within their remit with knowledge of the facts. This is also one of the main differences between State Security and a police service.[9]

Just as important is the fact that State Security – unlike some of its foreign counterparts – only collects information to counteract threats. The service will thus, for example, not undertake espionage abroad to collect information to help the country's economy. In this respect also, State Security is a 'defensive service'.

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6 Art. 2, section 2 of the Intelligence Services Act.

7 LUSTGARTEN, L., "National Security and Political Policing: Some Thoughts on Values, Ends and Law", in J.-P. BRODEUR *et al.* (eds.). *Democracy, Law and Security,* Hampshire, Ashgate Publishing Limited, 2003, 320.

8 It can for example be asked to assist or provide technical support to the judicial authorities (see 3.8).

9 This distinction does not always stand up. For example, the members of the protection department of State Security have various police powers. They can thus act accordingly (see 4.2). Furthermore, this distinction does not apply at all to the military intelligence service because this service is part of the army and thus part of the organisation that is responsible for fending off military threats.

3.1.1. The Threats

The phenomena to which State Security must pay attention are "*any individual or collective activity developed in the country or abroad that might relate to espionage, interference, terrorism, extremism, proliferation, harmful sectarian organisations or criminal organisations, including the distribution of propaganda, encouragement or direct or indirect support, for example through the provision of financial, technical or logistical resources, the provision of information on possible targets, the development of structures and capabilities, and the achievement of the intended objectives*".[10] These seven specific threats are given their own interpretations in law, which sometimes differ from the meaning that these same terms have in the Belgian criminal code. Many of these phenomena are indeed also covered by Belgian criminal law. There are specific criminal classifications regarding terrorism, racism and negationism, corruption, organised crime, the possession or sale of weapons, crimes relating to the internal and external security of the State… Although strictly speaking the intelligence services do not investigate crimes, it is clear that they can frequently come into contact with facts that also constitute crimes. This has major consequences for their operations. The agents of State Security are subject to a reporting requirement that is incumbent upon all civil servants[11]: if they have knowledge of a crime, they must inform the public prosecutor accordingly.

3.1.2. The Subject of the Threats

State Security only has to collect information on the above phenomena insofar as they constitute a problem for the "*internal security of the State and the continued existence of the democratic and constitutional order, the external security of the State, and international relations, the scientific or economic potential, as defined by the Ministerial Committee*". These terms have been further defined by the law[12] and – with regard to scientific or economic potential – by a confidential directive of the Ministerial Committee for Intelligence and Security.[13]

State Security – and this is the traditional role of every civil intelligence service – has to deal primarily with the continued existence of the democratic constitutional and welfare state, and not with the security of individual citizens or their property.[14]

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10 Art. 8, 1° of the Intelligence Services Act.

11 Art. 29 of the Criminal Procedure Code.

12 Art. 8, 2°, 3° and 4° of the Intelligence Services Act.

13 See 5.1.1. on this committee.

14 It is surprising that according to the law, State Security must also be mindful of '*the security and physical and moral protection of people and the security and protection of goods*' (Art. 8, 2°). This would rather seem to be a pure police role.

3.2. INTELLIGENCE ROLE WITH REGARD TO LAW AND ORDER

Less well-known (as it is virtually never applied) is the responsibility of State Security, on the express demand of the Minister of the Interior, to actively acquire, analyse and process intelligence that is useful for maintaining law and order. This role normally belongs to the administrative police. The 1998 Intelligence Services Act provides an exception here.[15]

3.3. INTELLIGENCE ROLE WITH REGARD TO MILITARY SECURITY

The collection and analysis of intelligence in the military sphere normally belongs exclusively to the military intelligence service (GISS). If requested, State Security must however help gather intelligence on people involved in a military threat, who do not come under the Minister of National Defence, or who do not belong to companies that implement certain 'military' contracts or participate in certain 'military' contract award procedures.[16]

3.4. PROTECTION ASSIGNMENTS

State Security also has an important operational role that does not relate directly to intelligence work, but indirectly to the security of our institutions and our international relations. It is really a police role. On demand of the Minister of the Interior, the service undertakes close protection assignments.[17] This protection can only be ordered for foreign heads of state or government and their family members, Belgian and foreign government members or 'certain important persons' who are subject to a terrorist or extremist threat, for example.[18] This role is fulfilled by close protection officers specially appointed for this purpose. They have many policing powers in this respect (see 4.2).

In connection with the role of collecting intelligence relating to law and order, the Minister of the Interior can demand the intervention of State Security. This service cannot refuse these labour-intensive assignments.

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15 State Security frequently sends information on law and order to the department of the Interior without being requested to do so. This possibility is described under 3.7.

16 Art. 11, §3 of the Intelligence Services Act.

17 Art. 7, 3° and 8, 5° of the Intelligence Services Act.

18 Protection assignments with regard to other people are done by the police.

3.5. EVALUATION OF THE RELIABILITY OF PEOPLE AND COMPANIES

Every year State Security examines information on tens of thousands of people who wish to obtain one or another permit or authorisation or who wish to take up a particular position. The purpose of these investigations is to examine whether the person concerned provides sufficient guarantees with regard to his reliability, as the abuse of the permit, authorisation or position could involve fundamental (state) interests.

Until recently, many of these investigations were undertaken without an adequate legal basis. A legal foundation was nevertheless needed, because such screening inevitably involves an interference in one's private life, in the meaning of Article 8 of the European Convention on Human Rights (ECHR) and the similar Article 22 of the Belgian Constitution.[19] In 2005, the legislature created a general framework for many investigations.[20] This regulation comes on top of the laws that already exist and State Security is expressly given a role in the screening of people. Aside from the cases provided by these laws, the service may not assist in such screenings in any way.

The role that State Security plays in all these reliability investigations is not always the same. Sometimes it is limited to passing on the personal information that it has in its files to other authorities. Sometimes it actively searches for additional information. Sometimes it provides reasoned advice, and in a few specific cases it also takes the final decision regarding whether or not to grant or withdraw the permit or authorisation.

3.5.1. Access to Classified Information: Security Clearances

People who on account of their position have access to classified information must have a specific clearance. The main purpose of this 'security clearance' is to protect sensitive information by restricting its availability to people who can be expected to provide sufficient guarantees regarding confidentiality, loyalty and integrity. But the clearance not only applies to individual people, and does not necessarily relate to access to classified information. Companies that wish to bid for government contracts in sensitive sectors, for example, can be investigated. In addition, a clearance can also be requested in implementation of Treaties that Belgium has with other countries or with international or supranational institutions.

Prior to granting the security clearance, there is a 'security investigation'. Except for military service personnel or companies seeking contracts in the military sphere,

19 This constitutional provision only differs on one important point of Art. 8 of the ECHR: any interference in the private life must be covered by a law passed by Parliament. A royal decree or ministerial order or established case law is not sufficient in Belgium.

20 This rule has been fully incorporated into the Classification Act.

the investigation is undertaken by officers of the field services of State Security specifically designated for this purpose.

The duration and scope of the security investigation depends on the required security level (confidential, secret or very secret information). For clearance at the 'top secret' level, the investigation can take up to six to nine months. In order to check the reliability of the applicant, the investigators can consult many government files that give a view of the legal, administrative, financial and social situation of the person concerned. They will not only consult existing files, but will also undertake additional investigations (make enquiries with the applicant's neighbours or with his current or former employer). His partner and even other adults who cohabit with the applicant may be investigated (see 4.3).

After the investigation, the officers draw up an investigation report, which they send to the authority that will ultimately decide on whether or not to grant the security clearance. For non-military personnel, it is generally the National Security Authority (NSA) (*Nationale Veiligheidsoverheid – Autorité nationale de Sécurité*), which was formed specifically for this purpose. As a rule it is not State Security that takes the decision.[21] Only when the security clearance relates to a person working for State Security, or who is a candidate for it, the administrator-general of the service itself decides on the clearance.

In principle, the security clearance is valid for five years. After this period, a completely new security investigation will have to be undertaken. However, nothing prevents the intelligence service from checking certain aspects of the private life of the person concerned in the interim, for example after a conviction. If necessary, it can recommend to the security authority that the clearance be withdrawn prematurely.

If the security clearance is refused or withdrawn, the person concerned can lodge an appeal with an independent administrative court (see 6.2.3).

3.5.2. Access to Classified Zones: Security Certificates

The Classification Act allows certain authorities (including State Security) to require security clearance, if desired, for people who have to access places where classified documents are kept, even if they do not have to look into this information. This can be the case for a visitor, contractor, cleaners, etc. The procedure for issuing a security clearance is, however, far too laborious and time-consuming. Hence, since 2005, the Act has provided a simplified procedure. If State Security desires, it can require a security certificate for access to its premises.[22] In practice this means that there will be no in-depth 'security investigation', but only a quick 'security check'. This check consists of a consultation and evaluation of a limited set of data: the information that

21 State Security forms part of the NSA. Its administrator-general sits on it together with various other senior civil servants from services that have to deal with security in one respect or another.

22 Art. 22*bis*, section 1 of the Classification Act.

State Security and the GISS have, certain information that can be passed on by the police, and the information contained in a number of government files that give a view of the legal, administrative and family situation of the person concerned. No additional investigation is undertaken, and no check is made of the people who cohabit with the applicant.

State Security can undertake the check itself and issue or withdraw the certificate.

The purpose of the certificate (i.e. to enable access to a certain place for a short period) implies that in theory it is only valid for a limited period. For a new visit to this location, the authority can have a new check performed. But this is not compulsory: the person in charge of the place decides autonomously in this respect.

Here too, the person concerned may lodge an appeal to a specific appeal body if the certificate is refused (see 6.2.3).

3.5.3. Access to Certain Places or Events: Security Certificates

In 2005, a second type of security certificate was introduced, i.e. a certificate for people wishing to access for a limited period rooms, buildings or sites that relate to the work of the public authorities or a particular national or international, diplomatic or formal event where a specific threat occurs.[23] In practice we can consider access to a European summit or other international meetings, where control is required of the participants, visitors, suppliers, journalists and the people responsible for the reception or catering.

The certificate may only be required under very strict conditions. First of all, the requirement to have a certificate may only be imposed by certain authorities.[24] In addition, those authorities may only use this facility for reasons of law and order, security or protection of the physical integrity of the people present, if a possible threat presents itself, as provided by the 1998 Intelligence Services Act (e.g. terrorism).

In most cases, the role of State Security will be limited to passing on the relevant information that it has to the authority that undertakes the check and issues the certificates.

The person concerned may lodge an appeal in the event of the certificate being refused or withdrawn (see 6.2.3).

23 Art. 22*bis*, section 2 of the Classification Act.

24 The Ministers of Justice, the Interior or National Defence, a governor, a mayor, the director-general of the government crisis centre or the judicial authorities who are responsible for maintaining order in court sessions. State Security can not require such certificates for its buildings or events.

3.5.4. Admission to Sensitive Positions, Locations or Permits: Security Advice

In addition to a potential or actual threat in a building or a location, certain sites may be sensitive by virtue of their nature. For example, the airside zone at an airport. A person who abuses the possibility to access such a place can cause serious damage to fundamental (state) interests. The same applies to people who perform a certain job or assignment, or who want a certain permit: access to prisons as a chaplain or consultant, special permit for the export or transit of weapons or military equipment, the granting of residence permits to foreigners, approval as an interpreter for a court or for the General Refugees Agency…

Hence the intelligence services (and also the police) have always sent information to many administrative authorities which have to decide on the allocation of sensitive positions, assignments, authorisations or permits, and in the case of which the reliability of the candidate/applicant forms part of the decision. Since 2005, this widespread practice (thousands of consultations every year) has had a legal foundation.

Just as with the security certificates (see 3.5.2 and 3.5.3), the investigations are called 'security checks'. They must result in a 'security advice'. All checks are undertaken by the National Security Authority on the basis of the same information that is used for granting security certificates. The role of State Security here is limited to sending the relevant information that it holds to the NSA.

This security advice can therefore relate to highly diverse situations. Unlike for the security certificates, *all* administrative authorities can request such advice. The area of application of this rule can consequently be very wide. There is in fact only one real condition: the decision to request a security advice can only be taken if as a result of inappropriate use of the position, assignment, authorisation or permit damage can be caused "*to the defence of the inviolability of the national territory and the military defence plans, the fulfilment of the roles of the armed forces, the internal security of the State, including the domain of nuclear energy, and the continued existence of the democratic and constitutional order, the external security of the State and the international relations of Belgium, the scientific and economic potential of the country, the security of Belgian nationals abroad or the functioning of the decision-making organs of the State*".[25]

A person who is given negative advice can appeal to the appeal body specifically created for this purpose. The appeal body can still issue a positive advice (see 6.2.3).

3.5.5. Licences in the Private Investigation Sector

People who want to work as a private investigator in Belgium, need a licence from the Minister of the Interior. He will first undertake an investigation into the background of each candidate. He will use the advice of State Security as a basis.

25 Art. 22*quinquies* of the Classification Act.

If the licence is refused due to negative aspects provided by State Security, the person concerned may appeal to the Council of State (see 6.2.4), but not to the appeal body that settles disputes regarding security clearances, certificates or advice.

3.5.6. Licences in the Private Guarding and Consultancy Sector

Just as for a candidate private investigator, the Minister of the Interior will seek the advice of State Security before giving authorisation to operate a security (consultancy) company or an internal security service. In addition, if an investigation into the security conditions of people who have a management or executive position in such companies or service seems required, the administration may ask State Security for information on the person concerned that might reveal a risk to law and order or to the security of the State.

If the licence is refused the negative decision can be contested in the Council of State (see 6.2.4).

3.5.7. Acquisition of the Belgian Nationality

There are various ways of acquiring the Belgian nationality. But only in one of these cases – i.e. a naturalisation application – does the law explicitly require State Security to give its advice to the Belgian Parliament.

For other cases – allocation, nationality declaration or choice of nationality – the civil intelligence service is consulted, but this time by the public prosecutor who has to undertake an investigation into any 'important facts specific to the person' that could constitute a contraindication for the allocation of nationality. If the advice of the prosecutor is negative (owing to aspects provided by State Security, for example) proceedings may be initiated in the ordinary courts (see 6.2.5).

3.5.8. Firearms Licences

The Minister of Justice decides whether people who do not reside in Belgium can possess a firearm. He must request security advice from the National Security Authority. But being allowed to possess a firearm does not mean that the person is allowed to 'carry' a firearm in Belgium. Decisions regarding licences to carry firearms for people who do not reside in Belgium are taken by State Security itself. They mainly concern members of foreign security services who are responsible for protecting dignitaries visiting Belgium.

Depending on the procedure (possessing or carrying a firearm), the appeal body is the one for security clearances, certificates and advice (see 6.2.3.), or the Council of State (see 6.2.4).

3.6. SUPPORT SERVICE OF THE CUTA[26]

Since December 2006, State Security, together with a number of other government departments, has been a support service for the *Coordination Unit for Threat Assessment* (CUTA). This means that State Security is required to pass on all information[27] about terrorist and extremist threats in and against Belgium to this fusion centre. The non-observance of this requirement carries criminal penalties.[28]

On the basis of the information that the CUTA receives from various quarters, it will undertake specific or strategic analyses for the government and the various support services. If applicable, the CUTA may suggest the measures that it considers necessary. However, it cannot issue instructions to State Security.

3.7. PROVISION OF INFORMATION TO OTHER AUTHORITIES AND INDIVIDUALS

In addition to the above *obligation* to pass on information, the law provides a wide *possibility* for State Security to share the information and intelligence that it has detected, received or processed in the context of its legal assignments with the judicial and administrative authorities, the police services and other competent bodies and people. There are two situations in which this possibility can be used: when these authorities or people need this information for the performance of their assignments, or when they are subject to one of the threats covered by State Security.[29]

The legislature has given the Ministerial Committee for Security and Intelligence (see 5.1.1) the task to develop the conditions under which this information transfer is possible.[30] On 16 February 2000 a directive was drawn up in this respect, requesting the intelligence services and other administrative authorities and services to exchange, as quickly as possible, the documents and information needed in the context of the performance of their respective legal assignments. In addition there is also a protocol

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26 See VAN LAETHEM, W., "Het Coördinatieorgaan voor dreigingsanalyse: een punctuele analyse", *Vigiles* 2007, no. 4, pp. 109–127.

27 It is important that the requirement does not relate to raw information but only to processed or analysed information.

28 This requirement also relates to information that State Security receives from foreign intelligence agencies, even if they invoke the 'third service rule.' Only when this rule is contained in an international legal standard State Security can refuse the sending of such intelligence. In many cases there is no international legal standard that gives a legal basis for this rule. Via an 'embargo procedure' in the law (where in principle only the director of CUTA examines the information) and a specific rule in a royal decree (whereby the consent of the foreign agency is requested) the regulator has attempted to meet the concerns of certain foreign intelligence agencies that feared that the unwritten 'third service rule' would be undermined because their confidential information could turn up in the analyses of the CUTA.

29 Art. 19 of the Intelligence Services Act.

30 Art. 20, §3 of the Intelligence Services Act.

agreement that deals with the information flow between the two Belgian intelligence services.[31]

Rules regarding information exchange with the judicial authorities have also been created. They are contained in confidential circulars. On the basis of these rules, the public prosecutor may examine the information held by State Security, even if this information is classified. If the public prosecutor wishes to use the classified information as evidence, State Security will first have to declassify it. All parties in the proceedings will then have equal access to it. The information provided by the intelligence service has no special value as evidence for the court judge. He has supreme power of decision over the value he attaches to it.

3.8. ASSISTANCE AND TECHNICAL SUPPORT FOR OTHER AUTHORITIES

If requested, State Security can also lend its 'assistance' and 'technical support' to the judicial and administrative authorities, as long as it is done '*within the bounds of a protocol approved by the ministers concerned*'.[32]

The judicial authorities in particular from time to time call on State Security in relation to an investigation, for example in the fight against terrorism. What the law does not make clear, however, is how far this assistance or technical support can go.

State Security not only provides technical support to the judicial authorities. The service also acts as an expert for various administrative authorities, and this with the agreement of and within the lines of play drawn by the relevant ministers. For example, the service forms part of many committees that have to provide advice in various policy domains. We referred above to the *Administrative Coordination Unit for the Fight against Harmful Sectarian Organisations* and the *Information and Analysis Centre for Human Trafficking* (see 2). But the service also sits on many other committees that have to give expert advice to the competent authorities in order to give shape to their security policy. For example, there is the *National Authority for Maritime Security*, the *Federal Committee for the Security of Rail Transport* and the *National Committee for the Security of Civil Air Transport*, the *National Agency for Information Security*, the *Interdepartmental Coordination Committee to Combat Illegal Weapon Transfers*, the *Advisory Commission for the Non-Proliferation of Nuclear Weapons*, etc.

31 Protocol accord of 12 November 2004 on the cooperation between State Security and the General Department of Intelligence and Security.

32 Art. 20 of the Intelligence Services Act.

4. POWERS AND RESTRICTIONS

The powers that the members of State Security have differ in relation to the role that is taken on.

4.1. POWERS IN RELATION TO THE VARIOUS INTELLIGENCE ASSIGNMENTS[33]

As an intelligence service almost inevitably deals with the private lives of people when collecting information, it has to respect Article 8 of the ECHR and Article 22 of the Belgian Constitution. For Belgium this means that there must be a formal law that defines the powers of the service in a way that is clear for the citizen, and which respects the principle of proportionality. This conclusion has far-reaching consequences, since it means that many techniques cannot be used. In the absence of a legal provision, the agents of State Security cannot listen into telecommunications, intercept mail, or conduct searches.[34] But even for a number of powers that would apparently seem obvious, there is no clear legal mandate. For example, static or mobile observation, using technical equipment or otherwise. The Belgian legislature used to believe that it was sufficient to give State Security the power '*to collect (...) intelligence*' or '*to detect, collect, receive and process intelligence and personal information*'[35] in order to make it clear that the service could for example also observe people. This situation was criticized on a number of occasions by the Belgian Standing Intelligence Agencies Review Committee, for example.[36, 37] The previous government worked on a draft bill to further define the powers of the two intelligence services and – in particular – to extend them markedly. For example, it wanted to give them the possibility to use 'specific'[38] and

33 For the various intelligence assignments, see 3.1, 3.2 and 3.3.

34 Most of these actions also carry criminal penalties.

35 Art 7, 1°, resp. Art. 13 of the Intelligence Services Act.

36 See for example p. 79 of the *Activity Report 2006* (Vast Comité I (ed.), *Activiteitenverslag 2006 – Rapport d'activités 2006,* in *Quis custodiet ipsos custodies?*, Antwerpen, Intersentia, 2007, 143).

37 A law that only stipulates that State Security '*may collect information*' gives not an adequate legal basis for specific methods of information collection. See in this respect also the findings of the European Court in a recent case against Bulgaria (ECHR 28 June 2007, *Association for European integration and human rights and Ekimdzhiev v. Bulgaria*, www.hudoc.echr.coe.int).

38 The specific methods are: surveillance using technical means in places that are accessible to the public, or surveillance, with technical equipment or otherwise, in private places; the searching of closed objects or places that are accessible to the public or private places; examination of the identification data of the sender or addressee of mail or the holder of a post-office box; measures to identify the subscriber or normal user of an electronic communications service; measures to detect the call data of electronic communication equipment and locating the origin or destination of electronic communications.

'exceptional'[39] methods. However, the draft was submitted to Parliament too late. As a result of the national elections in June 2007 it could not be discussed any further. The question is whether the new government will resume this extremely important project.

So what actions can State Security take in fact?

Just like every administration or individual, the intelligence services can of course collect information from open sources, i.e. freely accessible sources such as newspapers, pamphlets, the internet or public meetings. They do not require any specific legal mandate for this purpose. Incidentally, much of the information that State Security has, comes from these open sources.

In addition to the study of open sources, the information position of State Security is undoubtedly highly dependent on the information that other government departments hold. Article 14 of the Intelligence Services Act provides the possibility for public prosecutors, examining magistrates and civil servants of all public departments to pass on useful information to State Security on their own initiative or on request.[40] Except for the specific rule that applies to examining magistrates (see below) it is, however, only a possibility. They are not required to pass on the information. Yet, the Ministerial Committee for Intelligence and Security drew up a directive that calls on all government departments to pass on, as quickly as possible, all documents and information that State Security needs in order to fulfil its legal roles. In addition, a few specific agreements have been concluded, for example with the Social Inspectorate, the GISS and the prison administration. Ground rules for passing on information have also been agreed with the judicial authorities. They are contained in confidential circulars. In addition to this *possibility* of obtaining information, State Security has also been given the *right* in a number of cases to receive or examine certain government information. For example, this service – through the federal public prosecutor and the Minister of Justice – can be given information that examining magistrates obtain in the course of a judicial investigation, and that indicates an immediate and serious danger to public security or public health.[41] Furthermore, State Security can

39 The exceptional methods are: surveillance, with or without technical equipment, in homes; the formation or use of companies to support operational activities and the use of agents of the service, under the cover of a fictitious identity or capacity; the searching of homes; the opening and examination of mail entrusted to a postal operator; the collection of information concerning bank accounts and banking operations; breaking into computer systems, except for government computer systems; the tapping, examination and recording of telecommunications.

40 In principle, any confidentiality obligation that the members of these authorities are subject to (e.g. duty of professional confidentiality or the secret of the investigation) does not apply to their relationship with State Security. The strict requirements of the Belgian Data Protection Act, which prohibit the further processing of personal information for a different purpose, would not seem to apply here.

41 Art. 56, §1, section 6 of the Criminal Procedure Code.

obtain information from a number of government files.[42] Finally, as a support service, it receives strategic and specific threat analyses from the CUTA, as well as information that the CUTA has received from foreign fusion centres and that is important for the workings of State Security.[43]

The third important source of information for State Security is of course information from individuals, private organisations, human sources and informers (HUMINT).[44] Unlike people who are employed in a government department, private individuals and organisations may be bound by professional confidentiality and they have to take due account of the requirements of the Data Protection Act. The use of informers is virtually unregulated by the law. This is not altogether surprising. The information provided by informers cannot normally be used as evidence in legal proceedings. The only thing that is clearly regulated, with criminal penalties, is the requirement for officers to protect the identity of their sources.[45] People who give information to the intelligence services must be able to rely on this not becoming known. This relationship of trust is one of the critical success factors of an intelligence service. Even in the event of information being seized from State Security by the courts or by the Standing Committee I, or in the event of members of the intelligence service being questioned, certain procedures can be started to protect the identity of human sources as effectively as possible.[46]

Although not mentioned in the law, State Security may of course request and receive intelligence from its foreign counterparts. But there might be a problem regarding the use of such intelligence, in particular for a service that cannot take any action itself. Information from foreign intelligence agencies generally comes under the 'third service rule', which is sometimes embedded in a treaty or agreement, but generally it is only based on a practice that the intelligence services strongly adhere to.

Furthermore, agents of State Security can always enter places that are accessible to the public, and, with observance of the inviolability of the home, visit hotel establishments and other establishments providing accommodation[47]; they can request the registration documents of travellers from the owners, operators or employees of hotel establishments and other accommodation-providing establishments[48] and they can

42 These are the population and aliens registers, the National Register and the Central Criminal Records.

43 Art. 8 and 10 of the Threat Assessment Act.

44 Art. 16 and 18 of the Intelligence Services Act. See VAN LAETHEM, W., "Kan, mag of moet een inlichtingendienst op uw medewerking rekenen?", *Vigiles* 2004, no. 4, pp. 116–127.

45 See Art. 18 and 43 of the Intelligence Services Act.

46 See Art. 38 and onwards of the Intelligence Services Act and Art. 48 and 51 of the Review Act.

47 Art. 17 of the Intelligence Services Act.

48 Art. 17 of the Intelligence Services Act.

ask the GISS to assist with the collection of information when military personnel are involved in activities that constitute a threat.[49]

Finally, the documentation on events, groups and people gathered by all these means may of course be stored where relevant for the fulfilment of the service's assignments.[50]

4.2. POWERS IN RELATION TO PROTECTION ASSIGNMENTS[51]

When they have to ensure the security of dignitaries, the 'close protection officers' of State Security field services have practically the same powers as police officers, in addition to *all* the powers that can be employed with regard to the general intelligence roles.[52]

Thus, in well-defined cases they can:

- Enter abandoned real estate.
- Perform a body search to ascertain that a person is not carrying a weapon or another object that is a hazard to their physical integrity, or that of the person to be protected.
- Search a vehicle.
- Confiscate objects and animals that constitute a hazard to physical integrity of people in a place accessible to the public.
- Check identities.
- Hold a person in respect of whom there are reasonable grounds to believe that he has made preparations to commit a crime or who commits a crime that seriously endangers the life or physical integrity of the person to be protected, but never longer than necessary and under no circumstances for more than six hours.
- Use violence (e.g. with firearms) to achieve a legal objective that cannot be achieved in any other way.
- Claim the help or assistance of the people present.

In order that all information of importance for the protection of people is also known by the close protection officers, the law stipulates that the judicial authorities, officers and agents of public departments must give the Minister of the Interior all useful information that they hold in this respect. The Minister then passes this information on to State Security.[53]

49 Art. 9 of the Intelligence Services Act.

50 Art. 13 of the Intelligence Services Act.

51 Art. 22 to 34 of the Intelligence Services Act.

52 Art. 24 of the Intelligence Services Act.

53 Art. 23 of the Intelligence Services Act.

4.3. POWERS WITH REGARD TO EVALUATING THE RELIABILITY OF PEOPLE AND COMPANIES[54]

On request by a wide variety of authorities, State Security must provide advice on the reliability of people and companies when these authorities wish to grant an authorisation or permit. But in some of these cases, the law does not specify what information the service may divulge, or what powers it has in this respect (see 3.5.5, 3.5.6 and 3.5.7). In the absence of such rules, we assume that State Security can only provide information that it has in the framework of its general intelligence role, and which is also relevant for the purpose of the reliability investigation. This means that they cannot collect additional information on the ground or by consulting other files. This is the result of the requirements placed by Article 8 of the ECHR and Article 22 of the Belgian Constitution on any interventions with regard to private life. According to the case law of the European Court of Human Rights, even in matters that affect national security the citizen must be aware in advance what information may be collected and in what way, without however having to know precisely what will or will not be examined in his specific case.[55]

There are only two exceptions to the rule that State Security must limit itself to providing information that it already has and which is relevant in the light of the permit or authorisation. The first concerns the case of the security checks that the service sometimes undertakes. In such a case, in addition to its own files, it is also allowed to consult a number of additional files or registers (see 3.5.2, 3.5.3, and 3.5.4).

But much more important is the exception for security clearance investigations. The specially appointed officers of the State Security field services may employ many means and powers to this end. The law stipulates the upper limit, while a non-public directive of the Ministerial Committee for Intelligence and Security describes in further detail how far the investigators have to go in relation to the required clearance level. The methods described below are thus the upper limits.

In order to examine the reliability of the applicant, the agents concerned can first consult a number of files. State Security can of course consult its own files. In addition, all useful information may be requested from GISS and the police. Further information can also be drawn from the most diverse government files that give a view of the judicial, administrative, family and financial situation of the person concerned.

In addition, the officers can employ all means that their colleagues can employ in the regular intelligence role (see 4.1). They can for example request information from all public departments. However, these departments are not required to respond. Furthermore, the officer may make enquiries with the neighbours or question the current or former employer of the person concerned. It may also be decided to question the

54 Art. 18 to 21 of the Classification Act.

55 ECHR 26 March 1987, *Leander v. Sweden*, www.hudoc.echr.coe.int and ECHR 31 May 2005, *Antunes Rocha v. Portugal,* www.hudoc.echr.coe.int.

person concerned himself, who, moreover, must fill out an extensive personal information questionnaire.

For the questioning of foreign (intelligence) services, the investigator has a specific legal authorisation in relation to the security investigation. If the person for whom the security clearance is required, lives abroad (or has lived abroad) or is travelling or staying abroad (or has done so), State Security may request the assistance of the competent services of the host country.

In addition to all these possibilities, the Classification Act also allows them to "*start any investigation and collect all information needed for the investigation*". Does this mean for example that a person can be put under surveillance or have his phones tapped? As these powers are not legally governed and the rules of the Classification Act are inadequately precise in the sense of the ECHR, it is clear that this is not the case.

Finally, in some cases the partner and even other adults who cohabit with the applicant may be investigated.

The investigators thus have many possibilities of evaluating the reliability on the basis of all types of privacy-sensitive information. Only information on health cannot be collected.[56]

5. ORGANISATION, AUTHORITY AND MANAGEMENT

5.1. EXTERNAL ORGANISATION

State Security forms part of the Federal Public Department of Justice. It is a separate service within the department. Unlike some countries, State Security is not part of the police force.

Although State Security has been incorporated into the department that is the responsibility of the Minister of Justice, he does not have sole authority and management over it.

5.1.1. Authority

Authority is the responsibility for the actual fulfilment of the roles and for the way in which this is done. This can be seen in the possibility to issue orders (specific injunctions) or instructions (general injunctions), to issue directives on its conduct (as a hierarchical authority or otherwise), and to make demands of the service (here there is no hierarchical link).

The 1998 Intelligence Services Act stipulates that State Security fulfils its role "*through the intervention of the Minister of Justice, in accordance with the directives of*

56 Art. 14 of the Classification Act.

the Ministerial Committee".[57] This means that the Minister of Justice is the hierarchical authority. However, he needs to take the directives of the Ministerial Committee for Intelligence and Security into account.

The Minister of the Interior also has (limited) authority over State Security. He can demand that the service conducts assignments relating to the maintenance of law and order (see 3.2) and the protection of dignitaries (see 3.4). The demand will specify what it is for, and the Minister can make recommendations and give precise stipulations regarding the personnel and financial resources to be deployed.

A third form of authority is exercised by the Ministerial Committee for Intelligence and Security. This Committee is responsible for general policy on intelligence, determines the priorities for State Security and the GISS and coordinates their activities. The Committee also determines policy for the protection of sensitive information. It does so in the form of directives. Currently the Prime Minister and the Ministers of Justice, Finance, Foreign Affairs, the Interior, National Defence and Mobility are members of this Committee. The Committee is assisted by the Board of Intelligence and Security, which supervises the coordinated execution of the decisions of the Ministerial Committee. The administrator-general of State Security sits on this board.

5.1.2. Management

Management consists of the responsibility to organise a service in such a way that its roles can be properly implemented. Management relates to the organisation, functioning, training, budgets, personnel, etc.

The 1998 Intelligence Services Act assigns the organisation and general management of State Security to the Minister of Justice. In particular, he must supervise expenditure, management and training of personnel, the internal rules and discipline, the pay and remuneration, and equipment.[58]

As the Minister of the Interior has authority over State Security on two levels, it was decided to give him a form of co-management. He is thus involved in the organisation and management of State Security, when this organisation and management has a direct impact on the implementation of assignments relating to the maintenance of law and order and the protection of dignitaries.[59] This co-management can be seen in the fact that the Minister of Justice sometimes needs the signature of the Minister of the Interior, or needs to obtain his concurring advice in a number of other cases.

57 Art. 4 and 5, §1 of the Intelligence Services Act.

58 Art. 5, §3 of the Intelligence Services Act.

59 Art. 6 of the Intelligence Services Act.

5.2. INTERNAL ORGANISATION

Measured by international standards, Belgian State Security is a small department. It has around 500 employees[60] and its budget for 2007 is a little over 42 million euros.

The service is managed by the administrator-general. He is assisted by the deputy administrator-general. Their (renewable) appointments are for five years. They are appointed by the King, in theory on the proposal of the Minister of Justice, in practice by the government as a whole.

Since 2007, they have to draw up quadrennial strategic plans, stipulating the priorities and operational strategies to meet these priorities. An annual action plan, must also be drawn up. The administrators-general are assisted in this by a 'support unit', which consists of four experts from various fields. These people are not necessarily from State Security itself.

The department itself consists of three major components: field services, administrative services, and general interest services. The field services, which are managed by an 'operations director', are responsible for collecting intelligence on the ground, protecting people and for undertaking security investigations. They consist of a number of units, which each have their own area, speciality and powers. Within the administrative services, which are managed by the 'analysis director', the primary role is reserved for the study services. These services, which each have their own specialisation, analyse the information from the field services, from other authorities and open sources. Finally, there are the general interest services, which provide support to the other services in many areas (e.g. legal, logistics, computing, training, etc.).

A clear distinction has to be made with regard to personnel status. On the one hand there are the personnel of the field services (the officers on the ground), for whom a very specific financial and administrative status applies. The officers of the two internal services are subject to the general rules regarding the status of civil servants.

6. INTERNAL AND EXTERNAL SUPERVISION

6.1. INTERNAL SUPERVISION

Unlike in some countries, there are no specific internal supervisory mechanisms for State Security. The officers of the service are subject to the normal hierarchical supervision and may be subject to disciplinary measures where applicable.

60 In the next few years this number should grow to 650 to 700.

6.2. EXTERNAL SUPERVISION

There are many external departments that can (directly or indirectly) supervise the functioning of State Security or an aspect thereof. We will briefly discuss supervision by the Standing Committee I, the Federal Ombudsman, the appeal body for security clearances, security certificates and security advice, the Council of State, the judiciary, the Commission for the Protection of Private Life, and the Audit office.

6.2.1. Standing Committee I[61]

The most general form of supervision of the work of the Belgian intelligence services is undertaken by the Standing Intelligence Agencies Review Committee, abbreviated to Standing Committee I. This supervision has been in place since 1993. The Standing Committee I is a parliamentary supervisory body, i.e. in the first instance it works for and reports to the Belgian Parliament.[62] The objective of the supervision consists primarily of detecting any malfunctions within the intelligence services and making recommendations so that Parliament can undertake its legislative work on a factual basis. It is thus a form of indirect parliamentary supervision of the executive. However, this form of supervision does not rule out the normal parliamentary supervision.

Standing Committee I consists of three members, appointed by the Senate for a (renewable) period of five years. They are supported by an administrative department and an Investigation Department, which undertakes the investigations on the ground. The members of the Investigation Department are also judicial police officers. In this capacity they have the power to initiate investigations into felonies and misdemeanours that members of an intelligence service are suspected of having committed.

Standing Committee I must supervise the activities, methods, documents and directives of the intelligence services.[63] This supervision has a dual purpose: on the one hand to supervise "*the protection of the rights of people guaranteed by the Constitution and the law*", and on the other hand to supervise "*the coordination and effectiveness (...) of the intelligence and security services*".[64]

The supervisory body can initiate an investigation into the work of State Security at the request of the Senate, the Chamber of Deputies, the Minister of Justice or an

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61 DELEPIÈRE, J.-Cl., "Le Comité Permanent de contrôle des services de renseignement", in M. COOLS et al. (eds.), *De Staatsveiligheid. Essays over 175 jaar Veiligheid van de Staat,* Brussel, Politeia, 2005, 225–240.

62 Specific supervisory committees have been set up in both the Senate and the Chamber of Deputies, consisting of Members of Parliament, that jointly or separately supervise the operation of Standing Committee I, and receive and discuss the investigation reports and recommendations.

63 Art. 2, section 2 and Art. 33 of the Review Act.

64 Art. 1 of the Review Act.

individual or civil servant who submits a complaint. It may also initiate an investigation on its own initiative.

In order to fulfil its role, Standing Committee I has many powers. For example, State Security must send, on its own initiative, all documents that govern the conduct of the members of the service, and the Committee can request any other documents. It can question anybody. If applicable, the members of State Security can be summoned and required to testify under oath. They cannot simply hide behind their duty of professional confidentiality, unless the hearing deals with facts relating to an investigation by the judicial authorities or if the physical integrity of a person could be jeopardised as a result. In the latter case the chairman of the Committee will decide whether his questions have to be answered. Furthermore, the supervisory body may establish all useful findings and seize all objects and documents, except for items relating to an ongoing investigation by the judicial authorities. Finally, the Committee may require the assistance of experts and interpreters, and the support of the police.

When concluding its investigation into State Security, Standing Committee I will draw up a report for the Belgian Senate and for the Minister of Justice, stating its conclusions and recommendations. The Minister of Justice must inform the Standing Committee I of his response to these conclusions.

6.2.2. The Federal Ombudsman

Supervision by the Federal Ombudsman is also possible. This body – which also comes under Parliament – supervises any 'federal administrative service', and thus also State Security. It is rather surprising that this service has not been excluded from this form of supervision, as Standing Committee I was specifically created as the body to supervise the intelligence services, with the aim of striking a balance in an accurate way between transparency (in order to enable effective supervision) and confidentiality (in order not to jeopardise the work of the intelligence services).

The Federal Ombudsman may initiate investigations after receipt of complaints from individuals or on the request of the Chamber of Deputies. Unlike Standing Committee I, he does not have a right of initiative. The Federal Ombudsman is confronted with one or two complaints per year regarding State Security.

The ombudsman may question the members of State Security and may impose a compulsory period for reply. He may also establish any findings on site, have all documents or information that he considers necessary sent to him, and interview all people concerned. In the framework of the investigation undertaken by the ombudsman, the members of State Security are also released from their duty of confidentiality. At first sight, it would seem that the Federal Ombudsman has very wide powers of investigation. But this must be qualified in two respects: unlike for Standing Committee I, the members of State Security cannot be compelled to divulge secrets, and the Federal

Ombudsman may only start an examination on site and examine documents if he has the required security clearance.

On the basis of his findings, the Federal Ombudsman may make recommendations and issue a report. In addition, the complainant will be informed of the results of his complaint.

6.2.3. The Appeal Body for Security Clearances, Certificates and Advice

If a security clearance or certificate is refused or withdrawn, or if negative security advice is issued (see 3.5.1 to 3.5.4), the person concerned may appeal to an independent administrative court. The court thus indirectly supervises a certain aspect of the operation of the intelligence services.[65] This appeal body consists of the chairmen of the Standing Intelligence Agencies Review Committee, the Standing Police Services Review Committee[66] and the Data Protection Commission.

The appeal body may request additional information and question the members of the intelligence services who conducted the investigation or check. The person concerned is also questioned and in principle he gets to see the entire investigation file first. However, at the request of State Security, the appeal body may decide to remove some information from the file. If that information comes from a foreign agency, State Security itself decides whether the complainant may see it. This is a special application of the 'third service rule'.

The appeal body can make a number of decisions: it can confirm the refusal or negative advice of the security authority, require a security clearance or certificate to be issued, or issue positive advice. If the appeal relates to the allocation of a security clearance, the appeal body can ask questions that require additional investigation or give the security authority more time to complete the matter.

6.2.4. The Council of State

The administrative court described above is only authorised to decide on the procedure relating to security clearances, certificates and advice. But as we saw above, State Security may also intervene in other cases as an advisory body. For example, it issues advice for candidate detectives and for people or companies operating in the private security sector. As the advice of State Security forms an integral part of the administrative file on which an authority bases its refusal decision, the person concerned may examine his file. If he finds that State Security has wrongly attributed certain facts to him or wrongly arrived at a negative assessment of him, he may contest it indirectly by claiming the annulment of the decision in the Council of State. This Council is the

65 The composition, powers and procedure of this court have been incorporated into the Appeal Act.

66 This body supervises all police services on behalf of Parliament.

highest administrative court. It has already annulled decisions that were based on doubtful or unverifiable information from State Security.

The Council of State is also competent to examine disputes based on the possibilities of the Act of 11 April 1994. This Act gives citizens the right to see information a public service holds and therefore also their State Security 'file'. If refused, the citizen may appeal to the Council. The Council has already decided that State Security, just like any other administration, must be able to justify a refusal on the basis of the grounds provided by the law (e.g. national security).[67]

6.2.5. The Judiciary

If a fundamental right is violated or if somebody has suffered harm as a result of unlawful or careless acts of the government, the person concerned may go through the ordinary courts on the basis of the general principles. Compensation may be claimed or an ongoing illegality may be stopped. But these possibilities are rather theoretical because the work of State Security will generally be unknown.

If information obtained illegally is used in a criminal case, the person may attempt to have this information removed from the case. Indeed, in a number of cases the courts cannot take into account evidence obtained unlawfully.

The ordinary courts may also decide on the information produced by State Security and used by a prosecutor in the case of a naturalisation (see 3.5.7).

6.2.6. The Data Protection Commission

A citizen aiming to verify the information that State Security has on him, may also contact the Data Protection Commission. However, the citizen will not be allowed to see the information himself. In order to strike a fair balance between the legitimate rights of every person and the need to prevent breaches to the security of the State, the Data Protection Act provides a compromise: the right of access and correction is exercised by the Data Protection Commission itself. It will check the information in the file. The possibilities of the Commission are limited however: it can only make recommendations and it can only report to the requester that a check has been made. It has to remain silent on the content of the files.

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67 Council of State, No. 132.072, 7 July 2004 (Lybaert), www.raadvst-consetat.be. However, we believe that the Council of State missed the specific nature of the duty of professional confidentiality that the members of State Security are subject to (Van Laethem, W., "Het recht op raadpleging van dossiers van inlichtingendiensten", *Publiekrechtelijke Kronieken* 2005, no. 2, pp. 391–405.

6.2.7. The Audit Office

A completely different form of supervision of the work of a government department is of course the supervision of the financial resources. The Audit Office has responsibility for this in Belgium. This too is a satellite organisation of Parliament. The Audit Office will examine the legitimacy and regularity of the expenses, and make sure that the principles of frugality, appropriateness and effectiveness are observed.

The financial resources of State Security form part of the budget for the Federal Public Department of Justice. They are split up into an essential resources programme (personnel and operating costs) and an activity programme (security measures). For reasons of confidentiality, the second programme is not supervised by the Audit Office but by the Principal Private Secretary of the Minister of Justice.

7. CONCLUSION

We can conclude that a sufficient legal framework has now been established – albeit relatively late – which covers all assignments and powers of the Belgian civil intelligence service, as well as the organisation and supervision of its operation. On this front, therefore, State Security – fortunately – no longer lags behind the other Belgian services active in the field of 'intelligence' and 'security'. There are quite a number of such other services for that matter, some of whom have in recent years shifted their mission to pure intelligence work. The way the Federal Police is currently engaged in the fight against radicalism, extremism and terrorism proves this shifting. Some fear that the intelligence service will consequently lose its individuality (and thus perhaps its *raison d'être*). It is unlikely that things will go that far. After all, the civil intelligence service – like many inspectorates with powers overlapping those of the regular police services – has one major trump card: the possibility to specialize in one field. For the intelligence service this is the protection of our democratic constitutional and welfare state from very specific threats.

When we examine the legal framework, two things stand out immediately. First, the scope of competence of State Security stretches far beyond mere intelligence work. Second, its powers differ widely, depending on the nature of the assignment and are rather restricted, especially with regard to intelligence gathering. We have distinguished eight different roles. Although these roles seem very different (e.g. intelligence work, VIP protection, reliability investigations), there is clearly one common denominator: ultimately, each operation of the service – as already mentioned above – is aimed at preserving our constitutional and welfare state.

Today we must conclude that – certainly in comparison to many of its foreign counterparts, but even compared to some other Belgian security services – the powers of State Security are rather limited, at least when we focus on the service's intelligence assignment. As regards VIP protection and reliability investigations, the service does

possess considerable legal powers. A political debate on whether the powers of State Security for its intelligence assignment should be extended (e.g. telephone tapping and all sorts of searches) is going on.

Another striking feature is the quite extensive external supervision. Seven authorities can exercise supervision on (sometimes very specific aspects of) the operation of State Security. We can therefore state, somewhat provocatively, that the Belgian civil intelligence service is a small, well-supervised service with limited powers. Why is this the case? Are Belgians not patriotic enough to demand a strong service or do they simply not have an 'intelligence culture'? Is this because of the mistrust of a service that from time to time was named in scandals, so politicians were reluctant to give additional powers? Maybe there is no pressing need for a stronger service since others assume the same functions? But there is also a possibility for a more positive explanation: the situation might prove the strength of the internal and external legitimacy of the Belgian democratic system.

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