

## **The mandate system for the Belgian Public Prosecution.**

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## **Introduction**

The past three decennia's many administrations within the OECD-countries were subjected to important reforms to comply with the upcoming need for efficiency, effectiveness and economy. These reforms, frequently based on private management principles, were implemented in various manners (Pollitt & Bouckaert : 2000). According to the principles of the New Public Management (NPM), the public sector introduced among other things a new philosophy on management positions which places the flexibility of the manager in the centre of organisation management (Laegreid: 2000; Pollitt & Bouckaert: 2000).

The judicial system does not escape from this managerial discourse: in fact, it's a particularly interesting topic considering the constitutional independence granted to magistrates and the legal culture, which often collide with management reforms. The Belgian situation is a very current and pertinent research subject in this domain: the Dutroux-affaire, the overpopulation in prisons, the slowness of the judicial system, are merely some examples which illustrate the ongoing debate in parliament and the media. It's in respond to the need of a transparent system, client oriented, efficiency and effectiveness, that modernisation projects are frequently introduced (Depré & Hondeghem: 2000).

Within the scope of this article it's impossible to analyse all the reforms conducted in the Belgian judiciary. Therefore this paper will focus on a specific human resource management instrument, namely the introduction of the mandate system for heads of office. The system will particularly be studied within the public prosecution; the bench will not be included in the analysis.

In Belgium, the mandate system wasn't introduced in the public sector until the nineties; moreover, on the federal level it was only introduced in 2000 (Hondeghem: 2000). For the public prosecution the first mandates were introduced in 2001. The objective of such a system is to increase the managerial responsibility and to reduce the risk of politisation of high functions within the administration.

The general rule for nominations within the Belgian administration was one of permanent appointment. In practice this meant that officials and heads of office were appointed permanently. The obligations and rights which were linked to this arrangement, were made explicit in a statute. This led to a system where there was certainty concerning career advancement, but in which mobility or flexibility were almost absent. High ranked officials retained their position until they reached a pensionable age, which led to bureaucratic, habitually organisations which lacked innovation. Since the eighties, possibilities to enhance

the mobility and flexibility of high ranked officials have been sought. The idea of creating a pool of high ranked officials, trained in management, was one of them. In such a system rank or degree would be detached from function and a director-general could stay in his rank even though he wouldn't perform this function. This created the possibility to make officials mobile without loss of rank. It gave the Minister the opportunity to choose his top managers within the administration and led to the end of the Ministerial cabinets. Another idea to create mobility and flexibility was to introduce a mandate system for high ranked officials. Nominations within top-functions would be limited in time (deviation from nominations of permanent appointment) and would be linked to an agreement. This system was introduced in Belgium by the Copernicus reform and made it possible to appoint external and internal (from within the administration) candidates to a mandate (see also below).

This article is divided in several components. In the first part the concept of a mandate system will be elaborated. Next, the general situation in Belgium will be briefly demonstrated in a comparative perspective. Subsequently, fail and success factors of the system will be disclosed. Finally, the situation within the Belgian public prosecution will be examined, analysed and confronted with the theoretical principles.

### **The basic principles of a mandate system**

The mandate system refers to the difference between two types of contractualisation and places the flexibility of the mandate as the mean point of the debate. Basically, there are two types. The first type of contractualisation implies in fact the abandonment of a system of nomination and replaces the nomination of a candidate or employee with a contract. The second type refers to the implementation of some kind of performance agreement (or contract) (Putseys & Hondeghe: 2002). The mandate system is in such a manner an example of the second type. In this article, the system is described as a performance agreement with higher ranked officials, concerning management responsibilities for a limited period and with the preservation of its statutory position (Putseys & Hondeghe: 2002). This description already reveals several important aspects.

Firstly, the idea of a contract implies that an agreement is reached at the outset of the mandate concerning the objectives which have to be achieved. These objectives are strategic as well as operational.

Secondly, the system incorporates an evaluation component. It's clear, considering the fact that a mandate runs over a fixed term, that the evaluation has as a goal to verify to what extent the objectives, which were described at the beginning, are in fact reached at the end.

According to the (theoretical) principles, a positive evaluation will lead to a prolongation of the mandate and a reward, a negative evaluation on the other hand will lead to a termination of the mandate. In case of the preservation of the statutory position, the mandate holder can resume his or her initial function. An intervening evaluation may imply an adjustment of the objectives. The implementation of a mandate system is in fact explicitly connected to an new evaluation system and the modernisation of the remuneration system. Performance bonuses are often provided (Hondegheem: 2000).

Thirdly, the principal objectives of a similar system are in fact the liability and flexibility of the manager. He is responsible for the means (financial, personnel,..), has the liberty to manage its administration and to attain goals.

The system creates in fact a new relation between the politicians and the administration: the politicians determine the strategy and the main objectives of the public policy, whereas the administration occupies itself with operational management in which they receive the needed liberty to manage their means (Hondegheem : 2000). Finally, its clear that this system has to have an added value to the increase of the efficiency and the effectiveness of the public administration (Laegreid : 2000).

### **The Belgian situation in a comparative perspective**

As already stated, the idea of a mandate system has been present in Belgium since the eighties. The idea was to prevent politisation of high functions and to anticipate dysfunctions within political cabinets (Mertens : 2003). In spite of this, it was only in 1991 that a mandate system was introduced: the Belgian public enterprises were the first to do so. At the local level the system was put into action in 1993 (Hondegheem : 2000).

At a federal level, it was the Copernicus reform which introduced the implementation of the mandate. The goal of this reform included the transformation of a non-transparent, traditional bureaucracy into a modern administration oriented towards citizens. It was the new Minister of Public Functions and modernisation of the administration, Luc Van den Bossche, who initiated this revolutionary 'Copernicus-plan' (Hondegheem & Depré: 2005; Hondegheem & Parys: 2002).

The basic principle of the mandate system on the federal level is that none of the officials can stay nominated in a high-ranked position without receiving a positive evaluation after a certain period of time. This could lead to the creation of a pool existing of responsible managers, who are obliged to realise certain objectives, made explicit in management plans and concretized in operational plans. In theory, this implied that 450 high-ranked official positions were declared vacant. The top positions, the N and N-1, were declared open for internal and external candidates. The intermediate positions, N-2 and N-3, were only available to internal candidates (Putseys & Hondeghem: 2001; Thijs, Pelgrims & Hondeghem: 2006 ; Broucker & Hondeghem : 2008). The mandate encloses a period of 6 years and is renewable. The mandate holders will be evaluated twice: halfway and at the end. As already mentioned, the mandate system isn't strictly a Belgian phenomenon. It's thus important to mention that mandate systems can differ from country to country, even from sector to sector (Putseys & Hondeghem : 2001). The differences can be situated in the following dimensions:

- The size of the staff at the top of the administration. New-Zeeland, for example, counts 37 chief executives, whereas the Netherlands report 740 high-ranked officials. It speaks for itself that the size of the group has influenced the contractualisation system which is developed.
- The specific objective of the system. Certain countries, such as the Netherlands, introduced the mandate system to increase the mobility of high-ranked officials. Other countries, as the United Kingdom, especially wanted to increase the performance of the officials. Other objectives could be the enforcement of political control and the strengthening of accountability.
- The relationship with the political scenery affects the characteristic of the systems, which differs from country to country.
- The possibility of a performance contract. In Belgium, a contract is obligated, whereas in Denmark it is not. In the United Kingdom the Minister has no part in the contract, but in Belgium, the Netherlands and New-Zeeland the Minister is involved.
- The span of the mandate (number of years), the selection and the evaluation of the mandate holder may also differ.

A comparative analysis of five years is shown in the table below. It gives an overview of the possible differences in the system (Hondeghem: 2003).

**Table 1. Comparative Analysis**

	<b>Belgium</b>	<b>The Netherlands</b>	<b>United Kingdom</b>	<b>New Zealand</b>	<b>Denmark</b>
<b>Target group</b>	Functions N, N-1, N-2, N-3 (450 managerial functions)	General service of the state(740) ; Top management group (60)	Senior Civil Service (3300)	Chief Executives (37)	Departmental heads (18) and agency heads (300)
<b>Objectifs</b>	Responsabilisation	Mobility	Performance	Give account	Performance
<b>Contractualisation of the management relationship</b>	Management plan	Work agreement	Performance agreement	Performance agreement	Direktor kontrakt
<b>Contractualisation of the work relationship</b>	Statute (mandate of 6 years)	Statute (mandate of max. 7 years)	Contract of limited or unlimited duration	Contract of limited duration (5 years).	Contract or statute is (un)limited
<b>Structure support</b>	Department HRM Top management	Bureau ABD	Corporate Management Command (Cabinet Office)	State Services commission	Ministry of finance & State employer's Authority

**Advantages, disadvantages, success and risk factors of the mandate system**

The system contains several advantages and disadvantages. But it is also important to take the success and risk factors into account when implementing a similar system (Putseys & Hondegheem : 2001).

**The advantages.** The fact of having clear objectives is an important trump for the mandate holder. This allows him to have a transparent perspective which gives him the opportunity to focus the organisation on principle aspects (Putseys & Hondegheem : 2001). These objectives are the result of a negotiation between several partners. This increases the *engagement* of all implicated parties and the *consensus* on the priorities. Simultaneously the mandate holder is protected against demands from the Minister because the objectives are established. Conversely, the Minister can easily control the activities of the mandate holder. Finally, the *mobility* of the mandate holder is very broad. Even when negatively evaluated, he can easily leave the organisation, put his knowledge and experience at the disposal of another organisation. This of course may be for the organisation he's leaving a disadvantage of the system.

**The disadvantages.** Firstly, if the responsibility of the mandate holder is withheld from the contract, the risk exists that he will only pay attention to the criteria defined in the contract.

This could create a *checklist* mentality (Putseys & Hondeghem : 2001). This implies that it might be necessary to build in flexibility in the way the objectives are being reached (Laegreid: 2000). Secondly, its important to pay attention to the evaluation of the mandate holder. A heavy evaluation procedure can reduce the mandate holder's motivation (Putseys & Hondeghem : 2001). Even more, the cost of an evaluation can be disproportionate to the gain from it, due to the masses of required information (Laegreid : 2000). Thirdly, although the mobility of the mandate holder can be seen as an advantage, it could also incorporate a disadvantage. It can create a form of discontinuity within an organisation. Fourthly, the introduction of bonuses could degrade traditional values of *equality* of remuneration. Finally, there could be an integrity bound the personality of the mandate holder: why should he present clear and accurate information, when he knows this could endanger his reputation and increase the risk of a non-continuation of his mandate (Putseys & Hondeghem : 2001)? Even more, a similar evaluation would affect certain values, like personal responsibility and trust (Laegreid : 2000).

**Success and risk factors.** First the most important factor is a *steady work relationship* between the Minister and the official. The priority, the realisation and the evaluation of the objectives, is a responsibility of both parties. Secondly, the presence of a *stable* political environment is a necessity for the development of an enduring work relationship within a positive and goal-achieving atmosphere (Putseys & Hondeghem : 2001). It's important to mention that the objectives are often more promising at the outset than in the end. In other words: mandate holders have a tendency to promise more than they can deliver (Laegreid : 2000). Thirdly, it's necessary that the Minister specifies the strategic objectives together with the mandate holder (Putseys & Hondeghem : 2001). On the other side, it's also very important to mention that the mandate holders don't automatically follow the public policy of the Minister (Laegreid : 2000). Fourthly, the management capacity of an the organisation has to be sufficient to achieve the postulated goals.

**Empirical research** shows many different advantages, disadvantages and motives for implementing mobility and flexibility within the top-level of organisations. These assertions are often normative and scarcely based on research. Nevertheless, there exists a lot of research concerning this subject, often concealed in topics as managerial successions and organisational performances, mobility, management, turnover,... . One of the oldest and well known researches is the case study of Alvin Gouldner concerning succession within the

Gypsum Plant (Gouldner: 1954). Gouldner describes how the new plant manager, charged with the task to improve the functioning of the head office, started off with strategic transfers within the management structure of the plant. He also introduced his former personnel manager as a member of the management team. The new managers didn't feel committed to the existing informal culture within the plant. This resulted in a loss of trust from the side of the executive staff and the employees and had as a consequence that the bond of loyalty regarding to the top-manager was broken. As such, the new plant manager was forced to enhance his grip on the organisation by implementing impersonal or bureaucratic measures within a detailed and formal system of control. Considering the fact that each new plant manager would have to fall back on such a system, frequent successions of a top-manager would result in a more bureaucratic organisation. Grusky's research conducted in the army and private organisations, confirms this assertion (Grusky: 1964). His research showed that there exists a connection between the frequency of succession at a top-level and the degree of bureaucracy within an organisation. He found that private organisations showed a lower succession frequency. In a military context (air force base) this frequency was higher. Grusky found that private managers took more time to establish a certain degree of unity and homogeneity based upon mutual values within the organisation. Confirming this theory the higher succession frequency within the military organisations, should lead to a lower degree of homogeneity based on mutual experiences within these organisations. But Grusky refuted this assumption. He found that the homogeneity within officers corps of the military organisation was not established through mutual experiences on the air force base, but sprung from the institutionalized value pattern that was transferred through the military education system. Thus, a high succession frequency requires the presence of a certain institutionalized value pattern. Grusky empathizes that a succession frequency which is too high, influences the achievement of postulated objectives negatively. A new manager needs enough time in order to let his actions result into performances. In his first year a manager needs to adjust, the second year carries out his reforms and actually manages the organisation. During the third year he is already thinking about his next job. In additional research, conducted in a professional baseball team, Grusky found that the rate of administrative successions was negatively correlated with the degree of organisational effectiveness.

J. L. Price, recapitulated the literature on successions in the following propositions (Price : 1976):

1. Sequential higher succession frequency creates a raise in the administrative section of an organisation, (thus more overhead) (new managers bring extra staff members into the organisation, cfr. Gouldner);
2. A higher succession frequency brings about a higher degree of formalisation, and thus bureaucratisation;
3. A higher succession frequency leads to a lower degree of participation;
4. A higher succession frequency brings less satisfaction, more innovation and less conformity.

Recent research has also shown a revival of the succession issue (Hill: 2006). Hill acknowledges “the negative relationship between change and organisational performance”. It has been shown that successions by external candidates lead to more organisational changes. Local government authorities that performed well, also had lower number of chief executive successions. Other research found that high environmental munificent and consistently high performance over time, are strongly associated with relatively lower Senior management turnover (Boyne, James, John, Petrovsky: 2008). Low performances increase turnover. As such, “never change a winning team”.

Based-up this literature research we would like to caution organisations to implement mandate systems deliberately, and specially in judicial systems which embody strong institutionalised set of values.

## **The mandate system of the Public Prosecution in Belgium**

### ***The structure of the Public prosecution***

The public prosecution in Belgium is structurally allied with the Courts of First Instance and the Courts of Appeal, but not with the Justice of the Peace and Administrative and Constitutional courts. Every district has a Public prosecutor<sup>4</sup> who is head of the public prosecution office of the district and who is assisted by first substitutes and substitutes. Together they embody the public prosecution at the Court of First Instance, the juvenile courts, police courts and the tribunal of commerce. At the labour courts the public prosecution is embodied in the Prosecutor for labour legislation, supported by (first) substitutes. They

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<sup>4</sup> In Belgium the public prosecutors at a district level is fully named Public Prosecutor of the King.

treat, among other things, violations of the labour law proceeded at the labour court and at the correctional and police courts.

In the Court of Appeal, the public prosecution is represented by a Prosecutor-general, who manages the public prosecution office of the region. He is assisted by the magistrates of the Prosecution-general and the Labour-prosecution-general.

The Prosecutor-general is supported by a First Advocate-general, several advocates-general and several substitutes. For the Prosecution in labour legislation he is also assisted by a first advocate-general, several advocates-general and substitutes. The Public prosecutors and labour-prosecutors at first instance practice their function under the supervision of the Prosecutors-general with the Courts of Appeal.

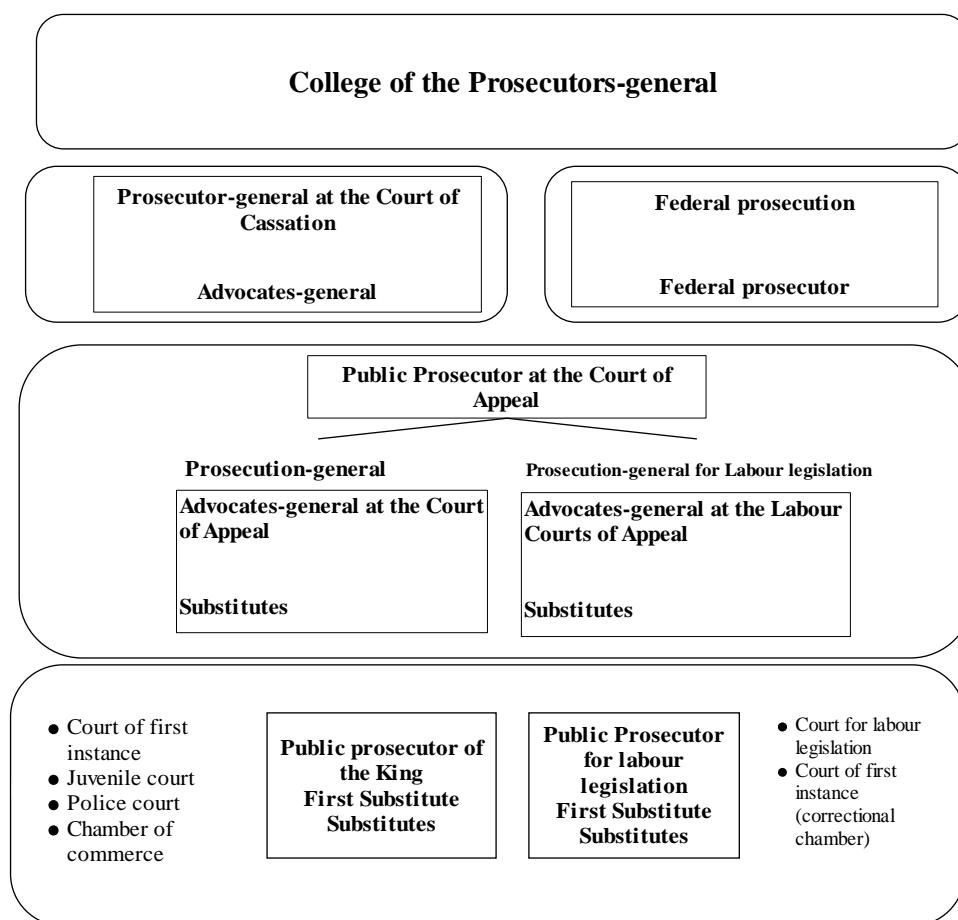
The five Prosecutors-general of the country embody the College of Prosecutors-general, under the authority of the Minister of Justice, which sets the objectives of the criminal policy.

There are also several national magistrates with the Public prosecution, whom are gathered in the Federal Prosecution, under the authority of the Federal Public Prosecutor. The Federal prosecutor has specified tasks in the field of organised crime, international cooperation, terrorism, international humanitarian law and military offences (Ministry of Justice: 2009).

At the Court of Cassation the Public Prosecution is represented by an Prosecutor-general, a First Advocate-general and several Advocates-general. The Prosecutor-general of the Court of Cassation is a member of the public prosecution, but does not govern the organisation (Plessers, Depré & Bouckaert: 2005).

The structure of the Public prosecution is displayed underneath. Notice that the figure, as presented, isn't an hierarchical model. It only shows the different levels in the organisation.

**Fig. 1 Structure of the Public Prosecution**



***The principles of the mandate system for the heads of the Public prosecution offices***

The law of 22 December 1998 introduced the mandate system for the heads of the public prosecution offices, which were appointed permanent before that. The presidents and first presidents of the courts, the Public prosecutor, the Prosecutors-general and the Federal prosecutor were all nominated ‘Head of office’ and executed from that moment temporary tasks within their mandate. In this article we will only focus on the heads of office within the Public Prosecution. Next to their judicial responsibilities as Public Prosecutor, the heads of office also have managerial and steering tasks within the organisation. They have to (1) execute the criminal policy, (2) administer and steer their organisation, (3) provide a service open to citizens (4) of a qualitative level. This had as a purpose to introduce more efficiency and effectiveness in the Belgian judicial system (Van Espen: 2009).

The period of which a mandate consists, changed several times. The original system enclosed two options, one for the permanent appointed Prosecutors who were already present and one for new appointed heads of Public Prosecution offices. The mandate for new candidates lasted for one period of seven years, non-extendable within the same office. Applying for a new

mandate in another office after 7 years, on the other hand was within the bounds of possibility (Hondeghe: 2000). The arrangement for the already present heads of office was somewhat different. They were also nominated for a period of seven years, but had the opportunity to apply for the prolongation of their mandate. They would be evaluated after their first term and would have to compete with other candidates in applying for the second mandate. In this way all the present heads of office could retain their seat until they reached a retiring age. Meanwhile, the system has changed: a mandate now lasts five years and is only renewable once (Van Espen: 2009). On this moment, there are speculations that the current Minister is going to adjust the system. It is said that he would stand by one, non-renewable term of seven years.

To obtain a mandate position, the candidate has to be selected by the High Council for Justice (Conseil Supérieur de la Justice) judged on a range of criteria: the file of the candidate, the recommendation of his predecessor, the recommendation of a member of the bar, the candidate's management plan for the corps for which he is applying and a copy of his evaluation file (Plessers, Depré & Bouckaert: 2005). The High Council considers the function of head of office as very important, as he or she is decisive for a professional organisation. The final nomination is executed by the King.

In September 2000, the profiles, necessary for the selections of the heads of office, were published (Moniteur belge : 2000; Van Espen: 2009). In these profiles, general (for example 'integrity', 'vision',...) and specific (problem analysis, creativity, energy,...) competences are outlined. Concerning these profiles, the High Council for justice has noted that these were drafted very rapidly. This is problematically, considering their importance (Van Espen : 2009).

In 2006, a board was founded to evaluate the heads of office. The evaluation board is responsible for introducing mid-term evaluations for the mandate holders. All heads of office are evaluated on three criteria-groups (Moniteur belge: 2008):

- General criteria: judicial knowledge, integrity, vision, understanding of the society, the ability to lead a group, planning and organising, following-up progress, decisiveness and public service oriented.
- One or several specific criteria: collaboration, delegation, active listening, professional development of employees, adaptability, analysing capacity, stress resistance and emotional intelligence.

- The evaluation of the realisation of the management plan, which consists of the evaluation of the initial plan and the modifications which were carried through.

The specific criteria are not applicable for all mandates. Each of the general and specific evaluation criteria is linked to a number of behavioural indicators, which make it possible to determine if the head of office meets the criteria and to which extend. Thereupon a label is attributed for each criteria: “good” of “insufficient”. The determination of the label is motivated and based upon the following criteria (Moniteur belge: 2008) :

- For the general criteria : if the head of office receives an “insufficient” on one of the general criteria, the score on his or her final evaluation will be “insufficient”.
- For the specific criteria : if this criteria-group consists of one or two criteria and the head of office receives an “insufficient” for at least one of these criteria, the final evaluation will also be “insufficient”. If this group of criteria consists of three or four specific criteria and if the head of office receives an “insufficient” for at least two criteria, the final score will be “insufficient”.
- If the assessment of the management plan leads to an “insufficient“, the score of the final evaluation will be “insufficient”.

It’s important to mention that it is until now unclear how the evaluation board assesses the described criteria.

### ***The Belgian Public Prosecution in numbers***

The following schedule shows the number of offices in every layer of the Public Prosecution.

**Table 2. Number of offices within the Public Prosecution**

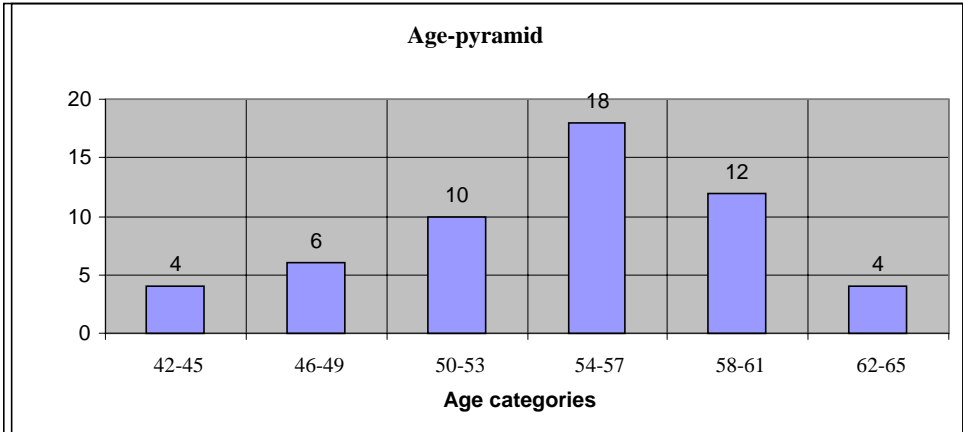
<b>Layer</b>	<b>Public Prosecution</b>	<b># of offices</b>
Federal	Public prosecution with the court of Cassation	1
	Federal Public prosecution	1
Regional	Public prosecution-general	5
	Public prosecution-general for labour legislation	5
District	Public prosecution	27
	Public prosecution for labour legislation	21

In total there are 55 heads of office within the Public prosecution. Among them there are 21 Prosecutors for labour legislation, 27 Prosecutors, 1 Federal Prosecutor and 6 Prosecutors-general. The first mandates were attributed in 2001, conversely the last ones were attributed in 2008. The partition of mandate holders according to sex and age is displayed below.

**Table 3. Partition of heads of office according to sex and linguistic group**

	Dutch-speaking		Frensh-speaking		Total
	Male	Female	Male	Female	
<b>Public Prosecutor</b>	13	1	9	4	27
<b>Public Prosecutor for labour legislation</b>	8	3	6	3	21 (1 missing value)
<b>Public Prosecutor-general</b>	2	0	4	0	6
<b>Federal Public Prosecutor</b>	1	0	0	0	1
<b>Total</b>	24	4	19	7	55

This schedule shows that the linguistic partition is fairly respected: 28 dutch-speaking as opposed to 26 french-speaking heads of office. The partition according to sex on the other hand is not well-balanced. In every layer, male heads of office are more present than female heads of office. The age-pyramid is displayed bellow. The majority of the heads of office is between 50 and 60 years of age.



***An analysis of the mandate system for heads of office within the Public Prosecution***

If we look closely at the mandate system for heads of office or if we confront the system within the Public Prosecution with the theoretical principles described in the first part of this article, we can identify several important differences and bottle necks. To validate the

observations describe below, interviews were conducted with several key-actors (see list of interviews) within different levels of the Public Prosecution and the High Council for Justice.

1. The reason for introducing the system was ambiguous. The official idea was to turn the justice system into an efficient and qualitative organisation, carried by competent and responsible managers who practiced modern management. On the other hand speculations say that the system was introduced to interfere in the policy of the permanent appointed Prosecutors and to replace some of them. The Belgian Justice system had just gone through an enormous crisis caused by several scandals (Dutroux-affair, unsolved organised crime,...). It was clear that some elements of the system were operating badly, so politicians wanted to intervene. The huge distrust opposite of the permanent heads lead to the introduction of the mandate system which made it possible to replace Prosecutors after a period of seven years.
2. If the actual reason for introducing the system was to intervene in the policy of the Prosecutors, why did they choose a fixed term of seven years (Hondeghem: 2000)? Seven years of mismanagement is a disaster for any organisation. Additionally, it's questionable why mandates couldn't be prolonged in the initial system. However, readjusting the system to a renewable term of five years was a positive evolution.
3. Introducing a mandate system to increase the efficiency and quality within the Justice system, will have a limited added value, taking the restricted management possibilities of the system into account. The mandates were introduced premature. In the current organisation mandate holders are bound in their management because of their dependency on the Minister of Justice concerning recourses. This dependency creates an extra barrier in increasing the efficiency and quality in the organisation. All resources are administered centrally by the Ministry and the criminal policy (although in consultation with the College of Prosecutors-general) is enforced top-down from the Minister, over the Prosecutors-general to the Prosecutors at a district level. The College of Prosecutors-general was made responsible for implementing the policy and the coordination of the organisation as a whole, but was not granted the administration of resources. The same goes for all heads of office (prosecutors-general and prosecutors) who have to implement the public policy, slightly adjusted to local characteristics, within their own district or region. Although they have some freedom of movement to manage their organisation, within the prescribed framework, they do not have any autonomy concerning their personnel or finances. (Londers: 2009) Put

differently: the duality between management and policy remains standing (Vervaeet, Depré & Bouckaert: 2008). This situation could change in the future. The current Minister of Justice has the intention to reform the justice system and to introduce the possibility to decentralize (financial) recourses to all prosecution offices. (De Clerck : 2009). The idea is to give the heads of office the necessary freedom of movement to manage their organisation and to make them responsible for reaching the objectives postulated in the management contracts.

4. An actual management (or performance) contract between the mandate holder (head of office) and the Minister or the High Council for Justice does not exist. Conversely, the theoretical principles consider such a contract as a necessity. It describes the responsibility of each partner, gives a clear view on future perspectives and is used to make the mandate holder accountable. The management plans, drafted by the candidates during the selection procedure, do not replace such a contract. These plans aren't genuine management plans, which are the result of a dialogue within the organisation. They only contain the sole vision of the candidate on how the organisation could function. Theoretically such a plan should be inspired on the management plan of the current management plan of the office for which the candidate applies. To label the plans of candidates as management plans is therefore a mistake. Even more, key persons mention that the quality of these plans strongly vary from candidate to candidate. Some of the plans are clearly drafted by external private consultants, others are un-inspired and contain narrow-minded vision on management and the organisation, only few of them are the product of an extensive internal dialogue and are fine examples of how a management plan should be. The problem is that the law does not impose any requirements concerning the content or form of these plans. They are only drafted to convince the High Council for Justice of the capacities of the candidate, but key persons also mentioned that the council doesn't screen the plans properly because the management knowledge of the members is often limited. Notwithstanding, it would be logical that, once nominated, the head of office would evaluate the existing plan, drafted by the predecessor, together with his employees and the partners of the organisation. Disregarding this procedure and creating a totally new plan would lead to discontinuity (Van Espen : 2009). It would be interesting to reappoint the 'management plan', as it is now defined in the law for the selection of candidates head of office, as a vision text to avoid further confusion. To optimize the system, candidates should, once they are appointed, be obliged to

draw-up an actual management plan which is debated with all involved actors (former head of office, employees, Minister,...). Such a plan could then function as a proper management (or performance) contract, within a mandate system which makes the head of office accountable for his actions and his management.

5. Does an actual management plan have a purpose in the current Belgian Judicial system? The discussion on the duality between management and policy (described in point 1) indicates that it hasn't. Without the authority to manage the necessary resources to achieve postulated objectives, a similar contract has limited added value. It is difficult to make the heads of office responsible for reaching objectives, if they don't get to manage the necessary resources.
6. There are no actual benefits in becoming head of office. The workload is higher and the responsibilities are bigger, but there is no reward for these extra burdens (Vervaeke: 2009). The increase in pay for heads of offices is minor, the mandate is (for some) only once renewable and there is no bonus system to reward well functioning managers. The latter is difficult to introduce in the mandate system of the Public Prosecution, since there is now no objective manner to follow-up the actions of the heads of office until now. Introducing the possibility to apply for a second mandate term, could be an incentive to manage the organisation to the best of ones abilities. Prosecutors are now barely stimulated to manage their organisation in the best way they can. The current system creates an absurd situation. Well-functioning heads of office can't be rewarded in any way and malfunctioning heads of office are left to their own device for five of seven years. Additionally it should be mentioned that repeatedly prolonging a mandate, will have consequence on the innovation within an organisation. Mandate holders who maintain their function too long, become washed out and lack the drive to make ground-breaking changes.
7. The selection procedure for the candidate heads of office is questionable. Firstly it is speculated that the system doesn't always seem to attract the most suitable candidates. Some candidates renounce a mandate because the system isn't attractive enough: the position is uncertain, the autonomy is bound, the increase in payment is minor and the future holds demotion (Hondeghem : 2000). Because of this, potentially suitable heads of office are deprived from the Public prosecution; of course this is not the case in all districts or regions. Secondly, the number of candidates who apply per mandate is low in most districts or regions. To give an indication: in Belgium, there are seldom more than 3 candidates per mandate. In most cases it is the right-hand-man of the former

head of office. Applying over the borders of districts or regions is seldom done. A possible reason therefore is the fact that they have a disadvantage in the current selection procedure. Seeing that the management information of most prosecution offices isn't public, they have almost no accurate data to draw-up a well-based management plan. The latter weakens their position during the selection procedure.

8. Because the system changed so often, a mishmash of terms exists next to each other. At the moment some Prosecutors have a mandate of seven years which can be prolonged once, some have a mandate which can't be prolonged at all and some have a mandate which can be prolonged after five years. This leads to confusion and inequality within the Public Prosecution.
9. Several mentioned aspects lead to a variety in evaluation procedures. In the beginning there was no specific intermediate or finale evaluation for mandate holders. It was only with the law of 9 may 2008 (Moniteur belge: 2008) that specific evaluation criteria for heads of office were introduced. This had as consequence that before 2008 nothing could be done against insufficient functioning heads of office during their mandate. Additionally, the first heads of office did not know how they would be evaluated at the end of their mandate. They only knew that they would be judged on the realisation of the so called management plan they drew up for their candidature. The way they proved this to the evaluation board, was entirely their own choice. On the other hand, the risk of having prior detailed knowledge concerning an evaluation procedure is that it creates a "check-list" mentality. Generally the evaluation of the heads of office remains a delicate matter. Firstly the criteria on which the evaluations are based can't be judged in an objective manner. Every member of the evaluation board judges the mandate holder as he sees fit. Secondly there are no actual objectives for which the mandate holders can be held accountable. This is due to two reasons: the objectives aren't fixed in a contract and the attainment of goals can't be measured by an objective and valid method. Evaluating and prolonging mandates is thus a thorny question.
10. Although only some categories heads of office are evaluated intermediate, it should be possible to monitor the activities of all heads of office. In order to guarantee a good management in every Public Prosecution office, the mandate system should include the opportunity to take corrective manners when needed. As mentioned in the theoretical principles, a manager in his first year is adjusting, it is only in his second year that he actually manages the organisation. Considering this, an intermediate

evaluation during the first three years is only justified if it is meant to support the new head in improving his management. It can't be used as a way to settle one's bill. It is thus important that the evaluations are executed by judicial management experts, who can give advice concerning management and policy. Notwithstanding the introduction of an intermediate evaluation, the system also needs an alarm procedure. There has to be a service where malfunctioning heads of office can be reported. This would create a permanent possibility to support or intervene (after a thorough investigation) in the policy of the heads.

11. The same counts for the boards which are responsible for the selection and the final evaluation of the mandate holders. The composition of the current boards lack members with management knowledge. The selection board only consist of magistrates, the evaluation board consists of magistrates, members of the administration and the bar. Therefore, the managerial capacity of the mandate holders can not be assessed sufficiently. For the selection procedure this implies that the managerial capacity of the candidates becomes a secondary matter. The screening of the so called management plan is subsidiary to the (subjective) recommendations and the assessment of the selection criteria foreseen in the selection procedure. This creates a paradox, considering the fact that candidates who apply are selected to manage an organisation. There is thus no certainty that the best candidates are withheld. For the evaluation board this implies that the goal attainment and the management performances of the head of office aren't assessed properly. The fact that members of the administration also have a seat in the evaluation board creates an additional point of criticism. In theory magistrates can only be evaluated by fellows, conversely this only counts for their judicial tasks. Evaluating a magistrate on his managerial capacities is a different question; in theory this can be done by an outsider. On the other hand it is recommended to exclude members of the executive power out of the process, this to ensure the separation of powers.
12. The law doesn't foresee a regulation after the mandate of a head of office is terminated: which possibilities does a former mandate holder have? In the current system they fall back on their old position. The return to be a substitute in the organisation of which they were head of office, change career or retire. The heads of office who return to their old function suffer a huge demotion, this in a financial (decrease in payment), work related (from manager to treating files, a task they haven't done for five or seven years) and social (loss of prestige) perspective. The

presence of the former heads of office also has an influence on the organisation. This can be positive or negative. His presence can guaranty the continuity of the policy within organisation. He can support the new head of office and show hem the ropes of managing the organisation. On the other hand the new mandate holder could be overshadowed by his predecessor. This could lead to an immobile and divided organisation. The only option a former (positive evaluated) head of office has, is to apply for a new mandate in another Public Prosecution office. This is hampered by two factors: the number of vacancies is limited and he has an unequal position opposite of candidates from within that office. In the private sector, former heads of office seldom remain in the organisation they once led. Most have many different fallback positions at the same level in other companies, even across industries. In this way, they preserve their status and their wage. Within a semi-closed system like the Public Prosecution<sup>5</sup>, having such a fallback positions is not within the bound of possibilities. It is thus important to create similar positions within the system. In order to create this possibility, Article 324 was introduced into the penal code in 2006. The article gave the Minister of Justice the possibility to appoint former heads of office to an exceptional assignment within or outside the Judicial System.<sup>6</sup> Conversely, the use of the article is been refused by the Minister up till now. The explication for this withhold is the fact that there are too many heads of office within the system (54 positions), to create assignments for all of them. Although the article only concerns outstanding functioning heads of office, many of them would appeal upon the article to maintain their status. In a reformed judicial system with less districts and regions, a similar system could function. Having this possibility within the mandate system would make the system more attractive for potential heads of office.

13. Finally, it's absurd to replace a well-functioning head of office with al less suitable candidate, just because his mandate term has ended. The chance that the competences of the candidates which apply for a mandate are less than those of the current head is realistic. Appointing one of these candidates would have negative consequences for the organisation. The question is what kind of mandate system undermines the functioning of is own organisation, if the aim is to improve it's efficiency and effectiveness.

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<sup>5</sup> A member of the Public Prosecution can always become a member of the bench in his capacity of magistrate.

<sup>6</sup> Art. 324 of the Penal Code (Gerechtelijk Wetboek)

## **Conclusion**

The introduction of such a system should be well-considered and several preliminary conditions should be fulfilled. The mandate system should only be introduced if the possibility to verify the attainment of postulated goals exists. This implies that there has to be an actual contract in which these are written down, as well as an objective method to measure them. Evaluating the performance of the mandate holders, without any objective evidence is a delicate matter. The introduction of a mandate system should be accompanied by elaboration of a well-considered evaluation procedure. Intermediate and final evaluations are a constituent factor within a mandate system. During intermediate evaluations heads of office can be assisted in work and deed, or corrective measures can be taken. The final evaluation is determining for the future career path of the mandate holder. A positive evaluation will most likely lead to a prolongation of his mandate, a negative evaluation implies the termination of his function. Having the possibility of being prolonged within their mandate will stimulate heads of office in managing the organisation to the best of their abilities. A well functioning mandate should be rewarded for his performances, if not there is no reason why he should exceed himself. In the end the introduction of a mandate system should be fit into a wider career policy, if not applying for a mandate only holds demotion for the future. A similar system has respectable as well as financially appealing enough to attract the best possible candidates.

It is clear that a lot of differences exist between the mandate system within the Belgian Public Prosecution and the theoretical principles of such a system. The system within the Public Prosecution was clearly introduced prematurely, for dubious reasons and in a precipitate manner. All the difficulties within the current system create a paradox. A mandate system is normally introduced to appoint the best possible heads of office within an organisation, but why should anyone want to be appointed head of a Public Prosecution office if his position is uncertain, his autonomy is bound, the wage increase is low and his future only holds demotion?

The ultimate question is what the added value of the mandate system is for the public prosecution. It remains impossible to intervene in the policy of appointed heads of office (during their mandate), the efficiency and effectiveness is only increased in some prosecution offices and a contract containing actual management responsibilities is absent. An alternative option is to appoint all Public Prosecutors as temporarily heads of office, combined with the introduction of intermediate evaluations or audits to verify the functioning of the offices and

the implementation of an alarm procedure which creates the possibility to intervene when difficulties occur.

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### **List of interviews**

- Prosecutor of the King, 3 July 2009
- Prosecutor of the King, 30 August 2009
- Prosecutor - general, 13 July 2009
- High Council for Justice, 14 July 2009