



Arrest team Sint Maarten

Inspection into the organization and deployment of the arrest team of the Sint Maarten Police Force.

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List of abbreviations

<i>Abbreviation</i>	<i>Meaning</i>
AOE	Arrest and Support unit (<i>Aanhoudings- en Ondersteunings-eenheid</i>)
AT	Arrest team (<i>Arrestatieteam</i>)
BES	Bonaire, Sint Eustatius, Saba
CAS (countries)	Curaçao, Aruba, Sint Maarten
DSI	Special Intervention Service (<i>Dienst Speciale Interventies</i>)
CvK	Board of Chiefs of Police (<i>College van Korpschefs</i>)
EHRM	European Court of Human Rights (<i>Europees Hof voor de Rechten van de Mens</i>)
<i>Fte.</i>	Fulltime-equivalent
HOvJ	Chief Public Prosecutor (<i>Hoofd Officier van Justitie</i>)
IBT	Integral Professional Skills Training (<i>Integrale Beroepsvaardigheden Training</i>)
KPCN	Dutch Caribbean Police Force (<i>Korps Politie Caribisch Nederland</i>)
KC	Chief of Police (<i>Korpschef</i>)
KPSM	Sint Maarten Police Force (<i>Korps Politie Sint Maarten</i>)
LIOL	National Ordinance on the establishment and organization of government (<i>Landsverordening Inrichting en Organisatie Landsoverheid</i>)
MvJ	Ministry of Justice (<i>Ministerie van Justitie</i>)
OT	Observation team (<i>Observatieteam</i>)
SWAT	Special Weapons and Tactics

Foreword

This report of the Law Enforcement Council contains the findings, analyses, and conclusions of the investigation into what extent the arrest team of the Sint Maarten Police Force is equipped to perform its tasks and in what way this task performance is shaped.

The deployment of an arrest team is the police's utmost use of force. This deployment is aimed at preventing or controlling instances of violence and minimizing the danger to the police and third parties. The presence of necessary safeguards and preconditions for the safe and professional functioning of an arrest team is therefore important.

The Council concludes based on this inspection that, despite the preconditions being insufficiently fulfilled, the execution of the operations is going relatively well in practice. However, this is mainly due to the extraordinary commitment of the police officers involved in the arrest team.

The Council hereby wishes to thank the organizations and individuals involved in the inspection for their constructive contribution. The Council trusts that the findings and recommendations of this inspection will contribute to the improvement of the necessary preconditions for the arrest team.

THE LAW ENFORCEMENT COUNCIL

Mr. E.R.A. Morillo, chairman

Mr. M.I. Koelewijn

Mr. M.R. Clarinda

Summary and recommendations

Introduction

The Law Enforcement Council has included several topics in its annual plan for 2023. One of the topics is an inspection into the organization and deployment of the arrest team (AT) of the Sint Maarten Police Force (KPSM). Taking into account the contribution that the AT makes to the maintenance of law and order and to the safety of citizens and police officers, the Council has examined the presence of the necessary safeguards and preconditions for the safe and professional functioning of the AT. The Council did this based on the topics of legislation, regulations, and policy, financial, human, and material capacity, approach and management and cooperation.

Legal framework and policies

Based on this inspection, the Council concludes that the applicable legal framework for the structure and deployment of the AT is generally up-to-date and forms a clear basis for the performance of the tasks, powers, and responsibilities of the AT. However, the Council is of the opinion that the finalization and implementation of the draft regulation on the Arrest- and observation team”, with due observance of the existing legal framework, together with the possibility offered in the National Police Ordinance to further regulate the organization and tasks of the AT, is important for a comprehensive system of the structure, management, and actions of the AT.

Capacity

The AT of the KPSM is the only local specialized unit that can carry out this specific work. This inspection (again) shows that the country's poor financial situation has a negative impact on the KPSM. As a result, the KPSM does not have the necessary financial and material resources to adequately set up, manage and guarantee the deployment of the AT.

The Council therefore concludes that the AT is insufficiently equipped in terms of human, material, and financial capacity to carry out the assigned work in the safest possible manner. The Council also concludes that, despite the inadequate conditions, the AT can in fact only carry out its work thanks to two important and positive aspects. This is on the one hand, the presence and quality of the AT-training and, on the other hand through the commitment of individual police officers, which is characterized by dedication, creativity, and expertise.

The AT- members work full-time within the KPSM in their own position and fulfil the AT activities as an ancillary task. The Council is of the opinion that the time needed to perform the full-time position, supplemented by AT-related deployment and training, results in a disproportionately large workload for a relatively small group of people (11 FTEs).

Operations

Due to the specific nature of AT operations, the emphasis is on physical and mental tests and the systematic practice of skills (marksmanship, self-defense), theoretical and practical procedures. In addition, there is intensive mutual social control and assistance within the KPSM and the AT, and the AT-members can, where necessary, make use of occupational health and safety assistance and socio-medical or psychological counselling.

In this regard, the Council points to the need to formally record these policies in writing because physical or mental problems can lead to legal consequences for the AT-members concerned.

The Council is of the opinion that the structure of the information management and the way in which the AT is operationally managed and monitored, evaluated, and supported within the KPSM contributes to a good approach by the AT.

Responsibilities

Furthermore, it appears that there is hardly any involvement and (policy) support from the MvJ for the KPSM in relation to the AT. This applies to regulatory and policy support regarding the need for and procurement of equipment, training, cooperation, legal certainty, and continuity. During the investigation, negligence in the field of confidentiality of information and shielding of the working methods and identity of AT-members within various ministries was also found.

Based on what is stated in this inspection, the Council emphasizes that not only the people who are directly or indirectly part of the AT have a specific responsibility for the structure and deployment of an AT, but that this also applies to the government of the country.

On Sint Maarten, there is no local network of mutually supporting 'special units'. As a result, the AT is forced to (initially) carry out the AT-operations independently in varied (potentially) life-threatening situations with relatively little force.

Cooperation

As a result, the AT is forced to almost call on support structurally from other parts of the KPSM and, where appropriate, also cooperate with other (judicial) organizations. At the Kingdom level, the AT has been working closely with the Police Academy, the Special Interventions Service (DSI) and the AT's of the other countries in the Caribbean part of the Kingdom for some time.

In the Council's opinion, the partnerships at kingdom level make a positive contribution to the quality and safety of the operations of the AT's and form the basis for high-quality training, mutual support, and exchangeability. This is of great importance in view of the capacity problems at the KPSM and the AT. In the Council's view, it would be a good idea to consolidate this cooperation in writing.

Final Conclusion

The Council is of the opinion that the AT – despite the (capacity) limitations – carries out its work professionally and is clearly managed internally by the KPSM commanders. In the Council's view, there is still room for improvement concerning the external responsibility by the responsible administrative authorities and concerning the support for the necessary financial, human, and material capacity arising from the existence of a professional AT.

The Council recommends the following to the Minister of Justice of Sint Maarten:

	To the Minister of Justice
1.	Based on the National Police Ordinance, regulate the organization and tasks of the AT.
2.	Formalize policies that regulate the care, guidance, and legal status framework for the AT employees.
3.	Ensure that there is an adequate financial budget to structurally guarantee the organizational, personnel and material preconditions of the AT.
4.	Take measures as soon as possible to ensure the confidentiality and shielding of AT-related information and working methods within the various ministries.
5.	Ensure that the Ministry fulfils its statutory duty to prepare policy and legislation and regulations relating to matters affecting the Ministry, as expressed in Article 15 of the LIOL.
	To the Minister of Justice regarding the Sint Maarten Police Force
6.	Document in writing the process that has already been started within the KPSM regarding the approach, structure, deployment, and performance of tasks of the AT.
7.	Provide the Chief of Police with an operational working budget and financial mandate to manage this budget in special circumstances.
8.	Provide a formal written basis for the existing cooperation and support with regard to AT-training and cooperation within the Kingdom.
9.	Explore local opportunities within the rest of the justice chain to recruit and train additional personnel capacity for the AT.

1. Introduction

1.1. Introduction and rationale

Introduction

The Law Enforcement Council (the Council) is tasked with the general inspection of the various services and institutions that are part of the judicial chain in Curaçao, Sint Maarten and the Netherlands as regards Bonaire, Sint Eustatius, and Saba (Caribbean Netherlands). The Council has included in its annual plan for 2023 an inspection of the organization and deployment of the arrest team (AT) of the Sint Maarten Police Force (KPSM).

Rationale

The KPSM is tasked with the effective enforcement of law and order and derives its authority to use force from the law. The basic principle here is that the use of force should be avoided as much as possible and should only be used as a last resort. The police should be well prepared when it comes to the use of force. One way to do this is to deploy one or more specialized teams. The KPSM has such a team (AT) that can be deployed in life-threatening situations or situations that may become life-threatening. Such a specialized team is indispensable given the developments within crime, where the use of (firearms) violence is a persistent and serious problem. An AT is the police's ultimate means of force and is therefore not deployed for slight or minor incidents. A deployment, given the means of force at the disposal of an AT, must be covered with safeguards. AT-personnel therefore undergo rigorous selection and specialized training and have specific equipment. The deployment of an AT is aimed at preventing or controlling violence by acting quickly and, above all, surprisingly during an arrest and minimizing the danger to third parties. To be able to carry out and maintain this working method, it is essential that the AT can carry out its work safely and in a practiced manner, and that aspects such as laws and regulations, steering, approach, cooperation and financial, personnel and material capacity are well organized.

1.2 Objective of the inspection

In the eyes of the Council, the importance of the AT's contribution to the criminal law enforcement of the rule of law and increasing safety for citizens and investigating officers is considerable. The Council provides by means of this inspection, insight into the extent to which the necessary preconditions for a safe and professional functioning of the AT are present. Based on the insights obtained from the inspection, the Council would like to contribute, where necessary, to the functioning of the AT and the safety of all parties involved by making recommendations.

1.3 Central question

The central question in this inspection is:

To what extent is the AT equipped to carry out its tasks and in what way is this task performance shaped?

To answer the central question, the following *sub questions* have been formulated:

1. *What laws, regulations and policies underlie the work of the AT?*
2. *To what extent does the AT have the necessary financial, personnel and material resources at its disposal?*
3. *In what way is the AT's approach to deployment and task performance organized?*
4. *To what extent and in what way is control exercised over the deployment and execution of the AT's tasks?*
5. *To what extent and how does the AT cooperate with other organizations?*

1.4 Assessment framework

To answer the central question and the sub questions, an assessment framework was developed using the applicable laws and regulations and other information, an overview of which is included in Appendix 1.

From the documents listed in Appendix 1, it emerged that the following aspects are important for the subject mentioned: legislation and regulations, policy and procedures, approach and steering, cooperation and financial, personnel and material resources. These aspects were therefore assessed to determine the extent to which the necessary preconditions are present for the safe and professional functioning of the AT.

1.5 Scope of the inspection

The inspection spans the period from 2018 to mid-2023. The inspection focused on the presence of the necessary safeguards and preconditions for the safe and professional functioning of the AT.

1.6 Method of approach

This inspection was carried out in five phases:

1. Orientation phase: global in-depth study of the subject for the purpose of determining the inspection approach and writing the plan of action.
2. Desk research: literature review, elaboration of the theoretical/legal framework and preparation of the interviews.
3. Data collection: collecting information based on a written questionnaire from some 'stakeholders', conducting interviews with employees of the Ministry of Justice (MvJ), the Public Prosecutor's Office (OM) and the KPSM and attending a wrap-up exercise of the AT on Sint Maarten.
4. Analysis and reporting: analyzing the information collected and preparing the draft inspection report.
5. Reaction and adoption: the respondents/interviewees were given the opportunity to react to factual inaccuracies in the draft report, after which any comments were processed, and the final report was adopted by the Council and presented to the Minister of Justice.

1.7 Reading guide

After the introductory Chapter 1, Chapter 2 describes the legal framework, policies and regulations relevant to the organization and deployment of the AT of the KPSM. Appendix 1 of this report provides an overview of applicable laws, regulations and other information at the Kingdom, regional and local levels. Furthermore, Chapter 2 addresses the various special requirements, which are imposed on the operations and organization of an AT. Chapter 3 deals with the research findings regarding laws and regulations, financial, material and personnel capacity, approach and steering and finally cooperation. The findings of Chapter 3 form the basis for the analysis, conclusions and recommendations detailed in Chapter 4.

2. Legal framework, policies, and relevant documentation

2.1 Introduction

The task of the police force, in subordination to the competent authority and in accordance with the applicable rules of law, is to ensure the effective enforcement of the rule of law and the provision of assistance to those in need of it and is authorized to use force to secure such enforcement in extreme cases. This enforcement is based on the tasks and powers enshrined in the law. The use of force is subject to conditions and is limited by the principles of proportionality and subsidiarity. Below, the Council outlines relevant legislation, as well as policy and regulations. The Council also pays attention to the various special requirements, which are imposed on the operations and organization of an AT.

2.2 Laws, regulations, and policies

2.2.1 International

International Covenant on Civil and Political Rights (ICCPR)¹

Article 6, first paragraph, third sentence, of this Convention provides that everyone has the right to life, that this right is protected by law and that no one may be deprived of his life arbitrarily.

Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)²

Article 2, paragraph 1, of this Convention states that the right of everyone to life shall be protected by law and that no one may be intentionally deprived of life except through the execution of a judicial sentence for a crime for which the law provides for the death penalty. The second paragraph adds that the deprivation of life shall not be deemed to have been made in violation of this article if it results from the use of force which is absolutely necessary: a. in defense of any person against unlawful violence; b. in order to effect a lawful arrest or prevent the escape of a person lawfully detained; c. in order to suppress, in accordance with the law, a riot or insurrection.

Ruling ECtHR

A judgment of the European Court of Human Rights (ECHR) is also relevant in this context.³ The ECHR judgment in the case "McCann and others v. the United Kingdom" is important because of its connection with the aforementioned Article 2 of the ECHR and the exception defined in paragraph 2 and the implications of this judgment for the conduct and organization of special units (including arrest teams). The judgment dealt with the arrest by the British and Spanish authorities of three members of the "Irish Republican Army" (IRA) in 1995 suspected of preparing a terrorist attack on the Gibraltar peninsula.

The judgment assesses the deployment of the special units, the (lethal) force used, and the responsibilities of the special units involved and those of the operational and administrative authorities. The ECHR judgment highlights a number of issues including the fact that - given the values and interests at stake - high demands must be placed on the organization and deployment of (the system of) special units.

¹ <https://wetten.overheid.nl/BWBO001017/1979-03-11>

² https://www.echr.coe.int/documents/d/echr/convention_nld

³ [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-57943%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57943%22]})

One of the implications of this judgment is the condition that the deployment of special units must be closely coordinated with the (valuation of the) information that is or can be obtained through intelligence services, investigation services and observation services.⁴ Another implication concerns the ECHR's requirements for the steering of (the system of) special units. For example, in the judgment, the ECHR states that not only must high requirements be imposed on the organization of special units and on the people who are part of them - after all, they remain, the ECHR argues, personally responsible for what they do in this regard - but certainly such stringent requirements apply to the operational and administrative authorities that steer these units. In this context, it is particularly important that the operational and administrative authorities are responsible for the proper management, organization, and support of the special units and that they must be well versed in the capabilities and limitations of these special units.

2.2.2 Kingdom

Charter for the Kingdom of the Netherlands (Charter)⁵

Pursuant to article 36 of the Charter, the Netherlands, Aruba, Curaçao and Sint Maarten provide aid and assistance to each other. The countries may make arrangements among themselves (Article 38, paragraph 1).

Police Kingdom Act of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba (Police Kingdom Act)⁶

According to article 5, it is the task of the police, in subordination to the competent authority and in accordance with applicable rules of law, to maintain the legal order and provide assistance to those who need it. Watching over the safety of persons (personal security) is also considered part of the criminal law enforcement of the legal order (article 1, second paragraph and what is stated in this regard in the explanatory memorandum of this Kingdom Act).

At the head of the police force is a chief of police (KC), charged with the daily management of the force (Article 6). This law further stipulates that a number of task areas must be provided for the police force. These include the task area of observation and arrest of armed and dangerous suspects (Article 7). According to Article 12, police officers appointed in one of the countries for police tasks are authorized to perform their tasks in each of the countries. Article 13 of this Kingdom Act regulates the authority of the use of force and entry into any place, including the entry into a dwelling, by police officers appointed to perform police tasks.

Countries must establish regulations among themselves, which contain quality criteria and education and training requirements for police officers (Article 41 paragraph 1). These criteria and requirements are established in each of the countries respectively by national decree, containing general measures or by general administrative measure. Each of the countries can set additional quality criteria and education and training requirements for police officers of the police force by or through a national decree, containing general measures, respectively by or through a general administrative measure (Article 41 paragraph 2).

⁴ The redesign of the special forces system, Fijnaut 2004, p.16

⁵ <https://wetten.overheid.nl/BWBR0002154/>

⁶ <https://wetten.overheid.nl/BWBR0028079/2010-10-10>

The countries must regulate among themselves regarding the regulations for equipping police officers. These regulations are established in each of the countries by national decree, containing general measures or general administrative measures (Article 42(1)). Each of the countries may, by or through a national decree, containing general measures, or by or through a general administrative measure, establish additional regulations regarding the equipment of police officers of the police force (Article 42, paragraph 2).

Mutual Regulations

Equipment regulation for the police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba ⁷

This regulation deals, among other things, with the arming and equipping of police officers (Article 2 et seq.), police officers in charge of personal security (Article 5) and police officers belonging to an arrest and support unit (Article 6 et seq.). Furthermore, these regulations state the responsibility of the Minister of Justice for determining the make and type of weapons, ammunition, and equipment in these regulations, as well as for their purchase and disposal. The regulation also sets forth requirements for, among other things, the competence of the officer concerned. The provisions of this mutual regulation can be found in part in the ministerial regulation implementing article 16, second paragraph (d) of the Police Regulation 1999 (see further page 15).

Mutual Regulation on Quality Requirements, Education and Training Requirements of the Police of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba ⁸

This mutual regulation deals with, among other things, job requirements and skill standards for the police officer in the field of the use of force, arrest and self-defense skills (articles 7.2 through 7.6). The provisions of this mutual regulation can largely be found in the National Decree containing rules on the legal status of police officers of the Sint Maarten Police Force (see further page 15).

2.2.3 National

Constitution Sint Maarten (Constitution)⁹

Article 2 of the Constitution guarantees the right to life for everyone. According to the accompanying explanatory memorandum, this article is based on the aforementioned Articles 2, first paragraph, ECHR and 6, first paragraph, third sentence, ICCPR.

Article 7 of the Constitution states that entry into a home without the consent of the occupant is only permitted in cases determined by national ordinance and by those who are designated for that purpose by national ordinance. This article establishes a number of frameworks for entry, which are to be further regulated by national ordinance.

Article 27 states that no one may be deprived of his liberty except according to rules of, inter alia, lawful detention and lawful arrest to be established by legal regulation.

⁷ <https://wetten.overheid.nl/BWBR0028960/2010-10-10>

⁸ <https://zoek.officielebekendmakingen.nl/stcrt-2010-11398.html>

⁹ <https://lokaleregelgeving.overheid.nl/CVDR179884>

Furthermore, article 124 provides the basis for a police force (paragraph 1) and regulates that by mutual regulations with one or more countries in the Kingdom, regulations can be set about the police whereby the government has to observe the provisions of the Constitution (paragraph 2).

According to article 125, the task of the police is the effective maintenance of the legal order and the provision of assistance to those who need it in subordination to the competent authority and in accordance with the applicable rules of law.

Based on article 126, the police officer, who has been appointed to perform police tasks under certain conditions specified in this article, is authorized to use force against persons and property in the lawful performance of his task. Further rules on the use of force should be laid down in a national ordinance or in a mutual regulation as referred to in the aforementioned article 124, second paragraph.

National Ordinances

National Ordinance on the establishment and organization of national government (LIOL)¹⁰

Based on article 9 of the National Ordinance the KPSM falls under the administrative responsibility of the Minister of Justice. One of the tasks of the administrative organization, in this case the MvJ based on article 11, is the preparation of policy and legislation and regulations with regard to matters affecting the MvJ. Based on Article 15, the MvJ has the objective of creating preconditions for maintaining security, order, and peace, and safeguarding the rights of society.

National Police Ordinance¹¹

The police force must consist of at least two organizational divisions, namely a Basic Police Care Department and an Investigation Department (Article 2(1)). The Investigation Department is responsible for, among other things, the task areas: apprehending armed and dangerous suspects and observation (article 7, second paragraph under b and c, of the Police Kingdom Act). Further rules may be set by national decree regarding the organization and tasks of the Basic Police Care and Investigation Departments, organizational divisions may be set up to support the two organizational divisions, and organizational divisions may be set up with specific tasks and activities tailored to them (Article 2, paragraphs 2, 3 and 4).

Article 4 states that the Minister of Justice may designate objects and services whose surveillance and security by the police is necessary. If this is done in the context of the maintenance of public order, the Minister shall ensure the implementation of this decree. If this is done in the context of the criminal enforcement of the legal order, the Attorney General (PG) shall ensure the implementation of this decree.

Section 5(1) confers the powers of section 13(1) and (4) of the Kingdom Police Act and additional measures referred to in section 14(3) of the Kingdom Police Act on persons designated by the Minister of Justice for the transportation of persons deprived of their liberty by law.

¹⁰ <https://lokaleregelgeving.overheid.nl/CVDR157703/3>

¹¹ <https://lokaleregelgeving.overheid.nl/CVDR301034>

Code of Criminal Procedure (WvSv)¹²

The WvSv contains several articles on the powers and means of coercion (article 71) relevant to the operations of an AT. The arrest of suspects (articles 73 and 74), entering places for the purpose of arrest (article 76) and entering homes (article 155 et seq.) are cited in this law.

National Ordinance containing further provisions on weapons¹³

According to this ordinance, it is prohibited to carry a weapon on public roads or in any place accessible to the public. Article 2 of this ordinance makes an exception to this prohibition, among other things, for police officers insofar as the weapon the officer carries is part of the service equipment.

National Decrees

National Decree, containing general measures, on administrative instructions¹⁴

This national decree regulates the power to use force (Articles 9-11), the use of firearms with normal and non-penetrating ammunition (Articles 12-20), physical force and the baton (Articles 28, 29), the obligation to report the use of force (Article 30) and the use of handcuffs (Article 31) by the police officer.

National Decree, containing general measures, on the legal status of police officers of the Sint Maarten Police Force^{15, 16}

This national decree, in the chapter on controlling the use of force, arrest and self-defense skills, handles in several articles with the requirements of proficiency for a police officer in the use of means of force and firearms (Article 90), the opportunity for training (Article 91), testing (Articles 92 and 93) and the registration of training and skills (Article 94).

National Decree, containing general measures, implementing article 10, under e, of the Police Regulation 1999 (National decree on training of police personnel').¹⁷

In accordance with the law, the KC of the KPSM is responsible for the training of both new and existing personnel. This national decree regulates, among other things, in Articles 40 and 41 the organization and coordination of additional training.

National Decree, containing general measures, implementing article 4, third paragraph of the Police Regulation (Instruction chief of police)¹⁸

Article 4 of this national decree states that the KC should provide for the training of newly recruited police personnel, the further training and ongoing training of other personnel and the professional education of police personnel.

¹² <https://lokaleregelgeving.overheid.nl/CVDR142469>

¹³ <https://lokaleregelgeving.overheid.nl/CVDR142380/2>

¹⁴ <https://lokaleregelgeving.overheid.nl/CVDR292804>

¹⁵ <https://lokaleregelgeving.overheid.nl/CVDR291491>

¹⁶ In its report "Review of the National Detectives Sint Maarten" (2021), the Council pointed to an advice of the Council of Advice on which legal status decree applies to the KPSM. It concerned the Netherlands Antilles Police Force Legal Status Decree 2000 and the KPSM Legal Status Decree. According to the Council of Advice, the KPSM Legal Status Decree is applicable. The Council of Advice concluded that the KPSM Legal Status Decree entered into force on October 10, 2010, and that the effective date provision contained therein did not preclude that. In addition, the Netherlands Antilles Police Force Legal Status Decree is still in force. The Council of Advice therefore indicated the desirability of repealing the Netherlands Antilles Police Force Legal Status Decree. In early 2023, the latest state of affairs was that no repeal decision had yet been published.

¹⁷ <https://lokaleregelgeving.overheid.nl/CVDR142183>

¹⁸ https://repository.officiele-overheidspublicaties.nl/CVDR/CVDR142112/1/html/CVDR142112_1.html

Ministerial Regulation

Ministerial Regulation implementing article 16, second paragraph (d) of the Police Regulation 1999¹⁹

Article 6 of this regulation regulates the police officer's authority to carry and possess (fire) weapons. The responsibility for uniforms and weapons is also regulated here (Articles 11 and 12). Furthermore, this regulation regulates, among other things, the uniform (article 31), the carrying and use of weapons (articles 52 and 53), the determination of make, model and caliber of weapons and ammunition of weapons that are applicable to the police officer (articles 51,54 and 55).

Plans

Organization plan (2010) KPSM ²⁰

This original plan around "10-10-10" establishes that the KPSM has its own AT. According to the plan, the AT is deployed when it is reasonable to assume that life-threatening circumstances against the police or others are imminent. According to the plan, the team's tasks are:

- making planned arrests;
- guarding and securing police officers, witnesses, suspects or detainees; and
- assisting in guarding and securing objects and providing specialized support (e.g., ship boarding, landings, (forensic) diving).

The AT was established to ensure that the safety of the citizen, the police officer and the suspect is not compromised during arrests. The deployment of an AT is aimed at preventing or controlling violence. According to the plan, by acting quickly and above all by surprise, the danger to third parties during the arrest is minimized.

The deployment of the AT is subject to an internal (corps) and external (public prosecutor's office) authorization procedure. The members of the AT perform the tasks as a task accent (secondary function), the plan reads. The intention back in 2010 was to expand the team to 14 FTEs. According to the wording of the plan, this expansion would ensure a more balanced distribution of the picket load. It would also give the AT coordinator space to focus fully on his coordinating role during deployments and the development of the team. However, this did not mean that it would lead to an exempt AT coordinator.

Organization plan KPSM 2012 (revised)²¹

The revised Organization Plan talks about investigative support by means of an AT, an observation team (OT) and a technical support section (STO). This support can be seen as task accents within the Basic Police Care (BPZ) and Investigations. The corps has its own AT. The AT will be a secondary task within the BPZ and Investigations. This revised plan anticipates that this will require an increase in capacity in the future. It also proposes to embed the AT and OT formally and organizationally within the organization.

¹⁹ The Police Regulation 1999 is no longer in force, but pursuant to Article 8 of the National Police Ordinance, the provisions based on the Police Regulation will remain in force after the National Police Ordinance enters into force until they are replaced by other regulations and implementing rules.

²⁰ The original establishment plan, version 17a, dated June 15, 2010, was approved by the political steering committee.

²¹ In 2012, the establishment plan, dated Sept. 20, 2012, was revised, but the plan was not endorsed by ministerial consultation.

Although it remains a secondary task, according to the plan's proposers, it seems appropriate to link permanent staff in permanent structures to these secondary tasks. In a growth model, the plan was to have two (2) sections AT accessible and deployable by 2016. A section consists of a section commander (at the team leader level) and eight employees (BPZ and Investigations).

Regulation

Draft regulation Arrest Team and Observation Team KPSM

This regulation still under development by the KPSM establishes in Article 1 the general responsibility of the KPSM for maintaining and establishing an AT and an OT and lists the tasks of the AT in case of threats against police or others. Article 2(1) lists the tasks of the AT in the context of criminal law enforcement.

The AT:

- combats all forms of serious violence and terrorism;
- secures persons and objects in special situations;
- conducts planned observations and arrests; and
- performs other parts of the police task assigned by the competent authority.

The role of the Chief of Police (KC) and the Public Prosecutor's Office in steering and accounting for the AT, whether or not in cooperation with other units, is also described in these regulations (Article 2, paragraph 2, Articles 3, 4 and 8). Furthermore, the carrying of automatic and long-range firearms is addressed and regulated (Article 5), as well as the approach (Articles 6 and 7). Finally, it states that a training plan should be the basis of AT training and cooperation regarding training in the Kingdom in this regard (Article 9).

Advisory report by Prof. Dr. C. Fijnaut (2004) "The reorganization of the system of special units".²²

This advisory report, issued in 2004, deals with an analysis and evaluation of the then existing system of the organization, direction, and performance of special units of the police and armed forces in the Netherlands.

An important part of the report is formed by the implications of the ECHR judgment cited in section 2.2.1 of this chapter. The advisory report also makes extensive and substantiated recommendations for a review of the special units' system.

This advisory report shows, among other things, that the organization and method of deployment of an AT is determined not only by the nature of the (expected) violence, but also by the laws and regulations (e.g., in the area of powers and responsibilities) of the country that must be complied with during the execution of AT operations.

Fijnaut indicates in the report that the nature of (foreseeable) violence is generally related to the crime picture of the community and partly determined, for example, by the (illegal) possession and use of (illegal) firearms in the community.

²² <https://zoek.officielebekendmakingen.nl/kst-29754-125-b2.pdf>

It is precisely the presence of these types of weapons that can cause a situation to be seen as life-threatening, necessitating an appeal to the AT.

In the report, Fijnaut also describes the importance of embedding an AT in a police force. This circumstance gives the AT easy access to the (preliminary) information - about suspects, their social environment, the locations where action is to be taken - among colleagues from criminal investigation and (criminal) intelligence units that is needed to prepare and execute deployments adequately and as safely as possible.

Fijnaut's report also pays attention to implications regarding the ECHR's requirements for the deployment and management of (the system of) special units. For example, he too emphasizes in the report - in line with the judgment - that not only should high requirements be set for the organization of special units and for the people who are part of them, but that it is also of eminent importance that these high requirements also apply to the operational and administrative authorities that manage these units.

3. Research findings

3.1. Introduction

Since mid-1995 the police on Sint Maarten (first as part of the Netherlands Antilles Police Force and since 2010 under KPSM) has had a specialized unit (in varying composition and strength) of police officers performing AT-operations.

This chapter presents findings based on written questionnaires, interviews and a working visit conducted by the Council's inspectors to the final phase of an AT-training week on St. Maarten. The Council deals successively with its findings about legislation and regulations, capacity (financial, material and human) approach and management and cooperation. For each topic, the Council first mentions the standard against which it was assessed.

3.2 Laws and regulations and policy

Standard: The legal framework and policies based on it are in place and up to date. The necessary responsibilities, powers and the grounds and scope are in place, known and being applied.

Findings

Laws and regulations and policy

All interviewees and respondents indicate that existing laws and regulations form the basis for the existence, organization, and deployment of the AT on Sint Maarten. They mention as the most important laws and regulations in this context the Police Kingdom Act, the National Ordinance Police, and the official instruction for the police. Furthermore, the Police Regulation 1999 and the Code of Criminal Procedure are mentioned. In addition, the establishment plan has also been identified as relevant.

The legislation regulates the powers and means of coercion available to the police and thus also forms the basis for the operations of the AT as a part of the police. The legislation, except for the Police Regulations 1999, is up to date according to most interviewees.

According to most interviewees, the terms and concepts used in the laws, regulations and policies are clear and known to all, with one interviewee emphasizing that updating regulations is important because of the regularly changing circumstances nowadays.

The possibility mentioned in the National Ordinance Police to further regulate the organization and tasks of the AT by National decree has not yet been utilized, according to some interviewees. According to several interviewees from the KPSM and the OM, this process still needs to be started together with the MvJ. Although it is not a requirement and the organization and deployment of the AT is regulated in principle, according to them it would still be good to regulate the legal framework step by step as conclusively as possible by also drawing up a national decree. This would benefit continuity.

Almost all interviewees mentioned the draft "arrest and observation team regulation. According to the person in charge of drafting it, this is a framework regulation which is still being developed within the KPSM. According to the KC, the activities included in the current draft are based on the police tasks from the Police Kingdom Act as part of the actual

maintenance of law and order, providing assistance to those who need it and guarding the safety of persons. According to several interviewees, in addition to the legal basis and tasks, it is intended that the final regulation will also describe issues such as selection, proficiency (training and education), physical and mental fitness, procedures and other requirements for AT-personnel. It is not known at this time when the new regulation will be formalized and implemented, but once it is, the KPSM will notify those affected.

3.3 Financial, material, and personnel capacity

Standard: The AT is sufficiently equipped in terms of capacity (material, personnel and financial) to perform the assigned operations safely and properly. The KPSM has the necessary financial and material resources to organize, manage and ensure deployment of the AT. Attention is given to the specific and stressful nature of AT operations.

Findings

Financial

Due to the poor financial situation of the country and its impact on the budget of the MvJ, the financial situation of the KPSM in general is not ideal. The resulting financial capacity available to the AT is insufficient. When asked, interviewees from the MvJ indicate that the entire ministry faces challenges in the financial, personnel and material areas and that they assume that this is not much different at the KPSM in general and the AT in particular. This has also been acknowledged by the KPSM. It is up to the KPSM to indicate whether the existing AT organization is adequate, according to the MvJ.

The interviewee from the Public Prosecutor's Office (OM) indicates another bottleneck caused by the fact that the KPSM does not have its own (operational) budget. For example, in case the AT needs to provide assistance on another island, a bureaucratic financial procedure for requesting this must be followed via the MvJ and the Ministry of Finance. Because the data cannot be supplied anonymously - although this is possible with other organizations - this means in practice that an unknown number of people within the bureaucratic line are given insight into the names and details. Failure to shield this information creates serious security risks for the AT-personnel involved. Given the mission of the AT, proper shielding is essential, according to multiple interviewees.

Material

With less money available each year in the ministry's budget, this situation (also for the AT) is only getting more dire. This affects the material capacity at the AT. According to several interviewees from the KPSM, the AT has the basic provisions in terms of equipment. Whether this is sufficient is relative to developments in this area. There is a lot available, for example, technical devices for observation and tapping. The cost of this kind of equipment is high and not required for every action on Sint Maarten. Only in complex cases can it sometimes be a bottleneck that the AT does not have certain specific resources.

The AT currently has the minimum necessary (safety) resources to perform its operations. The equipment is mostly obsolete and at the end of its lifespan for safe and responsible use.²³ This includes safety equipment such as bulletproof shields and vests and firearms.

A direct consequence of insufficient financial resources affecting the material equipment is that the depreciation of these resources by KPSM does not take place as prescribed. In principle, the equipment must be depreciated after a set number of years, but because no funds are available, its depreciation is sometimes necessarily delayed while the equipment is still in reasonable condition.

AT-personnel and KPSM management often seek creative ways to obtain equipment for the AT due to financial constraints, according to several interviewees. For example, sometimes through the intervention of the Special Interventions Service (DSI), second-hand equipment, still in good condition, is obtained from the Netherlands that is still very useful for the AT on Sint Maarten.

Personnel: capacity

Almost all KPSM interviewees indicate that it was determined internally that the capacity of the AT should consist of two eight FTE sections, each with a section commander headed by a general commander. This would bring the total required strength to nineteen FTE. This is also the composition and strength of the AT-teams in Aruba and Curaçao and is based on the procedures and requirements to perform the various tasks.

The current personnel strength of the AT on Sint Maarten is eleven FTE. The AT-employees work full-time within the KPSM in their own positions such as in the IBT, criminal investigation or Basic Police Service departments. In the existing situation the AT task is a secondary function for these employees and thus the 'AT-hours' fall under overtime and not under regular working hours.

Until recently, personnel capacity was even more dire than it is today, but last year KPSM personnel underwent initial AT-training. Initially, seventeen colleagues had signed up for this training but eventually three remained who successfully completed this physically and mentally demanding training, after which they were assigned to the KPSM-AT. On the other hand, several AT-members will have to retire from the team in the near future due to their age and/or physical condition.

According to several interviewees, it is an ongoing discussion whether the team - given that it is now a secondary function - has enough capacity to function optimally. In view of the already existing structural personnel shortages in the force, the KPSM would not be able to "bear it" if AT-personnel were to perform this task full-time.

In addition to deployment in the context of arrests, the AT is also deployed to work in prisoner transport and in the context of surveillance and security. Furthermore, much time is spent practicing and training. This is done weekly on a fixed day and through specially organized training sessions.

²³ Pursuant to article 31(3)(c) of the Kingdom Act Law Enforcement Council, parts of this report have not been made public.

Interviewees, on the other hand, when asked, say they cannot quantify exactly how many hours they spend on the various AT-activities and how this relates to their actual work. This is mainly because the actions are ad hoc, and the deployment fluctuates greatly. And it also depends on the staffing (illness, vacations) of the AT. This is not an ideal situation, especially given the strain it imposes and the safety of the personnel themselves, according to the interviewees.

An interviewee from the AT indicated "We are working with the bare minimum" if you look at what is minimally required (roster-wise) for deployment, training, daily operations, illness, vacations, and members' social lives. During the inspection, the Council asked the KPSM to provide a written overview of AT-deployments from 2018-2023. However, the Council did not receive an overview. Several KPSM interviewees indicate that in the long run it would be desirable for the AT task to be a regular task within the KPSM's job structure. In the current situation, the AT-function does not formally exist (function book). There is room for improvement on all fronts, according to interviewees.

For several AT-interviewees, overtime worked in connection with AT is not paid but is compensated in "time-back. This is due to the ranks and related legal status of these employees within the organization. The current situation is not ideal as interviewees accumulate a lot of hours and can only take time off when the shift permits this. Due to the shortage of capacity in the corps, these employees are often unable to take time off for an extended period. Interviewees from the AT hope that this situation will change with the formalization of the new function book.

Personnel: criteria and selection process

According to AT-interviewees, every AT-member is aware of the requirements in terms of physical and mental condition, behavior, and skills. This knowledge is based on the selection process during application, initial training and the trainings and courses in subsequent years. The most common procedures are taught in AT-training and are practiced regularly. As a result, AT-members get used to the standard procedures and are all on the same page. During and after training and courses, there is always room and time for evaluation that can serve for improvements and updates of knowledge and skills.

All KPSM-interviewees indicate that the selection process for the AT is strict. The applicant's list is first forwarded to the KC. Here an initial selection takes place based on the minimum requirements for applicants. For example, they must have worked at the KPSM for a minimum of four years. After this initial selection, they must first undergo an "in-test" on Sint Maarten. This consists of a physical, psychological, and medical test. In addition, a background check takes place. After successful completion of this 'in-test', candidates are sent to Aruba to undergo another 'in-test'. Upon successful completion of this test, they can then participate in the AT-training in Aruba.

This AT-training takes twelve to seventeen weeks and during this training heavy demands are made on the physical and mental condition of the trainees. The training includes physical and mental endurance, marksmanship, self-defense, and theoretical and practical procedures. This whole process is described by all interviewees as very challenging, both physically and mentally.

Upon joining the team, individuals have a six-month probationary period. When asked, AT interviewees indicate that all members of the team serve as mentors to new members. Also, new members are continuously tested on their acquired knowledge and skills. If it turns out that they have learned certain procedures differently than what is customary in practice, this is evaluated, and it is considered whether the procedures should be adjusted.

When asked, the interviewees indicated that AT work is risky and that everyone involved realizes this. In addition to the issues already mentioned, each AT-member must take into account issues such as "counter observation" of the team and the shortcomings already mentioned in the context of confidentiality and shielding are realistic risks. Also, everyone in the AT is very aware of the ever-increasing financial and material opportunities within the criminal circuit and the impact this has on the safety of AT-members.

Personnel: care and guidance

The AT-staff has strict peer social control and peer support. Members are assessed and evaluated annually. During these assessments, physical and mental condition, behavior and absenteeism, and marksmanship, among others, are addressed. The assessment process is conducted by the IBT-instructors and the AT-commander under the responsibility of the KC.

One interviewee notes that in the current situation, the AT does not have a written policy or structure for the care and supervision of AT-personnel. The requirements in terms of physical and mental condition, behavior and absenteeism imposed on personnel before, during and after their tasks are also nowhere in writing. In practice, however, the requirements do exist and the care of and supervision of personnel is also in place.

Should an AT-member get into trouble physically or mentally, there is peer support to reach a solution. If this does not lead to a solution, the KC is notified and the KC in turn looks at what the organization can do, together with the AT-commander and colleagues, to reach a good solution. Where appropriate, there is also the possibility of psychological help. The KPSM has in-house counseling available, and AT personnel can also seek socio-medical or psychological counseling. Several interviewees confirmed that this has also happened several times. However, further professionalization of this process is still needed.

Acknowledging mental or physical problems can sometimes be sensitive, for example due to ego or shame, but is very important. If there is no solution to the physical and/or mental problems, then the colleague will have to resign from the AT. This decision is made based on a psychological report and a doctor's statement. "First and foremost," is the safety of the team, according to the interviewees.

Trainings

Several KPSM-interviewees indicated that until 2015, AT training was provided by the National Police Academy from the Netherlands. From 2015 through 2021, AT-training was done jointly with the AT's of Aruba, Curaçao and the DSI based on informal agreements.

In recent years, the AT-training has been jointly organized through the Board of Chiefs of Police (CvK). Within the CvK, Aruba is portfolio holder for the AT-training. An important partner for the AT's in the Caribbean part of the Kingdom is the DSI.

The DSI does a lot for the different AT's in terms of education and training and is responsible for the quality of the training and thus indirectly for the quality of the AT-members. This joint training ensures the interchangeability of AT members in the region. Since 2022 the cooperation is more formal and is based on verbal and written agreements between the CvK and the National Police from the Netherlands. The current agreements include training, education, advice, and formal assistance by the DSI which will run until 2025 for the time being. This ensures the continuity and security of the various AT's in the Caribbean part of the Kingdom. Among other things, the KPSM uses the selection processes and testing standards of the DSI.

The personnel of the AT-KPSM are primarily expected to ensure that they themselves remain physically and mentally fit and train at least three times a week. In addition, the AT practices their own specialized skills locally on a weekly basis. During this time, the AT trains procedures, marksmanship, and other important skills at various locations on the island.

Furthermore, once a year there is the so-called "yellow week. This is a training week provided and organized by the DSI in which AT skills (physical, various procedures and marksmanship) are practiced and a heavy demand is made on the physical and mental resilience of the AT members. This week concludes with a final exercise in which various skills and procedures are practiced in the presence of DSI instructors. The final exercise in July of 2023 involved several residential arrests (residential procedures) at various locations. Council inspectors attended this final exercise for observational purposes.

There is also an "AT-week" where the AT's from the various CAS islands and personnel from the BES come together. This last took place in 2014. The intention was for this to happen every year and Sint Maarten was next to host the event. However, due to the passing of several hurricanes and because of financial shortages, it has not taken place since then. The next AT-week is scheduled to take place again on Sint Maarten in 2024. Also, during this week there is a lot of focus on procedures and physical and mental resilience. The purpose of the AT weeks is that uniform training and work is done and that this ensures that AT-members are interchangeable. This is also very important considering the existing capacity shortages.

Given the increase in (the level and degree) of violence in today's society, more attention is also paid in the training sessions to creating the so-called "rapid response deployment. This type of deployment is more focused on explosive and unexpected violence where very rapid action is needed to prevent escalation.

Once a year a training week takes place in Orlando, Florida (USA). During this week all AT skills are trained, but there is also attention for more specialized training, such as explosives training. Here attention is paid to the use of and knowledge about explosives. This week is organized by the 'Florida the SWAT organization'. SWAT teams from Florida, joined by SWAT teams from the region, participate in this week.

The week concludes with a friendly competition in which marksmanship, physical demands and procedural skills are the elements of competition. However, the AT from Sint Maarten does not participate every year due to the high cost involved, but when they do go, the whole team goes.

Consequences financial, personnel and material capacity

According to all AT-interviewees, the existing capacity shortages as described above not only lead to an increase in the risks faced by AT-personnel, but also sometimes create a situation where a planned operation has to be postponed. It is also pointed out that currently not all high-risk court hearings can be held on Sint Maarten because the court cannot be properly secured. This is weighed on a case-by-case basis.

A more operational example because of the capacity problems is that it sometimes occurs that the AT-commander and section commander are themselves deployed during an action. According to interviewees, they should maintain a helicopter view of the situation and not be directly involved in the operation. One of the interviewees is working on an inventory of what is necessary in terms of personnel, finances, and equipment to improve the situation. This inventory is taking place through the CvK within all the corps.

The circumstances and challenges outlined make, according to some of the interviewees, that the perception among (some) politicians and administrators is that the Justice system only costs money and produces no return. This is harmful and dangerous for the functioning of the KPSM in general and the AT in particular. Often the damage (and cost) of crime and lack of security for the tourism product and society as a whole is not given sufficient consideration. Sint Maarten is a small country with big city (criminal) developments and big city problems and if the police (and other judicial organizations) do not (cannot) do their job the damage, and thus the costs, are only higher in the long run according to several interviewees.

3.4 Approach and steering

Approach standard: The organization, deployment and task performance of the AT is based on established, practiced, and evaluated procedures known to all involved. The AT performs operations in accordance with these procedures. There is monitoring, recording and evaluation of operations. The information management of the KPSM is designed to support the AT operations.

Steering standard: Steering takes place within the framework of the organization and deployment of the AT. Steering is carried out by those authorized to do so. It is established and clear how and by whom the steering takes place. If necessary, instructions are given by the competent authority. And regular consultations take place.

Findings

Procedures

The interviews reveal that in practice different procedures relevant to the organization, deployment and task execution of the AT are utilized by the AT. Indeed, DSI procedures (e.g. arrest procedures) are used by the AT as the basis for the execution of AT operations at the local level. Although the procedures used by DSI are documented in writing (in the Netherlands), the procedures used by the AT-KPSM are not yet documented in writing (locally).

These procedures are practiced during initial training and all training and education thereafter as standard practical skills. In principle, these procedures and skills are the same for all AT's and the AT-members are therefore interchangeable and deployable. In practice, (minor) deviations from the DSI procedures do occur, but these are purely caused by local circumstances.

An interviewee of the KPSM indicates that it is the wish to document these procedures in writing and to discuss this with the DSI in connection with the confidentiality of such information. In the current situation, all procedures are known to everyone involved in the AT and these are regularly evaluated and, if necessary, it is considered whether the procedures should be adjusted. Because of the classified nature of the DSI's procedures, among others, the Council's inspectors could not review them.

Working method in practice

If the police act to maintain law and order, or perform tasks in the service of justice, they are subject to the authority of the Attorney General. If the police act to maintain public order and perform emergency assistance tasks, they are subject to the authority of the Minister of Justice, who can give general and special instructions to police officers for the performance of these tasks.

According to almost all interviewees, a request to deploy the AT within the framework of the criminal law enforcement of law and order, for example an arrest of an armed and dangerous suspect, in principle always goes through the KC. After the KC has received the request, from (in this example) the responsible tactical team leader or case officer, he or she informs the AT commander and in mutual consultation both decide whether the request is 'AT worthy'. In principle, a situation is "AT-worthy" if there is (or may be) a life-threatening situation.

If the request is "AT-worthy," the KC contacts the HOvJ by phone or app for consultation and to obtain authorization for AT deployment, according to several interviewees from the KPSM and OM. The HOvJ then assesses whether AT deployment is necessary based on the circumstances and communicates this decision to the KC. This method of short lines of communication and not documenting the authorization works well in practice, according to the HOvJ and the KC. The OM only has a decision-making role for the deployment of the AT and is not involved in the actual execution of the deployment. If the AT is to be deployed in the context of maintaining public order, the Minister of Justice is the one who must grant authorization.

Furthermore, the carrying of automatic firearms by members of the AT for the arrest of a person is subject to the permission of the HOvJ. Carrying such weapons in the context of guarding or securing persons and objects requires the permission of the competent authority. Carrying a firearm with which long-range precision fire can be delivered for the purpose of combating very serious crimes involving immediately life-threatening circumstances is only permitted after written authorization from the competent authority.

According to all AT interviewees, the AT commander takes care of collecting all necessary information that the AT needs for the execution of the assignment. In doing so, he uses the information that is already known to the KPSM (including from the requesting investigation team, the info desk, and Criminal Intelligence Service) or additionally collected by the AT itself, through technical support, the OT or other services. Such deployment (apprehension) of an AT can take place in a house/room (house-procedure), a moving or stationary vehicle (vehicle-procedure) or on foot, involving direct contact with the person as they walk down the street, for example.

All AT-interviewees also indicate that during the preparation phase there is so-called "compartmentalization". This means that the circle of people who are aware of what is going on is kept as small as possible. This is done to be able to protect the team and guarantee confidentiality (and safety).

Only when all the information and preparation lead to a clear plan of action drawn up by the AT commander will he convene the AT to inform every one of the situation, the objective, and the method of deployment (briefing). The AT members can give their input and feedback on the plan. After completing the preparation, the actual deployment takes place. An important principle in any deployment is to use as little force as possible. Operational command runs hierarchically: KC - commander-AT - section commander. This existing set-up of steering of the operations of the AT is known to all involved.

The interviewee from the OM notes that the AT on Sint Maarten is seen more as a stand-alone unit (not part of the KPSM) with a certain status based on the professionalism and practiced skills of the unit rather than the fact that the AT is part of the KPSM. This sometimes creates the misunderstanding that the AT can be called upon for a variety of issues. Also, in some cases it is thought that formally the AT is deployed, while the AT 'only' assists in the execution of the daily police task of the Corps.

An example of this is when a request is made by, for example, the Minister of Justice to perform work in the context of guarding and securing so-called "VIPs." In principle, this police task in the context of maintaining law and order can be performed by any police officer, but those who are deployed are often also members of the AT because, given their specialized training, and skills, they are actually the only ones who can be deployed for this purpose.

In such a case, the KC informs the public prosecutor of the request. A threat assessment can be used to determine how the surveillance and protection deployment should take place. The information gathered must then also show whether the deployment is AT-worthy. According to the KC, in principle, such security activities (persons/objects) are carried out by the AT based on the 'arrest and observation team regulation'.

Another example, according to the OM, is that it also occurs that members of the AT are deployed in the context of transporting arrestees. However, this is a part of the regular police task of the corps in which police officers who are also AT-members are designated by the KC for the transportation because special circumstances require it. In that moment, the AT is the only available extra trained unit of police officers. Therefore, in such cases there is no need to contact the HOvJ for permission.

All interviewees from the AT indicated that after each deployment an evaluation of the deployment and execution takes place during a 'debriefing'. Here any bottlenecks or points for improvement are discussed, making it a learning opportunity for every employee. Interviewees find this important because it often happens that practice differs from theory. If, based on evaluations, it appears that adjustments are needed, then, if necessary, the required adjustments are also made to the working method and/or procedures.

Each action of the AT is subsequently recorded in writing. In addition to a description of the action carried out, where appropriate, the use of force, arrests and other details are also reported. This report serves as a justification towards the KC and the OM. It can also be used in complaint procedures against members of the AT.

The MvJ has no role in steering the AT during their operations. They do see a potential policy supporting role for the MvJ in the organization of the AT. Currently, that role is not being fulfilled. Nor has the MvJ played a role in the current approach developed by KPSM for the deployment and task execution of the AT.

The procedure for police officers - and therefore also the AT - is that if shots have been fired by the police this must always be reported to the National Detectives. If shots were fired and there were no injuries, as a rule no further investigation is conducted by the National Detectives. The KPSM adds in its reaction that in accordance with the provisions of the official instructions, the use of force is reported in writing to the Bureau of Internal Affairs of the KPSM. The KC also assesses the use of force in terms of proportionality and subsidiarity. If shots were fired and there are injuries or fatalities, the National Detectives always conducts an investigation under the supervision of the OM, and they also assess the case accordingly. The AT's report on the said action is then also reviewed by the National Detectives. In the case of irregularities, the prosecutor with responsibility for the National Detectives also reads the report. In the case of the use of force against the police then the police always file a report.

3.5. Cooperation

Standard: Cooperation takes place in the context of the establishment and deployment of the AT. If necessary, an appeal is made to other (judicial) organizations at the local or Kingdom level. It is clear when and to whom an appeal can be made and within the cooperation use is made of available expertise, capacity, and information sharing. Regular consultations with stakeholders take place.

Findings

Cooperation: local

The MvJ indicates that, based on the National Police Ordinance, there is cooperation between the police and the prison regarding the transport of prisoners. Through the so-called triangular consultation between the Ministry, the KC and the HOvJ, the MvJ may be involved in the various forms of cooperation in which the AT is involved. In the current situation, there is no existing mechanism at the MvJ that could ensure regular evaluation and (if necessary) adjustment of existing forms of cooperation. The MvJ also has no role in shaping the objective of the various forms of cooperation the AT has.

Within the KPSM, the AT most often cooperate with departments such as the information desk, technical support, and the OT. In the context of legal assistance requests and transport of prisoners, the AT also cooperates, where appropriate, with the Detective Cooperation Team, the Royal Netherlands Marechaussee, and foreign police forces, among others. In addition, the prison is an important chain partner for the AT because the AT has to collect or deliver detainees there under certain circumstances. Furthermore, local partnerships exist due to the use of sports and shooting facilities.

Cooperation: Kingdom

At the Kingdom level, the AT works closely with the AT's of Aruba and Curaçao and the AT colleagues present on Bonaire. Cooperation with the AT's of the other countries is described by all interviewees as very good, and together with them, training and follow-up training opportunities for AT's are also evaluated. There is also regular sharing of best practices between the countries. A major advantage of the current setup, cooperation and following the same training is, as indicated earlier, interchangeability and assistance among the AT's in the Caribbean.

Also, when appropriate, the AT provides assistance to the KPCN on Saba and St. Eustatius. The interviewee from the OM indicates that if the AT is deployed on another island both chief public prosecutors must give permission for this. For example, when deploying to one of the BES islands, the chief public prosecutor there makes the assessment and gives authorization. The HOvJ then does the same here. The Minister of Justice is also informed of this afterwards.

Furthermore, there are close collaborations with the Police Academy in the Netherlands and the DSI. In the context of cooperation within the Kingdom, it is currently being considered how to continue and perpetuate the existing cooperation with the DSI. For example, the CvK has "purchased" one fte for training from the DSI on an annual basis. The KPSM uses the DSI's selection procedures and testing standards, and training and advice are provided by the DSI on, for example, how to use new materials. Cooperation between the DSI, the CvK and the various AT's in the countries is based on the Police Kingdom Act.

According to a KPSM interviewee, an inter-insular information hub is also currently being worked on. Some bottlenecks still exist, including, for example, the issue of information exchange between judicial partners within the Kingdom.

The KPSM indicates that the AT can grow in different directions in the future. This can be based on support from the DSI, but there are also possibilities through cooperation with the other AT's in the Caribbean part of the Kingdom. Another possibility for cooperation, especially in the area of specialties, exists with defense. According to the KPSM, where appropriate, consultation with the Marines also takes place within the framework of cooperation.

The possibility of participation in the AT by other members of local organizations within the justice chain was critically regarded by several interviewees as a possible solution to the shortage of personnel. Theoretically, this could be possible if these people met the required conditions (investigating officer, suitable and able to undergo training). Ultimately, this is at the discretion of the KC, according to the interviewees.

4. Analysis, conclusion, and recommendations

4.1 Analysis & conclusion

4.1.1 Introduction

In this inspection, the Council assessed the extent to which the AT is equipped to carry out its tasks and the manner in which these tasks are carried out. In this Chapter 4, the Council conducts an analysis, draws conclusions and in doing so answers the sub-questions and the central question. At the end of the chapter, the Council provides a number of recommendations.

4.1.2 Laws and regulations and policy

What laws, regulations and policies form the basis of the operations of the AT?

The Council concludes based on this inspection that existing laws and regulations form the basis for the existence, organization, and deployment of the AT on Sint Maarten. In particular, the Police Kingdom Act, the National Police Ordinance and the official police instructions are frequently used in this context. In addition, the Code of Criminal Procedure, the (revised) KPSM Organization Plan and the (draft) Regulation on the Arrest Team and Observation Team are important. The Charter and the Constitution of St. Maarten form the basis for mutual assistance and assistance between the countries of the Kingdom.

The possibility mentioned in the National Police Ordinance to further regulate the organization and tasks of the AT by national decree has not yet been used. The inspection shows that some parties involved do intend to start this project. The Council believes that given the importance of the continuity of the execution of tasks and the legal certainty of all involved, it would be good to regulate the legal framework step by step as seamlessly as possible.

The inspection shows that existing DSI regulations and procedures form an important basis for the new draft regulation on the arrest team and observation team KPSM and the procedures used by the AT (for the latter, see section 4.1.3). The Council believes that the expeditious development of these regulations, while respecting the existing legal framework, is of eminent importance for a sound structure, management, and operation of the AT. The intention of the KPSM to add in the regulation various topics such as selection, training and education, physical and mental requirements and procedures fits well with this, in the opinion of the Council.

The applicable legal framework for the existence, organization and deployment of the AT is generally up-to-date and provides a clear basis for task performance, powers, and responsibilities in the context of the AT's operations. The individuals and agencies involved in AT operations are comfortable with it, and the terms and concepts used in the laws, regulations and policies are clear and familiar to all. The responsibilities and powers are also known and applied by all involved.

4.1.3 Capacity in the areas of finance, equipment, and personnel

To what extent does the AT have the necessary financial, personnel and material resources?

Finances

The inspection shows that the country's poor financial situation has negative implications for the KPSM. In the current situation, the KPSM does not have the necessary financial and material resources to organize, manage and guarantee deployment of the AT.

Another bottleneck is the KPSM's lack of its own (operational) budget. Where appropriate, the KPSM must go through a bureaucratic financial application procedure with multiple ministries to deploy the AT. The Council has already repeatedly called attention to the necessity of securing a financial mandate for the Chief of Police and finds the serious security risks to the members and modus operandi of the AT, created by the absence of certain measures of confidentiality and shielding in these application procedures, unacceptable.

The Council believes that a solution to this must be found in the short term that considers the unique security situation of the AT. The Council has previously made recommendations on an independent budget for the KPSM in general, which are still fully applicable.

Materials

The AT of the KPSM is the only local specialized unit that can perform certain specific operations. The Council believes it is important to realize and consider that the AT is in fact "on its own" locally. After all, the AT cannot locally ad hoc call on another similar specialist unit in a specific case. This means it is even more important that it is well equipped in terms of financial, personnel and material capacity.

In the current situation, the AT has the minimum necessary (safety) resources.²⁴ Nevertheless, the AT succeeds in carrying out the work – mainly due to the serious attention paid to training and the dedication of the AT members, creative solutions, and good partnerships. The Council finds this admirable, but the primary responsibility for proper support of the AT lies at the level of the KC and the Minister of Justice.

Based on the above, the Council is of the opinion that this situation is unacceptable in view of the tasks and that the AT is insufficiently equipped in terms of personnel, material and financial capacity to carry out the assigned work in the safest possible manner and therefore correctly.

Personnel: capacity

The AT personnel work full-time within the KPSM in their own task and perform the AT task as a secondary function. The staffing situation created by the time required to perform their full-time function, as well as AT-related deployments and training, creates a disproportionately high workload for a relatively small group of people. The Council notes that it has not received an overview of AT deployment over the period 2018-2023.

²⁴ Pursuant to Section 31(3)(c) of the Law Enforcement Council Act, parts of this report have not been made public.

As a result, it has not been able to form a substantiated picture based specifically on this of the relationship between AT operations and the actual work carried out by AT members that has emerged from the other information gathered.

The dire personnel situation is exacerbated by the fact that the AT's personnel capacity is not at its target strength, has seen only modest personnel growth in recent years, and the expected outflow of personnel in the near future. The fact that in several cases AT personnel are only compensated for overtime in "time back," which is difficult to absorb due to capacity problems at KPSM, is an additional burden.

This situation, according to the Council, is so burdensome for this relatively small group of police officers that the risk of dropout is high. The Council therefore believes that in addition to the already existing recruitment and selection of members, it should be investigated whether other local solutions can be found for the shortage and strain on the current staff capacity. For example, the Council believes that possible potential police candidates from other judicial organizations should be considered.

Personnel: requirements and selection procedure

Given the specific nature of AT-operations, the existing selection procedure for the AT places high demands on potential candidates, including physical and mental fitness. These requirements continue to apply to the employees concerned even after their appointment to the AT and are structurally addressed during education and training. The Council believes that this procedure creates clarity for AT personnel and has a preventive effect in avoiding physical and/or mental problems in potential AT employees beforehand.

Personnel: care and guidance

As an extension of the above, there is intensive attention within the KPSM and the AT to the specific and stressful nature of AT operations. In addition to strong peer social control and internal support, there is increased attention for the assessment and evaluation of AT employees.

If the need arises, an AT employee can call on the in-house care and social/medical or psychological counseling available at the KPSM. The Council finds this procedure regarding the care, counseling and other requirements placed on AT personnel before, during and after their tasks to be a positive contribution to the functioning of the AT.

However, in certain cases, physical or mental problems caused by the specific and stressful nature of AT work may lead to legal status consequences for the employee concerned. Given these potential consequences, the Council believes it is in the best interest of the health, clarity, and legal certainty of AT members if the existing procedures are established in writing.

Trainings

Educating and training the AT takes place structurally both locally, regionally within the Kingdom and internationally and partly through cooperation. Given the mission statement, continuous education and training are, according to the Council, a prerequisite for continuing to perform the operations as safely as possible.

This cannot be cut back financially. However, the Council notes that participation in such training is still too often dependent on the financial possibilities of the force.

The trainings are characterized by an emphasis on physical and mental tests and the systematic practice of skills (marksmanship, self-defense) and theoretical and practical procedures. The Council believes that the existing cooperation in the field of training and the manner and content of the various courses and training contribute positively to the quality of the AT's operations and the safety of AT employees.

4.1.4 Approach and steering

In what way is the approach of the deployment and task execution of the AT organized? To what extent and in what way does steering take place regarding the deployment and task execution of the AT?

The authority over an AT deployment and the consent procedure regarding the deployment and arming of the AT are established by law. A request for AT deployment, the operational command, the preparatory phase, and the final deployment of the AT are based on established, systematically practiced, and evaluated procedures. These procedures are based on the DSI's established and documented (secret) procedures in the Netherlands and are not documented for the AT itself.

Although the Council was unable to inspect the procedures of the DSI, it has the strong impression from the interviews that the procedures are known to all members of the AT. Partly because of the occasional local deviations, the Council thinks it would be beneficial if the procedures were documented as well. According to the Council, there is nothing to prevent these documents - as with the DSI - from being kept confidential or secret.

Although the KPSM is in the process of documenting the organization, deployment, and performance of the AT in a "regulation on the arrest team and observation team," this has not yet been finalized. Now that the concept is at a more advanced stage, the Council believes that this can be formalized as soon as possible while respecting the existing legal framework.

The public prosecutor has a decisive voice in the actual deployment of the AT. The Council considers it desirable that the OM's authorization be recorded. During each deployment of the AT, steering and monitoring takes place by the KC, commander, and section commander-AT.

Each action and any details are documented for accountability purposes. An evaluation of the deployment and execution also takes place. The information management of the KPSM is designed to support the AT operations. The Council believes that this method of monitoring, steering, accountability, evaluation, and support of the information management contributes to a sound approach of the AT.

The Council further believes that involvement in the KPSM by a well-resourced MvJ is also important for the AT. This is especially true with respect to regulatory and policy support regarding equipment needs and procurement, training, cooperation, legal certainty, and continuity. The Council has repeatedly called attention to the necessary strengthening of the MvJ and reiterates it here.

Given the mission of the MvJ, and the importance of respecting the fundamental rights of Sint Maarten citizens, the previously mentioned judgment of the ECHR is important in this context. The specific responsibility for the existence and functioning of special police units such as the AT, emphatically indicated in this ruling, applies not only to the organization of special units and the people who are part of them, but also to the operational and administrative authorities responsible for these units (see also Chapter 2). The foregoing thus also applies to the AT in Sint Maarten. The Council is of the opinion that the AT - despite the capacity limitations (see section 4.1.5.) and the fact that there are still some things to be improved - in essence trains at the appropriate level, performs its operations professionally and is clearly managed internally by the commanding officers of the KPSM. Regarding external attention of the administrative authorities and support of the AT by doing so, the Council believes there are still gains to be made.

The inspection also revealed negligence in the areas of confidentiality of information and shielding of working methods and identity of AT members within various ministries. The latter poses irresponsible and unacceptable risks to AT members, according to the Council. Such a course of action implies insufficient awareness on the part of the government of its responsibilities regarding fundamental rights of citizens, the rights and safety of AT members and the required financial, personnel and material capacity arising from the existence of a professional AT. The Council therefore believes that the above should be addressed as a priority.

4.1.5 Cooperation

To what extent and in what ways does the AT collaborate with other organizations?

On Sint Maarten there is no local network of mutually supporting special units that, when appropriate, can cooperate and deal with various (life-threatening) situations. This forces the AT to (initially) perform AT work independently in varied (potentially) life-threatening situations with relatively little use of force.

As part of its organization and deployment, the AT relies almost structurally on support from other departments of the KPSM and, where appropriate, cooperates with (judicial) organizations at the local level such as the Point Blanche prison, the Royal Netherlands Marechaussee, the Marines, or the RST. At the Kingdom level, the AT has been working closely for some time with the National Police Academy, the DSI and the AT's of the other countries in the Caribbean part of the Kingdom. This involves a mutually intensive use of expertise, capacity, and information sharing. The Council always encourages cooperation, also in this case.

However, the Council - just as in previous inspections - draws attention to the fact that to be able to cooperate well, it is necessary that the KPSM and by extension the AT have the necessary financial, material and personnel capacity to be able to properly accomplish this.

Because of this intensive cooperation within the Kingdom, through regular consultations and verbal agreements, there is clarity about when and who can be called upon. This is also of great importance given the capacity problems at the KPSM and the AT. The existing cooperation at the Kingdom level is currently organized on an informal basis. The Council believes that a formal written basis for cooperation would be in the interests of (continuity of) quality, interchangeability, and legal certainty for all involved.

4.2. Answering the central question

To what extent is the AT equipped to carry out its tasks, and in what way is this task performance structured?

The Sint Maarten Police Force has an arrest team that can be deployed in (potentially) life threatening situations (against the police or others). The deployment of an AT is the ultimate means of force of the police and must, given the means of force at the disposal of an AT, be safeguarded.

Given the contribution of the AT to the enforcement of the rule of law and to the safety of citizens and investigating officers, it is of eminent importance that the necessary preconditions for a safe and professional functioning of the AT are in place.

However, this inspection shows that certain preconditions important for AT-operations are insufficiently in place. Although the legal basis and procedures are (at their core) in order, in the opinion of the Council, the human, material and financial capacity of the KPSM to maintain an AT are insufficient and need to be improved. With respect to the aforementioned capacity, the Council therefore concludes that the AT is insufficiently equipped to carry out its operations. Regarding its legal basis and procedures, however, it is sufficiently equipped.

The Council further concludes based on the inspection that the AT on Sint Maarten, despite the inadequate conditions, can actually carry out its activities only thanks to two important and positive aspects.

This is partly because the most common procedures are taught and systematically practiced in the various AT-trainings, with these trainings being facilitated by the various AT collaborations at the local, regional and kingdom levels. The partnerships at the kingdom level provide the basis for quality training, mutual support, and interchangeability. According to the Council, this bears fruit in terms of the way the execution of tasks is given shape in practice.

On the other hand, this is due to the commitment of the individual police officers directly and indirectly involved in the AT. It is apparent that the police officers who are part of the AT, as well as the police officers responsible for the operational management of the AT, meet the physical and mental demands placed on them to a very high degree.

Indeed, the Council believes that the execution and operational steering of the operations of the AT is characterized by dedication, creativity, improvisational ability, and relevant expertise.

Lastly, the Council is convinced that, given the nature of the operations and the associated risks of an AT, high demands must be placed on the organization of an arrest team and on the people who are part of it. However, awareness among administrative authorities regarding their responsibility for the proper and safe functioning of an AT seems (too) low and certainly open to improvement. In the opinion of the Council, it should go without saying that the high requirements also apply to the administrative authorities who are ultimately responsible for the operations of an AT.

Sint Maarten is a small country with big city (criminal) developments and big city problems and if the police (and thus also the AT) do not (cannot) do their job the damage, and thus the costs, for society will only be higher in the long run. The Council therefore requests the attention of all those responsible so that the AT can (continue to) perform its operations in the safest possible way.

4.3 Recommendations

The Council recommends the following to the Minister of Justice of Sint Maarten:

	To the Minister of Justice
1.	Based on the National Police Ordinance, regulate the organization and tasks of the AT.
2.	Formalize policies that regulate the care, guidance, and legal status framework for the AT employees.
3.	Ensure that there is an adequate financial budget to structurally guarantee the organizational, personnel and material preconditions of the AT.
4.	Take measures as soon as possible to ensure the confidentiality and shielding of AT-related information and working methods within the various ministries.
5.	Ensure that the Ministry fulfils its statutory duty to prepare policy and legislation and regulations relating to matters affecting the Ministry, as expressed in Article 15 of the LIOL.
	To the Minister of Justice regarding the Sint Maarten Police Force
6.	Document in writing the process, that has already been started within the KPSM regarding the approach, structure, deployment, and performance of tasks of the AT.
7.	Provide the Chief of Police with an operational working budget and financial mandate to manage this budget in special circumstances.
8.	Provide a formal written basis for the existing cooperation and support regarding AT-training and cooperation within the Kingdom.
9.	Explore local opportunities within the rest of the justice chain to recruit and train additional personnel capacity for the AT.

Annex 1

Laws and regulations and other information

- Charter for the Kingdom of the Netherlands;
- Constitution of Sint Maarten;
- Police Kingdom Act;
- National Police Ordinance Sint Maarten;
- National Ordinance on the establishment and organization of government;
- Code of Criminal Procedures Sint Maarten;
- National Ordinance containing further provisions regarding weapons;
- Equipment regulation for the police of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba;
- Mutual Regulation on Quality Requirements, Education and Training Requirements of Police of Curaçao, of Sint Maarten and of Bonaire, St. Eustatius and Saba;
- National Decree, containing general measures, containing the official instructions for the police and the extraordinary agents of police and rules regarding the measures to which persons deprived of their liberty by right can be subjected in Sint Maarten;
- National Decree, containing general measures, regulating the legal status of police officers of the Sint Maarten Police Force;
- National Decree, containing general measures, implementing article 4, third paragraph of the Police Regulation 1999;
- National Decree, containing general measures, for implementing article 10, under e, of the Police Regulation 1999 (National Decree education police personnel);
- Ministerial regulation implementing article 16, second paragraph (d) of the Police Regulation;
- Establishment plan KPSM (2010);
- Establishment plan KPSM revised (2012);
- Besluit beheer politie (Nederland);
- Regeling Dienst speciale interventies (Nederland);
- Circular and Arrest- and support units Regulation (AOE's; Nederland).
- Draft regulation Arrest- and Observation team KPSM;
- Relevant reports of the Law Enforcement Council.

Colophon

Law Enforcement Council

Juancho Yrausquin Blvd 26, Unit 3A | Philipsburg | Sint Maarten

info@rrh-sxm.org

www.raadrechtshandhaving.com

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