

**RE-SOCIALISATION OF OFFENDERS IN THE EU: ENHANCING THE ROLE
OF THE CIVIL SOCIETY (RE-SOC)**

Workstream 4: Civic monitoring of prisons

Analysis of availability and accessibility of data in Belgium

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I. Introduction

Availability of comprehensive statistical data is crucial for implementing knowledge-based good governance as well as for enhancing the state's capacity to address issues of concern and significance which might hamper the efficiency of its policies.

In the field of criminal justice, the collection and analysis of data can greatly assist both executive authorities and policymakers in planning and implementing policies and measures backed by empirical data and likely to respond to the system deficits. These deficits can vary from financial, operational, infrastructural or even regulation gaps.

This is particularly true when speaking about the prison system. Considering its characteristics, the statistical information it generates, if used fully and efficiently, can support monitoring performance and can also facilitate strategic and operational planning of the system itself.

As in many countries, despite longstanding efforts and the implementation of various electronic-based systems, in Belgium official statistical data on prison are not sufficient in many topics for an in depth quantitative analysis. At least it is not sufficient in its availability and accessibility. Consequently, researchers and independent observers must rely on the good will of penitentiary institutions in providing data beyond of what is published.

This issue was also stressed by the Court of Auditors in its report published in December 2011 under the title "Measures against prison overcrowding"¹. The Court of Auditors highlighted that the consistent use of figures and other encrypted data in the context of the preparation and implementation of the prison policy was flawed and problematic. Several statistics are not available or not in due time. Furthermore, the figures are only slightly accessible for scientific studies conducted by outside. Among its conclusions, the report recommended the Minister of Justice to allocate sufficient resources and give priority to the

¹ Cour des Comptes, Mesures de lutte contre la surpopulation carcérale, Rapport de la Cour des comptes à la Chambre des représentants, Bruxelles, décembre 2011, 181 p. (see website : www.ccrek.be).

development of statistical services. It is hoped that this call (from a body whose authority cannot be ignored) will be finally heard.

1. The Structure of the Belgian Prison System

The Belgian prison system falls under the competence of the Directorate-general of Penitentiary Institutions (DG-PI), as one of the four Directorate-generals of the Federal Department of Justice (Ministry of Justice). The DG-PI is responsible for, in conformity with the law, the execution of sentences and measures which deprive people of their liberty. The Directorate has an advisory role concerning penitentiary matters proceeding from its expertise and ensures a management of every entity under its competence.

The DG-PI consists of a central administration sustained by external services. The central administration is primarily responsible for supervising individual inmate records as well as prison staff management. The security forces responsible for the transfer of prisoners are also part of this branch.

1.1. Prison facilities

This Directorate-general is responsible for the execution of penalties and measures of deprivation of freedom within 32 prisons. These prisons are under the control of the national prison administration or head office but are regionally divided: 16 prisons are situated in Flanders, 14 in the Walloon part, and two in Brussels (Brussels Capital Region).

There is also one penitentiary institution (Paifve, in Wallonia) which is exclusively intended for the imprisonment of the mentally-ill offenders (“établissement de défense sociale”). Many other prisons also host mentally-ill offenders and some of them have specific sections intended for them (such as, in Flanders, Merksplas since 2009).

The prison system also manages three closed detention facilities for minors who have committed an “act designated as offence” (juvenile offenders), but technically speaking, these are not prisons: although the prison system manages security aspects, the follow-up of these minors is the responsibility of the different regional governments. The transfer to these closed federal centres (Everberg, Saint-Hubert et Tongres) only takes place under certain conditions and when the community centres (centres under the control of the Flemish government or Walloon Region) have reached their capacity.

Since 2009, the Ministry of Justice also chose to rent a part of a Dutch prison in *Tilburg*, just across the Belgian border, in order to solve, in the short-run, the problem of overcrowding in the Belgian prisons. This prison, where about 650 persons are currently being detained, is not situated on the Belgian territory, nonetheless, it has to be regarded as a Belgian penitentiary institution since the Belgian (penitentiary) legislation is binding in this institution.

1.2. Legal status of prison facilities

According to their legal status, the Belgian prisons may be divided into “houses of arrest” (remand prisons) and “houses of punishment” (prisons for sentenced/convicted offenders).

Remand prisons are penal institutions where people are incarcerated in application of the Pre-trial Detention Act of 1990, such as suspects and accused persons. “Houses of punishment”, on the other hand, are prisons for adults who have been convicted by the court to an effective prison sentence. However, this distinction has become quite theoretical. Due to the prison overcrowding, an increasing number of prison facilities receive both pre-trial detainees and convicted persons.

Most of the prisons are remand prisons (Arlon, Brugge, Dendermonde, Dinant, Forest, Gent, Hasselt, Huy, Ieper, Jamioulx, Lantin, Leuven Hulp, Mechelen, Mons, Namur, Nivelles, Oudenaarde, Saint-Gilles, Tongeren, Tournai, Turnhout and Verviers).

About one out of four prisons is a convict prison. These convict prisons have different levels of security² and can be divided into 3 types: open, half-open, and closed institutions.

– Closed prisons have a detention regime with high level permanent security regime which is clearly shown by, amongst others, constant camera-surveillance and high walls surrounding the prison. The majority of the Belgian prisons, including the ones which are called houses of arrest, fall under this category. (Andenne, Ittre, Louvain Central, Lantin, Mons, Tilburg...)

– Half-open prisons are characterized by a secured regime during working hours and at night. Although the prisoners here spend the evenings and nights in secured cells, during *daytime they work in or outside the prison (one facility: Merksplas)*;

– Open prisons ensure the security by an educational regime which is based on a voluntary accepted discipline and where common methods of coercion are only applied when deemed necessary. In these types of prisons, for example, one cannot see high walls surrounding the building, nor barbed wire etc. There are four such facilities in Belgium (Hoogstraten, Marneffe, Ruiselede and Saint-Hubert).

2. Publicly available information on prisons

2.1. Sources

Directorate-general of Penitentiary Institutions

The national governing body of prisons, the Directorate-general of Penitentiary Institutions (DG EPI), does not publish regularly statistical information on its own. Furthermore, it does not have a proper website.

The website of the SPF Justice (Ministry of Justice) provides general information on the prison and detention facilities (very brief description of their premises, capacity and location), as well as on the rules governing their administration, their access, the rights of the detainees as well as the various assistance programs of which they can benefit.

² Arrêté royal du 21 mai 1965 portant Règlement général des établissements pénitentiaires.

Since 2007, the DG EPI publishes its own annual report which is available on the website of the Ministry of Justice. An assessment of the information contained therein will be made in a following chapter. Additional generic data on the prison system or population are also provided by the Ministry of Justice in its own publications (the annual report on the justice system or brief overviews such as “Justice en Chiffres”, also published on a yearly basis), as well as by the Criminal Policy department of the Ministry of Justice (mostly on penitentiary institutions entries and exits, as well as categories of offenders or offences committed) and the Directorate-General on Statistics and Economic Data of the Ministry of Economy. These data are public and can be consulted online through the websites of the relevant institutions³.

Monitoring mechanisms and institutions and prevention of abuse in prisons

The bodies or organs in charge of ensuring an independent control or supervision over the prison system and its facilities should also constitute a critical source of information. However, as far as Belgium is concerned, so far the reports produced by such entities only allow the identification of specific problems or discrepancies at an individual level rather than a thorough assessment of the detention conditions in the various prison facilities.

a) The Central Prisons Supervisory Council (<http://www.ctrg-ccsp.be/fr>)

The Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 containing the general prison regulations created both the Central Prisons Supervisory Council and a local supervisory commission in every prison.

The Royal Decree of 29 September 2005 amended it to make those bodies more independent, transparent and professional (Dupont Act, article 26-27, 29-31). Among its duties, the Council should exercise independent control over the treatment of detainees and supervise the adherence to the regulations in force. Observations are reported to the Minister of Justice and the Federal Parliament, and the Commissions can present recommendations on penal matters. Each local supervisory commission should exercise the same control in its assigned prison.

³ Ministry of Justice (<http://justice.belgium.be/>); Service de la Politique Criminelle (<http://www.dsb-spc.be/>); Direction générale Statistique et Information économique (<http://statbel.fgov.be/>).

However, the relevant provisions of the above mentioned Royal Decree have not all entered into force and in practice, the functioning of the Commissions and the Council is flawed. The latest report of the Council⁴ raises several serious concerns regarding its effectiveness and independence. The Council complained inter alia that nominations of its members had taken place irregularly, that the secretaries assigned by the Minister of Justice were not suited to the task and that the body lacked adequate funding.

The local supervisory commissions are staffed by volunteers rather than professionals and do not receive adequate funding to effectively carry out their mandates. Their inspections are scattered and fragmented. Owing to a lack of co-operation between the committees and the central council, it is not possible to publish a consolidated annual report on problems in the various prisons.

b) Federal Ombudsman (Médiateur fédéral)

In its annual report, the Federal Ombudsman also highlights cases of inmates' rights infringements by the prison administration or situation of specific vulnerabilities. However, again, the information provided concern single cases at micro level.

c) OPCAT and the National Preventive Mechanism (NPM)

Belgium signed the OPCAT in October 2005 and discussions have been ongoing since then regarding the ratification of the instrument. Consequently, Belgium has still not establish a proper National Preventive Mechanism which could play a significant role in the monitoring of the prison facilities and the detention conditions.

Discussions have taken place on the possible NPM structure and various options have emerged, including establishing a new National Human Rights Institution (which mandate would also encompass the NPM functions) or designating the existing Federal Ombudsperson's Office, provided changes would be made to its mandate.

⁴ http://justice.belgium.be/fr/binaries/rapport_conseil_central_surveillance_penitentiaire_2008-2010_tcm421-156810.pdf

In November 2008, the Committee against Torture recommended that Belgium take all the necessary measures to promptly ratify the OPCAT and establish an NPM. On that occasion, the Delegation of Belgium explained in its [Opening Statement](#) to the Committee that the ratification of the OPCAT was challenging due to the obligation of establishing an NPM. Belgium reported that, since the signature of the OPCAT, various meetings had taken place to analyse the implications of such ratification. A working group was established and comprised representatives from the federal and local authorities. Before proceeding with the ratification of the OPCAT, all relevant authorities have to agree on the composition, structure, mandate and funding of the future NPM.

2.2. Overview of prison Statistics

In February 2013, Belgium had a total of 11,732 inmates, with a maximum capacity of only 9,255 persons and for a total Belgian population of over 10 million and a half (an incarceration rate of 107 per 100,000 inhabitants). A further 1,071 sentenced prisoners were detained at home under electronic surveillance.

The composition of the Belgian prison population is particular. Almost one third of all inmates are remand prisoners (35%). This high percentage is a reflection of management problems and arrears in the judicial system. The majority of inmates (50-55%) are sentenced prisoners, while 10% are mentally ill prisoners and less than 1% is held for administrative reasons.

The majority of the Belgian penitentiary population is also by far composed by men (women constituting only 4% of detainees). More than half of the prison population is constituted by young adults. Over the period 2006-2010 more than half of the prison population was aged between 21 and 35 years (52%-53%). The other part of the population consist of prisoners older than 36 years old (41%-43%) and 5% to 6% is under the age of 21. Less than 1% of the prisoners are youth offenders.

Another feature of the Belgian prison population is the increasing number over the last 30 years of foreign nationals. The number of non-Belgian detainees in Belgian prisons quadrupled in the period 1980-2010, going from 1,212 to 4,494, representing now around

42 % of the total prison population. It is also to be noted that the majority of them are pre-trial detainees.

Apart from these demographic features, information compiled by the Belgian prison administration fails to give a detailed description of the socio-economic profiles of inmates. The data related to detainees and actors involved in resocialisation activities are partial and incomplete, if not unavailable, and scattered over several federal, regional and local agencies and hence do not allow a comparative analysis and qualitative assessment. Similarly, information on the health and social status of Belgian prisoners is not systematically and structurally collected. Every prisoner has a medical, electronic file but the data these files generate cannot simply be retrieved in order to be used as a monitoring tool.

When we examine the data and information provided by the annual reports of the DG EPI, we can assess that they are limited to the following categories:

- number of detainees and overpopulation rate
- Prison population desegregated on (a) men and women (b) national and foreigners (foreigners are also desegregated by country) (c) remand, sentenced and interned (mentally-ill offenders)
- Entries and exits to penitentiary institutions.
- Deaths: desegregated on suicides and other categories of deaths (without any further details)
- Number of escapes
- General overview of the DG EPI's overall budget

The most important gaps identified are related to:

- Prison population by length and average of length of sentence imposed and for the average of sentence observed.
- Age structure of prison population

- Information on some prisoners with special needs (prisoners with disabilities or special healthcare needs; drug addicts; inmates with HIV or other infectious diseases; older prisoners; LGBT prisoners; etc.).
- Information on injuries and self-injuries
- Information on the availability of health treatment, educational and vocational training programs, work, leisure activities (number of social workers or volunteers, number of inmates involved, as well as the detailed portion of budget allocated to these programs or activities, etc.).

3. Prison data collection systems

The systematic gathering of official data on crime and crime control has been a problem in Belgium for decades. The prison administration (at central and local level) collects a wide range of information on prisoners and the prison system itself. Increasing computerisation has improved the collection and accessibility of data related to prison facilities and detainees as well as on sentence implementation. Yet, not all information is public, and some information is not even available within the overall prison system.

When considering the criminal justice system as a whole, the prison sector is where the establishment of computerized databases is the oldest and therefore the most proven⁵. In 1974 already, the prison administration implemented a first database system (BS2000). In 1997-1998, the system was replaced by a new application, the SIDIS system (Computer System detention) that retrieved information from the old application and introduced some relatively small adjustments. The final stage in this process was the introduction in 2001-2002, of a new database (called GREFFE) directly linked to the SIDIS application. While maintaining the existing SIDIS functionalities, the GREFFE program added new ones that clearly offered more opportunities for the creation of detailed and scientifically relevant analysis. It can be therefore surprising that with such potential exploitation - important if

⁵ *Vanneste Charlotte e.a., Les statistiques pénales belges à l'ère de l'informatisation*

one considers comparable existing databases abroad - the situation is yet so flawed in terms of the publication and dissemination of prison statistics.

Thus, although the publication of the annual activity reports of the Prisons Directorate since 2007 has filled a *vacuum*, statistics that are published remain relatively poor compared with the information available. For example, the data published do not allow to distinguish population of sentenced prisoners by the length of their sentence, or to identify among the category of defendants, those already convicted but whose sentence is not yet final. To allow a review of the evolution of the prison population, these two types of information are essential.

To enable future routine production of statistics, a data warehouse system was further developed in collaboration with the DG EPI and the CTI, modeled on the system in place for the production of conviction statistics. Four modules (incarcerations, population, releases, escapes) were designed and data available since 1980 have been gradually introduced. The data warehouse is in any case currently used in a very limited way and internally to the DG EPI.

Recent measures adopted might improve the situation and allow for a unique and centralised source of consistent data about prisoners held in Belgium (the electronic detention file). So far, the information related to the inmates' incarceration course was scattered in various systems and records, some of which existed only on paper. This was, for example, the case of disciplinary or psychological-medical files. Information about visits was still encoded in simple Excel files, by each penitentiary institution. Records were also set up and roughly maintained by different services (police, justice, prison administrations ...), without necessarily sharing them or not in an efficient manner.

After more than two years of pilot development, the so-called "Sidis Suite solution", whose implementation started in September 2014, might contribute to put some order and provide a clearer picture of the inmates' status, since their incarceration until their release. First active modules have already been set up (allocation of cells, visits management, sentence calculation, detention securities management, disciplinary record) and other modules will gradually be added (such as training management, statistics tools, etc.).

Who has access to this electronic detention file? Prison authorities, first and foremost, but also through other interconnected databases, other actors such as police, public prosecutors, and judges. Eventually, access will also be open to the Aliens Office, the Regions and Communities or the Social Security Department.

However, all these players do not have the same access rights and the type of information that can be consulted will vary. Lawyers are not granted access to this file. Nevertheless, pursuant to regulations on the protection of privacy, inmates should be provided the opportunity to check the accuracy of the information contained in their personal file. The so-called Prison Cloud platform should enable the inmate to consult (in his cell) his judicial and prison record, but also to order an appointment with a doctor or access some websites (such as job search sites). Prison Cloud is currently implemented in two prisons (Beveren and Leuven). A more widespread deployment will depend on budgets that will be allocated for development (including cell wiring).

In light of the means that have been mobilized for the production of prison statistics, the Belgian authorities should be aware of the unquestionable scientific and politic interest of taking advantage of the comprehensive and detailed statistics currently available. Not only by introducing new technologies to keep criminal justice information systems technically up to date, but also by making them more flexible, by enlarging their purpose and by ensuring their access with maximum transparency.