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

Workstream 3: Vulnerable groups of inmates

COUNTRY REPORT – BELGIUM

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1. Introduction

This report on vulnerable groups of prisoners in Belgium is based on the classification provided by the UN Handbook on Prisoners with Special Needs[1]. It also includes other vulnerable groups of prisoners, which are not listed in the UN handbook but are particularly relevant for the Belgian penitentiary context, notably inmates with drug related problems, sex offenders and mothers incarcerated with their child.

Vulnerable groups of prisoners have special needs or are exposed to specific factors or circumstances of vulnerability, and therefore need appropriate supervision, care and protection to be taken into account by legislation, policies and practices related to the management of prisons.

For each group, the report provides an overview of the relevant vulnerability factors, the legal framework and/or the institutional approach aimed at addressing their special needs as well as existing measures and programmes in which the civil society is involved.

[1] http://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf

2. Prisoners with mental health care needs

According to the most recent statistics provided by the Belgian Penitentiary Central Administration, in 2012 Belgium counted 4093 “mentally ill offenders”, indicating an increase of 24% over the six previous years. Over 1.100 of them were detained (*interned*) in ordinary prisons (in psychiatric wings or in cells blocks among regular prisoners), accounting for 10% of the total prison population[2].

Pursuant to the Act of 1 July 1964 on the Protection of the Society against Abnormal and Recidivist Offenders (*loi de défense sociale*)[3], which replaced the initial Act of 9 April 1930 with the same title, mentally ill offenders (persons who have committed a misdemeanour or a felony and are declared "irresponsible for their actions") can be interned. Under Belgian Law, internment is not a punishment, but a measure of safety to exclude mentally ill offenders out of society to prevent (further) harm and to provide medical treatment. In practical terms, these persons must be placed in a social protection institution (*établissement de défense sociale*) or, for therapeutic reasons, in an appropriate institution as far as security measures and healthcare services are concerned.

The Law, however, is not always applied properly. The three existing social protection institutions (*établissements de défense sociale - EDS*), all located in Wallonia (in Paifve, Tournai and Mons) are full and overcrowded. Timeouts to integrate these forensic facilities are hopeless. Regarding Flanders, where such institutions were simply lacking, the Belgian government has announced the construction of two forensic psychiatric centers in Ghent and Antwerp. These facilities should be operational in 2014 and would respectively provide 272 and 180 places for medium to high risk offenders with intellectual or psychosocial disabilities or mental disorders, with specific units that would cover persons suffering from psychotic disorders, personality disorders, intellectual disabilities, substance abuse, and other common psychiatric disorders.

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2 Directorate-General of Penitentiary Institutions, 2012 Annual Report, pp. 101-117.

[3] The current Social Protection Act should be replaced by the new Law on the internment of people affected by a mental disorder adopted on 21 April 2007. Due to many critics, mainly from professionals in the fields of psychiatry and mental health, the application of this new law has been postponed. The principal discussion concerns the proposed approach to internment: the law of 21 April 2007 placed greater emphasis on the aspect of "protecting society", to the detriment of "care" for the internee with a view to his reintegration. To respond to these criticisms, work is currently in progress on a draft amendment law to be proposed by the Cabinet of the Justice Minister.

As a direct consequence of the lack of places in adapted institutions, a substantial number of mentally ill offenders held under internment orders remain - for months and sometimes even years - in prison psychiatric units or in a normal prison section, awaiting transfer to an ad-hoc care institution where they could benefit from an appropriate treatment. It should be noted that psychiatric prison units are fully managed by the penitentiary administration and quality control by health authorities is not applicable. As a consequence the overall level of provided care, from a medical point of view, is unacceptably low.

These mentally ill offenders should not be confused with prison inmates suffering from mental disorders, who usually were considered being criminally responsible for their offences, and whose mental disorder – if at all prevalent prior to the prison sentence – was not found to be associated with the committed crime. The Belgian penitentiary administration does not provide any public statistical data related to this specific category of prisoners and does not take it into account in its annual report. Of course, it goes without saying that they also they also have the fundamental right to receive appropriate psychiatric treatment.

Legal provisions on the right to health care

The basic principles of health care in prison are legally embedded within the law of 12 January 2005 concerning the internal legal position of detainees (the Act on Principles of Prison Administration and Prisoners' Legal Status, commonly referred to as the "Dupont Act"[4]), which provides in its article 88 that all prisoners must have access to health care of the same quality as in the free community and that is suited to their specific needs. Until the adoption of this law, most aspects of life in detention, including prisons, were left to the discretion of the prison authorities or based on a variety of guidelines and circulars issued by the executive power. However the provisions regarding health care and health protection (articles 87-97, 99), medical expertise and medico-psychosocial expertise (articles 100-101), and right to social assistance and services relating to the detention plan (articles 102), so far have not been implemented. Royal Decrees have to be issued for the coming into force of several articles. In the absence of full implementation of this law, the General Regulations of

[4] Loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus.
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005011239&table_name=loi

the Penitentiary Institutions of 1965[5], still rules today significant aspects of the internal legal status of detainees.

Provision of penitentiary medical Services and mental health care

Belgium has a well-developed and accessible health care system for all citizens but persons incarcerated in a penal institution (be it pre-trial detainees, convicted inmates or interned), are by law excluded from the benefits of the Social Security system.

As a consequence, prison health care is a competence of the Minister of Justice. The Prison Health Care Service, on central level, as part of the Directorate-general of Penitentiary Institutions, is the service provider for the *"improvement, determination, preservation and improvement of physical and mental health"* (Art. 87, §1, Dupont Act of 2005). It is responsible for the global management of health care, the medical management (cure and prevention), internal management (quality standards and inspection), staff management, educational management, financial management, development and management of electronic databases, consultation and cooperation with internal health services (service for prevention and protection at work, service for labour medicine) and external services (health promotion, control of tuberculosis, drug-aid).

In each Belgian prison a single Service for Health Care is installed executing the health policy formulated by the central Service for Health Care in Prisons. Health care and somatic as well as psychiatric treatment are totally free for inmates. In addition to this service, each prison also comprises a Psychosocial Service. The prison manager, psychiatrist(s), psychologist(s), social worker(s) and administrative collaborator are part of the psychosocial service. Prisons with a psychiatric unit may complete their psychosocial service with a psychiatric nurse, ergo-therapist and psychomotor therapist.

Following a new legislation on prison sentences adopted in 1998, the major task of the psychosocial service consists in the evaluation of prisoners in order to recommend judicial authorities on their decision to grant release on probation (short prison leaves, semi detention, electronic monitoring, provisional and conditional release). These evaluations are based on a multidisciplinary investigation of the personality which includes risk assessment.

Next to the Federal Government, the Regional Governments are also involved in health policy in prisons, being competent for ambulatory health care and preventive health care (ranging from needle exchange, vaccination programs to suicide prevention).

[5] Royal Decree of 21 May 1965 laying down General Regulations of Penitentiary Institutions.

Practice

While prisoners with mental health difficulties are entitled to appropriate care and treatment whose quality should commensurate to the type of care available for people with similar mental health difficulties in the community, these requirements are not fulfilled in Belgium. This is due to different factors.

Firstly, the delay in the implementation of many of the relevant health care related provisions of the Dupont Act entails that the rights afforded to prisoners in this sector are in effect more restrictive than the legislation would suppose. As a result, the principle of equivalent medical care is still not a priority among the prison management.

Secondly, the complex Belgian state structure and the consequent fragmentised division of competencies between different ministerial portfolios have an impact on the organisation of services in the Belgian prison system. This compartmentalisation has disastrous results when it comes to meeting the specific needs of people in prison with mental and psychological disabilities, particularly when persons with disabilities are held under internment orders.

Thirdly, the situation de facto reveals organisational and practical shortcomings in the provision of health care due to an inadequate infrastructure of medical care, a lack of qualified or specifically trained staff, dilapidated and unsanitary facilities and insufficient resources. Prisoners continue to be reportedly confronted with long waiting times for specialized care, delayed medical interventions, lack of continuity of medical care and dissatisfaction with the access to minimum health care services on weekends and public holidays.

Similar problems exist with the provision of forensic psychiatric care, including no systematic collection of data, lack of residential and non-residential treatment options, conflicts between treatment and control orientation. Although multidisciplinary teams[6] were set up within prison-based psychiatric wings in 2007, they are not fully staffed and proper individual treatment of mentally ill offenders is still often underdeveloped or completely lacking in these facilities.

Moreover, Belgium currently does not use internationally standardized screening and assessment procedures in its prisons that would more accurately identify the prevalence of mentally ill offenders. The absence of (evidence-based) treatment protocols leads to additional difficulties, including wrongful clinical diagnoses of mental health problems at the

6 FPS Justice, DG Correctional Facilities, Prisons Health Care Service, Circular No. 1800: Equipes soignantes des sections psychiatriques dans les prisons, les sections ou dans les établissements de défense sociale : objectifs, composition, fonctionnement, 7 June 2007.

start of a person's incarceration, and consequently inadequate treatment and care. This shortcoming is particularly relevant, considering that a majority of mentally ill offenders have dual or multi-diagnoses, including substance disorders, psychotic disorders, personality disorders, impulse control disorders, and other severe mental disorders.

The critical situation of mentally ill offenders in Belgian prisons is well documented by the media, NGO's (particularly the Belgian Human Rights League) and international bodies (such as the European Committee for the Prevention of Torture), and is generally acknowledged to be one of country's major human rights issues. The Belgian State was given judicial notice of the legal inappropriateness of interning mentally ill offenders without sufficient and timely treatment[7] and has been condemned a number of times by the European Court of Human Rights[8] for violating the fundamental rights of this specific group of inmates.

3. Prisoners with disabilities

The Belgian Prison department does not provide statistical data about prisoners with disabilities, whether physical or mental. Nevertheless, reports of the Belgian Federal Ombudsman (*Médiateur Fédéral*) and the Centre for Equal Opportunities and Opposition to Racism (created by the Federal Act of 15 February 1993) show that physical and mental disabilities can suppose a special situation of vulnerability in prison facilities, considering that most of them are not adapted or equipped to meet their special needs. The issue of persons with disabilities in prison cannot be viewed separately from the general context of endemic prison overpopulation and the difficulties raised by this in regard to the organisation of the prison system as a whole.

7 Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 23 au 27 avril 2012, [CPT/Inf (2012) 36].

8 As an indication we cite the case of L.B. versus Belgium on 2 October 2012 and the case of Claes v. Belgium on 10 January 2013. The European Court of Human Rights (ECtHR) declared, in *Claes v Belgium* (application no. 43418/09), the treatment of mentally disabled persons in Belgian prisons to be in violation of the European Convention on Human Rights (ECHR). The Court held that there was a violation of Article 3 (prohibiting torture and inhuman or degrading treatment) as well as Articles 5(1) and 5(4) (protecting the right to liberty and security and the right to have the lawfulness of detention decided speedily).

Legal provisions

Since the Federal Anti-Discrimination Act of 25 February 2003[9], whose scope was further extended by the Act of 10 May 2007[10] (aimed at combating certain forms of discrimination), not providing for reasonable accommodations that would allow full access or participation of persons with disabilities in specific context is considered to be an act of discrimination in Belgium. The anti-discrimination legislation applies to the sector of goods and services, whether public or private, and therefore to public services such as courts and penitentiary facilities[11].

Reasonable accommodations are defined as "appropriate measures taken as needed in a particular case, to enable a disabled person to access, participate and progress in the areas for which this law applies, unless such measures would impose in respect of the person who should them adopt a disproportionate burden" (Art. 4, §12).

The concept of reasonable accommodations plays a key part in relation to the equal treatment of persons with disabilities as compared with others held in prison. The refusal to provide reasonable accommodations for a disabled person for a person with a disability constitutes a form of prohibited discrimination within the meaning of the law. And people with disabilities, who are held in prison, are entitled to reasonable accommodation to meet their specific needs. The measures to be taken must be proportional: the security requirements of these measures must strike a balance to meet disability-related needs of these people.

[9] Law of 25 February 2003 Combating Discrimination, Amending the Law of 15 February 1993 Founding the Centre for Equal Opportunities and Opposition to Racism. The Belgian Anti-Discrimination Act of 2003 broadened the concept of criminal "discrimination to every "discrimination" on the grounds of "gender, so-called race, colour, descent or national or ethnic origin, sexual preference, marital status, birth, wealth, age, religion or philosophy, present or future state of health, handicap or physical characteristic."

[10] Three new anti-discrimination laws were issued on 10 May 2007: the Racism Act, which modifies the Act of 30 July 1981 on Combating Certain Acts Inspired by Racism and Xenophobia; the Gender Act, which aims to eliminate discrimination between men and women; and the Anti-discrimination Act 2007, which aims to eliminate certain forms of discrimination. These new legislations set out prohibited grounds of discrimination as follows: nationality; racial identity; skin colour; ancestry; or national or ethnic origin; gender; age; sexual orientation; marital status; family background; financial status; religious or other belief; political opinion; language; current or future state of health; disability; physical or genetic characteristics; or social origin.

[11] The Anti-discrimination Federal Acts provide for protection in large areas of public life: the provision of goods or services when these are offered to the public; access to employment, promotion, conditions of employment, dismissal and remuneration, both in the private and in the public sector; the nomination of a public servant or his/her assignment to a service; the mention in an official document of any discriminatory provision; and access to and participation in, as well as exercise, of an economic, social, cultural or political activity normally accessible to the public.

Finally, the United Nations International Convention on the Rights of Persons with Disabilities (which was ratified by Belgium on 2 July 2009 and entered into force on 1 August 2009) reinforces and reiterates the fundamental rights of persons with disabilities.

Practice

If the principle of reasonable accommodation has been enshrined in law, there are no measures expressly intended for persons with disabilities in the prison regulations. The training of prison staff does not include any official information or specific guidelines on this subject either.

Having said that, certain actors within the prison system do promote the "natural" practice of making such accommodations, particularly in the case of staff working within prison psychiatric units. In response to the Federal Ombudsman inspections or following the intervention of the Centre for Equal Opportunities and Opposition to Racism, the prison administration use to solve the problem individually (such as providing for an ergonomic chair in the cell). However, such way of addressing special needs of disabled inmates is not sufficient nor appropriate. The Belgian penitentiary administration should integrate the concept of "reasonable accommodations" organically within its policy, staff training and infrastructure design.

4. Foreign national prisoners

Over the last 30 years, Belgium has faced an increasing number of foreign nationals incarcerated in its penitentiary facilities. 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 44 % of the total prison population[12]. It is also to be noted that the majority of them are pre-trial detainees.

In 2012, the foreign population in Belgian prisons consisted of nationals from over 120 different countries. Foreign nationalities mostly represented were Morocco (10,5%), Algeria

[12] Directorate-General of Penitentiary Institutions, 2012 Annual Report, p. 105.

(6,7%), Romania (2,9%), Netherlands (2,4%), France (2,0%), Italy (1,6%), Turkey (1,5%), Tunisia (1,1%) and Albania (1%)[13].

Regulations

Foreign inmates are not defined as a vulnerable group of prisoners in legal regulation. Nevertheless, prison regulations contain some provisions related to the rights of foreigners.

Art. 19. § 1 of the Dupont Act establishes that, upon their arrival in prison, inmates have the right to be informed about their legal rights and duties, the procedure, rules and conditions of the punishment execution as well as about existing or accessible opportunities for legal, social, medical and psychosocial assistance, as well as for moral, philosophical or religious support**.** In its § 2, the same article stipulates that information should be provided, to the extent possible, in a language that they understand.

The Dupont Act (Art. 69, §1) also establishes that imprisoned foreigners have the right to maintain relations with consular officials and diplomats of their country, where applicable in accordance with regulations prescribed by international agreements and without prejudice to legal prohibition of communication referred to in Article 20 of the Law of 20 July 1990 on preventive custody and other exceptions as provided by international treaties.

In its articles 71-74, the same Act also provides the right for prisoners to confess and practice their own religion or philosophy, individually or in community with others.

Practice

In practice, although foreign prisoners should have the same rights as Belgian nationals as recognised in the Dupont Act of 2005, they are *de facto* exposed to a variety of discriminatory factors which are sources of vulnerability.

Foreign prisoners are regularly confronted with language barriers and therefore face difficulties in understanding and communication with other prisoners, different staff and external services. Prison rules and regulations are often not available in the languages spoken by them. Therefore, they may neither understand their rights nor know their obligations. This may lead to the unintended breaking of prison rules, leading to disciplinary punishments.

[13] Directorate-General of Penitentiary Institutions, 2012 Annual Report, p. 105.

When this is the case, it is only due to the personal initiative of the establishment[14]. For example, some Belgian prisons organise with the assistance of lawyers legal information sessions for foreign national prisoners in order to provide them with more insight about legal proceedings.

Not knowing the local language also hinders the possibility for foreign nationals to participate in reintegration activities (training, education) organised or provided in prisons. The number and types of *intramuros* activities that are offered to prisoners also strongly vary from one prison to another. Participation to activities often requires the knowledge of Dutch or French, which is a strong excluding mechanism.

Foreign prisoners can also be excluded from working activities resulting in a lack of resources to make phone calls, send money to the family in the country of origin or pay the civil parties, the latter being an important element that is taken into account when the decision of early release is taken.

In most Belgian prisons, it is possible to take courses in language and sometimes also literacy programs, since part of the foreign population does not even have the ability to read and write. However, both courses are given by a small number of people and can therefore only be offered at very small groups[15]. It would be desirable to develop these projects, in order to reach a larger portion of the prison population.

Beyond the language problems, foreign prisoners may also be exposed to cross-cultural difficulties and social isolation (separation from family abroad, few social contacts in Belgium, ignorance of the Belgian system).

Moreover, foreign inmates who are irregularly residing in Belgium face specific problems related to their status. The residence status of a prisoner has an impact with regard

[14] While most stakeholders agreed on the fact that these documents should be provided (an therefore translated) in a language that foreign inmates understand, its realisation seems less obvious. Considering that there are more than 100 nationalities represented in the Belgian prisons, what languages should we expect or select? Moreover, these internal regulations vary from one prison to another and are subject to possible amendments, and therefore the number of documents to be translated would be very high and their translation would need to be constantly monitored and adapted.

[15] Communities are responsible for training organized within prisons. In the Flemish Community, the stated desire for a coordinated presence in prisons has resulted in a Strategic Plan and Relief Service detainees. Following this strategic plan, several pilot projects are currently underway in some prisons. In the French Community, the situation is less clear. There certainly are initiatives, but more scattered and without policy support. It is therefore more difficult to get an overview of the existing guidance.

to the implementation of the sentence during detention as well as with regard to the decision-making on early release.

This aspect is particularly relevant, considering that the percentage of foreign prisoners without a legal permit of residence within the total number of foreign prisoners in the Belgian prisons is around 25-30 %. These data however underestimate the proportion of foreign prisoners without a regular status in the Belgian prisons, because they do not include the group of foreign prisoners who are temporary granted a residence permit by the Office of Foreigners' Affairs and who thus potentially can become irregular migrants over time. In addition, the penitentiary database contains a significant number of "unknown" residence statuses.

According to the Act of 17 May 2006 on the External Legal Position of Prisoners and the Rights of Victims, during the imprisonment, Belgian prisoners can benefit from short prison leaves (day leave, systematic prison leave) or special modalities of serving their sentences outside prison (semi-detention and electronic monitoring) in view of reintegration. Foreign prisoners with a temporary permit of residence are equally considered as Belgians and can thus benefit from these modalities. If the External Legal Position Act of 2006 does not formally exclude foreign prisoners without a legal permit of residence from other methods of execution of the sentence than the ordinary regime[16], it is unlikely that they can benefit from these possibilities. The assumed risk of absconding, frequently taken into account by prison authorities, impede their access to such measures.

Finally, due to their illegal residence status, foreign prisoners without a legal permit of residence can also be subjected to expulsion measures, enacted by the Act of 1980 on the entry, stay, settlement and expulsion of foreigners[17].

[16] In its jurisprudence, the Belgian Supreme Court (*Cour de Cassation*) has confirmed that "none of these provisions [within the External Legal Position Act of 2006] states that a continuous legal residence in Belgium is a prerequisite for the admissibility of a request for semi-detention." Consequently, the same applies for electronic monitoring or other alternative measures to detention (Supreme Court (Cour de Cassation) 20 January 2009, P.08.1930.N).

[17] Pursuant to articles 20 to 26 of the Act of 15 December 1980 (Act of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners, M.B., 31 December 1980), aliens who threaten public order and national security may face an administrative measure of expulsion and have a ministerial decree of return or expulsion imposed on them (which prevents them of accessing Belgian territory for a period of 10 years).

5. Ethnic and racial minorities and indigenous prisoners

The Belgian penitentiary law does not contain any special regulations with respect to ethnic and racial minorities. Nevertheless, the prison administration has to consider the Anti-Discrimination Acts of 2003 and 2007. Although prisoners are not explicitly mentioned by these Acts, the anti-discrimination law is applicable to them as well. Thus, any indirect or direct discrimination is unlawful and the disadvantaged prisoner may demand damages.

6. Lesbian, gay, bisexual and transgender (LGBT) prisoners

There are no specific provisions that mention or directly address LGBT prisoners in Belgian penitentiary law. Also, there is no official statistics or quantitative estimates on how many such inmates are in prisons in Belgium.

Nonetheless, LGBT prisoners enjoy full protection from the Anti-Discrimination Acts of 2003 and 2007, which also prohibit discrimination on grounds of sexual identity. Any form of discrimination by the prison administration, especially with respect to the assignment of work, education or vocational training because of the prisoner's sexual orientation is illegitimate and unlawful.

7. Older prisoners

While the great majority of its prison population is composed of young adults (the average age of inmates um is 34 years), Belgium is also confronted, as in most Western countries, with an increase in the number of older adults behind bars. Furthermore, recent tendencies in the penal sanctioning practice, i.e. longer prison sentences, a more restrictive approach towards the suspension of sentences on probation and the more extensive use of legal instruments for the prolongation of prison sentences (e.g. preventive detention), will most likely lead to a higher proportion of old prisoners in Belgian penitentiaries.

Older persons are considered the persons above 60 years old. According to the Council of Europe's Annual Prison Statistics, as of 1 September 2012 in Belgium there were 364 prisoners between 60 and 70 years old, and 81 prisoners over the age of 70[18].

Legal regulations

In terms of health care, pursuant to the Dupont act of 2005, older prisoners are entitled to benefit from same the quality-level as in the free community. Article 15, §2 of the Dupont Act also provides for the designation of specific prisons or prison sections for different categories of prisoners (including detainees who need specific care due to age, physical or mental health), and against whom a particular form of punishment may be used[19]. However, this article is *de facto* and so far absolutely not respected.

Moreover, the principle of anti-discrimination, according to the Anti-Discrimination Acts, also applies to old prisoners as age is, next to the above-mentioned aspects like disabilities, sexual identity or ethnic origin, a legally defined prohibited ground of discrimination.

Practice

Whilst the prison population per se can already be considered as a group whose health care issues exceed those of the general population − or are at the very least complicated by their presence in penal institutions − recent international research also highlights that imprisoned elders face additional specific somatic and mental health needs. Cardiovascular diseases, arthritis and/or back problems, endocrine disorders e.g. diabetes and sensory deficits such a vision and hearing problems are common among older offenders in prison. In other words, older offenders tend to have more mental and physical health care needs than younger offenders and their similarly aged peers in the community.

Similarly to other vulnerable groups, the services, provisions, and programmes provided by the Belgian penitentiary institutions seem poorly adapted to the needs of an older population (including e.g. food, sports and fitness infrastructure, outdoor exercise, prison

[18] Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I) – Survey 2012, University of Lausanne, 2014, p. 66.

[19] The different categories of prisoners specifically mentioned in this article are remand detainees, female detainees, detainees accompanied by children under the age of three, and detainees who need specific care (due to age, physical or mental health).

labour, education, reintegration programmes, and other time use activities). Moreover, as prisons traditionally housed mainly young adult males, old inmates are exposed to potential risk of stigmatisation and identity crises.

Despite political recognition in Belgium of this phenomenon and the specific challenges it raises, to date little empirical research has been undertaken on older inmates in Belgian prison. Considering the lack of preventive or proactive attention to the (health) problems, sensibilities, and needs of older prisoners in later life, they are usually identified by scholars as a "forgotten" or "hidden" minority.

8. Prisoners with terminal illness

There are no statistics on the number of inmates with terminal illness in Belgian prisons or the number of deaths in prisons due to such illnesses.

Legal regulations

There is no specific regulation or legal provisions addressed to this specific group of inmates. Of course, in terms of health care, pursuant to the Dupont act of 2005, they are entitled to benefit from same the quality-level as in the free community (Art. 88) as well as to benefit from specific modalities of their sentence execution (Art. 15, §2). They might also be granted provisional release if the Courts for execution of sentences (*Tribunal d'application des peines*[20]) considers that their health condition is incompatible with detention.

Articles 93, 94 and 98 also defines the right (and its modalities) to be transferred, as required under medical supervision, to a specialized penitentiary or (if insufficiently equipped) extra-penitentiary hospital or care facility in order to receive appropriate treatment or surgery. Finally, terminally ill offenders may also be granted the right to be euthanized (law of 28 May 2002).

[20] The Belgian Act of 17 May 2006 on the External Legal Position of Prisoners and the Rights of Victims established the creation of such courts which are competent to decide on the implementation of alternative measures to custody (limited detention, electronic monitoring, conditional release).

Practice

The critical situation of organisational and practical shortcomings in the provision of health care in Belgian penitentiary settings, previously described in this report, has undoubtedly an impact on the possibility for this particularly vulnerable group of offenders to receive appropriate medical treatment.

The conflict between the health care necessity and the security constraints is particularly evident for inmates who are in a serious health condition that requires appropriate and timely medical care which prison facilities are most often unable to provide. As reported by NGOs[21], terminally ill offenders (as well as other offenders in critical health conditions) are usually confronted to obstacles (refusal of the prison authorities to release them when they have committed serious offenses and still have a long sentence to serve, practical difficulties to organise their transfer due to shortage of qualified staff) which impede them to receive the care required by their state.

9. Prisoners under life sentence

Life imprisonment is legal in Belgium and is the most severe punishment available under Belgian law since the formal abolishment of the death penalty in 1996. It can only be imposed for murder. According to the most recent Council of Europe's Annual Prison Statistics, as of 1 September 2012 in Belgium there were 213 prisoners serving a sentence of life imprisonment[22].

Life sentenced prisoners serve their penalty under very strict regime comparing with prisoners convicted to fixed-term imprisonment[23]. However, inmates sentenced to life imprisonments are eligible to apply for parole after serving 15 years (when no previous conviction or below 3 years), 19 years (when previous conviction below 5 years), or 23 years (when previous conviction 5 years or more). If the parole court rejects the parole, the inmate can continuously apply every year.

[21] Observatoire international des prisons, Notice 2008 de l'état du système carcéral belge, pp.109-110.

[22] Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I) – Survey 2012, University of Lausanne, 2014, p. 98.

[23] S. Verelst, "Life Imprisonment and Human Rights in Belgium", Human Rights Law Review, vol. 3, núm. 2, 2003, p. 279-290

In addition to life imprisonment, a specific legal provision (the so-called "placement at the disposal of the courts for enforcement of sentences"[24]) allows for the extension of the detention length initially prescribed. Pursuant to the Act of 9 April 1930, this regards offenders who are retained to pose an unacceptable risk to society and might kept in detention after having formally served their prison sentence.

The provision may be imposed for offenders: a) who have been convicted several times (recidivists); b) or who have committed sexual offences.

When such an offender has undergone his prison sentence, the court for enforcement of sentences may decide that he stays in prison if it considers that he still represents a danger to society and his rehabilitation is impossible. This additional penalty may be imposed for a period of minimum 5 years and maximum 15 years. The Court may also decide to grant him supervised release under certain conditions.

According to the most recent Council of Europe's Annual Prison Statistics, as of 1 September 2012 in Belgium there were 78 prisoners who were maintained in custody under this specific measure[25].

10. People under individual specific security regime

Inmates subjected to special security regimes constitute another category potentially exposed to strong factors of vulnerability. The heightened security measures imposed to them, combined with isolation, restricted and precarious external visit conditions, multiple limitations on free movement and exclusion from joint or individual activities, can cause severe disruptions in mental and physical health of prisoners. The General Regulations of the Penitentiary Institutions of 1965 as well as the Dupont Act of 12 January 2005 lay down the rules governing the imposition of such measures, ranging from specific security measures to

[24] Pursuant to the act of 26 April 2007 (which entered into force on 1 January 2012) The provision was previously called "placement at the disposal of the Government" as the decision was taken by the Minister of Justice.

[25] Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I) – Survey 2012, University of Lausanne, 2014, p. 90.

individual placement under special security regime, without mentioning disciplinary sanctions. While the Belgian prison administration does not provide public statistics on the annual number of inmates subjected to such measures, prisoners subjected to such measures are in the focus of attention by all major Belgian human rights organisations and advocacy groups monitoring prison policies[26].

Legal framework

The Dupont Act of 12 January 2005 provides, in its Title VI (on order, security and use of coercion), that prisoners posing a constant threat to security may be subject to a special closed regime ("individual specific security regime"[27]). Pursuant to this Act, these measures can only be taken by the Director General of the Prison Administration upon request by a prison director, and are submitted to a specific procedure. The prisoner should be informed in writing of the decision to place him under this regime and the reasons that underlie them, and he has a right to appeal the decision. The decision must be duly motivated on its opportunity, subsidiary, proportionate to the threat and limited in time (up to two months, possibly renewable). A prior medical examination must be done in order to assess the compatibility of the proposed regime modalities with the state of health of the prisoner.

Placement under "individual specific security regime" may consist in the imposition of one or a combination of the following measures: a) prohibition to take part in joint activities; b) systematic monitoring of incoming and outgoing correspondence; c) containment of visits; d) limited use of the telephone, without prejudice to the right to call a lawyer or a person responsible for legal assistance or legal aid; e) systematic application of the control measures (provided for in Article 108, § 1); f) application of one or more special security measures (provided for in Article 112, § 1), which includes: 1. withdrawal or deprivation of object/items; 2. exclusion from certain common and individual activities; 3 daily and nightly observation, while respecting the maximum nightly rest; 4. solitary confinement in the living area (cell) assigned to the inmate; 5. confinement in a security cell.

[26] See for example Observatoire international des prisons – Section belge, Notice 2013 de l'état du système carcéral belge, 23 août 2013, p. 109-118.

[27] Loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus, Section III, Art. 116-118.

The inmate subjected to such individual specific security regime should receive at least once a week the visit of the prison director and a medical officer, who control the status of the detainee and check if he/she has no complaints or observations to make. Any decision of placement under such regime and any adaptation of it by the Director General shall be recorded by the central prison administration in a central registry and by the director in a local registry, specifying the identity of the detainee and exemptions to the ordinary regime decided by the prison director. During the visit by the director and a medical officer, the inmate may also register in the register comments on its condition and location. Persons or bodies responsible for monitoring and control of prisons or execution of sentences or measures involving deprivation of liberty may ask to see the registry for the duration of the placement.

Practice

While the legal framework provided by the Dupont Act reveals the intention to ensure greater transparency and to safeguard the fundamental detainee's rights against whom specific security measures might be taken, deviations and abuses are still to be deplored[28].

Further to its visit carried out in 2009, the CPT expressed strong concerns in respect of the detention conditions in the "units for individual special security measures" (*Quartiers d'exécution des mesures de sécurité particulières et individuelles* (QMSPI)) within the prisons of Bruges and Lantin[29]. Despite the legal safeguards provided by the Dupont Act, the CPT noted that the initial project - the creation of specialized units for the treatment of prisoners with extreme and persistent aggressive behaviour - had been largely diverted from its goal. In 2009, among the 8 detainees held in the QMSPI of Bruges, only three were

[28] OIP - section belge, Notice 2013 de l'état du système carcéral belge, 23 août 2013, p. 113-115.

[29] The QMPSI of Bruges and Lantin were created in 2008. They have respectively a capacity of 12 and 10 places. Enhanced security units were also existing before. During the 1980s, there was the so-called "U block" in the prison of Lantin, a special security section for inmates considered as "dangerous". Further to a complaint lodged by the Belgian Human Rights League, the U block was closed by Court order in 1993 declaring that this regime of solitary confinement was illegal because there was no established legal basis and that it was contrary to Article 3 of the European Convention on Human Rights. The Belgian government then decided to create the QSR (Areas of Enhanced Security - Quartiers de Sécurité Renforcée) in the prisons of Bruges and Lantin in 1994, through a Royal Decree of 1993. A judgment of the State Council of 21 February 1996 also imposed the closing of these sections.

meeting the admission criteria, and among the 9 inmates held in the QMPSI of Lantin, they were only three"[30].

Moreover, the provisions of the Dupont Act (article 118 §10) establishing and regulating the inmates right to appeal a decision of the prison administration before the Appeal Board of the Central Prisons Supervisory Council have not yet entered into force[31]. In the absence of actual implementation of such provisions, it is arguable that the abuses will continue. The Belgian State has recently been condemned for serious negligence in that respect by the Civil Court of Brussels[32].

Finally, although the Dupont Act provides that inmates subjected to specific security measures should not be deprived of the right to practice his/her worship as well as to take part (in a limited way in respect of the ordinary regime) in education, leisure, and labour activities, the enforcement of these rights hardly seems compatible with the severe security and containment measures as applied in practice. This can only lead to increase de-socialisation effects and nurture potential explosive psychological and mental health problems. Without entering into the debate of the legitimacy of "strict or closed" regimes, the prison administration should not lift off its attention of minimising these risks which can only be increased due to the multiple exceptions to the ordinary regime. As recommended by the CPT, the Belgian State should also ensure the exercise of independent control over the

[30] Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 septembre au 7 octobre 2009 - CPT/inf (2010) 24, pp. 43-49.

[31] Provisions of the Dupont Act (articles 147-166) also established a right for prisoners to lodge complaints with complaints boards to be attached to the local monitoring commissions assigned in each prison. The complaints boards should be responsible for dealing with complaints from individual prisoners, who would be able to dispute prison management decisions concerning them. However, to date these provisions too have not entered into force.

[32] In a ruling issued on 22 March 2014, the Civil Court of Brussels condemned the Belgian State to pay a compensation of 10,000 euros to an inmate of the Lantin prison, due to irregularities in his detention conditions. This inmate sentenced to several sentences was repeatedly compelled to disciplinary measures "of individual placement under special security regime" (isolation) taken against him by the Director General of prison administration upon request by prison directors. As highlighted by the Court, "the absence of concrete establishment of the local prison complaint boards, as well as the Appeal Board of the Central Prisons Supervisory Council, pertains to a gross negligence of which the Belgian State is liable ("Condamné par la justice, l'Etat ouvre la porte aux plaintes des détenus", Le Vif, 22/03/2014).

treatment of detainees subjected to such measures by the assigned bodies as well as to allow a stronger involvement of civil society organisations in this supervision process.

11. Drug-addicted offenders

As in most Western countries, the Belgian prison system is to a great extent confronted with drug users, posing challenges and opportunities to offer services and treatment for them.

Based on the Space statistics (2011), 36.3% of detainees in Belgian prisons are sentenced for drug offences. This is a higher percentage compared to the latest data of the statistics of the Belgian Directorate-general on Penitentiary Institutions showing that 31.3% of all the prison population is detained for drug offences (regardless their legal status).

The two-yearly monitoring of drug use and health risks in prisons clearly demonstrates that risk behaviour in Belgian prison population is not negligible. In 2008, the Prison health care central service has addressed, in collaboration with the association Modus Vivendi, the issue of substance abuse in Belgian prisons. The study indicates that the number of inmates who reported having ever used the drug increased: from 60.0% in 2006, this percentage increased to 65.5% in 2008. Drug use during detention also increases. In 2006, 29.5% admitted using drugs in prison, against 36.1% in 2008.

Legal regulations

The drug policy in Belgian prisons is based upon the principles laid down in the Federal Drug Policy Note of 2001 and reconfirmed in 2010 with the Communal Declaration. Specific regulations are also important sources translating legislation into practice, such as the Ministerial Circular nr. 1785 of 18 July 2006 on the drug problem in prisons. This circular defines a penitentiary drug policy based on the following pillars: right to a treatment offer equivalent to that received outside, cooperation between the different levels of competences (communities, regions and Prison Service), role of the central and local steering committees on drugs, provision of information to prisoners, harm reduction and prevention of viral diseases, discharge planning and organization of external aid.

As already mentioned, the Dupont Act of 2005 provides a judicial basis for the right of health care that is equal to the health care in society and that is adapted to the specific needs of prisoners (Art. 88). Moreover, Art. 89 explicitly states that a prisoner has the right of continuity of health care, again on an equal basis as in society. The general principle of creating a prison regime that equals the extramural world as far as possible is very important with respect to prisoners with problematic use of drugs, because it demands that prisoners will leave prison in a status of health no worse than when entering prison. This should naturally include the continuation of medical programmes in which they have participated outside, such as maintenance programmes. This principle is made explicit with regard to Opiate Substitution Therapy (OST) in a technical protocol added to the above mentioned Ministerial Circular of 2006.

In Belgian prisons services for drug users are delivered both by experts that are part of the prison health teams and by external providers. Cooperation with external drug service providers exists in drug free programs and to prepare community drug treatment upon release. Prison health teams are also supported by personnel who are experts in a specific drug related field, such as physicians that function as reference for the opiate substitution treatment.

Initiatives and measures

a) Drug prevention and harm reduction information

In collaboration with the non-profit organisation Modus Vivendi and with the financial support of the Federal Department of Justice, a booklet on drug-related health problems and risk behaviour in prison is made by and for prisoners. It is available since 2009 in French prisons. Since 2011 it is also available in Flemish prisons.

Flyers, brochures, and posters to inform prisoners on the effect of different drugs, transmissible diseases (VIH, hepatitis B and C, etc.) and other health risks, available treatment and programs, are made available in every prison.

b) Opiate Substitution Therapy (OST)

Used medications for opiate substitution therapy in Belgian prisons are methadone and buprenorphine. All prisons provide OST for detoxification in Belgium, but not all provide OST for maintenance treatment (if started before imprisonment). This is particularly the case in Flanders.

On 23 February 2010, 3% of the total prison population receives OST, 82.9% is treated with methadone, 17% with buprenorphine. On 13 of April 2011 again 3% of the total prison population receives OST. Methadone is used for 80% of those treated with OST and buprenorfine is prescribed in 20% of the cases[33].

A technical protocol as a strict procedure on OST is used as a quality assurance of service. In the penitentiary institutions for remand prisoners, addiction specialists are assigned as reference. Psychosocial support interventions consist mainly of treatment-as-usual, described as 'conversations' and 'guidance'. All prisons report a written agreement between prison doctors and clients. The interventions are executed most of the time by staff from the medical department or by the psychosocial department. Referral to external services providing treatment in prison is rare (involving the outpatient mental health care centres and judicial welfare services (JWW)) and it is always combined with internal interventions.

c) Drug free programs

Drug free wings are present in the prisons of Ruiselede (depuis 1999), Verviers (since 2007) and Bruges (since 2009). They are generally open for a small group of prisoners (a maximum 20). Both inmates with a history of addiction that prisoners who have never used but want to distance compared to the other drug candidates may apply. Standardised procedures for screening, intake of prisoners and voluntary drug testing (as one of the conditions for admission) are well developed. Next to relapse therapy, services aimed at the development of prisoner's social and administrative skills and activities are also offered.

[33] Vander Laenen, F., Vanderplasschen, W., Smet, V., De Maeyer, J., Buckinx, M., Van Audenhove, S., Ansseau, M., De Ruyver, B., Analysis and Optimization of Substitution Treatment in Belgium (SUBANOP), Gent, Academia Press, 2013.

Drug policy in Belgian prisons is gradually put into practice but still drug-related health services and psycho-social drug treatment are inadequate or insufficient to guarantee the actual implementation of the principle of equivalence, continuity and specificity of care, as established by law (Belgian Prison Act of 2005).

The developed instrument for screening- and assessment of drug use and psychopathological disorders in prisons is essential in identifying the specific needs and referring prisoners to the most suitable treatment programme. However, the potential of these screenings and assessments can only be maximized when health staff can actually refer to treatment and prepare a treatment plan. Health staff teams in Belgian prisons are understaffed to provide, next to the basic, daily medical care, drug-related services

12. Inmate sex offenders

The presence of sex offenders in Belgian prisons has increased from 6 per cent in the 1980s to 17 per cent 30 years later[34]. In 2010, the number of sex offenders in Belgium prisons (for all kinds of qualifications for sexual offenses, including prostitution) amounted to a total of 1,783 (for a total of 10,622 prisoners), which corresponds to 17% of the total prison population (including pre-trial detainees and interned hosted in prison facilities)[35].

Legal regulations

The law of 5 March 1998 on conditional release or parole and the law of 29 June 1964 on suspension of sentences, stay of execution and probation provide for compulsory treatment for all sex offenders.

The monitoring of sex offenders falls under federal jurisdiction as regards to prison policy but the management of treatment programs available to inmates is a Community

[34] Kirstin Drenkhahn, Manuela Dudeck & Frieder Dünkel, Long-Term Imprisonment and Human Rights, Routledge Frontiers of Criminal Justice, July 2014, p. 76.

[35] In 2007: 1766 (out of a total of 9751 prisoners); in 2008: 1774 (out of 9841 prisoners); and in 2009: 1 721 (out of 10,157 inmates). Among these inmates, 60% are sentenced prisoners, 20% are pre-trial detainees and 20% interned (*Sénat - Question écrite n° 5-1663 du 4 mars 2011 de Bert Anciaux (sp.a) au ministre de la Justice : Délinquants sexuels - Nombres - Risque de récidive - Moyens disponibles pour l'accompagnement*).

competence[36]. In this context and in order to structure the collaboration between the judicial and therapeutic actors in the monitoring of sex offenders, cooperation agreements for guidance and treatment for perpetrators of sexual offenses have been concluded between the federal state and the federated entities (Regions and Communities).

These agreements set out the modalities for the monitoring of sexual offenders under the various laws related to alternatives to custody, conditional release or parole, or the placing at the government's disposal. They foresee the establishment of specialized psychosocial teams in some prisons (leading the investigation into the prisoner's personality and advise on a possible parole), as well as of external specialised health care teams in charge of providing guidance and therapeutic treatment to sex offenders, as well as advice and follow-up reports to the competent authorities.

Practice

Belgium prisons do not offer special treatment programmes for sexual offenders, but since the parole legislation of 1998 an extra-penitentiary guidance and treatment system in preparation for their early release has been established. This means that before qualifying for conditional release or parole, they will serve their sentence without receiving similar special treatment. If the emphasis on diagnosis and risk-asessment developed in the framework of the specific parole procedure has led to the specialization of some psychosocial services in particular prisons, the so-called « pre-therapy » treatment provided by these services falls short to cover their specific needs during detention.

Conditions of detention in prison for sex offenders are generally more difficult than for other inmates. Sex offenders are known to be more easily victimized by fellow prisoners. This is particularly true for sex offenders against children. Specific measures of confinement which are be taken in view of their protection and potential risk of stigmatisation in relation to other inmates contribute to expose this group of offenders to a process of "psychological hibernation or lethargy", which might have serious consequences upon their release from prison and hinder their potential reintegration into society. It is to be noted that, in Belgium,

[36] In accordance with Article 5, § 1, I, 1 and II, 2 and 7 of the Special Law of 8 August 1980 on institutional reforms, the Communities are responsible for policy on the provision of care in and outside of care institutions, as well as for welfare and health policy for inmates in view of their social reintegration.

there is no central policy on segregation or integration of sexual offenders inside prison, leading in practice to the heterogeneous implementation of both policies in the different penitentiary establishments.

Furthermore, a significant number of offenders seem to prefer to undergo the full length of their sentence and not to apply for parole, therefore avoiding to be subjected to any kind of specific support or treatment. As proposed by several draft bills, suitable therapeutic treatments should be imposed and attached to the prison sentence for sex offenders in order to avoid this problem[37].

13. Women in prison

To date little empirical research has been undertaken on female inmates in Belgian prisons. This general lack of knowledge could be explained by the low rate of female incarceration. Indeed, female inmates represent around 4-5% of the whole Belgian prison population. However, if women only represent a small percentage, they are generally incarcerated for longer sentences.

In terms of prison facilities, Belgium has only one single-sex women's prison (Berkendael) which hosts about 25% (95 women are detained in this prison for a capacity of 64 seats) of the total female inmates. The vast majority (75%) are detained in separate female wings of six other prisons (Anvers, Bruges, Gand, Lantin, Mons et Namur). The fact that there are only a limited number of prisons that can accommodate women on the Belgian territory creates difficulties in maintaining relationships with relatives. Indeed, visits are rare given the often longer distance trips for family or friends. It should be noted that the government has announced the opening, in 2016, of the first open-type prison facility specifically reserved for women, for a capacity of around 100 prisoners. This prison will be located in the district of Haren (Brussels region).

[37] Proposition de loi insérant un article *377bis* dans le Code pénal, visant à instaurer un traitement dès le prononcé du jugement de condamnation pour les auteurs d'infraction à caractère sexuel (Déposée par M. Jean-Marie Cheffert) 2005 ; Proposition de loi visant à instaurer la peine d'injonction de soins dès que la décision de condamnation est définitive pour les auteurs d'infractions sexuelles et celle du placement sous surveillance électronique mobile, par le biais d'un bracelet électronique, à leur libération (Déposée par Mme Christine Defraigne et M. Alain Destexhe, 19 avril 2007.

Although women should be entitled to the same rights as men, prison systems were primarily designed for men, and many prisons do not have adequate facilities or appropriate policies aimed at meeting their specific physical, occupational, social and psychological needs**.** The specificity of support lies mainly in the material conditions of detention, in relations with the outside world as well as childcare. Many women in prison have also high levels of mental illness and drug or alcohol abuse disorders as well as higher exposure to sexual and physical abuse and violence and require an adapted psychological support.

There also tends to be a lack of adapted and varied rehabilitation, education and training programmes, which are not based on traditional gender-based stereotypes (aesthetics, cooking, sewing and hairdressing).

One of the specific situations of vulnerability which might face female prisoners is the case of pregnancy and motherhood. The situation of children whose parents and especially mothers are held in prison raises delicate issues. Allowing babies but not older children to reside in prison is based on the premise that to separate a mother and baby causes emotional problems for the baby, but to keep a young child in the limited confines of a prison hampers their educational development.

In Belgium, there are only two prisons (Bruges and Berckendael) which have set up special arrangements for mothers with children. If the detention of these women cannot be done in one of these two institutions, other institutions may receive the necessary equipment to accommodate them. Moreover, all prisons organise gynecological and pediatric consultations to monitor the evolution of pregnancy and children.

However, as noted by the Federal Ombudsman[38], in Belgium there is no proper prison infrastructure specially designed to accommodate inmates with children. Improvements have been implemented very unevenly depending on the institution, creating material living conditions for children very different from one prison to another[39]. Furthermore, this absence of specialised infrastructures is compounded by an inconsistent regulatory framework and the

[38] Le Médiateur fédéral, RO 11/09, ww.federaalombudsman.be/fr/content/ro-1109.

[39] In Belgium, penitentiary institutions have no specific unit to accommodate pregnant women and mothers with infants but some have set up special arrangements such as a games room and specific spaces outside the cell. In the Wallonia-Brussels Federation, the prisons of Berkendael and Lantin are used to accommodate infants. Theoretically, two children can be accommodated simultaneously in Berkendael and three in Lantin. However, in practice, due to overcrowding, prisons regularly host more infants than expected. The duration varies from a few weeks to three years (the maximum age allowed). See Fonds Houtman, *Les enfants vivant en prison*, *c@hiers ## 10 - mai 2010*.

lack of general standards of accommodation and supervision, either in terms of equipment and rules of life, or in terms of medical and social assistance and specific training for prison officials"[40].

In addition to local and partial initiatives undertaken by the prison administration, several NGOs (such as « Relais parents-enfants »[41] or « Itinérances »[42]) also work to sensitize on this specific issue and contribute to humanising the living conditions of inmates with children.

As of January 2014, six children were living in three Belgian prisons (Bruges, Lantin and Berkendael), alongside their mothers.

Legal framework

Article 15, §2 of the Dupont Act provides for the designation of specific prisons or prison sections for different categories of prisoners (including women), and against whom a particular form of punishment may be used[43].

Although the Dupont Act of 2005 recognises the right of the detainee to maintain contact with the outside world and to receive visits (article 53 and articles 58-63), only the General Regulation of Penitentiary Institutions (articles 111 and 112) is currently addressing specifically the issue of children living with their imprisoned mothers[44]. Theoretically, a child can stay with his/her mother held in prison until the age of 3 years. However, most existing cases relate to infants with less than one year. The birth of the child during the time of

[40] - Le Médiateur fédéral, op cit.

[41] « Relais parents-enfants » is a non-profit organisation working to maintain family ties between the detainee and his child, to enable the best possible development of the child in minimizing the damage caused by parental incarceration and that give parents the opportunity to promote better social rehabilitation by maintaining these links with their (s) child (ren). To this end, it organizes individual and family interviews, as well as "parent-child" visits that are organized in addition to other visits granted to inmates. (See: www.relaisenfantsparents.be).

[42] The project “Itinérances” consists of a network of volunteers who accompany children to visit their detained relatives. This project is conducted in collaboration with the Houtman Fund (ONE) and with the support of the French Community Assistance for prisoners.

[43] The different categories of prisoners specifically mentioned in this article are remand detainees, female detainees, detainees accompanied by children under the age of three, and detainees who need specific care (due to age, physical or mental health).

[44] As already mentioned, Article 15 §2 of the Dupont Act also provides for the designation of specific prisons or prison sections for female detainees and detainees accompanied by children under the age of three, and against whom a particular form of punishment may be used.

detention, a mother who lives alone with his or her children when arrested, or cases when both father and mother are incarcerated together are the circumstances that lead most often to this situation[45].

14. Inmates with self-harm and suicide risk

According to the Council of Europe Penal Statistics' latest report, the suicide rate in Belgium was 10.1 per 10,000 inmates, against an average of 6.7 for the council's member countries46. According to the figures of the Belgian Ministry of Justice, the number of suicides in prison was 8 in 2004, 11 in 2005 and 2006, 13 in 2007, 16 in 2008, 12 in 2009, 19 in 2010, 12 in 2011 and 13 in 2012[47].

As already mentioned in a previous section[48], each Belgian prison comprises a Psychosocial Service. The prison manager, a psychiatrist, and, depending on the size of the facility, one or more one or more psychologists and social workers are part of this multidisciplinary team. Support to vulnerable inmates is a component of their specific activity. However, since the new legislation on prison sentences adopted in 1998, the major task of the psychosocial service consists in the evaluation of prisoners in order to recommend

[45] At the international level, the United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, the so-called "Bangkok Rules", were adopted by the General Assembly of the United Nations on 21 December 2010. The Bangkok Rules govern the treatment of women within the criminal justice system (remand, sentenced custody, etc.) as well as the specific rules concerning the detention of pregnant and nursing women and women with child(ren) in their care. The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) recognizes in its Article 8, the right to respect of private and family life as a fundamental value to be protected. The International Convention on the Rights of the Child (CRC) also states in its Article 9 the right for a child to grow up with family and to maintain personal relationships with his/her parents. Finally, the Standard Minimum Rules for the Protection of Juveniles Deprived of freedom, the so-called "Havana Rules", provide, in its Article 93, that the child staying with his parents in custody should be subject to caution and special care.

[46] Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I) – Survey 2012, University of Lausanne, 2014, p. 131.

[47] However, the figures recorded in the 1990s were higher. In 1994, the number of suicides in Belgian prisons amounted to 13 (two interned, two pre-trial detainees and nine convicts). In 1995, it amounted to 15 (two internees, five pre-trial detainees and eight sentenced prisoners). In 1996, it amounted to 18 (seven pre-trial detainees and eleven sentenced prisoners). In 1997, it amounted to 24 (two internees, eight pre-trial detainees and fourteen sentenced prisoners). In 1998, it amounted to 28 (seven internees, seven pre-trial detainees and fourteen sentenced prisoners).

[48] See section 1 "Prisoners with mental health care needs", p. 5.

judicial authorities on their decision to grant release on probation (short prison leaves, semi detention, electronic monitoring, provisional and conditional release). This task passed into the hands of Social Services to Help Prisoners of the French Community. However, workers of these are still under-represented in proportion to jail inmates.

Despite the organisational and practical shortcomings in the provision of health care and psychological support already highlighted[49], several initiatives have been undertaken in order to ensure suicide prevention among inmates:

- the development of an evaluation tool established by the Prison Health Care Service which would make it easier to detect psychiatric problems and suicidal behaviours from inmates upon their entry into prison.

  In some prisons, a special suicide prevention unit has been established, such as the one in Gand which opened in June 2010. It consists of a multidisciplinary team whose members (prison supervision staff, members of the psychosocial service and medical service and social workers) have received specific external training. All prison staff members also received limited training on suicide risk factors screening, recognition of alarming signals and how to convey them to the unit. The unit can recommend to the prison manager to introduce specific protection measures, such as the adaptation of the living space, including referral to authorities for help. From June to December 2010, the antenna was involved in 48 cases[50].

- different prisons also offer the opportunity for inmates to have free access at any hour to help phone lines, such as suicide prevention lines.

- the introduction of a compulsory supervision for inmates with suicide risk. In order to avoid their isolation, they are placed in a duo or trio cell, so that their **co-prisoner(s)** may play the role of trusted partner or assigned inmate support and alert the prison staff if necessary. For the most serious cases, placement in the psychiatric observation wing is ordered.

- the inclusion of a specific module on suicide prevention as part of the training provided to all prison staff members.

[49] See section 1 "Prisoners with mental health care needs", p. 6.

[50] Directorate-General of Penitentiary Institutions, 2010 Annual Report, p. 75

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