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

Workstream 1: Imprisonment in Europe

BELGIUM – COUNTRY REPORT

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1. Introduction: Basic information on imprisonment situation

The course of penal policy in Belgium has been marked by long periods of governmental and political indifference toward correctional policy and practice, which has left the development of the field to leading practitioners. For many years, corrections management policies focused mainly on security and order rather than on rehabilitation.

Since the mid-1990s Belgium has been going through a period of unprecedented criminal justice reform, in various key areas such as criminal control policing, the prison system and victim policy. Legislative reforms undertaken over the last 15 years focus on relieving overcrowding, through the introduction and development of alternative sanctions to imprisonment (such as conditional or provisional release, probation, penal mediation, community sanctions and measures, electronic monitoring of offenders), and increasing prisoners' rights through the adoption of the "Dupont Act" of 12 January 2005, which defines prisoners' legal status and lays down rules governing prison administration, in compliance with relevant international standards in the field.

Another feature of Belgium is its institutional complexity, with a push towards devolving decision-making powers on matters of justice from the federal level to its entities, the regions and language-based communities. One of the most significant development has been the involvement of the regional communities in the social reintegration of prisoners.

As in many other European countries, the chronic overcrowding of prison facilities, despite measures taken by the government, remains one of the greatest causes for concern among Belgian politicians and among policy makers with an interest for justice and law. The data available on the website of the Federal Directorate General Statistics and Economic Information (DGSEI) clearly show that, since 1997, the number of persons detained has been consistently higher than the prison capacity/ over the past 16 years the problem has steadily worsened. Moreover, the gap between the number of people in prison and the available capacity has never been wider than in 2013[1].

[1] Data pulled from the website of the Federal Directorate General Statistics and Economic Information (DGSEI). The graph shows that, the overall overcrowding increased from 111% in 1997 to almost 127% in March 2013. http://statbel.fgov.be/fr/statistiques/chiffres/population/autres/detenu/. The data shows the situation on 1 March

In Belgium the overcrowding is mainly caused by the following factors: an increasing use of pre-trial detention (especially during the 1980's and 1990's) even though remand custody should only be used in exceptional circumstances; lengthened and accumulative sentences, a low and belated use of parole, an increasing number of internees (internees were 783 in 2004 and 1.142 in 2012), the low use of alternative penalties to deprivation of liberty.

The effects of systemic overcrowding in old and dilapidated facilities are detrimental to the welfare of prisoners and the proper functioning of the prison system. Overcrowding can result in inhuman and degrading treatment of detainees, not only implying undignified conditions of detention (impact on standards of hygiene, lack of privacy, reduced safety), but also depriving prisoners of certain fundamental rights (reduced activities, insufficient capacity of medical care) and hampering the legitimacy and effectiveness of the punishment and the prevention of recidivism[2].

Good detention conditions are also a prerequisite to the rehabilitation of offenders, as laid down in relevant international covenants and other documents on standards and rules for the treatment of prisoners (including the Council of Europe European Prison Rules and the UN Standard Minimum Rules for the Treatment of Prisoners).

Data collection and public policies

The systematic gathering of official data on **crime and crime control** has been a problem in Belgium for decades. Increasing computerisation has improved the collection and accessibility of data related to prison facilities and detainees as well as on sentence implementation.

For the purpose of this study, we have used official data and statistics provided by the Ministry of Justice, in particular the annual reports published by the national prison administration (Directorate-General on Prison Institutions). Additional data were also provided by the Criminal Policy department (Ministry of Justice) and the Directorate-General on Statistics and Economic Data (Ministry of Economy). These data are public and can be

of each year. Source of the data: Federal Public Service for Justice, Directorate General EPI Penitentiary Institutions.

[2] CPT/Inf (2012) 36, op cit., §73-76.

consulted online through the websites of the relevant institutions3. Finally data contrained in the Council of Europe Annual Penal Statistics were also used.

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

[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/).

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.

2. Domestic legislation on imprisonment

2. a) International and EU documents

Belgian Prison policy is or should be founded in international conventions and legal acts ratified by the country, which are part of its legal framework. As illustrated in the table included in Annex1, the Belgian legal system has taken into account most of the international and European regulations on imprisonment and prisoners' rights issues.

Since the decision of the *Cour de Cassation* in the case *Belgium v S.A. Fromagerie Franco-Suisse Le Ski*[4], self-executing treaties or conventions since are deemed to be an integral part of the domestic legal order, and to supersede over incompatible domestic legislation[5].

In order for a treaty to be self-executing and entail direct effect in the domestic legal order, its provisions must be clear, unconditional and not subject to discretionary implementing measures.

International treaties or conventions need to be approved by law before they may be ratified by the Government in order to take effect. According to Art. 75, pp. 3 in conjunction with art. 77, under 6°, of the Constitution, the Government must therefore introduce a bill to Parliament, both Senate (first) and the House of Representatives (subsequently) being equally required to give their approval.

Whereas for the European Communities' legal order, the direct effect notion has longstanding tradition[6], this is not the case for the field of police and judicial cooperation in criminal matters between the Member States under Title VI of the TEU (Treaty establishing the European Union). Apart from 'third pillar' *conventions* (as meant in Art. 34, pp. 2, under d) TEU), which may surely entail direct effect following adoption, ratification and entry into force and where its provisions have the required characteristics for sorting direct effect

[4] Cass., 27th May 1971, Journal des Tribunaux, 1971, p. 460.
[5] With the decision concerned, in which the Court ruled that a self-executing treaty (in casu the TEC – Treaty establishing the European Community) prevails over acts adopted at the domestic level either before or after the ratification of such treaty and hence, that the courts should give effect to such treaty.
[6] Since the European Court of Justice's ruling in the case *Van Gend & Loos v Nederlandse Administratie der Belastingen*, 1963, 26/62

(*supra*), the legal instruments the JHA (Justice and Home Affairs) Council may adopt in the area of police and judicial cooperation in criminal matters do not entail any direct effect (Art. 34, pp. 2 TEU). In sum, as regards EU 'third pillar' legal instruments, only conventions may entail direct effect, though often their adoption at domestic level requires passing implementing legislation, because they are not fully self-executing.

A single exception so far to the absence of domestic legal effect for non-convention-type 'third pillar' legal instruments is reflected in Art. 12*bis* of the Preliminary Title to the Code of Criminal Procedure (following changes brought by Act of 22 December 2003, *Moniteur belge*, 31 December 2003). The revised Art. attributes direct effect to provisions of EU secondary legislation (term encompassing *inter alia* framework decisions) to the extent that these establish obligations for the Member States to prescribe extraterritorial jurisdiction. The above rule is the only one where equal affect is attributed to international convention-type legal instruments and framework decisions (even without the latter having been expressly implemented).

Framework decisions are implemented into Belgian legislation by means of a separate law, supplemented with a circular concerning the application of the law in practice. Implementation legislation for framework decisions implementing EU mutual recognition obligations is particularly precise in delineating its application and that of conventions previously applied between the EU Member States in the given field, so that incompatibility between directly applicable international convention law and implementation legislation for EU framework decisions usually does not arise.

EU legal acts

Among the EU Framework Decisions that bears particular significance to questions concerning the Belgian penitentiary system, we can highlight, firstly, the Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA), which was released by the Council of the European Union on 13 June 2002. The Belgian law implementing the European Arrest Warrant was adopted on 19 December 2003 and entered into force on 1 January 2004.

Secondly, the Framework Decision on the Application on the Principle of Mutual Recognition to Judgements in Criminal Matters imposing Custodial Sentences of Measures Involving Deprivation of Liberty for the Purpose of their Enforcement in the European Union

(2008/909/JHA), which was amended after a year by Framework Decision 2009/299/JHA and finally came into force in its current version in March 2011. The Belgian law implementing this later Framework Decision was adopted on 21 May 2013 and entered into force on 23 June 2013.

UN Conventions and Council of Europe legislation

Alongside the relevant UN covenants, legal acts by the Council of Europe (see table in Annex 1) represent the most significant international norms for Belgian penitentiary law. Pursuant to these instruments, Belgium has accepted the prerogative of various systems and monitoring visits of places for deprivation of liberty such as those carried out by the Committee for the Prevention of Torture (Council of Europe) and the Special Rapporteur on Torture of the UN. Also, other controls were allowed like the ones in charge of the United Nations High Commissioner for Human Rights (OHCHR) and the Committee for the Elimination of all Forms of Racial Discrimination from the CERD.

However, regarding protocols and procedures for effective monitoring and evaluation of the prison system, Belgium has not ratified to date the Optional Protocol to the United Nations Convention Against Torture ("OPCAT")**,** which was signed on 24 October 2005. OPCAT created a new system of regular visits to places of detention to prevent ill-treatment of detainees. At the national level, States Parties to OPCAT must set up or designate National Preventive Mechanisms (NPMs) to carry out the monitoring of prisons/ an effective independent national mechanism designed to prevent torture by means of unannounced visits to all places of detention.

The institutional and political complexities involved in establishing the national preventative mechanism provided in art. 3 OPCAT (because the federal and federated entities are involved and each must set up a mechanism for independent oversight in its area of competence), are often mentioned by the Belgian Government as reason for the delay.

A working group under the direction of the Federal Department of Justice is being charged to examine/study the institutional and technical implications of ratifying the Optional Protocol, in consultation with the federated authorities. It should be noted that the German-Speaking Community notified its assent to the ratification of the Optional Protocol by its Decree of 25 May 2009 (Belgian Government Gazette, 3 August 2009). The Flemish Government also approved a decree to that effect on 16 March 2012.

ECtHR case-law on Belgian prison conditions

With reference to the detention conditions of "mentally ill offenders" in Belgian correctional facilities, there are several decisions of the European Court of Human Rights (ECHR) worth to be mentioned.

Claes v Belgium (application no. 43418/09) / 10.01.2013: 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).

Mr Claes had been detained for over 15 years in a prison psychiatric wing. The applicant spent time from 1978 - 1994 between a prison psychiatric wing and a private psychiatric clinic. In 1994, following incidents involving young girls and female staff in the psychiatric hospital, the Mental Health Board ordered him to return to the psychiatric wing of a prison.

The Court found that the national authorities had not provided the applicant with adequate care and that he had been subjected to degrading treatment as a result. The Court highlighted existing structural problems, namely an inability to afford appropriate care to persons with mental disorders who were held in prison due to the shortage of places in psychiatric clinics elsewhere.

L.B. v. Belgium (no. 22831/08) / 02.10.2012

The case concerned the virtually continuous detention of a man suffering from mental health problems in psychiatric wings of two Belgian prisons between 2004 and 2011. The Court held that there was a violation of Article 5 § 1 (right to liberty and security) of the ECHR: the conditions of the detention had been incompatible with its purpose. The Court emphasised that the maintaining in a psychiatric wing was supposed to be temporary, while the authorities looked for an institution that was better adapted to the applicant's condition and re-adaptation. An inpatient placement had in fact been suggested by the authorities as early as 2005. The Court found that the place of detention was inappropriate and noted in particular that his therapeutic care was very limited in the prison.

De Donder and De Clippel v. Belgium (no. 8595/06), 06.12.2011

The case concerned Tom De Clippel, a mentally ill person who had committed suicide while interned in an ordinary prison. Under Belgian law, internment is a "safety measure" to protect society against a dangerous mentally ill individual who was committed a serious offence, but who is not considered to be criminally liable due to his or her mental illness.

According to the Court, the authorities should have been aware that there was a real risk that Tom De Clippel, as a paranoid schizophrenic, might attempt to commit suicide while detained in an ordinary prison environment. The Court found a substantive violation of Art. 2 ECHR (the right to life) on the ground that Tom De Clippel should never have been held in the ordinary section of a prison. This was not only contrary to the decision of the prosecutor to place him in the psychiatric wing of that prison but also resulted in a lack of appropriate treatment for his medical condition. This would have been sufficient for the Court to find a violation, but it chose to go to the core of the problem by stating that Tom De Clippel's placement in ordinary prison was caused by a chronic shortage of places in specialised institutions for interned detainees and psychiatric wings in prisons.

Secondly, the Court also found a violation of Art. 5 § 1 (the right to liberty), because Tom De Clippel's detention was manifestly contrary to domestic law. Belgian law requires that internment takes place in a specialised institution or, in exceptional circumstances, in the psychiatric wing of a prison. The Court further recalled its finding in the case of ***Aerts v. Belgium*** **(ECtHR, no. 25357/94, 30 July 1998)** that detention of a mentally ill person under Art. 5 § 1 (e) can only be lawful if it is effected in a hospital, clinic or other appropriate institution.

The Court held that there was a violation of Article 2 (right to life) concerning the death of the young man in prison, but no violation of Article 2 concerning the effectiveness of the investigation. Reiterating its case-law to the effect that in principle, the "detention" of a person as a mental health patient was "lawful" for the purposes of Article 5 only if effected in a hospital, clinic or other appropriate institution, the Court held that there had been a violation of Article 5 § 1 (right to liberty and security).

In common with the majority of EU member states, Belgium has passed legislation designed to protect the human rights of its prisoners and provide them with a meaningful regime during

their time in custody[7]. Belgian penitentiary legislation complies with the international minimum standards and commitments on imprisonment and prisoners' rights arising from legally binding international legal instruments. The problem is not the lack of legal basic penitentiary rules but the delay in the implementation of many of their relevant provisions which entails that the rights afforded to prisoners are in effect more restrictive than the legislation would suggest.

2. b) Constitution

The Belgian Constitution, even if it has little to do with prison law, defines the rights of any person within the national territory. If in Article 14 it clearly states that "no penalty may be imposed or applied if not by virtue of the law," the category of detainees is not the subject of any specific constitutional provision.

Title II of the Constitution entitled "Belgians and their rights" defines the rights of all citizens and contains no provision that would exclude the prison population.

Fundamental rights of detainees must therefore be determined from the fundamental rights of every citizen. For each of them, this is how far the situation of detention justifies restrictions are made. Although exceptions may exist and be justified by the detention situation, they must be organized by law.

The human rights of detainees as citizens of a state of law involve:

- The right to be subjected to a regime organized by law: the execution of custodial sentences must have a legal basis.

- The right to the normalization of the prison regime: as citizen of a state of law, the prisoner has a fundamental right to benefit from the legislation applicable to the community. This is the case, for example, for legislation on accidents at work and working conditions.

- The right to the motivation of disciplinary decisions: it is only very recently that the disciplinary procedure was regulated through a ministerial circular. The Council of State had

[7] However, Belgium has not adopted laws or policies relating to any of the commitments relating to the accommodation of prisoners. This entails that commitments arising from legally binding international legal instruments relating to the assessment of prisoners as to their suitability for sharing a cell and, that all cells must have a working alarm bell, have also not been incorporated.

already dealt with the issue of motivation of disciplinary decisions by the prison administration.

2. c) Substantive and procedural law

As it comes to custodial sentences, criminal sanctions and other forms of deprivation of liberty, the Belgian legal framework comprises various legal sources that need to be differentiated.

If the Belgian prison policy has undergone, since the end of World War II, a significant change, it must be recognized that the prison law is difficult to access, it is regulated by many multiple and scattered norms and rules multiple standards[8], which leads to their heterogeneous application among the different prison facilities.

Regardless of the Constitution, the Criminal Code is also very discreet about the execution of custodial sentences. We van however mention, in particular, Article 30 (allocation of preventive detention for the duration of the deprivation of liberty), Article 30a (execution of the sentence in institutions appointed by the King), Articles 40 and 41 relating to subsidiary imprisonment and Articles 86 to 96 aimed at the extinction of sentences.

Regarding the Code of Criminal Procedure, relevant articles are 65, 197 and 376 relating to the execution of judgments and mandates by the public prosecution, 615-618 on arbitrary detention and 619-634 on erasing sentences and rehabilitation in penal matters.

A series of special laws complement these codes. We will retain more particularly the law of 19 July 1991 on the formal motivation of administrative acts which imposes to administrative authorities the obligation to give reasons for their decisions. This law is regularly invoked by prisoners and may lead to an annulment of disciplinary decisions by the Council of State.

In terms of regulatory provisions, the Royal Decree of 21st May 1965 laying down general prison regulations[9] has been for long the only point of reference[10]. Pursuant to this instrument,

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[8] Beernaert, M.-A., Manuel de droit pénitentiaire, Louvain-la-Neuve, Anthémis, 2007, p. 13

[9] Arrêté royal du 21 mai 1965 portant réglementation générale des établissements pénitentiaires

[10] The Report submitted to the King in preparation of the Act defines its philosophy in the following terms “le régime auquel les condamnés sont soumis doit tendre à l’affermissement de leur sens moral, civique et familial.

detainees were not being recognised any specific right but only faculties. Consequently the prison administration used to consider these faculties as mere "favors" to be dealt with through internal measures and which could be revoked without formalities as soon as their exercise might, in the opinion of the prison directors, disrupt order and security in the institution.

This Decree is completed by the Ministerial Decree of 12 July 1971 laying down general instructions for prisons, as well as with the Royal Decree of 14 May 1971 laying down "Special instructions applicable to the external services staff of the prison administration".

Next to these regulatory provisions, there are also a myriad of circulars aimed at resolving practical arrangements of the prison system. However, these circulars reveal major flaws, including the fact of having rather uncertain legal status.

Significant legislative changes have been made in recent years, thanks to the influence of certain decisions by the European Court of Human Rights and visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatments[11]. At least on a theoretical level, we have moved from a system of questionable legality to a regime based on norms and standards set by law.

The « Dupont Act »

On 12 January 2005, the federal government passed a law 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"15[12]). This law is considered to be a "milestone" in the way sentences are executed in Belgian prisons. Until the adoption of this law, most aspects of life in detention, including prisons, were left to the discretion of the prison authorities.

Il doit leur procurer suivant les cas l'éducation, l'instruction, la connaissance d'un métier, l'habitude du travail ainsi que l'assistance médicale requise par leur état physique ou mental. Les méthodes doivent cultiver chez les détenus le sentiment qu'ils continuent à faire partie de la communauté sociale. La conception et l'organisation de la discipline, des conditions d'hébergement, du travail, des études et des loisirs doivent s'inspirer plutôt de ce qui rapproche de l'existence libre que de ce qui en éloigne et elles tendent à sauvegarder ou à susciter le sens de la dignité et des responsabilités humaines".

[11] The Committee has visited Belgium several times: from 14 to 23 November 1993, from 31 August to 12 September 1997, from 25 November to7 December 2001, from 18 to 27 April 2005, and from 24 September to 4 October 2013.

[12] 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

Echoing the recommendations of the CPT and written in the spirit of the European Prison Rules[13], the fundamental principles[14] and the detailed provisions of this law determine the rights and duties of the detainees and lays down rules governing prison administration.

Under the Act, custodial sentences must be served in conditions congruent with the rights of persons deprived of liberty and respect for their human dignity, which enable prisoners to preserve or enhance their self-respect, while both appealing to their sense of personal and social responsibility and preserving law and order (article 5§1).

The Act regulates important basic principles regarding material conditions, contact with the outside world, possibilities of obtaining information and legal assistance, freedom of expression, religion, access to culture, education and training (articles 76-80) and labour (articles 81-86), order and safety, disciplinary sanctions and the right to health care of the same quality as in the free community.

Article 7 foresees the establishment of consultative bodies within each prison, which are meant to establish a climate of consultation and to allow detainees to express themselves on issues in the interest of the prison community (principle of participation). In its articles 35-40, it also foresees the creation of individual plans for each detainee, aimed at compensation, possible transfers, rehabilitation and reintegration into society.

Basically, this law endorses the principle of the normalisation of prison life. In other words, life inside prison should resemble as closely as possible to the life outside. As expressly stated in the Act, "limiting the harmful effects of detention" is a condition sine qua non for the achievement of other objectives of imprisonment that are rehabilitation, repair and rehabilitation. Undergoing a prison sentence must also be a pathway to rehabilitation and reintegration in society[15].

[13] The European Prison Rules (EPR), initially passed by the Committee of Ministers of the Council of Europe in 1973 and recently renewed in January 2006, play a significant role in Belgian prison law, being regarded as an expression of an increased awareness of human rights in the penitentiary system. The EPR contain comprehensive guidance on the running of prisons and the treatment of prisoners. They aim to protect prisoners' fundamental rights in a manner that is consistent with the legitimate purpose of their detention and to provide that conditions should facilitate reintegration after release from prison. The EPR are not binding, although the ECtHR has used them as a basis when assessing complaints about prison conditions. ECtHR case-law seeks to correct excessively poor prison conditions in individual cases, but cannot achieve uniform compliance in all Member States.

[14] Title II of the Act entered in force on 15 January 2007, pursuant to the Royal Decree of 28 December 2006.

[15] Article 6 of the 2006 European Prison Rules emphasizes that "All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty". Art. 9 § 2 of the

In Belgian legislation, "rehabilitation" and "reintegration"[16] are used as two separate concepts in the Prison Act of 2005. "Rehabilitation" refers to the French traditional meaning of restoration as full citizen, while "reintegration" should be interpreted not as treatment but as the limitation of the detrimental effects of imprisonment and the availability of adequate activities and services in order to prepare the readmission of the prisoner into society[17].

Finally, we should also stress that Article 15 §2 provides for the designation of specific prisons or prison sections for different categories of prisoners (remand detainees, female detainees, detainees accompanied by children under the age of three, detainees serving prison sentences of at least 5 years, detainees who need specific care (due to age, physical or mental health), and against whom a particular form of punishment may be used)[18]. This article is *de facto* and so far absolutely not respected.

Since its adoption in 2005 several provisions have been amended4[19], sometimes adversely affecting prisoner's rights as originally intended[20], as detailed below, and significant parts of the Dupont Act have not entered into force to date[21]. In the absence of full implementation of this law, the General Regulations of the Penitentiary Institutions of 1965, still rules today significant aspects of the internal legal status of detainees.

In addition to the Prison Act of 2005, the Belgian Act of 17 May 2006 on the External Legal Position of Prisoners and the Rights of Victims was implemented to reform and ameliorate the external legal position of prisoners in respect of their (early) release possibilities and to

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Dupont Act states that the implementation of a prison sentence for all prisoners aims at "[…] the rehabilitation of the offender and the preparation of his reintegration into society".

[16] "Reintegration" refers here to the objective of "enhancing the ability of prisoners to return to and function normally in civil society upon release". It is seen as a more neutral term than "resocialization", used in Germany and the Netherlands, or (social) rehabilitation, which both seem to imply that all prisoners are de-socialized or present some forms of deficiencies (van Zyl Smit and Snacken 2009: 106).

[17] (Dupont 1998: 144; Commissie Basiswet 2001: 73-74).

[18] Dans le projet de loi, il était prévu que chaque prison aurait une capacité maximale à fixer, tout comme chaque détenu aurait sa propre cellule. Il est regrettable que ces articles n'aient pu être votés, pour des questions de budget contestables.

[19] Laws amending the Dupont Act: Law of 17 March 2013; Law of 2 March 2010; Law of 21 February 2010; Law of 20 July 2006; Law of 23 December 2005.

[20] On 14 mai 2013, la Chambre a voté le projet de loi portant sur la réforme de la loi « Dupont » qui régit les droits sociaux et les contraintes disciplinaires applicables aux détenus dans les établissements pénitentiaires. « L'une des conséquences de la réforme de cette loi est l'entrave au travail des services d'aide au détenus qui oeuvrent, dans des conditions déjà difficiles, pour leur réinsertion après leur séjour en prison », selon Evelyne Huytebroeck, ministre en charge de l'aide aux détenus en région bruxelloise. Pour y arriver, il faut passer par un investissement massif dans la formation de ces détenus, dans une réelle prise en charge médico-psycho-sociale, dans l'accès aux services extérieurs et dans l'aménagement de locaux pour que les services d'aide aux détenus puissent exercer leurs missions au mieux. La nouvelle loi va exactement à l'encontre de ces priorités. »

[21] Article 180 of the Dupont Act states that the King decides when and which articles will enter into force. Royal Decrees have been adopted but the following articles have yet to enter into force: 7, 14-15, 17-18, 20-41, 43, 48-52, 75, 81-97, 99-102, 147-166, 167§2 and 3.

strengthen possibilities for preparation of reintegration for prisoners (Snacken 2004: 41-43). Before being eligible for early release, the Act of 2006 foresees a whole trajectory to be fulfilled in order to prepare the return to society. Both Acts should function hand in hand as "both areas interact with each other and should be congruent and consistent in their aims"[22].

Alternative measures to imprisonment

With a view to solve the problem of overcrowding, the Belgian Government has also pursued a penal policy open to measures and sentences other than imprisonment, through the following options:

- suspension of sentences, stay of execution and probation (Act of 29 June 1964);

- penal mediation (article 21 6 *ter* of the Code of Criminal Investigation)

- community service (introduced by the Act of 17 April 2002) as an independent sentence that trial judges may impose for ordinary and minor offences

- the use of electronic surveillance sentences

- rules for serving prison sentences which can also reduce the time spent in detention (electronic surveillance, limited detention, conditional release and release on bail for the purposes of expulsion).

These alternative penalties and measures are being promoted through a variety of measures: coordination structures at the federal and local levels, regularly meeting personnel in the field; training for the judiciary and the existence of a coordinator of alternative measures in each legal-advice centre which, in particular, have the task of raising awareness among personnel in the field and the general public.

2. d) Other legislation

Leisure, work and education

Since 1st September 2011[23], Articles 76-80 of the Dupont Act (Title V, Chapter V) constitute the legal framework for training and education in prison. These provisions stipulate that in principle the detainee must have as widely as possible access to all training activities that aim

[22] Snacken, Beyens and Beernaert 2010: 84.
[23] Royal Decree of 8 April 2011 (*Moniteur Belge*, 21 April 2011).

to contribute to its personal development, give a sense to its incarceration as well as maintain or improve the prospects of a successful reintegration. These training activities include: education, literacy, training or vocational training, socio-cultural education and training in social skills, creative and cultural activities, physical education. It has therefore a very broad definition, encompassing everything that falls within the scope of activities for inmates.

Prisons and health care: organisation and legal framework

In Belgium, 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 responsible for the organisation, funding and delivery of care and drug-related health services to prisoners.

The Prison Health Care Service is the service provider for the *"improvement, determination, preservation and improvement of physical and mental health"* (art.87,1°, Dupont Act of 2005). 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. In Belgian prisons, there is a clear division between providing health care to prisoners (health perspective) and providing medical and psychosocial advise as part of security measures and probation (security perspective). Prisoners' health is central to the Service for Health Care in Prisons and care providers are bound by professional secrecy. The Psychosocial Service in Prisons is responsible for securing society, aiming at recidivism prevention.

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.

The Regional Governments define these competencies differently, as preventive health care, ranging from needle exchange, vaccination programs to suicide prevention.

The basic principles of health care in prison are legally embedded within Dupont Act of 2005, which provides in its article 88 that all prisoners must have access to health care that is equivalent to health care outside the prison and is suited to their specific needs. Formerly, prison life and prisoners' rights were based on a system of favours, guidelines and circulars coming from 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 fare have not been implemented. Royal Decrees have to be issued for the coming into force of several articles.

Organisational and practical shortcomings in the provision of health care in Belgian prisons (due to lack of qualified staff, dilapidated facilities and insufficient resources) are therefore still ongoing and the principle of equivalent medical care is still not a priority among the prison management. 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.

The complex Belgian state structure with different governments and a fragmentised division of competencies has also its repercussions on the organisation of services in the Belgian prison system. It explains the differences in services between prisons and the regions.

Internment & Psychiatric facilities for prisoners with mental disabilities

According to the Social Protection Act of 1 July 1964 (*loi de défense sociale*), the person who has committed a misdemeanour or a felony and is declared "irresponsible for his actions" is subject to preventive detention. In practical terms, this person 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.

Unlike the determined duration of conviction, confinement is decided for an unspecified duration. Internees are evaluated every six months by a Social Protection Committee (*Commission de Défense Sociale*), which decides on a hypothetical release testing. The Act of 26 April 2007 removed these committees and entrusted the implementation of internment to the newly established “courts for execution of sentences” (*Tribunal d’application des peines*).

The current Social Protection Act should be replaced by the a complementary Act "regarding the detention of persons with a mental disorder", adopted on 21 April 2007, aimed at improving the quality of the relevant institutions and fostering measures to ensure reintegration into society. Due to many critics, the application of this new law has been **postponed to January 2012**.

Conventional psychiatric facilities are reluctant to host internees. 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 designed to accommodate the so-called "medium and high risk" detainees are hopeless: according to the latest report of the Committee on Prevention of Torture (CPT), the average waiting time of an internee to join the EDS of Paifve is four years.

The situation in Flanders is not better: there are simply not such institutions. The building of two Forensic Psychiatric Centers are scheduled in Ghent (272 places) and Antwerp (180 places) and should be operational in 2014. In their design, they combine the security aspect and therapeutic treatment, according to the same criteria as a psychiatric hospital.

Enfin, en matière de *défense sociale* et de mesures de sûreté, il faut mentionner la loi du 27 avril 2007 relative à l'internement des personnes atteintes d'un trouble mental et celle du 26 avril 2007 relative à la mise à la disposition du tribunal de l'application des peines17.

According to the most recent statistics, in 2011, Belgium counted 4093 "mentally ill offenders", indicating an increase of 24% over the six previous years. Over 1000 of them are detained (*interned*) in ordinary prisons, accounting for 10% of the total prison population. They are held in psychiatric wings or in cells blocks among regular prisoners.

Although multidisciplinary teams were set up within psychiatric wings in 2007, proper individual treatment of mentally ill offenders is still often underdeveloped or completely lacking in the psychiatric wings of penal institutions (some of them being dilapidated and unsanitary as the rest of the prison) due to lack of qualified staff and adequate infrastructure. This practice 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 Belgium's major human rights issues.

The Belgian government has announced the construction of two forensic psychiatric institutions in Ghent and Antwerp, which would respectively provide 272 and 180 places for medium to high risk offenders with intellectual or psychosocial disabilities or mental disorders. The Ghent institution should be completed in March 2014, the Antwerp facilities in December 2014.

Drug offenders and drug-addicted offenders

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

Directorate-general showing that 31.3% of all the prison population is detained for drug offences (regardless their legal status). Drug-addicted offenders are not detained in separate institutions. Drug free programs, for example, are organised in prison where also non-addicted prisoners are detained.

Administration of juvenile justice

In 1965, Belgium opted to address the issue of minors in conflict with the law by introducing legislation (Youth Protection Law) with an educational focus. In accordance with an approach centred on education and rehabilitation, minors do not commit offences, but rather "acts designated as offences".

Legislative amendments have gradually modified this approach, however, introducing a restorative approach but also a more punitive dimension based on penalties. In contrast to that of other states, Belgium's youth justice system is still relatively protective of minors' rights and specific needs.

Under Belgian law, children are not criminally responsible until they turn 18. Youth judges[24] can impose a range of educational and rehabilitation measures on minors having committed an act designated as an offence. From the age of 12 years, they can place a minor in a public institution for the protection of young persons ("IPPJ") under an open educational regime. From the age of 14, the Juvenile Court may, under certain conditions and for rehabilitation purposes, consider placement in a closed centre of the community (revised Youth Protection Law of 1965)[25].

There are five IPPJs in the French Community and two – in four locations – in the Flemish community. Such placements are decided by a federal authority – a youth judge – but executed by the Youth Ministry of each community. As a result of this division of competence, minors may be dealt with differently depending on the community of their origin. Above all, in contrast to adult prisons, these youth facilities do not have special, independent monitoring and complaints mechanisms. When these centres have reached their capacity, minors can be transferred temporarily to one of the three closed federal centres

[24] The Juvenile Court is the competent authority for dealing with "acts designated as offences"' committed by persons aged under 18 years. In some cases, however and under certain conditions the Juvenile Court can refer the case to the Criminal Court when a minor of 16 years or older is involved.
[25] Royal Decree of 12 November 2009.

under the control of the Directorate-general of Penitentiary Institutions of the Federal Department of Justice.

Regarding the overall approach to the problem of juvenile delinquency, it is complex to implement, given the division of powers between the Federal Government (issues on the procedure and sanctions/custodial and educational measures) and the Communities (issues on prevention and placement in youth protection institutions).

The federal justice department and the Flemish and French Ministries in charge of youth protection and aid share responsibility for managing the centre. Logistics, transfers and security are federal competences, while the Flemish and French communities deal primarily with education, teaching and leisure services. It appears that the two communities' authorities differ in their approach to the centre in terms of both the use of available places and the regime applied. They have differing disciplinary rules, and solitary confinement continues to be a cause of concern. Likewise, the Flemish community's management team is half the size of its counterpart in the French community.

As previously said, the emphasis is on rehabilitation and reintegration of the minor rather than punishment or penalties. Preference is given to the educational approach even for minors who have committed serious crimes. Only in exceptional cases can **relinquishment of jurisdiction** apply to a minor, and the rules of criminal law for adults are then applied.

Under Section 57a of the 1965 Act, youth judges can relinquish jurisdiction over the case of an alleged juvenile offender. They may propose to the prosecuting authorities that the case be tried by a specific chamber within the Youth Court where they consider, on the basis of the alleged offender's personality, that the protective measures available to them are inadequate. In the case of a serious criminal act committed by a young person whose jurisdiction has been relinquished by a youth judge, the ordinary criminal courts (*cour d'assises*) may also be competent. In practice, this means that young people over the age of 16 who have committed a serious offence may be tried as adults rather than by the youth court (art. 57 bis of the Youth Protection Act of 8 April 1965). Should the offender receive a prison sentence, he or she will be held in an adult prison. Furthermore, a minor over whom jurisdiction has been relinquished may be remanded in custody with adults. This situation concerns only a small number of minors each year. About 150 minors were subject to such measures in 2008, mainly in the Brussels region; courts in the Walloon and especially the Flemish districts made very little use of it.

The use of the procedure to relinquish jurisdiction is subject to very strict conditions and the minor is protected by procedural safeguards[26]. For instance, jurisdiction may not be relinquished unless the minor is over 16 years of age. The usual measures provided for minors must have proven inadequate, assessed on the basis of the minor's personality and his or her entourage and maturity. These are cases in which a custodial, preventive or educational measure cannot be taken for the positive development of the minor and his or her circumstances.

The court must give grounds for its decision to relinquish jurisdiction and refer the case to the Public Prosecutor for prosecution before the competent court, where appropriate. Finally, subject to some exceptions, the court may relinquish jurisdiction only after a social study and medical and psychological examination of the minor. If the Public Prosecutor decides to prosecute the minor after jurisdiction is relinquished, he or she will in principle be tried by a specific chamber of the juvenile court, composed of three judges, two of whom have received the training required to perform the duties of a juvenile judge, while the third is a correctional court judge.

Monitoring mechanisms and institutions and prevention of abuse in prisons

The Central Prisons Supervisory Council

The Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 containing the general prison regulations[27] 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 exercises independent control over the treatment of detainees and supervises 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 exercises the same control in its assigned prison.

[26] Jurisdiction may be relinquished in two cases only: (1) the young person has already been subject to rehabilitation measures or a reparative programme; (2) the offence of which he or she is charged is referred to in articles 373 (indecent assault with violence or threats), 393-397 (murder, assassination, parricide, infanticide, poisoning), 400, 401 (assault with permanent disability or unintentional manslaughter), 417 ter and quater (torture/inhuman treatment), 471 to 475 (robbery with violence or threats with aggravating circumstances) or attempting offences referred to in articles 393 to 397.

[27] Arrêté Royal du 4 avril, 2003 modifiant l'arrêté royal du 21 mai 1965 portant règlement général des établissements pénitentiaires
http://www.ejustice.just.fgov.be/doc/rech_n.htm

However, the relevant provisions have not all entered into force[28] and in practice, the functioning of the Commissions and the Council is flawed.

The latest report of the Council[29] 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

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 committees. 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, these provisions have not entered into force to date.

Judicial supervision of detention conditions through the courts of law

A detainee may also apply for interim relief to the president of a court of first instance in the event of infringement of one of the detainee's personal rights, on the ground that the situation requires urgent action, or to a court of law in the case of an application on the merits. The Council of State has declared itself incompetent to rule on measures taken to ensure the proper functioning of a prison which would justify impairment of the subjective rights of detainees, but it still exercises marginal control by establishing whether the measure in question is not in fact a disguised disciplinary punishment and that there has not been an obvious error of assessment.

In addition to the examining magistrates, independent controls of prisons are also legally foreseen by members of the Chamber of Representatives and the Senate, other authorities (the

[28] The relevant articles are the articles 26-27 & 29-31 of the Dupont Act (op cit). These have yet to enter into force.
[29] Conseil central de surveillance pénitentiaire et commissions de surveillance, Rapport Annuel 2008-2010
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provincial governor and the mayor of the place where the facility is located)[30], and the services of the Federal Mediator[31].

Finally, control is also exercised by the European Committee for the Prevention of Torture, the European Commission on Human Rights and NGOs such as the International Observatory of Prisons and the League of Human Rights.

National Human Rights Institution

Belgium does not have a National Human Rights Institution (NHRI) compliant with the Paris Principles[32] despite specific recommendations to establish one by the European Union (EU) Fundamental Rights Agency, several Belgian NGOs and most recently the UN Human Rights Committee. Belgium has repeatedly expressed its intention to create an NHRI. Not only at the national level, where the establishment of a NHRI was envisaged in coalition agreements, both in 2003 and 2011, but also at international level. In 2011, during the UPR of the UN Human Rights Council, Belgium supported the recommendations to establish a National Human Rights Institution. Although representatives of the regional and federal authorities have established a working group with the aim of establishing such an institution, to date there seems to be very little progress and no formal consultations with civil society has been made on this regard.

A National Human Rights Institution could play a significant role in the protection, fulfilment and promotion of human rights in Belgium which shows significant gaps in particular regarding the management of its prison facilities and detention conditions. This institution

[30] The access is also granted the closed centres where asylum seekers are hosted or "detained" for administrative reasons (article 42 of the Royal Decree of 2 August 2002).

[31] The office of the Federal Ombudsman is an independent and impartial institution that examines complaints about the way the federal administrative authorities act or function. It also investigates, at the request of the House of Representatives, how the federal administrative services function and makes recommendations to the federal administrative authorities and to Parliament based on observations made during these two missions. The institution comprises two ombudspersons. They are appointed for a period of six years by the House of Representatives, and are assisted by a team of experienced staff. They are not part of the administration.
The ombudsmen already reported on complaints received from inmates, regarding detention conditions as well as unable to have rehabilitation plans prepared for them or receive visits. He also expressed concern about the use of administrative detention of asylum-seekers and irregular migrants, the living conditions inside closed centres for asylum-seekers and irregular migrants, serious deficiencies in the complaint system for those detained, and called for the provision of legal advice services in the closed centres.
- Le Médiateur Fédéral, Rapport Annuel 2010 :
www.federalombudsman.be/sites/1070.b.fedimbo.belgium.be/files/ra2010-fr.pdf
- Le Médiateur Fédéral, Investigation sur le Fonctionnement des Centres Fermés Gérés par l'Office des Etrangers. June 2009.
www.federaalombudsman.be/sites/default/files/auditCF2008-FR.pdf

[32] UN General Assembly, Paris Principles (A/RES/48/134), 20 December 1993
http://www.info.gov.hk/info/eoc/annex6_e.pdf

could serve as a forum for discussion for civil society, academia and the authorities and have an advisory and a monitoring role with regard to legislation, draft legislation and the follow-up of international jurisprudence on human rights. Such an institution could also include the much needed independent preventative mechanism as provided for in OPCAT.

3. Institutions and organizations

3. a) Governmental institutions

The Prison Administration

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.

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 security[33] 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).

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"). As already mentioned, 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

[33] Arrêté royal du 21 mai 1965 portant Règlement général des établissements pénitentiaires.

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.

Houses of Justice

Upon inception in 1999 (Act of 13 June 1999), the Houses of Justice were assigned to the enforcement of alternative penalties and measures to imprisonment (which includes probation tasks).

The Houses of Justice are administered by the federal Ministry of Justice (Directorate General Houses of Justice) and are funded 100% by the central government (through the Ministry of Justice). From an organisational point of view, the Directorate-General Houses of Justice can be divided in two levels: a central and a decentralised (local) level. At local level, there is a House of Justice in every court district (in total 28). Each House of Justice is managed by a director, sometimes assisted by one or several key process manager(s), depending on the size of the House of Justice concerned. The actual fieldwork is carried out by approximately 1,100 justice assistants (probation workers, mediators, victim support workers, etc.).

The Directorate General Houses of Justice has been assigned with different tasks: penal matters, victim support, civil applications and primary social and legal work.

The Department of Offender Guidance, previously called “the probation service”, is one of the departments falling under the Directorate General of the Houses of Justice. The Department of Offender Guidance is responsible for the execution of all community penalties in Belgium. The daily supervision of offenders and follow-up is carried out by justice assistants, who – since 1999 – are trained at a higher education level as social workers, social advisors, social nurses or assistants in psychology, while others are trained at a university level as social scientists (i.e. criminologists, psychologists, sociologists and educationists).

3. b) The development of alternative measures to imprisonment in Belgium

After World War II the idea that the sentence should be adapted to the person of the offender and should serve his or her reintegration was further implemented in Belgium. This was done through the introduction, by the law of 29 June 1964, of the system of suspension of a sentence, postponement of the execution of a sentence, and probation (which consists in the attachment of conditions to one of the two previous possibilities). In 1994, the scope of application of these three modalities has been considerably enlarged and the possibility of imposing community service or training as a condition for probation (as well as for penal mediation) was inscribed in the law (10 February 1994).

In Belgium, community sanctions and measures are rarely used compared to what is legally possible. Conditional pre-trial release has also a very low implementation rate. The use of imprisonment and fines (which constitutes about 70% of all sentences) constitutes by far the favorite solution to the criminal problem. Only the public ministry at the police level applies the penal transaction in a considerable way, and this mostly for traffic offences. At the level of the court of first instance penal transaction remains a rather marginal practice.

Scope and implementation of alternative measures to imprisonment

During the pre-trial phase **conditional release of pre-trial detention** allows the investigating judge (*Juge d'Instruction*) or the courts proceedind with the instruction of assumed offences, in cases where preventive detention (remand) can be ordered or sustained, to leave defendants un-apprehended or to release defendants by imposing prohibitive or positive terms and conditions. The justice assistant (Houses of Justice) reports to the investigating judge or the court regarding the course of the guidance and the way the offender deals with the conditions imposed.

In 1994, article 216ter on **penal mediation** was introduced in the Belgian code of criminal procedure (Act of 10 February 1994[34]). According to this provision, the public prosecutor can formally dismiss a case under certain conditions, namely when the offender fulfils a condition

[34] This law emerged from the recommendations of a parliamentary commission inquiring into several high profile criminal affairs, which focused on reviving the trust of the public in the official institutions. The reform of both police and justice services was insisted upon in order to create a strong policy in security matters. Moreover, arguments were developed in the federal parliament claiming that it was necessary to accelerate the judgement of petty and repetitive delinquency. The inadequacy of the traditional system to react to this kind of crime was highlighted and considered as problematic, because it fuelled a general feeling of impunity within the public opinion. Penal mediation was considered as an intermediary measure.

to participate in mediation with the victim on compensation or reimbursement, to enter medical treatment or therapy, to accomplish a community service and/or participate in training.

In the framework of this implementation, three new structural functions have been created: (1) the justice assistants who handle the individual files for penal mediation and report to the public prosecutor about the course of the process; (2) a liaison magistrate in each judicial district responsible for the selection of cases and the supervision of the justice assistants; and (3) an assistant advisor in each of the appeals courts appointed to evaluate, coordinate and supervise the implementation of penal mediation (Peters, 2001).
Despite a circular letter of April 30, 1999, issued by the College of general prosecutors and the Minister of Justice, which aimed at bringing more uniformity in the application of penal mediation, at improving the understanding of this concept, and at promoting the selection of cases with identifiable victims, the application of penal mediation is still heterogeneous and remains peripheral.

Within the trial phase a judge (*juge correctionnel ou pénal*) can decide to **postpone the execution or to defer the pronouncement of the sentence**. The court will suspend execution of the sentence on probation if it is to be expected that the offender will not commit any further crimes and there are no other reasons not to suspend the sentence. Cette mesure, qui n'apparaît pas sur le casier judicaire, ne peut être accordée qu'à l'auteur d'une infraction qui n'a pas encore encouru de peine d'emprisonnement supérieure à 6 mois. This measure, which does not appear on the criminal record can only be granted to the offender who has not incurred a sentence of more than six months imprisonment.

The judge can link conditions to these decisions, which is called **probation**. A probation committee follows the accomplishment of the measure and the justice assistant has to report regularly to this committee. The Probation Service is integrated in the Directorate-General Houses of Justice, but probation work in the broad sense of the term (rehabilitation) is also executed within other departments and associations.

Apart from probation stands the **work penalty**, which is an autonomous sanction in Belgium since 2002 (Act of 17 avril 2002). When this law was adopted, its main purpose was to cope with overcrowding and conceived as as a substitute for short terms of imprisonment. Under this sanction the offender is compelled to do unpaid work in his spare time (between 20 and 300 hours). When imposing a task penalty, the court must state the period of detention to be

served in the event of non-compliance. The justice assistant is assigned with the task of finding a place to execute the work punishment and is in charge to do the follow-up as well as to report to the probation committee. This measure does not appear on the criminal record of the convicted person.

However, it has been observed that, since the introduction of this new penalty in 2002, some acts which previously would not have been prosecuted or would have been sanctioned with a mere suspended sentence, are today punished with a sentence of community work. Similarly to the use of electronic surveillance, this new measure has thus a net-widening effect in terms of penal control.

In the post-trial phase, concerning the execution of the sentence itself, the following options are worth to be mentioned:

- **limited detention** is another form to conduct part of a prison sentence outside. The offender may leave the prison during the day (not more than 12 hours) to follow lessons, to work or due to familial reasons. Conditions can also be imposed and the justice assistant reports frequently to the penal enforcement tribunal (*Tribunal de l'exécution des peines*[35]).

- **electronic surveillance**: a person can be monitored electronically. For the inmates sentenced to three years in prison or less, the prison director is in charge of the sentence and makes the decisions. For the inmates sentenced to more than three years in prison, the penal enforcement tribunal is the authorized authority, to which the justice assistant reports. The justice assistant makes up an hour schedule with the offender and the offender is obligated to wear an anklet which monitors whether or not he holds on to his schedule. The National Centre of Electronic Monitoring checks the movements of the offender.

- **conditional or custodial release of prison** (parole) also belongs to the possibilities. The offender is released early (at least after 1/3rd of his sentence), but has to follow conditions to facilitate his reintegration process. For offenders sentenced to three years in prison or less the justice assistant reports to the Service of Detention Management (custodial release) and for the offenders with more than three years the penal enforcement tribunal is the authorized authority (conditional release). The offender can also be put under protection of the government. The Direction of Detention Management decides whether the offender stays in

[35] A Law of 17 May 2006, partially in force as from 1 February 2007 and fully in force since 1 June 2008 has introduced new principles, among which the creation of penal enforcement courts which deal with: "limited detention", "electronic control", "conditional release".

prison or is released under conditions. The justice assistant reports to the Direction regarding the guidance and the conditions imposed.

3. c) Assistance and re-socialisation of offenders

Following the institutional reforms during the 1980's, all aspects relating to 'forensic welfare' (i.e. social aid to offenders, victims and their family) are the exclusive responsibility of the regional and community authorities (in this case: the Flemish Community). This means that while the management of prison facilities is mainly the responsibility of the federal government (federal prison administration), the wellbeing of the prisoners and their rights to access all services available for the purpose of their rehabilitation[36] (education, training, healthcare) are the responsibility of the regional authorities. The determination of law and policy being shared by the federal government and the regional communities and their authorities, sometimes leads to tension and lack of coherence between those different policy-making authorities[37]. Moreover, the division of competences also apply between the Regions and Communities and nurture further complexity which hampers continuity in the provision of welfare assistance in the field. Following the transfer to the regions of the competence in social assistance to pre-trial detainees, released prisoners and related victims, the service "assistance to detainees" within the General Secretariat of the Ministry of the French Community has the task to provide psycho-social assistance only to the persons detained (in the strict sense, i.e. after a final sentence), as well as to their relatives[38]. At local level, some initiatives try to overcome this obstacle and join the two services in one association.

Formal and non-formal adult education are provided in several prisons. Several educational institutions have been offering programmes to detainees for some time. This is the case for formal educational institutions, such as the centers for adult education and especially adult basic education, but just as well for non-formal educational institutions such as the VDAB (Flemish Public Employment and Vocational Training Service) and organisations for socio-cultural adult work (e.g. De Rode Antraciet on the Flemish side, and FAPEP in the French

[36] Law of 8 August 1980 (23 Art. 5, II, 7°).
[37] Civ. Liège (réf.) 14 avril 1993, Kellens, G., Kéfer, F. et Seron, V., *Code pénitentiaire,* Bruxelles.
[38] Décret du 19 juillet 2001 relatif à l'aide sociale aux détenus en vue de leur réinsertion sociale (M.B. du 23 août 2001) ; Arrêté du Gouvernement de la Communauté française du 13 décembre 2001 portant exécution du décret du 19 juillet 2001 relatif à l'aide sociale aux détenus en vue de leur réinsertion sociale (M.B. du 10 janvier 2002). See also the relevant section on the French Community website : http://www.aidedetenus.cfwb.be

speaking Community). In some prisons voluntary organisations (e.g. Auxilia, De Vuurbloem) and volunteer civilian tutors help organizing educational programmes.

Education and training for prisoners is not only in the hands of external organisations. The management of the prisons (prison governors) and the prison staff (restorative justice counselors, employees of the psycho-social team, warders, etc.) play, without a doubt, an important role in enhancing the educational participation among prisoners. This is not self-evident. Due to the overcrowding problem, the prison staff in a lot of prisons is overworked, and opportunities to provide services beyond the basic detention is often seriously compromised.

4. Polices, programs, and coordination mechanisms

4. a) Increasing the capacity of prisons

One of the measures taken to counter prison overcrowding is the so-called Master Plan 2008-2012-2016 for a "Prison Infrastructure with Humane Conditions". The plan aims at increasing the capacity of the prison system (up to 2500 new places within 2016), through renovations, extensions to existing sites and new buildings, and improving the conditions for prisoners in the process.

New buildings are planned in Marche-en-Famenne (312 places), Leuze (312 places), Beveren (312 places) and Dendermonde (444 places). Construction work at Marche-en- Famenne began on 20 October 2011 and completion was scheduled for 2013.

The Master Plan also aims to increase the accommodation capacity for inmates. It plans to build two forensic psychiatry centres, one in Ghent and the other in Antwerp, with 272 and 180 places respectively. Construction of the Ghent centre began in October 2011 and completion is scheduled for 2013. The Antwerp centre is currently subject to a planning application and completion is scheduled for 2014. Finally, there are plans to build a new facility with 1,190 places at Haren (Brussels Region) in 2016-2018.

As highlighted by many observers, this measure in itself (extending the prison capacity) is unlikely to achieve the announced objective that the government intends to pursue: offering offer a lasting solution to the problem of overcrowding.

In a report released in 2010[39], the Belgian Court of Audit[40] recommended to government to adopt and implement an integrated and systematic approach of prison overcrowding within the context of a broader review of criminal law and criminal procedure, to improve the foundation and evaluation of its policy, the legislation's implementation as well as harmonization with other public services and the judicial power. On the same line, in its report published on 13 December 2012, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), urged Belgium to rethink its prison policy, stressing that focusing on the capacity increase of prison facilities was not sufficient and that comprehensive and decisive measures were needed to tackle long-standing issues, stemming from its investigation of reports of deteriorating prison conditions.

4. b) Fostering the right to education in prison facilities

Status and extent of adult education in prisons

With an average age of 32, the Belgian prison population is relatively young. Over 59% of inmates are indeed in the age group of 18-35 years. In contrast, there are about 650 individuals older than 53 years. In addition, inmates often come from economically disadvantaged backgrounds. A study on the educational qualifications of Belgian inmates carried out in some prisons of the French speaking Community, reported that nearly 30% of inmates had no degree at all and nearly 45% had obtained the Certificate of Basic Studies (primary school). A little less than 20% of inmates reported having a degree of lower secondary education.

Despite this reality, up to a few years ago, policy makers in Belgium paid little attention to adult education in prison. For the federal government it was a side issue. The focus on rehabilitation or reintegration of prisoners as a factor in reducing recidivism is also fairly recent practice in Belgium. The national policy documents were mainly focused on issues like

[39] « Mesures de lutte contre la surpopulation carcérale », Rapport de la Cour des comptes transmis à la Chambre des représentants, Bruxelles, décembre 2011.(https://www.ccrek.be/FR/Publications/Fiche.html?id=1ebadf21-41a6-4ef2-8e93-18a0fb74858e)

[40] The purpose of the report was to examine 7 measures that are meant to help reducing prison overcrowding. These 7 measures are: 1. less pre-trial detention, 2. more community service sentences and 3. electronic monitoring, 4. transferring prisoners of foreign origin to their own country, 5. inclusion of mentally ill prisoners in the mental health care system, 6. reforming provisional release and conditional release as well as 7. expanding prison capacity. In its rapport to the Federal Parliament, the Court stated that the impact of these measures has not been sufficient up to now. The Audit concluded that no structural reduction of overcrowding had occurred as a result of these measures, and that only measures increasing the use of conditional release had shown a significant impact.

labour in prison, release on parole, etc. In case norms did regulate aspects of the regime in prison (including education) they did not do so in a directive way. Sometimes adult education was referred to in official letters from ministers or their administration or in the rules and regulations made by the prisons themselves.

The adoption of the Dupont Act in 2005 contributed to affirm "reintegration" as an important leading principle of the Belgian prison and sentence execution policy. Since their entry into force (Royal Decree of 1st September 2011), its articles 76- 80 are the main legal framework for the training and education in prison. It is now recognised that, although deprived of liberty, a prisoner retains his other rights as any other citizen, such as the right to work, education and vocational training in order to reintegrate into free society.

Critically, the law also allows to further legitimise the actions of external services (mainly non-governmental associations) working in prisons in the fields of culture, health, education and training, legal assistance, sport or rehabilitation. However, the application of this law has faced - and still faces - consistent difficulties and obstacles on the ground. Indeed, the infrastructures of prisons are ill-suited to host training classes or workshops.

Moreover, although recent efforts have been undertaken to improve coordination (see infra), relevant services are still pretty much dispersed among different agencies and operators and the offer in this area is still distributed quite unevenly among the various prison facilities. For years, provision of this kind of external services in each prison was based on local dynamics driven by the prison direction and associative and institutional actors. The range of activities provided was therefore not the result of a thoughtful comprehensive plan according to the needs of prisoners and those of society.

This disparity is a source of many obstacles that prevent some projects to run at full capacity or even to see the day. It requires large amounts of energy and time to be dedicated by concerned associations to a random chase for public subsidies, which do not always take into account the prison realities.

Action plans to increase coordination

One of the most important policy documents on access to adult education in prisons in the Flemish Community of Belgium is, at this moment, the "Strategic Plan on social assistance

and services to inmates" (*Het strategisch plan hulp- en dienstverlening aan gedetineerden*)[41]. This plan was introduced in the year 2000 by the Flemish government, in recognition of the need to ensure a coherent, integrated policy for educational activities (assistance, vocational training, education, sports and leisure) in prisons. Its main objective is to improve the close cooperation between the different services funded by the Flemish Government in order to offer detainees qualitative social aid, education, vocational training, sports and leisure activities. At this moment, the plan has been implemented in eight prisons. In the near future this will be the case in all Flemish prisons. The plan has been evaluated for the first time in the year 2008[42]. Similar coordination efforts have also been made by relevant association involved in prison activities through the establishment of Klasbak, the Network of Prison Education Organisations in Flanders[43].

In most prisons located in Wallony and Brussels (except the women's section of Forest Berkendael), the number of organized activities is lower, due to the lack of resources invested, fragmented competences, and unsuitable prison facilities.

Training in prison are provided by various organizations that form partnerships with each other and which come either from the education and social promotion sector or the voluntary sector, which depend on regional or community authorities (ADEPPI, Services for social assistance to prisoners, *Centres d'Action Laïque*, organisations for socio-professional integration, etc.). Federated through the CAAP, the Coordination for the associations active in prisons (*Coordination des asbl actives en prison*) and the FAFEP, the Federation of Associations for Training and Education in Prison (*Fédération d'Associations pour la Formation et l'Education en Prison*), these associations have a common goal to increase the skills base of prisoners and improve their professional and social skills to facilitate their post-prison rehabilitation.

A cooperation agreement[44] was signed on 23 January 2009 between the French Community, the Walloon Region and the French Community Commission, which aims to improve the

[41] Strategic Plan for Assistance and Services to Prisoners: http://wvg.vlaanderen.be/welzijnenjustitie/gedetineerden/stratplan.htm

[42] For an overview and assessment of the services provided see: Rapport d'activités du coordinateur Communauté flamande http://www4wvg.vlaanderen.be/wvg/welzijnensamenleving/hulpaangedetineerden/jaarverslagen/Paginas/default.aspx

[43] http://www.klasbak.net

[44] Accord de coopération du 23 janvier 2009 entre la Communauté française, la Région wallonne et la Commission communautaire française visant la coordination des politiques d'intervention en lien avec le milieu carcéral (M.B. du 25 août 2009).

coordination of policy interventions related to prisons. This cooperation agreement particularly provides for the establishment of an annual Ministerial Conference and a Permanent Steering Committee (*Comité de Pilotage Permanent*)[45].

The aim is to increase opportunities for social assistance, education, recreational activities, labour offered by these federated entities in prison.

The Ministerial conference has the following missions:

- to assess the implementation of the coordination of policies pursued by the French Community, the Walloon Region and the French Community Commission in connection with the prison.

- to examine the proposals and recommendations that are submitted by the Permanent Steering Committee;

- to examine useful ways and means to ensure the exercise of competences of the signatory parties and strengthen the policies already developed in the field of rehabilitation of prisoners;

- to prepare a cooperation agreement with the Federal Government .

The Permanent Steering Committee is composed of representatives of all Ministers with responsibilities in the prison sector (French Community, College of the French Community Commission, the Walloon Region), administrations, voluntary sector active in prison, and observers (Ministry of Justice). These experts are divided into five working groups: health, education and training, prison release, information and coordination.

To minimize the negative effects of the bursting of the voluntary sector operating in prisons, field operators also federated in a common structure (the CAAP[46]), which has been designated as the official representative of the associative and voluntary sector active in prisons within the Permanent Steering Committee.

[45] The process led to the establishment on 9 March 2010 of a Permanent Steering Committee (Comité de Pilotage Permanent (CPP)) and.the organisation of a first Interministerial Conference on 16 December 2010.
[46] The CAAP, *Concertation des Associations Actives en Prison*, has 46 member associations (http://www.caap.be/).

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6. Annexes

Annex 1: Treaties and legally binding international instruments/documents

United Nations treaties

Entry into force	Name of the treaty	Signed - date	Ratified - date
3 September 1981	Convention of the elimination of all Forms of Discrimination against Women	17 July 1980	10 July 1985
4 January 1969	Convention of Elimination of all Forms of Racial Discrimination	17 August 1967	7 August 1975
2 September 1990	Convention on the Rights of the Child (UN)	26 January 1990	16 December 1991
23 March 1976	International Covenant on Civil and Political Rights (1966)	10 December 1968	21 April 1983
3 January 1976	International Covenant on Economic, Social and Cultural Rights (1966)	10 December 1968	21 April 1983
26 June 1987	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	4 February 1985	25 June 1999
22 June 2006	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	24 October 2005	Not ratified yet

Council of Europe legislation

Entry into force	Name of the treaty	Signed - date	Ratified - date
3 September 1953	European Convention on Human Rights and Fundamental freedoms (1950)	4/11/1950	14/6/1955
1 April 2005	Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms (2000)	4/11/2000	Not ratified
1 February 1989	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	26/11/1987	23/7/1991
22 August 1975	Convention on the Supervision of Conditionally Sentenced of Conditionally Released Offenders	22/12/1964	21/9/1970

EU legislation

Entry into force	**Name of the treaty**	**Transposition – date/legislation/etc.**
1 December 2009	Charter of Fundamental Rights of the European Union (2000)	Direct effect
2004 January 01	Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States	The implementing law was adopted on 19 December 2003 (published in official publication for legislation on 22 December 2003) and entered into force on 1st January 2004.
2011	Framework Decision on the application on the Principle of Mutual Recognition to Judgements in Criminal Matters imposing Custodial Sentences of Measures Involving Deprivation of Liberty for the Purpose of their Enforcement in the European Union	The implementing law was adopted on 21 May 2013 and entered into force on 23 June 2013.

Annex 2: Imprisonment statistics

Table 1. Prison population

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Prison population total	9.245	9.375	9.635	10.008	9.858	10.159	10.561	11.065	11.330
Prison population rate (per 100.000 inhabitants)	88,9	89,7	91,6	94,5	92,4	94,5	97,4	101	102,7
Entries to penitentiary institutions in a given year	15.735	15.774	16.740	16.173	17.255	17.884	18.503	18.829	18.932
Rate of entries to penitentiary institutions (per 100.000 inhabitants) in a given year	151,3	151	158.6	152,8	161,8	166,3	170,7	172	171,5
Pre-trial/ remand	3.614	3.550	3.530	3.473	3.527	3.557	3.712	3.890	3.599
Rate of pre-trial/ remand (per 100.000 inhabitants)	34,8	34	33,6	32,8	33	33	34,2	35,5	32,6

Table 2. Prison population by socio-demographic characteristics (total numbers)

		2004	2005	2006	2007	2008	2009	2010	2011	2012
Females					432	421	404	406	442	483
Minors					40	46	51	77[47]	81	92
Age structure of prisoners	From 14 to less than 16 years				9	5			14	
	From 16 to less than 18 years				111	24			70	
	From 18 to less than 21 years				631	470			499	
	From 21 to less than 25 years				1272	1262			1395	
	From 25 to less than 30				1866	1954			2236	

[47] Enfin, la population journalière de l'établissement fédéral pour mineurs d'Everberg s'élève en moyenne à 31 jeunes qui y sont détenus suite à des décisions des tribunaux de la jeunesse sans qu'il n'ait été question de dessaisissement (c'est-à-dire de renvoi vers la justice des majeurs). D'autres jeunes sont incarcérés au centre fédéral fermé de Tongeren et, depuis le 30 avril 2010 à celui de St-Hubert. Ces deux derniers centres recueillent également des jeunes prévenus et condamnés, après dessaisissement

	years									
	From 30 to less than 40 years				3208	3426			3848	
	From 40 to less than 50 years				1842	1953			2340	
	From 50 to less than 60 years				688	849			1103	
	From 60 to less than 70 years				190	213			330	
	From 70 to over 80 years				58	67			78	

Table 3. Prison population by offences (total numbers)[48]

Type of offence	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal offences total		14217	15001	14816	15769			7.183	
Homicide (including attempts)		689	753	735	740			782	
Assault and Battery		1511	1664	1656	1726			2178	
Rape		759	802	799	806			855	
Other types of sexual offences					848			846	
Robbery		2382	2462	2423	2525			2918	
Other types of theft		2564	2644	2567	2653			3297	
Drug offences		2045	2145	2112	2189			2620	
Other cases		4267	4542	4524	4282			5261	

Table 4. Prison population by length of sentence (percentages) and average length of imprisonment (months)

		2004	2005	2006	2007	2008	2009	2010	2011	2012
Prison population by length of sentence (percentage)	Less than 1 month		0,0	0,0	0,0	0,0			0,0	
	From 1 month to less than 3 months		0,0	0,0	0,0	0,0			0,0	
	From 3 months		0,0	0,2	0,1	0,1			0,1	

[48] The *main offence rule* is not well-defined. Therefore, prisoners sentenced for more than one offence can be counted several times. Indeed, the information in this Table relates to the number of prisoners with a final *relative* sentence concerning at least one offence of the corresponding category. Therefore the total number exceeds the number of sentenced prisoners..

	to less than 6 months									
	From 6 months to less than 1 year		2,6	4,0	2,2	3,0			3,5	
	From 1 year to less than 3 years		13,0	14,5	14,0	13,3			15,3	
	From 3 years to less than 5 years		25,2	25,1	26,6	26,5			28,9	
	From 5 years to less than 10 years		34,7	32,6	33,8	33,7			32,4	
	From 10 years to less than 20 years		12,6	12,1	11,9	12,0			9,8	
	20 years and over		0,1	7,4	7,4	7,6			6,7	
	Life imprisonment		1,5	4,1	4,1	3,9			3,3	
Average length of imprisonment (months)	Imposed by the court									
	Factual		7.3	7.4	7.0	7,1			7.3	

Table 5. Number of different facilities and number of prisoners in different types of facilities (total numbers)

		2004	2005	2006	2007	2008	2009	2010	2011	2012
Semi-open prisons	Number of semi-open facilities				1	1	1	1	1	1
	Number of prisoners in semi-open facilities				351	352	356	292	300	307
Open prisons	Number of open prisons				4	4	4	4	4	4
	Number of prisoners in open prisons				557	566	559	560	577	587
Preventive detention centers	Number of preventive detention centers				2	2	2	2	2	2
	Number of prisoners in preventive detention centers				432	426	437	523	531	525
Total number of different facilities					32	32	32	32	32	32

Table 6. Situation of penal institutions

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total capacity of penal institutions/ prisons		8.133	8.311	8.311	8.226	8.254	8.829	8.930	9.255
Density per 100 places/	113	110,8	117,9	118.5	124,8			127,2	
Average rate of overcrowding (%)					18	21,8	17,7	20,2	23,7

Table 7. Persons under parole, probation and surveillance orders (total numbers)

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Conditional release	783	735	599	765	768	717	695	793	
Provisional release	698	246	182	231	246	278	290	299	
Release on probation for internees	523	684	525	521	564	547	575	598	
Temporary release					72	79	89	77	84
Electronic surveillance orders	278	277	337	612	557	609	928	1.102	989

Table 8. Groups of (possibly vulnerable) prisoners (total numbers)

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Foreigners (%)		41.2	40.4	41,4	42,4	43,6	42,7	44,2	44
Ethnic/ cultural/ religious groups									
Alcohol addicted persons									
Persons addicted to other drugs than alcohol (excluding nicotine)									
Mentally handicapped persons (e.g., lower IQ)									
Persons with a psychiatric handicap[49]	783	856	862	965	994	1.038	1.089	1.103	1.142
Physically handicapped persons									
HIV/AIDS									
"Querulous persons"/ "trouble makers"									
Sexual offenders									
Former police officers, prosecutors, judges, etc.									
(Functional) illiterates									

[49] The figures correspond to the number of internees.

Persons not speaking the local language									
Old prisoners (reached retirement age; or ≥ 60 years)									

Table 9. Deaths and injuries in penal institutions (total numbers)[50]

		2004	2005	2006	2007	2008	2009	2010	2011	2012
Deaths	Total	29	33	39	49	51	43	46	49	47
	of which: natural death									
	of which: suicides	8	11	11	13	15	12	19	12	13
	of which: accidents									
	of which: homicides									
	of which: other (*please specify*)									
Injuries	Total									
	of which: assaults									
	of which: accidents									
	of which: self-harm									
	of which: other (*please specify*)									

Table 10. NGO, volunteers, re-socialisation programs, legal advice (total numbers)

		2004	2005	2006	2007	2008	2009	2010	2011	2012
NGO's collaborating with penitentiary institutions	Total	NA	NA	NA	NA	NA	NA	NA	NA	NA
	of which: prisons	NA	NA	NA	NA	NA	NA	NA	NA	NA
	of which: probation agencies	NA	NA	NA	NA	NA	NA	NA	NA	NA
Volunteers	Total	NA	NA	NA	NA	NA	NA	NA	NA	NA
	of which: in prisons	NA	NA	NA	NA	NA	NA	NA	NA	NA
	of which: in pre-trial/ remand	NA	NA	NA	NA	NA	NA	NA	NA	NA
	of which: in probation agencies	NA	NA	NA	NA	NA	NA	NA	NA	NA
Re-socialisation (rehabilitation) programs	Number of programs	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Number of persons attending such	NA	NA	NA	NA	NA	NA	NA	NA	NA

[50] Number of deaths in detention, whether in prison or even in a hospital in which, if any, they have been transferred. Aside from suicides, medical secrecy makes it impossible to distinguish from other causes of death..

	programs									
Legal advice in penal institutions free of charge or via legal aid			NA	NA	NA	NA	NA	NA	NA	NA

Table 11. Prisoners who are studying and/or working (total numbers)

		2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of prisoners who are studying at a given year (high school, vocational school, university)		NA	NA	NA	NA	NA	NA	NA	NA	NA
Number of graduated prisoners at a given year		NA	NA	NA	NA	NA	NA	NA	NA	NA
Other education (skills improvement) (*please specify*)		NA	NA	NA	NA	NA	NA	NA	NA	NA
Number of prisoners who are working at a given year	In a state companies / In private firms	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Involved in individual work, creative or other activity	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Working fatigue in penal institutions	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Total	NA	NA	NA	NA	NA	NA	NA	NA	NA

Table 12. Financing of penal institutions (total numbers in euros)

		2004	2005	2006	2007	2008	2009	2010	2011	2012
Total budget of penal institutions (in millions EUR)					400	432	463	500	526	581
Prison Staff					325	351	379	383	395	440
Average amount spent per day for one prisoner for:	Nutrition, clothing and bedding				15	26	24	16,3	17,6	17,9
	Medicines and care							28	27	40
	Domestic tasks and				3,8	4	4,1	4	4	3,8

	gratification for detainees									
	social rehabilitation programmes and services									
	drug substitution (methadone)									
	harm reduction									