

Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database
(FRANET)

**Belgium
2021**

Contractor: Fundamental Rights' Research Centre (FRC), Vrije
Universiteit Brussel (VUB)

Authors: Tom Daems & Marjolein Robert,
Leuven Institute of Criminology (LINC), KU Leuven

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project: [Criminal Detention Database](#). The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

Part I: National standards	3
1. Cells	3
a) Cell space	3
b) Cell equipment, furniture and facilities	4
c) Video-surveillance of cells	6
d) Hygienic conditions in cells	7
2. Sanitary conditions	9
3. Time out of cell	12
4. Solitary confinement	15
5. Access to healthcare	17
6. Special measures in place to protect young detainees	18
7. Special measures in place to protect detainees from violence	19
8. Women in detention	21
9. Nutrition	23
Part II: National jurisprudence	25
Belgium, Council of State (Raad van State), n° 243.480, 24 January 2019	25
Belgium, Council of State (Raad van State), n° 242.726, 19 October 2018	26
Belgium, Council of State (Raad van State), n° 242.885, 8 November 2018	27
Belgium, Court of Cassation (Hof van Cassatie), n° P.20.0337.F, 1 April 2020	29
Belgium, Court of Cassation (Hof van Cassatie), n° P.19.0397.N, 7 May 2019	31
Belgium, Court of Cassation (Hof van Cassatie), n° P.19.0952.F, 11 February 2021	32
Belgium, Constitutional Court (Grondwettelijk Hof), n° 22/2021, 11 February 2021	34
Belgium, French Civil Court (Franstalige burgerlijke rechtbank), Brussels, 5 December 2018	35
Belgium, French Civil Court (Franstalige burgerlijke rechtbank), Brussels, 9 January 2019	37

Part I: National standards

1. Cells

a) **Cell space:** What is the national standard for cell space available to detainees in m²? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling¹ observed?

For **persons in police custody**²: Police cell - a cell designated for the detention of one person for the duration of 24 hours. This cell has to be a minimum of 4.5 m² and should include an embedded bench of 200 cm by 90 cm with a blanket, mattress and drinking cup. In the event that detention is exceptionally extended beyond the initial 24 hours, then the cell space is required to be a minimum of 7 m² and include an embedded table with seating. Holding cell - a cell designated for the detention of one person for the duration of three hours. A holding cell should be a minimum of 4 m² and should include an embedded seat. A minor who is detained by the police must be put in a special surveillance room of minimum 5 m².

For regular prison cells, that are used for **persons in pre-trial detention/remand and post-trial detainees**, the cell has minimally the following floor surface:

- 10 m² (in case the cell is supposed to hold 1 prisoner);
- 12 m² (in case the cell is supposed to hold 2 prisoners);
- 15 m² (in case the cell is supposed to hold 3 prisoners);
- 25 m² (in case the cell is supposed to hold 4 prisoners);
- 38 m² (in case the cell is supposed to hold 5 or 6 prisoners);

The height should be minimally and everywhere 2,5 m.

The actual cell space and height may deviate up to 15% from these standards.

The width is minimally 2 m.³

For **disciplinary cells**, the cell space should be minimum 10 m². The height should be minimally and everywhere 2,5 m. The actual cell space and height may deviate up to 15% from these standards. The width is minimally 2 m.⁴

The calculation requirements spelled out by the CJEU in its *Dorobantu* ruling, as they apply to prison cells (that is, a minimum of 3 m² per prisoner in multi-occupancy accommodation⁵) are observed: a cell for 2 prisoners should be 12 m², a cell for 3 prisoners should be 15 m², etc.

¹ For the CJEU's calculation requirements please see: CJEU, [C-128/18, Dorobantu](#) [GC], Judgment of 15 October 2019, oper. part.

² Art. 1 [Royal Decree of 14 September 2007](#) (Koninklijk besluit van 14 september 2007 betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen).

³ Art. 41, §2 [Prison Law 12 January 2005](#) (Basiswet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden), *BS* 1 februari 2005; Art. 1 [Royal Decree of 3 February 2019](#) (Koninklijk besluit van 3 februari 2019 tot uitvoering van de artikelen 41, §2, en 134, §2, van de wet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden), *BS* 14 februari 2019.

⁴ Art. 5, 1° - 3°, Royal Decree of 3 February 2019.

⁵ *Dorobantu*, margin number 72.

For police custody this minimum requirement is not being observed: here the standards foresee minimally 2 m² per person in a collective cell.⁶ However, such stays in police custody are usually 'short, occasional and minor' and therefore the 'strong presumption of a violation of Article 3 of the ECHR' will normally be capable of being rebutted.⁷

However, it has to be stressed that for the existing police custody accommodation there's a period of 20 years to adapt to the standards set out in the Royal Decree of 14 September 2007⁸; the same applies to existing prison accommodation: for existing prisons there's a period of 20 years to adapt to the standards set out in the Royal Decree of 3 February 2019.⁹

b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

For persons in police custody:

There are a number of common norms:

- the level of lighting should be sufficient to allow permanent (electronic) supervision and to allow reading and writing;
- ventilation should allow refreshing air with a minimum of 30 m³ per hour;
- heating should, during the use of the place of detention, guarantee a temperature of minimally 18° celsius.¹⁰

A police cell (that is, infrastructure for detention of 1 person for a maximum length of in principle 24 hours) has a toilet. Persons who are detained in other places of detention should have the possibility to satisfy their natural needs.¹¹

It should be possible to observe places of detention from the outside, without having to open the door. They are equipped with a communication system. The signal has to reach a service that is permanently manned.¹²

Each place of detention is built with materials that can resist physical violence and are easily disinfected. Doors have minimally three anchor points that cannot be reached from the inside. Doors always turn open towards the outside. Places of detention are equipped in such a way that woundings, self-mutilation and suicidal behaviour become difficult. The pipes and switches for lighting and heating, as well as the flushing mechanism of the toilet, are not reachable via the inside of the place of detention.¹³

The materials used in places of detention are at a minimum fire resistant or fire retardant. There should be a fire detection system and evacuation plan, that is approved by a local fire department commandant, in every cell complex (that is, a grouping of more than 5 police cells in one building).¹⁴

⁶ Art. 14 [Royal Decree of 14 September 2007](#) (Koninklijk besluit van 14 september 2007 betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen).

⁷ Dorobantu, margin number 73.

⁸ Art. 17 Royal Decree of 14 September 2007. That these norms are therefore not always respected, was also confirmed by the General Inspection of the Federal and Local Police during its 2019 inspection of places of detention used by the police (evaluation report May 2020, information provided by e-mail, 29.06.2021).

⁹ Art. 11 Royal Decree of 3 February 2019.

¹⁰ Art. 6, 2° - 4°, Royal Decree of 14 September 2007.

¹¹ Art. 5 Royal Decree of 14 September 2007.

¹² Art. 9 Royal Decree of 14 September 2007.

¹³ Art. 7 Royal Decree of 14 September 2007.

¹⁴ Art. 8 Royal Decree of 14 September 2007.

A police cell has an anchored bench to rest of 200 cm by 90 cm and is equipped with minimally a blanket, a mattress and a drinking cup. In case of detention of longer than 24 hours, the police cell should also have an anchored table and the possibility to sit.¹⁵

In waiting cells (meant for 1 person for a duration of maximum 3 hours) and collective cells, there is an anchored possibility to sit down (in a collective cell every detainee should have to possibility to sit down like that).¹⁶

Supervision places (that is, places designed for supervising one or more minors) are minimally equipped with an anchored table and an anchored possibility to sit down. These places are equipped with an aggression resistant door, without looking like a cell door. The use of bars is forbidden. These places are equipped with furniture that is aggression resistant.¹⁷

Collective cells and cell complexes need to have the necessary infrastructure to preserve and distribute meals in a hygienic way.¹⁸

For prison cells that hold **persons in pre-trial detention/remand and post-trial detainees**, the following should be provided:

- a window with a surface of at least 1 m², which allows natural light to enter the prison cell and makes it possible to look outside of the prison cell;
- a sanitary installation that is separated and contains minimally a toilet and a washbasin and, if the cell space and shape of the cell make this possible, a shower. In case the cell is supposed to hold two or more prisoners, then the sanitary installation has to be completely separated from the living space;
- every prison cell should have a calling system. The signal should reach a receiver that is accessible on a permanent basis;
- ventilation and lighting should be in line with the regulations from the region where the prison is situated¹⁹;
- a night lighting system that can be operated from outside the cell and which allows observation with maximum respect for the prisoner's sleep;
- during day and night, and irrespective of the weather conditions, a heating system that maintains a minimum of 18° celsius;
- in terms of fire prevention and fire fighting, the cell needs to be in line with the applicable regulations from the region where the prison is situated; the equipment needs to be made of fire resistant material;
- the prisoner has the right to furnish his/her cell as long as this does not jeopardize rules regarding order or safety, as stipulated in the local prison regulations.²⁰

In terms of furnishing his/her cell, the general part of the local prison regulations ('huishoudelijk reglement') stipulates that every prison provides a number of objects that are part of the basic equipment of a prison cell: a table, a chair, a bed, a wash

¹⁵ Art. 11, 2°-3°, Royal Decree of 14 September 2007.

¹⁶ Art. 12 and 14 Royal Decree of 14 September 2007.

¹⁷ Art. 13 Royal Decree of 14 September 2007.

¹⁸ Art. 15 Royal Decree of 14 September 2007.

¹⁹ This means that every Region (Flanders, Brussels, Wallonia) has its own rules. Depending on the place where the prison is situated, the local rules will apply. For lighting NBN-EN 12464-1 applies. For ventilation the EPB-rules for each Region apply. Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

²⁰ Art. 1, 2, 8 and 10 Royal Decree of 3 February 2019; art. 41, §1 Prison Law.

basin and a toilet. In the special part of the local prison rules, which differ per prison, the local prison management can determine what other objects can be used to furnish the cell (e.g. closet, bulletin board, fridge). Prisoners are not allowed to buy/bring in their own furniture.²¹

For the **disciplinary cells** in prisons, the following applies:

- a window with a surface of at least 1 m², which allows natural light to enter the disciplinary cell;
- a door which can only be locked from outside; in the door there is an observation hatch and a serving hatch which are closed from the outside;
- disciplinary cells are built from materials that are easily to disinfect, fire resistant and resistant to physical violence;
- disciplinary cells can be observed in full from the corridor; cell corners are constructed in such a way that the prisoner can never escape from view;
- a toilet and a washbasin;
- in order to facilitate observation of the inmate, the disciplinary cell is equipped with video-surveillance, a microphone or any other technical device, in line with art. 137, §1 of the Prison Law.²² The Prison Law prescribes that disciplinary cells are equipped with a calling system.²³

For **rooms used for common activities** in prisons, the following applies:

- these rooms need to have a floor and window surface that are adapted to the activities that take place inside the rooms;
- these rooms should have a calling system. The signal should reach a receiver that is accessible on a permanent basis.²⁴

However, as was stressed before in the previous section, for the existing police custody accommodation there's a period of 20 years to adapt to the standards set out in the Royal Decree of 14 September 2007²⁵; the same applies to existing prison accommodation: for existing prisons there's a period of 20 years to adapt to the standards set out in the Royal Decree of 3 February 2019.²⁶

c) **Video-surveillance of cells:** Are there any national standards for video-surveillance of cells? If so, what do they require?

For **police custody**, video-surveillance is allowed in places of detention on the condition that detainees are at least being guaranteed the use of the toilet in privacy. The presence of cameras needs to be mentioned explicitly to the detained persons, unless a judicial authority decides otherwise.²⁷

²¹ Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

²² Art. 5-8 Royal Decree of 3 February 2019.

²³ Art. 134, §2 Prison Law.

²⁴ Art. 3-4 Royal Decree of 3 February 2019.

²⁵ Art. 17 Royal Decree of 14 September 2007.

²⁶ Art. 11 Royal Decree of 3 February 2019.

²⁷ Art. 10 Royal Decree of 14 September 2007.

For **prison cells**, when a prisoner is being placed in a disciplinary cell: Upon positive advice of the doctor, observation can take place by means of video-surveillance, microphone or any other technical means, if this is necessary to safeguard the physical integrity of the prisoner. The prisoner needs to be informed about this.²⁸

d) **Hygienic conditions in cells:** Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?

Every **prison** needs to have a maintenance plan that applies to regular prison cells, disciplinary cells and rooms used for common activities to make sure that these spaces, as well as their equipment, are maintained well and respect all contemporary hygienic and sanitary requirements.

This maintenance plan also needs to address the prevention and fighting of vermin and contagious diseases.

Every space, in which prisoners can be present, needs to receive a daily minimal cleaning and a weekly thorough (wet) cleaning. For the cleaning of the personal prison cell the necessary cleaning material should be made available to the prisoner.²⁹

The local prison management is responsible for drafting and implementing the maintenance plan.³⁰

Every prison has its own rules which allow prisoners to clean their own clothes³¹ with a sufficiently high frequency. Several systems are possible and/or combinable, from washing machines at the section to having clothes being taken care of outside the prison. In case prisoners need to wash their own clothes and when they have to pay for this, the financial contribution cannot exceed 1 euro per full wash cycle (wash/dry/iron). This amount can be adjusted at the central level in view of price evolutions. The specific way in which prisoners can take care of their own clothes and the costs, are described in the specific part of the local prison rules ('huishoudelijk reglement'). Prisoners can buy a washing product or a wash via the canteen.

Clothes that are provided by the prison (prison clothes or civilian clothes) are always washed at the expense of the prison.³²

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The Prison Law has a number of principles that apply to specific categories of prisoners, that is, a distinction is made between pre-trial³³ and convicted prisoners.³⁴

Pre-trial prisoners are to be separated from convicted prisoners, unless they agree in writing in order to participate in common activities.³⁵

Pre-trial prisoners need to have access to the necessary facilities in order to defend themselves in court.³⁶

There are no different standards with respect to the classification of the prisons.

²⁸ Art. 137, §1 Prison Law 12 January 2005.

²⁹ Art. 9 Royal Decree of 3 February 2019.

³⁰ Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

³¹ Art. 43 Prison Law deals with the right of prisoners to wear their own clothes.

³² Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

³³ Art. 10-13 Prison Law.

³⁴ Art. 9 Prison Law.

³⁵ Art. 11 Prison Law.

³⁶ Art. 12 Prison Law.

For pre-trial prisoners, the Prison Law stipulates explicitly that they have the right to isolate themselves in their prison cell.³⁷

- f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) – e), including their respective legal basis.

Internal (prison-specific) remedies:

- Prisoners have the right to write letters to a list of people outside the prison (King, members of parliament, etc.), which cannot be censored.³⁸
- Prisoners can get in touch and raise issues confidentially with a member of the local prison monitoring commission, who can mediate between the prisoner and the prison governor when there is a problem.³⁹
- Prisoners can complain about the prison governor's decisions through the formal complaint procedure. Every prison has a complaint commission, since 1 October 2020, which deals with such complaints. This (local) complaint commission can propose to mediate, if necessary/feasible. The (local) complaint commission can annul the prison governor's decisions and request the governor to take a new decision. Compensation for the prisoner is possible (with the exclusion of financial compensation). The procedure also foresees a right to appeal with the (central) appeal commission.⁴⁰

COVID-instructions (pdf) 30/4/2021: persons who need to speak with prisoners for professional reasons are still allowed to enter the prison. The new instructions now also explicitly specify that this includes members of the local prison monitoring commissions or of the central monitoring board for the prison system.

External (general) remedies:

Like other citizens, prisoners can avail themselves of the (external) existing judicial mechanisms:

- When a prisoner is a victim of a crime, s/he can file a complaint and have his/her case dealt with through the criminal law court system (Code Criminal Law).
- When a prisoner suffers damages, s/he can ask for reparation through the civil law court.⁴¹
- In case of an urgent need to take measures with respect to an alleged infringement of a subjective right⁴², the 'juge des référés'/'rechter in kortgeding' (this is the president of the tribunal of first instance) can intervene and take provisional measures in prison issues in order to prevent or stop infringement of subjective rights.
- In case of irregular administrative decisions, the Council of State can be requested to annul these.⁴³

- g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National

³⁷ Art. 52 Prison Law.

³⁸ For the full list (N=19), see art. 57, §1 Prison Law.

³⁹ Art. 20-31 Prison Law.

⁴⁰ Art. 147-166 Prison Law.

⁴¹ Art. 1382 Code Civil Law.

⁴² Art. 584, para 1 Code Criminal Procedure.

⁴³ Art. 14 Coordinated Laws 12 January 1973.

Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

So far, Belgium has not ratified OPCAT (signed on 24 October 2005), so there's no NPM yet.

There is no [CPT report](#) for the reference period (the most recent CPT report relates to the periodic visit of 27 March – 6 April 2017).

2. Sanitary conditions

a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay, even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

With respect to **police custody**, all police cells should have a toilet. People detained in other places of detention that are used by the police should have the possibility to use a toilet.⁴⁴

In terms of privacy, it is stipulated that places of detention should never be observable from a zone that is accessible to the public.⁴⁵ It should be possible to observe places of detention from the outside, without having to open the door. They are equipped with a communication system. The signal has to reach a service that is permanently manned.⁴⁶ This means that a detainee can communicate via a communication signal with the control room. If necessary s/he will be given the opportunity to use a toilet. Given the permanent police presence (24h/24h) this should also not be a problem during the night. When a cell is not equipped with a toilet, then detention is usually restricted in time (e.g. in waiting cells this is maximum 3 hours). A person who indicates that s/he needs to use a toilet, will be allowed to do so.⁴⁷

For prison cells that hold **persons in pre-trial detention/remand and post-trial detainees**: see above (under 1b), cells should have a sanitary installation that is separated and contains minimally a toilet and a washbasin and, if the cell space and shape of the cell make this possible, a shower. In case the cell is supposed to hold two or more prisoners then the sanitary installation has to be completely separated from the living space. Also disciplinary cells should have a toilet and washbasin.⁴⁸ However, as we noted above (see 1b), for the existing prisons there's a period of 20 years to adapt to the standards set out in the Royal Decree of 3 February 2019.⁴⁹

The Belgian Prison Administration adds that currently only a very limited number of prisons have cells without a toilet:

- *For Regio North:*

* There are no toilets in the 'chambrettes' of the Penitentiary Agricultural Center of Ruiselede (open prison with community regime). Prisoners usually are here only in the evening and at night, they have a key of their 'chambrette' and common toilets are available and at all times accessible to them. These 'chambrettes' will disappear when the Masterplan III is further realised. When that is completed, the cells will conform Royal Decree of 3 February 2019.

⁴⁴ Art. 5 Royal Decree of 14 September 2007.

⁴⁵ Art. 2 Royal Decree of 14 September 2007.

⁴⁶ Art. 9 Royal Decree of 14 September 2007.

⁴⁷ Information provided by the General Inspection of the Federal and Local Police (e-mail 29.06.2021).

⁴⁸ Royal Decree of 3 February 2019.

⁴⁹ Art. 11 Royal Decree of 3 February 2019.

* There are no toilets in the castle of the Penitentiary School Center of Hoogstraten (open prison with community regime) (pavilion b and c, total of 125 cells). Prisoners can use the common facilities during the day and use a toilet bucket at night. When Masterplan III is completed, all cells will have a sanitary installation (toilet and shower).
* There are no toilets in the five cells in the crisis section of the prison of Merksplas. When the Masterplan III is realised, then also these cells will be conform Royal Decree of 3 February 2019.

- *For Regio South:*

* There are no toilets in the cells of wing A of the prison of Tournai (approximately 20 prison cells). The renovation of wing A is being studied at the moment and the tender should be published in 2022. The renovation foresees a sanitary space (washbasin and toilet) in cells.

- *For Brussels:*

* There are no toilets in the cells of wings A and B of the prison of Forest. In these wings prisoners are being detained who work. These wings have an open door regime at the end of the afternoon (there are toilets accessible at the section), which implies that inmates are locked up for a limited period of time. This prison will be closed down in 2022, when the new prison of Haren becomes operational.⁵⁰

b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

For prison cells that hold **persons in pre-trial detention/remand and post-trial detainees**, the Prison Law stipulates that the prison governor should ensure that prisoners are capable of taking appropriate care of their appearance and bodily hygiene on a daily basis.⁵¹

In Collective Letter n° 107 (a letter from the Prison Administration which clarifies some of the rules introduced by the Prison Law to the prison governors), it is stated that this implies that a number of products are provided for free upon arrival in the prison:

- soap;
- tooth brush;
- toilet paper;
- shampoo;
- tooth paste;
- razor blade;
- shaving foam;
- sanitary towels (female prisoners).

These products are also provided at any other moment during the detention, if the prisoner does not have sufficient financial means to take appropriate care of him/herself. In such cases it is up to the local prison management to determine whether a prisoner does not have sufficient financial means, taking into account amongst others prison labour and financial means on his/her individual prison account.⁵²

⁵⁰ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

⁵¹ Art. 44 Prison Law.

⁵² Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

There is no national standard in terms of access to shower facilities. Collective Letter n° 107 only mentions that there should be 'sufficient moments for showering' and that prisoners in a safety or disciplinary cell should have the opportunity to wash themselves on a daily basis.⁵³ The Belgian Prison Administration adds that rules with respect to access to shower facilities are included in the local prison rules ('règlement d'ordre intérieur' or 'huishoudelijk reglement', art. 16 Prison Law), which are currently being revised.⁵⁴

In case of a prison officer strike, when a guaranteed minimum service needs to be provided, prisoners should, for the full duration of the strike, at least on a daily basis, be offered the possibility to take appropriate care of their appearance and bodily hygiene as well as of their prison cell; in case the strike lasts longer than two days, prisoners should have the possibility to take at least two showers on a weekly basis.⁵⁵

The Belgian Prison Administration adds that shower facilities have further improved since 2015 in the following prisons:

- Prison of Antwerp: a stronger pump has been introduced to improve the water pressure in the showers;
- Prison of Hasselt: this year the hot water pipes will be replaced so that showers will function better;
- Prison of Leuven-Hulp: works will start soon in order to renew the showers in wing B;
- Prison of Bruges: renewal of showers in section of women (block 5) and men 2 (block 4) is in end phase; renewal of showers in section men 1 (block 3) is planned in 2021;
- Prison of Leuven-Centraal: showers in wing E were fully renovated in 2015;
- Prison of Ypres: 5 new showers were introduced since 2016 for sections 1 and 2 (for common use, with individual shower cells);
- renovations have been concluded or are still ongoing in the prisons of Marneffe, Tournai, Dinant, Saint Hubert and Namur.⁵⁶

c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?

For prisons that hold **persons in pre-trial detention/remand and post-trial detainees**, it is stipulated that every prison needs to have a maintenance plan that applies to regular prison cells, disciplinary cells and rooms used for common activities to make sure that these spaces, as well as their equipment, are maintained well and respect all contemporary hygienic and sanitary requirements.

This maintenance plan also needs to address the prevention and fighting of vermin and contagious diseases.

⁵³ Collective Letter n° 107 (16 June 2011), at page 5 (Collectieve brief nr. 107, 16 juni 2011, Inwerkingtreding van verscheidene bepalingen van titels III en V van de basiswet, no weblink).

⁵⁴ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

⁵⁵ Art. 17, 2°, [Law 23 March 2019 concerning organisation of prison service](#) (Wet van 23 maart 2019 betreffende de organisatie van de penitentiaire diensten en van het statuut van het penitentiair personeel), BS 11 april 2019.

⁵⁶ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

Every space where prisoners can be present, needs to receive a daily minimal cleaning and a weekly thorough (wet) cleaning. For the cleaning of the personal prison cell, the necessary cleaning material should be made available to the prisoner (see under 1d).⁵⁷

- d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The same rules apply to all detention regimes.

- e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) – d), including their respective legal basis.

See above under section 1.f.).

- f) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

See above under section 1.g.).

3. Time out of cell

- a) What is the national standard set for time per day/week spent by detainees outside of their cells:
- Outdoors (within the boundary of the prison)?
 - Indoors in the common area?

For prisons that hold **persons in pre-trial detention/remand and post-trial detainees**, the Prison Law stipulates that prisoners have the right to physical exercise and sport during at least 2 hours per week and a walk or other recreational activity outside (open air) during at least 1 hour per day.⁵⁸

The daily walk or recreational activity outside (open air) (min. 1h/day) happens in common, that is, in the presence of other prisoners. Only in case of a disciplinary sanction or a safety measure, this can be restricted to an individual walk outside.

The physical exercise and sport (min. 2h/week) can take place indoor or outdoors.⁵⁹

⁵⁷ Art. 9 [Royal Decree of 3 February 2019](#) (Koninklijk besluit van 3 februari 2019 tot uitvoering van de artikelen 41, §2, en 134, §2, van de wet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden), *BS* 14 februari 2019.

⁵⁸ Art. 79, §1 Prison Law.

⁵⁹ Collective Letter n° 107 (16 June 2011), at page 22 (Collectieve brief nr. 107, 16 juni 2011, Inwerkingtreding van verscheidene bepalingen van titels III en V van de basiswet, no weblink).

In case of a prison officer strike, when a guaranteed minimum service needs to be provided, prisoners should, for the full duration of the strike, at least on a daily basis, be offered the possibility to spend at least 1 hour in the open air.⁶⁰

COVID-instructions (word) 12/3/2021: for the **walks**, there are certain rules in place. Firstly, there have to be stable compartments. This means that the walks need to consist of mostly the same groups of prisoners each time. There has to be as little change in these groups as possible and prison administrations need to avoid mixing sections. Secondly, the groups for the walks will be smaller than normal. Thirdly, the walks will be longer than normal, if the compartmentalisation with smaller groups allows for this.

b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

See above under section 3.a.).

In addition, the Prison Law deals (in general terms) with aspects related to religion (art. 71 – 75), educational and recreational activities (art. 76 – 80) and prison labour (art. 81 – 86).

COVID-instructions (pdf and word) 12/3/2021: one-on-one activities of various kinds can continue to take place. However, currently there can be no **collective activities** (educational, cultural et cetera). An exception is in place for prisoners who are already enrolled in a course with a mandatory intra-muros exam. These prisoners can take their exam in groups of maximum 4 and/or – if necessary – follow a preparational class prior to their exam in groups of maximum 4 (plus one external person). These prisoners have to wear a mouth mask and keep 1,5 m distance from each other. A second exception is in place for prisoners who are working in the prison. This labour can also continue. A third exception is in place for collective religious/moral activities. However, the number of participants here is limited in function of the floor space (1 prisoner per 10 m², with a maximum of 15 plus 1 external person). Besides that, participants need to keep 1,5 m distance from each other and they have to wear a mouth mask.)

COVID-instructions (word) 12/3/2021: **library books** can be handed out to cells, but prisoners cannot go to the library.

COVID-instructions (word) 29/1/2021: **visits** to prisoners are allowed again since 7/12/2020 (children-visits since 21/12/2020). Every prisoner who is normally entitled to table visits now regains this right, except for prisoners who are in preventive quarantine or medical isolation. Every prisoner has a theoretical possibility to at least 1 visit session per week. For the time being, only table visits will be allowed by persons mentioned in article 59 of the Prison Law. However, some rules are in place. Firstly, there is only 1 person of minimum 16 years old allowed per visit session. This person has to be the same one for a duration of 4 weeks. After 4 weeks, prisoners can change their regular visitor. Secondly, children can join the table visit, but there are only 2 children (younger than 16 years) allowed per visit session. These do not have to be the same children every visit. If children can only visit their detained parent in the company of an employee of an external service, 1 external professional can accompany maximum 2 children during a visit. These external professionals will not be seen/counted as the regular visitor of that prisoner. Thirdly, voluntary visitors who are linked to a non-profit association can visit prisoners who are not receiving other visitors. Lastly, in-house visits (prisoner to prisoner) are possible on the condition that visits take place in the visit hall, so that all hygienic prescriptions are fulfilled. These prisoners can also change their regular visitor after 4 weeks. The **general rules** are that every visit needs to be reserved beforehand. Every person in the visit hall has to sanitize his/her hands before the visit session. Plexi-screens will be available on the tables. Everyone (besides from

⁶⁰ Art. 17, 4°, [Law 23 March 2019 concerning organisation of prison service](#) (Wet van 23 maart 2019 betreffende de organisatie van de penitentiaire diensten en van het statuut van het penitentiair personeel), BS 11 april 2019.

children younger than 12 years) has to wear a mouth mask and there can be no physical contact. Note: besides from regular visits, prisoners can keep having **videocalls** with (other) loved ones.

c) Is there a national standard for time spent in cells? If so, what does it require?

There is no national standard for time spent in cells under Belgian law.

d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

See above under section 3.a.).

The Prison Law stipulates that prisoners have the right to participate in what is being provided within the prison in terms of programmes, activities, etc.⁶¹

Such activities and programmes (culture, sport, education, ...), however, are not a federal competence so there are no national standards. This is a competence of the Communities.⁶²

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are no different standards applicable to different detention regimes.

COVID-instructions (word) 12/3/2021: existing open-door regimes can continue, because those prisoners are part of the same 'bubble'. However, some restrictions: only within the same compartment as the daily walk, maximum 2 prisoners at the same time in 1 cell, and obligatory use of a mouth mask.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) – e), including their respective legal basis.

See above under section 1.f.).

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

See above under section 1.g.).

⁶¹ Art. 103, §1 Prison Law.

⁶² On this, see e.g. [Décret de 19 juillet 2001 de la Communauté française relatif à l'aide sociale aux détenus en vue de leur réinsertion sociale](#) and [Decreet van 8 maart 2013 betreffende de organisatie van hulp- en dienstverlening aan gedetineerden](#).

4. Solitary confinement

a) What are the national standards regarding solitary confinement?

Solitary confinement enforced as a security measure can only be applied if the warden deems that there is a danger for general order and/or safety and if the measure is proportional to the danger it would remedy.⁶³ Solitary confinement as a security measure may last a maximum of seven days.⁶⁴ This seven day period can only be renewed by a motivated decision of the warden and after hearing the prisoner. The measure can be renewed three times, bringing the maximum application of solitary confinement to 21 days in total.⁶⁵ When solitary confinement is taken as a security measure, the prisoner retains the right to use/enjoy all facilities, organised by the prison (e.g. the use of the telephone and other means of communication, written and oral contact with lawyers and with consular and diplomatic officials), except when this is no longer compatible with the aim of the security measure.⁶⁶ When a prisoner is detained in solitary confinement in a punishment cell, the warden must ensure that the prisoner has meals, clothing, shoes and products for his/her personal hygiene; has sufficient reading materials; has the option to spend at least one hour in the open air; can carry out correspondence; can profess his/her religion of choice and receive visitation of a representative of that religion; can apply to a lawyer for legal support; can apply to psychosocial and medical assistance⁶⁷; and does not stay longer than 14 days in the 'punishment cell'.⁶⁸

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

- in case of a forced stay in a prison cell⁶⁹ or in a safety cell⁷⁰: prisoners need to be followed-up carefully by the prison governor and the prison doctor; they need to visit him/her regularly, check his/her state and verify whether s/he has complaints or remarks⁷¹;
- members of the monitoring bodies can visit prisoners in safety cells⁷²;
- prisoners in an 'individual special safety regime', in case this regime includes separation from the prison community, will be visited at least once a week by the prison governor and the doctor to check his/her state and verify whether s/he has complaints or remarks⁷³;
- in case of placement in a disciplinary cell (as a sanction): a prisoner will be visited on a daily basis by the prison governor and the doctor to check his/her state and verify whether s/he has complaints or remarks.⁷⁴ Upon positive advice of the doctor, observation can take place by means of video-surveillance, microphone or any other technical means, if this is necessary to safeguard the physical integrity of the prisoner. The prisoner needs to be informed about this.⁷⁵ The Prison Law does not add any further

⁶³ Art. 110, §1 Prison Law.

⁶⁴ Art. 112, §2 Prison Law.

⁶⁵ Art. 112, §2 Prison Law.

⁶⁶ Art. 113, §1 Prison Law.

⁶⁷ Art. 136 Prison Law.

⁶⁸ Art. 139 Prison Law.

⁶⁹ Art. 112, 4°, Prison Law.

⁷⁰ Art. 112, 5°, Prison Law.

⁷¹ Art. 113, §2 Prison Law.

⁷² Art. 113, §3 Prison Law.

⁷³ Art. 118, §5 Prison Law

⁷⁴ Art. 137, §2 Prison Law.

⁷⁵ Art. 137, §1 Prison Law.

prescriptions on how prisoners should be informed about this. Essentially the prisoner needs to know if and when the camera functions (e.g. a system with a little lamp that is switched on when the camera functions can indicate to the prisoner that s/he is being filmed). Prisoners are informed about this in general terms⁷⁶;

- members of the monitoring bodies can visit prisoners in disciplinary cells⁷⁷;

- in case of a forced stay in a prison cell (as a sanction): a prisoner will be visited at least once a week by the prison governor and the doctor to check his/her state and verify whether s/he has complaints or remarks.⁷⁸

The members of the monitoring bodies (that is, the Central Monitoring Body (including their personnel and, if applicable, experts) and the Local Monitorings Bodies) have between 7:00 and 21:00 at all times, including during industrial action and strikes, unlimited access to all prisons (for the members of the Central Monitoring Body) or the prison that they are connected to (for the Local Monitoring Bodies). Visits at night (between 21:00 and 7:00) are only undertaken by the members of the Central Monitoring Body and by delegations that are composed by the Central Monitoring Body. Such nightly visits will always be announced beforehand to the local prison management who will grant permission to enter the prison, in accordance with art. 9 of the Royal Decree of 17 August 2019.⁷⁹

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are no different standards applicable to different detention regimes.

d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.

See above under section 1.f.).

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

See above under section 1.g.).

⁷⁶ Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

⁷⁷ Art. 137, §3 Prison Law.

⁷⁸ Art. 141 Prison Law.

⁷⁹ Information provided by the Belgian Prison Administration (e-mail 25.06.2021); [Royal Decree of 17 August 2019](#) (Koninklijk besluit van 17 augustus 2019 tot uitvoering van de bepalingen van de basiswet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden inzake de toegang tot de gevangenis), *BS* 29 augustus 2019.

5. Access to healthcare

<p>a) What is the national standard with regard to access to medical services in prisons, including emergency care? (E.g.: Do detainees have prompt access to medical services within prisons and/or externally? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?</p>
<p>The Prison Law, as changed in 2018, stresses in particular the equivalence of care with the outside community.⁸⁰</p> <p>Healthcare in prisons includes: services with the aim to improve, assess, retain, recover or improve the physical and mental condition of the patient; health prevention and health protection of prisoners; and the reintegration of the prisoner in society throughout the aid of healthcare professionals.⁸¹ The prisoner has the right to receive healthcare, similar to the one provided to the general population and healthcare that is adjusted to the specific needs of the prisoner.⁸²</p> <p><u>In case of a prison officer strike</u>, when a guaranteed minimum service needs to be provided, prisoners should, for the full duration of the strike, at least on a daily basis, receive, and continue to receive, medical and well-being care, as their health condition requires.⁸³</p>
<p>b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?</p>
<p>There are no national standards regulating the availability of qualified medical and nursing personnel under Belgian law.</p>
<p>c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of a detainees? If so, what do they require?</p>
<p>Upon arrival a prisoner needs to be seen by the doctor within 24 hours.⁸⁴ This examination has three objectives: (1) assess whether the prisoner is a medical danger for the prison (e.g. contagious disease); (2) assess whether the prison is a danger to the prisoner (that is, check if the health condition of the person is an obstacle to imprisonment); (3) assure continuity of the health care the prisoner received before his/her imprisonment. When confronted with (suspicion of) a psychic/psychiatric problem, the prison doctor can refer the prisoner to the psychiatrist. Within four days of his/her arrival, the prisoner will be seen by a member of the psycho-social service of the prison. This person explains to the prisoner how s/he can make use of social, psychosocial, juridical and familial support. Every prisoner is being received by different services within the prison. Each service can, when there's a suspicion of a psychic problem, refer the prisoner to a specialised external service. The Law on patient rights applies.⁸⁵</p>
<p>d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?</p>
<p>There are no national standards regulating the provision of specialist care under Belgian law.</p>

⁸⁰ Art. 87-89 Prison Law.

⁸¹ Art. 87 Prison Law.

⁸² Art. 88 Prison Law.

⁸³ Art. 17, 3°, Law 23 March 2019.

⁸⁴ Art. 5 [Royal Decree of 8 April 2011](#) (Koninklijk besluit van 8 april 2011 tot bepaling van de datum van inwerkingtreding en uitvoering van verscheidene bepalingen van de titels III en V van de basiswet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden), BS 21 april 2011.

⁸⁵ Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?
The general part of the local prison regulations ('huishoudelijk reglement') stipulates that prisoners can consult a doctor of their own choosing. For this s/he needs to write a note to the prison governor with his/her request. If the prison governor grants permission, then the prisoner can get in touch with his/her doctor. In this case the prisoner will have to pay the costs of the consultation. Ministerial Circular Letter n° 1495 states that such requests should in principle be granted: the prisoner's request can only be rejected for reasons related to order and safety. ⁸⁶
f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
There are different standards applicable to different detention regimes.
g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) – f), including their respective legal basis.
See above under section 1.f.).
h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the OPCAT Database .
See above under section 1.g.).

6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)
Note: following a reform of the state in 2014, dealing with youth delinquency has become a competence of the Communities. These reforms are ongoing (e.g. in Flanders with the partial implementation of the Decree of 15 February 2019 ⁸⁷).
b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.
Minors who are tried as adults are transferred to a closed federal centre for minors who have committed an act that is described as a criminal offence. ⁸⁸

⁸⁶ Art. 96 [Royal Decree of 21 May 1965](#) (Koninklijk besluit van 21 mei 1965 houdende algemeen reglement van de strafinrichtingen), *BS* 25 mei 1965; Ministerial Circular Letter n° 1495 of 16 October 1985 (ministeriële omzendbrief nr. 1495 van 16 oktober 1985: Vrije keuze van geneesheer – art. 96 A.R., niet-gepubliceerd). In the future this will be regulated by art. 91 of the Prison Law, but this article has not come into force yet. Information provided by the Belgian Prison Administration (e-mail 25.06.2021).

⁸⁷ [Decree of 15 February 2019](#).

⁸⁸ Art. 84bis, §4 Youth Law.

The Code of Criminal Procedure sets out that minors (aged 16-17) who are tried as adults can never be transferred to a normal prison as long as they are still underage.⁸⁹ Young adults aged 18 or above can be transferred to a normal prison, when: (1) the maximum capacity of the closed centre has been reached; (2) they seriously disrupt life in the centre; or (3) they endanger the integrity of the minors, other young adults, or the personnel.⁹⁰ Young adults aged 23 or over are transferred to a normal prison.⁹¹ It is thus possible for youngsters aged 18 to 23 to stay in the closed federal detention centres, together with those aged 16 and 17. On the one hand, this makes it possible to protect young adults aged 18 to 23 from older detainees in normal prisons. On the other hand, the integrity of the minors in the closed federal detention centres is protected through the use of individual rooms.⁹²

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are no different standards applicable to different detention regimes.

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) – c), including their respective legal basis.

See above under section 1.f.).

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See above under section 1.g.).

7. Special measures in place to protect detainees from violence

a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? (E.g.: Are there emergency call buttons? Do guards receive special training? Do detainees have access to a complaints mechanism?)

There is a general duty to report criminal offences to the public prosecutor for authorities/public servants, which also applies in the context of imprisonment (art. 29 Code Criminal Procedure). Prisoners who are victims of violence, can report this to the prison governor and the prison monitoring body.

⁸⁹ Art. 606 Code Criminal Procedure.

⁹⁰ Art. 606 Code Criminal Procedure.

⁹¹ Art. 606 Code Criminal Procedure.

⁹² Marjan Rom, Rechtspositie van uit handen gegeven jongeren in Tongeren, TJK 2010/2, p. 111.

The training programme for prison officers pays special attention to dealing with conflict and aggressive behaviour, on the basis of an integral policy (prevention, control and aftercare). In practice a five phase-model is being applied: phase 0 normal; phase 1 verbal resistance; phase 2 verbal aggression; phase 3 aggression towards objects; phase 4 aggression towards persons (including oneself); and phase 5 aftercare. For each phase, there are appropriate responses proportional to the degree of escalation.

Prison officers learn about prisoners' right to complain⁹³ and the functioning of the prison monitoring bodies in their training with respect to the Prison Law, which forms part of the basic training of personnel.⁹⁴

b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? (E.g.: Are detainees supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

The prison governor and all prison personnel under his/her authority need to preserve order and safety within the prison.⁹⁵ Preserving internal safety is one of the core tasks of the prison officers, which includes being attentive and vigilant so that the physical integrity of inmates is not being violated. Prison management can take special safety measures towards individual prisoners, if there are serious indications that there is a threat to order or safety (including the safety of oneself).⁹⁶

c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

The Prison Law applies to all inmates – this implies that the specific group of LGBTI detainees has the same rights and guarantees (in terms of care, safety, etc.) as other prisoners.

For the group of LGBTI prisoners, a policy document has been drafted with recommendations about how to deal with this subgroup. The point of departure here is respect for the personal gender experience. A draft action plan has been written in order to implement the recommendations throughout the whole organisation and to distribute the necessary documentation. According to the Belgian Prison Administration, these documents will be presented in the near future to the strategic management team of the Prison Administration.⁹⁷

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are no different standards applicable.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) – d), including their respective legal basis.

See above under section 1.f.).

⁹³ Art. 144 and further Prison Law.

⁹⁴ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

⁹⁵ Art. 105 Prison Law.

⁹⁶ Art. 110 and further Prison Law; Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

⁹⁷ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

So far, Belgium has not ratified OPCAT (signed in 2005), so there's no NPM yet.

There is no [CPT report](#) for the reference period (the most recent CPT report relates to the periodic visit of 27 March – 6 April 2017).

8. Women in detention

a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

For **police custody**, a police cell is an individual place of detention and, accordingly, is occupied by one person (irrespective of sex). When people are detained in collective cells, women should in principle be separated from men and/or other solutions will be explored.

Before detention in a cell, the person will be searched to make sure that s/he does not have any objects or substances that are dangerous to him/her or to other persons or that can facilitate escape. Such search will in principle be executed by a police officer of the same sex as the detainee.⁹⁸

For **custody in prison**, the Prison Law does not differentiate between male and female detainees. There's only one exception:

- In case of a disciplinary procedure against a pregnant woman or a woman whose child is less than three years and with her in the prison: in this case the prisoner cannot be detained in a disciplinary cell.⁹⁹

The Belgian Prison Administration adds that the local prison rules ('règlement d'ordre intérieur' or 'huishoudelijk reglement', art. 16 Prison Law) for several prisons are currently being revised. In the future these will include extra provisions related to own clothing, adapted nutrition for pregnant women, availability of products for bodily hygiene and health care for pregnant women.¹⁰⁰

b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

There are currently 9 prisons where female prisoners are being held (Antwerp, Mons, Bruges, Brussels, Ghent, Hasselt, Hoogstraten, Lantin and March-en-Famenne).¹⁰¹ Women can only be held in these prisons.

There are no further rules related to the separation of male and female prisoners.

⁹⁸ Art. 28, §3 [Law 5 August 1992](#) (Wet van 5 augustus 1992 op het politieambt); Information provided by the General Inspection of the Federal and Local Police (e-mail 29.06.2021).

⁹⁹ Art. 134, §3 Prison Law.

¹⁰⁰ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

¹⁰¹ Art. 2, §2 [Royal Decree of 17 August 2019](#) (Koninklijk besluit van 17 augustus 2019 tot uitvoering van de bepalingen van de basiswet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden inzake de bestemming van de gevangenen en de plaatsing en de overplaatsing van de gedetineerden), *BS* 29 augustus 2019.

The Belgian Prison Administration adds that the European Prison Rules and the comments of the CPT are taken into account. These recommendations start from the principle of separate detention for men and women; exceptions are possible under certain conditions. Female detainees need to be housed in places that are physically separated from the spaces where male detainees are housed. During its visits, the CPT observed situations where men and women were held in the same section of a prison, inspired by the principle of normalization. The CPT emphasized that one has to be very careful in terms of determining and respecting the criteria for deciding to place men and women in such a mixed section. This also requires close monitoring of the relations between both categories. The selection of inmates for such a section needs to happen with the necessary caution (e.g. not for vulnerable detainees).¹⁰²

c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

In the local prison rules ('règlement d'ordre intérieur' or 'huishoudelijk reglement', art. 16 Prison Law) and Collective Letter n° 107¹⁰³, it is stipulated that sanitary towels are being provided to female detainees¹⁰⁴ (on this, and other hygiene products for male and female detainees, see also 2b).

d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

Prisoners have the right to health care that is equivalent to health care in society. The local prison rules contain several specific provisions for pregnant, female detainees:

- With respect to nutrition: the prisoner who stays in prison with her child, is being offered food that is adapted to the age and the specific needs of the child. Adapted nutrition is also being offered to pregnant women and women who breastfeed, on the basis of medical advice.

- With respect to health care: when a prisoner is pregnant, she has the right to adapted prenatal care (gynaecologist, obstetrician, medical-social assistant, psychologist). She will be transferred to a hospital in order to give birth. The prisoner also has the right to medical and psychosocial care after giving birth, which will be made available by the prison.¹⁰⁵

e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

There are three prisons where persons can be detained with their child (under three years old): Bruges, Brussels and Lantin.¹⁰⁶

The Belgian Prison Administration adds that there is, at this moment, no global framework for children who stay with their mothers in prison. The prisons of Lantin and Berkendael have a protocol of cooperation with the relevant agencies of the Communities. The prison of Bruges has no such protocol yet with 'Kind & Gezin'. The conclusion of such a protocol with 'Opgroeien', the relevant agency from the Flemish

¹⁰² Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

¹⁰³ Collective Letter n° 107 (16 June 2011), at page 5 (Collectieve brief nr. 107, 16 juni 2011, Inwerkingtreding van verscheidene bepalingen van titels III en V van de basiswet, no weblink).

¹⁰⁴ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

¹⁰⁵ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

¹⁰⁶ Art. 3 [Royal Decree of 17 August 2019](#) (Koninklijk besluit van 17 augustus 2019 tot uitvoering van de bepalingen van de basiswet van 12 januari 2005 betreffende het gevangeniswezen en de rechtspositie van de gedetineerden inzake de bestemming van de gevangenen en de plaatsing en de overplaatsing van de gedetineerden), BS 29 augustus 2019.

Community, has been included in the 'Strategic Plan for Care and Assistance' (deadline: end 2022).

In the newer version of the local prison rules ('règlement d'ordre intérieur' or 'huishoudelijk reglement', art. 16 Prison Law), which are currently in preparation, additional provisions will be included (including related to designated living space, access to common rooms and the patio, care and assistance, ...).¹⁰⁷

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are different standards applicable.

g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) – f), including their respective legal basis.

See above under section 1.f.).

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See above under section 1.g.).

9. Nutrition

a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

The Prison Law stipulates that prisoners should receive a sufficient amount of food that lives up to the norms of modern hygiene and that, if necessary, is adapted to requirements related to the prisoner's health.¹⁰⁸

In case of a prison officer strike, when a guaranteed minimum service needs to be provided, prisoners should, for the full duration of the strike, at least on a daily basis, be offered meals in sufficient quantity and quality, in accordance to the health situation of the prisoner. This should include one hot meal on a fixed moment of the day.¹⁰⁹

b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?

¹⁰⁷ Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

¹⁰⁸ Art. 42 Prison Law.

¹⁰⁹ Art. 17, 1^o, Law 23 March 2019.

In Collective Letter n° 107, it is argued that prisoners should receive 3 meals per day with respect for rules related to a "balanced diet".¹¹⁰

c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?

In Collective Letter n° 107, it is argued that prisoners should receive 3 meals per day with respect for rules related to a "balanced diet".

It is further argued that a special diet is possible, but only upon medical advice. Freedom of religion should be respected, which implies that dietary requirements that are related to religion should be complied with. This implies that prisons should take the required measures, in so far as these are reasonable.¹¹¹

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are no different standards applicable.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) – d), including their respective legal basis.

See above under section 1.f.).

f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See above under section 1.g.).

¹¹⁰ Collective Letter n° 107 (16 June 2011), at page 4 (Collectieve brief nr. 107, 16 juni 2011, Inwerkingtreding van verscheidene bepalingen van titels III en V van de basiswet, no weblink).

¹¹¹ Collective Letter n° 107 (16 June 2011), at pages 4 and 5 (Collectieve brief nr. 107, 16 juni 2011, Inwerkingtreding van verscheidene bepalingen van titels III en V van de basiswet, no weblink).

Part II: National jurisprudence

Belgium, Council of State (Raad van State), n° 243.480, 24 January 2019

Thematic area	Section 3b. Time out of cell
Decision date	24 January 2019
Reference details	Belgium, Council of State (Raad van State), 11th chamber, n° 243.480 , 24 January 2019.
Key facts of the case	The Applicant was a prisoner at the prison of Ittre, staying at the deradicalization wing. In April 2017, he received a disciplinary sanction from the director of the prison, for having prayed together with another prisoner at the courtyard. He did not stop praying, when a prison guard asked him to. As a result, he was not allowed to participate in activities for a period of 5 days, based on the presumption that he instigated (or was the leader of) a collective action that threatened the security of the prison.
Main reasoning/argumentation	According to article 71, §1 of the Prison Law of 12 January 2005 (hereafter: "Prison Law") prisoners have the right to an individual and collective religious practice, with respect however to the rights of other prisoners. According to article 9, §2 of the European Convention on Human Rights, this right is not absolute, but has to take for example the public security into account. The prisoner <i>in casu</i> was sentenced for not obeying the order of the guard, but there was no threat to the prison or others, so he had the right to continue praying.
Key issues (concepts, interpretations) clarified by the case	The right to an individual and collective religious practice, set out in article 71, §1 of the Prison Law is not absolute. However, when exceptions to this right are made, they must be made with a thorough appreciation of the facts at hand.
Results (sanctions) and key consequences or implications of the case	Even though both prisoners that were praying, were detained at the deradicalization wing, this does not automatically mean that their 'collective' prayers constitute a risk for the prison facility. Therefore, the prison administration's disciplinary sanction was inadequate. As a result, the Applicant has the right to his requested award for procedural damages for the amount of 700 Euro. The other costs, for a sum of 200 Euro, are also to be borne by the Belgian State. The decision of the prison administration towards the Applicant is cancelled.

<p>Key quotation in original language and translated into English with reference details</p>	<p>Page 8, margin number 15:</p> <p><i>“Il résulte de ce qui précède qu’en sanctionnant le requérant pour n’avoir pas obéi à un agent lui demandant d’arrêter sa prière, celle-ci ne présentant, dans les circonstances spécifiques pré-décrites, aucun risque pour l’ordre et la sécurité au sein de l’établissement, la partie adverse a, en l’espèce, commis une erreur manifeste d’appréciation, de sorte que, dans cette mesure, le moyen unique est fondé.”</i></p> <p>It follows from the foregoing that, in sanctioning the Applicant for not obeying an officer's request to stop his prayer, which, in the specific circumstances described above, posed no risk to order and security within the establishment, the opposing party made a manifest error of assessment in the present case, so that, to that extent, the single plea is well founded.</p>
---	--

Belgium, Council of State (Raad van State), n° 242.726, 19 October 2018

Thematic area	Section 4a. Solitary confinement
Decision date	19 October 2018
Reference details	Belgium, Council of State (Raad van State), 11th chamber, n° 242.726 , 19 October 2018.
Key facts of the case	The Applicant was a prisoner at the prison of Andenne. In October 2018, he received a disciplinary sanction from the director of the prison, which entailed a stay of 30 days in isolation. The reason for this sanction was the fact that 51 prisoners (of whom the Applicant was one) had refused to go back to their cells after having spent some time in the courtyard. The police was called upon to help and stop this protest. The Applicant received his sanction for 2 infractions of the 1 st category (intentional breach of the order and instigation/conduction of collective action seriously endangering the security or order in the prison) and 1 infraction of the 2 nd category (refusal to obey orders and directions of prison staff), as set out in articles 129 and 130 of the Prison Law.
Main reasoning/argumentation	It is clear that the Applicant ‘participated’ in the collective protest. However, there is no evidence to conclude that the Applicant ‘instigated’ this protest and, thus, breached article 129, 6° of the Prison Law (disciplinary infraction of the 1 st category). In addition, since the protest was not accompanied by violence, the conditions of

	<p>article 129, 6° of the Prison Law were not met, because this would require ‘collective actions, which put the security or order of the prison severely in danger’. The infraction of the 2nd category was proven, but according to article 139 of the Prison Law, a maximum of 15 days is set out for isolation in a disciplinary cell.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>To conclude that a prisoner has made a disciplinary infraction of the 1st category, there has to be both, a serious as well as complete examination of the circumstances of the case.</p> <p>For disciplinary infractions of the 2nd category, a maximum of 15 days isolated stay in a disciplinary cell is set out and has to be respected.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The execution of the decision taken by the director of the prison of Andenne, imposing the disciplinary sanction of 30 days of isolation on the Applicant, is suspended.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>Page 6, paragraph 5:</p> <p><i>“S’agissant du refus d’obtempérer aux injonctions, il convient de relever que la sanction attaquée excède la période maximale de 15 jours de placement en régime d’isolement qui peut être infligée pour cette infraction de deuxième catégorie. Cet aspect de la motivation de l’acte attaqué, outre le fait que le requérant en conteste la matérialité, ne peut légalement justifier l’acte attaqué”</i></p> <p>With regard to the refusal to comply with orders, it should be noted that the contested measure exceeds the maximum period of 15 days of solitary confinement that can be imposed for this second category offence. This aspect of the statement of reasons for the contested measure, apart from the fact that the Applicant contests its materiality, cannot legally justify the contested measure.</p>

Belgium, Council of State (Raad van State), n° 242.885, 8 November 2018

Thematic area	Section 4d. Solitary confinement
Decision date	8 November 2018
Reference details	Belgium, Council of State (Raad van State), 11th chamber, n° 242.885 , 8 November 2018.
Key facts of the case	The Applicant was a prisoner at the prison of Lantin. In July 2017, he was placed under an individual special safety regime by the director of the prison (based on art. 116 and 117 Prison Law), to take place

	<p>from July to September 2017, which was then renewed for another two months. The regime entailed extensive measures: prohibition to take part in individual or group activities, systematic control of incoming and outgoing correspondence et cetera. The reason behind the regime is the fact that the Applicant was seen as a radicalized prisoner, who could exert extremist influence on other prisoners and could thus put the safety of the prison at risk.</p> <p>(separate source for the facts of the case)</p>
<p>Main reasoning/argumentation</p>	<p>Prisons have the possibility to take a ‘measure of internal order’, dictated exclusively or mainly by a concern for security or prudence. This type of measure can only be taken by the prison administration to ensure the proper functioning of the prison and the maintenance of order. Since this constitutes a simple measure of internal organization, it is in principle not open for annulment. However, the situation radically differs, if this ‘measure of internal order’ forms in practice a ‘disguised disciplinary sanction’ or a ‘for appeal susceptible measure of order’.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>Firstly, to know whether one is actually dealing with a ‘disguised disciplinary sanction’, one has to assess the disciplinary nature of the measure. This happens by taking into account the content of the act, the circumstances in which it is adopted, whether the prisoner's behaviour is qualified as wrongful, whether the intention to punish such behaviour is manifest and the impact on the prisoner's rights.</p> <p>Secondly, to know whether one is actually dealing with a ‘for appeal susceptible measure of order’, it is necessary to examine whether the authority has taken a measure of order which not only arises from the prisoner's behaviour, but can also be considered serious in that it affects his/her rights and legal position.</p> <p>It is thus crucial to examine the circumstances <i>in casu</i> which led to the adoption of a so-called ‘measure of internal order’, to investigate whether it is not in practice a ‘disguised disciplinary sanction’ or a ‘for appeal susceptible measure of order’.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p><i>In casu</i>, there is nothing in the administrative file to suggest, nor does the Applicant prove that the sole or main purpose of the measure was to punish the prisoner and therefore constituted a ‘disguised disciplinary measure’.</p> <p>However, the contested measure was adopted in light of the behaviour of the prisoner, in accordance with article 116, §1 of the Prison Law. In addition, placement within an individual special safety regime entails that one or more measures of article 117 of</p>

	<p>the Prison Law were implemented, which strongly limit the rights of the prisoner. In conclusion, a decision to place someone under an individual special safety regime, based on their behaviour and having serious consequences for their rights and legal position, forms a ‘for appeal susceptible measure of order’ (art. 118, §10 Prison Law).</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>Page 6, paragraph 2:</p> <p><i>“Pour qualifier une mesure d'ordre intérieur soit de sanction disciplinaire déguisée, soit de mesure d'ordre susceptible de recours, il convient d'examiner, au cas par cas, les circonstances qui ont conduit à son adoption. En ce qui concerne la première hypothèse, le caractère disciplinaire ou non d'une mesure s'apprécie en tenant compte de la teneur de l'acte, des circonstances dans lesquelles il est adopté, de ce que le comportement du détenu est ou non qualifié de fautif, de l'intention manifestée ou non de punir un tel comportement et des incidences sur les droits du détenu. Dans la seconde hypothèse, il y a lieu d'examiner si l'autorité a pris une mesure d'ordre qui, non seulement, découle du comportement du détenu mais qui, en outre, peut être considérée comme grave en tant qu'elle porte atteinte à ses droits et à sa situation juridique.”</i></p> <p>In order to classify an internal order measure either as a disguised disciplinary sanction or as an order measure subject to appeal, it is necessary to examine, on a case-by-case basis, the circumstances that led to its adoption. In the first case, the disciplinary nature of a measure is assessed by taking into account the content of the act, the circumstances in which it was adopted, whether or not the prisoner's behaviour is qualified as wrongful, whether or not the intention to punish such behaviour is manifest and the impact on the prisoner's rights. In the latter case, it is necessary to examine whether the authority has taken an order, which not only stems from the prisoner's behaviour, but which, in addition, can be considered serious in that it affects his/her rights and his/her legal position.</p>

Belgium, Court of Cassation (Hof van Cassatie), n° P.20.0337.F, 1 April 2020

<p>Thematic area</p>	<p>Section 5a. Access to healthcare</p>
<p>Decision date</p>	<p>1 April 2020</p>

Reference details	Belgium, Court of Cassation (Hof van Cassatie), n° P.20.0337.F , 1 April 2020.
Key facts of the case	The Applicant was arrested in November 2018 and later sentenced to 6 years of imprisonment, but appealed this sentence. The court of appeal postponed his case in 2020 because of the COVID-19 pandemic. The Applicant then asked to be released. This claim was declared unfounded and it is this latter judgment, which is under appeal in the current case.
Main reasoning/argumentation	Although the prisoner states that imprisonment leads to a greater risk of contracting the COVID-19 virus and although there is an emergency situation in place in Belgian prisons with regard to the COVID-19 virus, there is no reason to assume that prisoners have insufficient access to the minimal health- and sanitary conditions. Therefore, imprisonment during the COVID-19 pandemic does not constitute a form of torture or inhuman or degrading treatment or punishment, as set out in article 3 of the European Convention on Human Rights.
Key issues (concepts, interpretations) clarified by the case	Even though the COVID-19 pandemic has a great impact on society as a whole and perhaps an even greater impact on prison life, this does not automatically mean that imprisonment during COVID-19 results in any form of torture. Prisoners have to have sufficient access to the minimal health- and sanitary conditions.
Results (sanctions) and key consequences or implications of the case	The plea is legally insufficient. Since there is no reason to assume that the Applicant's detention would not allow him to benefit from the minimal health- and sanitary conditions, the appeal judges have regularly motivated and legally justified their decision that the Applicant would not undergo any form of torture and should thus not be released.
Key quotation in original language and translated into English with reference details	<p>Page 5, paragraphs 4 and 5:</p> <p><i>“Les juges d’appel ont énoncé qu’ « il n’apparaît pas des éléments portés à la connaissance de la cour que cette détention ne permettrait pas au prévenu, vu la situation sanitaire, de bénéficier des conditions minimales de santé et d’hygiène ».</i></p> <p><i>Par cette considération, ils ont régulièrement motivé et légalement justifié leur décision qu’au moment où ils ont statué, les conditions de détention du demandeur ne s’apparentaient ni à la torture, ni à des peines ou traitements inhumains ou dégradants.”</i></p> <p>The appeal judges stated that "it does not appear from the elements brought to the court's attention that this detention would not allow</p>

	<p>the defendant, given the sanitary situation, to benefit from the minimum conditions of health and hygiene".</p> <p>By this consideration, they regularly motivated and legally justified their decision that, at the time they ruled, the conditions of the Applicant's detention did not amount to torture or inhuman or degrading treatment or punishment.</p>
--	---

Belgium, Court of Cassation (Hof van Cassatie), n° P.19.0397.N, 7 May 2019

Thematic area	Section 5d. Access to healthcare
Decision date	7 May 2019
Reference details	Belgium, Court of Cassation (Hof van Cassatie), n° P.19.0397.N , 7 May 2019.
Key facts of the case	The Applicant was detained and suffered from a medical condition to both eyes. This cassation appeal deals with the judgment of the criminal enforcement court ('strafuitvoeringsrechtbank') of 10 April 2019, which denied the prisoner's plea for a provisional release on medical grounds.
Main reasoning/argumentation	According to several doctors, the prisoner <i>in casu</i> does not have a disease which is incompatible with a stay in a detention facility. Article 72 of the Law on the External Legal Status, of Persons Sentenced to Deprivation of Liberty and on the Rights Accorded to Victims in the Context of the Enforcement of Sentences of 17 May 2006 (hereafter: "LELS"), is reserved exclusively for convicted persons who are detained and suffering from a disease in terminal phase or for whom detention is incompatible with their health condition.
Key issues (concepts, interpretations) clarified by the case	Article 72 of the LELS deals only with a provisional release on medical grounds, which is not linked to prison leave, because it entails a full release of the prisoner (since detention is incompatible with the prisoner's health condition). In contrast, prison leaves for medical reasons are possible in the situation of article 4 of the LELS, which deals with concrete days on which the prisoner can leave the detention facility for a maximum of 16 hours for medical examination or treatment <i>extra muros</i> . The latter situation means that the convicted person is not provisionally released, but stays detained.

Results (sanctions) and key consequences or implications of the case	<p>The cassation appeal is denied, because – based on the advice of the doctor – the prisoner’s health condition is not incompatible with his detention.</p>
Key quotation in original language and translated into English with reference details	<p>Page 4, margin number 13, paragraphs 1 and 2:</p> <p><i>“Overeenkomstig artikel 4 Wet Strafvueroering laat een uitgaansvergunning de veroordeelde toe om de gevangenis te verlaten voor een bepaalde duur die niet langer mag zijn dan zestien uren onder meer om een medische behandeling buiten de gevangenis te ondergaan. Dit houdt in dat de veroordeelde niet voorwaardelijk in vrijheid is gesteld, maar integendeel gedetineerd blijft.</i></p> <p><i>Daarentegen veronderstelt invrijheidstelling om medische redenen overeenkomstig artikel 72 Wet Strafvueroering dat detentie onverenigbaar is met de gezondheidstoestand van de veroordeelde die daarom voorlopig in vrijheid wordt gesteld. Het onderdeel dat de uitgaansvergunning beschouwt als een modaliteit van de voorlopige invrijheidstelling om medische redenen, gekoppeld aan voorwaarden, faalt naar recht.”</i></p> <p>According to Article 4 of the LELS, a prison leave allows the convicted person to leave the prison for a certain period of time that may not exceed sixteen hours in order, among other things, to receive medical treatment outside the prison. This implies that the convicted person is not provisionally released but, on the contrary, remains in prison.</p> <p>On the other hand, release on medical grounds under Article 72 of the LELS presupposes that detention is incompatible with the state of health of the convicted person, who is therefore released on a provisional basis. The section that considers the output permit as a modality of the provisional release on medical grounds, coupled with conditions, fails as a matter of law.</p>

Belgium, Court of Cassation (Hof van Cassatie), n° P.19.0952.F, 11 February 2021

Thematic area	Section 5d. Access to healthcare
Decision date	11 February 2021
Reference details	Belgium, Court of Cassation (Hof van Cassatie), n° P.19.0952.F , 11 February 2021.

<p>Key facts of the case</p>	<p>The Applicant suffered from a medical condition and was sentenced to deprivation of liberty. The cassation appeal deals with the judgment of the criminal enforcement judge ('strafuitvoeringsrechter') of 11 September 2019, who found himself incompetent to examine a plea for provisional release on medical grounds. The reason for this was the fact that he believed this measure to be exclusively available for detained convicted persons.</p>
<p>Main reasoning/argumentation</p>	<p>The provisional release of a prisoner on medical grounds can only be ordered by the criminal enforcement judge, with regards to convicted persons who are already admitted to a prison facility. This is the case because the provisional release on medical grounds is a means of enforcing the sentence. Convicted persons cannot state that a violation of article 3 of the European Convention on Human Rights (prohibition of torture) will take place, because they argue in advance that even one day in prison is not compatible with their severe health situation.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>From the preparatory works of the LELS, one can conclude that the legislator wanted to give a terminally ill prisoner the possibility to leave the prison facility, in order to spend his/her last days with his/her beloved ones. This idea stems from the goal of making the execution of the deprivation of liberty as humane as possible. Therefore, the fact that a person is detained in a prison facility forms a <i>conditio sine qua non</i> for the application of article 72 of the LELS.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>No violation of article 3 of the European Convention on Human Rights can be concluded from the finding in the judgment under appeal, that the law did not confer jurisdiction on the criminal enforcement judge to rule on the application for provisional release on medical grounds of a convicted person, who is not in prison. Nonetheless, the president of the court of first instance is competent, in urgent cases, to order provisional measures to prevent a violation of article 3 of the European Convention on Human Rights. Therefore, the cassation appeal is denied.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>Page 5, margin number 10:</p> <p><i>“Ainsi qu’il résulte de l’examen du premier moyen, le juge de l’application des peines n’est pas compétent pour se prononcer sur une demande de libération provisoire pour raisons médicales d’un condamné qui n’est pas détenu.”</i></p> <p>As can be seen from the examination of the first plea in law, the criminal enforcement judge is not competent to rule on an application</p>

	for provisional release on medical grounds by a convicted person, who is not in detention.
--	--

Belgium, Constitutional Court (Grondwettelijk Hof), n° 22/2021, 11 February 2021

Thematic area	<i>Section 6b. Special measures in place to protect young detainees</i>
Decision date	11 February 2021
Reference details	Belgium, Constitutional Court (Grondwettelijk Hof), n° 22/2021, 11 February 2021.
Key facts of the case	The Applicants sent an appeal to the Constitutional Court for partial annulment of the Decree of the Flemish Community of 15 February 2019 on Youth Delinquency Law. One of the points for appeal deals with article 37, §1, paragraph 2, and §4 of the Decree, about long-term closed counselling for minors younger than 16 years at the time of the offence.
Main reasoning/argumentation	In principle, long-term closed counselling can only be imposed on a minor who is sixteen years or older at the time s/he commits a juvenile offence. However, that sanction may (according to art. 37, §1, paragraph 2 of the Decree) be ordered in ‘exceptional circumstances’ for persons who are younger than 16 years at the time of the offence. In this last case, the sanction is limited to maximum 2 or 5 years, depending on the age of the minor (respectively between 12 and 14 years or between 14 and 16 years, according to art. 37, §4 of the Decree).
Key issues (concepts, interpretations) clarified by the case	The Decree does not define these ‘exceptional circumstances’. From the parliamentary preparation, one can conclude that these circumstances point mainly to the severity of the committed offence. This is not in line with the conditions set out in article 37, §2, 4°, which point only to a limited set of offences. This means that the conditions for the application of this sanction, on offenders younger than 16 years at the time of the offence, are less strict than for offenders of 16 or more years. This forms a direct contrast with the intention of the legislator, stating that such sanction can only be applied to younger persons in ‘exceptional circumstances’.
Results (sanctions) and key consequences or implications of the case	Therefore, one may conclude that article 37 of the Decree gives rise to legal uncertainty for offenders younger than 16 years at the time of the offence. It is insufficiently foreseeable for them, whether their act

	<p>can lead to the aforementioned sanction of maximum 2 or maximum 5 years. This unforeseeability violates the legality principle in criminal affairs, as set out by the Belgian Constitution in article 12, paragraph 2, and article 14.</p> <p>As a result, article 37, §1, paragraph 2, and §4 of the Decree is annulled.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>Page 60, margin number B.55.3., paragraph 1:</p> <p><i>“Dat gebrek aan coherentie tussen, enerzijds, de algemene voorwaarde van « uitzonderlijke omstandigheden » die in artikel 37, § 1, tweede lid, is vermeld, en, anderzijds, de specifieke voorwaarden die in artikel 37, § 4, zijn neergelegd, vormt een bron van rechtsonzekerheid voor de minderjarigen die jonger zijn dan zestien jaar. Zij kunnen niet voldoende voorzien of zij een gedraging stellen die aanleiding kan geven tot een gesloten begeleiding van maximaal twee of vijf jaar.”</i></p> <p>This lack of coherence between, on the one hand, the general condition of "exceptional circumstances" mentioned in article 37, § 1, second paragraph, and, on the other hand, the specific conditions laid down in article 37, § 4, constitutes a source of legal uncertainty for minors under the age of sixteen. They cannot adequately anticipate whether they will commit an act that may give rise to a closed supervision of up to 2 or 5 years.</p>

Belgium, French Civil Court (Franstalige burgerlijke rechtbank), Brussels, 5 December 2018

Thematic area	“Remedies”
Decision date	5 December 2018
Reference details	Civ. Bruxelles fr. (4e ch.), 5 Décembre 2018, Journal des Tribunaux 2019, pp. 188-189.
Key facts of the case	The Applicants were prisoners at the deradicalization wing of the prison of Ittre. They summoned the Belgian State in 2017 to obtain an order to compensate them for personal injury, caused by their detention at the deradicalization wing. Their lawyers asked that the prisoners be transferred to court on the day of the pleadings, to explain their detention situation personally. This did not happen and therefore the five prisoners asked the court to organize their transfer at the postponed hearing fixed by the court, on the sanction of a

	penalty payment of 10,000 Euro per hearing at which they could not be present. According to the Belgian State, this application was inadmissible and unfounded.
Main reasoning/argumentation	The Applicants invoke article 6, §1 of the European Convention on Human Rights (right to a fair trial). The European Court of Human Rights (ECtHR) has stated that this article does not guarantee the right to appear in person at a civil trial. However, the ECtHR has also pointed out that a mere practical problem, such as the person's detention, cannot in itself justify not being heard by a civil court. The Belgian legislator has opted for a system that allows the defendant to choose to appear either in person or by lawyer (art. 728, §1 of the Judicial Code (Gerechtelijk Wetboek)). In addition, article 758, §1 of the Judicial Code states that "the parties may present their own submissions and defences, unless the law has provided otherwise". This provision thus enshrines a subjective right to appear personally before the civil courts.
Key issues (concepts, interpretations) clarified by the case	In the present case, the Applicants expressed a clear wish to exercise their right to appear in person. Secondly, their absence from the hearing was the result of organisational difficulty encountered by the authorities responsible for organising their transfer. In accordance with the case law of the ECtHR, these purely practical problems cannot justify infringing the right of prisoners to appear in person before the civil court.
Results (sanctions) and key consequences or implications of the case	By not transferring the detained Applicants to court, the Belgian State has violated their rights under article 758, §1 of the Judicial Code. The damage caused by this action will be adequately compensated by ordering the Belgian State to take the necessary measures to ensure the presence of the detained Applicants, if they wish so, at the next hearing. In view of the risk of voluntary non-enforcement of the present judgment by the Belgian State, in light of the recurrent difficulties of transporting prisoners, the order should be accompanied by a penalty payment.
Key quotation in original language and translated into English with reference details (max. 500 chars)	Page 188, II., 2., paragraph 13: <i>"Or, conformément à la jurisprudence de la Cour européenne des droits de l'homme précitée, ces contingences purement matérielles ne peuvent justifier une atteinte au droit des détenus de comparaître en personne."</i> However, in accordance with the above-mentioned case law of the European Court of Human Rights, these purely material contingencies

	cannot justify an infringement of the detainees' right to appear in person.
--	---

Belgium, French Civil Court (Franstalige burgerlijke rechtbank),
Brussels, 9 January 2019

Thematic area	Section 1a. + “remedies”
Decision date	9 January 2019
Reference details	Civ. Bruxelles fr. (4e ch.), 9 Janvier 2019, received via legal expert Eva De Cock on 2/6/2021, pp. 1-31.
Key facts of the case	The Applicant was a prisoner at the prisons of Forest and Saint-Gilles. He states that the overcrowding in these prisons led to the fact that he suffered personal damages. His plea is supported by the Belgian Bar of French and German lawyers (OBFG), who also denounce the overcrowding in those prisons. They ask that the Belgian State takes the necessary measures to remedy this situation and that it pays compensation for past and future suffering.
Main reasoning/argumentation	The OBFG states that there are several damaging elements in place at the aforementioned prisons, due to overcrowding. <i>Inter alia</i> : deterioration of material detention conditions and restrictions on health care. The Belgian State does not contest this situation, but states that the damage set out by the OBFG is not personal, nor direct in relation to the OBFG and therefore the plea is unfounded. The Court finds that a distinction must be made between on the one hand: a claim by individual prisoners who plea for their subjective rights. And on the other hand: a claim by a professional order of lawyers who plea for the defence of the interests of all prisoners and for measures that oblige the State to remedy a certain situation.
Key issues (concepts, interpretations) clarified by the case	Article 495 of the Judicial Code allows for professional orders of lawyers (<i>in casu</i> the OBFG) to act in respect of the defence of the interests of litigants. Therefore, the OBFG can act on behalf of damages that were suffered not by itself, but collectively by the litigants for whom it takes on the defence. Besides that, one can conclude from the evidence that there has been overcrowding in Belgian prisons (and especially in prisons in Brussels) for more than 10 years, which has led to below-standard human detention conditions. This points to a fault, committed by the Belgian State, because it has not taken the appropriate steps to diminish this overcrowding.

<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Applicant has not shown sufficient evidence to the Court that his suffering was greater than unavoidably inherent to imprisonment as such, because of the fault of the Belgian State. Therefore, the causal relation between the failings of the Belgian State on behalf of the prison overcrowding on the one hand and the suffering of the Applicant on the other hand, has not been proven <i>in casu</i>. His plea is thus regarded as unfounded.</p> <p>The OBFG has requested that the Court orders the Belgian State to take specific measures. However, because of the separation of powers, the Court can only order the prison administration to solve the situation of overcrowding, thereby respecting its own appreciation of the necessary measures to that end. The OBFG also asks to make this order stringent, by forcing the Belgian State to certain penalty payments. The Court follows this reasoning.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>Page 26, paragraph 3:</p> <p><i>“Les carences de l’Etat belge ont, à tout le moins, aggravé une situation dommageable qui ne serait pas réalisée in concreto dans la même mesure en l’absence de la faute de celui-ci.”</i></p> <p>The failings of the Belgian State have, at the very least, aggravated a harmful situation which would not have been realised <i>in concreto</i> to the same extent in the absence of its fault.</p>