

# Criminal Detention in the EU: Conditions and Monitoring

Update of FRA's Criminal Detention Database

(FRANET)

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## Part I: National standards

### 1. Cells

#### a. Cell space

For **persons in police custody**<sup>1</sup>: 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 m<sup>2</sup> 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 m<sup>2</sup> 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 m<sup>2</sup> 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 m<sup>2</sup>.

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 m<sup>2</sup> (in case the cell is supposed to hold 1 prisoner);
- 12 m<sup>2</sup> (in case the cell is supposed to hold 2 prisoners);
- 15 m<sup>2</sup> (in case the cell is supposed to hold 3 prisoners);
- 25 m<sup>2</sup> (in case the cell is supposed to hold 4 prisoners);
- 38 m<sup>2</sup> (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.

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<sup>1</sup> Art. 1 Royal Decree of 14 September 2007 (Koninklijk van 14 september 2007 besluit betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen), [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2007091452&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007091452&table_name=wet).

The width is minimally 2 m.<sup>2</sup>

For **disciplinary cells**, the cell space should be minimum 10 m<sup>2</sup>. 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.<sup>3</sup>

The calculation requirements spelled out by the CJEU in its **Dorobantu ruling**, as they apply to prison cells (that is, a minimum of 3 m<sup>2</sup> per prisoner in multi-occupancy accommodation<sup>4</sup>), as well as in **2022 Recommendation of the Commission** (that is, an absolute minimum personal space available to each detainee, including in a multi-occupancy cell, of at least 3 m<sup>2</sup> surface area per detainee<sup>5</sup>) are observed: a cell for 2 prisoners should be 12 m<sup>2</sup>, a cell for 3 prisoners should be 15 m<sup>2</sup>, etc.

For police custody this minimum requirement for collective cells is not being observed: here the standards foresee minimally 2 m<sup>2</sup> per person in a collective cell.<sup>6</sup> 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.<sup>7</sup>

**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 2007<sup>8</sup>; 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.<sup>9</sup>

#### b. Access to natural light and fresh air, cell equipment, furniture, and facilities

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 m<sup>3</sup> per hour;

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<sup>2</sup> 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,

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2005011239](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2005011239);

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,

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2019020307](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2019020307).

<sup>3</sup> Art. 5, 1° - 3°, Royal Decree of 3 February 2019.

<sup>4</sup> Dorobantu, margin number 72.

<sup>5</sup> Recommendation, margin number 34.

<sup>6</sup> Art. 14 Royal Decree of 14 September 2007 (Koninklijk van 14 september 2007 besluit betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen),

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2007091452&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007091452&table_name=wet).

<sup>7</sup> Dorobantu, margin number 73; Recommendation margin number 35.

<sup>8</sup> 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).

<sup>9</sup> Art. 11 Royal Decree of 3 February 2019.

- heating should, during the use of the place of detention, guarantee a temperature of minimally 18° celsius.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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).<sup>14</sup>

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.<sup>15</sup>

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).<sup>16</sup>

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.<sup>17</sup>

Collective cells and cell complexes need to have the necessary infrastructure to preserve and distribute meals in an hygienic way.<sup>18</sup>

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 m<sup>2</sup>, which allows natural light to enter the prison cell and makes it possible to look outside of the prison cell;

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<sup>10</sup> Art. 6, 2° - 4°, Royal Decree of 14 September 2007.

<sup>11</sup> Art. 5 Royal Decree of 14 September 2007.

<sup>12</sup> Art. 9 Royal Decree of 14 September 2007.

<sup>13</sup> Art. 7 Royal Decree of 14 September 2007.

<sup>14</sup> Art. 8 Royal Decree of 14 September 2007.

<sup>15</sup> Art. 11, 2°-3°, Royal Decree of 14 September 2007.

<sup>16</sup> Art. 12 and 14 Royal Decree of 14 September 2007.

<sup>17</sup> Art. 13 Royal Decree of 14 September 2007.

<sup>18</sup> Art. 15 Royal Decree of 14 September 2007.

- 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 situated<sup>19</sup>;
- 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.<sup>20</sup>

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 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.

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

- a window with a surface of at least 1 m<sup>2</sup>, 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.<sup>21</sup> The Prison Law prescribes that disciplinary cells are equipped with a calling system.<sup>22</sup>

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<sup>19</sup> 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.

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

<sup>21</sup> Art 5 -8 Royal Decree of 3 February 2019.

<sup>22</sup> Art. 134, §2 Prison Law.



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.<sup>23</sup>

**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 2007<sup>24</sup>; 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.<sup>25</sup>

### c. Video-surveillance of cells

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.<sup>26</sup>

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.<sup>27</sup>

Note: at the moment of writing this update report a **bill (2 April 2024)** was tabled in Parliament which, in exceptional circumstances, aims to introduce the possibility of continuous video surveillance for prisoners being subjected to a special individual security regime. At the time of writing this bill was being discussed in Parliament.<sup>28</sup>

### d. NPM assessment

There are **no NPM reports** available for the reference period (15 April 2021 – 31 March 2024) as **Belgium has still not ratified OPCAT** (OPCAT was signed by Belgium on 24 October 2005), so there is no NPM yet.

However, most recently, on 28 March 2024, the federal Parliament has voted a Law which, when implemented, will designate the Federal Institute of Human Rights as NPM<sup>29</sup> but this has not been

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<sup>23</sup> Art. 3-4 Royal Decree of 3 February 2019.

<sup>24</sup> Art. 17 Royal Decree of 14 September 2007.

<sup>25</sup> Art. 11 Royal Decree of 3 February 2019.

<sup>26</sup> Art. 10 Royal Decree of 14 September 2007.

<sup>27</sup> Art 137, §1 Prison Law 12 January 2005.

<sup>28</sup> See Chapter 9 of "Wetsontwerp houdende bepalingen inzake digitalisering van justitie en diverse bepalingen II", 2 April 2024. 55K3945/001, <https://www.dekamer.be/FLWB/PDF/55/3945/55K3945001.pdf>

<sup>29</sup> On this, see "Projet de loi modifiant la loi du 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains", Parl. St. 21 December 2023, 55K3736. The text was adopted by

implemented yet and it will – so far – only relate to the federal competences (which implies that for competences of the Communities/Regions further negotiations will be necessary).

There is **one CPT report**, related to an **ad hoc visit to Belgium (2 to 9 November 2021)**, which was published on 29 November 2022 and which is relevant for this update.<sup>30</sup> The focus of this visit was on the prisons in Belgium, including the problems of **prison overcrowding**. In its report the CPT reports on its visit to four prisons and expresses serious concerns about the problems of overcrowding and prisoners having to sleep on mattresses placed on the floor.<sup>31</sup> This also included an immediate observation (Art. 8, §5) by the CPT delegation:

*“§8. Lors des entretiens de fin de visite avec les autorités belges, la délégation a fait une observation sur-le-champ concernant la situation inacceptable qui a été observée à la prison d'Anvers (et qui était également le cas jusqu'à récemment à la prison d'Ypres) dans laquelle une partie importante des détenus (jusqu'à 90) devaient dormir sur des matelas posés à même le sol. La délégation a demandé aux autorités belges d'informer le Comité, dans un délai de trois mois, des mesures prises pour garantir que chaque détenu de la prison d'Anvers (et, plus généralement, de toutes les prisons belges) dispose de son propre lit”*

*“§8. During the end-of-visit discussions with the Belgian authorities, the delegation made an immediate observation regarding the unacceptable situation that was observed in Antwerp prison (and which was also the case until recently at Ypres Prison) in which a significant portion of the prisoners (up to 90) had to sleep on mattresses placed on the floor. The delegation asked the Belgian authorities to inform the Committee, within three months, of the measures taken to ensure that each prisoner in Antwerp prison (and, more generally, in all Belgian prisons) has their own bed”*

The persistent problem of prison overcrowding **has since long attracted the attention of monitoring bodies and wider civil society in Belgium as well as the ECtHR**. This happened in particular the wake of several key judgment of the ECtHR (including *Vasilescu* (touching upon the prison conditions in Antwerp and Merksplas), *Sylla et Nollomont* (on Forest and Lantin), *Clasens* (on Ittre), and *Pîrjoleanu* (on Antwerp, see also *Part II of the report for a summary*)) and the follow-up procedure with the Committee

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the Commission on Justice on 22 March 2024 (<https://www.dekamer.be/FLWB/PDF/55/3736/55K3736003.pdf>), and approved during the plenary meeting of 28 March 2024. For a press release (29 March 2024) by the Federal Institute of Human Rights, see

<https://federaalinstituutmensenrechten.be/fr/le-mecanisme-de-prevention-de-la-torture-mis-en-place>

<sup>30</sup> Rapport au Gouvernement de Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 2 au 9 novembre 2021, 29 November 2022, <https://rm.coe.int/1680a922ac>; Note that the CPT also monitored a Frontex-supported removal operation (which also involved Cyprus) to the Democratic Republic of Congo, and published a report on this operation (Report to the Government of Belgium on the visit to Belgium carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 10 November 2022), but we will not address this here as this is out of the scope of this report.

<sup>31</sup> See in particular, CPT 2022, para 8-10, 18-19.

of Ministers of the Council of Europe (cf “Groupe Vasilescu c. Belgique”, with inter alia joint communications by the Federal Institute of Human Rights and the Central Prison Monitoring Board<sup>32</sup>).

Noteworthy in this respect is that prison overcrowding has also been raised **in front of the national courts**, in particular in front of the Tribunal of Liège, and confirmed by the Court of Appeal (*See Part II of this report for a summary*), and similar actions related to the prisons of Saint-Gilles and Mons.<sup>33</sup> In a **Royal Decree of 18 February 2024**, aimed at recruiting personnel for the prison system, the Belgian government refers to these recent developments as follows:

*“[...] Considering that the need for additional capacity is urgent because the Belgian State was ordered to reduce the (over)population to a maximum of 110%, to put an end to inhuman and degrading treatment within one year and to completely eliminate overpopulation within 5 years; Considering that, since December 8, 2023, the Belgian State has been paying penalty payments of 1,000 euros per day per additional detainee in Lantin prison and since January 26, 2024 of 2,000 euros per day per additional detainee in Mons prison [...]”<sup>34</sup>*

These persistent problems were also highlighted in a **memorandum of the Central Prison Monitoring Board (March 2024)**<sup>35</sup>, in view of the elections in Belgium of 9 June 2024.

## 2. Allocation of detainees

### a. Geographical allocation

The **placement or transfer of prisoners** is decided by officials of the penitentiary administration designated for this purpose by the Director-General (art. 18, §1 Prison Law). In doing so, the penitentiary administration should take into account the destination of the prison or section or any

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<sup>32</sup> See eg, Communication au Comité des Ministres du Conseil de l’Europe, au sujet de l’exécution de l’arrêt Vasilescu c. Belgique (requête n°18052/12, arrêt du 25 novembre 2014, définitif le 20 avril 2015), July 2023, <https://ctrj.belgium.be/wp-content/uploads/2019/08/Rule-9-Vasilescu-c.-Belgique-CCSP-IFDH-juillet-2023.pdf>; Communication au Comité des Ministres du Conseil de l’Europe, au sujet de l’exécution des arrêts Clasens c. Belgique et Detry et autres c. Belgique, January 2024, <https://ccsp.belgium.be/wp-content/uploads/2024/03/CCSP-IFDH-Regle-9-Clasens-janvier-2024.pdf>

<sup>33</sup> For a discussion of these judicial interventions with respect to the prisons of Lantin, Saint-Gilles and Mons, see O. Nederlandt & M.-A. Beernaert, “L’État belge condamné à agir pour réduire la surpopulation carcérale”, *JLMB*, 2024, 13, 549-560.

<sup>34</sup> “[...] *Overwegende dat de nood aan extra capaciteit urgent is omdat de Belgische Staat werd veroordeeld tot het terugdringen van de (over)bevolking tot maximaal 110%, om binnen een jaar een einde te maken aan onmenselijke en vernederende behandelingen en om binnen 5 jaar de overbevolking volledig weg te werken; Overwegende dat de Belgische Staat sinds 8 december 2023 dwangsommen betaalt van 1.000 euro per dag per extra gedetineerde in de gevangenis van Lantin en sinds 26 januari 2024 van 2.000 euro per dag per extra gedetineerde in de gevangenis van Mons [...]”* Royal Decree of 18 February 2024 (Koninklijk besluit houdende de jury Samenstelling voor selecties binnen het Directoraat-generaal Penitentiaire Inrichtingen van de Federale Overheidsdienst Justitie), *BS* 21 February 2024 [https://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=nl&caller=summary&pub\\_date=24-02-21&numac=2024001678](https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=24-02-21&numac=2024001678)

<sup>35</sup> See “Mémorandum Elections 2024. Nos propositions pour garantir les droits fondamentaux et la dignité des détenus dans les prisons belges”, March 2024, <https://ccsp.belgium.be/wp-content/uploads/2024/03/Memorandum-CCSP-2024-FR.pdf>

other criteria as determined in art. 14-15 of the prison law and, for convicted prisoners, also taking into account the individual detention plan (art. 17 Prison Law).

Prisoners can **object against such decisions** with the Director General of the penitentiary administration (art. 163 Prison Law) and, if not satisfied with action (not) taken by the Director-General, appeal with the Appeal Board of the Central Prison Monitoring Board (art. 165 Prison Law).

#### b. Allocation within detention facilities

With the exception of them providing a written agreement to participate in common activities, pretrial detainees are to be separated from convicted prisoners (art. 11 Prison Law).

#### c. NPM assessment

In the light of the problems of prison overcrowding the **Central Prison Monitoring Board** commented as follows on this issue in its most recent (2022) annual report:

*“Te veel gedetineerden betekent met name meer overplaatsingen naar andere gevangenissen, die vaak verder weg liggen en daarom moeilijker te bereiken zijn voor bezoekers of familie. Daar komt nog bij dat deze grotere afstand het onvermijdelijk nog lastiger maakt om banden te onderhouden of te smeden die nodig zijn voor de re-integratie, die op haar beurt wordt bemoeilijkt.”<sup>36</sup>*

*“In particular, too many detainees means more transfers to other prisons, which are often further away and therefore more difficult to reach for visitors or family. In addition, this greater distance inevitably makes it even more difficult to maintain or forge the bonds necessary for reintegration, which in turn becomes more difficult”*

On the **separation of different categories** of prisoners it recommended as follows:

*“De CTRG beveelt aan om verdachten, veroordeelden en geïnterneerden van elkaar gescheiden te houden, tenzij zij daartoe schriftelijk hebben ingestemd om te kunnen deelnemen aan gemeenschappelijke activiteiten”.<sup>37</sup>*

*“The CTRG recommends keeping suspects, convicts and interneers<sup>38</sup> separated from each other, unless they have agreed to this in writing in order to participate in common activities”*

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<sup>36</sup> CTRG, Jaarverslag 2022, September 2023, p. 17 (available at: [https://ctrq.belgium.be/wp-content/uploads/2019/08/CTRQ\\_Jaarverslag\\_2022\\_NL\\_DEF.pdf](https://ctrq.belgium.be/wp-content/uploads/2019/08/CTRQ_Jaarverslag_2022_NL_DEF.pdf)).

<sup>37</sup> CTRG, Jaarverslag 2022, p. 131.

<sup>38</sup> The internment of a person is possible in case a person (1) has committed an act described as a crime or misdemeanor punishable by imprisonment; and (2) who, at the time of assessment, is suffering from a mental disorder that impairs his judgment or control over his actions, or seriously affected, and (3) in respect of whom there is a risk that he will commit crimes again as a result of his mental disorder, if necessary in combination with other risk factors. See Art. 9 Law of 5 May 2014 on the internment of persons, BS 9 July 2014 <https://www.ejustice.just.fgov.be/eli/wet/2014/05/05/2014009316/justel#LNK0005>

### 3. Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees)

#### a. Access to toilets

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.<sup>39</sup> In terms of privacy, it is stipulated that places of detention should never be observable from a zone that is accessible to the public.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup>

#### b. Access to showers and warm and running water

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.<sup>44</sup>

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.<sup>45</sup>

#### c. Access to sanitary products

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.<sup>46</sup>

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;

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<sup>39</sup> Art. 5 Royal Decree of 14 September 2007.

<sup>40</sup> Art. 2 Royal Decree of 14 September 2007.

<sup>41</sup> Art. 9 Royal Decree of 14 September 2007.

<sup>42</sup> Royal Decree of 3 February 2019.

<sup>43</sup> Art. 11 Royal Decree of 3 February 2019.

<sup>44</sup> 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).

<sup>45</sup> 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, <http://www.ejustice.just.fgov.be/eli/wet/2019/03/23/2019011569/justel>).

<sup>46</sup> Art 44 Prison Law.

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

#### d. Hygienic conditions in cells

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. 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).<sup>47</sup>

#### e. NPM assessment

The **CPT** commented as follows on the situation it observed in the **prison of Saint-Gilles**:

*“§32: Les conditions étaient également acceptables dans l'ensemble dans les cellules de l'annexe psychiatrique de la prison de St-Gilles ; cependant, comme déjà mentionné au paragraphe 17 ci-dessus, certaines des cellules étaient très sales car les personnes qui y étaient placées étaient manifestement incapables de veiller à leur hygiène personnelle et à la propreté des cellules”<sup>48</sup>*

*“Conditions were also generally acceptable in the cells of the psychiatric annex of St-Gilles prison; however, as already mentioned in paragraph 17 above, some of the cells were very dirty because the people placed there were clearly incapable of ensuring their personal hygiene and the cleanliness of the cells”*

In its 2022 annual report, the **Central Prison Monitoring Board** commented inter alia as follows on the topic of hygiene:

*“Er zijn steeds vaker problemen die een invloed hebben op het algemene onderhoud in de sterk overbevolkte inrichtingen. De hygiëne in de inrichting lijdt eronder, net als de persoonlijke hygiëne van de gedetineerden die er verblijven (...) Het spreekt voor zich dat de infrastructuurproblemen ook een impact hebben op de persoonlijke hygiëne van de gedetineerden. Samenwonen in kleine, vaak onhygiënische, verouderde ruimtes met gebrekkige*

<sup>47</sup> 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,

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2019020307](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2019020307)).

<sup>48</sup> CPT, 2022, para 32.

*of ontoereikende gemeenschappelijke sanitaire voorzieningen heeft een negatieve invloed op de persoonlijke hygiëne van de gedetineerden zelf. Wanneer de gemeenschappelijke douches door een groter aantal mensen gebruikt moeten worden, wordt de gebruiksduur beperkt of wordt het aantal douches per week verminderd, omdat er niet genoeg warm water beschikbaar is. In Sint-Gillis werd bovendien beslist dat een kapper niet meer werkt als de gevangenisbevolking de drempel van 900 gedetineerden overschrijdt. Het grondrecht van gedetineerden om elke dag behoorlijk voor hun uiterlijk en persoonlijke hygiëne te zorgen, wordt met andere woorden zwaar op de proef gesteld”.<sup>49</sup>*

*“There are increasing problems that affect general maintenance in highly overcrowded facilities. Hygiene in the institution suffers, as does the personal hygiene of the detainees staying there (...) It goes without saying that the infrastructure problems also have an impact on the personal hygiene of the detainees. Living together in small, often unsanitary, outdated spaces with poor or inadequate communal sanitary facilities has a negative impact on the personal hygiene of the detainees themselves. When the communal showers need to be used by a larger number of people, the duration of use is limited or the number of showers per week is reduced because there is not enough hot water available. In Saint-Gilles it was also decided that a hairdresser will no longer work if the prison population exceeds the threshold of 900 inmates. In other words, the fundamental right of detainees to take proper care of their appearance and personal hygiene every day is being severely tested”*

#### 4. Nutrition

##### a. Quality and quantity of food

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.<sup>50</sup>

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”.<sup>51</sup>

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.<sup>52</sup>

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

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<sup>49</sup> CTRG, Jaarverslag 2022, September 2023, 24 and 27.

<sup>50</sup> Art. 42 Prison Law.

<sup>51</sup> 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).

<sup>52</sup> Art. 17, 1°, Law 23 March 2019.

complied with. This implies that prisons should take the required measures, in so far as these are reasonable.<sup>53</sup>

#### b. Drinking water

There are no explicit rules in the Prison Law on drinking water: art. 42 Prison Law relates to ‘sufficient food’ (‘voldoende voeding’).

#### c. Dietary requirements

See above, under 4a).

#### d. NPM assessment

In its 2022 annual report the **Central Prison Monitoring Board** formulates the following recommendation in this respect:

*“De CTRG beveelt aan te investeren in performante interne keukens in alle penitentiaire inrichtingen om de kwaliteit en de samenstelling van de maaltijden te verbeteren. De CTRG beveelt aan om dagelijks te voorzien in minimaal twee stukken fruit en de aanbevolen hoeveelheid groenten per gedetineerden”<sup>54</sup>*

*“The CTRG recommends investing in high-performance internal kitchens in all penitentiary institutions to improve the quality and composition of meals. The CTRG recommends providing at least two pieces of fruit and the recommended amount of vegetables per detainee daily”*

In addition, the Central Prison Monitoring Board also raised the issue of increasing the **budget for food** for prisoners in this discussions with the penitentiary administration.<sup>55</sup> Nonetheless, in fact, this budget has (notwithstanding increasing food prices in the outside world) decreased from 5,68 euro per prisoner per day (5,18 euro for food and 0,50 euro for hygiene) to 5,32 euro (4,92 euro for food and 0,40 euro for hygiene).<sup>56</sup>

## 5. Time spent outside the cell and outdoors

### a. Time spent outdoors

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 one hour per day.<sup>57</sup>

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.

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<sup>53</sup> 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).

<sup>54</sup> CTRG, Jaarverslag 2022. September 2023, p. 124.

<sup>55</sup> CTRG, Jaarverslag 2022, September 2023, p. 54.

<sup>56</sup> Parliamentary Question of MP Vanessa Matz (28 February 2024) to the Minister of Justice.

<sup>57</sup> Art 79, §1 Prison Law.



The physical exercise and sport (min. 2h/week) can take place indoor or outdoors.<sup>58</sup>

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 one hour in the open air.<sup>59</sup>

#### b. Time spent indoors

See under 5.a.). As far as we know, there are no such specific standards that differentiate between outdoor and indoor activities.

#### c. Recreational facilities

See above under section 5.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).

#### d. Educational activities

See above under section 5.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.<sup>60</sup>

Such activities and programmes (culture, sport, education, access to the library, ...), however, are not a federal competence so there are no national standards. This is a competence of the Communities.<sup>61</sup>

#### e. NPM assessment

In its 2022 report **CPT** recommended the following in terms of activities organised for detainees:

*“Le CPT appelle les autorités belges à intensifier très fortement leurs efforts pour développer les programmes d'activités tant pour les détenus condamnés que pour les prévenus, notamment en ce qui concerne le travail, les activités éducatives et professionnelles. L'objectif devrait être d'assurer que les détenus puissent passer une partie significative de la journée (8 heures ou plus) hors de leur cellule, engagés dans des activités utiles et variées”<sup>62</sup>*

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<sup>58</sup> 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).

<sup>59</sup> 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, <http://www.ejustice.just.fgov.be/eli/wet/2019/03/23/2019011569/justel>).

<sup>60</sup> Art. 103, §1 Prison Law.

<sup>61</sup> 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, <https://wallex.wallonie.be/eli/loi-decret/2001/07/19/2001029329/2002/01/01?doc=279&rev=276-38>; Décret van 8 maart 2013 betreffende de organisatie van hulp- en dienstverlening aan gedetineerden, [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=nl&nm=2013035311&la=N](https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=2013035311&la=N).

<sup>62</sup> CPT, 2022, para 22.

*“The CPT calls on the Belgian authorities to strongly intensify their efforts to develop activity programs for both convicted prisoners and pre-trial detainees, particularly with regard to work, educational and professional activities. The aim should be to ensure that prisoners can spend a significant part of the day (8 hours or more) outside their cell, engaged in useful and varied activities”*

Also the **Central Prison Monitoring Board** recommended to increase the offer in terms of sport, recreation, culture and to guarantee the minimum rights in terms of sport and recreation during strikes.<sup>63</sup> Also here, as elsewhere in its 2022 annual report, it expresses its concerns on the impact of prison overcrowding in this respect:

*“Een van de grootste gevolgen en belangrijkste problemen van de overbevolking is de impact op de organisatie van activiteiten waardoor gedetineerden tijd buiten hun cel kunnen doorbrengen”<sup>64</sup>*

*“One of the biggest consequences and most important problems of overcrowding is the impact on the organization of activities that allow detainees to spend time outside their cells”*

## 6. Solitary confinement

### a. Placement in 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.<sup>65</sup> Solitary confinement as a security measure may last a maximum of seven days.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> 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 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 assistance<sup>69</sup>, does not stay longer than 14 days in the 'punishment cell'.<sup>70</sup>

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<sup>63</sup> CTRG, Jaarverslag 2022, September 2023, p. 127 and 132.

<sup>64</sup> CRTG, Jaarverslag 2022, September 2023, p. 26.

<sup>65</sup> Art. 110, §1 Prison Law.

<sup>66</sup> Art. 112, §2 Prison Law.

<sup>67</sup> Art. 112, §2 Prison Law.

<sup>68</sup> Art. 113, §1 Prison Law.

<sup>69</sup> Art. 136 Prison Law.

<sup>70</sup> Art. 139 Prison Law.

## b. Monitoring of detainees

- in case of a forced stay in a prison cell<sup>71</sup> or in a safety cell<sup>72</sup>: 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 remarks<sup>73</sup>;

- members of the monitoring bodies can visit prisoners in safety cells<sup>74</sup>;

- 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 remarks<sup>75</sup>;

- 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.<sup>76</sup>

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<sup>77</sup>;

- members of the monitoring bodies can visit prisoners in disciplinary cells<sup>78</sup>;

- 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.<sup>79</sup>

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.<sup>80</sup>

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<sup>71</sup> Art. 112, 4°, Prison Law.

<sup>72</sup> Art. 112, 5°, Prison Law.

<sup>73</sup> Art. 113, §2 Prison Law.

<sup>74</sup> Art. 113, §3 Prison Law.

<sup>75</sup> Art. 118, §5 Prison Law

<sup>76</sup> Art. 137, §2 Prison Law.

<sup>77</sup> Art. 137, §1 Prison Law.

<sup>78</sup> Art. 137, §3 Prison Law.

<sup>79</sup> Art. 141 Prison Law.

<sup>80</sup> 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, [https://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=nl&caller=summary&pub\\_date=19-08-29&numac=2019041928](https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=19-08-29&numac=2019041928)).

### c. NPM assessment

The Central Prison Monitoring Board has published a **separate report on the use of disciplinary and security cells** in October 2021.<sup>81</sup>

In this report the Central Prison Monitoring Board formulated *inter alia* a **series of recommendations related to follow-up**:

-One general recommendation:

“The CTRG recommends monitoring the detainees who are placed in a disciplinary or safety cell in accordance with legal guidelines and international recommendations and certain methods or resources (e.g. camera surveillance) only to be used in the interest of the detainees and this taking into account the human dignity of the detainees”

-Six specific recommendations:

“-The CTRG recommends that dialogue between prisoner and the management as a general rule takes place in the cell or in a separate space.

-The CTRG recommends that the psychiatrist systematically enters the cell if the detainee shows signs of psychosis, depression, decompensation or other unstable mood

-The CTRG recommends a communication effort around medical care in the form of dialogue and increased availability of services.

-The CTRG recalls the importance of having sufficient personnel to meet the needs of detainees placed in segregation. Moreover, the Board points out that the suffering of certain detainees should not be negated or minimised in order to avoid delaying sometimes necessary medical treatment.

-According to Article 112 §1 3° of the Prison Law, in each case a separate assessment must be made as to whether nighttime surveillance is appropriate. The CTRG points out that under no circumstances may this measure be taken systematically.

-The CTRG recalls that, in accordance with Article 137, § 1 of the Prison Law, the detainee must be informed of the camera surveillance and the reasons for such surveillance”<sup>82</sup>

## 7. Work and education of detainees to promote social reintegration

### a. General measures to promote social reintegration

Social reintegration is **one of the goals of imprisonment** (next to rehabilitation and restoration) (art. 9, §2, Prison Law). According to the Prison Law (art. 9,§3, 38-39), the **individual detention plan** should be the vehicle to further social reintegration. Following the state reform, however, many of the activities that aim to further social re-integration are organised by the Communities. For the reason, prison

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<sup>81</sup>CTRG, *Het gebruik van straf- en beveiligde cellen in de Belgische gevangenissen*. October 2021. [https://ctrq.belgium.be/wp-content/uploads/2021/10/Strafcellen\\_2021\\_NL.pdf](https://ctrq.belgium.be/wp-content/uploads/2021/10/Strafcellen_2021_NL.pdf)

<sup>82</sup> Ibid, p. 182 (“Aanbevelingen over de opvolging van het verblijf in straf- en beveiligde cellen”).

governor should take all measures to ensure that the social assistance and services can make their services available to the detainees, provided that order and safety are taken into account (art. 103, §2).

#### b. Access to work

Art. 81 stipulates that prisoners have the **right to participate in the work that is available in the prison**. Further rules are enlisted in art. 82 – 86 of the Prison Law.

#### c. Access to education

Such programmes are, as mentioned above, a competency of the Regions/Communities (cf social assistance and services). There are therefore no national standards.

#### d. NPM assessment

On this, see 5.e.) above.

### 8. Healthcare (note – section 11 contains specific questions concerning female detainees)

#### a. Access to healthcare

The Prison Law stresses in particular the **equivalence of care** with the outside community.<sup>83</sup>

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, the reintegration of the prisoner in society throughout the aid of healthcare professionals.<sup>84</sup> 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.<sup>85</sup>

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, receive, and continue to receive, medical and well-being care, as their health condition requires.<sup>86</sup>

#### b. Availability of medical staff

There are no national standards regulating the availability of qualified medical and nursing personnel under Belgian law.

#### c. Medical examination upon admission

Upon arrival a prisoner needs to be seen by the doctor within 24 hours.<sup>87</sup> 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

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<sup>83</sup> Art. 87-89 Prison Law.

<sup>84</sup> Art. 87 Prison Law.

<sup>85</sup> Art. 88 Prison Law.

<sup>86</sup> Art. 17, 3°, Law 23 March 2019.

<sup>87</sup> 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, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2011040801](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2011040801)).

person is an obstacle to imprisonment); (3) to 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.

#### d. Preventive care

As far as we know, there are no national standards in this respect;

#### e. Specialised care

There are no national standards regulating the provision of specialist care under Belgian law.

#### f. Treatment of the detainee's choosing

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 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.<sup>88</sup>

#### g. NPM assessment

In its 2022 report the CPT recommends *inter alia* the following in terms of medical care:

*“Le Comité recommande que des mesures soient prises par les autorités belges pour renforcer les équipes soignantes dans les établissements pénitentiaires visités. Plus précisément, des mesures urgentes doivent être prises pour garantir qu'il y ait au moins l'équivalent de 2 postes de médecins généralistes à plein temps à la prison d'Anvers, 3 postes de médecins généralistes à plein temps aux prisons de Lantin et de St-Gilles et 0,5 poste de médecin généraliste à plein temps à la prison d'Ypres (lorsqu'elle rouvrira après sa reconstruction)52. Des mesures doivent également être prises pour augmenter de manière significative le nombre d'infirmiers dans tous les établissements visités.*

*En outre, le CPT recommande aux autorités belges de veiller à ce qu'une personne compétente pour dispenser les premiers secours (titulaire d'un certificat valide de formation à l'application de la réanimation cardio-pulmonaire et à l'utilisation d'un défibrillateur externe automatisé) soit toujours présente dans chaque établissement pénitentiaire. Le Comité réitère également son*

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<sup>88</sup> Art. 96 Royal Decree of 21 May 1965 (Koninklijk besluit van 21 mei 1965 houdende algemeen reglement van de strafinrichtingen, BS 25 mei 1965, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1965052130&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1965052130&table_name=wet)); 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).

*point de vue selon lequel au moins un infirmier qualifié devrait être présent dans chaque établissement pénitentiaire le week-end”<sup>89</sup>*

*“The Committee recommends that measures be taken by the Belgian authorities to strengthen the healthcare teams in the prison establishments visited. Specifically, urgent measures must be taken to ensure that there are at least the equivalent of 2 full-time general practitioner positions at Antwerp prison, 3 full-time general practitioner positions at Lantin prisons and of St-Gilles and 0.5 full-time general practitioner position at Ypres prison (when it reopens after its reconstruction). Steps must also be taken to significantly increase the number of nurses in all establishments visited.*

*Furthermore, the CPT recommends that the Belgian authorities ensure that a person competent to provide first aid (holder of a valid certificate of training in the application of cardiopulmonary resuscitation and the use of a automated external defibrillator) is always present in each prison establishment. The Committee also reiterates its view that at least one qualified nurse should be present in every prison establishment at weekends”*

Also the Central Prison Monitoring Board commented extensively on medical care in its annual 2022 report.<sup>90</sup>

## 9. Prevention of violence and ill-treatment

### a. Protection from violence by prison staff

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.

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 complain<sup>91</sup> 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.

### b. Protection from violence by other detainees

The prison governor and all prison personnel under his/her authority need to preserve order and safety within the prison.<sup>92</sup> 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).<sup>93</sup>

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<sup>89</sup> CPT 2022, para 24 and further.

<sup>90</sup> CTRG, Jaarverslag 2022, September 2023, p. 27 -28, 128-129.

<sup>91</sup> Art. 144 and further Prison Law.

<sup>92</sup> Art. 105 Prison Law.

<sup>93</sup> Art. 110 and further Prison Law; Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

### c. NPM assessment

The **problem of inter-prisoner violence** was explicitly mentioned and highlighted in the **CPT** report as an issue of concern.<sup>94</sup> See e.g.:

*“ ...la violence entre personnes détenues était un problème récurrent dans les établissements visités, comme l'ont également reconnu les directions et certains membres du personnel. Ce problème était clairement lié à la surpopulation (en particulier les conflits entre codétenus dans les cellules où il y avait plus de prisonniers que de lits ) et aux manques d'effectifs et à la présence insuffisante du personnel (en particulier dans le cas de confrontations physiques entre détenus dans les grandes cours d'exercice extérieures)”<sup>95</sup>*

*“ ...violence between prisoners was a recurring problem in the establishments visited, as also recognized by management and certain staff members. This problem was clearly linked to overcrowding (particularly conflicts between fellow prisoners in cells where there were more prisoners than beds) and to staffing shortages and insufficient staff presence (particularly in the case of confrontations physical activity between inmates in large outdoor exercise yards”*

The CPT recommended Belgium to do the following:

*“ ....le Comité recommande aux autorités belges de prendre des mesures résolues pour s'attaquer au phénomène de la violence entre détenus dans les prisons visitées (et, le cas échéant, dans tous les autres établissements pénitentiaires de Belgique). Davantage doit être fait pour s'assurer que le personnel soit formé et motivé pour être proactif et prévenir cette violence, notamment par l'identification précoce des détenus vulnérables et des détenus violents”<sup>96</sup>*

*“ ....The Committee recommends that the Belgian authorities take resolute measures to tackle the phenomenon of violence between prisoners in the prisons visited (and, where appropriate, in all other penitentiary establishments in Belgium). More needs to be done to ensure staff are trained and motivated to be proactive and prevent this violence, including through the early identification of vulnerable prisoners and violent prisoners”*

Also the **Central Prison Monitoring Board** draws attention to problems of inter-prisoner violence in its 2022 annual report:

*“Die vaststellingen brengen ons bij een andere harde realiteit, namelijk de groeiende onveiligheid en spanningen als gevolg van de overbevolking. Geweld, of het risico op geweld, tussen gedetineerden neemt soms toe wanneer in een cel voor twee gedetineerden drie, vier of zelfs meer gedetineerden zitten, die zo gedwongen worden om een kleine en onhygiënische ruimte te delen. Diezelfde spanningen leiden er regelmatig toe dat gedetineerden op eigen verzoek in een strafcel worden geplaatst. Volgens hen is dat de enige manier om zichzelf te beschermen en om afstand te creëren. Ook wie koste wat het kost wil praten met de directeur, die volgens de wet dagelijks bij de*

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<sup>94</sup> CPT 2022, para 13-16.

<sup>95</sup> CPT 2022, para 13.

<sup>96</sup> CPT 2022, para 15.



*gedetineerden in isolatie moet langsgaan, kiest hiervoor. Bovendien leiden dit geweld en deze spanningen tot meer tuchtprocedures*<sup>97</sup>

*“These findings bring us to another harsh reality, namely the growing insecurity and tensions as a result of overpopulation. Violence, or the risk of violence, between detainees sometimes increases when a cell for two detainees contains three, four or even more detainees, forcing them to share a small and unsanitary space. The same tensions regularly lead to detainees being placed in a punishment cell at their own request. According to them, that is the only way to protect themselves and to create distance. Anyone who wants to talk to the director at all costs, who by law must visit detainees in isolation every day, also chooses this. Moreover, this violence and tensions lead to more disciplinary proceedings.”*

## 10. Contact with the outside world

### a. Visits

Visits by **family and other relatives** are regulated in Title V, Chapter III, Section III (art. 58-63) of the Prison Law. Subject to the exceptions provided for by law, suspects have the right to receive daily visitors (Art. 58, §1). Other detainees are entitled to a minimum of three visits per week, spread over three days, of which at least one day in the weekend and Wednesday afternoon (art. 58, §2). The duration of a visit is at least one hour (art. 58, §3).

According to the law, **conjugal visits** are possible, subject to the exceptions provided for by law, at least once a month for a minimum of two hours (art. 58, §4).<sup>98</sup> Visits by **lawyers** are regulated in Title V, Chapter III, Section V. Art. 67 states that lawyers can visit their clients during the day. Access to the prison is possible between 7 a.m. and 8.30 p.m. and consultation is supposed to end by 9 p.m.<sup>99</sup>

### b. Correspondence

**Correspondence by letter** is regulated by Title V, Chapter III, Section II (art. 54-57) of the Prison Law. In principle detainees have the right to send and receive an unlimited number of letters (art. 54, §1). Incoming and outgoing correspondence by letter can be subjected to control, according to the rules, as set out in resp. art. 55 and 56 of the Prison Law. However, correspondence by letter with a number of persons, as listed in art. 57, §1, cannot be subjected to such control (e.g. King, Chair of House of Representatives, President of the CPT, etc.). This list was further expanded with the chair of the Penitentiary Health Council, the Order of Medical Practitioners and the president of the European Court of Human Rights.<sup>100</sup>

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<sup>97</sup> CTGR, Jaarverslag 2022, September 2023, 16-17.

<sup>98</sup> On these conjugal visits, see art. 15-19 of the Royal Decree of 8 April 2011 (Koninklijk besluit 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).

<sup>99</sup> Art. 26 Royal Decree of 8 April 2011.

<sup>100</sup> Art 14 Royal Decree of 8 April 2011.

Use of **telephone** is regulated in art. 64. Subject to the exceptions provided by or pursuant to the law, the prisoner has the right to make daily telephone calls at his expense to persons from outside the prison at the times and for a duration determined by the internal regulations (art. 64, §1).<sup>101</sup>

### c. Visits with children

The prison governor needs to ensure visits can take place in circumstances that maintain or promote ties with the affective environment, in particular when it concerns visits by minors to their parents (art. 60,§2). In addition, art. 58, §2 stipulates that at least one visit should be possible on a Wednesday afternoon (that is, when children are not attending school).

### d. NPM assessment

The **Central Prison Monitoring Board** comments *inter alia* as follows on this topic:

*“Wat de mogelijkheden voor contact met de buitenwereld betreft, melden verschillende commissies van toezicht extra problemen in verband met bezoeken als gevolg van de overbevolking. In veel gevallen betekent de aanwezigheid van meer gedetineerden ook meer bezoeken, wat resulteert in overvolle bezoekruimtes en beperkte bezoeken. In sommige inrichtingen is de duur van bezoeken en/of ongestoorde bezoeken korter, ofwel omdat gedetineerden later worden verwittigd vanwege de hoge werklust, ofwel omdat de bezoeken iets vroeger afgebroken moeten worden. Het grondrecht van gedetineerden op minstens drie bezoeken per week van minstens een uur en maandelijks ongestoord bezoek van minstens twee uur wordt vaak niet gerespecteerd”<sup>102</sup>*

*“As for the possibilities for contact with the outside world, several supervisory committees report additional problems related to visits due to overcrowding. In many cases, the presence of more inmates also means more visits, resulting in overcrowded visiting areas and limited visits. In some institutions the duration of visits and/or undisturbed visits is shorter, either because detainees are notified later due to the high workload, or because the visits have to be terminated slightly earlier. The fundamental right of detainees to at least three visits per week of at least one hour and monthly undisturbed visits of at least two hours is often not respected”*

## 11. Special measures for female detainees

### a. General conditions of detention for women and girls

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.<sup>103</sup>

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<sup>101</sup> Art. 20-25 Royal Decree of 8 April 2011.

<sup>102</sup> CTRG, Jaarverslag 2022, September 2023, p. 25.

<sup>103</sup> Art. 28, §3 Law 5 August 1992 (Wet van 5 augustus 1992 op het politieambt, [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=nl&nm=1992000606&la=N](https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=1992000606&la=N)); Information provided by the General Inspection of the Federal and Local Police (e-mail 29.06.2021).

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.<sup>104</sup>

#### b. Separation from men

There are currently 9 prisons where female prisoners are being held (Antwerp, Mons, Bruges, Brussels, Ghent, Hasselt, Hoogstraten, Lantin and March-en-Famenne).<sup>105</sup> Women can only be held in these prisons. There are no further rules related to the separation of male and female prisoners.

#### c. Hygiene

In the local prison rules ('règlement d'ordre intérieur' or 'huishoudelijk reglement', art. 16 Prison Law) and Collective Letter n° 107<sup>106</sup>, it is stipulated that sanitary towels are being provided to female detainees.

#### d. Healthcare

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.<sup>107</sup>

#### e. Pregnancy and women with babies or young children

There are three prisons where persons can be detained with their child (under three years old): Bruges, Brussels and Lantin.<sup>108</sup>

#### f. NPM assessment

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<sup>104</sup> Art. 134, §3 Prison Law.

<sup>105</sup> 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, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2019081703](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2019081703)).

<sup>106</sup> 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).

<sup>107</sup> Information provided by the Belgian Prison Administration (e-mail 02.06.2021).

<sup>108</sup> 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, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2019081703](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2019081703)).

## 12. Special measures for foreign nationals

### a. General measures for foreign nationals

No such measures are available.

### b. Interpretation and translation

Every new prisoner needs to be received within 24 hours by the governor and, as far as possible, informed about, **in a language he understands**, his rights and obligations, about the applicable rules (in prison or department), about the role of the staff and about the existing there or accessible from there possibilities of medical, legal, psychosocial and family assistance, from moral, philosophical or religious support and social assistance and services (art. 19 Prison Law). The Royal Decree of 8 April 2011 clarifies that if the detainee does not speak the language of the region where the prison is located then the prison will use “any reasonable means of translation”.<sup>109</sup>

### c. NPM assessment

The **CPT** commented the following on access the complaint procedure:

*“Le seul point potentiellement préoccupant était que les informations écrites sur les voies de recours (et plus généralement le règlement intérieur et les droits et obligations des détenus) n'étaient disponibles qu'en français, en néerlandais et parfois en anglais. Compte tenu de la présence de nombreux détenus étrangers dans les établissements visités, il serait souhaitable de fournir ces informations écrites dans un plus grand éventail de langues comprises par les détenus”<sup>110</sup>*

*“The only point of potential concern was that written information on appeals (and more generally the internal regulations and the rights and obligations of prisoners) was only available in French, Dutch and sometimes English. Given the presence of many foreign prisoners in the establishments visited, it would be desirable to provide this information written in a wider range of languages understood by the prisoners.”*

The **Central Prison Monitoring Board** recommended the following in its 2022 annual report:

*“De CTRG beveelt aan dat alle reglementen die van toepassing zijn in gevangenissen (of het nu gaat om interne reglementen, collectieve brieven, ministeriële circulaire, koninklijke besluiten, wetten, normen en andere soft law-regels) toegankelijk worden gemaakt via de publicatie en regelmatige bijwerking ervan op de website van de FOD Justitie; dat het Huishoudelijk Reglement van de gevangenissen systematisch wordt overhandigd aan elke gevangene die de gevangenis binnenkomt in een taal die hij kan begrijpen en dat dit hem zo nodig wordt uitgelegd door een daartoe bevoegd personeelslid; dat de opleiding van het personeel over deze regelgeving zowel bij de aanvang als tijdens hun tewerkstelling wordt verstrekt”<sup>111</sup>*

*“The CTRG recommends that all regulations applicable in prisons (whether internal regulations, collective letters, ministerial circulars, royal decrees, laws, standards and other soft law rules)*

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<sup>109</sup> Art. 2, Royal Decree 8 April 2011.

<sup>110</sup> CPT, 2022, para 47.

<sup>111</sup> CTRG, Jaarverslag 2022, September 2023, 138.

*be made accessible through publication and regular updating of it on the website of the FPS Justice; that the Internal Regulations of Prisons are systematically communicated to every prisoner entering the prison in a language he can understand and, if necessary, explained to him by an authorized staff member; that staff training on these regulations is provided both at the start and during their employment”*

### 13. Special measures relating to detention of children and young adults/juvenile detention regime

#### a. Age groups

Minors who are tried as adults are transferred to a closed federal centre for minors who have committed a fact that is described as a criminal offence.<sup>112</sup> The so-called ‘uithandengeving’ is possible from 16 years onwards.

#### b. General measures for detained children and young adults

Note: following a reform of the state in 2014, dealing with youth delinquency has become a competence of the Communities. These reforms are ongoing. There are therefore no ‘general measures’.<sup>113</sup>

#### c. Separation from adults

See previous note.

#### d. NPM assessment

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### 14. Special measures to protect detainees with disabilities or serious medical conditions

#### a. Care in detention

There are no national special standards on such detainees.

#### b. Continuity of care

Cf above.

#### c. Reasonable accommodation and accessibility

Cf above.

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<sup>112</sup> Art. 84bis, §4 Youth Law.

<sup>113</sup> For more information, on rules on visits, education, stay, etc see eg: <https://www.jeugdhulp.be/organisaties/vlaams-detentiecentrum> and <https://www.aidealajeunesse.cfwb.be/index.php?id=8751>.

#### d. NPM assessment

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### 15. Specific measures to protect detainees with special needs or other vulnerabilities

#### a. Protection of LGBTI detainees

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, some years ago it was announced that a policy document would be drafted with recommendations about how to deal with this subgroup but so far this has not been completed or published (for guidelines on transgender prisoners, see under b).

Each year a symbolic action is initiated, when prisons are asked to fly the rainbow flag on May 17.

At the local level, a working group, discussion group and theatre group have been created at the prison of Bruges.

#### b. Protection of trans detainees

This topic has attracted the attention of the prison administration and a set of recommendations has been formulated in how to deal with transgender detained persons:<sup>114</sup>

“1. Transgender detainee persons like other detainees are treated fairly, equally and respectfully and enjoy the standard regime. Therefore, in each case a specific needs analysis by the medical service and the psychosocial service is carried out. Gender identity is always taken into account when addressing the person with his/her (chosen) first name and form of address (he/his, she/her, those/their,...). In case of doubt about the gender identity of the detainee, reference is made through the hierarchy to the local management of the facility, who can take decisions, such as an internal decision to (re)classify, gender/sex of the correctional officer conducting the body search, etc.

2. The local management decides on the allocation of transgender detainees to a section, which in principle corresponds to their gender identity, regardless of their sex characteristics or legal gender registration as stated on their identity card, and with a view to maintaining order and security for the individual and the prison. The governor may seek the advice of any staff who can provide useful advice in this regard (PSD, medical service, penitentiary officers, etc.).

3. Upon reception, transgender detainees are given an information leaflet on the subject and their specific needs are addressed. Any request for assistance due to gender dysphoria/ gender

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<sup>114</sup> Aanbevelingen / richtlijnen voor de omgang met transgender gedetineerde personen, 2 March 2023 FOD Justitie. On this, see A. Vanliefde, “Wanneer men niet in het (gender) hokje past: Onderzoek naar de classificatie en plaatsingscriteria van gedetineerde transgender en genderdiverse personen in België”, *Fatik*, 2023, 179, p. 25ff.

incongruence or medical/legal transition is taken seriously and forwarded to the PSD and the Penitentiary Health Service.

4. Transgender detainees will have access to specific goods related to their gender identity and expression to the extent that they do not undermine order and security (including goods they carry on entry). Their safety and privacy needs are also taken into account when accessing showers.

5. Transgender detainees sons have indiscriminate access to the education, leisure activities and prison labour provided by the department to which they were assigned pursuant to the internal classification decision were classified.

6. Both medico-psychological and prison staff pay particular attention to any behavioural change that may indicate an increased risk of gender dysphoria or incongruence, self-harm or (attempted) suicide.

7. Detainees who have already initiated a medical transition or wish to undergo a relevant procedure can continue that process or be admitted to specialised investigations and treatments (e.g. hormone treatment or surgery).

8. In principle, information about a prisoner's gender or gender transition is not shared with others staff members. In the event of transfer, information will only be shared with the prison of destination and PSD staff to the extent necessary for the continuation of safe and humane detention.

9. The examination of the clothing can be conducted by each prison officer: for transgender the same procedures apply as for any other prisoner. The local management decides on body searches and the sex (potentially also non-binary) of the prison officers charged with that task.

10. As part of their training, guard staff are made aware of diversity and the right tools for appropriate communication and interaction with transgender prisoners.”<sup>115</sup>

c. Protection of other vulnerable detainees

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d. NPM assessment

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<sup>115</sup> “Samenvatting van de aanbevelingen voor de omgang met transgender gedetineerde personen”, FATIK, 2023, 179, 42-43.

## 16. Specific measures to address radicalisation in prisons

### a. General measures to prevent radicalisation

Special security regimes may be applied on an individualised basis for all prisoners, including radicalized prisoners (Art. 116-118 Prison Law).

Art. 116, §1 of the Prison Law stipulates that where concrete circumstances or the behaviour of a detainee indicate that he represents a continuing threat to security, and both the control measures referred to in Section I and the special security measures referred to in Section II are shown to be insufficient, he may be placed in an individual special security regime. §2 adds that placement in such a regime may be decided only when security cannot be safeguarded by any other means and for the time strictly necessary for that purpose. The types of measures that can apply are listed in Art. 117 of the Prison Law. The procedure to place a person under such a regime is regulated in Art. 118.

In terms of preventive programmes and working towards deradicalisation, these are not organised nationally, but rather at the level of the Communities/regions.

### b. Risk assessments

Cf above

### c. Training of staff

Cf above

### d. Deradicalisation measures

Cf above

### e. NPM assessment

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## 17. Inspections and monitoring

### a. Inspections

For police detention inspections are undertaken by the General Inspectorate of the Federal Police and the Local Police. For the prisons the creation of an inspectorate is foreseen<sup>116</sup> but not implemented yet.

### b. Access to detention facilities by national authorities

Members of the different (federal and regional) parliaments in Belgium have the right to access the prisons (art. 33, §1 Prison Law).

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<sup>116</sup> Penitentiary Law 23 March 2019, art. 9-10.

[https://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=nl&caller=summary&pub\\_date=19-04-11&numac=2019011569](https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=19-04-11&numac=2019011569)



### c. Access to detention facilities by international bodies

Belgium ratified the ECPT and, therefore, grants access to members of the CPT. As was explained above, OPCAT has not been ratified yet so the SPT has, for the moment, no access to detention facilities on Belgian territory.

### d. NPM assessment

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## 18. Access to remedy

### a. Legal remedies

#### 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.<sup>117</sup>
- 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.<sup>118</sup>
- 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.<sup>119</sup>

#### 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.<sup>120</sup>
- In case of an urgent need to take measures with respect to an alleged infringement of a subjective right<sup>121</sup>, the 'juge de 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.<sup>122</sup>

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<sup>117</sup> For the full list (N=19), see art. 57,§1 Prison Law.

<sup>118</sup> Art. 20 – 31 Prison Law.

<sup>119</sup> Art. 147 – 166 Prison Law.

<sup>120</sup> Art. 1382 Code Civil Law.

<sup>121</sup> Art. 584, para 1 Code Criminal Procedure.

<sup>122</sup> Art. 14 Coordinated Laws 12 January 1973.

b. Legal assistance

The Prison Law foresees specific arrangement in terms of contact and visits by lawyers, respect for confidentiality during consultations and correspondence.

c. Request and complaints

As explained above (see 18.a)) there's a specific complaint procedure foreseen in the Prison Law, which is in effect since 1 October 2020.

d. Independent authority

See above (18.a))

e. NPM assessment

The **first experiences with the complaint procedure** were discussed at length in the 2022 annual report of the Central Prison Monitoring Board.<sup>123</sup>

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<sup>123</sup> See CTRG, Jaarverslag 2022, September 2023, 35-43.

## Part II: National case-law

### Belgium, Cour d'appel de Liège, 12e chambre A, Brussels, 12 December 2023

Thematic area	<i>Cell space</i>
Decision date	12 December 2023
Reference details	Excerpts published in: JLMB, 2024, issue 13, 548-549.
Key facts of the case	The case deals with the appeal procedure of the Belgian state against the decision of the tribunal of Liège, of 28 November 2022 (see further), concerning the overcrowding in the prison of Lantin.
Main reasoning/argumentation	The Court of Appeal confirmed the decision of the Liège Court: it declared on December 12, 2023 that Belgian State's appeal was unfounded.
Key issues (concepts, interpretations) clarified by the case	Prison overcrowding
Results (sanctions) and key consequences or implications of the case	This judgment condemns the Belgian State to: <ul style="list-style-type: none"> <li>- reduce the prison density rate to 110% within one year under penalty of a penalty of €1,000 per day per inmate exceeding the maximum capacity of Lantin prison;</li> <li>- put an end to prison overcrowding in Lantin prison within 5 years under penalty of a penalty of €2,000 per day per inmate exceeding the maximum capacity of Lantin prison;</li> <li>- put an end to the inhuman and degrading treatment present at Lantin prison within one year under penalty of a penalty of €1,000 per day.</li> </ul>
Key quotation in original language and translated into English with reference details	<p>“It is indeed appropriate to set the time limit within which the objective of eliminating all overpopulation must be achieved. There is no reason to limit the condemnation of the Belgian State to the implementation of long-term strategies aimed at structurally reducing, or even eliminating, prison overcrowding at Lantin prison. It is indeed important that said strategies have actually been put in place and that their objectives are accomplished within the allotted time frame. The five-year period retained by the expert constitutes the necessary and sufficient period for the objectives defined as part of a long-term strategy to be achieved. There is no justification for increasing or decreasing this deadline. (...) It is up to the Belgian State, as part of the reparation in kind to which it is required, to put an end to the inhuman and degrading treatment present in Lantin. His order to be executed within one year from the notification of the judgment is reasonable and adequate in view of the conclusions of the expert report.</p> <p><i>“Il convient en effet de fixer le délai endéans lequel l’objectif de suppression de toute surpopulation doit être atteint. Il n’y a pas lieu de limiter la condamnation de l’État belge à la mise en oeuvre des stratégies à long terme visant à structurellement réduire, voire à supprimer, la surpopulation carcérale de la prison de Lantin. Il importe en effet que lesdites stratégies aient effectivement été mises en place et que leurs objectifs soient accomplis dans le délai imparti. Le délai de cinq ans retenu par l’expert constitue le délai nécessaire et suffisant pour que les objectifs définis dans le cadre d’une stratégie à long terme puissent être atteints.</i>”</p>

	<i>Rien ne justifie de majorer ou minorer ce délai. (...)Il appartient à l'État belge, dans le cadre de la réparation en nature à laquelle il est tenu, de mettre un terme aux traitements inhumains et dégradants présents à Lantin. Sa condamnation à s'exécuter dans un délai d'un an à partir de la signification du jugement est raisonnable et adéquate au regard des conclusions du rapport d'expertise."</i>
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**Belgium, Cour d'appel de Bruxelles, 1ère chambre F, affaires civiles, Brussels, 223/KR/5, 13 March 2023**

<b>Thematic area</b>	<b>Conditions of detention (body searches/art. 3 ECHR)</b>
<b>Decision date</b>	13 March 2023
<b>Reference details</b>	Excerpts published in: JLMB, 2023, issue 18, 817-823.
<b>Key facts of the case</b>	Case relates to the trial of the terrorist attacks of 22 March 2016: suspects had contested inter alia the practice of body searches with genuflections and blinding when they are being transferred from the prison of Haren to the court. The case was dealt with on 29 December 2022 when the Brussels judge found a violation of Art. 3 ECHR (see further ). The state appealed against that decision.
<b>Main reasoning/argumentation</b>	<p>A body search accompanied by an examination of the body cavities with mandatory knee bends (squats) constitutes a serious infringement of the right to privacy. Such interference must be laid down in a law that meets the requirements of foreseeability, clarity and accessibility set by Article 8, § 2, of the European Convention on Human Rights.</p> <p>It can only be deduced from Article 28, paragraph 3 of the Act of 5 August 1992 on police duties and the preparatory activities of that Act that a person may be asked, or even forced, to undress in order to thoroughly examine his clothing. to research. This provision cannot constitute a legal basis for such a body search.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b>	Body searches – inhuman and degrading treatment
<b>Results (sanctions) and key consequences or implications of the case</b>	No legal basis for strip searches with genuflections Penalty of 1000 euro per infringement, per applicant, from the 9 <sup>th</sup> day of notification, with a maximum of 25.000 euro per applicant
<b>Key quotation in original language and translated into English with reference details</b>	<p>"Neither Article 28, paragraph 3, of the Police Act of 5 August 1992, nor the preparatory work relating to this provision, authorizes that during the body search, the person is invited, and a fortiori may be forced by police officers, to perform genuflections, or "squats" to allow the visual examination of its cavities and orifices, and in particular the anal orifice.</p> <p>Resulting solely from the legal provision and the preparatory work, the possibility that she would be invited, or even forced, to undress completely "so that her clothes can be completely examined"." (§20) ... "For all of these reasons, the strip searches of the respondents with genuflections are carried out, according to the prima facie assessment of the court, without the legal basis required by Article 8, paragraph 2, of the European Convention on Human Rights; They are therefore</p>

	<p>contrary to this conventional provision and illegal, which is sufficient to order the immediate cessation of the genuflections in dispute” (§23)</p> <p><i>“Ni l’article 28, paragraphe 3, de la loi sur la fonction de police du 5 août 1992, ni les travaux préparatoires relatifs à cette disposition, n’autorisent qu’à l’occasion de la fouille à corps, la personne soit invitée, et a fortiori puisse y être contrainte par les officiers de police, à effectuer des genuflections, ou « squats » pour permettre l’examen visuel de ses cavités et orifices, et en particulier l’orifice anal.</i></p> <p><i>Résulte uniquement de la disposition légale et des travaux préparatoires, la possibilité qu’elle soit invitée, voire contrainte, à se déshabiller complètement « pour que ses vêtements puissent être examinés complètement ».” (§20) ... “Pour l’ensemble de ces motifs, les fouilles à nu des intimes avec genuflections s’opèrent, selon l’appréciation prima facie de la cour, sans la base légale requise par l’article 8, paragraphe 2, de la Convention européenne des droits de l’homme ; ils sont dès lors contraires à cette disposition conventionnelle et illégales, ce qui suffit pour ordonner la cessation immédiate des genuflections litigieuses” (§23)</i></p>
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### Belgium, Cour de cassation de Belgique, Brussels, N° P.23.0002.F, 11 January 2023

Thematic area	Cell space
Decision date	11 January 2023
Reference details	<p><a href="https://juportal.be/JUPORTAwork/ECLI:BE:CASS:2023:ARR.20230111.2F.9_FR.pdf?Version=1674116525">https://juportal.be/JUPORTAwork/ECLI:BE:CASS:2023:ARR.20230111.2F.9_FR.pdf?Version=1674116525</a></p> <p>Excerpts published in: JLMB, 2023, issue 6, 269-270</p>
Key facts of the case	<p>This case relates to the conditions in the prison of Saint-Gilles. The plaintiff criticized the appeal judges for not having granted his subsidiary request for transfer to another prison than the Saint-Gilles prison and having declared themselves without jurisdiction regarding such request. He considered that in order to verify the legality of the arrest warrant, it is up to the investigating court, when invited to do so, to verify that the conditions of detention are not contrary to Article 3 of the ECHR.</p>
Main reasoning/argumentation	<p>The investigative courts are authorized, at the first appearance and provided that they are requested to do so on the basis of elements specific to the situation of the detainee, to order the rectification of the arrest warrant by ordering that pre-trial detention be continued in a other penal institution if it appears that the arrest warrant orders the detention of the suspect in a prison where the conditions of residence, to the detriment of that suspect, constitute inhuman or degrading treatment. (Art. 30 law on pre-trial detention; art. 3 ECHR).</p> <p>The investigating court that declares itself incompetent to inspect the living conditions of a suspect who maintains that the living conditions on his part constitute inhuman or degrading treatment and to order, where appropriate, his transfer to another penal institution, justifies its decision not correct. (Art. 30 law on pre-trial detention; art. 3 ECHR).</p>

<b>Key issues (concepts, interpretations) clarified by the case</b>	Prison overcrowding
<b>Results (sanctions) and key consequences or implications of the case</b>	The Court overturned the contested judgment and referred the case to the Mons Court of Appeal, chambre des mises en accusation, otherwise composed.
<b>Key quotation in original language and translated into English with reference details</b>	<p>“When it appears that the arrest warrant orders the incarceration of the accused in a remand center whose accommodation conditions constitute, to the detriment of this accused, inhuman or degrading treatment, the investigating courts are competent, during the first appearance, and provided they are invited to do so on the basis of elements specific to the situation of the detainee, to order the rectification of the arrest warrant by requiring that preventive detention continue in another establishment.</p> <p>Considering that, during a first appearance, the investigating jurisdiction is without power to carry out such a control and to order, if necessary, the transfer of the accused to another penitentiary establishment, the judges of appeal did not legally justify their decision”</p> <p><i>“Lorsqu’il apparaît que le mandat d’arrêt ordonne l’incarcération de l’inculpé dans une maison d’arrêt dont les conditions d’hébergement constituent, au préjudice de cet inculpé, un traitement inhumain ou dégradant, les juridictions d’instruction sont compétentes, lors de la première comparution, et à condition d’y être invitées sur la base d’éléments propres à la situation du détenu, pour ordonner la rectification du mandat d’arrêt en imposant que la détention préventive se poursuive dans un autre établissement.</i></p> <p><i>En considérant que, lors d’une première comparution, la juridiction d’instruction est sans pouvoir pour procéder à un tel contrôle et pour ordonner, s’iléchet, le transfert de l’inculpé dans un autre établissement pénitentiaire, les juges d’appel n’ont pas légalement justifié leur décision”</i></p>

**Belgium, Tribunal de première instance francophone de Bruxelles, section civile, Chambre de référés, affaires civiles, Brussels, 22/299/C-22/304/C, 29 December 2022**

<b>Thematic area</b>	<b>Conditions of detention (art. 3 ECHR)</b>
<b>Decision date</b>	29 December 2022
<b>Reference details</b>	Excerpts published in: JLMB, 2023, issue 2, 75-92
<b>Key facts of the case</b>	Case relates to the trial of the terrorist attacks of 22 March 2016: suspects contest inter alia the practice of body searches with genuflections and blinding when they are being transferred from the prison of Haren to the court
<b>Main reasoning/argumentation</b>	Body searches, which involve bending the knees several times, are by nature humiliating and painful measures for those who have to undergo them. However, they are not always illegal and may prove necessary to ensure security, maintain

	<p>order or prevent criminal offences. In any case, they must be carried out in such a way that the degree of suffering or humiliation does not exceed what is unavoidable in this form of treatment.</p> <p>Such searches constitute inhuman and degrading treatment, prohibited by Article 3 of the ECHR, if they are of a prolonged, daily, general and systematic nature and do not appear to be justified by mandatory security requirements, as they take place in addition to numerous other security measures and are not based on a concrete assessment of the circumstances and the threat posed by each of those involved who must undergo them individually, and that their concrete application is left to the discretion of the police officers who carry them out, so that the differences may give the persons who undergo them a sense of arbitrariness to give.</p> <p>However, wearing a blindfold during transfer from prison to court may be justified for security reasons, insofar as it may prevent detainees from knowing the details of the route, the security equipment deployed and the methods used by police officers - useful information for a possible escape attempt – can prevent them from actively participating in an escape with outside help and can limit the risks of aggression against the police officers charged with their guard. Even if such a measure must remain exceptional, it can be justified by the extreme seriousness of the crimes committed, which justifies that a threat level 3 was determined by the OCAD (Coordinating Body for Threat Analysis) and appears to be in reasonable proportion to the lawfully intended purposes, because, for example, it is less drastic than covering the head with a hood, while darkening the windows of vehicles would not allow all these purposes to be achieved.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b></p>	<p>Body searches – inhuman or degrading treatment</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b></p>	<p>Violation article 3  End the systematic strip searching;  Penalty of 1000 euro per infringement, per applicant, from the 9<sup>th</sup> day of notification, with a maximum of 50.000 euro per applicant</p>
<p><b>Key quotation in original language and translated into English with reference details</b></p>	<p>“The strip search, moreover with the obligation to genuflect several times, constitutes by its nature a humiliating and embarrassing measure for the person who must undergo it. According to the jurisprudence of the European Court of Human Rights, which is binding on the Belgian State, it is however not in itself illegitimate, and may prove necessary to ensure security, defend order to prevent criminal offenses; it must in any case be carried out according to “adequate modalities”, so that the degree of suffering or humiliation suffered does not exceed that which inevitably involves this form of legitimate treatment. It cannot, moreover, present a systematic or automatic character, in the sense that it must be justified by a convincing security imperative” (§24) ... “It is appropriate ... to recall that having regard to the fundamental and absolute character of Article 3 of the Convention, the extreme seriousness of the facts for which the applicants are being tried by the Assize Court does not justify any derogation from this provision... The practice of degrading treatment is purely and simply prohibited in our rule of law, and this must be so even if the victims of these treatments are accused or convicted of acts of terrorism” (§28)</p> <p><i>“La fouille à corps, de surcroît avec obligation de procéder à plusieurs genuflections, constitue par nature une mesure humiliante et embarrassante pour le personne qui doit la subir. Selon la jurisprudence de la Cour européenne des droits de</i></p>

	<p><i>l'homme, qui s'impose à l'Etat belge, elle n'est cependant pas en elle-même illégitime, et peut se révéler nécessaire pour assurer la sécurité, défendre l'ordre ou prévenir les infractions pénales; elle doit en tout état de cause être réalisée selon des "modalités adéquates", de manière à ce que le degré de souffrance ou d'humiliation subi ne dépasse pas celui qui comporte inévitablement cette forme de traitement légitime. Elle ne peut, par ailleurs, présenter un caractère systématique ou automatique, en ce sens qu'elle doit être justifiée par un impératif de sécurité convaincant" (§24) ... "Il convient ...de rappeler qu'en regard au caractère fondamental et absolu de l'article 3 de la Convention, l'extrême gravité des faits pour lesquels les demandeurs sont jugés par la Cour d'assises, ne permet pas de justifier une quelconque dérogation à cette disposition ... La pratique de traitements dégradants est purement et simplement proscrite dans notre Etat de droit, et il doit en être ainsi même si les victimes de ces traitements sont accusés ou condamnés pour des faits de terrorisme" (§28)</i></p>
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**Belgium, Tribunal de première instance de Liège – division Liège, affaires civiles (4ème chambre), Liège, 15/3235/A, 28 November 2022**

<b>Thematic area</b>	<b>Cell space</b>
<b>Decision date</b>	28 November 2022
<b>Reference details</b>	<p><a href="https://latribune.avocats.be/sites/latribune/files/15-3235-a1_compressed_1.pdf">https://latribune.avocats.be/sites/latribune/files/15-3235-a1_compressed_1.pdf</a></p> <p>Excerpts published in: <i>JLMB</i> 2023, issue 2, 62-74.</p>
<b>Key facts of the case</b>	The case is directed at prison overcrowding – and the impact this has on persons deprived of their liberty - in the prison of Lantin
<b>Main reasoning/argumentation</b>	<p>Even though the initiatives considered by the Belgian State and the will of the current Minister of Justice are commendable, this does not alter the fact that overcrowding in prisons has been a daily problem for years that affects all those involved, but for which the means of action remain stuck in the roundtable discussions and consultations that the Government often initiates when a strike or lawsuit threatens.</p> <p>Since the expert appointed by the judge to determine whether it was necessary to completely eliminate overcrowding in Lantin prison in order to comply with the fundamental rights of the detainees, or whether a margin of tolerance could be allowed, and to provide advice on the time limits that can reasonably be imposed on the State to eliminate or reduce prison overcrowding, has answered these questions without his conclusions being really challenged by the parties, it behooves him to confirm them and to order the State to reduce the prison population density to 110 percent within one year, to eliminate overcrowding in Lantin prison within five years and to put an end to inhuman and degrading treatment in Lantin within a year.</p>



<b>Key issues (concepts, interpretations) clarified by the case</b>	Prison overcrowding
<b>Results (sanctions) and key consequences or implications of the case</b>	<p>the court of first instance of Liège sentences the Belgian State to:</p> <ul style="list-style-type: none"> <li>- reduce the prison density rate to 110% within one year under penalty of a penalty of €1,000 per day per inmate exceeding the maximum capacity of Lantin;</li> <li>- put an end to prison overcrowding at Lantin prison within 5 years under penalty of a penalty of €2,000 per day per inmate exceeding the maximum capacity of Lantin;</li> <li>- put an end to the inhuman and degrading treatment present in Lantin within one year under penalty of a penalty of €1,000 per day.</li> </ul>
<b>Key quotation in original language and translated into English with reference details</b>	<p>“Overcrowding as described by the Expert...undeniably leads to negative consequences on detainees. If the initiatives envisaged by the Belgian State and the will of the current Minister of Justice are laudable, the fact remains that prison overpopulation remains, for years already, a customary issue which concerns all the actors concerned , but for which the avenues of action linger around round tables and consultations that the Government often initiates when strike or justice threatens”</p> <p><i>“La surpopulation telle que décrite par l’Expert ...entraîne de manière indéniable des conséquences négatives sur les détenus. Si les initiatives envisagées par l’Etat belge et la volonté de l’actuel Ministre de la Justice sont louables, il n’en reste pas moins que la surpopulation carcérale demeure, depuis des années déjà, une question coutumière qui interpelle tous les acteurs concernés, mais pour laquelle les pistes d’action s’attardent autour des tables rondes et des consultations que le Gouvernement initie souvent lorsque la grève ou la justice menacent”</i></p>

## Belgium, Klachtencommissie Gent, Ghent, KC09/22-0048, 28 October 2022

<b>Thematic area</b>	<b>Cell space</b>
<b>Decision date</b>	28 October 2022
<b>Reference details</b>	<a href="https://rechtspraak.ctrg.belgium.be/files/KC0922-0048.pdf">https://rechtspraak.ctrg.belgium.be/files/KC0922-0048.pdf</a>
<b>Key facts of the case</b>	The complaint concerns the fact that the complainant was not placed alone in a mono cell in Ghent prison (in a timely manner), despite the fact that he was granted a detention guarantee, given his transfer (EAW) from the Netherlands to Belgium. Instead, he was placed in a duo cell as a floor sleeper and third person. The management did not decide within a reasonable period to place the complainant alone in a mono cell.
<b>Main reasoning/argumentation</b>	The stay of the complainant, a non-smoker, in a cell with two other smoking detainees, with less than 3 m <sup>2</sup> of space per person, where the complainant had to sleep on a mattress on the floor, for a period of 21 days, constitutes a violation of the prohibition of inhuman treatment (Article 3 ECHR). The complaint is admissible and well-founded. (Art. 148, paragraph 2 Basic Act of 12 January 2005 on the prison system and the legal position of detainees).

<b>Key issues (concepts, interpretations) clarified by the case</b>	Prison overcrowding – EAW
<b>Results (sanctions) and key consequences or implications of the case</b>	The complaint is admissible and well-founded
<b>Key quotation in original language and translated into English with reference details</b>	<p>“Considering the fact that the complainant had to stay for 21 days in a multi-person cell where, after deducting the space occupied by the sanitary facilities, he and his fellow detainees had less than 3 m<sup>2</sup> per detainee. Considering that he had to sleep on a mattress on the floor during this period. Given that he had to passively smoke with his cellmates during this period. Given the lack of privacy when using the toilet, the complaints committee decides on inhumane treatment of the detainee, contrary to art. 3 of the European Convention on Human Rights. The living conditions in which the detainee stayed are unlawful. ... The complainant's living conditions are also contrary to the guarantees that the FPS Justice has offered and on the basis of which the complainant's extradition to Belgium was permitted.”</p> <p><i>“Gelet op het feit dat klager 21 dagen moest verblijven in een meerpersoonscel waar, na aftrek van de ruimte ingenomen door de sanitaire voorzieningen, hij en zijn medege-detineerden over minder dan 3 m<sup>2</sup> per gedetineerde beschikten. Gelet dat hij gedurende deze periode op een matras op de grond moest slapen. Gelet dat hij gedurende deze periode passief moest meeroken met zijn celgenoten. Gelet op het gebrek aan privacy bij het gebruik van het toilet, besluit de klachtencommissie tot een onmenswaardige behandeling van de gedetineerde, strijdig met art. 3 van het Europees Verdrag voor de Rechten van de Mens. De leefomstandigheden waarin de gedetineerde verbleef zijn onwettig. ... De leefomstandigheden van klager zijn eveneens in strijd met de garanties die de FOD Justitie heeft geboden en op grond waarvan de overlevering van klager aan België werd toegestaan.”</i></p>

### Belgium, European Court of Human Rights, *Pîrjoleanu c. Belgique*, 26404/18, 16 March 2021

<b>Thematic area</b>	<i>Cell space</i>
<b>Decision date</b>	16 March 2021
<b>Reference details</b>	<a href="https://hudoc.echr.coe.int/fre?i=001-208594">https://hudoc.echr.coe.int/fre?i=001-208594</a>
<b>Key facts of the case</b>	<p>Case concerns prison conditions in the prison of Antwerp, partly during a strike of prison officers.</p> <p>The applicant alleged that he was detained in a cell whose walls were dirty, damp and covered with mold, equipped with two beds that he had to share with three inmates, and in which the toilets were not equipped with partition. He only had two shirts and pants worn and irritating and that bedding was limited to two sheets washed every two weeks.</p>

<p><b>Main reasoning/argumentation</b></p>	<p>Penitentiary institutions must provide (multi-person) cells where each detainee has at least 3 m<sup>2</sup> of personal space, including the space occupied by furniture, excluding sanitary facilities. Prisons that do not respect this standard give rise to a strong suspicion of a violation of Article 3 of the ECHR. Member States can rebut the presumption by demonstrating that other factors adequately compensate for the lack of personal living and exercise space.</p> <p>In this case, the ECHR is examining the poor living conditions of detainees in the Antwerp prison. In 2018, prison staff stopped working for almost a month, creating additional inconveniences for detainees. The Court notes that the standard regarding personal cell space was not respected and believes that the overall detention conditions did not compensate for this shortcoming. The Belgian state therefore did not pass the ECHR test.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b></p>	<p>Prison overcrowding – inhuman or degrading treatment</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b></p>	<p>Violation of art 3 ECHR</p> <p>4,200 euros moral damages</p>
<p><b>Key quotation in original language and translated into English with reference details</b></p>	<p>24. The Court recalls that it has already found a violation by the respondent State of Article 3 of the Convention in relation to issues similar to those which are the subject of the present case (Vasilescu, cited above, § 107, Sylla and Nollomont, cited above, §§ 34 and 42, and Clasens, cited above, §§ 33-39),</p> <p>25. After examining all the elements submitted to it in the present case, the Court finds no fact or argument capable of convincing it to reach a different conclusion as to the merits of the complaints based on Article 3.</p> <p><i>“24. La Cour rappelle qu’elle a déjà conclu à la violation par l’État défendeur de l’article 3 de la Convention au sujet de questions similaires à celles qui font l’objet de la présente affaire (Vasilescu, précité, § 107, Sylla et Nollomont, précité, §§ 34 et 42, et Clasens, précité, §§ 33-39),</i></p> <p><i>25. Après examen de l’ensemble des éléments qui lui ont été soumis dans la présente affaire, la Cour ne décèle aucun fait ou argument propre à la convaincre de parvenir à une conclusion différente quant au bien-fondé des griefs tirés de l’article 3”</i></p>