Parallel report of the Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH)

Committee against torture
71st session
Fourth periodic report of Belgium

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Report of the Federal Institute for the Protection and Promotion of Human Rights to the Committee against Torture

71st session

Fourth periodic report of Belgium

Report of 14 June 2021

The Federal Institute for the Protection and Promotion of Human Rights

The Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) is an independent institution created by the Act of 12 May 2019 in accordance with the Paris Principles on national institutions for the promotion and protection of human rights, in order to contribute to the protection and promotion of human rights in Belgium.

1. Introduction

The Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) was created by the Act of 12 May 2019 with a view to providing Belgium with a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).[1] This report pertains to the Institute's mission to collaborate with United Nations bodies and regional human rights organizations, in the framework of which it can present reports on the human rights situation in Belgium.

The FIRM/IFDH carries out this mission within the limits of its mandate, which covers all matters relating to the protection of fundamental rights which fall within the competence of the federal level and for which no other independent body for the protection and promotion of human rights has been designated. This report is complementary to the one submitted jointly by Unia, the independent public institution for combating discrimination and promoting equal opportunities (type B NHRI), and Myria, the Federal Migration Centre. The topics already dealt with in the joint report by these two institutions are not further discussed in this report.

[1] The Federal Institute for the Protection and Promotion of Human Right *(Federaal Instituut voor de Bescherming en de Bevordering van de Rechten van de Mens / Institut Fédéral pour la Protection et la Promotion des Droits Humains)* is an associate member of the European Network of National Human Rights Institutions since April 2021.

2. Methodology

This report was drafted on the basis of consultations with several relevant federal institutions: the Central Monitoring Council for Prisons (CCSP),[2] the Standing Intelligence Agencies Review Committee (Standing Committee I),[3] and the Attorney General of Mons. The FIRM/IFDH would like to thank them for their assistance. Such assistance was particularly important for the section on the situation in Belgian prisons, which was drafted in close cooperation with the CCSP, to whom we are most grateful. Considering the recent creation of the Institute (see below), time constraints did unfortunately not allow us to conduct wider consultations. This report also takes into account the recommendations and contributions of civil society and the FIRM/IFDH wants to particularly thank the following organizations for exchanging views on the points discussed in this report: Comité T, Amnesty International Vlaanderen, I-Care, the OPCAT Coalition, Fair Trials, Police Watch and Kif Kif. The sole responsibility for the statements made in this report lies with the FIRM/IFDH.

[2] The Central Monitoring Council for Prisons (Conseil Central de Surveillance Pénitentiaire) is the independent monitoring and advisory body competent to watch over the rights and human dignity of prisoners, and was established by the Principles Act of 12 January 2005, *Belgian Official Gazette* 1 February 2005. For more information, visit https://ccsp.belgium.be.

[3] The Standing Intelligence Agencies Review Committee is the independent control body for intelligence services, established by the Act of 18 July 1991, *Belgian Official Gazette* 26 July 1991. For more information, visit https://comiteri.be/index.php/en/standing-committee-i.

3. Article 2 – Response to point 6: The creation of a national human rights institution

The FIRM/IFDH was created by the Act of 12 May 2019 with a view to providing Belgium with a national human rights institution in accordance with the Paris Principles. Its secretariat became operational on 1 February 2021. It currently has seven staff members out of a planned initial staff of ten.

At present, the mandate of FIRM/IFDH only extends to the federal level, which means that it has no competence to ensure the protection and promotion of human rights in matters that fall within the competence of the federated entities. However, the conclusion of a cooperation agreement between the federal state, the communities and the regions in order to fill this gap is envisaged in the Federal Government Agreement. The latter also provides for the Institute to be given the competence to receive individual complaints. In the context of Belgium's Universal Periodic Review on 5 May 2021, Sophie Wilmès, Deputy Prime Minister and Minister of Foreign Affairs, reiterated Belgium's position in this respect:

> *"The establishment of a Federal Institute for the Protection and Promotion of Human Rights in 2019, covering all human rights issues which fall under federal competence, has made it possible to move forward. The proposed scenario of interfederalisation, in a second stage, would ensure full coverage of human rights (also at the level of the federated entities). In the context of the establishment of a National human rights institute, it is also possible that a federated entity will set up its own human rights institution. In either case, the federated entities and the federal state will have to agree on a common vision through a cooperation agreement."*[4]

The interfederalisation of the Institute is also recommended by the Committee on the Elimination of Racial Discrimination,[5] the Human Rights Committee[6] and the Committee on Economic, Social and Cultural Rights.[7] The interfederalisation of the Institute was also recommended by several States during the recent Universal Periodic Review of Belgium.[8] These instances also recommend that the Institute be given the capacity to receive and examine individual complaints and petitions.[9]

Suggested recommendations:

1. Conclude a cooperation agreement between the federal state and the federated entities in order to give the IFDH/FIRM an interfederal mandate.
2. Provide the IFDH/FIRM with the capacity to receive and examine individual complaints and petitions

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[4] Own translation from French to English. United Nations, "Belgium Review - 38th Session of Universal Periodic Review", *UN Web TV*, 5 May 2021.

[5] CERD, *Concluding observations concerning the report of Belgium*, 21 May 2021, CERD/C/BEL/CO/20-22, para. 7.

[6] Human Rights Committee, *Concluding observations concerning the sixth periodic report by Belgium*, 6 December 2019, CCPR/C/BEL/CO/6, para. 10.

[7] Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Belgium*, 26 March 2020, E/C.12/BEL/CO/5, para. 8.

[8] Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review on Belgium*, 7 May 2021, A/HRC/WG.6/38/L.5 (on file with authors).

[9] Ibid.

4. Articles 5, 6, 7, 8 et 9 – Response to point 23: The conclusion and implementation of extradition treaties concluded by Belgium

Only one bilateral extradition treaty was concluded by Belgium after 2012, namely with the People's Republic of China.

This treaty[10] was concluded between Belgium and the People's Republic of China on 31 October 2016, and the 'Act Concerning the Consent to the Extradition Treaty between the Kingdom of Belgium and the People's Republic of China, done In Beijing on 31 October 2016' was adopted by the Belgian federal parliament on 3 December 2018, and published on 16 December 2020.[11] It entered into force ten days later, on 26 December 2020.

The treaty foresees a number of mandatory refusal grounds for extradition, including, in article 3(f), when the person sought has been or would possibly be subjected to torture or other cruel, inhuman or humiliating treatment or punishment in the Requesting Party.[12]

Concerns were raised about the human rights implications of this treaty.[13] During the parliamentary debates, concerns were voiced across the political spectrum about, *inter alia*, the deteriorating human rights situation in the People's Republic of China, the imposition and execution of the death penalty, the treatment of minorities, the lack of an independent judiciary, and the fact that charges of corruption have been repeatedly used by the Chinese regime to persecute political dissidents.[14] In reply, the minister responsible for this matter pointed out the refusal grounds listed in the treaty, as well as the fact that special attention would be required for extradition requests involving minorities.[15] Critical questions were also raised in the Belgian press about the treaty, quoting, among others, a representative of the Uighur minority in Belgium, who fears the treaty will be used as a political tool by China.[16] Asked about the treaty in the federal parliament, the Belgian Prime Minister maintained that, while he is concerned about gross human rights abuses in China, including what he referred to as a 'genocide on Uighurs', any extraditions under the treaty would be overseen by the government on a case-by-case basis and would be in compliance with international law, including the European

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[10] The text of the treaty can be found in *Doc. Parl.* Chamber, DOC 54-3312/001, and this in Dutch (p. 21), French (p. 31) and English (p. 40).

[11] Loi portant assentiment au Traité entre le Royaume de Belgique et la République populaire de Chine sur l'extradition, fait à Pékin le 31 octobre 2016, *Belgian Official Gazette* 16 December 2020.

[12] As mentioned higher, the text of the treaty can be found in the preparatory works of the 'Act Concerning the Extradition Treaty between the Kingdom of Belgium and the People's Republic of Chine, done in Beijing on 31 October 2016', *Doc. Parl.* Chamber, DOC 54-3312/001, and this in Dutch (p. 21), French (p. 31) and English (p. 40).

[13] See, for instance, M. Burnay, "Traité d'Extradition entre la Belgique et la Chine", Jean Monnet Network 'EU-China Legal and Judicial Cooperation' (EUPLANT), *qmul.ac.uk* 23 October 2019.

[14] See, e.g., *Doc. Parl.* Chamber, Projet de loi portant assentiment au Traité entre le Royaume de Belgique et la République populaire de Chine sur l'extradition, fait à Pekin le 31 octobre 2016, rapport fait au nom de la commission des relations extérieures par M. Jean-Jacques Flahaux, DOC 54-3312/002, p. 4-7.

[15] *Doc. Parl.* Chamber, Projet de loi portant assentiment au Traité entre le Royaume de Belgique et la République populaire de Chine sur l'extradition, fait à Pekin le 31 octobre 2016, rapport fait au nom de la commission des relations extérieures par M. Jean-Jacques Flahaux, DOC 54-3312/002, p. 7-9.

[16] See, for instance, G. Nath and A. Bougrea, "België speelt Peking in de kaart met uitleveringsverdrag", *De Standaard* 8 July 2020; B. Struys, "België levert voortaan verdachten uit aan China. 'We lopen nu ook hier gevaar'", *De Morgen* 19 januari 2021; G. Nath and M. Verbergt, "Uitleveringsverdrag met China verdeelt Vivaldi", *De Standaard* 21 januari 2021.

Convention on Human Rights. He held that if the application of the treaty should prove problematic in practice, suspension or denunciation of the treaty is always an option.[17]

Suggested recommendation:

3. Ensure that extraditions to the People's Republic of China fully comply with the Convention against Torture and other international human rights standards.

[17] *Doc. Parl.* Chamber, Interpellation by representative Annick Ponthier of Prime Minister Alexander De Croo about the extradition treaty with China and its ratification (55000087I), response of Prime Minister Alexander De Croo, 21 January 2021, CRIV 55 PLEN 084, p. 34-35.

5. Article 11 : The situation in prisons

Since the previous examination of Belgium by the CAT Committee, some positive developments have taken place, which will be discussed first. However, important challenges to the effective enjoyment of human rights by prisoners in Belgium remain. Next, this report will discuss the question of overcrowding and detention conditions, and the need to ensure adequate health care for all prisoners. Finally, the impact of the Covid-19 crisis on Belgian prisons will be discussed. For the impact of the Covid-19 crisis on migration detention centers, see the Parallel Report by Unia and Myria.

5.1. Response to points 31 and 29 (d): positive developments

In recent years, some positive steps have been taken by the Belgian authorities with a view to better ensuring the rights of prisoners. In response to point 31, it must be noted that most parts of the Principles Act of 12 January 2005 on the Prison System and the Legal Position of Prisoners[18] have now entered into force. Importantly in this regard, on 24 April 2019 the Central Monitoring Council for Prisons (*Conseil central de surveillance pénitentiaire*, provided for in Title III, Chapter IV, Section II of the Principles Act), an independent monitoring and advisory body competent to watch over the rights and human dignity of prisoners, was established. Subsequently, in September 2019, the Supervisory Committees (provided for in Title III, Chapter IV, Section III of the Principles Act) were established. These bodies, coordinated by the Central Monitoring Council, monitor the respect of the rights of prisoners under the Principles Act. Since October 2020, the Complaint Committees established within the Supervisory Committees are also competent to receive complaints from prisoners regarding decisions taken with respect to them by the prison director or on his behalf (provided for in Title III, Chapter VIII of the Principles Act), with the possibility of appealing to the Appeals Committee of the Central Monitoring Council.[19] However, as pointed out in the Parallel Report of Unia and Myria (in response to point 43), while discussions have been ongoing for some years, Belgium has regrettably not yet ratified OPCAT, let alone has it established a National Preventive Mechanism.

The provisions from the Principles Act on individual detention plans (Title IV of the Principles Act), which are meant to be crucial instruments for the reintegration of prisoners in society, have also entered into force in April 2019.[20] Unfortunately, while such plans should among others provide for labor and educational activities, the most recent statistics from 2017 illustrate that only a very limited number of prisoners actually works in prison (35 %) or has followed vocational training (less than 5 %).[21] After its previous visit to Belgium, the Council of Europe Committee on the Prevention of Torture (CPT) had also noted with concern the shortage of out-of-cell activities in every prison it had visited.[22] However, even after the entry into force of the provisions on the individual detention plans, problems remain regarding delays in the drafting of these plans and the lack of counselling by psychosocial services during this process, as well as the lack of implementation thereof.[23] For this reason, the

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[18] *Op. cit.*

[19] For more information on the Central Monitoring Council for Prisons and the Supervisory Commissions, see https://ccsp.belgium.be.

[20] Arrêté royal déterminant la date d'entrée en vigueur du titre IV de la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus relatif à la planification de la détention, *Belgian Official Gazette* 26 April 2019.

[21] Central Monitoring Council for Prisons, *Mémorandum à l'attention du Gouvernement fédéral belge*, 25 September 2020, p. 4.

[22] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 70.

[23] Central Monitoring Council for Prisons, *Annual Report 2019*, p. 57, 86, 89, 57 107 and 109.

Central Monitoring Council for Prisons has called upon the new federal government to take all measures necessary in order to increase the number of working detainees and the offer of vocational training.[24]

Also, positively, with respect to point 29 (d), Belgium has taken steps to ensure a guaranteed minimum service during prison strikes and to improve the conditions for prison staff. The Act of 23 March 2019 on the Organization of Penitentiary Services and the Statute of the Penitentiary Personnel[25] aimed to meet the criticism voiced by international human rights bodies – the CAT Committee in its 2014 concluding observations (para. 15), CPT[26] and the European Court of Human Rights[27] – on the difficulties for prisoners to enjoy their basic rights in the case of prison strikes. However, it remains to be seen whether this Act in and of itself is sufficient to improve the well-being of the prison staff and to address the problem of staff shortages which lies at the basis of these strikes.[28] In a Memorandum to the new federal government, the Central Monitoring Council for Prisons has called upon the Minister of Justice to take the necessary steps in order to ensure that the guaranteed minimum service is also effectively applied in practice.[29]

Suggested recommendations:

4. Ratify OPCAT and establish a national preventative mechanism competent to access all places in which persons are or can be deprived of their liberty.
5. Take the necessary steps in order to fully implement in practice the individual detention plans, including by improving the availability of prison work and vocational training.
6. Take the necessary steps required for the effective application in practice of the Guaranteed Minimum Service Act, in order to ensure that the rights of prisoners are adequately guaranteed in case of a strike of prison staff.

5.2. Response to point 29 (a) and (b): prison overcrowding and conditions of detention

Belgium has been repeatedly criticized by international human rights bodies for its overcrowded prisons. In the context of its previous review of Belgium, in 2014, the CAT Committee has voiced its concerns regarding the overcrowding rate in Belgian prisons.[30] On 25 November 2014, the European Court of Human Rights, in the case of *Vasilescu v. Belgium*, found that the problems regarding prison overcrowding and of unhygienic and dilapidated prison facilities were of a structural nature and ordered Belgium to adopt general measures with a view to guaranteeing prisoners conditions of detention compatible with Article 3 ECHR (the prohibition of torture and of inhuman and degrading

[24] Central Monitoring Council for Prisons, *Mémorandum à l'attention du Gouvernement fédéral belge*, 25 September 2020, p. 4.
[25] Loi concernant l'organisation des services pénitentiaires et le statut du personnel pénitentiaire, *Belgian Official Gazette* 11 April 2019.
[26] E.g., CPT, *Public statement concerning Belgium*, 13 July 2017, CPT/Inf (2017) 18.
[27] ECtHR, 28 May 2019, *Clasens v. Belgium*, no. 26564/16. Also see, recently, ECtHR, 16 March 2021, *Pîrjoleanu v. Belgium*, no. 2640418.
[28] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 29-30.
[29] Central Monitoring Council for Prisons, *Mémorandum à l'attention du Gouvernement fédéral belge*, 25 September 2020, p. 3.
[30] CAT Committee, *Concluding observations of the third periodic report of Belgium*, 3 January 2014, CAT/C/Bel/CO/3, para. 15.

treatment and punishment).[31] In March 2021, the Committee of Ministers of the Council of Europe, which supervises the execution of judgments by the European Court of Human Rights, ruled that Belgium still had not made sufficient progress in this regard.[32] Also, the CPT, in its most recent report on Belgium from 2018, reminded the Belgian authorities to strengthen their efforts with a view to reducing overcrowding.[33]

The Belgian Directorate General for Penitentiary Institutions has not published an annual report with official statistics on the prison population since 2017.[34] The most recent statistics are those communicated by the Belgian State to the Committee of Ministers of the Council of Europe in January 2021 in the context of the execution of the *Vasilescu* case. These statistics show that the Belgian authorities have made some progress in recent years, but that the steps taken have proven insufficient to address the problem. From an average prison population of 11,644 prisoners on a capacity of 9.384 prisoners (an average of 24 % overcrowding) in 2013, by 14 December 2020 the prison population had decreased to 10,427 prisoners on a capacity of 9.546 (an average of 9,2 % overcrowding).[35] However, at that time, temporary measures to reduce the prison population in the context of the Covid-19 pandemic were still in place (see below). These numbers make abstraction of the large differences in overcrowding between different prisons. For instance, numbers from the 2019 Annual Report of the Central Monitoring Council for Prisons illustrate the situation of severe (average) overcrowding in certain prisons: e.g., the prisons of Ypres (80 %), Dinant (75 %), Antwerp (50 %), Dendermonde (50 %), Ghent (40 %), Forest (40 % on average), Namur (40 %), Saint-Gilles (37 %) and Mechelen (35 %).[36] As a result of severe overcrowding, prisoners in many prisons have to sleep on a matrass on the floor.[37] In combination with staff shortages, overcrowding in many prisons has an impact on the normal exercise of activities (e.g. walks, religious activities, courses, medical treatment).[38]

Moreover, while a number of new prisons have opened in recent years (as mentioned in the State report, para. 101), many prisons have been constructed in the 19th or early 20th century and have been insufficiently renovated to comply with present-day standards. As a result, prison infrastructure in Belgium is often inadequate and dilapidated,[39] e.g. resulting in unhygienic circumstances (e.g. poorly functioning showers),[40] infestation (e.g. rats, bed bugs, cockroaches),[41] inadequate heating and

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[31] ECtHR, 25 November 2014, *Vasilescu v. Belgium*, no. 64682/2. Also see, recently, ECtHR, 16 March 2021, *Pîrjoleanu v. Belgium*, no. 2640418.

[32] Committee of Ministers, *Decision on Group Vasilescu v. Belgium*, 11 March 2021, CM/Del/Dec(2021)1398/H46-3.

[33] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 39.

[34] Central Monitoring Council for Prisons, *Annual Report 2019*, p. 110.

[35] Belgian State, *Action Plan to the Committee of Ministers on Group Vasilescu v. Belgium*, January 2021, DH-DD(2021)30.

[36] Central Monitoring Council for Prisons, *Annual Report 2019*, p. 107 (Ypres), 37 (Dinant), 75 (Antwerp), 97 (Dendermonde), 83 (Ghent), 67 (Forest), 55 (Namur), 71 (Saint-Gilles), 91 (Mechelen).

[37] Ibid., p. 83 (Ghent), 107 (Ypres), 48 (Louvain-Hulp), 55 (Oudenaarde).

[38] Ibid., p. 39 (Huy), 47 (Lantin), 49 (Leuze-en-Hainaut), 57 (Nivelles).

[39] Ibid., p. 108.

[40] Ibid., p. 83 (Ghent), 85 (Hasselt), 87 (Louvain-Central), 69 (Forest), 71 (Saint-Gilles), 39 (Huy), 45 (Jamioulx), 59 (Paifve), 61 (Saint-Hubert); CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 66 (Lantin and Saint-Gilles).

[41] Ibid., p. 69 (Forest), p. 71 (Saint-Gilles), 53 (Mons).

ventilation systems,[42] electricity problems,[43] poor kitchen infrastructure,[44] etc. The examples of the prisons of Saint-Gilles, Forest and Berkendael, of which the prisoners will be transferred to the new prison of Haren, which is currently under construction, demonstrate a lack of interest to invest in the renovation of dilapidated prisons which are bound to close down.[45] In 2019, the Belgian government adopted a Royal Decree, spelling out the conditions (e.g. size of cells, sanitation, heating, ventilation, light, fire safety) with which Belgian prisons ought to comply, and which have been largely inspired by CPT standards. However, the Royal Decree explicitly provides for a transitory period of 20 years to allow existing prisons to be brought in conformity with these requirements.[46] The Report to the King introducing the Royal Decree justifies this long transitory period by referring to the outdated character of many prisons and the impossibility to renovate all of them on the short term to the extent necessary to comply with the provisions of the Decree.

Excessive focus on increasing prison capacity

As explained in the State report (para. 101), the Belgian government has adopted 3 successive Master Plans (in 2008, 2012 and 2016) with a view to ensuring humane detention conditions and to tackling the problem of overcrowding. These Master Plans, which have partly been implemented, have resulted or will result in the construction of new prisons and forensic psychiatric centers for mentally-ill offenders, and in the renovation and expansion of existing prisons. However, at the same time, they have resulted or will result in the temporary (for renovation purposes) or permanent closure of dilapidated prisons or prison wings.[47] Consequently, since 2013, there has only been a minor increase in overall prison capacity (see above).

In 2011 the Court of Audit *(Cour des comptes)*, competent to exercise external control on public expenditures in Belgium, published a report in which it examined the measures adopted to fight prison overcrowding. According to the Court – in an analysis which is still relevant today[48] – the approach adopted by the Belgian government, through its Master Plans, overly focuses on the increase of the prison capacity. At the time, even if the Master Plans were entirely implemented, there would be a shortage of 900 places, as a result of which additional measures to reduce the prison population would still be required.[49]

Such efforts to reduce the prison population have hitherto, however, been largely ineffective. The most significant measure was the opening of two new forensic psychiatric centers in Ghent (capacity

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[42] Ibid., p. 84 (Hasselt), 71 (Saint-Gilles), 55 (Namur), 57 (Nivelles).
[43] Ibid., p. 71 (Saint-Gilles), 57 (Nivelles).
[44] Ibid., p. 81 (Bruges), 69 (Forest).
[45] Ibid., p. 71. Similarly, I.Care, *L'urgence d'action pour la santé des personnes détenues*, March 2021, p. 49.
[46] Article 11, Arrêté royal de 3 février 2019 portant exécution des articles 41, § 2, et 134 § 2, de la loi du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus, *Belgian Official Gazette* 14 February 2019.
[47] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, CPT/Inf (2018) 8, 8 March 2018, para. 37.
[48] Central Monitoring Council for Prisons, *Avis au sujet du « plan d'action » communiqué le 4 janvier 2021 par les autorités belges à l'intention du Comité des Ministres du Conseil de L'Europe concernant les affaires reprises au « Groupe Vasilescu c. Belgique »*, 1 February 2021, p. 8.
[49] Court of Audit, *Mesures de lutte contre la surpopulation carcérale*, December 2011, p. 11.

of 264 persons) and Antwerp (capacity of 182 persons),[50] which has enabled the transfer of mentally ill offenders serving a compulsory confinement *("internement")* from prison to such institutions. These steps were taken in order to respond to the criticism of various international human rights bodies on the inadequate treatment of mentally-ill offenders in Belgian prisons. While, as pointed out in the Parallel Report by Unia and Myria (see response to point 32) important challenges remain with regards to the situation of internees in Belgium (i.e. mentally ill offenders who cannot be considered criminally liable), the opening of these new forensic psychiatric centers certainly represents an important positive step towards a more humane treatment of internees – which has resulted in the decrease of the average number of these offenders in prisons from 1139 in 2013 to 537 in 2019.[51] These persons are no longer counted in the penitentiary statistics, but since this has not resulted in a corresponding decrease of the overall prison population (see above), the effect has mostly been a widening of the net of social control, with overall more people being subjected to the State's carceral powers.[52]

Alternatives to detention: net-widening effects

There is a risk inherent to the provision of alternatives for detention as this may result in a so-called net-widening effect: rather than being imposed as an alternative for a prison sentence, in practice alternatives to detention are to an important extent imposed on people who otherwise would have received a lighter sentence – resulting in an overall higher number of people being subjected to the State's carceral powers.[53] This also seems to have been the case for Belgium, where the introduction of alternatives to detention did not have a significant impact on the prison population.[54] In 2014, in addition to the already-existing community service sentence, two new autonomous sentences were introduced: the autonomous electronic surveillance sentence[55] and the autonomous probation sentence.[56] In 2018, 720 probation sentences and 51 autonomous electronic surveillance sentences were pronounced – community service sentence remaining by and far the most frequently imposed autonomous sentence (10,010).[57] By way of comparison, in the same year, a total number of 1905 persons were subject of electronic surveillance (compared to 983 in 2011).[58] These differences indicate that electronic surveillance is in practice mostly used as a sentence execution modality – in

[50] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 18.
[51] Service public fédéral Justice, *Justice en chiffres 2015-2019*, p. 72.
[52] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 35.
[53] E.g. J. Junger-Tas, "Alternatives to Prison Sentences: Experiences and Developments", in Dutch Research and Documentation Centre, *Studies on Crime and Justice* 1994, p. 9.
[54] Central Monitoring Council for Prisons, *Avis au sujet de « plan d'action » établi le 4 juillet 2019 par les autorités belges à l'intention du Comité des Ministres du Conseil de l'Europe concernant les affaires reprises au « Groupe Vasilescu c. Belgique»* , 13 August 2019, p. 8.
[55] Loi de 7 février 2014 instaurant la surveillance électronique comme peine autonome, *Belgian Official Gazette* 28 February 2014.
[56] Loi de 10 avril 2014 insérant la probation comme peine autonome dans le Code pénal, et modifiant le Code d'instruction criminelle, et la loi du 29 juin 1964 concernant la suspension, le sursis et la probation, *Belgian Official Gazette* 19 June 2014.
[57] Service public fédéral Justice, *Justice en chiffres 2015-2019*, p. 70.
[58] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 14.

other words, as an alternative to a conditional release rather than as an alternative to detention.[59] In fact, statistics from 2017 show that a majority of the prisoners being granted conditional release (58,6 % and 63,2 % of prisoners serving a prison sentence of, respectively, less or more than three years) were first subjected to electronic surveillance as a sentence execution modality.[60]

In its 2011 report, the Court of Audit had already warned for this net-widening effect of electronic surveillance, based on experiences with the autonomous community service sentence, which was introduced in 2002 and which had mostly resulted in more sentencing.[61] The same holds true for electronic surveillance as an alternative for pre-trial custody. The State report (para. 103) refers to the Act of 27 December 2012[62] which introduced such possibility. In June 2017, however, only 215 suspects were subject of electronic surveillance compared to around 3500 who were detained in prison.[63] Moreover, statistics show that between 2013 and 2019 both the average number of persons in pre-trial custody and the average number of persons under electronic surveillance have increased significantly (from 3652 to 3969 and from 1338 to 1912, respectively),[64] also indicating an overall net-widening effect.

The fourth pillar of the Third Master Plan – besides the construction of new prisons, the expansion of existing prisons and prison renovation – consists of the development of new policies regarding alternatives to detention. In particular, the Third Master Plan provides for the creation of 100 places in so-called "transition houses", the first of which have opened in 2019. Rather than being alternatives to detention in the true sense, these are small-scale detention facilities to which detainees who are approaching the eligibility date for early release can be transferred to prepare for their reintegration in society. However, since these transition houses do not replace existing prisons, they contribute to the increase of prison capacity.[65] Again there is a serious risk that this measure will mostly result in a widening of the net of social control.

The need to decrease the influx of detainees

What is lacking more generally, however, are effective measures to significantly decrease the influx of detainees. For instance, the number of persons in pre-trial custody has increased over recent years (see above) – which might be explained by the assumption that pre-trial custody is sometimes imposed for longer periods of time to anticipate the non-execution of short prison sentences (see below).[66] The CPT, in 2018, warned the Belgian authorities that, with a view to tackling the problem

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[59] Central Monitoring Council for Prisons, *Avis au sujet de « plan d'action » établi le 4 juillet 2019 par les autorités belges à l'intention du Comité des Ministres du Conseil de l'Europe concernant les affaires reprises au « Groupe Vasilescu c. Belgique »*, 13 August 2019, p. 8.

[60] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 21-22.

[61] Court of Audit, *Mesures de lutte contre la surpopulation carcérale*, December 2011, p. 12 and p. 71-73.

[62] Loi de 27 décembre 2012 portant des dispositions diverses en matière de justice, *Belgian Official Gazette* 31 January 2013.

[63] E. Maes and A. Jonckheere, "Quo vadis ? Dilemma's rond alternatieven voor voorlopige hechtenis", *Panopticon* 2017, p. 405.

[64] Service public fédéral Justice, *Justice en chiffres 2015-2019*, p. 72.

[65] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 17-18.

[66] E. Maes and A. Jonckheere, "Quo vadis ? Dilemma's rond alternatieven voor voorlopige hechtenis", *Panopticon* 2017, p. 404.

of overcrowding, excessive focus was put on the increase of prison capacity rather than on efforts to reduce the prison population.[67] Also the Court of Audit, in its 2011 report, recommended the Belgian government to adopt a global multi-year plan against prison overcrowding, based on scientific research and using measurable objectives. Such plan requires an integrated approach, not only focusing on the increase of prison capacity, but also through a broader reform of criminal law and criminal procedure.[68]

In this regard, it is important to note that discussions have been ongoing in Belgium regarding the drafting of a new Criminal Code and Code of Criminal Procedure. Between 2015 and 2018, an Expert Commission for the Reform of the Criminal Code worked on a draft Criminal Code (referred to in para. 103 of the State report), which provides that prison sentences can only be imposed as a measure of last resort, in case the same objective cannot be achieved by other autonomous sentences.[69] However, the experts resigned in September 2018 because, in their opinion, the proposed changes to their draft Criminal Code made at government level reinforced rather than weakened the central position of imprisonment as a sentence in Belgian criminal law.[70] In December 2020, the experts were once again entrusted with the task of reforming the Criminal Code by the new Minister of Justice.[71]

The potential negative impact of the reform of the sentence implementation legislation

Whereas the implementation of sentences traditionally took place under the responsibility of the Executive, the Act of 17 May 2006 regarding the External Legal Position of detainees,[72] partly transferred this competence to the Sentence Implementation Courts. These multi-disciplinary courts have the mandate to decide on the modalities of sentence implementation and on conditional release. However, this competence was limited to sentences of three years of imprisonment and more, while the competence for lower sentences remained with the Executive. The transfer of the latter to the Sentence Implementation Courts has been postponed repeatedly, most recently until 1 December 2021.[73]

Currently, the implementation of prison sentences below 3 years is still overviewed by the Minister of Justice, based on the rules set out in various consecutive ministerial circulars and notes. The latest one, of 16 May 2017, states that sentences of less than 6 months are not executed and that sentences between 6 months and 3 years will be partially executed for a set number of months, after which the prison director – without intervention of the Executive or a judge – will automatically release the

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[67] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 38.
[68] Court of Audit, *Mesures de lutte contre la surpopulation carcérale*, December 2011, p. 11, 14-15.
[69] D. Vandermeersch, *La réforme des Codes en matière pénale: un saut nécessaire du 19e au 21e siècle*, Mercuriale pronounced at the Solemn Opening of the Judicial Year, 1 September 2020.
[70] Belga, "Experten Strafrechtcommissie ministers Geens nemen ontslag", *De Standaard*, 10 September 2018.
[71] Arrêté ministériel de 22 décembre 2020 portant création de la Commission de réforme du droit pénal, *Belgian Official Gazette* 20 January 2021.
[72] Loi de 17 mai 2006 relative au statut juridique externe des personnes condamnées à une peine privative de liberté et aux droits reconnus à la victime dans le cadre des modalités d'exécution de la peine, *Belgian Official Gazette* 15 June 2006.
[73] Loi de 16 mars 2021 reportant l'entrée en vigueur des dispositions relatives au statut juridique externe des personnes condamnées à une peine privative de liberté pour les peines privatives de liberté de trois ans ou moins, *Belgian Official Gazette* 26 March 2021.

convicted person. In practice, convicted persons are almost automatically sent home to undergo electronic surveillance until their conditional release.[74]

As of 1 December 2021 – unless a further postponement is decided – a single judge of the Sentence Implementation Court will decide on the implementation modalities for all sentences below 3 years. In principle, convicted persons will first be placed in detention, before they can apply to the single judge for sentence execution modalities (electronic surveillance, limited detention or conditional release). Policy makers assume that the guarantee that at least part of the sentence will be served in prison might incentivize sentencing judges to impose lighter sentences, which might lead to less detention in the long term.[75] While such long term effect is uncertain, observers, including the Central Monitoring Council for Prisons, are convinced that on the short term this will lead to an important increase of the prison population.[76] The reason for this is that the procedure for the Sentence Implementation Court is demanding and time-consuming – in particular compared to the current procedure involving the prison director – which will create a serious bottleneck, resulting in an increase of detainees serving at least part of their short prison sentence in prison.[77]

Recently, in May 2021, the government introduced a bill in Parliament which provides for a procedure which would enable persons convicted to a short prison sentence to apply to the Sentence Implementation Court while still at liberty.[78] The aim of this bill, which however has not yet been passed, is to avoid an excessive increase of detainees serving a short prison sentence in prison.

Suggested recommendations:

7. Continue the efforts to reduce the problem of prison overcrowding and to improve detention conditions in Belgian prisons.
8. Combat prison overcrowding via an integrated approach, which not only focuses on increasing prison capacity or otherwise widening the net of social control, but also on decreasing the influx of detainees. The use of alternatives to a prison sentence or alternative ways of serving detention should lead to a decrease of the prison population.
9. Take measures to avoid that the entry into force of the Act on the External Legal Position of Prisoners with regards to prison sentences of less than 3 years would lead to an increase of the prison population.

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[74] K. Beyens and E. Maes, "Het lappendeken van tien jaar strafuitvoering in België", *Panopticon* 2020, no. 1, p. 22-23.

[75] E.g., *Parl. Doc.* 2020-21, DOC 55-1796/002, p. 9-10.

[76] Central Monitoring Council for Prisons, *Avis au sujet du « plan d'action » communiqué le 4 janvier 2021 par les autorités belges à l'intention du Comité des Ministres du Conseil de L'Europe concernant les affaires reprises au « Groupe Vasilescu c. Belgique »*, 1 February 2021, p. 8. Also see F. Verbruggen, *Bedenkingen bij het wetsvoorstel van 6 februari tot wijziging van de wet van 17 mei 2006 (…) tot aanpassing van de procedure voor strafuitvoeringsrechter voor de vrijheidsstraffen van drie jaar of minder,* Memo for the Chamber of Representatives, 2019 (on file with authors).

[77] See ibid., F. Verbruggen.

[78] *Parl. Doc.* Chamber, Projet de loi portant opérationnalisation de la procédure d'exécution des peines privatives de liberté de trois ans ou moins, DOC 55-1979/001.

5.3. Response to point 32: health care in prison

Article 88 of the Principles Act provides that prisoners have a right to health care which is equivalent to the level of health care in society. The enjoyment of such a right in practice is however far from guaranteed in Belgian prisons, which has led to repeated criticism from international human rights bodies. In its previous concluding observations from 2014, the CAT Committee has voiced its concerns regarding inadequate access to health care and the lack of medical personnel in several places of detention (para. 15). Also the CPT, most recently in its 2018 report[79] has expressed its concerns regarding various aspects of health care in prisons:

- A lack of sufficient medical personnel, including general practitioners (para. 76), nurses (para. 77), psychologists and psychiatrists (para. 78).
- Long waiting periods for consultations with specialized health care practitioners (para. 76) and long delays in transferring prisoners in need of inpatient hospital care, often due to a lack of sufficient prison staff to accompany the prisoner or lack of availability within hospitals (para. 87).
- Insufficient protection of medical confidentiality, due to the intermediary role played by prison staff (para. 81-82).

The 2019 Annual Report of the Central Monitoring Council for Prisons also contains a wide range of concerns regarding the lack of sufficient medical personnel in various prisons and the long waiting periods for medical consultations.[80] In certain prisons, concerns exist regarding the quality of the health care provided, for instance regarding the superficial character of "1-minute-consultations" or the fact that all ailments are treated with paracetamol.[81]

The lack of sufficient medical personnel was also highlighted in the report published in 2017 by the Belgian Health Care Knowledge Centre (KCE) on the overall state of prison health care in Belgium. In this report, the KCE emphasized the insufficiency of resources allocated to penitentiary health care to guarantee adequate care. The KCE criticized the shortage of medical staff and the lack of adequate medical equipment and infrastructure in prisons. Moreover, working in prison is insufficiently attractive, due to a lack of career prospects and training possibilities for medical staff in prisons, and the often-occurring problem of late payment for independent health care providers.[82]

Overcrowding and the lack of sufficient prison staff to accompany prisoners, or staff absenteeism, also affect access for prisoners to both general and specialized health care and to external medical examinations and hospital visits,[83] which is exacerbated in case of a strike.[84] Moreover, according to I.Care, an NGO working on health care in prison, there is a need to provide more attention to the

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[79] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8.
[80] Central Monitoring Council for Prisons, *Annual Report 2019*, p. 67 (Berkendael), p. 53 (Mons), p. 63 (Tournai), p. 59 (Paifve).
[81] Ibid., p. 75 (Antwerp) and p. 37 (Dinant), respectively.
[82] Belgian Health Care Knowledge Centre, *Synthèse – Soins de santé dans les prisons belges : situation actuelle et scénarios pour le futur*, 2017, KCE Report 293Bs, p. 25-26.
[83] Central Monitoring Council for Prisons, *Annual Report 2019*, p. 63 (Tournai) and p. 53 (Mons). I.Care, *L'urgence d'action pour la santé des personnes détenues*, March 2021, p. 34.
[84] Central Monitoring Council for Prisons, *Annual Report 2019*, p. 46 (Lantin).

specific health care problems which are prevalent in prison in the context of the training of prison staff.[85]

Strengthening penitentiary health care

The problems regarding access to adequate health care for prisoners are all the more pressing given the average poor health status of the Belgian prison population, which according to research is far worse than the health enjoyed by a similar population outside prison. In particular, conditions like infectious diseases (tuberculosis, HIV, Hepatitis C), substance abuse and mental health problems are very frequent.[86] Drug prescription is more than twice as high as with regards to the population in general, 43 % of which concerns psychotropic medication (e.g. antidepressants and anxiety suppressants).[87] For this reason, KCE has emphasized the importance of increasing health care personnel in prison, in accordance with the heightened care need of the prison population and taking into account the specificities of the prison context.[88]

According to KCE, in light of the increased care need regarding mental health problems, there is in particular an insufficient number of mental health professionals.[89] In its 2018 report, CPT has expressed its concerns regarding the treatment of psychiatric emergencies, in particular regarding situations in which persons with suicidal tendencies were placed in a punishment cell.[90] Such practice has been criticized by NGOs,[91] and also resulted in the finding of a violation of Article 3 ECHR by the European Court of Human Rights in the case of *Jeanty v. Belgium*.[92] CPT has recommended that the Belgian authorities would take measures in order to ensure that detainees in a mental health crisis or showing strong suicidal tendencies should be transferred as soon as possible to a suitable medical structure, allowing for treatment by qualified personnel in circumstances which ensure their safety.[93]

Regarding penitentiary health care in general, KCE has recommended that Belgian authorities adopt a global and coordinated approach to health care in prison, e.g. by providing for an elaborate patient intake when a person arrives in prison (taking into account physical, psychological and social aspects), by ensuring continuity of care at the moment of entry in and departure from prison, by introducing a health care coordinator in prison, and by requiring the drafting of an individual care plan which provides the basis for multidisciplinary care.[94]

For a long time, the Belgian authorities have proclaimed their intention to transfer the competence for penitentiary health care from the Justice Department to the Public Health Department, in line with

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[85] I.Care, *L'urgence d'action pour la santé des personnes détenues*, March 2021, p. 59.
[86] Belgian Health Care Knowledge Centre, *Synthèse – Soins de santé dans les prisons belges : situation actuelle et scénarios pour le futur*, 2017, KCE Report 293Bs, p. 15 and 32.
[87] Ibid., p. 12-13.
[88] Ibid., p. 20 and 44.
[89] Ibid., p. 26.
[90] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 86.
[91] I.Care, *L'urgence d'action pour la santé des personnes détenues*, March 2021, p. 41; and Concertation des Associations Actives en Prison, *Prévention du suicide en milieu carcéral*, March 2020, p. 43.
[92] ECtHR, 31 March 2020, *Jeanty v. Belgium*, no. 82284/17.
[93] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 86.
[94] Belgian Health Care Knowledge Centre, *Synthèse – Soins de santé dans les prisons belges: situation actuelle et scénarios pour le futur*, 2017, KCE Report 293Bs, p. 31-34.

WHO recommendations.[95] The organization of penitentiary health care by the Justice Department has been criticized for prioritizing security over public health considerations, and for creating potential loyalty conflicts for health care personnel in prison.[96] However, no concrete time frame has been put forward for such transfer of competence. In its 2017 report, KCE recommended to the government to ensure that the competence for penitentiary health was transferred as soon as possible to the responsibility of the Minister of Public Health, accompanied by the necessary budgetary measures and measures with a view to reorganizing prison health care.[97] Also CPT in its 2018 report,[98] and the Central Monitoring Council for Prisons in its 2020 memorandum for the new federal government, have recommended such transfer.

Covid-19 in prison

The Covid-19 crisis has significantly impacted Belgian prisons. A number of measures were taken to temporarily reduce the prison population during the first and second wave of the epidemic.[99] Most notably, by way of Royal Decree, Ministerial Circular and, later, by the Act of 20 December 2020,[100] the possibility of a 'Covid-19' early release was introduced for prisoners approaching the end of their prison sentence, as well as the possibility of a 'Covid-19' interruption of the sentence. The College of Prosecutors General issued two circulars with a view to suspending the execution of certain short prison sentences. In combination, these measures resulted in a temporary decrease of the prison population with about 10 % during the first wave of the pandemic (mid-March to mid-June 2020), before, however, returning rapidly to the same level of overcrowding as before the crisis.[101]

Further sanitary measures were introduced, besides imposing social distancing and the wearing of masks, which entailed important restrictions on prisoners' rights. At the beginning of the epidemic, from March to May 2020, visits were altogether suspended, while conjugal visits were suspended until September 2020, to be suspended again in October. Visits by children were for a second time suspended between the end of October and the end of December 2020. The sanitary measures also resulted in a significant decrease in the availability of activities and of education.[102] The suspension or restriction of activities concerning reintegration and resocialization have, moreover, caused a significant delay in the prisoner rehabilitation process.[103] The Act of 20 December 2020, in turn, provided for the temporary suspension of certain sentence execution modalities (e.g. prison leave,

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[95] Ibid., p. 1 and 8.
[96] I.Care, *L'urgence d'action pour la santé des personnes détenues*, March 2021, p. 36.
[97] Belgian Health Care Knowledge Centre, *Synthèse – Soins de santé dans les prisons belges : situation actuelle et scénarios pour le futur*, 2017, KCE Report 293Bs, p. 42.
[98] CPT, *Report on the occasion of the visit to Belgium between 27 March and 6 April 2017*, 8 March 2018, CPT/Inf (2018) 8, para. 75.
[99] Central Monitoring Council for Prisons, *Draft Annual Report 2020* (on file with authors).
[100] Loi de 20 décembre 2020 portant des dispositions diverses temporaires et structurelles en matière de justice dans le cadre de la lutte contre la propagation du coronavirus COVID-19, *Belgian Official Gazette* 24 December 2020.
[101] Central Monitoring Council for Prisons, *Confinement en prison, toujours plus difficile*, 27 April 2021.
[102] Central Monitoring Council for Prisons, *Draft Annual Report 2020* (on file with authors).
[103] Central Monitoring Council for Prisons, *Deuxième avis d'office au sujet de la poursuite des mesures visant à soutenir la lutte contre la crise sanitaire dans les prisons*, 30 March 2021.

limited detention).[104] Despite the serious impact of the sanitary measures on prisoners, no measures were taken to increase access to mental health care for prisoners in need of support.[105]

The sanitary measures were, however, insufficient to prevent the spreading of the virus through the prison system. Between March 2020 and the end of April 2021, more than 1000 prisoners tested positive for Covid-19.[106] In April 2021, one prisoner (from the prison of Dendermonde) and one prison staff member (from the prison of Ghent) died as a result of Covid-19.[107] In response to outbreaks of the coronavirus, various prisons have been subjected to temporary full lockdowns.[108] Nonetheless, contrary to the recommendations of the Superior Health Council, and unlike prison staff or other persons living in collective housing units (e.g. elderly care homes), prisoners were not considered eligible for priority vaccination, with the exception of older prisoners and prisoners with comorbidity (around 1800 out of 10500 detainees).[109] This decision, which does not seem to have been based on health policy considerations but rather on their status as prisoner, has exposed (and as of early June 2021 still exposes) prisoners for longer than strictly necessary to both health risks and to sanitary measures entailing serious restrictions on prison life.[110]

Suggested recommendations:

10. Ensure that detainees enjoy their right to health care at a level equivalent to the level of health care in society, including by increasing medical personnel in prison and by facilitating access to external medical examinations and hospital services.
11. In particular, ensure access to adequate mental health care in prison and ensure that detainees going through a mental health crisis or showing strong suicidal tendencies receive adequate treatment in a suitable medical infrastructure.
12. Transfer the competence for penitentiary health care to the Minister of Public Health.
13. Ensure that the right to health of prisoners is adequately protected in the context of the Covid-19 outbreak, without, however, adopting measures which disproportionately restrict the rights of prisoners.

[104] Ibid.
[105] Central Monitoring Council for Prisons, *Draft Annual Report 2020* (on file with authors).
[106] Central Monitoring Council for Prisons, *Deuxième avis d'office au sujet de la poursuite des mesures visant à soutenir la lutte contre la crise sanitaire dans les prisons*, 30 March 2021.
[107] S. Van Overstraeten, "Corona maakt slachtoffer in gevangenis: een gedetineerde overleden, tweede gevangene en cipier in coma", *Het Nieuwsblad* 11 May 2021; X. "Personeelslid gevangenis Gent overleden aan corona", *De Standaard* 15 April 2021.
[108] Central Monitoring Council for Prisons, *Deuxième avis d'office au sujet de la poursuite des mesures visant à soutenir la lutte contre la crise sanitaire dans les prisons*, 30 March 2021.
[109] Central Monitoring Council for Prisons, *Vaccination en prison*, 28 May 2021.
[110] T. Daems, "Kiezen tussen pest en cholera: rechten van gedetineerden in tijden van pandemie", *De Juristenkrant* 26 May 2021, p. 10-11.

6. Articles 12, 13 and 16 : Illegitimate violence by police officers

Regarding the police, a number of concerns remain regarding the prevalence of illegitimate violence by police offers (e.g. ill-treatment and excessive use of force by police services), and the lack of reliable statistics on this subject. This report will focus on concerns regarding the disproportionate use of particular police enforcement methods, in particular in the context of the policing of demonstrations (e.g. the use of tear gas), police pursuits on the public road, and the use of tasers, as well as concerns regarding the right of persons to film police interventions. We will also discuss how the Covid-19 crisis has contributed to increasing concerns in this regard. For specific concerns regarding the disproportionate impact of the use of force by police on protected groups (e.g. migrants, ethnic minorities, persons with a disability), and regarding the practice of ethnic profiling, we refer to the Parallel Report by Unia and Myria.

6.1. Response to point 37: illegitimate violence committed by police officers

Belgium has been subjected to repeated criticism by international human rights bodies regarding the prevalence of illegitimate violence committed by police officers. In its previous concluding observations from 2014, the CAT Committee expressed concern regarding reports of excessive and unjustified force during questioning and arrests (para. 13). In various reports based on country visits to Belgium, CPT has also expressed concerns regarding allegations of excessive use of force, including against persons under police control (e.g. while being immobilized on the ground or during questioning).[111] In its recently adopted concluding observations of 2021, the UN Committee for the Elimination of Racial Discrimination (CERD) also expressed concerns regarding violence and ill-treatment inflicted by the police in Belgium vis-à-vis persons belonging to ethnic minorities, migrants and asylum-seekers, which seems to form a pattern of structural discrimination.[112]

Moreover, the ECtHR repeatedly found violations of the ECHR in cases against Belgium involving police brutality or excessive use of force, most recently in the case of *Bouyid v. Belgium* from 2015 concerning two young men who were slapped in the face by police officers while in police custody.[113] In 2019, a friendly settlement was reached in the case of *Kaya v. Belgium* before the ECtHR, in which the Belgian authorities acknowledged their responsibility for the death of a man in a medical health crisis during a police intervention – a case showing similarities to the cases of Jonathan Jacob (referred to in point 36 (a) of the list of issues) and Jozef Chovanec (discussed in the Parallel Report by Unia and Myria).

While the State report (paras. 136-146 and the Annexes referred to) provides statistics regarding complaints, judicial inquiries and criminal convictions of police officers, there are strong indications that these statistics may only show part of the picture regarding the true scope of illegitimate violence committed by police officers in Belgium. Various NGOs[114] have repeatedly emphasized the importance

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[111] CPT, *Report on the occasion of the visit to Belgium between 24 September and 4 October 2013*, 31 March 2016, CPT/Inf (2016) 14, para. 11; CPT, *Report on the visit to Belgium between 28 September and 7 October 2009*, 23 July 2010, CPT/Inf (2010) 24, para. 13; CPT, *Report on the visit to Belgium between 18 and 27 April 2005*, 10 April 2006, CPT/Inf (2006) 15, para. 8.

[112] CERD, *Concluding observations concerning the report of Belgium*, 21 May 2021, CERD/C/BEL/CO/20-22, para. 13.

[113] ECtHR (Grand Chamber), 28 September 2015, *Bouyid v. Belgium*, no. 23380/09. Also see ECtHR, 14 June 2011, *Trévalec v. Belgium*, no. 30812/07; and ECtHR, 10 March 2009, *Turan Cakir v. Belgium*, no. 44256/06.

[114] E.g., Hungarian Helsinki Committee, *Investigation of torture in Europe – A Comparative Analysis of Seven Jurisdictions*, 2016, p. 21; Amnesty International, *Submission to the UN Committee on the Elimination of Racial*

of collecting more data on the prevalence of illegitimate violence committed by police officers. Similarly, the CERD Committee has recently recommended Belgium to collect more data, specifically regarding illegitimate violence committed by police officers out of racist motives.[115] In a recent report, the Inspectorate General of the Federal and Local Police (AIG) acknowledged the absence of reliable statistics on the illegitimate use of violence by the police as well and called upon the government to create a database containing all cases of illegitimate violence committed by police officers.[116]

In order to make up for this absence of reliable official statistics, NGOs have begun drafting reports documenting cases of alleged illegitimate violence committed by police officers, which provide an indication that the prevalence of such violence may be more widespread than officially acknowledged by the State. In 2018, Médecins du Monde published a report based on interviews with 440 transit migrants – i.e. asylum seekers travelling through Belgium to apply for asylum in another country – in which 25 % complained of having been the victim of police brutality before and/or during their arrest on account of their irregular migration status (including when they were already immobilized), and/or at the police station, before and/or during their police custody.[117] Police Watch, a project of the Ligue des Droits Humains, published a report based on 102 testimonies of alleged police abuses (e.g. beatings, unlawful arrest and body searches, insults) in the context of the Covid-19 lockdown from 18 March to 29 May 2020, mostly vis-à-vis young people and persons belonging to ethnic minorities.[118] Finally, Kif Kif, an NGO fighting against discrimination, recently wrote an (as yet unpublished) report on police brutality in the context of a research project by the European Network Against Racism, in which it has documented 50 cases of alleged illegitimate violence committed by police officers during the period 2015 to 2020, selecting 5 cases for in-depth discussion.[119] According to the Kif Kif report, in many cases of severe or even deadly violence committed by police officers, the initial reason for police intervention was often insignificant and not related to serious crime, which raises questions as to the proportionality of the use of force employed as well as to the failure to resort to alternative means of de-escalating the situation.

Police pursuits

There have been a number of police pursuits which caused injury or worse to the persons involved.

Cases mentioned in the media include those of Ouassim Toumi and Sabrina El Bakkali, twenty and twenty-four years old, who died on May 9, 2017, in an accident following a police pursuit.[120] The trial is expected to start in the spring of 2021, with the prosecution requesting a dismissal of charges

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Discrimination (103rd Session, 19-30 April 2021), 29 March 2021; Police Watch, *Abus policiers et confinement*, June 2020, p. 21.

[115] CERD, *Concluding observations concerning the report of Belgium*, 21 May 2021, CERD/C/BEL/CO/20-22, para. 14.

[116] AIG, *Document de vision "Tout les flics sont-ils incompétents ? – L'approche de l'intégrité au sein de la police*, 6 April 2021, p. 72-73.

[117] Médecins du Monde, *Violences policières envers les migrants et les réfugies en transit en Belgique*, October 2018, p. 4-5

[118] Police Watch, *Abus policiers et confinement*, June 2020, p. 4, 12 and 14.

[119] Kif Kif, *Police Brutality and Community Resistance in Belgium*, May 2021 (unpublished report on file with author).

[120] A. Sente, "Décès de Sabrina et Ouassim: une affaire qui relance le débat sur les courses-poursuites policières", *Le Soir* 2 June 2021.

against the police officers.[121] A young man died in an accident following a police pursuit in August 2019.[122] Seventeen-year-old Mehdi Bouda died on August 20, 2019, after he fled a police control and got involved in an accident with a police car which was driving at high speed without a siren.[123] Adil Charrot, a nineteen-year-old, died in an accident on April 10, 2020, following a pursuit.[124] Following these cases, the lack of legal framework guiding police officers in how to conduct a pursuit was pointed out.[125]

There was also the case of Mawda Shawri, a toddler who was fatally struck on May 17, 2018 when police opened fire on the van of the group of transmigrants she was travelling with. The police officer who fired the shot was convicted in first instance, as the use of a firearm in the given situation was deemed disproportional.[126] The appeal against the conviction is ongoing. Following this incident, the Standing Police Monitoring Committee ('Committee P') conducted an investigation into the communication and coordination failings during this particular pursuit and concluded with a number of specific recommendations.[127] A wider supervisory investigation regarding the practice of interception of vehicles took place in 2020, also resulting in a number of specific recommendations.[128]

Policing of demonstrations

In addition to these reports which mostly describe cases of alleged illegitimate violence committed by police officers during police interventions or in the context of police custody, particular concerns also exist regarding the policing of demonstrations.[129] In recent years, a number of mediatized events took place which led to allegations of excessive use of force by the police with a view to dispersing demonstrations in Brussels: e.g. the Extinction Rebellion manifestation of 12 October 2019,[130] the demonstration against Class Justice of 24 January 2021[131] and the so-called "La Boum" anti-lockdown demonstrations on 1 April[132] and 1 May 2021.[133] Afterwards, the police was criticized for the excessive use of policing techniques like charging with police horses, water cannons and tear gas. Investigations into these incidents may still be ongoing, and, in any event, the Federal Human Rights Institute does not have at its disposal all necessary elements to draw decisive conclusions regarding the legality of the use of force employed. These media reports nonetheless give rise to concern that the "less-lethal"

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[121] G. Adrien, "Affaire "Sabrina et Ouassim": le parquet requiert un non-lieu", *La Dernière Heure* 3 June 2021.
[122] X, "Dode na politieachtervolging in Sint-Lambrechts-Woluwe", *Bruzz* 3 August 2019.
[123] X, "Politiewagen die Mehdi (17) dodelijk aanreed had geen sirene op", *Bruzz* 17 April 2020.
[124] D. De Coninck, "'We hebben hem! We hebben hem geschept!': reconstructie van de dood van Adil in Anderlecht", *De Morgen* 18 April 2020.
[125] H. Debeuckelaere, "Dodelijke politie-achtervolgingen: nabestaanden en politie tasten in het duister", *Bruzz* 17 April 2020.
[126] D. Hiroux, "Politieman in zaak-Mawda krijgt 1 jaar cel met uitstel, een van de vermoedelijke mensensmokkelaars gaat vrijuit", *VRT* 12 February 2021.
[127] Standing Police Monitoring Committee, *Les problèmes en matière de communication et de coordinations lors d'une poursuite menée le 17/05/2018 qui s'est achevée par un accident de tir à Mons*, 2019.
[128] Standing Police Monitoring Committee, *Techniques d'interception de véhicules*, 2020.
[129] Also see Police Watch, *Quand les citoyen.ne.s utilisent leur droit de manifester pour dénoncer les violences policières, les forces de l'ordre répondent par la violence*, 2021.
[130] X., "Vier tuchtprocedures opgestart rond politieoptreden Extinction Rebellion", *De Standaard* 21 October 2019.
[131] L. De Roy, "Incidenten en arrestaties tijdens betoging tegen 'klassejustitie' in Brussel", *VRT* 24 January 2021.
[132] X., "Halfnaakte vrouw omvergereden door politie te paard, federale politie onderzoekt incident", *Het Nieuwsblad* 2 April 2021.
[133] D. Baert, "Was politiegeweld bij La Boum 2 gerechtvaardigd of niet?", *VRT* 3 May 2021.

character of such policing techniques might in practice give rise to a slippery slope effect. In this regard, it must be recalled that, according to the Human Rights Committee, such "less-lethal weapons with wide-area effects" should only be used as a measure of last resort.[134] The Federal Human Rights Institute is particularly concerned about mediatized images of at first sight non-violent protestors[135] or even of an immobilized protester[136] being subjected to tear gas. It must be recalled that under Belgian law, tear gas may only be used as a purely defensive weapon when confronted with heavy forms of collective violence or in case of legitimate self-defense, and not, e.g., as a means to break passive resistance, disperse demonstrations or facilitate arrests.[137] Limiting recourse to tear gas to use as a measure of last resort in strict compliance with the requirements of Belgian law, is all the more important given the serious negative physical and/or mental health or, for persons with underlying medical conditions, even lethal effects which may result from exposure to tear gas.[138]

The impact of Covid-19

The difficulties police services are confronting in the context of the enforcement of the sanitary measures taken to respond to the Covid-19 crisis – which have resulted in the criminalization of conduct which in ordinary circumstances would amount to ordinary social behavior – should certainly not be underestimated. Nonetheless, as has been acknowledged by CERD in its recent concluding observations, there is reason to believe that problems regarding illegitimate violence committed by police officers have exacerbated in the context of the enforcement of the sanitary measures taken in response to the Covid-19 crisis.[139] Both Amnesty International[140] and Police Watch, in its already-mentioned report,[141] have expressed their concern about the use of illegitimate violence committed by police officers in this context. Also the Committee P witnessed an increase of complaints of (alleged) illegitimate violence committed by police officers from 1161 in 2019 to 1438 in 2020 – an increase which is at least partly attributed by the Committee P to the Covid-19 crisis.[142]

In the course of 2020, the sanitary measures have also impacted the possibility for persons held in police custody to physically meet their lawyer – in the absence of the possibility for such consultations to take place in safe sanitary circumstances, many lawyers have opted for telephone consultations instead.[143] In this regard, it must be recalled that the right for physical assistance by a lawyer is in

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[134] Human Rights Committee, *General Comment No. 37 on the right of peaceful assembly (article 21)*, 17 September 2020, para. 87.

[135] X. "Opschudding over filmpjes van hardhandig optreden politie rond Ter Kamerenbos tijdens La Boum 2", *Het Nieuwsblad* 2 May 2021; S. François and G. Wils, "Interventions policières musclées en marge de la boum 2, 'légitimes' selon la police: nous avons soumis les images à la Ligue des droits humains (vidéo)", *RTL* 5 May 2021.

[136] X., "Onderzoek naar agent die geboeide klimaatbetoger met pepperspray in gezicht spoot", *De Morgen* 13 oktober 2019.

[137] Circulaire ministérielle de 31 mars 2014 OOP 41 concernant l'opérationnalisation du cadre de référence CP 4 relatif à la gestion négociée de l'espace public relativement aux événements touchant à l'ordre public, *Belgian Official Gazette* 15 May 2014, section 3.3.4.

[138] See, generally, Amnesty International's interactive website "Tear Gas: an Investigation".

[139] CERD, Concluding observations concerning the report of Belgium, 21 May 2021, CERD/C/BEL/CO/20-22, para. 13.

[140] Amnesty International, *Policing the Pandemic*, 2020, p. 20.

[141] Police Watch, *Abus policiers et confinement*, June 2020.

[142] Standing Police Monitoring Committee, *Annual Report 2020*, p. 38 and 58.

[143] Q. Rey, "Auditions Salduz – Mesures Sanitaires", *La Tribune* no. 170. More generally, see Fair Trials, *Safeguarding the right to a fair trial during the coronavirus pandemic: access to a lawyer*, May 2020, p. 5.

principle expressly required by the case law of the European Court of Human Rights,[144] and serves as an essential safeguard against ill-treatment in custody.[145]

Suggested recommendations:

14. Ensure that reliable data are collected on the prevalence of illegitimate violence committed by police officers.
15. Ensure, including through training, that all use of force by the police complies with the legal requirements of necessity and proportionality, and that whenever possible priority is given to de-escalatory tactics.
16. Continue to ensure the proportionality of the means used by police, including as regards the active pursuit of a person.
17. In the context of the policing of demonstrations, ensure that tear gas is only used as a defensive weapon of last resort in the circumstances provided for by law.

6.2. Filming of police officers by citizens

In order to establish instances of (alleged) illegitimate police violence, video footage produced by the victim or by bystanders can be crucial evidence. While Belgian legislation does not prohibit the filming of police officers if this is done in the public interest, a number of incidents have been reported pertaining to citizens – and even journalists – exercising their freedom of expression by filming police officers. A notable case is that of Ibrahima Barrie, a twenty-three-year-old man who died in police custody, after having been arrested for what bystanders said was his attempt to film police officers conducting Covid-measure controls.[146] In another incident, police also seized camera equipment and erased footage of journalists, who had explicitly identified as such.[147] The police officers who had seized the camera were later convicted of theft. It was hereby repeated that, as a general rule, it is not forbidden to film police during their work, and that the seizure of camera equipment and the erasure of footage by police is not allowed.[148]

The Supervisory Body for Police Information (COC) touched upon the topic of citizens filming police officers in a 2020 advisory report[149] which dealt with the use of body cams by police officers. In this report, the supervisory body explained that the use of bodycams by police officers was deemed by

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[144] E.g., ECtHR (Grand Chamber), 9 November 2018, *Beuze v. Belgium*, no. 71409/10.

[145] E.g., CPT, *Access to lawyer as a means of preventing ill-treatment*, 2011, CPT/Inf(2011)28-part1.

[146] Y. Kobo, "Brussels' police violence problem", *Politico.eu* 18 January 2021; Belga, "Des questions autour d'Ibrahima B. dans le cadre d'une interpellation demeurent", *RTBF* 20 January 2021. See also, about another case, that of Idries Bensbaho, E. Verhoeven, "Politie onderzoekt of agent 'pak de makakken' riep tijdens interventie", *De Standaard* 20 October 2020. The incident involving Ibrahima Barrie was also discussed in parliament, see, a.o., the report of the plenary session of 14 January 2021, *Doc. Parl.* Chamber, DOC CRIV 55 PLEN 083.

[147] See, on the website of the Council of Europe, *Journalists Arrested and Forced to Delete Material During Anti-TTIP Event*; see also N. Amies, "Filming police is our right, say reporters as trial of officers begins", *thebulletin.be* 18 December 2020.

[148] See the statement on the website of the Flemish association of journalists (VVJ): VVJ, "Politie mag perscamera niet in beslag nemen", *journalist.be* 28 January 2021; see also on the website of ZinTV, the medium involved: ZinTV, "Filmer la police est un droit: deux policiers jugés coupables de vol d'usage" , *ZinTV* 29 January 2021.

[149] The Supervisory Body for Police Information, *Avis d'initiative suite aux constatations dans le cadre d'une enquête sur l'utilisation de bodycams*, 8 May 2020.

some officers to form a defence against being filmed by citizens.[150] The supervisory body proceeded by concurring with the judgment by the European Court of Justice of 14 February 2019,[151] which held that, while also police officers are entitled to the protection of personal data in the fulfillment of their duties and enjoy a level of privacy, regular citizens are nevertheless entitled to film police officers when there is a public interest at stake, though such an interest is not automatically present in every police intervention. This means that, in the absence of a justified interest, a person filming a police officer in the fulfillment of the latter's duties may be acting in violation of Belgian data protection law. Obviously, proportionality is key here: in some cases, for instance, anonymization may be in order before posting footage on social media.[152] Nevertheless, it would seem paramount that such interest is not questioned too rapidly, as it can be argued that the threshold for considering police operations a matter of public interest in a democratic society should be low.[153] A *de facto* ban on filming and punishment of reporting on police actions would, moreover, seem to amount to a violation of the freedom of the press and freedom of expression as guaranteed by article 10 of the European Convention on Human Rights and article 11 of the Charter of Fundamental Rights of the European Union.[154]

Seven human rights organisations,[155] which together form the platform 'Stop Ethnic Profiling', therefore recently listed the fact that police officers should be instructed to respect the right to film the police, as one of their recommendations.[156] More generally, there is a widespread consensus among civil society in Belgium that the exercise of the right to film police officers, as part of the right to freedom of expression, is a fundamental safeguard against illegitimate violence by police officers, and one which in practice is all too often disregarded. The latter, especially, is the case when citizens are forced to hand over their phones or other devices to police and are thus prevented from exercising their aforementioned right.

A clearer entrenchment in the law of the right to film police officers during their work, as part of the right to freedom of expression, would provide a stronger guarantee of this right and, with it, a stronger safeguard against illegitimate violence by police officers.

Suggested recommendation:

18. Ensure that the right of citizens to film police officers when the public interest is at stake is respected, and is explicitly recognized in Belgian legislation.

[150] Ibid., no. 57 (p. 24-25).
[151] ECJ, 14 February 2019, C-345/17, *Sergejs Buivids*.
[152] K. Lemmens, "De politie gefilmd: l'arroseur arrosé?", *Rechtskundig Weekblad* 2014-15, 5, 162.
[153] K. Lemmens, "De politie gefilmd: l'arroseur arrosé?", *Rechtskundig Weekblad* 2014-15, 5, 162.
[154] D. Voorhoof, "Geen verbod op filmen van politieagenten", *De Juristenkrant* 2018, 380, 1-2.
[155] Amnesty International, JES Brussel, Liga voor Mensenrechten, Minderhedenforum, Uit De Marge, la Ligue des Droits Humains, MRAX, and activist Yassine Boubout.
[156] Stop Ethnic Profiling, "Aanbevelingen", *stopethnicprofiling.be*.

6.3. Response to point 36(b): investigation, prosecution and punishment

As mentioned above, there are serious indications that illegitimate violence committed by police officers is more widespread than reflected in the official numbers of investigation, prosecutions and convictions. For this reason, various NGOs denounced a lack of systematic effective investigations into and prosecutions for illegitimate violence committed by police officers in Belgium.[157] The CPT has called upon the Belgian authorities to increase the fight against impunity, through effective, swift and independent investigations of all credible complaints of illegitimate violence committed by police officers.[158]

The likely underestimation of the true scope of the problem of illegitimate police violence in the statistics provided for by the State, may be explained by concerns that victims of (alleged) illegitimate police violence may be confronted with various obstacles in accessing complaint mechanisms (e.g. Committee P) or in pursuing judicial remedies. More research is required to properly identify the obstacles victims meet in practice. In this regard, NGOs have alleged that the following potential obstacles might play a role: e.g., lack of awareness of the existence of complaint mechanisms; feelings of resignation; ineffectiveness (or perceived ineffectiveness) of the complaint procedures; lack of independence (or perceived lack of independence) of the investigation; costs, length and complexity of the procedure; inadequate legal and social support of victims; and incidents of intimidation of complainants via false counter-claims or news leaks.[159] In a recent report, Police Watch also voiced its concerns regarding the quality of medical certificates drafted after alleged instances of ill-treatment by police officers – which are of crucial evidentiary importance – and the lack of training of medical and legal professionals regarding the requirements of the Istanbul Protocol (the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).[160]

In its above-mentioned recent report, the Inspectorate General of the Federal and Local Police (AIG) also identified problems regarding the complaint procedure, in particular regarding the insufficient transparency thereof. According to the AIG, it is important that more clarity is provided to plaintiffs regarding which service will investigate their complaint: Committee P, AIG, COC (regarding data protection), or an internal oversight body at the local or federal level. Now complaints are often dispatched to one of these services without informing the plaintiff.[161] The AIG also recommends to set a maximum duration for investigations, which may only exceptionally be exceeded, and to inform plaintiffs at the outset of the investigation about the anticipated duration thereof.[162]

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[157] E.g. Hungarian Helsinki Committee, *Investigation of torture in Europe – A Comparative Analysis of Seven Jurisdictions*, 2016, p. 21; Kif Kif, Police Brutality and Community Resistance in Belgium, May 2021 (unpublished report on file with author).

[158] CPT, *Report on the occasion of the visit to Belgium between 24 September and 4 October 2013*, 31 March 2016, CPT/Inf (2016) 14, para. 15.

[159] Police Watch, *Abus policiers et confinement*, June 2020, p. 4-5; Kif Kif, *Police Brutality and Community Resistance in Belgium*, May 2021 (unpublished report on file with author).

[160] Police Watch, *Violences policières et la charge de la preuve : le rôle du certificat médical (version longue)*, December 2020.

[161] AIG, *Document de vision "Tout les flics sont-ils incompétents ? – L'approche de l'intégrité au sein de la police*, 6 April 2021, p. 71-72.

[162] Ibid.

Suggested recommendations:

19. Conduct prompt, thorough, effective and impartial investigations into all alleged cases of illegitimate violence committed by police officers and prosecute and sanction officials found guilty of such offences with appropriate penalties.
20. Establish a parliamentary inquiry commission to examine the potential systemic causes of illegitimate violence committed by police officers.
21. Examine the obstacles which in practice hinder the access of victims of alleged illegitimate violence committed by police officers to complaint mechanisms, and take the necessary measures to facilitate such access to victims.

6.4. Response to point 40: The use of tasers

Pilot projects were recently set up allowing the use of tasers in selected policing zones in Belgium. For instance, a newspaper report in September 2020 mentioned that the Antwerp Rapid Response Team, which has had tasers at their disposal tasers since 2018, used them for the first time to make an arrest, though tasers had reportedly been used twenty times before by way of deterrent.[163] The use of tasers is currently limited to special missions such as when reinforcement is required during an intervention, or to assist a front-line team.[164]

As the Belgian Minister of the Interior, Ms. Annelies Verlinden, explained in parliament, tasers are considered by the government as a useful defence tool for police officers.[165] Tasers at the moment still fall into the category of special weapons, and are not considered standard equipment. In case tasers would become part of the police's collective armament, article 5 of the Royal Decree of 3 June 2007[166], which lists the types of weapons for that purpose, would have to be modified.

In accordance with the Law on the police profession[167], which sets out the rules on coercion and the use of legitimate force, it is the responsibility of the police officer to use any weapon in a proportionate and lawful way.[168] Police Union ACV, however, opposes the use of tasers by police officers without additional protection. It is mostly concerned about the fact that police officers cannot assess whether a person is pregnant or under the influence of alcohol, which could entail the liability of the individual officer in case anything goes wrong.[169]

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[163] Belga, "Antwerpse politie gebruikt voor het eerst stroomstootwapen", *De Standaard* 28 September 2020.
[164] *Doc. Parl.* Chamber, Minister of the Interior, security, migration and administrative affairs, Ms. Annelies Verlinden, in the Parliamentary Commission of the Interior, 10 December 2020, DOC 55 1578/023, p. 109.
[165] *Doc. Parl.* Chamber, Minister of the Interior, Ms Annelies Verlinden, in the Parliamentary Commission of the I Interior, security, migration and administrative affairs, 10 December 2020, DOC 55 1578/023, p. 109.
[166] Arrêté royal relatif à l'armement de la police intégrée, structurée à deux niveaux, ainsi qu'à l'armement des membres des Services d'Enquêtes des Comités permanents P et R et du personnel de l'Inspection générale de la police fédérale et de la police locale, *Official Gazette* 22 June 2007.
[167] Loi de 5 août 1992 sur la fonction de police (as amended), *Official Gazette* 22 December 1992.
[168] *Doc. Parl.* Chamber, Minister of the Interior, security, migration and administrative affairs, Ms. Annelies Verlinden, in the Parliamentary Commission of the Interior, 10 December 2020, DOC 55 1578/023, p. 109.
[169] *Doc. Parl.* Chamber, Mr Joery Dehaes, representative of the police union ACV, hearing of 10 July 2020, United Parliamentary Commission of justice and of the Interior, security, migration and administrative affairs, DOC 55 1592/001, p. 112.

It is a source of concern that tasers are becoming increasingly integrated in the armament of the police force. Knowledge and safeguards against misuse are essential. An adequate training of law enforcement officers is required in order to avoid excessive use of force. Tasers should be used exclusively in a very limited number of extreme situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.

Suggested recommendations:

22. Refrain from flat distribution and use of tasers by police officers.
23. Ensure safeguards against misuse and provide proper training for personnel to avoid excessive use of force.
24. Ensure that tasers are used exclusively in extreme and very limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.

7. Article 16 - Response to Point 41: Prohibition of Corporal Punishment

Belgium has not explicitly prohibited the use of corporal punishment, sometimes called "educational" violence. However, it argues that its legislation already contains an implicit prohibition on corporal punishment. The Penal Code prohibits assault and battery,[170] degrading treatment,[171] and considers it an aggravating circumstance if such violence is exercised by a person with parental authority over the child.[172] The Belgian Constitution states that children have the right to physical, psychological and sexual integrity.[173] In addition to these federal provisions, the Communities – which are competent for youth protection – have adopted specific prohibitions.[174] Their approach is directed towards the prevention of abuse, without, however, explicitly defining corporal punishment as abusive behaviour. Thus, although Belgian law prohibits certain violent behaviour with an allegedly educational purpose, it does not contain an explicit prohibition of corporal punishment in each and every situation.

This situation leads to the tolerance of corporal punishment when it does not reach a certain (perceived) threshold of severity. This tolerance is expressed, for example, in the persistence of the acceptance of a so-called "right of correction" by some courts,[175] as well as in some political statements.[176] Yapaka, the official program for the prevention of child abuse in the French Community, advocates for more awareness-raising among parents but is opposed to an explicit ban on corporal punishment, which it deems counterproductive: "*The desire to legislate more than reasonable may result in the overlegalization of an issue which must above all be addressed through awareness-raising, listening and dialogue. The desire to restrain* [such behaviour] *is based on the assumption that only the threat of punishment has an impact. We, on the contrary, believe that supporting parents must be the basic pinciple of any policy in this area*".[177]

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[170] Art. 398 *et seq.*, Penal Code.
[171] Art. 417 quater, Penal Code.
[172] Art. 405 quater, Penal Code.
[173] Art. 22 bis, Constitution.
[174] The Flemish decree of 7 May 2004 prohibits corporal punishment within public youth protection institutions. No such prohibition explicitly exists within the French Community legislation. See Decreet van 7 mei 2004 betreffende de rechtspositie van de minderjarige in de integrale jeugdhulp [en binnen het kader van het decreet betreffende het jeugddelequentierecht], *Belgian Official Gazette* 4 October 2004.
[175] Criminal Court of Nivelles, 13 January 2011, *J.D.J.*, n°346, 2015, p. 38; Court of Appeal of Antwerp, 13 March 2012, *R.W.*, 2012-2013, p. 1592; Criminal Court of Nivelles 14 March 2013, *J.D.J.*, n°346, 2015, p. 38.
[176] A study published by Unicef in 2019 showed that three out of the seven main Flemish political parties (NV-A, Open VLD, Vlaams Belang) opposed a legal modification that would explicitly prohibit all violence against children. See UNICEF Belgium, "Standpunten politieke partijen rond geweld tegen kinderen", enquête UNICEF België - Verkiezingen 2019. Théo Franken, a Member of the Federal Parliament for the NV-A, stated on May 6, 2021: "to associate an educational slap with child abuse is to involve the government in private situations". Translated from the French : "[a]*ssocier une gifle pédagogique à la maltraitance des enfants, c'est impliquer le gouvernement dans les situations privées.".* LN24, "Pour ou contre l'interdiction de la fessée", *LN24* 6 May 2021.
[177] Original in French :*"Vouloir légiférer plus que de raison, c'est introduire la loi dans une situation qui doit avant tout se dépasser grâce à la sensibilisation, l'écoute, le dialogue. Vouloir contraindre encore, c'est prendre comme fondement que seule la menace de punition a de l'effet. Nous pensons au contraire que le soutien au parent doit être l'axe de base de toute politique en la matière".* Yapaka.be, "Faut-il châtier les parents qui donnent une fessée ?", 22 June 2015.

The lack of legislation prohibiting corporal punishment is contrary to the case law of the European Court of Human Rights[178] and Belgium's international obligations.[179] Those provisions entail an obligation for Belgium to explicitly prohibit corporal punishment of children through legislation, which the State has failed to do.[180] This situation has led to several convictions of Belgium by the European Committee of Social Rights, among others in 2004[181] and 2015.[182]

Several bills have been introduced in Parliament. The most recent one,[183] in similar fashion to a recent opinion of the advisory body of the National Commission for the Rights of the Child,[184] argues for an amendment of article 371 of the Civil Code[185] to provide for an explicit prohibition of physical or psychological punishment and other forms of humiliating treatment. The choice for a Civil Code amendment over a criminal prohibition is consistent with the recommendations of the Committee on the Rights of the Child.[186] This allows for an approach that focuses on awareness-raising and prevention, rather than on a repressive approach that may not be in the best interests of the child.

Amending the Civil Code would primarily have a symbolic effect: it would make clear that all violence against children is intolerable, even if it is described as "educational". This prohibition could also have certain legal consequences for parents using violence, particularly in the event of a judicial decision regarding parental authority, custody or the placement of children in foster care.

Suggested recommendations:

25. Adopt an amendment to the Civil Code explicitly prohibiting all so-called "educational" violence, albeit physical or psychological. Ensure the consistency of the prohibition of so-called "educational" violence with the legislation of the Communities.
26. Accompany the legal amendment with awareness-raising, prevention and information campaigns aimed at the general public, as well as training and support measures regarding education and nonviolent parenting aimed at parents, teachers and care providers. Ensure training and support for all persons working with children and families, professionals in contact with families and youth welfare agencies, judges and lawyers.

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[178] See, *inter alia*, the judgments *Campbell and Cosans v. United Kingdom*, 25 February 1982, n° 7511/76 et 7743/76; *A. v. United Kingdom*, 24 September 1998, n° 25599/94, which considers that "reasonable punishment" admitted under British law is incompatible with the prohibition of inhuman or degrading treatment.

[179] See, *inter alia*, art. 17 of the European Social Charter, art. 19 and 28 of the International Convention on the Rights of the Child, art. 7 of the International Covenant on Civil and Political Rights.

[180] See Organe d'avis de la Commission nationale pour les droits de l'enfant, *Interdire expressément les violences dites éducatives : une obligation juridique pour la Belgique*, April 2018.

[181] E.C.S.R., *Organisation mondiale contre la torture v. Belgium*, decision on the merits, 7 December 2004, complaint nr. 21/2003.

[182] E.C.S.R., *Association pour la protection des enfants (APPROACH) Ltd. v. Belgium*, decision on the merits, 20 January 2015, complaint nr. 98/2013.

[183] *Doc. Parl.* Chamber, Proposition de loi modifiant le Code civil en vue d'interdire toute violence systématique entre les parents et leurs enfants, DOC 55 1840/001, 9 March 2021.

[184] Organe d'avis de la Commission nationale pour les droits de l'enfant, *Interdire expressément les violences dites éducatives : une obligation juridique pour la Belgique*, *op. cit.*

[185] This article currently states provides that "*the child and his father and mother owe each other mutual respect at all ages*. Original in French :« *l'enfant et ses père et mère se doivent, à tout âge, mutuellement le respect".*

[186] UN Committee on the Rights of the Child, *General Comment nr. 8*: *the Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia*), 2 March 2007, CRC/C/GC/8, para. 40.

8. Other questions – Response to point 45: Measures to combat terrorism and radicalism

In its 45th point, the Committee invites Belgium to provide updated information on "the measures taken by the State party to respond to any threats of terrorism and [to] describe if, and how, those anti-terrorism measures have affected human rights safeguards in law and practice". The following section offers clarification on the issue and discusses four elements: the widening of the criminal law in Belgium; the increased use of the concepts of radicalism and radicalization to manage the risk of terrorist threats; the management of radicalism in prison; and the repatriation of Belgian children present in Syria and Iraq, and their mothers.

8.1. New widening of the criminal law in the fight against terrorism

Counter-terrorism legislation has undergone significant developments over the past decade. Implementing the European Union directive 2017/541 on combating terrorism, the 5 May 2019 Act introduced a number of offences preparatory to the commission of terrorist acts into the criminal code. These include recruitment, training, formation or leaving the territory, when these acts are carried out with a view to "contributing to the commission" of a terrorist offence.[187] The NGO Comité T notes, however, that this legislative development could contribute to the emergence of an exceptional mode of criminal participation by opening up the possibility of specific case law interpretation of the concept of "contributing to the commission".[188]

The 5 May 2019 Act also introduced the new offence of personal training for terrorism. Article 140quinquies of the Criminal Code now punishes following a training "with a view to committing or contributing to the commission" of a terrorist offence.[189] Through this incrimination, the Belgian legislator also intends to punish "self-education " by which a person acquires knowledge, including by consulting internet sites. However, as pointed out by the NGO Comité T, the introduction of this offence raises questions about how to prove intent in the absence of acts other than consultation.[190]

This finding is in line with similar criticism voiced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism during her visit to Belgium. The latter had indeed highlighted the difficulties of prosecuting persons "travelling with terrorist intent".[191] In the Rapporteur's view, the adoption of this offence in Belgian law entailed a risk of too broad an interpretation. She also stressed the importance of prosecutions "being conducted on the basis of conclusive evidence of intent to commit terrorist offences".[192] More generally, the manner in which these standards are implemented and their compatibility with human rights law should be

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[187] In French "contribuer à commettre": Penal Code, art. 140ter - 140sexies; Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, *OJ.,* L 88/6, 31 March 2017.
[188] Comité T, *Rapport 2020 - Évaluation des mesures visant à lutter contre le terrorisme à la lumière des droits humains*, 2020, p. 15.
[189] In French "en vue de commettre ou de contribuer à commettre".
[190] Comité T, *Rapport 2019 – Le respect des droits humains dans le cadre de la lutte contre le terrorisme : Un chantier en cours. 2019*, p. 16.
[191] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, UNGA., 40th session, 8 May 2019, A/HRC/40/52/Add.5, para. 23.
[192] *Ibid.* para. 23.

subject to an overall assessment as highlighted by the Human Rights Committee.[193] In this context, it must also be noted that EU Directive 2017/541 provides that the Commission must, before 8 September 2021, present to the European Parliament an assessment of the impact of the directive on fundamental rights and freedoms, taking into account the information provided by Member States on the transposition of the directive into their respective anti-terrorism legislations.[194] An assessment by Belgium of its legislation and its impact on human rights would therefore be particularly timely.

Suggested recommendations:

27. Amend the Criminal Code to remove the words "contributing to" which could be interpreted as creating an exception regime to modes of criminal participation.
28. Amend the Criminal Code to remove the offence of personal training for terrorism and act at EU level to ensure that Directive 2017/541 is also amended to this effect.
29. Undertake a comprehensive human rights assessment of the impact of the successive additions of terrorism offences and communicate this assessment to the European Commission so that it can be taken into account in the assessment of Directive 2017/541.

8.2. The increased use of the concepts of radicalism and radicalization to address the risk of terrorism

In parallel to the widening of the criminal law to combat terrorism, we can notice an increasing use of the concepts of “radicalism” and “radicalization” to preventively manage the terrorist threat through administrative measures. These measures include: bans on working in certain sensitive areas,[195] refusals to grant Belgian nationality,[196] the closure of establishments by communal authorities,[197] refusal to issue a Belgian passport or travel document,[198] revocation of a residence permit and

[193] Human Rights Committee, *Concluding observations on the sixth periodic report of Belgium*, 6 December 2019, CCPR/C/BEL/CO/6, para. 12.

[194] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism, art. 29.

[195] Loi de 11 décembre 1998 relative à la classification et aux habilitations, attestations et avis de sécurité, *Belgian Official Gazette* 7 May 1999.

[196] Code de la nationalité belge, *Belgian Official Gazette* 12 July 1984, art. 1 para. 2, 4°, and art. 15 para. 3; Arrêté royal de 14 janvier 2013 portant exécution de la loi du 4 décembre 2012 modifiant le Code de la nationalité belge afin de rendre [l'acquisition] de la nationalité belge neutre du point de vue de l'immigration, *Belgian Official Gazette* 21 January 2013: Article 2 of this decree defines the 'serious personal facts' on the basis of which the public prosecutor may issue a negative opinion on the acquisition of Belgian nationality. However, this list is not exhaustive. See Court of Cassation, judgment of 24 October 2019, C.19.0159.N, *Tijdschrift voor Vreemdelingenrecht*, 2020/2, p. 167.

[197] Art. 134*septies*, Nouvelle loi communale de 24 juin 1988 (version of the Brussels-Capital Region), *Belgian Official Gazette* 3 September 1988. Note the rejection of the recourse against the law of 30 July 2018 on the creation of local comprehensive security cells in relation to radicalism, extremism and terrorism, Constitutional Court, 1 April 2021, nr 52/2021.

[198] Art. 5, Loi de 10 août 2015 portant modification du Code consulaire, *Belgian Official Gazette* 24 August 2015.

expulsion of foreigners from Belgian territory,[199] or follow-up measures at the communal level.[200] However, the concepts of radicalization and radicalism on which these measures are based are too vaguely defined, while important restrictions on people's rights are concerned.

As such, the notion of radicalism is not legally defined. Only the National Taskforce created in the *Plan R* offers a definition.[201] According to the latter, radicalism is:

> "The pursuit and/or support of very drastic changes in society, which may cause a danger to the democratic legal order (objective), possibly the use of undemocratic methods (means), which may harm the functioning of the democratic legal order (effect)" or more generally "radicalism is the willingness to accept the most extreme consequence of an opinion and to follow it up with action."[202]

This definition is too vague and seems to suggest that pursuing a drastic change of society through democratic means could be a sign of radicalism. It also does not define what kind of behavior would be likely to cause a danger to the "democratic legal order" or what would be "the most extreme consequence of an opinion". This definition therefore leaves too much room for interpretation by the actors who are supposed to implement it. The lack of a clear definition has been criticized by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.[203]

The same applies to the term "radicalization", defined in *Plan R* as "a process influencing an individual or group of individuals in such a way that the individual or group of individuals is mentally prepared or willing to commit terrorist acts".[204] The lack of precision in this definition and in the methodology used to assess radicalization has been highlighted by civil society.[205] However, in addition to being used in the context of the aforementioned measures limiting human rights, this concept is likely to

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[199] Loi de 24 février 2017 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers afin de renforcer la protection de l'ordre public et de la sécurité nationale, *Belgian Official Gazette* 19 April 2017. A so-called radicalized person may indeed be perceived as a "threat to public order" or "danger to public order" under this law; Loi de 15 mars 2017 modifiant l'article 39/79 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, *Belgian Official Gazette* 19 April 2017.

[200] Loi de 30 juillet 2018 portant création de cellules de sécurité intégrale locales en matière de radicalisme, d'extrémisme et de terrorisme, *Belgian Official Gazette* 14 September 2018.

[201] The *Plan R* was developed by all Belgian institutions in charge of the fight against terrorism under the coordination of the Coordination Unit for Threat Analysis (CUTA): *Le Plan R – Le Plan d'Action Radicalisme*, 2015, p. 9.

[202] In French: "*La poursuite et/ou le soutien de changements très drastiques dans la société, pouvant causer un danger pour l'ordre juridique démocratique (objectif), éventuellement l'utilisation de méthodes non démocratiques (moyen), pouvant nuire au fonctionnement de l'ordre juridique démocratique (effet)" ou de manière plus générale "le radicalisme est la volonté d'accepter la conséquence la plus extrême d'une opinion et d'y donner suite par des actes*", *Ibid.*

[203] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit.,* para. 32.

[204] « [Un]processus influençant un individu ou un groupe d'individus de telle sorte que cet individu ou ce groupe d'individus soit mentalement préparé ou disposé à commettre des actes terroristes ». This definition comes from art. 3, 15° of the Loi organique des services de renseignement et de sécurité, *Belgian Official Gazette* 18 December 1998.

[205] Comité T, *Rapport 2019 – Le respect des droits humains dans le cadre de la lutte contre le terrorisme : Un chantier en cours. 2019*, *op. cit.*, p. 25.

have specific consequences for the conditions of detention of persons perceived as radicalized, as the following section shows.

Suggested recommendations:

30. Define in a legislative provision the notions of 'radicalism' and 'radicalization' in a narrow way and determine the elements to assess their existence.
31. Take measures to ensure that the use of these concepts does not disproportionately limit the exercise of freedom of expression and association.

8.3. Managing radicalism in prison

The treatment of so-called 'radicalised' prisoners is a major issue for the prison system, which might justify a number of exceptions to the general principles of sentence implementation law The identification of these prisoners, the segregation measures to which they are frequently subjected, the general opacity of the system and the lack of remedies create an exceptional and complex regime. The de-radicalisation and disengagement strategies carried out by Belgium since 2015 are based on the twofold observation that prisons are a potential breeding ground for radicalisation and that there is a need for 'specialised supervision' for so-called 'radicalised' prisoners.[206] These observations have led the public authorities to adopt a two-pronged approach to radicalisation, based on the isolation and regrouping of identified prisoners within 'D-Rad:Ex' sections or specialised satellite prisons, or via the almost systematic use of the special individual security regime,[207] and on disengagement strategies, the effectiveness of which has been criticized and which are rarely implemented by prison management.[208]

Some recent progress can be noted, particularly in relation to the right to a remedy and the disengagement process. However, the prison regime for so-called 'radicalised' prisoners remains characterised by considerable interference with human rights.

Measures restricting freedom

In her 2019 report on Belgium, Fionnuala Ní Aoláin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, notes her "*deep concern*" about certain aspects of the measures taken against so-called "radicalised" persons. This concern is mainly related to the significant restrictions on individual rights associated with the prison regime for so-called "radicalised" detainees. Conviction or mere prevention of terrorism generally justifies placement in a special individual security regime, without any systematic provision for a personal assessment of the threat that the person may pose to society.[209] The systematic isolation of these detainees was severely criticised by the Brussels Court of Appeal in a judgment of 8 October

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[206] Federal Public Service Justice, *Action plan against radicalisation in prisons*, 11 March 2015.
[207] F. XAVIER, "Le "radicalisme" en prison", *Observatoire juridique du fait religieux en Belgique* [online], 17 April 2017.
[208] *Doc. Parl.* Chamber, Rapport fait au nom de la Commission de la Justice: l'organisation, le suivi et les résultats des programmes de déradicalisation, de désengagement et de réinsertion mis en place dans les établissements pénitentiaires belges, DOC 55 1501/001, 10 September 2020.
[209] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit.,* paras. 35-36.

2020,[210] which found it to be contrary to Articles 3 and 8 of the European Convention on Human Rights and lacking any legal basis.

This security regime has many consequences for the liberty of individuals: it severely restricts their freedom of movement within the prison, and allows them only limited contact with other prisoners and the outside world, to the extent that it often amounts in practice to solitary confinement. The Special Rapporteur recommends that this regime should be applied only after a rigorous individual assessment and only if strictly necessary for security and law and order.[211]

In addition, prison wings specifically dedicated to the most dangerous so-called 'radicalised' prisoners, called D-Rad:Ex sections, exist within the prisons of Ittre (14 places) and Hasselt (8 places). Placement in a D-Rad:Ex wing is a prerogative of the prison administration based on the identification of so-called 'radicalised' prisoners *(below*) without these prisoners being informed or having knowledge of the information that led to this classification. In practice, D-Rad:Ex sections organise a regime comparable to the individual special security regime of the Principles Act[212], with two differences:

- Prisoners are subjected to daily monitoring in the form of a daily observation note and a quarterly report by prison staff. The persons concerned are not informed of the content of this monitoring and have no recourse against it. A judgment of 12 April 2021 of the Brussels Court of Appeal condemns the lack of effective recourse against the surveillance.[213] This daily surveillance is also carried out for so-called "radicalised" prisoners incarcerated in satellite prisons or under special individual security arrangements.[214]
- The measures restricting liberty, which normally last for two months,[215] are in many cases systematically renewed without individual examination of the dangerousness of the individual concerned. As the Brussels Court of First Instance notes,[216] placement in section D-Rad:Ex, described as an ordinary regime, has the effect of excluding the individuals concerned from the legal guarantees normally applicable to transfer and placement in a security regime. The court concludes that "*perhaps by taking too much of a collective view of the issue of radicalisation in prison, the Belgian State has lost sight of the necessarily individualised approach to any particular security measure."*[217]

The procedure leading to the placement of these persons in the D-Rad:Ex wing is less well defined than the one leading to placement in the individual special security regime: the decision is taken by the general prison administration and concerns prisoners convicted of terrorist offences but also those identified as "radicalised", without the criteria for this identification being clear *(infra*). The Ligue des droits humains thus held:

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[210] Court of Appeal of Brussels, judgment of 8 October 2020, no. 2014/AR/2257, unpublished.
[211] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit*., para. 37.
[212] Art. 117, Loi de principes concernant l'administration pénitentiaire ainsi que le statut juridique des détenus, *Official Gazette* 1 February 2005, known as the 'Principles Act'.
[213] Court of Appeal of Brussels (fr), judgment of 12 April 2021, no. 2019/AR/1276, unpublished, para. 44.
[214] It should be noted that the concept of a satellite prison has lost some of its meaning, since the assessment of so-called 'radicalised' prisoners that justified their existence is now conducted in all prisons that have such prisoners. This observation was made by Valérie Lebrun, director of the Ittre prison. See *Doc. Parl.* Chamber, Rapport fait au nom de la Commission de la Justice, *op. cit,* hearing of Ms Valérie Lebrun, p. 21.
[215] Art. 118, Principles Act of 12 January 2005, *op. cit.*
[216] Court of first instance of Brussels (fr), 26 April 2019, no. 18/16/A, unpublished, p. 20.
[217] *Ibid.*

> *"In prison, under the pretext of radicalisation, isolation, body searches and multiple restrictions are practised, left to the discretion of the prison administration, without any real possibility of defence or contradiction. When a prisoner is identified as "radicalised" (by the administration, without any decision or control by the judiciary), he is put in isolation: he then lives without human contact for at least 22 hours a day. In some prisons, such as Ittre and Hasselt, specialised wings were created in 2016 for 'terrorist' or 'radicalised' detainees: these are the D-Rad-Ex wings, where inmates are placed on undisclosed motivesn extension every three months. In these wings, the courtyard is narrow and barred; no psycho-social support is provided; the detainees no longer have contact with those in the other wings.* (...)[218]

However, some actors note that prison authorities seem to be reducing the number of prisoners in D-Rad:Ex sections, without being able to explain the reasons for this.

Opacity and lack of remedies against these measures

The prison regime for so-called 'radicalised' detainees is also marked by a certain opacity in the identification of detainees, the reasons of decisions taken against them and the vagueness of the norms governing the conditions of detention.

There are several ways of identifying so-called "radicalised" prisoners: prisoners convicted or prosecuted for a terrorist offence; those whose profile or grounds for detention lead to the assumption that they are radicalised; foreign terrorist fighters; and finally, prisoners whom prison staff consider to be radicalised. There is no transparency about the criteria for classifying so-called "radicalised" persons, and prison staff are often only imperfectly trained to detect signs of radicalism or extremism.[219] This situation is problematic for religious freedom: what may be only a sign of religious practice may be interpreted by prison staff as a sign of radicalism.

This selection leads to the constitution of five categories of prisoners without them being informed of their classification.[220] There is no possibility of an effective remedy to challenge the assessments made by prison staff, which are not made known to the persons concerned. Training for prison staff in the detection of radicalism remains relatively basic: only a module on radicalism "in general" is mandatory, and the administration also offers an e-learning tool.[221] In these circumstances, the risk of confusion between certain protected religious practices and a form of "radicalism" is very real, as the UN Special Rapporteur is concerned about.[222]

The use of this assessment method results in a number of so-called 'radicalised' individuals being vulnerable or suggestible persons whose 'radical' identity is strongly linked to the prison context.[223] In a parliamentary hearing on the subject, Rudy Van de Voorde, Director General of the Prison

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[218] E. DERONT, A. SINON, "Inflation of terrorist offences, degradation of human rights", analysis by the Ligue des droits humains, October 2020.

[219] [219] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium, op. cit,* para. 40; Comité de vigilance en matière du luttre contre le terrorisme (Comité T), *Rapport 2019, le respect des droits humains dans le cadre de la lutte contre le terrorisme: un chantier en cours*, p. 37.

[220] F. XAVIER, "Le "radicalisme" en prison", *op. cit*; Comité de vigilance en matière du luttre contre le terrorisme (Comité T), *Rapport 2020, évaluation des mesures visant à lutter contre le terrorisme à la lumière des droits humains*, p. 79.

[221] *Doc. Parl.* Chamber, Rapport fait au nom de la Commission de la Justice, *op. cit.*, p. 8.

[222] *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium, op. cit.*

[223] *Parl. Doc.* Chamber, Rapport fait au nom de la Commission de la Justice, *op. cit.* p. 4.

Administration, notes that most of the so-called "radicalised" individuals are not *"convinced and theologically inspired offenders"*, estimating that the share of the latter among the so-called "radicalised" inmates is "*clearly a minority*". Van de Voorde describes the majority of those monitored as "*psychologically vulnerable detainees, opportunists who rather invoke other social phenomena such as real or presumed discrimination as an excuse for their actions, and others who are highly influenceable* ". He concludes that "*religion and/or ideology is used as an instrument to commit an offence or at least to mobilise to commit offences.*[224]

The identification of so-called "radicalised" detainees has important consequences for their individual freedoms. The UN Special Rapporteur notes that the lack of control and the secrecy of these measures create a very real risk of restrictions and even deprivation of liberty.[225] Furthermore, the use of these security and isolation regimes has serious consequences for detainees and their mental health.[226]

However, this situation may be about to improve. Since 1 October 2020, the implementation of the right to complain to internal judicial bodies of the Prison Supervision Boards - the Complaints Commissions - allows a prisoner to challenge any decision taken by the prison management that he or she considers illegal, unreasonable or unfair.[227] This reform has been overdue for more than 15 years, since the right to complain was enshrined in the Principles Act of 2005.[228] The right to complain does not apply to decisions of a general and structural nature or to collective measures. The right of complaint is nevertheless broad in scope and the powers of the Complaints Commission include the possibility of suspending the execution of the measure or ordering its replacement by a measure that is more appropriate or more proportionate to the acts of which the prisoner is accused.[229]

The right to file a complaint is certainly a significant step forward, provided that the prison authorities ensure its effectiveness, under the supervision of the Central Prison Supervision Council. This right is also likely to play a particular role in the detention of so-called "radicalised" prisoners, as it may lead to practices of publishing and motivating the decisions of prison directors, such as the decision by prison management to place prisoners under a special individual security regime. The impact of this right will still have to be assessed in the light of its implementation, but it raises important hopes for the respect of the human rights of prisoners.

Disengagement process

In 2019, the Special Rapporteur noted that specialised and personalised programmes were not systematically implemented by the prison administration. She deplored the lack of efforts undertaken for the rehabilitation and disengagement of so-called "radicalised" prisoners, in favour of a constant

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[224] *Ibid.*

[225] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit.*

[226] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit.*

[227] Arrêté royal du 11 septembre 2019 modifiant la date d'entrée en vigueur des dispositions de la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus, relatives au traitement des plaintes et des réclamations, *Belgian Official Gazette* 17 September 2019.

[228] Art. 147 ff, Principles Act of 12 January 2005, *op. cit.*

[229] Art. 158, Principles Act of 12 January 2005, *op. cit.*

preoccupation with containing the threat.[230] Some disengagement programmes do exist but are not systematically integrated into the management's approach to the phenomenon of radicalisation in prison.[231]

Following this criticism, the joint circular of 18 February 2019 for a global approach to violent radicalism, extremism and terrorism was signed by the Minister of Justice and the governments of the three Communities. It proposes a comprehensive and coordinated approach to radicalisation within the prison system, with a particular focus on disengagement. The approach adopted is not without flaw : for example, the director of the prison is tasked by this circular with an assessment of the modalities of the prisoner's reintegration and disengagement, whereas this competence should be the responsibility of the institution's specialised psychosocial services - the *Centre d'Aide et de Prise en Charge de toute personne concernée par les Extrémismes et Radicalismes Violents* (CAPREV) or the *Centrum Algemeen Welzijnswerk* (CAW).[232] In addition to the confusion caused by the fact that Communities have competence over the matter – while it is de facto exercised by the directors of the prisons who belong to the federal authority - the directors of the prisons seem to be less qualified than social workers to carry out this assessment regarding the disengagement process.

The disengagement processes nevertheless face many obstacles, including the placement in D-Rad:Ex sections, where the association with other so-called 'radicalised' prisoners and the severe limitations on contact with outsiders make it almost impossible to assess the deradicalisation process, which is in itself necessary to remove these individuals from the specialised regimes.[233] The existence of a de-listing procedure[234] for people leaving the D-Rad:Ex wings is an encouraging sign, but the criteria for including an individual in this procedure need to be clarified and the management of the establishments needs to be made more aware of this possibility.[235]

Suggested recommendations:

32. Review the use of security measures with regards to so-called "radicalised" detainees and provide a strict framework that respects their fundamental rights in order to avoid any form of arbitrary decision by the prison authorities, in accordance with the recommendations of the UN Special Rapporteur.
33. Establish criteria for the identification of “radicalised” prisoners. Do not make prison officers responsible for identifying so-called "radicalised" prisoners, but use specialised staff to apply the identification criteria.
34. Inform detainees of their classification as a radicalised person and provide effective remedies to challenge it.

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[230] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit.*, para. 43.

[231] *Ibid.*

[232] These centres depend on the Communities and have been able to offer specialised support to so-called "radicalised" people for some years in order to promote their disengagement and reintegration.

[233] Critique by Ms Valérie Lebrun, Counsellor Director of Ittre Prison. *Doc. Parl.* Chamber, Rapport fait au nom de la Commission de la Justice, *op. cit.,* p. 9.

[234] This ”de-listing” procedure should allow an individual to have his name withdrawn from the registry of so-called ”radicalised” prisoners. However, the criteria leading to this ”de-listing" are unclear and many directors of prisons seem to be unaware of this possibility. See Comité de vigilance en matière du lutte contre le terrorisme (Comité T), *Rapport 2021: évaluation des mesures visant à lutter contre le terrorisme à la lumière des droits humains*, p. 94-95.

[235] *Ibid.*

35. Strengthen disengagement processes and systematically use de-listing procedures where appropriate.
36. Close the D-Rad:Ex sections of the Ittre and Hasselt prisons in favour of an ordinary prison regime or the special individual security regime, where the situation so requires.

9. The repatriation of Belgian children present or held in Syria and Iraq, and their mothers

Between twenty and forty Belgian children[236] and their parents currently live in Syrian detention camps administered by the Kurdish authorities, mainly al-Hol and al-Roj. The living conditions there are described as "appalling"[237] due to overcrowding, lack of care, constant violence, etc. In May 2021, a one-year-old Belgian child died in Al-Hol from poor living conditions, the fifth Belgian child to die there since 2019.[238]

In December 2017, the Belgian government announced its intention to repatriate Belgian children under the age of ten. It also stated it would consider the situation of children between ten and seventeen on a case-by-case basis. However, the government refused to consider repatriating their parents.[239] Three years later, only six orphans and one child accompanied by his mother had been repatriated.[240] In March 2021, Belgium announced that it intended to repatriate all children under the age of twelve, and that it would examine the situation of older children and mothers "on a case-by-case" basis.

Several petitions have been addressed to the courts with a view to obtaining an order to return the children accompanied by their mothers after consular protection had been granted.[241] The decisions granting these requests have all been appealed. In two rulings dated March 5, 2020,[242] the Brussels Court of Appeal declared the appeal inadmissible on the grounds that the Belgian State has no jurisdiction in Syria. Consequently, the repatriation requires the agreement of the Kurdish authorities. In addition, the Court of Appeal considered that the original plaintiffs cannot be considered as legal representatives of the children in the absence of birth certificates, that the courts cannot substitute

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[236] Some figures brought to our knowledge mention twenty-seven children and their thirteen mothers in April 2021. An Egmont study estimated, in October 2020, the number of Belgian children to be thirty-eight (see T. RENARD, R. COOLSAET, "From bad to worse : the fate of European foreign fighters and families detained in Syria, one year after the Turkish offensive", Egmont Security Policy brief, n°130, October 2020, p. 5). In December, researchers estimated about forty children to be present in the camps, based on figures from the Coordination Unit for Threat Analysis (OCAM/OCAD). See E. DELHAISE, C. REMACLE, C. THOMAS, « Après le califat, l'embarras », *La Revue nouvelle,* nr. 6, 2020 p. 49-66. Finally, the Dutch-speaking public television network recently mentioned thirty children and their thirteen mothers in June 2021. See I. VRANCKEN, "België bereidt terugkeer IS-vrouwen vanuit kamp in Syrië voor, Rudi Vranckx : "Dossier dat al 3 jaar zit te verzieken"", *VRT* 7 juin 2021.
It is unclear whether these differences are related to repatriations, deaths, displacements, or disappearances or to differences in calculation. Furthermore, most official figures only count children whose Belgian nationality is certain, which excludes children born in Syria to Belgian parents in the area controlled by the Daesh terrorist group where no proper birth registration existed.

[237] In French "épouvantables". See Court of Appeal of Brussels (fr), 5 March 2020, no. 2020/KR/60, unpublished.

[238] S. BOUSSOIS, S. BEN ALI, "Al Hol : Yassine, 1 an, mort dans l'indifférence occidentale", *Le Courrier de l'Atlas* 7 May 2021.

[239] Belgian government statement of 22 December 2017. See J. VANSEVENANT, R. ARNOUDT, "Automatisch terugkeerrecht voor kinderen van IS-strijders die jonger dan 10 zijn", *VRT* 22 December 2017.

[240] L. Cools, "La reconnaissance d'un droit subjectif au rapatriement dans le chef des enfants belges retenus en Syrie : un grand pas en avant", *Cahiers de l'E.D.E.M.*, December 2020.

[241] Civil Court of Brussels (réf.), 30 October 2019; Civil Court of Brussels (réf.), 2 December 2019; Civil Court of Brussels (réf.) 26 December 2019 ; Civil Court of Brussels (réf.), 30 October 2020, cited in L. COOLS, "La reconnaissance d'un droit subjectif au rapatriement dans le chef des enfants belges retenus en Syrie : un grand pas en avant", *op. cit.*, and in T. VAN POECKE, E. WAUTERS, "Rapatriement de ressortissants européens de Syrie. Positions et raisonnements des États belge, français, allemand et hollandais", *J.D.J.*, nr. 404, p. 11-24.

[242] Court of Appeal of Brussels (fr), 5 March 2020, *op. cit.*

their assessment of the situation to that of the Minister and that they cannot order the latter to issue documents allowing the children to return to Belgium. In fact, according to the Court, the Minister alone is competent to verify whether the alleged mothers clearly present a risk or a substantial threat to public order or public security.

The International Convention on the Rights of the Child stipulates that a child has the right to live with his or her parents[243] and prohibits any age distinction in the protection afforded to children.[244] In 2019, the Committee on the Rights of the Child recommended that Belgium should develop mechanisms for the identification, repatriation and assistance of Belgian children or alleged Belgian children, as well as their family members.[245] Notwithstanding the issue of territorial jurisdiction, raised in particular by the Brussels Court of Appeal,[246] the Committee on the Rights of the Child[247] as well as several UN bodies[248] have considered that Belgium has an obligation to repatriate its nationals.

Suggested recommendations:

37. Provide for mechanisms to identify Belgian children or children born of a Belgian parent who are currently detained in Syria. Repatriate all Belgian minors or presumed minors, regardless of their age or involvement in the Syrian conflict, within two months of the Committee's findings. Repatriate their parents as well, regardless of their nationality, provided that the existence of a parent-child relationship can reasonably be established and that they consent.
38. Provide for rehabilitation and reintegration programs upon the return of these children to Belgium, including psychological and social assistance.
39. Ensure that parental relations are effectively maintained, including in the event that the parents are imprisoned under a special individual security regime. Finally, ensure that the best interests of the child are the primary concern of the Belgian authorities throughout the repatriation, rehabilitation and reintegration processes.

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[243] In particular arts 8 and 9 of the Convention on the Rights of the Child and art. 8 of the European Convention on Human Rights.

[244] Art. 1, Convention on the Rights of the Child.

[245] Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth reports of Belgium*, 28 February 2019, CRC/C/BEL/CO/5-6, para. 50. The Advisory Body of the National Commission on the Rights of the Child echoes these recommendations in an opinion adopted on May 13, 2019. See also on the same topic: United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium*, *op. cit*., paras. 82-84.

[246] Court of Appeal of Brussels (fr), 5 March 2020, *op. cit.*

[247] Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth reports of Belgium*, *op. cit.*

[248] Those experts include Fionnuala Ní Aoláin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Elina Steinerte, Miriam Estrada-Castillo and Leigh Toomey, respectively Chair-Rapporteur, Vice-Chair and Member of the UN Committee on Arbitrary Detention. See UNHR, Office of the High Commissioner, "Syria: UN Experts urge 57 states to repatriate women and children from squalid camps", 8 February 2021.

10.Summary of the suggested recommendations:

Article 2 – Response to point 6: The creation of a national human rights institution

1. Conclude a cooperation agreement between the federal state and the federated entities in order to give the IFDH/FIRM an interfederal mandate.

2. Provide the IFDH/FIRM with the capacity to receive and examine individual complaints and petitions

Articles 5, 6, 7, 8 et 9 – Response to point 23: The conclusion and implementation of extradition treaties concluded by Belgium

3. Ensure that extraditions to the People's Republic of China fully comply with the Convention against Torture and other international human rights standards.

Article 11 : The situation in prison

Response to points 31 and 29 (d): Positive developments

4. Ratify OPCAT and establish a national preventative mechanism competent to access all places in which persons are or can be deprived of their liberty.

5. Take the necessary steps in order to fully implement in practice the individual detention plans, including by improving the availability of prison work and vocational training.

6. Take the necessary steps required for the effective application in practice of the Guaranteed Minimum Service Act, in order to ensure that the rights of prisoners are adequately guaranteed in case of a strike of prison staff.

Response to point 29 (a) and (b): Prison overcrowding and conditions of detention

7. Continue the efforts to reduce the problem of prison overcrowding and to improve detention conditions in Belgian prisons.

8. Combat prison overcrowding via an integrated approach, which not only focuses on increasing prison capacity or otherwise widening the net of social control, but also on decreasing the influx of detainees.

9. Take measures to avoid that the entry into force of the Act on the External Legal Position of Prisoners with regards to prison sentences of less than 3 years would lead to an increase of the prison population.

Response to point 32: Health care in prison

10. Ensure that detainees enjoy their right to health care at a level equivalent to the level of health care in society, including by increasing medical personnel in prison and by facilitating access to external medical examinations and hospital services.

11. In particular, ensure access to adequate mental health care in prison and ensure that detainees going through a mental health crisis or showing strong suicidal tendencies receive adequate treatment in a suitable medical infrastructure.

12. Transfer the competence for penitentiary health care to the Minister of Public Health.

13. Ensure that the right to health of prisoners is adequately protected in the context of the Covid-19 outbreak, without, however, adopting measures which disproportionately restrict the rights of prisoners.

Articles 12, 13 and 16 : Illegitimate violence by police officers

Response to point 37: Illegitimate violence committed by police officers

14. Ensure that reliable data are collected on the prevalence of illegitimate violence committed by police officers.

15 Ensure, including through training, that all use of force by the police complies with the legal requirements of necessity and proportionality, and that whenever possible priority is given to de-escalatory tactics.

16. Continue to ensure the proportionality of the means used by police, including as regards the active pursuit of a person.

17. In the context of the policing of demonstrations, ensure that tear gas is only used as a defensive weapon of last resort in the circumstances provided for by law.

Filming of police officers by citizens

18. Ensure that the right of citizens to film police officers when the public interest is at stake is respected, and is explicitly recognized in Belgian legislation.

Response to point 36(b): investigation, prosecution and punishment

19. Conduct prompt, thorough, effective and impartial investigations into all alleged cases of illegitimate violence committed by police officers and prosecute and sanction officials found guilty of such offences with appropriate penalties.

20. Establish a parliamentary inquiry commission to examine the potential systemic causes of illegitimate violence committed by police officers.

21. Examine the obstacles which in practice hinder the access of victims of alleged illegitimate violence committed by police officers to complaint mechanisms, and take the necessary measures to facilitate such access to victims.

Response to point 40: The use of tasers

22. Refrain from flat distribution and use of tasers by police officers.

23. Ensure safeguards against misuse and provide proper training for personnel to avoid excessive use of force.

24. Ensure that tasers are used exclusively in extreme and very limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.

Article 16 - Response to Point 41: Prohibition of Corporal Punishment

25. Adopt an amendment to the Civil Code explicitly prohibiting all so-called "educational" violence, whether physical, psychological or psychological. Ensure the consistency of the prohibition of so-called "educational" violence with the Communities legislation.

26. Accompany the legal amendment with awareness-raising, prevention and information campaigns aimed at the general public, as well as training and support measures regarding education and

nonviolent parenting aimed at parents, teachers and care providers. Ensure training and support for all persons working with children and families, professionals in contact with families and youth welfare agencies, judges and lawyers.

Other questions – Response to point 45: Measures to combat terrorism and radicalism

New widening of the criminal law in the fight against terrorism

27. Amend the Criminal Code to remove the words "contributing to" which could be interpreted as creating an exception regime to modes of criminal participation.

28. Amend the Criminal Code to remove the offence of personal training for terrorism and act at EU level to ensure that Directive 2017/541 is also amended to this effect.

29. Undertake a comprehensive human rights assessment of the impact of the successive additions of terrorism offences and communicate this assessment to the European Commission so that it can be taken into account in the assessment of Directive 2017/541.

The increased use of the concepts of radicalism and radicalization to address the risk of terrorism

30. Define in a legislative provision the notions of 'radicalism' and 'radicalization' in a narrow way and determine the elements to assess their existence.

31. Take measures to ensure that the use of these concepts does not disproportionately limit the exercise of freedom of expression and association.

Managing radicalism in prison

32. Review the use of security measures with regards to so-called "radicalised" detainees and provide a strict framework that respects their fundamental rights in order to avoid any form of arbitrary decision by the prison authorities, in accordance with the recommendations of the UN Special Rapporteur.

33. Establish criteria for the identification of "radicalized" prisoners. Do not make prison officers responsible for identifying so-called "radicalized" prisoners, but use specialised staff to apply the identification criteria.

34. Inform detainees of their classification as a radicalised person and provide effective remedies to challenge it.

35. Strengthen disengagement processes and systematise the use of de-listing procedures where appropriate.

36. Close the D-Rad:Ex sections of the Ittre and Hasselt prisons in favour of an ordinary prison regime or the special individual security regime, where the situation so requires.

The repatriation of Belgian children present or held in Syria and Iraq, and their mothers

37. Provide for mechanisms to identify Belgian children or children born of a Belgian parent who are currently detained in Syria. Repatriate all Belgian minors or presumed minors, regardless of their age or involvement in the Syrian conflict, within two months of the Committee's findings. Repatriate their parents as well, regardless of their nationality, provided that the existence of a parent-child relationship can reasonably be established and that they consent.

38. Provide for rehabilitation and reintegration programs upon the return of these children to Belgium, including psychological and social assistance.

39. Ensure that parental relations are effectively maintained, including in the event that the parents are imprisoned under a special individual security regime. Finally, ensure that the best interests of the child are the primary concern of the Belgian authorities throughout the repatriation, rehabilitation and reintegration processes.

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