



Report of Various Size – Fieldwork research (FRANET)

Criminal Detention in the EU – Conditions and Monitoring

Country Report Belgium

FRANET Contractor:	Milieu Ltd
Author:	Jozefien Van Caeneghem
Review:	Gretta Goldenman
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1. Cell space

- a) What is the national standard for cell space available to prisoners in m²? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.). Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

a) National standard for cell space available to prisoners in m²

The following analysis includes information on three different categories of detention that apply in Belgium.

1. Pre-trial detention by the police

In certain situations, the police will apprehend and detain crime suspects or people who act in a disorderly manner in a public place, in a cell at the police station. The space of these cells varies according to their purpose. Certain rules and minimal conditions apply and are regulated by a legislative act, namely the **Royal Decree of 14 September 2007** on minimum standards, the implementation and application of confinement places used by the police forces¹ (hereinafter '**Royal Decree Confinement**'). This federal legislation applies to all Belgian Regions and Communities, given that the police force is a federal competence.

According to Article 1 Royal Decree Confinement, there is a **difference between cells** depending on the utilisation of the cell. The purpose of these cells and the minimal required m² these cells should be, are the following:

- **Police cell:** a cell designated for the detention of one person for the duration of 24 hours. This cell has to be a minimum of **4.5 m²** and should include an embedded bench of 200 cm by 90 cm with a blanket, mattress and drinking cup. In the event that detention is exceptionally extended beyond the initial 24 hours, then the cell space is required to be a minimum of **7 m²** and include an embedded table with seating.
- **Holding cell:** a cell designated for the detention of one person for the duration of three hours. A holding cell should be a minimum of **4 m²** and should include an embedded seat.
- **Surveillance room:** a space specially designed to monitor one or several more minors. A surveillance room should be a minimum of **5 m²** and should include an embedded table with seating. Surveillance rooms are equipped with a security door (that may not resemble a cell door), security furniture and the space may not contain any iron bars. Additionally, a surveillance room must be separate from other detention rooms or cells.
- **A collective cell:** a cell designated for the detention of multiple persons. A collective cell should have at least **2 m² per person** and should include embedded seating for each person.
- **Confinement place:** a room designated for the detention by the police force of one of multiple persons who are subject to an administrative or judicial deprivation of liberty. Such a room has to have a **height of minimum 2.5 m**, illumination that ensures permanent monitoring and enables reading and writing.

¹ Royal Decree of 14 September 2007 on minimal standards, the implantation and utilisation of the confinements used by the police force, [Koninklijk besluit van 14 september 2007 betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen / Arrêté royal de 14 septembre 2007 relatif aux normes minimales, à l'implantation et à l'usage des lieux de détention utilisés par les services de police](#), Publication in the Official Belgian Gazette on 16 October 2007.

Such rooms are also equipped with a ventilation system that refreshes the air volume of at least 30 m³ per air and heating of minimal 18°C.

While these minimum standards **apply to all cells used by the police in Belgium**, some “older cells” located in police stations across Belgium do not comply with the standards set out by the Royal Decree Confinement. Article 17 of the Royal Decree Confinement sets out a 20 year **transitional period** to adjust cells that were built or for which construction started prior to 16 October 2007, in order to ensure they comply with the Decree’s standards. These cells must thus meet the conditions listed above by **16 October 2027**.

2. Detention during a prison sentence

In Belgium, there is **no national standard** in terms of required m² for cell space in prisons. Each of the 35 prisons in Belgium (there are 17 prisons in the Flemish Region, 16 in the Walloon Region and two in the Brussels-Capital Region) have different cell sizes, making it impossible to aggregate this information.

According to the **Basic Law of 12 January 2005** on the prisons and the legal position of prisoners² (hereinafter ‘**Prison Law**’), prisoners are allowed to furnish their cells as they see fit, as long as they respect the rules and regulations of the internal prison rules (Article 41, §1). The Prison Law **does not include any specifics** regarding the size of the cell.

According to the **Directorate-General Penitentiary Establishments** (*Directoraat-Generaal Penitentiare Inrichtingen / Direction Générale des Etablissements Pénitentiaires*; hereinafter ‘DG EPI’) the customary cell space is **9 m²** for **individual cells** in Belgium.³ Prisons may also have duo and trio cells, the cell space of which may vary according to the institution. DG EPI stresses that the cell space for prisoners with limited mobility is bigger in more “modern” prisons,⁴ namely 14 m².⁵

In sum, the situation is **currently not regulated** in Belgium and, due to the old infrastructure, many prisoners still live in inhuman and degrading conditions. A recent example of this was established by the conviction of Belgium before the European Court of Human Rights (hereinafter ‘ECtHR’) in the **case of Sylla and Nollomont v. Belgium**⁶. According to the ECtHR, Mr Sylla was detained in a **shared cell of 9 m²**, together with two fellow inmates while Mr Nollomont was detained in a **cell of 8.8 m²** with one other prisoner. The ECtHR deemed such living conditions to be in violation of Article 3 of the European Convention of Human Rights (**inhuman and degrading treatment**) since Mr Sylla had less than 3 m² of personal living space, while Mr Nollomont was also detained in conditions contrary to this provision.

3. Detention of minors or juveniles

According to Article 1 of the Royal Decree Confinement, a minor who is **detained by the police** must be put in a special surveillance room of **minimum 5 m²**.

Prison sentences can be applied to minors. Belgium has a **mechanism** in place that allows minors between the age of 16 and 18 years to be treated and judged as an adult (for more in-depth information on this system see **question 6**). Those minors face the full consequences of their actions and can be detained in a prison cell. The provisions of the **Prison Law** are applicable to these minors. While the latter establishes some, be it rather **minimal, safeguards**, it does not provide for any measures or provisions on this special category of prisoners.

² Basic Law of 12 January 2005 on the prisons and the legal position of prisoners, [Basiswet betreffende het gevangeniswezen en de rechtspositie van de gedetineerden / Loi de principes concernant l’administration pénitentiaire ainsi que le statut juridique des détenus](#), Publication in the Belgian Official Gazette on the 1st of February 2005.

³ Directorate-General Penitentiary Establishments (*Directoraat-Generaal Penitentiare Inrichtingen / Direction Générale des Etablissements Pénitentiaires*), information received via email on 15 June 2018.

⁴ Idem.

⁵ Directorate-General Penitentiary Establishments (*Directoraat-Generaal Penitentiare Inrichtingen / Direction Générale des Etablissements Pénitentiaires*), information received via email on 28 June 2018.

⁶ European Court of Human Rights (ECtHR), *Sylla and Nollomont v. Belgium*, No 37768/13 and No 36467/14, 16 May 2017.

In practice, the absence of such measures or a minor-friendly approach to them results in many difficulties during a decisive moment in the life of a minor.⁷ Under the current legislative framework, detained minors are placed in small cells and barely have any opportunity to participate in communal activities, due to the old and inadequate infrastructure.⁸

More attention and action are needed on this issue. This is acknowledged by a **statement of the Flemish Minister of Health**⁹ who states being annoyed by the current situation. The current juvenile prisons, such as the federal closed detention centre for minors in Tongeren, are outdated and do not conform with modern prison standards. The cells are too small, dark and not properly ventilated.

According to the **Flemish Children's Rights Commissioner** (*Kinderrechtencommissariaat*), in the federal closed detention center of Tongeren, minors are detained in a space of approximately **2m50/3m by 1m50/2m**.¹⁰ **Whereas** the Commissioner could not provide any information on the other institutions, it was mentioned that the current sleeping quarters in the Center of Everberg are exceptionally poor due to humidity and bad ventilation.¹¹

b) Different detention regimes and the applicable standards

Belgium has **different detention regimes** in place, depending on the severity and nature of the crimes committed and the best possible actions for rehabilitation. These regimes are:

- **Closed detention:** all necessary security and safety measures are taken;
- **Semi-open detention:** prisoners are allowed to work within or outside of the prison;
- **Open detention:** there are fewer security and safety measures that restrict the prisoner's freedom.

No different standards apply to cell space for any of these prison regimes. In general, Belgium **does not have minimum standards** in place for the space of prison cells.

c) National Preventive Mechanism

Belgium is **not included** in the list of Designated National Preventive Mechanisms by regions and countries. Belgium signed the Optional Protocol to the Convention against Torture (hereinafter OPCAT) on 24 October 2005 and discussions on the ratification have been ongoing since then. No report has been published to this date. The absence of a national monitoring authority in Belgium has been confirmed in the third periodic report of the United Nations Committee against Torture (hereinafter 'CAT').¹²

While Belgium does not have a national monitoring authority, **each individual prison** is monitored by a **Commission of Surveillance**. As stated in Article 131 of the Royal Decree of 21 May 1965 on the general regulations of Penitentiary institutions¹³ (Decree Penitentiary Institutions), the Commission has the task of:

- Independently monitoring the prison regarding the prisoners' behaviour and how they are treated;
- Providing advice and information to the Minister of Justice and the Central Board for Prison Surveillance;
- Producing a yearly report on anything related to the prison and its prisoners.

⁷ Marjan Rom, Rechtspositie van uit handen gegeven jongeren in Tongeren, TJK 2010/2, p. 109.

⁸ Idem.

⁹ VRT News (2018), "Jeugdgevangenis Tongeren niet geschikt om jongeren op te vangen. Zo behandel je mensen van de toekomst niet", 28 March 2018, available at www.vrt.be/vrtnws/nl/2018/03/28/jeugdgevangenis-tongeren/.

¹⁰ Flemish Children's Rights Commissioner (*Kinderrechtencommissariaat*), information received via email on 24 June 2018.

¹¹ Idem.

¹² United Nations (UN), Committee against Torture (CAT) (2012) *Consideration of reports submitted by States parties under article 19 of the Convention*, 19 November 2012, p.3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBEL%2f3&Lang=en.

¹³ Royal Decree of 21 May 1965, on the general regulations of Penitentiary institutions, *Koninklijk besluit houdende algemeen reglement van de strafinrichtingen / Arrêté royal portant règlement général des établissements pénitentiaires*, Publication in the Belgian Official Gazette on 16 May 2003.

2. Sanitary Facilities

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?
- b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities offer privacy to prisoners who use them?
- c) Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
- e) *Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

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a) National standard regarding access to toilets

The following analysis includes information on three different categories of detention that apply in Belgium.

1. Pre-trial detention by the Police

According to Article 5 of the **Royal Decree Confinement**, all cells designated as a **police cell** (see 1.a) above) **include a toilet**. The people detained in one of the **other forms** of detention, as described under 1.a) above, have the **right to have access** to all basic needs, including sanitation.¹⁴

The Royal Decree Confinement does **not specify** further if the prisoners, other than those detained in a prison cell, have access to sanitation without **undue delay** or if all of the provided facilities offer any **privacy**. However, the Royal Decree Confinement does stress in Article 10 that cameras can only be used to ensure security if it respects the privacy of the detained person, especially when using the provided sanitation.

2. Detention during a prison sentence

Belgium does **not have a national standard** with regard to access to toilets in prisons.

On 6 February 2009, following media coverage of the abysmal conditions of Belgian prisons, questions were asked in the **Belgian Senate** regarding the sanitary provisions in prisons across the country:¹⁵

- How many prison cells in Belgium do not have sanitation and if this is the case, which prisons?;
- How long would it take to remedy the situation? Will immediate actions be taken or do the prisoners have to wait until the prison closes in 2013 or 2016?;
- What renovation works are taking place in the prison of Doornik?

The Minister of Justice replied:

¹⁴ Article 5 Royal Decree Confinement.

¹⁵ Belgian Senate, written question nr. 4-2974, hearing 2008-2009, available at www.senate.be/www/?MIval=Vragen/SVPrint&LEG=4&NR=2974&LANG=nl.

- With the **exception of the prisons in Merkplas, Vorst and Doornik**, all 35 prisons have the necessary facilities for sanitation;
- For the prisons of Merkplas, Vorst and Doornik, all necessary measures will be taken to ensure such facilities;
- The prison of Doornik will have 90 cells with sanitation from June 2009. After this renovation, 22 cells will remain without sanitation.

Follow-up questions were asked on 9 June 2009¹⁶ on this topic:

- How many cells in the prison of Merkplas, do not have access to sanitation?;
- How long will the inhuman situation in the prison of Merklans continue? Will immediate action be taken or do the prisoners have to wait until the prison closes in 2013 or 2016?;
- What action is planned to improve the hygiene in the prisons in the region of Antwerp and the Kempen?

The Minister of Justice replied:

- There is **one department in Merkplas without sanitation**. In addition, the prisons of Vorst and Doornik also have **cells without sanitation**;
- A renovation plan should provide a solution regarding sanitation in the prisons;

In the response to the follow-up question, the Minister of Justice referred to the future Masterplan 2008-2012 for a prison infrastructure with humane detention conditions.¹⁷ The Masterplan identifies **over 250 cells across all 35 prisons that lack sanitary facilities**¹⁸ and sets out to **renovate** the existing facilities through an accelerated programme to remedy this situation. The plan stresses that this will take some years to implement. This plan was later relaunched in 2016 by the Council of Ministers, who decided in the framework of the Plan:

- to further renovate and expand the existing facilities;
- to replace the outdated facilities and;
- to construct seven new prisons.¹⁹

Despite the proposed changes, it appears that the situation is **improving slowly**. The majority of the measures target the overpopulation in Belgian prisons, which has decreased over time. On the other hand, there has been **minimal progression** so far regarding sanitation and other facilities.²⁰

DG EPI reports that, taking into consideration some exceptions, all prisons in Belgium are equipped with a toilet and that all prisoners have the **right to attend to their personal hygiene every day**.²¹ Access to showers varies according to each prison, the individual prisoner regime and/or measures enforced in relation to the prisoner, including safety measures, disciplinary measures, and individual special safety regime.²² In most cases, access to showers is **restricted to once every two to three days**. In the more recently built prisons, each cell is equipped with a separate shower.²³

3. Detention of minors or juveniles

¹⁶ Idem.

¹⁷ Ministry of Justice and Institutional Reforms, "Masterplan 2008-2012 for a prison infrastructure with humane detention conditions", 18 April 2008, available at <http://www.presscenter.org/nl/pressrelease/20080418/gevangenisinfrastructuur>.

¹⁸ Ibid, p.4.

¹⁹ Press communication of the Ministry of Justice, "Masterplan 2008-2012-2016 voor een gevangenisinfrastructuur in humane omstandigheden", 23 November 2015, available at https://justitie.belgium.be/nl/nieuws/persberichten/news_pers_2011-03-23_1.

²⁰ Press communication of the Minister of Justice, "Beleid in Belgische gevangenissen werpt vruchten af, maar we zijn er nog niet", 14 March 2018, available at www.koengeens.be/news/2018/03/14/beleid-in-de-belgische-gevangenissen-werpt-vruchten-af-maar-we-zijn-er-nog-niet.

²¹ DG EPI, information received via email on 15 June 2018.

²² Idem.

²³ Idem.

There are **no separate rules** applicable to minors detained in surveillance rooms of the police or a prison cell.

b) National standard regarding access to regularly cleaned shower/bathing facilities

1. Pre-trial detention by the Police

When **more than five police cells** are grouped together in one building, there must be a facility with **at least one shower**. The same applies when a **collective cell** is used.²⁴ The Royal Decree Confinement does **not specify** how often access should be provided or how privacy during usage is ensured. It is possible that some police stations have less than five police cells and do not have a collective cell, meaning that the police force is not required to have a showering facility in that station. A 2015 press release from the local police of Westcoast (*Westkust*, in Koksijde-Nieuwpoort and De Panne in the Flemish Region), which was issued after the decision was taken to build a new police station, illustrates this issue:²⁵ Given that the police station of Koksijde only has two cells and no shower facilities, it was not adapted to the facilities required in a modern police station. The new police station will include eight cells and showering facilities. Given that the new police station will not be operational until 30 June 2018, this means that the persons detained in that police station do not have access to showering facilities until that date.

Due to a central monitoring authority or reports on this issue, published by the local and or federal police force, it is difficult to report whether this issue manifests itself on a larger scale.

2. Detention during a prison sentence

Belgium does **not have a national standard** with regard to access to showers in prisons.

Following a question asked in the federal Parliament on 11 May 2015, the Minister of Justice was asked if:

- The ongoing situation regarding a lack of showers has been addressed by the Masterplan 2008-2012-2016?;
- If not, when these renovations would take place?;
- If there are similar problems in other prisons?;

The Minister of Justice responded by stating that:

- In the framework of the Masterplan, the prisons of Sint-Gilles, Vorst and Berkendael will be replaced by a prison complex located in Haren. This is the main reason why there are no longer any projects planned in the prisons themselves;
- In the meantime, there will be **small renovations and work** will be done to **sustain** the prisons as they require a few more years of service. One of these projects is the renovation of the shower facilities and these projects are in progress. This applies to **all 35 prisons** in Belgium;²⁶

A key word search in the federal Parliament's database did not provide any further information on similar questions after 2015, and it is unclear if the situation has, in 2018, been improved.

²⁴ Art. 3, Royal Decree of 14 September 2007 on minimal standards, the implantation and utilisation of the confinements used by the police force, [Koninklijk besluit van 14 september 2007 betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen / Arrêté royal de 14 septembre 2007 relatif aux normes minimales, à l'implantation et à l'usage des lieux de détention utilisés par les services de police](#), Publication in the Official Belgian Gazette on 16 October 2007 .

²⁵ Belgium, Local Police Force Westcoast (*locale politie Westkust*) (2015) 'Bouw nieuw politiehuis PZ Westkust gaat midden 2016 van start!', Press release, 15 December 2015, available at <http://www.policelocale.be/sites/5461/images/teksten/persbericht%20-%20bouw%20nieuw%20politiehuis%20gaat%20midden%202016%20van%20start.pdf> .

²⁶ Belgian Parliament, written question and answer Nr. 0275, 26 march 2015, available at <http://www.dekamer.be/kvvcr/showpage.cfm?section=qvva&language=nl&cfm=qvvaXml.cfm?legislat=54&dossierID=54-b024-866-0275-2014201502350.xml> .

3. Detention of minors or juveniles

There are **no separate rules** applicable to minors detained in surveillance rooms during police detention or a prison cell.

Whereas the **Flemish Children's Rights Commissioner** did not provide information on access to sanitary or shower facilities in general, it did report that the sleeping quarters of the girls' ward in the closed federal detention centre of Beernem **does not have access to sanitation**.²⁷ According to the Flemish Children's Rights Commissioner, the situation in Beernem is **exceptional** due to the old facilities; it not apply to all detention centres in Belgium.²⁸

c) **Regulation of cleanly sanitary facilities provision**

1. Pre-trial detention by the Police

The provisions on sanitations are included in a legislative act, namely in Article 3 of the **Royal Decree Confinement**.

2. Detention during a prison sentence

There is **no legislative act or policy paper** on how the sanitary facilities are regulated. These are regulated by an internal set of rules, which are different for each individual prison. These rules could not be found after an extensive desk research.

Analysing the information provided in the abovementioned ECtHR case of **Sylla and Nollomont v. Belgium**,²⁹ the use of showers was **restricted to twice a week**³⁰ and while the toilets were located in the cell, they are only separated by a wooden partition which allowed for **minimal privacy**.³¹

d) **Different detention regimes standards**

Belgium does **not apply different standards** to the different detention regimes. From a communication of the Minister of Justice in 2016,³² it appears that there has been some improvement in access to sanitation following changes in the detention regimes. In the particular example cited by the Minister, the prison of Vorst was changed from a closed to half-open detention: given that the cells are now open during the day, prisoners have easier access to communal sanitation during the day.

From this statement, it also appears that there are individual differences between detention regimes due to the nature of the regime.

DG EPI states that whereas it is a set principle that prisoners who work during their prison sentence have the **right to daily access to showers, in practice this is limited to once every two or three days in most cases**.³³

²⁷ Flemish Children's Rights Commissioner (*Kinderrechtencommissariaat*), information received via email on 24 June 2018.

²⁸ Flemish Children's Rights Commissioner (*Kinderrechtencommissariaat*), information received via telephone on 26 June 2018.

²⁹ European Court of Human Rights (ECtHR), *Sylla and Nollomont v. Belgium*, No 37768/13 and No 36467/14, 16 May 2017.

³⁰ European Court of Human Rights (ECtHR), *Sylla and Nollomont v. Belgium*, No 37768/13 and No 36467/14, para. 30, 16 May 2017.

³¹ *Ibid*, paras. 9 and 41.

³² Vanhecke, N. (2016) "Gevangenis van de schande' wordt minder schandalig", 15 December 2016, available at <https://www.koengeens.be/news/2016/12/15/gevangenis-van-de-schande-wordt-minder-schandalig>.

³³ DG EPI, information received via email on 15 June 2018.

e) National Preventive Mechanism

Belgium is **not included** in the list of Designated National Preventive Mechanisms by regions and countries. Belgium signed the OPCAT on 24 October 2005 and discussions on its ratification have been ongoing since then. No report has been published to date. The absence of a national monitoring authority has been confirmed in CAT's third periodic report on Belgium.³⁴

As mentioned previously, **each individual prison** is monitored by a **Commission of Surveillance**, which (1) independently monitors the behaviour of prisoners and how they are treated, (2) advises the Minister of Justice and the Central Board of Prison Surveillance, and (3) yearly reports on the prison and its prisoners.³⁵

3. Time out of cell

- a) What is the national standard set for time per day/week spent by prisoners outside of their cells:
 - a. Outdoors (within the boundary of the prison)?
 - b. Indoors in the common area?
- b) Are sports or other recreational and educational facilities available to prisoners? If so what types?
- c) Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
- e) *Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

Please cite any relevant sources

a) National standard for time per day/week spent outside of cell

The following analysis includes information on three different categories of detention that apply in Belgium.

1. Pre-trial detention by the Police

According to Article 1 of the **Law on Temporary Custody (Law Temporary Custody)**,³⁶ a person cannot be detained by the police for more than **48 hours**, unless the perpetrator is caught in the act. When the Crown Prosecutor decides to prosecute a suspect held in temporary custody, he/she will be **transferred to a prison** where he/she will be further detained until the trial.

Detention in a police cell is thus subject to a **very strict regime** and does not provide any options to spend time outside of their cell. Detainees are allowed, however, to leave their cell to a so called "**ventilation room**", where smoking is possible, for instance.

2. Detention during a prison sentence

³⁴ United Nations (UN), Committee against Torture (CAT) (2012) *Consideration of reports submitted by States parties under article 19 of the Convention*, 19 November 2012, p.3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBEL%2f3&Lang=en.

³⁵ Article 131 Decree Penitair Institutions.

³⁶ Law of 20 July 1990 on Temporary Custody, *Wet betreffende de voorlopige hechtenis / Loi relative à la détention préventive*, Publication in the Belgian Official Gazette on 14 August 1990.

There is **no legislative act or policy document** applicable to the time out of cell for prisoners. Such rules are included in each prison's own internal prison regulations. While we were unable to access the internal prison rules through desk research, the yearly reports provided by each Commissions of Surveillance confirms that the time out of cell is regulated by the internal prison regulations.

3. Detention of minors or juveniles

There is **no legislative act or policy document** on the time minor prisoners can spend out of their cell. Independent research conducted by the Flemish Children Rights Commissioner confirmed that, due to the old and inappropriate infrastructure, for instance in the federal closed detention centres in Tongeren where minors aged 16-18 who were trialled as adults are held, the centre is cramped and ill-equipped for communal activities.³⁷

b) **Availability of sports or other recreational and educational facilities**

There is no legislative act or policy document on the availability of sports or other recreational and educational facilities. Such facilities are regulated by internal rules.

c) **Regulation of time spent in cells**

There is **no legislative act or policy document** that regulates the time spent in cells. For detention in prison cells, such rules are included in the internal regulations of each individual prison.

d) **Different detention regimes standards**

Belgium does **not apply different standards** to the different detention regimes. Due to the nature of the different prison regimes (see question 1, b), prisoners spend less time in their cell in semi-open or open detention centres. Whether these prisoners have access to recreational activities at such time is unclear and will depend on the internal regulations of each prison.

e) **National Preventive Mechanism**

As explained above, Belgium is **not included** in the list of Designated National Preventive Mechanisms by regions and countries. Each of the 35 prisons in Belgium are monitored by a Commission of Surveillance.³⁸

4. **Solitary confinement**

- a) What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
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³⁷ Marjan Rom, Rechtspositie van uit handen gegeven jongeren in Tongeren, TJK 2010/2, p. 109.

³⁸ Article 131 Decree Penitentiary Institutions.

a) National standard regarding solitary confinement

The following analysis includes information on three different categories of detention that apply in Belgium.

1. Pre-trial detention by the Police

During a police detention, there is **no option to place a suspect or an offender in solitary confinement**. Detainees are usually placed in an individual police cell, which, due to its blankness, could appear as an isolation cell. Still, following Article 1 and 5 of the Royal Decree Confinement, such cells are required to be equipped with an embedded bench of 200cm by 90cm and with a blanket, mattress, drinking cup and toilet. These cells are **not built around the principles of minimal environmental stimulation and/or minimal social interaction** and can therefore not be considered to be isolation cells.

2. Detention during a prison sentence

Solitary confinement can be enforced on prisoners serving a prison sentence. Such action can be employed as: (A) a **security measure**, to protect the prisoner or his environment from his or her actions; or (B) a **disciplinary measure**, to punish the prisoner for certain behaviour.

A. *Solitary confinement as a security measure*, is regulated by the **Prison Law** under **two distinct categories**:

- Article 112, §1, 4° Prison Law, states that **mandatory stay** in a **room designated for the prisoner** is classified as an exceptional security measure;
- Article 112, §1, 5° Prison Law, states that **transferring a prisoner to a secured cell without any potentially harmful or dangerous objects** is classified as an exceptional security measure.

Solitary confinement enforced as a **security measure** can only be applied if the **warden** deems that there is a **danger** for general order and/or safety and if the measure is **proportional** to the danger it would remedy.³⁹ In addition, the prisoner must always be **heard** before such an action can be taken.⁴⁰ The hearing of the prisoner allows the warden to fully comprehend the situation and take an **informed decision**. The prisoner has the possibility to file a **complaint** within **seven days** after the decision is taken,⁴¹ with a special Commission of Complaints that was established to handle prisoners' complaints (this Commission is a separate body in addition to the prison management and the Commission of Surveillance).⁴² The complaint mechanism is only available in relation to actions taken by the warden that affect the prisoners. Before the Commission of Complaints takes a decision, it may **suspend** the warden's decision to place the prisoner in solitary confinement.⁴³ The Commission of Complaints must take a **decision within 14 days** and the prisoner may **appeal** that decision.⁴⁴ In case of an appeal, the case is brought before the **Central Board for Prison Surveillance**.

The **prison staff** can also be authorised to enforce solitary confinement when the danger is immediate and action cannot be delayed, provided that the warden is informed without undue delay. If such a situation occurs, the warden must take a definite decision as to whether to maintain the solitary confinement.⁴⁵ Solitary confinement as a security measure may last a **maximum of seven days**.⁴⁶ This seven day period can only be renewed by a motivated decision of the warden and after hearing the prisoner. The measure can be renewed three times, bringing the **maximum application of solitary confinement to 21 days in total**.⁴⁷ In the event of

³⁹ Article 110, §1 Prison Law.

⁴⁰ Article 110, §2 Prison Law.

⁴¹ Article 150, §5 Prison Law.

⁴² Article 150 Prison Law.

⁴³ Article 156 Prison Law.

⁴⁴ Article 157, §1 Prison Law.

⁴⁵ Article 110, §3 Prison Law.

⁴⁶ Article 112 §2 Prison Law.

⁴⁷ Article 112, §2 Prison Law.

a prison transfer, the warden of the prison where the prisoner is transferred to, shall decide whether to continue the measure.⁴⁸

When solitary confinement is taken as a security measure, the prisoner retains the right to use/enjoy all facilities, organised by the prison (e.g. the use of the telephone and other means of communication, written and oral contact with lawyers and with consular and diplomatic officials), except when this is no longer compatible with the aim of the security measure.⁴⁹ The warden decides on a case-by case, basis whether this ban applies.

Article 113, §2 of the Prison Law determines that, when a prisoner is in solitary confinement as a security measure, the **warden must ensure that the prisoner:**

- has meals, clothing, shoes and products for his personal hygiene;
- has sufficient reading materials;
- has the opportunity to spend at least one hour outside in the open air;
- is allowed to have correspondence (which can be potentially restricted, as mentioned earlier);
- can profess his/her religion of choice and receive visitation of a representative of said religion;
- can apply to a lawyer;
- can apply to psychosocial and medical support.

Article 115 of the Prison Law lays down that enforcing solitary confinement as a security measure, must be notified in a **special registry** that explains:

- the **circumstances** that have led to the measure in question;
- the **date and time** the measure was taken; and
- **how long** the measure will be in place.

When the prisoner forms a continued threat to his/her own safety and/or the safety of others, that prisoner is placed in an **individual special safety regime**.⁵⁰ Solitary confinement can be applied under such a regime, as is indicated in Article 117, §1 of the Prison Law. Furthermore, under the same article, the regime allows for a **combined (one or multiple) application of solitary confinement** with:

- the exclusion of participation in communal activities;
- the systematic control of communication (incoming and outgoing);
- the partial denial of the use of telephone facilities;
- the application of a body and/or clothing search;
- deprivation or retention of objects;
- the exclusion of individual activities;
- daytime observation.

The decision to take an individual special safety regime lies with the director-general of the penitentiary administration, following a proposal made by the warden that includes the **circumstances** that prove that the prisoner is a continued safety threat and motivates why placing the prisoner under this regime is a necessary measure to remedy the threat.⁵¹ Before submitting the proposal, the warden is required to notify the prisoner and give him the possibility to defend himself, potentially with the support of a counsellor or trust person, depending on the preference of the prisoner.⁵² In the event that the prisoner is **excluded from society**, the warden is required to **visit the prisoner at least once a week** to ensure that the prisoner does not have complaints or remarks and that he is **accompanied by a doctor** who will advise him on the condition of the prisoner.⁵³

⁴⁸ Article 112 §3 Prison Law.

⁴⁹ Article 113, §1, Prison Law.

⁵⁰ Article 116 Prison Law.

⁵¹ Article 118, §1 & §2 Prison Law.

⁵² Article 118, §3 Prison Law.

⁵³ Article 118, §5 Prison Law.

All decisions to place a prisoner under an individual special safety regime, or amendments to the existing regime, will be kept in a **central register** by the penitentiary administration and in a **local registry** by the warden.⁵⁴ The decision to place a prisoner under an individual special safety regime will apply for a **term defined by the director-general, which cannot exceed two months**. Article 118, §7, Prison Law states that the term is 'possibly **renewable**', **but does not specify how often and it does not impose a maximum total period**.⁵⁵ According to DG EPI, that the possibility for renewal is **indefinite**.⁵⁶ It is up to the director-general of the penitentiary administration to decide, every two months, whether it is necessary to renew the safety regime to secure safety.⁵⁷ The prisoner can **appeal** this decision.⁵⁸

B. *Solitary confinement as a disciplinary measure*. Similar to when the measure is used as a security measure (See point A above), the Prison Law foresees two distinct categories of solitary confinement when applies as a disciplinary measure. These categories are:

- Article 132, 3° of the Prison Law: separation of the prisoner in a specially designated room for a maximum of 30 days for Category 11-infractions (see below) and maximum 15 days for Category 2-infractions;
- Article 132, 4° of the Prison Law: detention in a 'punishment cell' for a maximum of nine days for Category 1-infractions and maximum three days for Category 2-infractions.

As mentioned above, the conditions when solitary confinement can be applied, are restricted to certain **behaviours** set by the of the Prison Law. These include:

- **Category 1-infractions**, defined in Article 129 of the Prison Law as:
 - intentional violation or threat to the physical integrity of a person;
 - intentional violation or threat to the mental integrity of a person;
 - intentional damage or threat to the goods of others;
 - theft of goods;
 - intentional disruption of internal order. Order is defined as following the internal prison rules;
 - inciting or performing collective actions to disrupt internal order;
 - being in the possession of or selling goods, prohibited by law;
 - escape or participate in an escape;
 - being in possession of technological means which allow irregular communication outside of the prison.
- **Category 2-infractions**, defined in Article 130 of the Prison Law as:
 - insulting a person, residing in the prison;
 - not following the internal regulations of the prison;
 - not following the reminders, warnings and orders of the prison staff;
 - being in a room without permission and outside of the allowed time period to be in that room or being in a generally prohibited room;
 - not cleaning the cell and other communal rooms or polluting the prison;
 - causing noise hindrance that disrupts the functioning of the prison.

Only the **actions or attempt** to the abovementioned actions can be punished with a solitary confinement.

According to Article 136 of the Prison Law, when a prisoner is detained in solitary confinement in a **punishment cell**, the warden must ensure that the prisoner:

- has meals, clothing, shoes and products for his personal hygiene;
- has sufficient reading materials;
- has the option to spend at least one hour in the open air;

⁵⁴ Article 118, §6 Prison Law.

⁵⁵ Article 118, §7 Prison Law.

⁵⁶ DG EPI, information received via telephone on 26 June 2018.

⁵⁷ Idem.

⁵⁸ Article 118, §10 Prison Law.

- can carry out correspondence;
- can profess his/her religion of choice and receive visitation of a representative of that religion;
- can apply to a lawyer for legal support;
- can apply to psychosocial and medical assistance;
- does **not stay longer than 14 days** in the 'punishment cell' (Article 139 of the Prison Law).

By contrast, when a prisoner is separated in a **specially designated room**, Article 140 of the Prison Law determines that the warden must ensure that the prisoner:

- has the option to spend at least one hour in the open air;
- can profess his/her religion of choice and receive visitation of a representative of that religion;
- retains the right to receive visitation from outside the prison. Such a visitation will occur in a different room than a normal visitation, and is equipped with a transparent wall that separates the prisoner from the visitor;
- has limited access to the telephone facilities (one conversation per week);
- does **not stay longer than 45 days** in the specially designed room.

3. Detention of minors or juveniles

Minors detained in a federal closed detention centre are **subjected to the same rules as outlined above (title 2)**. The Prison Law does not provide for any exceptions on solitary confinement applicable to minors. As a result, the same restrictions on solitary confinement apply (e.g. the maximum terms depending on the type of confinement, spending at least one hour in the open air,). From a report published by the Flemish Children's Rights Commissioner,⁵⁹ rules on solitary confinement should be included in the internal regulations of these facilities. Yet, it appears that this is not the case in practice.⁶⁰ There appears to be a clear lack of regulation, which has been confirmed by individual testimonies of imprisoned minors.⁶¹ According to these minors, there are no clear precedents and the application of solitary confinement varies according to each supervisor.⁶²

With regard to the use of solitary confinement in closed federal detention centers, the **Flemish Children's Rights Commissioner** states that the internal guidelines put down that this measure can be applied for **five days maximum**.⁶³ This period can be extended in exceptional circumstances⁶⁴. According to the Flemish Children's Rights Commissioner, only severe cases of aggression qualify as 'exceptional circumstances'.⁶⁵ If the minor still shows signs of aggression after the initial five days of confinement, he/she is considered to remain a danger to himself/herself and others.⁶⁶ Such situations occur only rarely (e.g. about three to four times per year).⁶⁷

There are quite some individual differences between the different closed federal detention centres regarding the rooms and their layout (e.g. presence of a clock, sanitary facilities,...).

b) Different detention regimes standards

Belgium does **not apply different standards** to the different detention regimes.

⁵⁹ Kinderrechtencommissariaat, Dossiers Binnen(ste)buiten - Rechtswaarborgen voor mindejarigen in detentie doorgelicht, 2010, available at https://www.kinderrechtencommissariaat.be/sites/default/files/bestanden/dossier_binnenste_buiten_detentie_0.pdf.

⁶⁰ Ibid, p.117.

⁶¹ Ibid, p.118.

⁶² Idem.

⁶³ Flemish Children's Rights Commissioner (*Kinderrechtencommissariaat*), information received via email on 24 June 2018.

⁶⁴ Idem.

⁶⁵ Flemish Children's Rights Commissioner (*Kinderrechtencommissariaat*), information received via telephone on 26 June 2018.

⁶⁶ Idem.

⁶⁷ Idem.

c) National Preventive Mechanism

As mentioned previously, Belgium does **not** have a **Designated National Preventive Mechanism**. Each prison's Commission of Surveillance independently monitors the prison, formulates advice and reports yearly on the prison.⁶⁸

5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons? (E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?)
- b) Are there any special provisions relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.)
- c) Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes.
- e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

a) National standard regarding access to medical services in prisons

The right and access to healthcare derives from Article 23, 2° of the **Belgian Constitution**:⁶⁹

*“ Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others: 2° the right to **social security**, to **health care** and to **social, medical and legal aid**.”*

In addition to the Belgian Constitution, the right to healthcare is regulated by multiple rights, associated to healthcare, that are scattered across different pieces of federal and regional legislation. With regard to detention, there are **two fundamental laws and one Royal Decree** on the healthcare for prisoners:

- The Law of 22 August 2002 on the rights of the patient⁷⁰ (**Law of Patient Rights**);
- **Prison Law**;
- Royal Decree of 21 May 1965 on general regulations for penitentiary institution⁷¹ (**Decree Penitentiary Institution**).

⁶⁸ Article 131 Decree Penitentiary Institutions.

⁶⁹ The Coordinated Constitution of 17 February 1994, [De gecoördineerde Grondwet / La Constitution coordonnée](#), Publication in the Belgian Official Gazette on 17 February 1994.

⁷⁰ Law of 22 August 2002, on the rights of the patient, [Wet betreffende de rechten van de patiënt / Loi relative aux droits du patient](#), Publication in the Belgian Official Gazette on 26 September 2002.

⁷¹ Royal Decree of 21 May 1965 on general regulations for penitentiary institutions, [Koninklijk besluit houdende algemeen reglement van de strafinrichtingen / Arrêté royal portant règlement général des établissements pénitentiaires](#), Publication in the Belgian Official Gazette on 25 May 1965.

Next to these laws, there are **numerous special Laws and Royal Decrees** on healthcare, including the Law of 6 July 2007 on medically guided reproduction and the purpose of redundant embryo's and gametes⁷² and the Law of 28 May 2002 on euthanasia.⁷³ The provisions of these laws and decrees are applicable to prisoners or detainees following the **principle of equality** set out in Articles 10 and 11 of the Belgian Constitution, which lay down that every citizen should receive the same rights and treatment.

Following the structure of the previous questions above, question 5 will be analysed according to three different categories of detention that apply in Belgium.

1. Pre-trial detention by the Police

There is **no set standard for the access to healthcare** during the detention in cells by the police. Access to healthcare during this form of detention is guaranteed by the **Belgian Constitution**. The police force cannot be negligent in providing aid or medical assistance to a detained person, when the situation arises where such action would be necessary. This obligation follows from Article 23, 2° of the **Belgian Constitution**.

In addition, the **Law of Patient Rights** applies, since its scope applies to all relationships between patients and healthcare practitioners, despite the person's situation and therefore also including detained persons. The Law of Patient Rights provides for the following rights for the detained person:

- the right to receive a high-quality service, that will meet the needs of the patient (Article 5);
- the right to freely choose the practitioner (Article 6);
- the right to be informed about his medical condition (Article 7);
- the right to consent to every step taken by the practitioner, after being informed (Article 8, §1-§2);
- the right to refuse treatment or consent without losing the right to receive a high-quality service (Article 8, §3);
- the right to receive emergency aid, when, due to dire circumstance, no consent to treatment can be given (Article 8, §5);
- the right to file a complaint against the practitioner (Article 11).

There are **no further rules or guidelines** applicable to this category of detainees. It follows from Article 23, 2° of the Constitution in conjunction with Article 5 of the Law of Patient Rights that **access should be given to practitioners other than a general practitioner** (such as dentists and opticians). Yet, while the core principles and access for healthcare are provided, there is no indication on how promptly such access is given.

2. Detention during a prison sentence

The Prison Law provides a **set standard** regarding access to medical services. According to Article 87 of the Prison Law, healthcare in prisons includes:

- services with the aim to improve, assess, retain, recover or improve **the physical and mental condition** of the patient;
- **health prevention and health protection** of prisoners;
- the **reintegration** of the prisoner in society throughout the **aid of healthcare professionals**.

The Prison Law also stresses that the prisoner has the right to receive healthcare, **similar to the one provided in "the free society"** and healthcare that is adjusted to the **specific needs** of the prisoner.⁷⁴ Reading this article

⁷² Law of 6 July 2007 on medical guided reproduction and the purpose of redundant embryo's and gametes, [Wet betreffende de medisch begeleide voortplanting en de bestemming van de overtalige embryo's en de gameten / Loi relative à la procréation médicalement assistée et à la destination des embryons surnuméraires et des gamètes](#), Publication in the Belgian Official Gazette on 17 July 2007.

⁷³ Law of 28 May 2002 on euthanasia, [Wet betreffende de euthanasie / Loi relative à l'euthanasie](#), Publication in the Belgian Official Gazette on 22 June 2002.

⁷⁴ Article 88 Prison Law.

broadly, it appears that access to other more specialised practitioners such as dentists or opticians is also covered.

Article 89 of the Prison Law provides that, in the exceptional situation that the prisoner was subject to certain medical treatment before his detention, the treatment must be continued during the execution of his/her prison sentence. The prisoner also has the right to receive any doctor of his choice, to examine or treat him.⁷⁵ That doctor shall share his conclusions with the doctor stationed at the prison and if they disagree, they will consult an independent doctor to take a final decision. If the prison is not equipped with the necessary, medical instruments to perform an investigation or treatment, then the prisoner should be transferred to another prison, hospital or institution where the investigation or treatment could take place.⁷⁶

In addition to the Prison Law, the **Decree Penitentiary Institution** further reinforces the national standard by ensuring that all prisoners who are ill, receive the **necessary care of the doctor stationed at the prison** or the care of any doctor of their choice.⁷⁷ If the necessary care cannot be provided at the prison, the prisoner may be transferred to a medical centre where treatment is possible.⁷⁸

Despite this national standard, the provisions of the **Constitution** and the **Law of Patient Rights** are also applicable to prisoners through the principle of equality.

A 2017 report, published by the **Federal Knowledge Centre for Health Care**⁷⁹, further sheds some light on the situation of healthcare in Belgian prisons. The report provides an overview on the **practical application of healthcare** since it was established through a mixture of investigative methods, including sampling and interviews as well as analysing the medical files of the prisoners.

The report investigates the **current issues** relating to healthcare, across all 35 Belgian prisons. The report concludes that:

- there is an **abnormally high level of drug usage**.⁸⁰ During a period of one year, 80% of the prisoners received a prescription for medication;
- the **majority** of the health issues are **mental issues**;⁸¹
- prisoners are “**less healthy**” when compared to the rest of the population.⁸²

On the **usage** of healthcare, the report states that:

- the **majority** of consultations were done by **general practitioners**, followed by psychiatrists.⁸³ On average, one prisoner consults a doctor 24 times a year, of which 18 visits would be to a general practitioner, and 3 visits to a psychiatrist;
- there is a **large variety** between prisoners and prisons.⁸⁴

While Belgium does have a national standard on healthcare, it should be mentioned that there is no contingency in case of a **strike**. In Belgium, it is not unusual for multiple prison strikes to occur in a single year. In those situations, the **services** provided in the Belgian prisons are **limited** and, as stated in a communication of 2016

⁷⁵ Article 91, §1 Prison Law.

⁷⁶ Article 93 Prison Law.

⁷⁷ Article 96 Decree Penitentiary Institution.

⁷⁸ Article 97 Decree Penitentiary Institution.

⁷⁹ Mistiaen P, Dauvrin M, Eyssen E, Roberfroid D, San Miguel L, Vinck I, Gezondheidszorg in Belgische gevangenissen: Huidige situatie en toekomstige scenario's – Synthese, Federaal Kenniscentrum voor de Gezondheidszorg, KCE Reports 293As, Publication on 18 October 2017, available at https://kce.fgov.be/sites/default/files/atoms/files/KCE_293As_Gezondheidszorg_Belgische_gevangenissen_Synthese.pdf.

⁸⁰ Ibid, p.11,

⁸¹ Ibid, p.12.

⁸² Ibid, p.14.

⁸³ Ibid, p.15.

⁸⁴ Ibid, p.16.

by the National Order of Physicians,⁸⁵ concern arises on how access to healthcare is provided during a strike of the prison staff. According to the National Order of Physicians, a strike may have severe consequences, given that it would be possible that prisons are unable to get access to a doctor during a strike. Therefore, the National Order of Physicians requests the Belgian government provide some regulation or policy of a minimal service to avoid incidents in the future. The National Order of Physicians suggests transferring the competence in this matter from the Federal Public Service Justice to the Federal Public Service Healthcare.

In the past, a similar request to **transfer competences** in this matter were made when questions were asked in the Belgian Federal Parliament.⁸⁶ However, so far, no proposals have been submitted in the Belgian Parliament to transfer this competence.

3. Detention of minors or juveniles

Minors detained in a prison are **subject to the same rules as outlined in the previous title (title 2)**. The Prison Law does **not provide for any exceptions** on healthcare applicable to minors detained in prison.

However, in addition to the rules outlined above, the Treaty on the Rights of the Child⁸⁷ is directly applicable in the Belgian legal order and requires Belgium to ensure access to the healthcare of detained minors and provide adequate support and aid.

Regarding the **federal closed detention centres for minors**, all centres have **internal rules** regarding medical healthcare.⁸⁸ In practice, it appears that these minors have the right to access a doctor and that the institutions have internal medical staff to assist the minors.⁸⁹ The latter also have access to specialised medical assistance (including access to dentists and opticians and mental assistance), and they will be transferred to hospital in the case of severe injuries.⁹⁰

b) Provisions of specialist care

Belgium does **not differentiate** the access to healthcare in different categories. Instead, the Belgian legal framework provides general provisions that ensure access to any aid required, irrelevant of its nature.

For example, Article 87 of the Prison Law foresees that healthcare in prisons includes:

- services with the aim to improve, assess, retain, recover or improve the **physical and mental condition** of the patient;
- health prevention and health protection of prisoners;
- the reintegration of the prisoner in society through the aid of healthcare professionals.

⁸⁵ Belgium, Toegang tot de gezondheidszorg door de staking van de gevangenisbewaarders, 21 May 2016, available at <https://www.ordomedic.be/nl/adviezen/advies/toegang-tot-de-gezondheidszorg-door-de-staking-van-de-gevangenisbewaarders> .

⁸⁶ Belgian Parliament, written question and answer N° 0324, 16 February 2009, available at www.dekamer.be/kvvcr/showpage.cfm?section=qv&language=nl&cfm=qv&Xml.cfm?legislat=52&dossierID=52-b049-380-0324-2008200906508.xml ; Belgian Parliament, written question and answer N° 0165, 23 february 2015, available at www.dekamer.be/kvvcr/showpage.cfm?section=qv&language=nl&cfm=qv&Xml.cfm?legislat=54&dossierID=54-b013-866-0165-2014201501342.xml ; Belgian Parliament, written question and answer N° 0626, 25 January 2016, available at www.dekamer.be/kvvcr/showpage.cfm?section=qv&language=nl&cfm=qv&Xml.cfm?legislat=54&dossierID=54-b059-867-0626-2015201606784.xml .

⁸⁷ The treaty of 20 November 1989 on the rights of the child, *Verdrag inzake de rechten van het kind / Convention relative aux droits de l'enfant*, Publication in the Belgian Official Gazette on 17 January 1992.

⁸⁸ Kinderrechtencommissariaat, Dossiers Binnen(ste)buiten - Rechtswaarborgen voor mindejarigen in detentie doorgelicht, 2010, p.124-125, available at https://www.kinderrechtencommissariaat.be/sites/default/files/bestanden/dossier_binnenste_buiten_detentie_0.pdf .

⁸⁹ Ibid, p.124-125.

⁹⁰ Idem.

These are very **broad principles** that could include any type of care, depending on the individual prisoner's situation.

c) Regulation of access to healthcare

All legal instruments and policy documents regarding access to healthcare are provided under A) and B)

d) Different detention regimes standards

Belgium does **not apply different** standards to the different detention regimes.

e) National Preventive Mechanism

Belgium does **not have** a National Preventive Mechanism. Each prison's Commission of Surveillance independently monitors the prison, formulates advice and reports yearly on the prison.⁹¹

6. Special measures in place to protect juvenile prisoners.

- a) Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)
- b) What age category falls under this specific juvenile prison regime?
- c) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
- d) *Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

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According to Belgian law, minors cannot be punished. They cannot commit a crime, but they can commit a 'fact described as a crime'. Given that juveniles are not punishable, the juvenile court judge cannot impose any penalties/punishments, but 'measures'. As a result, minors cannot be placed in a federal closed detention centre, unless the juvenile court judge decides to place such measures.⁹² As will be described below, several systems are in place in Belgium to protect minors who commit such a 'fact described as a crime'.

a) The separation of juvenile prisoners from adults

In Belgium, a procedure allows juvenile court judges to decide that **minors can be tried as adults** (*uithandengeving / dessaisissement*) for crimes they committed between the age of 16 and 18.⁹³ This is possible

⁹¹ Article 131 Decree Penitentiary Institutions.

⁹² Article 57bis, §4 Law of 8 April 1965 on youth protection, the charging of minors who have committed a fact described as a criminal offence, and the recovery of the damage caused by this fact (*Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade / Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait*), Publication in the Belgian Official Gazette on 15 April 1965 (Youth Law).

⁹³ Article 57bis Law of 8 April 1965 on youth protection, the charging of minors who have committed a fact described as a criminal offence, and the recovery of the damage caused by this fact (*Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade / Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait*), Publication in the Belgian Official Gazette on 15 April 1965 (Youth Law).

if it concerns serious crimes or when a minor has been subjected to measures already in the past.⁹⁴ This procedure makes it possible to try minors as adults⁹⁵ before a special chamber of the juvenile court (composed of two juvenile court judges and a criminal court judge), or before the Court of Assizes (*Hof van Assisen / Court d'Assises*).⁹⁶ Before the decision to try a minor as an adult can be taken, the minor must complete social and medical-psychological examinations in order to evaluate the situation in function of the personality of the person concerned and of his/her environment and level of maturity.⁹⁷ Minors who are tried as adults are transferred to a **closed federal centre for minors who have committed a fact that is described as a criminal offence**.⁹⁸ The underlying reasoning for putting these minors in separate, closed centres is that ordinary prisons are not equipped to meet minors' needs for specific educational guidance, and that contact between imprisoned minors and serious adult criminals should be avoided.⁹⁹

b) Age categories of the juvenile prison systems

The **Code of Criminal Proceedings** sets out that minors (aged 16-17) who are tried as adults **can never be transferred to a normal prison** as long as they are still underage.¹⁰⁰ Young adults aged 18 or above can be transferred to a normal prison, when: (1) the maximum capacity of the closed centre has been reached; (2) they seriously disrupt life in the centre; or (3) they endanger the integrity of the minors, other young adults, or the personnel.¹⁰¹ Young adults aged 23 or over are transferred to a normal prison.¹⁰² It is thus possible for **youngsters aged 18 to 23 to stay in the closed federal detention centres, together with those aged 16 and 17**. On the one hand, this makes it possible to protect young adults aged 18 to 23 from older detainees in normal prisons; On the other hand, the integrity of the minors in the closed federal detention centres is protected through the use of **individual rooms**.¹⁰³

c) Different standards for different detention regimes

The procedure and rules explained above that are applicable to minors who are tried as adults, applies during **pre-trial detention** phase as well as to the **execution of the punishment**.¹⁰⁴

d) National Prevention Mechanism reports

As mentioned previously, Belgium **does not have a Designated National Preventive Mechanism**. Each prison's Commission of Surveillance independently monitors the prison, formulates advice and reports yearly on the prison.¹⁰⁵

⁹⁴ Idem. Code of Criminal Proceedings of 16 December 1808 (*Wetboek van Strafvordering / Code d'Instruction Criminelle*), Publication in the Belgian Official Gazette on 26 December 1808.

⁹⁵ The only exception is that minors who were not yet 18 years old at the timing of the crime, cannot be condemned to lifelong imprisonment or lifelong detention, as determined by article 12 of the Criminal Code of 8 June 1867 (*Strafwetboek / Code Penal*), Publication in the Belgian Official Gazette on 9 June 1867.

⁹⁶ Article 57bis §2 Youth Law.

⁹⁷ The Youth Law provides for some exceptions. The juvenile court judge can decide to let the minor fall from his/her hands in case the minor refuses to do the tests or when it concerns very serious crimes punishable with more than 20 years of imprisonment.

⁹⁸ Article 84bis §4 Youth Law.

⁹⁹ Ministerial Circular number 2/2007 of 7 March 2007 concerning the laws of 15 May 2006 and 13 June 2006 to amend the legislation on the youth protection and to charge minors who have committed a fact described as a criminal offence (*Ministeriële omzendbrief nr. 2/2007 betreffende de wetten van 15 mei 2006 en 13 juni 2006 tot wijziging van de wetgeving betreffende de jeugdbescherming en het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd / Circulaire ministérielle n°2/2007 relative aux lois des 15 mai 2006 et 13 juin 2006 modifiant la législation à la protection de la jeunesse et à la prise en charge des mineurs ayant commis un fait qualifié infraction*), Publication in the Belgian Official Gazette on 8 March 2007, available at: <http://www.ejustice.just.fgov.be/wet/wet.htm>.

¹⁰⁰ Article 606 Code of Criminal Proceedings.

¹⁰¹ Idem.

¹⁰² Idem.

¹⁰³ Marjan Rom, Rechtspositie van uit handen gegeven jongeren in Tongeren, TJK 2010/2, p. 111.

¹⁰⁴ Idem.

¹⁰⁵ Article 131 Decree Penitentiary Institutions.

7. Special measures in place to protect prisoners from violence

- a) Are any special measures in place to protect prisoners against violence, including sexual violence? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)
- b) Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?
- c) Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of--designated-npmby-regions-and-countries/>

Please cite any relevant sources

a) Special measures to protect prisoners against violence

Following the structure of the previous questions above, question 7 will be analysed according to three distinctive categories of “prisoners”.

1. Detention by the Police (pre-trial)

The Belgian police receives **special training on stopping escalation** and how to **control violence**. The training applies generally to all police activities, including upon detention of a suspect of a crime and when dealing with prisoners.

Further specifications on how the concept of violence control should be interpreted and how the police should stop the escalation of violence is provided by **Circular GPI 48** on the education and training of violence control for the staff of all police services¹⁰⁶ (hereinafter ‘Circular GPI 48’). The Circular defines violence control as the knowledge of a police member who is confronted with a dangerous or potentially dangerous situation, which allows that person to diffuse the situation with maximum attention to safety and resolve it in the least violent way. Given that Circular GPI 48 **does not set out any limitations** on when and where such a dangerous situation could occur, it also applies to violence occurring during detention at a police station. Circular GPI 48 also does **not specify the nature of violence** (e.g. sexual violence) **or its target**. The police are required to apply the same **standard in all situations**.

Circular GPI 48 introduces **guidelines** on the minimal expectations and steps police force members should take, when they are confronted with a situation of violence:

- recognise a (potential) conflict situation, analyse it and the risks connected to it;
- assess the measures necessary for intervention;

¹⁰⁶ Circular GPI 48 of 17 March 2006 on the education and training of violence control for the staff of all police services, [Omzendbrief GPI 48 betreffende de opleiding en training in geweldbeheersing voor de personeelsleden van het operationeel kader van de politiediensten / Circulaire GPI 48 relative à la formation et l'entraînement en maîtrise de la violence des membres du personnel du cadre opérationnel des services de police](#), Publication in the Belgian Official Gazette on 14 May 2006.

- employ coercive measures in a progressive method, while taking into account the proportionality to the threat;
- postpone, for as long as possible, the use of physical force;
- ensure their own safety, the safety of their colleagues and of third parties.

According to the Circular, the training must be **evaluated yearly** and police force members are required to follow **additional courses** if they do not have the necessary skills to diffuse a dangerous situation.

There are **no further measures** in place to protect detained persons in police cells, **nor** are there any further **specifications** on how often the detainees are monitored, if there is access to an emergency call button or if they have access to a complaint mechanism.

2. Detention during a prison sentence

Special measures are in place to ensure the safety of prisoners in Belgium. The Prison Law provides in article 105 that ensuring order and safety is a dynamic interaction between the prison staff, the prisoner, the technical means employed and a constructive detention regime. Article 106 of the Prison law continues that the prisoner also has the **duty to conduct himself in a way that does not endanger** the staff, fellow prisoners, or other people present in the prison.

Furthermore, it is possible that **certain security measures** can be applied to ensure the safety of the prisoners. It is not specified for which actions these measures can be enforced, nor are they restricted in any way. Therefore, these measures **can be applied to protect prisoners against their own violence or against the violence of fellow prisoners**. The Prison Law lays out the potential measures that can be applied to ensure safety:

- body- and/or clothing search (article 108);
- searching and investigation of a cell assigned to a particular prisoner (article 109);
- confiscation or depriving a prisoner of an object (article 112, §1);
- the exclusion of participation to communal or individual activities (article 112, §2);
- daily observation of a prisoner, with respect to his/her sleep (article 112, §3);
- the mandatory transfer to a special room allocated to the prisoner (article 112,§4);
- the transfer to a secured cell, without objects which could be potentially dangerous (article 112, §5);
- placing the prisoner under an individual and special safety regime (articles 116 & 117 – for further information on the regime see question 4, a), section 2.1).

The Prison Law **does not set out any measures that specifically target sexual violence**. Furthermore, in contrast to the detention by the police, prison staff are not required by any Circular or legislation to follow a training on stopping escalation and violence control. Prison guards do, however, receive six-months of training before they are hired. From desk research, it is unclear if training on this aspect is included and it is unsure how detailed such training could potentially be.

The Prison Law does make a **complaints' mechanism** available to prisoners. According to article 148 of the Prison law, prisoners have the right to formulate complaints to either the management of the prison or a specific Commission of Complaints, which is present in every prison in Belgium. The prisoner can file a complaint on any measure, omission or refusal taken by the warden. The complaint mechanism is only available in relation to actions taken by the warden that affect the prisoners. Before the Commission of Complaints takes a decision, it may **suspend** the warden's decision to place the prisoner in solitary confinement.¹⁰⁷ The Commission of Complaints must take a **decision within 14 days** and the prisoner may **appeal** that decision.¹⁰⁸ In case of an appeal, the case is brought before the **Central Board for Prison Surveillance**.

¹⁰⁷ Article 156 Prison Law.

¹⁰⁸ Article 157, §1 Prison Law.

3. Detention of minors or juveniles

Special measures apply to minors **detained by the police force**. According to Article 1 of the **Royal Decree Confinement**, minors cannot be detained in a police cell or communal cell with other prisoners. They are placed in a surveillance room of surveillance that is equipped with a security door and special furniture.¹⁰⁹ It concerns individual rooms to ensure that the minor has no, or at least only minimal, contact with other detainees.

Minors who are trialled as adults and who are detained in a **closed federal detention centre** are **subject to the same rules as outlined in the previous title 2**. The Prison Law does **not provide for any exceptions** to ensure the safety of minors against violence.

There are no further measures that ensure the protection of minor prisoners against violence.

b) Protection of LGBTI prisoners

Belgium does **not have any special measures** in place to protect LGBTI prisoners or detainees against violence during their detention.

Following the death of Vicky Thompson, a transgender woman imprisoned in a male prison in England, a question was asked in the Belgian Federal Parliament on the treatment and number of transgenders in Belgian prisons.¹¹⁰ In particular questions were asked concerning:

- the number of transgender prisoners in Belgium;
- the policy implemented by the Federal government.

The Minister of Justice replied that:

- there is no statistical information available to determine the number of transgender prisoners in Belgium;
- in principle, the information provide on the identity card prevails. However, exceptions are possible after consultation with the psycho-social services.

Despite the lack of any legislation or policy papers, it appears that the current government is determined to implement a stronger and more structured policy. As stated in the government agreement of the current administration, the government aims to fully develop a zero-tolerance policy against all forms of violence, including gender-based violence.¹¹¹ In addition, in its latest Action Plan against discrimination and violence towards LGBTI (applicable 2018-2019), the federal government aims to:¹¹²

- reinforce legislation;
- improve registration and follow-up of LGBTI in prisons;
- create more awareness regarding the situation in prisons, also among magistrates who perform sentencing ;
- the creation of specific guidelines concerning LGBTI detained in prisons;
- providing training on the topic to prison staff as well as to members of the legal order.

The Action Plan refers to the creation of further guidelines concerning LGBTI detained in prison and the Plan also clarifies that these guidelines will follow the Scottish model¹¹³ and will introduce procedures regarding

¹⁰⁹ Article 13 Royal Decree Confinement.

¹¹⁰ Belgian Parliament, written question and answer N° 51-1-000872, 23 February 2016, available at <http://www.dekamer.be/QRVA/pdf/54/54K0066.pdf> or https://www.valerievanpeel.be/sites/parlement.nva.be/files/generated/images/wysiwyg/vvp-160223-scv-transgenders_in_gevangenissen_0.pdf.

¹¹¹ Belgium, Federal Government (Federale overheid), 'Interfederaal Actieplan tegen discriminatie en geweld ten aanzien van LGBTI-personen', p. 5, available at https://fedweb.belgium.be/sites/default/files/Actieplan_LGBTI_2018-2019_NL.pdf.

¹¹² Ibid, p. 36.

¹¹³ Scottish Transgender Alliance, "Transgender experiences in Scotland. Research summary. Key research findings of the Scottish Transgender Alliance survey of transgender people living in Scotland", March 2008.

reception, registration, classification, showers, dressing rooms, medical assistance.¹¹⁴ These guidelines will be communicated and implemented across all Belgian prisons¹¹⁵.

c) Regulation of protection of prisoners from violence

All legal instruments and policy documents regarding access to healthcare are provided under A) and B)

d) Different detention regimes standards

Belgium does **not apply different standards** to the different detention regimes, according to any legislation or policy paper.

e) National Preventive Mechanism

As mentioned previously, Belgium **does not have a Designated National Preventive Mechanism**. Each prison's Commission of Surveillance independently monitors the prison, formulates advice and reports yearly on the prison.¹¹⁶

8. Responsible authorities

- a) What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision? *(Please specify whether there a central authority deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?)*
- b) What authority is responsible for monitoring conditions of detention and putting forward recommendations?

Please cite any relevant sources

a) Authority providing additional information regarding EAW

On 8 August 2005, a Ministerial Circular regarding the EAW¹¹⁷ was published to provide further clarification on the practical application of the EAW mechanism. When the investigating judge is of the opinion that the information provided in the EAW is insufficient, he/she is required to contact the authority issuing the order for further clarification (Section 5.1.2.1 of the Ministerial Circular). To facilitate this, he/she may receive help from the Federal Public Service Justice that serves as the point of contact for the European e-Justice portal.

Section 1.5 of the Ministerial Circular also states that the Federal Public Service Justice and the Federal Prosecution have a special responsibility regarding the EAW. Both play a supportive role in providing information. Section 1.6 of the Ministerial Circular states that the Federal Public Service Justice must be informed of any EAW issued by a Belgian judge, but it does not designate the Federal Public Service Justice and the Federal Prosecution as the points of contact specifically.

b) Authority monitoring detention conditions and making recommendations

Each individual prison is monitored by a **Commission of Surveillance**. According to Article 131 of the Decree Penitentiary Institutions, these Commissions have the task of:

¹¹⁴ Belgium, Federal Government (Federale overheid), 'Interfederaal Actieplan tegen discriminatie en geweld ten aanzien van LGBTI-personen', p. 39, available at https://fedweb.belgium.be/sites/default/files/Actieplan_LGBTI_2018-2019_NL.pdf.

¹¹⁵ Idem.

¹¹⁶ Article 131 Decree Penitentiary Institutions.

¹¹⁷ Ministerial Circular of 8 August 2005 regarding the EAW, *Ministeriële circulaire inzake het Europees aanhoudingsbevel / Circulaire ministérielle relative au mandat d'arrêt européen*, Publication on 31 August 2005.

- independently monitoring the prison regarding the prisoners' behaviour and how they are treated;
- providing advice and information to the Minister of Justice and the Central Board for Prison Surveillance;
- reporting yearly on anything related to the prison and its prisoners.

Regarding the structure of the Commissions of Surveillance,¹¹⁸ all members are volunteers and the members have a four-year mandate that can be extended once. Amongst its members, there should be at least one magistrate and one doctor. In order for a Commission of Surveillance to be lawfully assembled, it should include at least six members. Currently, there are seven Commissions which do not comply with these criteria.

Article 131 of the Decree Penitentiary Institutions mentions the existence of a **Central Board for Prison Surveillance**, that should be advised and informed by the individual Commissions of Surveillance. This Central Board does not publish any reports or overview of the information it receives. Its mandate decides upon the budget to cover the operating costs of the individual Commissions of Surveillance. In practice, however, the Commissions seldom use these funds.¹¹⁹ The Central Board for Prison Surveillance also maintains a webpage where the Commissions of Surveillance can post their reports and recommendations.¹²⁰ Currently, not all Commissions make use of this webpage. The Central Board for Prison Surveillance also provides the Commissions of Surveillance with any information requested, but this information will only be provided to them and not to third parties. Every year, the Central Board for Prison Surveillance organises a seminar for the members of the Commissions of Surveillance. The topics for the seminar are freely chosen and the members are not obliged to attend.

The **Flemish Children's Rights Commissioner** refers to a **newly established independent monitoring mechanism** on the detention of minors in the closed federal detention centers.¹²¹ This monitoring is carried out by the Commissioner themselves and has been active **since January 2018**.¹²² The monitoring is done by volunteers who undertake monthly visits to the detention centers and report their findings to the Flemish Children's Rights Commissioner.¹²³ Unfortunately, the Commissioner is unable to expand on the information gathered so far, which will be included in its upcoming annual report that is expected to be published on 13 February 2019.¹²⁴

¹¹⁸ Central Board for Prison Surveillance, "De commissies van toezicht onder de loep", 13 February 2018, available at www.ctrg-ccsp.be/nl/nieuws/de-commissies-van-toezicht-onder-de-loep .

¹¹⁹ Idem.

¹²⁰ The webpage is available at: <https://www.ctrg-ccsp.be/nl/commissions> .

¹²¹ Flemish Children's Rights Commissioner (*Kinderrechtencommissariaat*), information received via email on 24 June 2018.

¹²² Idem.

¹²³ Idem.

¹²⁴ Idem.