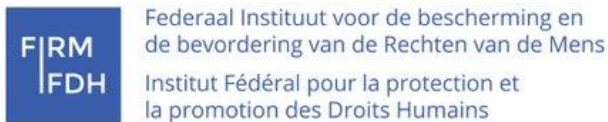


Input regarding the situation in BELGIUM by the Belgian Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) and the Belgian Central Prison Monitoring Council (CTRG/CCSP)

1 April 2022



Report on older persons deprived of their liberty

Independent Expert on the enjoyment of all human rights by older persons

The following is a joint submission by the Belgian Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) (which is responsible for the section ‘Elderly in care settings in Belgium’) and the Belgian Central Prison Monitoring Council (CTRG/CCSP) (which is responsible for the section ‘Elderly in detention in Belgium’).

The Belgian **Federal Institute for the Protection and Promotion of Human Rights** (Federaal Instituut voor de bescherming en de bevordering van de Rechten van de Mens – FIRM/ Institut Fédéral pour la protection et la promotion des Droits Humains – 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).

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In this submission, the Belgian Central Prison Monitoring Council and the Belgian Federal Institute for the Protection and Promotion of Human Rights would like to inform the Independent Expert of a number of developments in two specific fields, i.e., detention and care settings.

Elderly in detention in Belgium

According to the annual SPACE-I statistics published by the Council of Europe, the number of people older than the age of 60 in detention increased gradually with approximately 12% in the period between 2007 and 2013. The latest SPACE-I report states that on the 31st of January 2020, there were 2 245 aged 50 or more and 293 aged over 65¹ in detention in Belgium. Although, as the Belgian prison service doesn't publish annual reports, statistics for Belgium are scarce, it is estimated that for the whole of Belgium the number of people in detention of at least 60 years of age has evolved from 486 detainees in 2013 to about 610 detainees in 2022. Furthermore, in 2019, some 1459 persons in the 50-59 age group were deprived of their liberty in Belgian prisons. This suggests that the percentage of 'over-sixties' will increase in years to come. In these statistics, the term "senior detainees" is often specifically defined by a certain age-limit, whereas in scientific literature it is generally argued that it would be preferable to apply a definition in function of the interplay between detainees' physical, mental and socio-emotional characteristics. For instance, some detainees under the age of 60 may encounter difficulties participating in prison life, while other detainees over 60 may not, or vice versa.

In Belgium there are two prisons, those of Saint-Hubert² and Merksplas³, with **segregated** units focussing on senior detainees. In these segregated units, designed for detainees with shared characteristics, "senior detainees" or detainees with specific vulnerabilities live separately from the main population in small-scale housing units within the same prison⁴. This type of segregation in small-scale housing units is, in literature, often described as the most important solution for working with "senior detainees" and as a way to be more responsive to their specific needs. The 'best practices' in the previously named prisons are viewed as a positive development both by the inmates, scientists and human rights organisations. Nevertheless, and despite the promising opportunities that these small units bring about, there are a number of potential disadvantages and/or risks in play. Most importantly, Humblet (2017)⁵ states that within these segregated units the general prison and safety regulations are applicable and this risks jeopardising the opportunities and the benefits that would normally be expected to follow from such differentiation in small units.

The second approach, and this is the case in most of the Belgian prisons, is to try and **integrate** "senior detainees" in the general population. The median age in the Belgian prisons is 35, implicating that "senior detainees" are residing in a context of a younger majority. As, in this case, the prison system doesn't adapt itself to the needs of the elderly, the minority group of "senior detainees" can only

¹ M.F. Aebi, M.M. Tiago & C. Burkhardt, [Council of Europe Annual Penal Statistics SPACE I – Prison Populations Survey 2007](#) & [Council of Europe Annual Penal Statistics SPACE I – Prison Populations Survey 2013](#); M.F. Aebi and M.M. Tiago, [Council of Europe Annual Penal Statistics SPACe I – Prison Populations Survey 2020](#), 2020.

² The Saint-Hubert detention centre is a prison that can accommodate 40 "senior detainees", equipped with a medical service and cells adapted to receive prisoners with a pathology requiring regular care or monitoring.

³ The unit of Merksplas was created during the COVID-19 pandemic as a result of the decision to concentrate all elderly people in order to protect them from contamination. It was noticed that the senior detainees were more at ease in the segregated unit and therefore they decided to maintain it. In fact, during the planned renovation works, a specific unit for senior detainees will be built within the prison of Merksplas.

⁴ Denktank Oudere Gedetineerden, [Witboek: naar een holistische aanpak van de vergrijzing in onze gevangnissen](#), 2022; L. Hardy, "En prison quel est l'avenir de nos vieillards", *Revue de la Faculté de droit de l'Université de Liège* 73(1) 2018, 67-98.

⁵ D. Humblet, "Oudere gedetineerden", in K. Beyens and S. Snacken, *Straffen: Een penologisch perspectief*, 2017, Antwerpen: Maklu, 2017, pp. 475–483.

participate in life in prison as far as they can adapt to the *'one-size-fits-all'* approach. Crawley (2005)⁶ defines this approach as a form of 'institutional thoughtlessness' where the emphasis on the majority group of detainees can potentially lead to further (social) deprivation of the minority groups, such as "senior detainees". They are at risk of being excluded and being denied access to a number of fundamental rights. For example, the offer of prison labour is mainly aimed at people returning to an employment *extra muros*, and therefore at persons of working age.

It seems imperative to work towards a more inclusive approach based on a small-scale and tailor-made way of working with "senior detainees", focussing on the principle of normalisation. Recent developments in the Belgian penitentiary landscape provide us with opportunities to differentiate between groups of detainees, and thus to focus on their specific needs. Firstly, the new prison of Haren (Brussels), which will detain around 1200 individuals, is divided in fourteen different housing units, and provides an opportunity to integrate small-scale housing units within a 'prison village'. A second opportunity to develop a tailor-made approach for vulnerable categories of detainees are the so-called '*detentiehuisen*' ('detention houses'), which introduce a new penological paradigm of small-scale detention settings, which are anchored in the local community. The Belgian Central Prison Monitoring Council recommends developing a penitentiary policy aimed at "senior detainees" with sufficient attention to adapted infrastructure, a tailor-made regime and sufficient attention to the welfare and health of the "senior detainees".

Elderly in care settings in Belgium

While elderly people living in residential care homes⁷ cannot in all cases be considered as 'deprived of their liberty', this qualification may apply in specific circumstances. During the Covid-crisis, for instance, residential care homes in Belgium were the object of very strict lockdown and quarantine measures which effectively confined elderly people to these residential facilities, and prevented visitors, including close family, from visiting. A number of structural problems and human rights violations in this context have been documented in several notable research studies. These relate mostly to the fact that certain policies prioritized general hospital capacity while not paying sufficient attention to the situation in residential care homes, leading to adverse consequences regarding both the physical and mental well-being of the affected elderly.⁸

A first report from July 2020 by **Médecins sans Frontières**,⁹ followed a series of emergency interventions conducted by this organisation across Belgium in residential care centres between 21 March and mid-June 2020. This period included mandatory lockdowns in residential care homes, during which visits were suspended. In its report, the organisation concludes that the Belgian government gave priority to safeguarding general hospital capacity, while lacking any emergency plans for residential care homes. This led to a lack of attention to and of proactive measures for elderly people living in residential care homes.¹⁰ According to a survey conducted at the end of May 2020, 9 out of 10 residential care centres witnessed new or aggravated psychological symptoms among their inhabitants, and 10% witnessed an increase in suicidal thoughts and a consideration of euthanasia,

⁶ E. Crawley, "Institutional Thoughtlessness in Prisons and Its Impacts on the Day-to-Day Prison Lives of Elderly Men", *Journal of Contemporary Criminal Justice* 21(4) 2005, 350-363.

⁷ With 'residential care home' we refer to what is known in Dutch as 'woonzorgcentra' and in French as 'maisons de repos' as well as 'maisons de repos et de soins'.

⁸ See also : R. Lagasse & P. Deboosere, [Évaluation épidémiologique de l'impact du Covid-19 en Belgique à la date du 15 juillet 2020](#), report submitted to Prime Minister Sophie Wilmès on 15 July 2020.

⁹ Médecins Sans Frontières, [Les laissés pour compte de la réponse au Covid-19: Partage d'expérience sur l'intervention de Médecins Sans Frontières dans les maisons de repos de Belgique](#), July 2020.

¹⁰ *Ibid.*, p. 29.

confirming an increased wish to give up on life.¹¹ Médecins Sans Frontières observed that ‘negligence has led to too many avoidable deaths and to immense suffering of residents, their families and the staff’.¹²

In November 2020, **Amnesty International** published a study on the situation in residential care homes in Belgium.¹³ In this study, which covered the period between August and October 2020, Amnesty concluded that the human rights of inhabitants of care homes had been violated. It noted that by the end of October 2020, 10.588 people in Belgium had died of COVID, of which 61,3% were inhabitants of care homes and 47,1 % had died in those care homes.¹⁴ The study pointed at a structural lack of financing and personnel, as well as at a structural lack of preparedness for a pandemic.¹⁵ It also pointed at a lack of priority given by the authorities to the inhabitants and personnel of care homes, indications of a lack of access to hospitals for inhabitants of residential care homes, insufficient medical care in care homes, overburdened staff, low test capacity, a lack of personal protection gear for personnel and unclear directives for care personnel.¹⁶ In spite of the efforts made by some residential care homes to bring elderly in contact with their family, Amnesty gathered testimonies showing elderly had been locked up in their rooms for sometimes weeks at a time.¹⁷ This included people with cognitive problems such as dementia who were isolated in their room with the door locked, or restrained physically or chemically.¹⁸ Amnesty concluded that subordinating the care and wellbeing of elderly in residential care to safeguarding the general hospital capacity amounted to discrimination, and had caused extra and unnecessary suffering, with the lockdown measures causing a devastating physical and psychosocial impact on the inhabitants of residential care homes.¹⁹

Third, also the independent equality body **Unia** released a report²⁰, covering the period from October 2020 till March 2021. In this report, Unia similarly concluded that restrictions on the liberty of movement and the autonomy of inhabitants of residential care homes, including the obligation for these people to stay in their rooms, were imposed without permission of the elderly and sometimes involved coercive measures.²¹ The crisis, Unia noted, had exacerbated existing problems with regard to care homes in Belgium, including underfinancing, lack of coordination between primary care and elderly care and a lack of recognition of caretakers in the elderly sector.²²

¹¹ *Ibid.*, p. 22.

¹² *Ibid.*, p. 29.

¹³ Amnesty International, [Les maisons de repos dans l'angle mort](#), November 2020.

¹⁴ *Ibid.*, p. 10, 12. As shown in the footnotes there, Amnesty bases its research on figures by the national public health institute of Belgium, Sciensano.

¹⁵ *Ibid.*, pp. 18-21.

¹⁶ *Ibid.*, pp. 22-40.

¹⁷ *Ibid.*, p. 46.

¹⁸ *Ibid.*, pp. 50-52.

¹⁹ *Ibid.*, p. 56.

²⁰ Unia, [L'impact des mesures Covid-19 sur les droits humains dans les maisons de repos \(et de soins\): une étude qualitative](#).

²¹ *Ibid.*, pp. 49-53.

²² *Ibid.*, pp. 51-52.