

Prisoners' rights under pressure: Belgian prison policies and life in prison during the COVID-19 pandemic

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Presentation:

1. Life in prison during the pandemic
2. Prison policies
3. Reflexive conclusions

1. Life in prison during the pandemic

Pandemic in Belgium

- Different periods:
 - **First wave:**
 - March-June 2020 (spring)
 - **Second wave:**
 - October 2020 – March 2021
 - April 2021 – June/July 2021
 - July 2021 – Today

Situation in prisons before the pandemic

- “ordinary prison crisis” => Belgium in a difficult position to cope with a sanitary crisis
 - **Alarming conditions of detention**
 - The European Court of HR
 - **Old prisons versus new prisons**
 - Buildings in poor conditions, insalubrious
 - Contact with staff (phones, showers,...)
 - **Prison overcrowding**
 - Social distancing: impossible (several people locked in the same cell, common showers, ...)
 - Arrest house-prisons
 - **Problematic healthcare:**
 - Inmates often face health issues
 - Insufficient health care in prison & generally danger of circulation of infectious diseases (e.g. tuberculosis)



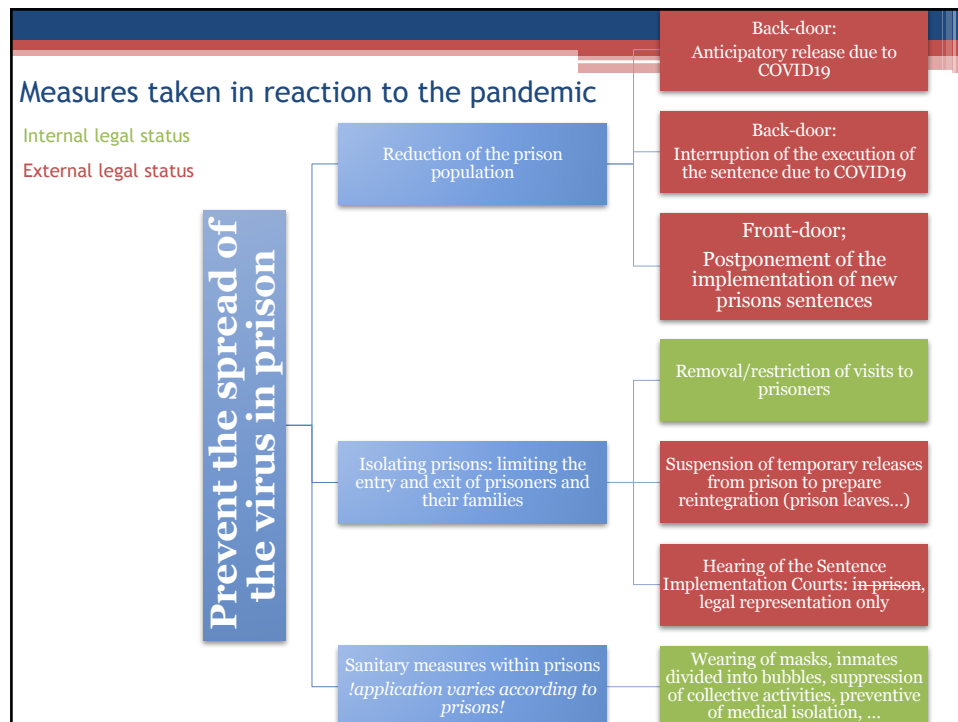
Life inside prison during pandemic

- Lack of information, insecurities
- Absence & restrictions in relation to:
 - Visits
 - Digitalisation
 - Activities
 - Digitalisation
- Sanitary measures:
 - Wearing masks (at first, not available for inmates)
 - Medical isolation as preventive measure
 - After prison leaves
 - After visits
 - « Bubbles »

2. Prison policies

		E/C.12/2020/1
Committee on Economic, Social and Cultural Rights		Distr.: General 6 April 2020
Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights		
2. The pandemic has deep negative impacts on the enjoyment of economic, social and cultural rights, especially the right to health of the most vulnerable groups. As elaborated below, States are under an obligation to take measures to prevent, or at least to mitigate, these impacts. However, if States do not act within a human rights framework, a clear risk exists that the measures taken might violate economic, social and cultural rights and increase the suffering of the most marginalized groups.		
5. Disadvantaged and marginalized groups are severely affected by the current crisis. Older persons, those with pre-existing health conditions and compromised immune systems are particularly vulnerable to serious health consequences if infected by COVID-19. Other groups are at greater risk of contagion such as those in residential care facilities or communal living arrangements; prisoners and persons in detention facilities; and residents of informal settlements or other areas lacking adequate access to water, soap or sanitizer.		
3. The COVID-19 pandemic vividly illustrates the importance of the indivisibility and interdependence of all human rights. This pandemic is essentially a global health threat. However, it has multiple implications for the enjoyment of civil and political rights because some of the measures taken by States to combat it impose severe restrictions on the freedom of movement and other rights. Thus, it is essential that the measures adopted by States to combat this pandemic are reasonable and proportionate to ensure protection of all human rights.		

CPT/Inf(2020)13	Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic issued on 20 March 2020	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	
		1) The basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff. 2) WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty. 3) Staff availability should be reinforced, and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty. 4) Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of Covid-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures. 5) As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.	6) As regards the provision of health care, special attention will be required to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions. This includes, inter alia, screening for Covid-19 and pathways to intensive care as required. Further, detained persons should receive additional psychological support from staff at this time. 7) While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication). 8) In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day. 9) Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times. Precautionary measures (such as requiring persons with symptoms to wear protective masks) may be appropriate in some circumstances. 10) Monitoring by independent bodies, including National Preventive Mechanisms (NPMs) and the CPT, remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine. All monitoring bodies should however take every precaution to observe the 'do no harm' principle, in particular when dealing with older persons and persons with pre-existing medical conditions.



Measures to protect the health

Potential of the measures:

- Significant decrease in the prison population
- Ability to innovate quickly
 - New forms of release
 - Entry of the computers connected to Internet into prisons
- Dissemination (not publication) of information on the prison population and spread of the virus within the prisons
- Mobilisation of the civil society ; litigation

Measures to protect the health

Measures = **insufficient** to protect the health:

- No systematic screening
- No priority in vaccination
- People with risk profiles remained detained due to the restrictive criteria for access to covid releases
- Virus contained outside walls during the 1st wave, not during the 2nd wave => prisons = clusters
- Measures **counterproductive** in the long term:
 - Increased isolation => harm to health
 - Reduced perspectives of reintegration => longer stay in prison => overcrowding & harm to health

Restrictions of human rights

Measures to protect the health:

- Restrictions of fundamental rights:
 - Restrictions of civil and political rights
 - Restrictions of economic, social and political rights
 - Restrictions must meet the requirements of legality, necessity and proportionality

Restrictions of human rights

Restrictions of civil and political rights:

- Right not to be subjected to torture or to inhuman or degrading treatment or punishment
Detention conditions // strike (ECHR, *Clasens v. Belgium*, 28 May 2019)
- Right to liberty and security
Detention makes it impossible to meet the requirements of detention: limit detention harm (& normalisation), prepare reintegration in society
- Right to respect for private and family life
Visits were suspended or restricted ; prison leaves to spend time outside with social network were suspended
- Right to an effective remedy
Right to complaint not applicable ; other remedies ineffective
- Prohibition of discrimination
Different conditions between prisons ; prisoners and their visitors considered as a danger for the spread of COVID >< prison staff

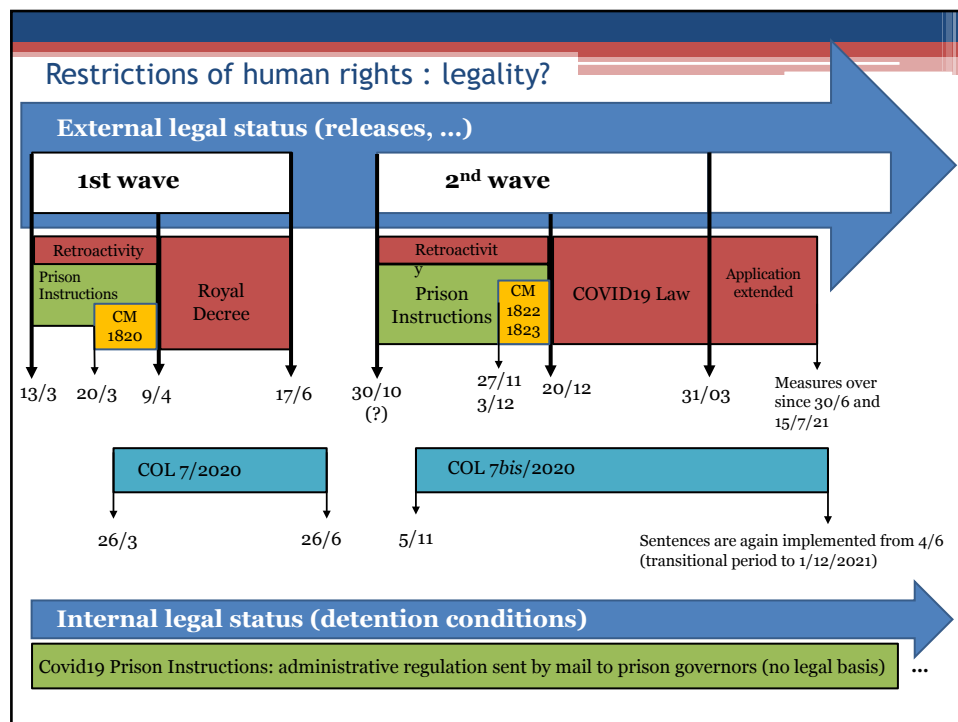
Restrictions of human rights

Restrictions of economic, social and cultural rights:

- Right to work
Lack of employment contract and fair pay; suspension of prison work during crisis
- Social security stops at prison gates
release without resources; temporary release: no access to social security; no social assistance after release
- Difficult/ non-existent access to education
- Difficult/inexistent access to cultural life
- Aggravation of inequalities
 - those who have no resources outside prison remain in prison; in prison, precariousness increases

Restrictions of human rights

- Legality and proportionality?



Restrictions of human rights

- Proportionality?
 - Temporal analysis
 - Equal treatment
 - Participation
 - Compensation

Proportionality: temporal analysis

- First wave
 - **fast** reaction(4 weeks):
 - **13 March** 2020: state of emergency
 - Minister of Justice Act of **20 March** 2020
 - Royal Decree of **9 April** 2020 (special powers)
- Second wave
 - **late** reaction (10 weeks):
 - Second wave starts **mid-October** 2020
 - Minister of Justice Acts of **27 November** and **3 December** 2020
 - COVID19 Law of **20 December** 2020

Proportionality: equal treatment

- Different treatment for different prisoners
 - Conditions of access to release: based on the length and nature of the sentence - not on the health situation
- Significant discretionary power of prison governors
- Difference in treatment between institutions (*supra*)

Proportionality: participation

- No consultation with inmates, their families, NGO's... despite their mobilisation

★ [EN DIRECT DE LOUVAIN]

En cette journée de Saint-Nicolas, des familles sont réunies devant la Prison de Louvain, pour faire entendre les revendications que le Ministre Van Quickenborne continue toujours d'ignorer.

Elles sont accompagnées et soutenues par différentes assoc' (la clac, [Observatoire International des Prisons - Belgique](#), [Ligue des droits humains](#), [Genepi Belgique](#)).

Il s'agit de la troisième manifestation hebdomadaire organisée par les familles (après une à Huy... [Afficher la suite](#))



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DIMANCHE À 14:00 UTC+01

Rassemblement solidaire de Noël avec les familles et proches des personnes incarcérées

Commune de Forest - Gemeente Vorst



Proportionality: compensations

- **Compensations very limited:**
 - Contact with relatives via video conference
 - Call credits
 - Once (in June) possibility of recovering prison leave ("saved leave")
- **Many other possible compensations!**

Free television and telephone; GSM authorization; Internet access (contacts + access to information on the pandemic); Reduction of 'canteen' prices (abolition of the 10% tax); Reduction of legal fees or criminal fines; Reduction of sentences, amnesties, ...
- **Other less intrusive measures possible!**

Maintenance of intimate visits and quarantine/testing outings, less restrictive criteria for access to temporary and permanent releases, etc.

3. Reflexive conclusion

Lessons learned?

- Two 'revelations'
 - Possibility of a significant decrease in the prison population
 - Porosity between prison and free society:
 - protecting the inmates' health = protecting our health (here is a « we »)
 - Digitalisation

Lessons learned?

- Pessimism...
 - persistence of the *tough on crime* discourse
 - stricter measures second wave (whereas few failures following first wave releases)
 - arrival of a new government and a new Minister of Justice in October 2020: their political projects = expansion, repressive and security policy projects...