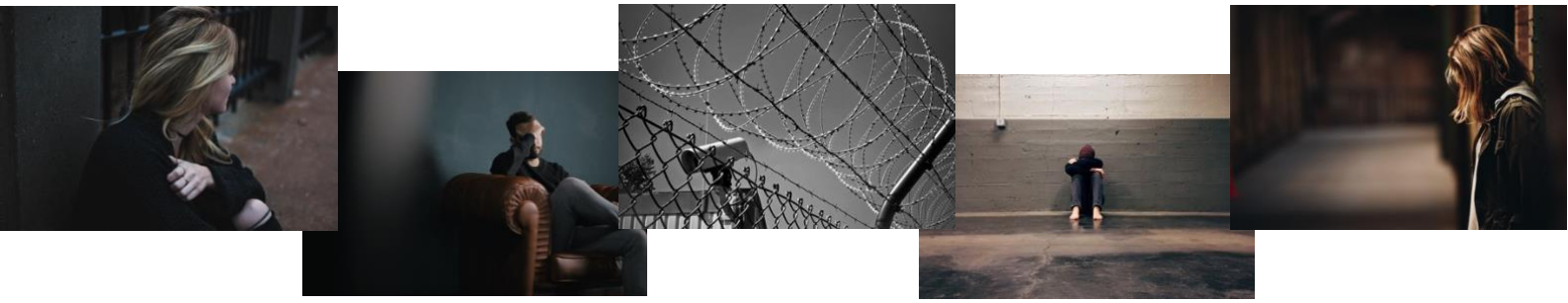

ARISA: Assessing the Risk of Isolation of Suspects and Accused

COUNTRY REPORT ON THE FACTORS AFFECTING THE SOCIAL STATUS OF SUSPECTS AND ACCUSED

BELGIUM

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1. Legal status of suspects and accused

1.1. Introduction

In Belgian criminal proceedings, the suspect is the person suspected of having committed a punishable act and subject to criminal preliminary investigation ("information" or "instruction").

The suspect becomes accused or indicted ("inculpé") when the investigating judge informs him formally about the alleged charges brought against him. Under Belgian law, a specific obligation exists for the investigating judge to formally charge a suspect as soon as there are serious indications of guilt[1].

That being said, the status of "formal suspect" may also ensue from the fact that the name of the suspect appears in the request of the public prosecutor to open a judicial inquiry or in the petition of the civil party (or the alleged victim of an offence by means of an action for damages in a criminal case).

Once a person achieves the status of formal suspect, the investigating judge cannot decide on his/her own motion to drop that status. The formal suspect will then necessarily have to appear before the investigation courts, which will evaluate the pre-trial investigation and decide whether there are sufficient indications of guilt for his/her committal to trial.

The indictment can be done in two ways.

On the one hand, **the investigative judge ("juge d'instruction" / "onderzoeksrechter")** may, before making his decision, decide to hear the person concerned. In practice, the prior hearing of the accused is relatively rare.

It is only carried out if the investigating judge intends to follow the notification of charges with an arrest warrant, in which case the hearing is a substantial formality: according to the law, in the absence of such interrogation, the accused is released.

On the other hand, the judge can also proceed by notifying the charges to the person concerned by simple mail, or even by fax.

In both cases, the judge is not required to specify the content of the indications of guilt that led to such notification. Only the charge will be mentioned (for example: theft, murder, assault, etc.).

There is no minimum threshold of criminal gravity to impose such procedure. Thus, for example, both the person suspected of contempt and that suspected of rape may fall under this formality.

1.2. Right to notice of charges

While indictment is undeniably an important step in the investigation, it is also of great interest to the individual concerned.

Indeed, the law has attached legal consequences such that the accused enjoys a greater number of rights than the suspect.

Among these, there is, in particular, the right for the accused to request access to the case file which allows him/her to prepare his defense.

As soon as a suspect is formally accused (i.e. official charges are brought against him and becomes known as "inculpé" / "in verdenking gesteld")[2], this person has the right to ask the investigative judge ("juge d'instruction" / "onderzoeksrechter") to grant him access to his/her criminal file. This

[1] Art. 61bis Code of Criminal Procedure (CCP).
[2] Art. 21bis and Art. 61ter CCP.

information should be given in a language which s/he understands and in detail. The information should address both the legal qualification and the underlying facts.

If the accused is detained preventively, s/he is granted automatic access to his criminal file.

If s/he is not detained, s/he may request access to the file by means of a request sent to the investigating judge. The investigating judge may refuse (but must give reasons for his refusal), grant or limit access to the file. In case of refusal or limited access, the accused has a right to appeal to the indictments chamber[3].

The accused may also ask the investigating judge to perform certain additional investigations or exculpatory duties (for example to hear the version of the facts of a person who has not yet been interrogated). The investigating judge may refuse if he does not consider the measure to be indispensable to uncovering the truth or considers it to be harmful to the investigation. The accused has also the right to appeal to the indictments chamber when the instruction is not closed in the year.

1.3. Different types of pre-trial investigations

The investigation during the pre-trial phase can take **two forms**[4]:

1) a preliminary investigation conducted by the public prosecutor ("information" or "opsporingsonderzoek"). A preliminary investigation led by the public prosecutor is opened at the prosecutor's initiative, after being informed by the police that an offence has taken place or after a complaint by an injured party. The process is inquisitorial: secret, written and ex parte.

Unlike the investigation system (*see infra*), there are no particular rules regarding the total or partial communication of the file to the parties in question at the disclosure stage. They may request access to the file from the Public Prosecutor, who has the discretionary power to accept or refuse.

2) **a judicial inquiry** ("instruction judiciaire" or "gerechtelijk onderzoek") led by an investigating judge ("juge d'instruction" or "onderzoeksrechter"), which is member of a Court of first instance.

In both types of investigations, the goal is to identify the suspect and to see whether there are sufficient grounds to bring charges against him/her. However, the difference is that the involvement of an investigating judge creates the possibility to proceed to more intrusive investigative measures. The Code of Criminal procedure explicitly states that the investigating judge conducts the investigation *à charge* and *à décharge*, meaning that s/he looks for both incriminating evidence and evidence which could prove the innocence of the suspect[5], whereas a prosecutor only has the obligation to ensure that the evidence is collected in a legal and loyal manner.

There are three ways to initiate a judicial inquiry:

a) at the request of the public prosecutor

b) after a formal complaint of the injured party involving a 'civil party petition' (*constitution de partie civile*); or

c) on the investigating judge's own initiative, e.g. when s/he catches a suspect red-handed or, more likely, in the context of a mini-instruction (infra).

In the first two situations, the investigating judge is obliged to start the investigation.

[3] Un suspect privé d'accès à son dossier lors d'une information judiciaire doit pouvoir exercer un recours, J.-C.M., La Libre Belgique, 25 janvier 2017 (www.lalibre.be/actu/belgique/un-suspect-prive-d-acces-a-son-dossier-lors-d-une-information-judiciaire-doit-pouvoir-exercer-un-recours-5888b61ecd70e747fb552963).

[4] L'action pénale : « information » ou « instruction » ? *par Laurent Kennes, Justice en ligne, le 1er septembre 2009* (www.justice-en-ligne.be/article105.html).

[5] Art. 56, §1, para. 1 CCP.

The so-called **mini-instruction**[6] is a kind of intermediate way, situated between a normal *enquête* and a judicial inquiry, which offers the prosecutor the possibility to proceed to more intrusive investigative measures without having to request a judicial inquiry[7]. In case of a mini-instruction, the public prosecutor asks the investigating judge for a punctual authorisation for a specific intrusive investigative measure, while remaining in charge of the investigation. Not all intrusive measures can be conducted in this way though. The most intrusive ones (e.g. search of private premises and a wiretap) still necessitate the opening of a judicial inquiry. Moreover, whenever the investigating judge is requested to give an authorisation in the context of a mini-instruction, s/he has the possibility to appropriate or 'evoke' the case, which implies opening a judicial inquiry (supra) and taking over the lead of the investigation from the prosecutor.

1.4. Conclusion of the investigation

The preliminary investigation run by the public prosecutor can be concluded in several ways

- a direct summons before a trial court;

- a decision not to prosecute;

- or an out-of-court settlement, at the initiative of the prosecutor[8].

In the event of a judicial inquiry, the pre-trial stage is always concluded by a hearing before a special investigative court called *council chamber* ("chambre du conseil" or, upon appeal, "chambre des mises en accusation"), which makes a first ruling on the lawfulness of the pre-trial phase and checks whether there is a prima facie case justifying a trial. Cette juridiction d'instruction est composée d'un juge unique.

If the investigative court concludes the investigation shows there is sufficient evidence indicating the suspect's guilt, it will refer the case to a trial court. In the opposite situation, it will deliver a nonsuit, which puts an end to the investigation. After a nonsuit, the case can only be reopened in case new elements are discovered.

Exceptionally, the investigative court may act as a trial court, in which case it judges on the merits of the case. However, acting as a trial court, the investigative court is only entitled to take two types of decisions: either an internment (i.e. a custodial measure for persons who are seriously mentally ill at the moment of the verdict and require psychiatric treatment); or a suspended conviction (i.e. a guilty verdict without imposing a sentence, provided that the offender does not reoffend during a certain period of time).

It is also up to the council chamber to decide every month whether to keep the accused in pre-trial detention. Both the suspect and the prosecutors have the right to appeal against the decisions of the judicial council before the chamber of indictment ("chambre des mises en accusation" or "kamer van inbeschuldigingstelling") and a further appeal against the decision of the chamber of indictment can be made to the Court of Cassation. The possibilities to appeal in cassation, however, have been limited by a new Law of 5 February 2016. Under the new law, the decision on appeal of the chamber of indictment to maintain the pre-trial detention can no longer be contested in cassation, unless the

[6] Apart the possibility of a mini-instruction, a prosecutor also enjoys more extensive investigative powers whenever the suspect is caught red-handed, that is in the very act of committing an offence (Art. 41 CCP. See also Art. 46 CCP). The 2003 Act on Special Investigative Techniques has also created new possibilities for the public prosecutor to proceed to certain intrusive as well as proactive investigative measures (such as an observation or infiltration), without the intervention of the investigating judge. Such techniques are usually limited to cases where serious offences are suspected. In sum, even though a preliminary investigation conducted by the prosecutor is traditionally said not to allow for any intrusive investigative measures, the coercive powers of the prosecutor have been – and continue to be – extended.

[7] Art. 28septies CCP.

[8] Art. 216bis CCP.

decision of the judicial council (i.e. the decision appealed against) was taken at the moment of the first control of the arrest warrant (i.e. within the first five days of its issue).

1.5. How long can a person remain suspect or accused?

If there are no explicit mandatory time-limits for completing the investigation and/or the trial, the defendant has a right to be tried by an impartial and independent tribunal within a reasonable time[9]. What is *reasonable* will vary from one case to another and will depend on the facts, circumstances and complexity of the case, as well as of the backlog (if any) of the relevant court.

The conduct of the suspect/accused may also be a factor of incidence. Hence, even though the suspect enjoys the right to remain silent and has no obligation to cooperate with the authorities (supra), his/her conduct may play a role in evaluating whether the reasonable time-limit has not been exceeded.

However, if the pre-trial enquiries drag on, a suspect/accused may, after one year, submit a reasoned request for the case to be referred to the indictments division, which will review the conduct of the enquiries.

The ECHR has ruled that the compensation for a violation of the right to be tried within a reasonable time should be adequate and proportionate to the seriousness of the violation.

At the national level, the consequences of a violation of the right to be tried within a reasonable time are regulated by the Preliminary Title of the Code of Criminal Procedure (CCP)[10]. According to Article 21ter of the Preliminary Title of the CCP, trial courts can either impose a penalty below the statutory minimum or simply pronounce a guilty verdict without imposing a sentence.

In addition, the Court of Cassation has ruled that the Council Chamber (which, as noted before, only intervenes in case of a judicial inquiry) can declare the criminal claim inadmissible if the rights of the defence have been seriously and irretrievably damaged due to the violation of the right to be tried within a reasonable time. In other less serious cases, the Council Chamber may establish the violation of the right to be tried within a reasonable time and commit the case for trial, after which the trial court is bound to give a proper response to this violation, in accordance with Article 21ter of the Preliminary Title of the Code of Criminal Procedure[11].

[9] Art. 6 (1) ECHR.

[10] Criminal proceedings are laid out in the Code of Criminal Procedure ("code d'instruction criminelle" or "Wetboek van Strafvordering").

[11] For instance, Court of Cassation 8 April 2008.

2. Custodial and non-custodial measures

2.1. Arrest

In addition to the ECHR which imposes a number of conditions under which a person may be deprived of his/her liberty[12], Article 12 of the Belgian Constitution provides that a person can only be detained on the basis of a well-reasoned judicial decision (infra), which has to be issued and served on that person within 48 hours[13]. This means that a suspect cannot be deprived of his/her liberty for more than 48 hours by the police or the prosecutor, unless the investigating judge issues an arrest warrant.

The starting point for that 48 hours' period is normally (but there are some specific exceptions) the moment when the individual loses his freedom to go and stand where s/he pleases. However, this moment does not necessarily coincide with the arrest by the police or the public prosecutor. An arrest warrant marks the beginning of pre-trial detention.

With respect to the arrest made by the police or the public prosecutor, one should distinguish between the situation where the suspect is caught red-handed and the situation where s/he is not. In the former situation, a police officer or a private person may stop the suspect and prevent him from fleeing. Yet, the formal decision on the arrest of the suspect needs to be taken by a police officer of a higher rank, who notifies the public prosecutor of the arrest. If the suspect is not caught red-handed, then the decision to arrest the person can only be taken by the public prosecutor.

Furthermore, the arrest warrant issued by an investigating judge should be distinguished from an **order to appear**. This order is also issued by the investigating judge, but for the mere purpose of forcing a suspect to appear before the judge for interrogation. Such an order is thus only used in cases where the suspect refuses to show up voluntarily and does not necessarily have to be followed by an arrest warrant. Again, the deprivation of freedom following the issuance of an order to appear cannot last longer than 48 hours.

2.2. Pre-trial detention under arrest warrant

Pre-trial detention is regulated by the Pre-trial Detention Act of 20 July 1990[14].

Belgian law explicitly prohibits the use of detention as a method of immediate punishment or as a measure of force. Pre-trial detention formally starts with an arrest warrant delivered by an investigating judge.

The issuance of an arrest warrant is subject to a number of material and procedural requirements:

(a) the existence of serious indications of the suspect being guilty

(b) an alleged criminal offence punishable by at least one year's imprisonment, implying that pre-trial detention is only possible for crimes and misdemeanours;

(c) an absolute necessity for public safety.

[12] Art. 5 ECHR.

[13] Révision de l'article 12 de la Constitution, M.B., 29 novembre 2017, p.104076. See also : Le délai maximal d'arrestation judiciaire porté à 48 heures, Christelle MACQ Assistante-doctorante UCL (CRID&P), 28 novembre 2017 https://uclouvain.be/fr/instituts-recherche/juri/cridep/actualites/le-delai-maximal-d-arrestation-judiciaire-porte-a-48-heures.html#_ftnref44.

[14] 20 JUILLET 1990. - Loi relative à la détention préventive. www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1990072035&table_name=loi Modification de la loi relative à la détention préventive Par Laurent Kennes Mercredi 27.07.05 La loi du 31 mai 2005, publiée au moniteur belge le 16 juin et entrée en vigueur le 26 juin, a modifié plusieurs dispositions de la loi du 20 juillet 1990 relative à la détention préventive.

Furthermore, if the statutory maximum penalty for the alleged criminal offence does not exceed 15 years of imprisonment, the requirement of absolute necessity has to be further justified based on one of the following reasons: the investigating judge has serious reasons to fear that the suspect (1) would re-offend or commit new crimes or misdemeanours (risk of recidivism); (2) would try to evade justice (absconding), (3) would attempt to destroy or tamper evidence, or (4) would collude with third parties and interfere with witnesses.

The procedural requirements for an arrest warrant are as follows:

a) **Interrogation**: before a person is confronted with an arrest warrant, s/he should be interrogated by an investigating judge (except when the person is a fugitive or is hiding somewhere). The investigating judge cannot delegate this task to the police or the public prosecutor. The suspect is entitled to a confidential conversation with a lawyer prior to this interrogation and has the right to have a lawyer present during the interrogation[15]. If the suspect has not chosen a lawyer or this lawyer is not available, the Bar Council's pro bono unit is contacted. A suspect who does not have adequate resources can benefit from full or partial free legal aid. From the moment the lawyer is chosen or appointed, a consultation with a lawyer must take place within two hours and takes place for a maximum of 30 minutes. During the interrogation, the investigating judge has to warn the suspect that s/he may be the subject of an arrest warrant in order to give the suspect and his lawyer the possibility to make comments as regards the absolute necessity requirement.

b) **the investigating judge** has to sign the arrest warrant and serve it on the suspect within 48 hours. The suspect is entitled to receive a copy of the interrogation report.

If these requirements are not respected, the suspect must be released. In that case, a new arrest warrant can only be issued against him/her in the event of new and serious circumstances, or if s/he refuses to appear for a certain procedural measure or act.

2.2.1. Judicial control on pre-trial detention

While it is not possible to appeal against the decision of the investigating judge to issue an arrest warrant, the pre-trial detention is subject to the periodic judicial control of the investigating courts, i.e. the so-called Council Chamber (*Chambre du conseil* /Raadkamer) - first instance) and Indictment Chamber (*Chambre des mises en accusatio*n - appeal). Regardless of this periodic control, the investigating judge can decide at any moment in time to release the suspect or to change the modalities of his/her pre-trial detention (prison versus electronic supervision at home).

The first review is carried out by the Council Chamber within 5 days after the arrest warrant was issued, in presence of the accused and his lawyer. Before the hearing, the case file is placed for two days at the disposal of the accused and his counsel (Art. 22). The Council Chamber will check

[15] Since 2011 (*Loi du 13 août 2011 modifiant le Code d'instruction criminelle et la loi du 20 juillet 1990 relative à la détention préventive afin de conférer des droits, dont celui de consulter un avocat et d'être assistée par lui, à toute personne auditionnée et à toute personne privée de liberté, publiée au Moniteur belge du 5 septembre 2011*), all suspects have a right to consult a lawyer before questioning. However, only suspects who are deprived of their liberty are entitled to have a lawyer present during the interrogation. This major legislative change was triggered by landmark case law of the ECtHR in Salduz ECtHR (Grand Chamber), Salduz v. Turkey, 27 November 2008) which has been confirmed and extended in subsequent cases (for instance, ECtHR, Panovits v. Cyprus 11 December 2008 and Dayanan v. Turkey, 13 October 2009). The ECtHR considers the assistance of a lawyer during pre-trial questioning crucial for the overall right to a fair trial (infra). In November 2016, the so-called Salduz-bis Act (*Loi du 21 novembre 2016 relative à certains droits des personnes soumises à un interrogatoire, M.B., 24 novembre 2016*) further extended the right to legal assistance (no minimum threshold of a penalty of one year of imprisonment). These amendments were adopted to ensure compliance of Belgian law with the requirements of the Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

the legality of the arrest warrant and the absolute necessity of taking the suspect in pre-trial detention, that is, if serious indications of guilt and other reasons that existed at the moment of arrest remain valid. Before any decision, the court must hear the detainee and/or the lawyer. If the Council Chamber confirms the detention, the suspect can be kept in pre-trial detention for another month. From then on, the suspect will have to appear once within one month and finally, every two months, before the Council Chamber until the investigations are closed (with some exceptions for the most serious offences which are tried by the Court of Assizes).

The suspect can appeal against the decision of the Council Chamber before the Indictment Chamber. S/he has 24 hours to do so. The Indictment Chamber should release its decision within 15 days after the submission of the appeal request[15].

The suspect or his/her counsel may also ask for a summary interrogation within ten days before every appearance before the investigating courts. Such an interrogation provides the opportunity to get an update on the current situation of the investigation and to raise the appropriateness of additional investigative measures.

2.2.2. Duration and end of pre-trial detention

Pre-trial detention is by principle a temporary measure. Although Belgian law does not stipulate a maximum duration, an accused person has to be brought before a trial court within a reasonable time. This reasonable time is stipulated in the Article 5, paragraph 3 of the European Convention on Human Rights (ECHR) and is considered in the light of the jurisprudence of the European Court of Human Rights (ECtHR).

In practice, on an average basis, the period of pre-trial detention usually lasts between a maximum of six months, for minor offences, to a year for serious offences. In 2016, the global average duration of pre-trial detention was of 4 month and 3 days[16].

Furthermore, there are special rules concerning the judicial control on prolonged pre-trial detention. For instance, the Code of Criminal Procedure provides for the automatic supervision by the Chambre des mises en accusation if a suspect is kept in pre-trial detention for more than six months without a decision on the referral to a trial court, which puts an end to the pre-trial stage[17].

In any case, in recent years the Belgian State was convicted (again) by the ECtHR, because of unreasonable length of pre-trial detention (Leli.vre vs. Belgium, 8 November 2007; remand in custody of seven years and ten months – violation of Art. 5, § 3 ECHR), and because of inhuman or degrading detention conditions due to prison overcrowding in Belgian prisons (Vasilescu vs. Belgium, 25 November 2014 – violation of Art. 3 ECHR).

2.2.3. Rights of pre-trial detainees

In terms of regulatory provisions, the Royal Decree of 21st May 1965 laying down general prison regulations[18] has been for long the only point of reference[19]. Pursuant to this instrument, detainees were not being recognised any specific right but only faculties.

[16] Question et réponse écrite n° : 1967 - Législature : 54, Bulletin n° : B126, de Annick Lambrecht (SP.A) au Ministre de la Justice, 08/06/2017 (www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-b126-866-1967-2016201716767.xml).

[17] Art. 136ter CCP.

[18] Arrêté royal du 21 mai 1965 portant réglementation générale des établissements pénitentiaires.

[19] The Report submitted to the King in preparation of the Act defines its philosophy in the following terms “le régime auquel les condamnés sont soumis doit tendre à l’affermissement de leur sens moral, civique et familial. Il doit leur procurer suivant les cas l’éducation, l’instruction, la connaissance d’un métier, l’habitude du travail ainsi que l’assistance médicale requise par leur état physique ou mental. Les méthodes doivent cultiver chez les détenus le sentiment qu’ils continuent à faire partie

The «Dupont Act»

On 12 January 2005, the federal government passed a law concerning the *internal* legal position of detainees: the Act on Principles of Prison Administration and Prisoners' Legal Status (commonly referred to as the "Dupont Act"[20]). This law is considered to be a "milestone" in the way sentences are executed in Belgian prisons. Until the adoption of this law, most aspects of life in detention, including prisons, were left to the discretion of the prison authorities.

Echoing the recommendations of the CPT and written in the spirit of the European Prison Rules[21], the fundamental principles[22] and the detailed provisions of this law determine the rights and duties of the detainees and lays down rules governing prison administration.

Article 15 §2 of the Dupont Act provides for the designation of specific prisons or prison sections for different categories of prisoners (remand detainees, female detainees, detainees accompanied by children under the age of three, detainees serving prison sentences of at least 5 years, detainees who need specific care (due to age, physical or mental health), and against whom a particular form of punishment may be used).

All pre-trial detainees should - as a rule - be kept apart from convicted prisoners and treated in such a way as not to give the impression that their deprivation of liberty is punitive in nature because they are presumed innocent.

In practical terms, all pre-trial detainees should be accommodated in a specific prison facility, more precisely, in a house of arrest or remand prison. "Houses of punishment", on the other hand, are prisons for adults who have been convicted by the court to an effective prison sentence[23]. There are 21 houses or arrest in Belgium: Antwerp, Arlon, Oudenaarde, Bruges, Dinant, Forest-Berkendael, Ghent, Hasselt, Huy, Jamioulx, Lantin, Secondary Leuven, Mechelen, Mons, Namur, Nivelles, Saint-Gilles, Dendermonde, Tournai, Turnhout and Ypres.

However, given the prison overcrowding in Belgium, this rule is de facto rarely respected in practice and an increasing number of prison facilities receive both pre-trial detainees and convicted persons. As a result, the guarantees of detention conditions for pre-trial detainees and convicts are almost identical.

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de la communauté sociale. La conception et l'organisation de la discipline, des conditions d'hébergement, du travail, des études et des loisirs doivent s'inspirer plutôt de ce qui rapproche de l'existence libre que de ce qui en éloigne et elles tendent à sauvegarder ou à susciter le sens de la dignité et des responsabilités humaines".

[20] *Loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus*. Law on principles/Prison Act of 12 January 2005 concerning the administration of the prison system and the legal position of detainees [1 February 2005] Official Journal (Moniteur belge/Belgisch Staatsblad). www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005011239&table_name=l

[21] The European Prison Rules (EPR), initially passed by the Committee of Ministers of the Council of Europe in 1973 and recently renewed in January 2006, play a significant role in Belgian prison law, being regarded as an expression of an increased awareness of human rights in the penitentiary system. The EPR contain comprehensive guidance on the running of prisons and the treatment of prisoners. They aim to protect prisoners' fundamental rights in a manner that is consistent with the legitimate purpose of their detention and to provide that conditions should facilitate reintegration after release from prison. The EPR are not binding, although the ECtHR has used them as a basis when assessing complaints about prison conditions. ECtHR case-law seeks to correct excessively poor prison conditions in individual cases, but cannot achieve uniform compliance in all Member States.

[22] Title II of the Act entered in force on 15 January 2007, pursuant to the Royal Decree of 28 December 2006.

[23] According to their legal status, the Belgian prisons are divided into "houses of arrest" (remand prisons) and "houses of punishment" (prisons for sentenced/convicted offenders). Remand prisons are penal institutions where people are incarcerated in application of the Pre-trial Detention Act of 1990, such as suspects and accused persons. "Houses of punishment", on the other hand, are prisons for adults who have been convicted by the court to an effective prison sentence.

It should also be noted that, since its adoption in 2005, several provisions of the Dupont Act have been amended[24], sometimes adversely affecting prisoner's rights as originally intended, as detailed below, and significant parts of the Dupont Act have not entered into force to date[25]. In the absence of full implementation of this law, the General Regulations of the Penitentiary Institutions of 1965, still rules today significant aspects of the internal legal status of detainees.

2.2.4. Pre-trial detention and healthcare

Any pre-trial detainee - and, in general, any person deprived of liberty - has the right to health care that is equivalent to the level of health care provided in the free society and which is adapted to his/her specific needs.

In general, the penitentiary administration is required to ensure a regular medical monitoring of prisoners. The law provides that any person entering prison must be presented to a doctor within twenty-four hours of his/her arrival. This "medical admission visit" has a twofold objective: to take stock of the detainee's health and to collect any relevant epidemiological information. The results of this first medical examination and the subsequent examinations and prescriptions of the prisoner are recorded in an individual medical file, which is classified in a register available at the infirmary of the penitentiary establishment.

The prisoner may also require a medical examination with a general practitioner or a specialist from the prison medical service. To this end, s/he must submit a written request to the prison supervisors for transmission to the medical service. Of course, even when the detainee makes no such request, it is the supervisor's responsibility to determine if the detainee needs medical attention or, if necessary, emergency healthcare. Failure to do so can lead to individual penalties.

As for costs, medical care and pharmaceuticals are fully covered by the prison administration. This principle of free health care extends to all examinations or treatments provided by specialists as well as to various prostheses (except dentures and glasses). However, this free service only refers to the necessary consultations and care provided by the medical staff attached to the prison. As a result, when an inmate wants to consult an outpatient physician/doctor, he or she must bear the costs of the consultation as well as the pharmaceuticals prescribed.

2.2.5. Pre-trial detention and prison overcrowding

For several decades now, as in many other European countries and despite measures taken by the government, Belgium has faced serious problems of chronic prison overcrowding, due to an almost constantly rising prison population. Incarceration numbers have seen an explosive growth especially since the early 1990s. Moreover, the gap between the number of people in prison and the available capacity has never been wider than in 2013[26].

In 2013, the Belgian average daily prison population was 11.645 with a maximum capacity of only 9.255 persons and for a total Belgian population of over 10 million and a half [27] (i.e. an incarceration

[24] Laws amending the Dupont Act: Law of 17 March 2013; Law of 2 March 2010; Law of 21 February 2010; Law of 20 July 2006; Law of 23 December 2005.

[25] Article 180 of the Dupont Act states that the King decides when and which articles will enter into force. Royal Decrees have been adopted but the following articles have yet to enter into force: 7, 14-15, 17-18, 20-41, 43, 48-52, 75, 81-97, 99-102, 147-166, 167§2 and 3.

[26] Data pulled from the website of the Federal Directorate General Statistics and Economic Information (DGSEI). The graph shows that, the overall overcrowding increased from 111 % in 1997 to almost 127% in March 2013. http://statbel.fgov.be/fr/statistiques/chiffres/population/autres/detenu/. The data shows the situation on 1 March of each year. Source of the data: Federal Public Service for Justice, Directorate General EPI Penitentiary Institutions.

[27] Rapport annuel 2013, Direction générale des Etablissements Pénitentiaires, SPF Justice 2014, page 66.

rate of 104.3 per 100,000 inhabitants). The degree of prison overcrowding however has receded in the last years.

The average daily prison population dropped slightly to 11,578 in 2014, for a rate of 103.3 inmates per 100,000 inhabitants (with a general population of 11,203,992)[28] and decreased to 11,041 in 2015[29] and further to 10.619 in 2016[30].

Average daily prison population[31]	
2012	11.330,2
2013	11.644,6
2014	11.578,3
2015	11.040,7
2016	10.618,8

While the Belgian central prison administration reported a 24,1 % of overpopulation in 2013 and 16,6 % in 2014 (on average 11.578 prisoners for 9.931 available places), the latest annual report indicates that this number dropped to 9,60 % in 2016. This is a consequence both of a reduction in the incarcerated prison population and of a quite significant expansion of prison capacity over the last years.

Average daily overcrowding rate[32]	
2012	23,70 %
2013	24,10 %
2014	16,60 %
2015	10,10 %
2016	9,60 %

Crucially, it should be noted that the significant and alarming growth experienced by Belgium in its incarceration numbers over the last decades does not only concern convicted offenders but also prisoners in remand custody (untried prisoners and not-definitively sentenced prisoners).

The average daily number of pre-trial detainees evolved from nearly 1.500 in 1980 to 3.553 in 2016, an increase of 140 %. Compared to the year 1990 (N = 1.821), there is an increase of 92,1 %, or, in other words, a population in pre-trial detention almost twice higher in 2015. The rise of this (sub)population is especially observable in the first half of the 1990s and from the late 1990s into the new century.

[28] Rapport annuel 2014, Direction générale des Etablissements Pénitentiaires, SPF Justice 2015, page 38.
[29] Rapport annuel 2015, Direction générale des Etablissements Pénitentiaires, SPF Justice 2016, page 37.
[30] Rapport annuel 2016, Direction générale des Etablissements Pénitentiaires, SPF Justice 2017, page 38.
[31] Rapport annuel 2016, Direction générale des Etablissements Pénitentiaires, SPF Justice 2017, page 38.
[32] Rapport annuel 2016, Direction générale des Etablissements Pénitentiaires, SPF Justice, page 38.

Average daily number of pre-trial detainees[33]	
2012	3599,8
2013	3651,9
2014	3610,6
2015	3498,8
2016	3552,5

Representing an average of 30-35 % of the total prison population, the number of people who are deprived of their liberty before being definitively convicted in Belgium is undoubtedly one of the highest compared to many other Western European countries. Except for Luxembourg, with an even higher number of remand prisoners (44.2 per 100,000 inhabitants), Belgium makes more use of pre-trial detention (remand custody) than, for example, Germany (13.9), the Netherlands (25.0) and France (26.0). When we consider the yearly number of entries (*écrous*) in Belgian penitentiary facilities, the percentage is even higher: in 2016, the number of entries for pre-trial detainees amounted to 10.508 out of a total of 17.648 (including 6.564 convicted persons).

Number of persons subject to pre-trial detention per year (entries or "écrous")[34]	
2012	11484
2013	11615
2014	11660
2015	11085
2016	10508

This high percentage is a reflection of management problems and arrears in the judicial system. This evolution also shows that despite 'alternatives' to pre-trial detention – especially those introduced by the new Pre-trial Detention Act of 1990 and later reforms – the increasing use of pre-trial detention has not been altered, even though remand custody should only be used in exceptional circumstances.

In respect of demographic features, it can be observed that the majority of the Belgian penitentiary population is by far composed by men (women constituting only 4-5 % of detainees). More than half of the prison population is constituted by young adults. Over the period 2006-2010 more than half of the prison population was aged between 21 and 35 years (52-53 %). The other part of the population consists of prisoners older than 36 years old (41-43 %) and 5% to 6 % is under the age of 21. Less than 1 % of the prisoners are youth offenders.

Another feature of the Belgian prison population is the increasing number over the last 30 years of foreign nationals. The number of non-Belgian detainees in Belgian prisons quadrupled in the period 1980-2010, going from 1,212 to 4,494, representing now around 42 % of the total prison population. It is also to be noted that the majority of them are pre-trial detainees[35].

[33] Rapport annuel 2016, Direction générale des Etablissements Pénitentiaires, SPF Justice, page 43.
[34] Rapport annuel 2016, Direction générale des Etablissements Pénitentiaires, SPF Justice, page 46.
[35] Apart from these demographic features, information compiled by the Belgian prison administration fails to give a detailed description of the socio-economic profiles of inmates. The data related to detainees and actors involved in resocialisation activities are partial and incomplete, if not unavailable, and scattered over several federal, regional and local agencies and hence do not allow a comparative analysis and qualitative assessment. Similarly, information on the health and social status

The effects of systemic overcrowding in old and dilapidated facilities are detrimental to the welfare of prisoners and the proper functioning of the prison system. Overcrowding can result in inhuman and degrading treatment of detainees, not only implying undignified conditions of detention (impact on standards of hygiene, lack of privacy, reduced safety), but also depriving prisoners of certain fundamental rights (reduced activities, insufficient capacity of medical care).

Such a situation is a cause for concern, as the detention conditions, which are not uncommonly described as 'inhuman', hamper the practical application of the provisions of the 2005 Prison Act[36]. A lack of prison infrastructure that is sufficiently adapted to current needs and problems of overcrowding have many negative effects: a degrading moral climate within the institution and difficulties with respect to order and security, classification, hygiene and comfort, as well as the supply of enough prison labour and food and organization of family visits, etc. In this respect, there is a serious risk of violation of Article 13, & 2 of the 2005 Prison Act which – similar to past prison regime regulations[37] – clearly states that as far as possible remand prisoners should be granted all regime facilities that are compatible with imperatives of good order and security within prison. With regard to remand prisoners it is, in particular, the principle of the presumption of innocence that often has been used as a justification for maximum efforts to prevent the potentially detrimental effects of imprisonment.

2.2.6. Monitoring mechanisms and institutions and prevention of abuse in prisons

The Central Prisons Supervisory Council

The Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 containing the general prison regulations[38] created both the Central Prisons Supervisory Council and a local supervisory commission in every prison. The Royal Decree of 29 September 2005 amended it to make those bodies more independent, transparent and professional (Dupont Act, Article 26-27, 29-31). Among its duties, the Council exercises independent control over the treatment of detainees and supervises the adherence to the regulations in force. Observations are reported to the Minister of Justice and the Federal Parliament, and the Commissions can present recommendations on penal matters. Each local supervisory commission exercises the same control in its assigned prison.

However, the relevant provisions have not all entered into force[39] and in practice, the functioning of the Commissions and the Council is flawed.

The latest report of the Council[40] raises several serious concerns regarding its effectiveness and independence. The Council complained *inter alia* that nominations of its members had taken place irregularly, that the secretaries assigned by the Minister of Justice were not suited to the task and that

of Belgian prisoners is not systematically and structurally collected. Every prisoner has a medical, electronic file but the data these files generate cannot simply be retrieved in order to be used as a monitoring tool.

[36] Law on principles/Prison Act of 12 January 2005 concerning the administration of the prison system and the legal position of detainees [1 February 2005] Official Journal (Moniteur belge/Belgisch Staatsblad).

[37] Article 165 of the Règlement général des maisons de sûreté et d'arrêt (General regulations on remand prisons) of 6 November 1855 for example already stated that all communication and other mitigations of prison regime that are compatible with good order and security in prison, are granted to suspects and accused prisoners within the limits of the prison rules, ["[t]outes les communications et les autres adoucissements compatibles avec le bon ordre et la sécurité de la prison, sont accordés aux prévenus et aux accusés dans les limites du règlement"]; Recueil des circulaires, instructions et autres actes émanés du Ministère de la Justice ou relatifs à ce département [1855-57] 177ff.)

[38] Arrêté Royal du 4 avril, 2003 modifiant l'arrêté royal du 21 mai 1965 portant règlement général des établissements pénitentiaires, www.ejustice.just.fgov.be/doc/rech_n.htm.

[39] The relevant articles are the articles 26-27 & 29-31 of the Dupont Act (op cit). These have yet to enter into force.

[40] Conseil central de surveillance pénitentiaire et commissions de surveillance, Rapport Annuel 2008-2010.

the body lacked adequate funding. The local supervisory commissions are staffed by volunteers rather than professionals and do not receive adequate funding to effectively carry out their mandates. Their inspections are scattered and fragmented. Owing to a lack of co-operation between the committees and the central council, it is not possible to publish a consolidated annual report on problems in the various prisons.

Provisions of the Dupont Act (Articles 147-166) also established a right for prisoners to lodge complaints with complaints boards to be attached to the local monitoring committees. The complaints boards should be responsible for dealing with complaints from individual prisoners, who would be able to dispute prison management decisions concerning them. However, these provisions have not entered into force to date.

2.2.7. Compensation for unlawful or ineffective pre-trial detention

Suspects who experienced either unlawful (i.e. pre-trial detention in violation of the legal rules) or ineffective/inappropriate pre-trial detention ("détention inopérante" in French or "onwerkdadige hechtenis" in Dutch; i.e. because the person is innocent or because the time spent in pre-trial detention exceeds the length of the prison term to which s/he was sentenced) can claim damages or full compensation under certain conditions (Act of 13 March 1973 on Ineffective Pre-trial Detention). This right also finds support in the ECHR[41].

According to Article 28 of the Act of 1973, one of these conditions is that the person has been held in pre-trial detention for more than eight days without this detention being attributable to his/her personal behaviour.

The claim for compensation must be sent in writing to the Ministry of Justice. The latter has a period of six months to assess the applicant's compliance with the conditions. The amount of the compensation is determined in equity taking into account circumstances of private interest (such as pharmaceutical and medical costs, financial resources, the defendant's behaviour, the effects of incarceration, etc.) and public one (such as the characteristics and specific needs of the investigations, the functioning of justice, the state of public finances, etc.). It does not aim at full compensation for the postulated damage.

An appeal against the decision or the lack of response within the time limit may be lodged before a Committee specifically set up for this purpose.

In the event of the death of the beneficiary of such compensation, it may be transmitted to other eligible right-holders (family members or dependents).

Finally, if the individual who was kept in pre-trial detention is ultimately convicted to imprisonment, the time spent in pre-trial detention will be deducted from the prison sentence s/he has to serve.

The following table shows over the last years the number of compensation claims for inappropriate pre-trial detention submitted and approved as well as the total amount paid by the Belgian State[42].

[41] Art. 5 (5) ECHR.

[42] Depuis 2012, 763.000 euros d'indemnités pour "détention préventive inopérante", Belga / La Libre Belgique, 15 avril 2015 (www.lalibre.be/actu/belgique/depuis-2012-763-000-euros-d-indemnites-pour-detention-preventive-inoperante-552e7a573570fde9b2b62601).
Question écrite n° 5-7832 de Hassan Bousetta (PS) du 21 janvier 2013 à la ministre de la Justice (www.senate.be/www/?MIval=/Vragen/SchriftelijkeVraag&LEG=5&NR=7832&LANG=fr).
Question écrite n° 0255 de Sophie De Wit (NVA) du 13/03/2015 à la ministre de la Justice (www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-B019-866-0255-2014201502115.xml).

Year	Number of requests	Approved	Total amount paid (euros)
2008	94	66	488 731,62
2009	102	72	484 433,93
2010	103	62	347 501,48
2011	101	63	376 988,13
2012	99	54	271,284.93
2013	88	39	314,336.05
2014	97	33	177,901.11

2.3. Alternatives to pre-trial detention

There are two alternatives to pre-trial detention in prison: the investigating judge can instead order that the detention is carried out under electronic supervision at the suspect's home; or decide to release the suspect while imposing certain conditions upon him/her.

2.3.1. Pre-trial detention at home under electronic monitoring

Electronic monitoring (EM) has been used in Belgium as a way of executing prison sentences since 2000 and its use has grown continuously since. The number of monitored individuals has increased by broadening eligibility criteria, introducing new technologies in addition to radio frequency (RF) including voice recognition and GPS-tracking and by introducing EM at different stages of the criminal justice system. EM is considered as a solution to prison overcrowding.

Since 2014, EM became used as an alternative for pre-trial detention and, in 2016, it was also introduced as an autonomous standalone sentence and as a way of imposing restrictions on offenders with mental illness. Having said that, EM is mostly used as a modality of implementing the whole or a part of a prison sentence.

Until 1 January 2015, both the Flemish Centre EM and the Centre for EM operated as one monitoring centre, known as the National Centre for Electronic Monitoring. Following the Sixth State reform in 2014, the responsibility for the operation of EM was transferred to the Flemish and the French Communities, leading to the split into 2 monitoring centres. These centres are responsible for the installation and de-installation of EM equipment, technical controls and follow- up.

With the Law of 27 December 2012 (in operation since 1st January 2014), electronic monitoring was introduced as a new alternative measure to pre-trial detention[43]. More specifically, electronic monitoring is considered as a modality of execution of an arrest warrant, which means that the investigating judge (or investigating courts) will first decide whether an arrest warrant has to be issued (or prolonged) and then, in a second step, will decide where the arrest warrant will be executed: in prison or at the suspect's home (or at another assigned residence). At this stage of the criminal justice process, suspects are monitored using GPS-technology, without limitation in time. In case of non-compliance, electronic monitoring can be converted into pre-trial detention in prison.

The continuation of electronic monitoring will be reviewed on a regular basis, just as would have been the case were the suspect detained in prison.

[43] Surveillance électronique des prévenus et des condamnés Analyse des objectifs proclamés et mise en confrontation avec la procédure, Mémoire réalisé par Noémie VERLEYEN (Promoteur Thibaut SLINGENEYER, Année académique 2015-2016, Master en droit [120], à finalité spécialisée (https://dial.uclouvain.be/memoire/ucl/fr/object/thesis:8037/datastream/PDF_01/view).

A suspect under electronic monitoring is not allowed to leave the assigned place of residence except for a limited number of movements allowed for medical reasons, in case of force majeure, or in relation to the criminal investigation process (e.g., hearings by judicial authorities and police interrogations). Electronic monitoring in the pre-trial stage thus appears to be a form of '24-hour home detention'.

Electronic monitoring (EM) within the framework of pre-trial detention is – contrary to the expectations of several policy makers at the time of parliamentary discussion – used rather sparsely.

In 2016, 378 people were placed under EM in the pre-trial stage[44] out of a total of 2.550 individuals submitted to EM. This rather small number of electronically monitored suspects at home contrasts highly with the number of pre-trial detainees deprived of freedom in prison.

2.3.2. Release on bail

The Pre-Trial Detention Act of 20 July 1990 provides for release (i.e. released from custody until the trial) on the (sole) condition that bail is paid (Art. 35, paragraph 4). The judge freely determines the size of the amount, since there are no legal criteria for it. The investigating judge is not even required to give a reason for the decision on the amount of bail if the parties have not filed submissions on this point. The amount must be paid in advance and in full; it is indeed a prerequisite to release.

There is no updated data that can inform us about the use of the measure, but we know that it is scarcely used in practice. According to the judges, it threatens the equality of citizens, since those who can afford to pay bail could be released while others are sent to or remain in prison.

In practice, it should be noted that is very difficult for foreigners to obtain bail in Belgium, unless they are resident in Belgium.

2.3.3. Release under probation conditions

Acting ex officio or at the request of the public prosecutor, the investigating judge can also decide to release the suspect and impose respect for one or several conditions for a determined period and in any case no longer than three months, renewable every three months.

Release under conditions can occur either without a prior arrest warrant or after time is spent in detention. There is currently no statistical information about the number of releases under conditions preceded by pre-trial detention, even though such information would be relevant to verify the hypothesis that these releases are less capable of preventing incarceration than they are of reducing its duration[45].

When deciding on release under conditions, the judge must determine how long it will last, though it cannot exceed three months (Art. 35, paragraph 1). Before the termination of the first period established, the judge may decide to extend the conditions for a new period and determine the duration, which once again cannot exceed three months. This possibility continues to be available to the judge throughout the instruction (Art. 36).

The investigating judge may also impose one or several new conditions, as well as withdraw, modify or extend the conditions already laid down in whole or in part. At the end of the instruction, the

[44] Administration Générale des Maisons de Justice, RAPPORT ANNUEL 2016, page 33. See also Détention préventive: 7 % des détenus portent un bracelet, voici leur nombre par prison (Tableau), L. N., La Libre Belgique, 11 septembre 2017 (www.lalibre.be/actu/belgique/detention-preventive-7-des-detenus-portent-un-bracelet-voici-leur-nombre-par-prison-tableau-59b619f1cd70fc627d74a2c8).

[45] A survey conducted among the country's French-speaking Probation Service indicates that in five out of six observed districts, most of release under conditions were preceded by a period of pre-trial detention, ranging from 61.1 % (Mons) to 81.9 % (Namur). See Alexia Jonckheere, 'Structure de concertation locale des maisons de justice : «Détention préventive et liberté sous conditions»' 2.

judicial council may decide to maintain or withdraw the conditions. Finally, after the instruction is completed, it is up to the trial court handling the case to decide whether to extend the existing conditions, always for a maximum period of three months and until the ruling at the latest. It may also withdraw or dispense with compliance with some of them, but it may never impose new ones (Art. 36).

The Pre-Trial Detention Act of 20 July 1990 does not provide for an exhaustive list of conditions that can be imposed. The choice of conditions is therefore left to the judges' discretion.

The judge may choose which conditions are imposed, such as to not leave the country, to remain at a specified place and to inform the police or another authority of any change of residence, to remain under the supervision of a probation officer, to follow therapeutic treatment, to not meet the victim or other people involved in the case, to find a job or an occupation, to stay at home between e.g. 10 pm and 6 am, etc.

The Probation Service (*maisons de justice*) may be called on to verify that the conditions are being met. Although it is an option and not an obligation, it seems that the Probation Service does indeed verify most of the conditions. The probation officer (*assistant de justice*) meets the person during regular interviews at the house of justice and, occasionally, visits him at his home. The probation officer reports to the investigating judge or the court regarding the course of the guidance and the way the offender deals with the conditions imposed.

Adherence to conditions of prohibition (the prohibition to visit certain places or neighbourhoods, former inmates, etc.) must be verified by the police (Art. 38).

The length of releases under conditions is extremely variable. In some cases, it only lasts three months; in other cases, it may be extended to 18 months[46].

In addition, releases under conditions are on average longer than pre-trial detention. The fact that the alternative measure lasts longer than the measure it is intended to replace is quite surprising, also considering that the time spent on release under conditions is not deducted from the time of the sentence that may be imposed at the end of the case investigation. This may be an effect of the three-month period provided by law: while it is a maximum (renewable) period of time, it seems that judges systematically make it last that long.

2.3.4. Probation services

Upon inception in 1999 (Act of 13 June 1999), the Houses of Justice ("maisons de justice" in French or "justitiehuizen" in Dutch) were assigned to the enforcement of alternative penalties and measures to imprisonment (which includes probation tasks).

Since 1st January 2015, the responsibility of the probation services has been transferred from the Federal State[47] to the communities (Walloon-Brussels federation and the Flemish Community - Law of 6 January 2014). In this way, the implementation of custodial measures that can be applied in the pre-trial stage (arrest, detention on remand or pre-trial detention) fall within the federal state whereas the execution of alternative measures belongs to the competence of the communities.

Belgium has 28 Houses of Justice: one in each judicial district. Flanders and Wallonia each have 13, and Brussels has 2, one French- and one Dutch- speaking. From an organisational point of view, Each House of Justice is managed by a director, sometimes assisted by one or several key process manager(s), depending on the size of the House of Justice concerned. The actual fieldwork is carried

[46] Administration générale des maisons de justice (n 117).

[47] The Houses of Justice were previously administered by the federal Ministry of Justice (Directorate General Houses of Justice) and are funded 100% by the central government (through the Ministry of Justice).

out by approximately 1.100 justice assistants (probation workers, mediators, victim support workers, etc.).

The different tasks assigned to these probation services can be distinguished between penal matters, judicial victim support, civil applications and primary social and legal work. This includes work punishments, electronic monitoring, limited detention, probationary conditional or suspended sentences, conditional or custodial release of prison, protection of the government, internment (conditional release of mentally disordered offenders).

Evolution of the number of mandates by sector

Houses of Justice in Wallonia-Brussels federation (2010-2015)[48]

Tasks	2011	2012	2013	2014	2015	2016
Penal matters: SE + BIR*	5925	5447	3837	3528	3246	2919
Penal matters: supervision and guidance	16773	15996	17859	18364	19976	19655
Civil matters	1193	1186	1095	1145	1165	1109
Victims' support	8751	7986	7869	7161	6583	7146
Primary social care & support	4155	3447	3068	2285	1947	1315
Electronic monitoring supervision	1237	1437	2160	2372	2593	2550

** SE: social enquiries – NIR: brief information reports.*

Evolution of the number of mandates by sector

All Belgian Houses of justice (2010-2015)[49]

Tasks	2011	2012	2013	2014
Penal matters: SE + BIR*	12404	10872	7956	7172
Penal matters: supervision and guidance	32739	31593	34511	35575
Civil matters	3081	3113	3076	3034
Victims' support	14680	13390	13767	12531
Primary social care & support	8314	6690	5931	4454
Electronic monitoring supervision	3688	3238	4735	5030

** SE: social enquiries – NIR: brief information reports.*

[48] Administration Générale des Maisons de Justice, Rapport Annuel 2016, SPF Justice 2017.
[49] Justitiehuizen Jaarverlag 2014, p. 64-66.

Evolution of the number of supervision and guidance mandates by sector

Houses of Justice in Wallonia-Brussels federation (2010-2015)[50]

Supervision and mediation mandates	2010	2011	2012	2013	2014	2015
ADP*	2679	2699	2713	2876	2847	3031
Probation	3011	2933	2607	3021	3155	3602
Work as autonomous penalty	6308	5593	5591	6062	6115	6590
Prison	693	684	658	628	651	676
Electronic monitoring	1511	1454	1290	2071	2280	2625
Penal mediation	3246	3410	3137	3201	3316	3452
TOTAL	**17.448**	**16.773**	**15.996**	**17.859**	**18.364**	**19.976**

** ADP: alternatives to pre-trial detention.*

Evolution of the number of supervision and guidance mandates by sector All Belgian Houses of Justice (2010-2014)[51]

Supervision and mediation mandates	2010	2011	2012	2013	2014
ADP*	4436	4694	4495	4846	4982
Probation	6511	6513	6231	6969	6873
Work as autonomous penalty	10529	9332	9556	9903	10.457
Prison	1794	1880	1717	1582	1528
Electronic monitoring	2377	3688	3238	4735	5030
Penal mediation	6315	6722	6356	6476	6705
TOTAL	**33.062**	**33.739**	**31.593**	**34.511**	**35.575**

** ADP: alternatives to pre-trial detention.*

Although alternatives for remand custody seem to be applied quite often (in 2015 a record number of 5.324 new supervision orders handled by the Probation Service was reached; 4.982 in 2014), they did not (substantively) reduce the number of detainees in remand custody. The use of imprisonment and fines (which constitutes about 70 % of all sentences) still constitutes by far the favourite solution to the criminal problem.

The situation for foreigners is particularly of concern due their high proportion among the prison population. In particular, with respect to pre-trial detention and its alternatives, this issue seems to be a major challenge for the future. As recent research has shown, alternatives are much less frequently granted to non-nationals, since foreign origin or nationality is a stable predictor of pre-trial detention (remand in custody). Another challenge is the large number of drug-related offenses leading to an arrest warrant, probably due to border traffic.

[50] Administration Générale des Maisons de Justice, Rapport Annuel 2016, SPF Justice 2017.
[51] Justitiehuizen Jaarverlag 2014, p. 64-66.

3. Disclosure of information

3.1. Confidentiality of preliminary investigation

Under Belgian law (Code of Criminal Procedure), the secrecy of the instruction (pre-trial investigation phase) is imposed on any person called upon to lend his professional assistance to the instruction. Anyone who violates this secret is punished by the penalties provided for in Article 458 of the Penal Code. The violation of the secrecy of the instruction is punishable with an imprisonment of eight days to six months and a fine of 100 to 500 euros. This measure may apply to judges, prosecutors, investigators, court clerks, and all persons employed by them. Neither the defendant nor third parties (including civil parties) nor journalists are bound by the secrecy of the investigation.

If the secrecy of the instruction "imposes itself" on the accused, it is in the sense that he will have access to the file and the information collected in the course of the investigation only within the limits fixed by the law. However, the accused (and his lawyer) are in no way bound by the secrecy of the investigation. The accused is therefore totally free to disclose to third parties the information that he has known at the discretion of the investigation. The only restrictions to these disclosures are those imposed by the Act of 12 March 1998 on access to the file, in the sense that the accused can make use of the information obtained by consulting the file only in the interests of its defence and provided s/he respects the presumption of innocence and the rights of defence of third parties.

However, since the Dutroux affair and the adoption of the so-called “Franchimont law”[52], the Public Prosecutor is allowed to communicate, with the agreement of the investigating judge (who cannot communicate with any media) and when the public interest so requires, information to the press about cases in the course of investigation. In this case, the Public Prosecutor must ensure the respect of the presumption of innocence, the rights of defence of the accused, the victims and third parties, as well as the privacy and dignity of persons[53]. And, to the extent possible, specifies the law, the identity of the persons mentioned in the file is not communicated.

As a corollary to this exception, the law specifies that "the lawyer" (without distinction between the lawyer of the accused or the plaintiff) may, when the interest of his client so requires, communicate information to the press. It is strange that the legislator thought it necessary to make this clarification since, as stated above, this right was not in dispute. This, however, was an opportunity to set some limits to the public intervention of the lawyer. The law specifies that, as for the prosecutor, the lawyer must ensure respect of the presumption of innocence, rights of defence of the accused, victims and third parties, privacy, dignity of persons and abide by the rules of the profession.

The secret of the instruction has a double justification. The disclosure of certain elements of the investigation could make hamper or even destroy the entire investigation. In fact, if third parties involved in the case are informed of what the investigators are doing, they could take measures to avoid prosecution. The other aim is to guarantee a fair trial for the person prosecuted and to ensure the effective respect of his presumption of innocence and to guarantee, if possible, the protection of his private life and honour.

The secrecy of the investigation is in no way binding on the press, whose mission is neither to carry out a police investigation with a view to finding the culprits, nor to bring them to trial before a court. The European Court of Human Rights has often recalled the right of the media to report on ongoing court cases, as well as the right to assess and criticize the way in which judges carry out their duties, which may include a certain amount of exaggeration, provocation or even harshness.

[52] Loi améliorant la procédure pénale au stade de l'information et de l'instruction, 12 mars 1998.
[53] Jacques Englebert «le secret de l’instruction», 24 mai 2009, publié sur le site www.justice-en-ligne.be.

Moreover, in Belgium, there is no legal framework requiring the respect of the presumption of innocence to journalists. Only one single legal prohibition: the disclosure of the identity of a minor involved in a court file. In other words, to be presumed innocent is a right that the defendant can assert with respect to the judiciary, not the media. Journalists are held to it only by virtue of their ethical obligation to respect the facts[54]. For some observers, this deontology based on self-regulation is insufficient[55]. It is true that once images are published and information disclosed about a suspect or accused, the damage is considerable. The harm is done, the public opinion forged.

France provides us with an enlightening example of a transition from the simple self-regulation with a strict legal framework when the law of 15 June 2000 was passed reinforcing the presumption of innocence[56]. Part of the legislation is dedicated specifically to media and communication. It provides, inter alia, that: "Where a person is, before any conviction, publicly presented as guilty of facts under investigation, the judge may prescribe any measures, such as the publication of a rectification notice or the dissemination of a news release to stop the infringement of the presumption of innocence". Moreover, the publication of pictures showing suspects or accused handcuffed or placed in custody is punishable by a very heavy fine (€ 15,000).

3.2. Wanted person notice: how does it work?

In accordance with Ministerial Directive C-2005/09521 of 01/07/2005[57], the dissemination of wanted or "red" notices to the public is a task reserved for the Wanted Notice Service of the Federal Judicial Police (Central Directorate of Judicial Police Operations).

These notices are produced by the Wanted Notice Service and disseminated by various means to a broad range of media (audio-visual and printed media, websites, social media, etc.).

The notices appearing on the website of the Federal Judicial Police are published at the request of the public prosecutor's office or the investigating magistrate in charge of the case. As soon as the suspect is identified and / or arrested, the Wanted Notice Service withdraws the relevant notice from the Federal Police website, unless the investigating magistrate decides otherwise to obtain further evidence.

The Federal Police has partnership agreements with RTBF and VRT (French-speaking and Flemish-speaking Public Broadcasting Services), as well as with private TV stations such as RTL-TVI (crime clips) and VTM (Faroek broadcasts). The wanted notices are made available to other media via the Belga press agency. These media are therefore free to publish and disseminate these notices, which is often the case.

With regard to the dissemination of wanted notices on the Internet, the media are asked to relay these notices exclusively via the Fedpol Belgium Youtube channel in order to guarantee the validity and updating of the information.

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[54] Martine Simonis «La lettre de l'AJP» n°97, octobre 2008. According to the case law, the fact that a journalist publishes a judicial document communicated to him by a person bound by the secrecy of the investigation (police officer, magistrate, etc.) does not make him thereby a co-perpetrator or an accomplice of the breach of professional secrecy. On the other hand, if the information that the press reveals on this occasion subsequently appears to be incorrect, it may be held liable for slander or defamation, provided that the sanction does not constitute an excessive limitation in the exercise of freedom of expression. According to the European Court of Human Rights, only restrictions that meet a "pressing social need" are admissible.

[55] K. Lemmens et S Van Drooghenbroek «La présomption d'innocence face à la médiatisation des procès » in « Médias et droit », Anthemis 2008. See also Droit des médias et de la communication: Presse, audiovisuel et Internet, François Jongen, Alain Strowel, Larcier, 2017.

[56] The so-called Law «Guigou» from the name of the French Minister of Justice Elisabeth Guigou.

[57] Directive ministérielle concernant la diffusion d'avis de recherche judiciaires dans les médias et sur internet, 1er juillet 2005 (www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005070130&table_name=loi).

3.3. The trial phase: publicity of hearings and decisions

Article 148 of the Belgian Constitution states that court hearings are public[58]. In other words, transparency and publicity of judicial activity in the trial stage are considered as fundamental guarantees of the rule of law[59]. Every citizen must therefore have the opportunity to attend hearings and to monitor the manner in which the judge exercises his/her function. This rule however, is not absolute and there are exceptions.

The publicity of the hearing may be removed when it is likely to undermine public order or morality[60]. The hearings then must proceed "in camera". It is usually requested by one of the parties who wishes to avoid giving publicity to the trial (i.e. victim or perpetrator in a trial for offenses of manslaughter) but can also be decided by the Tribunal (for example in case of highly mediatised trials in which the agitation is detrimental to the serenity of the debates).

Besides the publicity of the debates, the judge is also obliged to pronounce publicly his decision[61]. This rule suffers no exception[62].

In Belgium, judicial scandals triggered important changes in the way judges and prosecutors (or, in some cases, their representatives) perceived the need to communicate with the media and the public in the course of an ongoing trial. Most notably following the aftermath of the Marc Dutroux case, members of the judiciary became more aware of the importance of using communication strategies in order to improve comprehension and acceptance of their decisions and activities as well as to manage and streamline the way they relate to the media[63].

For instance, the country has evolved from a position that was originally similar to the French or Spanish one, where any judge or prosecutor could communicate with the media, to one where a number of press-judges and press-prosecutors have been specifically designated and trained for this purpose[64]. In December 2011, a national platform was created in Belgium for all press judges and spokespersons for the prosecutor's office. The aim of this platform is to ensure easy and informal contacts between these spokespersons, to review the existing press guidelines or communication protocols, to elaborate a regular exchange of experiences between all the stakeholders (e.g. media and bar association) and to create a national spokesman's office.

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[58] This right is also guaranteed by Article 6 of the European Convention on Human Rights and by Article 14 of the International Covenant on Civil and Political Rights.

[59] The rising influence of the European Court of Human Rights (ECHR) in Strasbourg over European justice systems contributed to the development of the "appearance doctrine" and the view that "not only must Justice be done; it must also be seen to be done" (see in particular ECHR, Case of Delcourt v. Belgium 1970). The European Court acknowledged "the increased sensitivity of the public to the fair administration of justice" (ECHR, Case of Borgers v. Belgium, 1991), leading to changes in communications practices among courts throughout Europe.

[60] Article 148 §2 of the Constitution.

[61] Article 149 of the Constitution.

[62] The ECHR also stresses the importance of making decisions accessible to the public by explaining them. In the case of Taxquet v. Belgium in 2010, it was ruled that: "For the requirements of a fair trial to be satisfied, the accused, and indeed the public, must be able to understand the verdict that has been given; this is a vital safeguard against arbitrariness. As the Court has often noted, the rule of law and the avoidance of arbitrary power are principles underlying the Convention. In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society."

[63] See: Justice, Society and the Media - ENCJ Report 2011-2012; "Judicial communication and professional ethics. Renewing the relationship between the judiciary and the public", Team France 4, Louise Chrétien | Arthur de Peretti-Schlomoff | Yoann Viguier, European Judicial Training Network, 2015.

[64] «La formation des magistrats en matière de Média et Justice – relations et coopération à la lumière de l'affaire Dutroux» by Philippe Morandini, Lisbon Network, ENCJ, 2008 (www.coe.int/t/dghl/cooperation/lisbonnetwork/rapports/RL-2008-7-Morandini_fr.pdf).

4. Legal impact of proceedings on suspects and accused

4.1. Pre-trial detention

4.1.1. Impact on the person's employment status

Under Article 28 (5) of the Employment Contracts Act of 3 July 1978[65], performance of the contract is automatically suspended during the period in which the worker is subject to a pre-trial detention. The defendant should transmit to his/her employee a certificate of detention (delivered by the penitentiary administration upon his/her entry in prison). Failing to transmit this document might lead to his/her dismissal for unjustified absence at work.

Suspension of the employment contract means that, during the period of pre-trial detention, the employer does not pay any remuneration to the employee subject to this measure. Similarly, in the event of notice being given by the employer prior to or during the suspension due to pre-trial measures of deprivation of liberty, this notice does not run during the suspension (Section 38 (1) of the Act of 3 July 1978). This new regulation was introduced by the Act of 29 November 1983. On the basis of these provisions, a pre-trial detention measure does not terminate the employment contract in itself. Such deprivation of liberty cannot be interpreted as an expression of the worker's desire to terminate his/her employment contract. It should be noted that the worker must, as far as possible, notify his/her employer as soon as possible of his absence. If he neglects to do so, this may be considered a reason of contract's breach.

Article 28 (5) does not address the consequences of deprivation of liberty following a final judgment. The employer cannot always rely on the mere fact of such judgment to put a term to a contract. It is always required that the termination is grounded on facts which have an impact on the performance of the contract of employment, and which render definitively and immediately impossible the professional collaboration. The employer could seek the termination of the employment contract in court on the basis of the non-performance of the obligations that the worker must provide under the employment contract. It is also always possible to terminate the employment contract subject to compliance with the notice period. This notice period may run during the period when the worker is imprisoned following a final conviction.

And a dismissal for serious grounds on the basis of the facts that justified the pre-trial detention of the employee? The employer might seek termination of the contract and decide the dismissal for serious grounds if the alleged misdeed of which the employee is accused makes any professional collaboration immediately and definitively impossible[66].

As we have said, the mere fact of pre-trial detention cannot justify dismissal for serious grounds of misconduct. On the other hand, the charges brought against the employee that justified his/her pre-trial detention may justify a dismissal for serious grounds. For example, the alleged involvement of a worker in a fraudulent case related to vehicles while vehicles trade is specifically the employer's business. In fact, the employer could not, as a dealer, absolutely allow itself to be called in question in this respect.

[65] See also Question et réponse écrite n° : 0260 - Législature : 48, de Vanleenhove G (CVP) au Ministre de l'Emploi et du Travail, chargé de la politique d'égalité des chances entre hommes et femmes, 13/12/1993 (www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=48&dossierID=48-b092-12-0260-1993199400504.xml).

[66] See also: Peut-on licencier pour motif grave un travailleur qui est en détention préventive?, Securex, 01/03/2017 (www.securex.eu/lex-go.nsf/vwNewsWgsoc_fr/693B1C4816B29B87C12580D6003136FA?OpenDocument#.WmDg7HZG2M8).

In conclusion, the facts underlying the detention on remand may justify dismissal for serious grounds but they must be proven by the employer. The conviction or acquittal of the worker by the criminal court will therefore influence the assessment of the dismissal on serious grounds by the labour courts.

4.1.2. Impact on the person's healthcare and social security status

Upon entry into prison, the pre-trial detainee receives a certificate of detention delivered by the penitentiary administration. From the start of detention, this document should be transmitted to the organisms in charge of allowances payment (mutuality, syndicate, etc.) to inform them about this new status. If it is not done, the detainee and/or his/her family would receive revenues/allowances of which they are not entitled to anymore and be obliged to reimburse afterwards.

Unemployment allowances / compensation for unemployment

In case of pre-trial detention, the same rule (suspension) as for employment contract applies[67]. This means that the unemployed person perceiving allowances cannot receive them during the period of pre-trial detention. The ONEM has been keeping statistics since January 2010 on the number of prisoners for whom the right to unemployment benefits was suspended because of their imprisonment. For the period from January 2010 to September 2013, there were 88 people in this case. In this respect, it is impossible to distinguish between persons who are in remand, convicted or interned. In case of acquittal, the defendant has no right to claim the unpaid amount of unemployment benefits.

Minimum livelihood allowance (Minimex)

As for unemployment allowances, recipients of the Minimex see their benefits suspended while in pre-trial detention, unless they have dependent(s).

Sickness and disability allowances

Since the adoption of a new Act that entered into force on 1st July 2015[68], the payment of such allowances is also suspended in case of pre-trial detention. Before this measure was adopted, if the defendant was entitled to a sickness or disability allowance, s/he continued to receive it as long as the Mutual Health Insurance Funds to which s/he was affiliated recognized his/her incapacity for work. Inmates with a dependent were receiving the full amount; a single person, half the allowance. In 2015, 1.600 out of the 12.000 Belgian prisoners were benefiting from sickness and disability compensatory allowances.

Pension

If the defendant is entitled to a pension allowance, the first year s/he continues to benefit from it. Then the payments are suspended until the end of the detention.

Family/Child allowances

As for the convicted detainee, the person held in remand retains the right to family allowances[69].

However, **if the defendant in pre-trial detention is a student**, his/her parents or the student itself cannot benefit from family allowances during the period of detention.

The parents or the student must inform the organism in charge of the payment of family allowances and provide a certificate of detention delivered by the penitentiary administration. They should also inform the direction of the school, education centre or university about this status.

[67] Question et réponse écrite n° : 0741 - Législature : 53, Zuhal Demir (N-VA) au Ministre de l'Emploi, 14/01/2014 (www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=53&dossierID=53-b148-672-0741-2013201416020.xml).

[68] Dès le 1er juillet les détenus n'auront plus droit aux indemnités maladies, Alain Lechien, RTBF, 29 mai 2015 (www.rtbf.be/info/belgique/detail_les-detenus-n-auront-bientot-plus-droit-aux-indemnites-maladies?id=8992693).

[69] See: www.socialsecurity.be/citizen/fr/famille/allocations-familiales-specifiques/allocations-familiales-pour-detenus.

Medical examination

As previously mentioned, any pre-trial detainee - and, in general, any person deprived of liberty - has the right to health care that is equivalent to the level of health care provided in the free society and which is adapted to his specific needs.

As a general rule, the penitentiary administration is required to ensure a regular medical monitoring of prisoners. The law specifies that any person entering prison must be presented to a doctor within twenty-four hours of his/her arrival.

During the course of his/her detention, the inmate may also ask for a medical examination with a general practitioner or a specialist, by submitting a written request to the prison supervisors.

As for costs, medical care and pharmaceuticals are fully covered by the prison administration. This principle of free health care extends to all examinations or treatments provided by specialists as well as to various prostheses (except dentures and glasses). However, this free service only refers to the necessary consultations and care provided by the medical staff attached to the prison. As a result, when an inmate wants to consult an outpatient physician/doctor, he or she must bear the costs of the consultation as well as the pharmaceuticals prescribed.

4.1.3. Impact on the person's family status and relationships

The Law of Principles of 12 January 2005 (Dupont Act) recognises the right of the detainee to maintain contact with the outside world and to receive visits (Article 53 and Articles 58-63). In line with the International Convention on the Rights of the Child[70], the Dupont Act[71] recognises the maintenance of the family relationship with the detained parent as a fundamental right of the child (except when contrary to his/her own interest).

Despite this, it is frequently mentioned that one out of two children never visits the detained parent[72]. It is estimated that more than 76,000 people are affected by the imprisonment of a relative in Belgium, including at least 12,000 minor children concerned by the detention of a parent. In 80 % of cases, it is the father[73].

Several NGOs Relais parents-enfants are working to facilitate and maintain family ties between the detainee and his child, by organising in coordination with the prison administration individual and family interviews, as well as parent-child visits that are convened in addition to other visits granted to inmates[74].

4.2. Pre-trial detention under electronic monitoring

For persons under EM (as a modality of execution of pre-trial detention as well as other forms), there is generally no obstacle to the collection of unemployment benefits as well as all other social allowances previously mentioned. The only exception applies to the minimal living allowance ('leefloon'). They are not entitled to receive such benefits, which free citizens without income

[70] Article 9, International Convention on the Rights of the Child, 1989, states the right for a child to grow up with family and to maintain personal relationships with his/her parents.
[71] See Article 53 : «Le détenu a le droit d'avoir des contacts avec le monde extérieur dans les limites fixées par ou en vertu de la loi.» and Article 60 «Le chef d'établissement veille à ce que la visite puisse se dérouler dans des conditions qui préservent ou renforcent les liens avec le milieu affectif, en particulier lorsqu'il s'agit d'une visite de mineurs à leur parent.»
[72] Rapport d'activité du projet Itinérances 2016, Croix Rouge de Belgique, 2017.
[73] INSEE. L'histoire familiale des hommes détenus. Synthèses, 59, 2002.
[74] See: www.relaisenfantsparents.be. This NGO also works to enable the best possible development of the child in minimizing the damage caused by parental incarceration and that give parents the opportunity to promote better social rehabilitation by maintaining these links with their child(ren). The project "Itinérances" consists of a network of volunteers who accompany children to visit their detained relatives. This project is conducted in collaboration with the Houtman Fund (ONE) and with the support of the French Community Assistance for prisoners.

normally receive. Instead, they are entitled to receive a 'financial allowance'[75] but this does not equate to the minimal living allowance. The organisation of the payment raises a lot of practical issues, which may have far reaching consequences for monitored individuals[76].

However, paradoxically, the modalities of execution of pre-trial detention under EM are stricter that those applied for the execution of sentences under EM. In the latter case, conditions of surveillance may be adapted if the monitored convicted is employed, enrolled on an educational programme or participating in a therapeutic programme (non-curfew hours may be up to 12 hours a day during the week instead of the standard permission from 8.00 to 12.00).

On the contrary, suspects held in pre-trial detention "at home" under electronic monitoring are confined to their house at all times. They are not allowed to leave the assigned place of residence except for a limited number of movements explicitly permitted by the investigating judge and for specific reasons (medical reasons, in case of force majeure, or in relation to the criminal investigation process (e.g., hearings by judicial authorities and police interrogations). Electronic monitoring in the pre-trial stage thus appears to be a form of '24-hour home detention'. Consequently, it is not possible for persons placed under such measure to keep their work or to be enrolled on an educational programme.

Furthermore, the investigating judge may also impose additional prohibitions on the accused placed under electronic surveillance. The judge may prohibit the accused from being visited by certain persons or prohibit any correspondence or telephone or electronic contact with certain persons or institutions.

[75] L'"allocation entretien détenu" may be requested to the Centre for Electronic Monitoring, in the relevant Community (Brussels-Wallonia Federation or Flemish Community).

[76] Bulletin n° : B061 - Question et réponse écrite n° : 0378 - Législature : 53, de Sabien Lahaye-Battheu, Open Vld au Ministre de la Justice, 09/03/2012 (www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=53&dossierID=53-b061-670-0378-2011201207766.xml).

5. Practical impact of proceedings on suspects and accused

Testimonies provided by suspects and accused which were subjected to pre-trial custodial measures and then acquitted, often largely relayed by the media[77], clearly demonstrate the serious financial, social and psychological harm they suffered in the course but also after the termination of this measure.

Especially in high profile cases (be it for the public notoriety of the suspect or for the gravity of the alleged crimes he/she was accused to have committed[78]), the damages can be even harsher. Usual consequences of pre-trial detention are dismissal from work, end of professional career, loss of sources of income (such as social benefits or allowances whose payment was suspended), broken family ties (spouse/husband or children) as well as social exile or banishment.

Admittedly, in case of "ineffective" pre-trial detention, that is to say when pre-trial detention has not been followed by a conviction, a law provides for compensation. As we have seen, the compensation is calculated on the basis of the number of days of imprisonment and according to the income of the person concerned. In this regard, for defendants without income or benefiting from modest revenues, financial compensation might appear derisory. Furthermore, the compensation provided only tackle the financial loss but there is no way to compensate for the social and psychological harm suffered.

In case of execution of pre-trial detention under electronic monitoring, the strict conditions of control and curfew imposed also have a strong harmful impact on the professional, educational, social and familial status. It is not by chance that persons subjected to such measure and then acquitted can also pretend to financial compensation and submit claims according to the same procedures foreseen in case of "ineffective" pre-trial detention.

[77] See for example: Le débat sur la détention préventive relancé par un témoignage poignant, Rédaction RTBF, 20 mars 2012 (www.rtbf.be/info/societe/detail_le-debat-sur-la-detention-preventive-relance-par-un-temoignage-poignant?id=7733793). See also: http://deredactie.be/cm/vrtnieuws/binnenland/1.1247001.

[78] See for example the case of Karim Ahalouch, who was accused of being involved in the Verviers terrorist cell and spent several months in pre-trial detention before being released under conditions and then acquitted of all charges. L'"ami" des terroristes de Verviers se confie à "La Libre": "J'ai vraiment songé à me suicider », Jacques Laruelle et Jean-Claude Matgen, La Libre, 7 février 2017 (www.lalibre.be/actu/belgique/l-ami-des-terroristes-de-verviers-se-confie-a-la-libre-j-ai-vraiment-songe-a-me-suicider-5898cef8cd70e747fb8f54bd).

6. Assessment of the impact of proceedings by the competent authorities

Before deciding on the measure to take concerning a suspect, the investigating judge may ask a probation officer (*assistant de justice*) to conduct a preliminary inquiry (brief information report or social enquiry) into the need for pre-trial detention or the suitability of an alternative measure such as release under conditions[79]. The judge may also request this social report about somebody who is already in prison and whom he hesitates to release. This investigation option is used less frequently, however.

In a **brief information report**, the justice assistant assesses the attainability of a certain alternative measure to pre-trial detention. For example, if the defendant is able to perform such measure considering his/her professional situation, family situation or state of health.

A **social inquiry** is a more general investigative work aimed at situating the alleged offence in a larger psycho-social context. In collaboration with the defendant and his/her family and social environment, the justice assistant can thus propose an individualized, restorative and future-oriented measure as well as evaluate the potential impact of the relevant proceedings on the defendant's life.

Such optional procedure allows the judicial authorities, with the assistance of the probation services (*maisons de justice*), to envisage the measure to be decided in light of the specific personal context of the defendant as well as its potential social and economic consequences on the life of the accused. However, this option is scarcely used (and its use has even decreased over the years) in case of alternative measures to pre-trial detention.

Evolution of the number of social enquiries and brief information reports (new entries) by sector Houses of Justice in Wallonia-Brussels federation (2010-2015)[80]

Social enquiries and brief information reports	2010	2011	2012	2013	2014	2015
ADP*	202	184	162	145	119	62
Probation	638	514	462	431	380	304
Work penalty	1579	1239	1137	800	835	540
Prison**	1826	1728	1772	1959	1781	1943
Electronic monitoring	2438	2260	1914	502	413	397
TOTAL	**6683**	**5925**	**5447**	**3837**	**3528**	**3246**

** ADP: alternatives to pre-trial detention*

*** Social enquiries of brief information reports requested in view of a possible release under conditions from prison.*

[79] Art. 35, paragraph 1, Act on Pre-Trial detention.
[80] Administration Générale des Maisons de Justice, Rapport Annuel 2016, SPF Justice 2017.

Evolution of the number of social enquiries and brief information reports (new entries) by sector All Belgian Houses of justice (2010-2014)[81]

Social enquiries and brief information reports	2010	2011	2012	2013	2014
ADP*	316	243	224	232	202
Probation	1852	1640	1550	1812	1651
Work penalty	2438	2145	1691	1477	1389
Prison**	3541	3377	3443	3661	3374
Electronic monitoring	5237	4999	3964	774	556
TOTAL	**13.384**	**12.404**	**10.872**	**7956**	**7172**

** ADP: alternatives to pre-trial detention*

*** Social enquiries of brief information reports requested in view of a possible release under conditions from prison.*

As demonstrated by the table, the number of social inquiries requested by judicial authorities in the pre-trial stage (in respect of the number of persons placed in pre-trial detention or released under conditions before trial) is quite low. The number of social inquiries even dropped to its lowest level in 2015, when only 112 social inquiry requests were reported, while in the same year a total of 11.085 pre-trial detention orders were issued and 5.324 new mandates of supervision and monitoring of releases under conditions were ordered and executed by a probation officer[82]. The maximum period of 48 hours within which the judge must decide to deprive a suspect of his freedom seems to explain the lack of social inquiry requests, as they usually take a few days to complete.

Considering that the average daily population in pre-trial detention has not decreased significantly despite the popularity and enhanced rate of implementation of alternative measures, it seems that these alternatives supplement, rather than replace, classic pre-trial detention and contribute to a net-widening effect[83]. Taking into account all the numbers of people placed under one or another form of judicial control in the pre-trial stage at a certain point of time of the year (pre-trial detention in prison or under electronic monitoring, release under supervised conditions), gives a clear image of the impressive growth over time in the use of coercive, custodial or non-custodial measures before final conviction.

[81] Justitiehuizen Jaarverslag 2014, FO Justitie2015, p. 67-74.

[82] Administration Générale des Maisons de Justice, Rapport Annuel 2015, SPF Justice 2016.

[83] It was also clearly demonstrated in a recent NICC research (Burssens, Tange & Maes, 2015) that alternatives to pre-trial detention do not seem to replace incarcerations under remand custody (imprisonment). When a suspect is presented before the investigating judge (first hearing), alternatives are mainly applied in place of a release (maintain in liberty) without any imposed conditions. Not only is there more frequent use of pre-trial detention (remand custody) in cases where a suspect is presented before the investigating judge, but there are also fewer cases of simple releases without conditions among applied modalities of non-detention. A similar tendency is observable when it come to terminating a period of remand custody: although the alternative of release under conditions has a certain success, its main objective does not seem to have been reached (Dieter Burssens, Carrol Tange and Eric Maes, 'Op Zoek Naar Determinanten van de Toepassing En de Duur van de Voorlopige Hechtenis / A La Recherche de D.terminants Du Recours . La D.tention Pr.ventive et de Sa Dur.e' (NICC, Operationele Directie Criminologie 2015).