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COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the
supervision**

**of the execution of judgments and of terms of friendly settlements by the
Human Rights Law Clinic (University of Ghent)**

Jeanty v. Belgium (No. 82284/17)²

² <https://hudoc.echr.coe.int/eng?i=001-202125>



INTRODUCTORY PARAGRAPH

a) Description of the case

In the case of *Jeanty v. Belgium*¹, the European Court of Human Rights (ECtHR) found that Belgium had violated article 3 of the European Convention on Human Rights (ECHR), which prohibits torture and inhuman or degrading treatment or punishment. The case concerned the degrading treatment of the applicant, who is suffering from a psychological disorder, as a result of the lack of medical supervision and follow-up during two periods of pre-trial detention in the prison of Arlon. In addition to this, there also was a disciplinary punishment in solitary confinement for three days, because the applicant had made several suicide attempts. There, the applicant was stripped of his clothes, handcuffed and helmeted and he did not see a doctor in the first 24 hours of his solitary confinement. The case also concerned the lack of an effective investigation in this regard, given the delay between July 2014 and March 2015 in launching the judicial investigation of the case and, subsequently, the few investigative tasks carried out.

The ECtHR decided that the lack of medical supervision and follow-up, in combination with the disciplinary punishment after the suicide attempts, constituted a particularly distressing ordeal and exposed the applicant to an intensity of suffering or deprivation that went beyond the unavoidable level of suffering inherent to detention. In other words, the treatment of the applicant is in fact a degrading treatment. As concerns the lack of an effective investigation, the ECtHR decided that the above mentioned delay and the fact that the parties concerned were not heard, constitute an ineffective investigation.

Lastly, the applicant also claims that Belgium did not fulfil its positive obligation to take measures to prevent the certain and immediate risk to the applicant's life of which they were aware and thus violated article 2 ECHR. However, the ECtHR decided that the authorities did what could reasonably be expected in the circumstances of the case to prevent the danger to the applicant's life to the extent that they were aware of the certain and immediate nature of that danger, i.e. meaning that article 2 ECHR was not violated.

¹ ECtHR, *Jeanty v. Belgium*, No. 82284/17, 31 July 2020. Available at: <https://hudoc.echr.coe.int/eng?i=001-202125>.

b) Description of the organization submitting this communication

This communication has been prepared by the Human Rights and Migration Law Clinic² of the Human Rights Centre at Ghent University.

The Human rights Law Clinic was founded in 2014 at the faculty of law at the Ghent University and aims to fulfil a central social justice role by contributing to the effective protection of human rights, in particular those of disadvantaged persons and groups. As regards the present case, Mr. Jeanty has a vulnerable position due to his status as a detainee and because of his psychosocial condition. To achieve its goal, the Legal Clinic cooperates with a number of partners from civil society that work on human rights and migration law issues.

EXECUTIVE SUMMARY

We recommend that the Belgian State

- Establishes agreements with psychiatrists in the area;
- Creates more places for prisoners with psychiatric vulnerabilities;
- Commits to suicide prevention;
- Creates a general framework with focus points for mental wellbeing;
- Examines by a psychiatric expert when imposing disciplinary sanctions;
- Enables the transfer of powers with regard to penitentiary health care.

KEY ISSUES

Belgium has a structural and systemic problem concerning the detention of offenders with psychological disorders in a prison environment unsuited to their therapeutic needs. While in its action plan the Belgian government makes it seem as if this problem is limited to the prison of Arlon, the jurisprudence of the Court proves that the issue is of a structural nature. In addition, the Committee Against Torture (CAT) has expressed its concern regarding the poor mental health of prisoners and insufficient psychiatric care.³ In 2020 the Central Supervision Board for the Prison System (CTRG) acknowledged that offenders with psychological

² HUMAN RIGHTS CENTRE, Human Rights and Migration Law Clinic, <https://hrc.ugent.be/clinic/human-rights-and-migration-law-clinic/>.

³ Committee Against Torture, “Concluding observations on the fourth periodic report of Belgium”, 2021, para 19, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgy8iEII7EhsMb0if1UiLCzFQkVsnp6wv3HcptNyiJ0fkIFcKYqUU%2fJdPsGpY7MgUUbpD3HokXNFirVVWDpxIfM4OuPOSs7N%2f6OX59A7nQp>.

disorders were often inadequately supported and that in some institutions psychiatric care is almost non-existent and mainly limited to the administration of medication.⁴ It is clear that Belgium's policy concerning detainees with psychological disorders is characterised by severe shortcomings and requires a more thorough approach. A clear, comprehensive framework for mental health is lacking in the Belgian prison system.

Persons with psychological disorders in prisons are entitled to the same standard of health care as any other person in the country.⁵ However, Belgian prisons are unable to provide sufficient health care, especially concerning psychiatric care. There are several causes for this issue. First of all, there is a lack of specialised facilities in Belgium. Since 2014, several Forensic Psychiatric Centres (FPC) have been established.⁶ However, the capacity of these facilities is limited and the waiting lists are too long. As a result, a considerable number of inmates with psychological disorders end up in the psychiatric annex of prisons. Although the stay in this annex should be temporary and transitory, in practice people stay there longer than initially intended.⁷ Often prisoners with specific mental health needs even end up in normal regimes, without special attention to psychiatric health.⁸

Furthermore, the prisons must deal with a lack of human and financial resources.⁹ The Belgian prison system is substantially understaffed.¹⁰ Psychiatric experts and other medical staff are insufficiently available. There is a clear lack of specialised, trained personnel. As a result, the present medical staff is overwhelmed by the extensive workload.¹¹ Research shows that they cannot meet the high demand for health care by inmates.¹² Moreover, payments to external

⁴ CTRG, "Jaarverslag 2020", 2021, p.47, https://ctrg.belgium.be/wp-content/uploads/2021/09/CTRG_Jaarverslag_2020-2.pdf.

⁵ Art. 35 Recommendation no. REC(2004/10) of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder, Committee of Ministers (22 September 2004).

⁶ <https://www.healthybelgium.be/en/key-data-in-healthcare/mental-healthcare/forensic-care/internment>

⁷ Unia, "NHRI Parallel Report and CRPD 33.2", 2021, para 56, https://www.unia.be/files/Documenten/Publicaties_docs/21-12-03-parallel_report_-_CRPD_-EN.pdf.

⁸ CTRG, "Jaarverslag 2020", 2021, p.47, https://ctrg.belgium.be/wp-content/uploads/2021/09/CTRG_Jaarverslag_2020-2.pdf.

⁹ Unia, "NHRI Parallel Report and CRPD 33.2", 2021, para 59, https://www.unia.be/files/Documenten/Publicaties_docs/21-12-03-parallel_report_-_CRPD_-EN.pdf.

¹⁰ CTRG, "Jaarverslag 2020", 2021, p.47, https://ctrg.belgium.be/wp-content/uploads/2021/09/CTRG_Jaarverslag_2020-2.pdf.

¹¹ Unia, "NHRI Parallel Report and CRPD 33.2", 2021, para 59, https://www.unia.be/files/Documenten/Publicaties_docs/21-12-03-parallel_report_-_CRPD_-EN.pdf.

¹² Belgian Health Care Knowledge Centre, "Organisation of health care in Belgian prisons", 2017, p.19, https://www.researchgate.net/publication/320616637_Organisation_of_health_care_in_Belgian_prisons.

medical staff are frequently made with serious delays, which further reduces the health care availability.¹³ This all has a negative impact on the quality of health care that can be offered. Multiple bodies of international organisations have urged Belgium to take action on this point.¹⁴

Medical care in Belgian prisons is also known to adopt symptomatic practices.¹⁵ The lack of a holistic approach and comprehensive, individual treatment plans for prisoners has repeatedly been acknowledged as a key issue.¹⁶ Therefore, communication and coordination between healthcare providers also remains an area of concern.¹⁷

Further, the number of suicide attempts in Belgian prisons remains worrisome. Belgium has one of the highest prison suicide rates in Europe.¹⁸ 33% of all prison deaths in Belgium are a result of suicide.¹⁹ Two main elements can explain these figures. First, a lot of detainees were exposed to certain vulnerabilities before entering the prison.²⁰ A substantial part of the prison population deals with psychological disorders and/or substance abuse.²¹ These two factors contribute to a higher risk of suicide. Second, detainees are faced with some prison-specific challenges. Imprisonment itself leads to isolation, a lack of autonomy and a lack of purposeful

¹³ NGO Consortium, “Alternative Report presented to the UN Committee Against Torture ahead of the consideration of the 4th periodic report of Belgium”, 2021, para. 80, <https://www.fiacat.org/en/publications-en/reports/geographic-reports/europe/2977-cat-belgium-reviewed-by-the-committee-against-torture>.

¹⁴ Committee Against Torture, “Concluding observations on the fourth periodic report of Belgium”, 2021, para. 20, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgy8iEII7EhsMb0if1UiLCzFQkVsnp6wv3HcptNyiJ0fklFcKYqUU%2fJdPsGpY7MgUUbpD3HokXNFirVVWDpxIfM4OuPOShs7N%2f6OX59A7nQp> and European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, “Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants”, 2018, p.41, <https://rm.coe.int/16807913b1>.

¹⁵ Commissie van Toezicht Brugge, “Jaarverslag Commissie van Toezicht bij de gevangenis van Brugge”, 2020, p.24, https://ccsp.belgium.be/wp-content/uploads/2021/06/05_Jaarverslag-2020-CvT-Brugge_DEF.pdf.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ M.F. AEBI and M.M. TIAGO, “Prisons and Prisoners in Europe 2020: Key Findings of the SPACE I report”, *Council of Europe and Université de Lausanne* 2021, p.19 https://wp.unil.ch/space/files/2021/06/210329_Key_Findings_SPACE_I_2020.pdf.

¹⁹ L. FAVRIL, K. AUDENAERT, G. PORTZKY and F. VANDER LAENEN, “Suïcidaal gedrag in Belgische gevangenis: overzicht en geïntegreerd preventiemodel”, *Tijdschrift voor Psychiatrie* 2022, afl. 64, p.167.

²⁰ L. FAVRIL, F. VANDER LAENEN, C. VANDEVIVER and K. AUDENAERT, “Suicidal ideation while incarcerated: Prevalence and correlates in a large sample of male prisoners in Flanders, Belgium”, *International Journal of Law and Psychiatry* 2017, afl. 55, p.19.

²¹ Ibid.

activity.²² We can conclude that detainees evidently form a vulnerable group and require access to specific mental health care.²³ Research further shows that 80% of suicides in Belgian prisons are committed by inmates with psychological disorders.²⁴ Additionally, it indicates that adequate treatment and management of psychological disorders is likely to reduce the risk of suicidal behavior.²⁵ The WHO has urged Belgium to take urgent action on this point and to provide adequate mental health care to detainees with psychological disorders.²⁶

A final remark considering the treatment of persons with a need for psychiatric care in prisons concerns the use of disciplinary sanctions. Often prison management issues disciplinary sanctions without a preliminary examination of the accountability of the individual involved. Several independent complaints commissions have already ruled that a prior assessment by a psychiatric expert is necessary when considering disciplinary sanctions for a person with a known or suspected psychological disorder.²⁷ It is worth noting that the Directorate General Penitentiary Institutions (DG EPI) had also previously recommended an assessment by a psychiatric expert prior to initiating a disciplinary procedure. DG EPI recommended this assessment in its guidelines of August 2020 and March 2021.²⁸ However, DG EPI issued guidelines in April 2021 which no longer require this prior assessment by a psychiatric expert.²⁹ These guidelines leave all discretionary power in the hands of the management and thus directly conflict with the case law of the independent complaints commissions and the Council of State.

Moreover, disciplinary sanctions are often the main reaction to suicide attempts in prisons. Various cases where this practice was used, were presented before the independent complaints commissions. These bodies have ruled that the imposition of a punitive cell sanction following

²² L. FAVRIL, F. VANDER LAENEN, C. VANDEVIVER and K. AUDENAERT, “Suicidal ideation while incarcerated: Prevalence and correlates in a large sample of male prisoners in Flanders, Belgium”, *International Journal of Law and Psychiatry* 2017, afl. 55, p.20.

²³ L. FAVRIL and F. VANDER LAENEN, “Suicidepreventie in de Belgische gevangenis: een stand van zaken”, *Neuron* 2018, afl. 9, p.23.

²⁴ L. FAVRIL and F. VANDER LAENEN, “Suicidepreventie in de Belgische gevangenis: een stand van zaken”, *Neuron* 2018, afl. 9, p.22.

²⁵ L. FAVRIL, F. VANDER LAENEN, C. VANDEVIVER and K. AUDENAERT, “Suicidal ideation while incarcerated: Prevalence and correlates in a large sample of male prisoners in Flanders, Belgium”, *International Journal of Law and Psychiatry* 2017, afl. 55, p.26.

²⁶ D. AVONTS, “Mortaliteit in Europese gevangenis”, *Huisarts Nu* 2020, afl. 3, p.104.

²⁷ Klachtencommissie Antwerpen 29 juli 2021, KC02/21-0049, p.6, <https://rechtspraak.ctrg.belgium.be/files/attachments/KC0221-0049.pdf> and Nederlandstalige Beroepscommissie 25 februari 2022, BC/21-0149, p.5, <https://rechtspraak.ctrg.belgium.be/files/BC21-0149.pdf>.

²⁸ Klachtencommissie Antwerpen 29 juli 2021, KC02/21-0049, p.5, <https://rechtspraak.ctrg.belgium.be/files/attachments/KC0221-0049.pdf>.

²⁹ Ibid.

a suicide attempt is a violation of international standards concerning human dignity. Thus, these disciplinary sanctions were considered unreasonable and were nullified. However, this situation keeps presenting itself. The Committee for the Prevention of Torture (CPT) has also expressed its worry concerning the use of punitive cell sanctions for detainees with psychological disorders. It deems this practice to be a violation of the right to respect for human dignity.³⁰ Additionally, the supervisory committee of Bruges stated in 2020 that punitive cells cannot be considered an alternative to the structural lack of qualitative psychiatric care.³¹ They believe that these practices are ineffective in any way if they are not accompanied by psychological counselling.³² In this regard, the CPT notices that the lack of medical personnel is also a relevant factor here.³³

We can conclude that there is in fact a structural problem concerning the detention of offenders with psychological disorders. This problem is not limited to the prison of Arlon. Moreover, this multi-faceted problem requires a comprehensive approach and sufficient attention. For this reason, we recommend that the Committee of Ministers follows the enhanced procedure for the supervision of the implementation of the Action Plan in question.

INDIVIDUAL MEASURES

We have no comments regarding the individual measures contained in the Action Plan.

GENERAL MEASURES

In the Action Plan, the Belgian government acknowledges the shortage of doctors and psychiatrists in the care provided in the prisons. The government also recognises the need to reform the psychiatric healthcare provided in prisons in order to align the quality and accessibility of healthcare in prisons with the healthcare that is available in the outside world. In addition, it is proposed by the government to improve the medical care for detainees when they first arrive in prison: the first medical assessment, carried out on arrival of the prisoners,

³⁰ European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, “Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants”, 2018, p.40-41, <https://rm.coe.int/16807913b1>.

³¹ Commissie van Toezicht Brugge, “Jaarverslag Commissie van Toezicht bij de gevangenis van Brugge”, 2020, p.19, https://ccsp.belgium.be/wp-content/uploads/2021/06/05_Jaarverslag-2020-CvT-Brugge_DEF.pdf.

³² Ibid.

³³ CTRG, “Het gebruik van straf- en beveiligde cellen in de Belgische gevangenissen”, 2021, p.20, https://ctr.g.belgium.be/wp-content/uploads/2021/10/Strafcellen_2021_NL.pdf.

must come from a holistic approach to examine all the physical, psychic and social problems of the incoming prisoner. On the basis of this assessment, an individual care plan can be drawn up.

Although we welcome the above mentioned general measures, we urge the government to take further action in order to provide adequate psychiatric healthcare in prison. Therefore we provide the following list of recommendations:

1. Establishing agreements with psychiatrists in the area
2. Creating more places for prisoners with psychiatric vulnerabilities
3. Committing to suicide prevention
4. Creating a general framework with focus points for mental wellbeing
5. Examination by a psychiatric expert when imposing disciplinary sanctions
6. Transfer of powers with regard to penitentiary health care

1. Establishing agreements with psychiatrists in the area

The Belgian government acknowledges the shortage of psychiatrists within the prison system but the problem extends much further than that. Belgium also has a structural shortage of psychiatrists within general psychiatric health care, the outside world included. Psychiatrists have huge waiting lists, which have only gotten longer due to the impact of the Covid-19-crisis.³⁴

In order to compensate for the shortage of psychiatrists within prisons, agreements can be made with psychiatrists who are located in the vicinity of prisons. To bridge the time in which the shortage in the prison system is being dealt with, psychiatrists in the area can be called in. This could be a solution for prisons like the one in Arlon, so that they can no longer hide behind the fact that in some prisons there is a lack of psychiatrists and therefore no possibility of providing adequate health care.

2. Creating more places for prisoners with psychiatric vulnerabilities

³⁴ D. Bleus and S. Lamote, “Psychiaters en psychologen kunnen de vraag naar psychische hulp niet meer verwerken.”, De Tijd 8 June 2021, <https://www.tijd.be/politiek-economie/belgie/algemeen/psychologen-en-psychiaters-moeten-massaal-patienten-weigeren/10311949.html>

In 2017, the Belgian Health Care Knowledge Centre published its report of the current situation and future scenarios for health care in Belgian prisons. The report stated that Belgium's current policy is to move all prisoners with a psychological disorder, of which the court ruled that they are not accountable for their acts, from prisons to specially adapted psychiatric care centres.³⁵ Currently, Belgium has two FPCs: one in Ghent, which accommodates 264 male patients and one in Antwerp, which accommodates 182 (18 female and 164 male) patients.³⁶ In addition to this, the special unit Levanta in the psychiatric centre Sint-Jan-Baptiste in Zelzate has room for 20 female internees.³⁷ In Wallonia, the situation is even worse. There, only the Hôpital Psychiatrique du Beau Vallon in Saint-Servais and Le Chêne aux Haies in Mons have special units which can accommodate, respectively, 11 and 20 internees. In total, Belgium can provide appropriate care to 497 internees. However, this is far from enough.

In 2021, the Belgian government published that 609 internees are staying in prison.³⁸ In 2022, the waiting list for FPC Ghent and Antwerp has never been this long and is still growing. On the 6th of May 2022, 128 people are waiting for placement in either Antwerp or Ghent.³⁹ It is expected that the number will only increase, as the number of internment measures in general is also increasing.⁴⁰ In response to this, the Belgian state wants to open a new “Long Stay” FPC in Aalst, which will be able to accommodate 120 detainees.⁴¹ They also want to open two FPCs in Wallonie, namely in Wavre and in Paifve, each with 250 places.⁴² Only the FPC in Waver

³⁵ Belgian Health Care Knowledge Center, ‘Short report: health care in Belgian prisons. Current situation and scenarios for the future’, 2017, 39. https://kce.fgov.be/sites/default/files/2021-11/KCE_293Cs_Prisons_health_care_Synthese_1.pdf

³⁶ X, For a healthy Belgium: Internment, <https://www.healthybelgium.be/en/key-data-in-healthcare/mental-healthcare/forensic-care/internment>

³⁷ X, For a healthy Belgium: Internment, <https://www.healthybelgium.be/en/key-data-in-healthcare/mental-healthcare/forensic-care/internment>

³⁸ Federal Public Service Health, Food Chain Safety and Environment, “Geestelijke gezondheidszorg”, 2021, 44. https://www.gezondbelgie.be/images/Blikvanger_Gezondheidszorg_GGZ_NL_v11.pdf.

³⁹ Interview with Jan Boucke, Head of Registry, Treatment Reporting & Social Services at FPC Ghent, 6 May 2022.

⁴⁰ VRT NWS, Aantal nieuwe geïnterneerden neemt toe, ook (opnieuw) meer plaatsingen in gewone gevangenis: wat is er aan de hand?, <https://www.vrt.be/vrtnws/nl/2021/07/23/interneringen-neemt-toe/#:~:text=Het%20aantal%20jaarlijkse%20nieuwe%20interneringen,lag%20het%20cijfer%20op%20476>.

⁴¹ MANAGEMENT OF BUILDINGS BELGIUM, Aalst Forensisch Psychiatrisch Centrum, <https://www.regiedergebouwen.be/nl/projects/forensisch-psychiatrisch-centrum-1>.

⁴² MANAGEMENT OF BUILDINGS BELGIUM, Waver Forensisch Psychiatrisch Centrum, <https://www.regiedergebouwen.be/nl/projects/forensisch-psychiatrisch-centrum-2> and MANAGEMENT OF BUILDINGS BELGIUM, Paifve Inrichting tot bescherming van de maatschappij | Forensisch psychiatrisch centrum, <https://www.regiedergebouwen.be/nl/projects/inrichting-tot-bescherming-van-de-maatschappij-forensisch-psychiatrisch-centrum>.

has a planned opening date, which is in 2027. It remains to be seen when the ones in Aalst and Paifve will open.

It may be concluded that the (hypothetical) extra FPCs are an extremely necessary step in the right direction, but, as previously indicated, the number of internment measures imposed continues to rise. It remains to be seen if these will suffice.

3. Committing to suicide prevention

The World Health Organisation reports 700 000 deaths every year due to suicide.⁴³ Suicidal thoughts and behaviour can be found among people all over the world, in all layers of society. However, certain groups are subject to a higher risk, including those who come into contact with the criminal justice system.⁴⁴ This is reflected in the context of prisons: more than one third of deaths in European prisons is attributable to suicide.⁴⁵ In Belgium, the suicide rate in detention is five times higher than in free society.⁴⁶ It is for those reasons, prisons should put maximum effort into suicide prevention.

Effective prevention begins with effective identification of those who suffer a higher risk among prisoners. Upon arrival, every person should be screened by medical staff. This screening should then be systematically repeated especially when prison conditions change, for example in case a prisoner is transferred elsewhere.⁴⁷ After this, physical measures can be put into place in order to manage the suicide risk. These include increasing observation and limiting access to potentially deadly objects.⁴⁸ In addition, the following considerations can be made: a duocell can be chosen to do peer to peer control or they can opt for a safety cell that is stimulus-free.⁴⁹

⁴³ Nombres according to the World Health Organisation, <https://www.who.int/news-room/fact-sheets/detail/suicide>.

⁴⁴ R.T. Webb, P. Qin, H. Stevens e.a., “National study of suicide in all people with a criminal justice history”, *Arch Gen Psychiatry* 2011, 68: 591-9.

⁴⁵ K. Rabe, “Prison structure, inmate mortality and suicide risk in Europe.”, *Int J Law Psychiatry* 2012, 35: 222-30.

⁴⁶ L. FAVRIL, K. AUDENAERT, G. PORTZKY and F. VANDER LAENEN, “Suïcidaal gedrag in Belgische gevangenen: overzicht en geïntegreerd preventiemodel”, *Tijdschrift voor Psychiatrie* 2022, afl. 64, p. 167.

⁴⁷ L. FAVRIL, K. AUDENAERT, G. PORTZKY and F. VANDER LAENEN, “Suïcidaal gedrag in Belgische gevangenen: overzicht en geïntegreerd preventiemodel”, *Tijdschrift voor Psychiatrie* 2022, afl. 64, p.170.

⁴⁸ Ibid.

⁴⁹ Note on suicide prevention in the prison of Antwerp, 2017.

The abovementioned measures can significantly reduce the risk of perpetrating harmful suicidal behavior but obviously do not act on the underlying cause. To work on this, one can firstly opt for cognitive behavioural therapy.⁵⁰ It has been proven that this therapy can effectively reduce the suicide risk in prison.⁵¹ Therefore, prisoners should have access to this aid more easily and more frequently. In the aftermath of the Covid 19 health crisis, it may be a good option to offer psychiatric assistance online as well. Secondly, prisoners with severe depressive complaints should have access to an extensive range of sports. The benefits of physical exercise and sports on psychological well-being have been excessively researched and proven. Lastly, it must be possible to reach the Suicide Hotline⁵² and similar initiatives at all times. At this moment this is only possible during the day, but this possibility should be extended to nighttime hours.⁵³

4. Creating a general framework with focus points for mental wellbeing

An environment should be created within prisons in which prisoners are encouraged to indicate when they or someone else is mentally unwell. Prison officers must also be extra vigilant in order to notice this kind of behaviour and report it to the appropriate services within the prison.⁵⁴

Special attention should also be paid to the impact of deaths within prisons. Research has shown that there is too little emotional and personal support when a fellow detainee dies.⁵⁵ Prisoners also go through a grieving process and should be supported in this, as happens in the rest of society, otherwise this can leave a lasting negative impression, especially on those who were closer to the deceased, such as a cellmate.⁵⁶ When the death is due to suicide, the impact on the surroundings is even greater. Here, research has shown that being confronted with the suicidal

⁵⁰ L. FAVRIL, K. AUDENAERT, G. PORTZKY and F. VANDER LAENEN, “Suïcidaal gedrag in Belgische gevangenissen: overzicht en geïntegreerd preventiemodel”, *Tijdschrift voor Psychiatrie* 2022, afl. 64, p. 171.

⁵¹ D. PRATT, N. TARRIER, G. DUNN e.a., “Cognitive-behavioural suicide prevention for male prisoners: a pilot randomized controlled trial.”, *Psychol Med* 2015, 45: 3441-51.

⁵² Suicide Line 1813 is an initiative by the Flemish government. People can call the number 1813 day and night, every day of the year. This platform serves as a central gateway for people who are looking for help in order to deal with suicidal thoughts.

⁵³ Note on suicide prevention in the prison of Antwerp, 2017.

⁵⁴ Note on suicide prevention in the prison of Antwerp, 2017.

⁵⁵ M. Turner, S. Payne, H. Kidd and Z. Barbarachild, “Dying behind bars: an evaluation of end of life care in prisons in Cumbria and Lancashire”, Lancaster, Lancaster University, 2010.

⁵⁶ A. BISBACK, L. FAVRIL, F. VANDER LAENEN and C. VANDEVIVER, “Overlijdens in detentie - Zicht op oorzaken en impact”, *FATIK* 2018, p. 13.

thoughts of fellow prisoners can cause other prisoners to also experience suicidal thoughts.⁵⁷ It is therefore important to provide emotional support in order to deal with suicidal thoughts and other negative repercussions that are result of deaths in prison.

It is up to the policy makers within the government and prisons to establish a comprehensive framework regarding the mental wellbeing of prisoners. The above mentioned points should certainly be taken into account.

5. Examination by a psychiatric expert when imposing disciplinary sanctions

In order to impose a sanction on a person who is suffering from a psychological disorder, it must be certain that this person was aware of the acts committed at the time.⁵⁸ To determine this with sufficient certainty, an assessment by a psychiatric expert prior to a disciplinary procedure is essential.⁵⁹ This cannot be assigned to the management of the prison, since this is a delicate assessment that must be conducted with the necessary skill and expertise.⁶⁰ Management is generally not sufficiently medically or psychiatrically trained to make this assessment.⁶¹

DG EPI should revisit its earlier recommendations and take into account the importance of the accountability of the detainee concerned. While the Council of State and the independent complaints commissions have confirmed the requirement of a prior assessment by a psychiatric expert, DG EPI and prison management are yet to comply. It is necessary for DG EPI to adjust its guidelines and recommend this assessment by a psychiatric expert once again. It is imperative that the guidelines of DG EPI of August 2020 and March 2021 be reinstated.

6. Transfer of powers with regard to penitentiary health care

Today in Belgium, penitentiary health care still falls under the competence of the Minister of Justice. However, in recent years there has been a political will to transfer this power to the

⁵⁷ L. FAVRIL, F. VANDER LAENEN, C. VANDEVIVER and K. AUDENAERT, “Suicidal ideation while incarcerated: prevalence and correlates in a large sample of male prisoners in Flanders, Belgium”, *International Journal of Law and Psychiatry* 2017, p. 19-28.

⁵⁸ RvS (11e k.) 22 februari 2020, nr. 247.098, p.3.

⁵⁹ Klachtencommissie Antwerpen 29 juli 2021, KC02/21-0049, p.6, <https://rechtspraak.ctrg.belgium.be/files/attachments/KC0221-0049.pdf>.

⁶⁰ Ibid.

⁶¹ Klachtencommissie Antwerpen 29 juli 2021, KC02/21-0049, p.6, <https://rechtspraak.ctrg.belgium.be/files/attachments/KC0221-0049.pdf>.

Minister of Public Health and Social Affairs.⁶² In this way, the focus will be on healthcare and prisoners will be treated as patients when they seek health care. This transfer should also include the necessary budgetary measures, which are aimed at optimising health care.

Despite the fact that there have been many discussions about this over the last few years, the transfer of powers has still not been implemented. Enabling this transfer seems to be a long-term job and many necessary steps have already been taken in the right direction, but the pace needs to be stepped up. A transfer to the Minister of Public Health and Social Affairs would surely have a significant impact on the quality of care provided to prisoners. Currently, Belgian prisons are unable to provide sufficient health care, let alone psychiatric care. Prisoners who are patients deserve the same care and status as those who live outside prison walls. However, within the current distribution of competences it seems to be an almost impossible task to provide similar care.

The Central Supervision Board for the Prison System also stresses the importance of this intervention and will pay extra attention to the follow-up of this topic in 2022.⁶³

CONCLUSIONS AND RECOMMENDATIONS TO THE CM

We acknowledge the Government's willingness to tackle the inadequate treatment of detainees with psychological disorders and a failing health care system in Belgian prisons. However, we find that the Government must introduce further measures than those set out in the Action Plan in order to prevent internees and detainees from being exposed to pain and suffering in incidents violating ECHR Article 3.

To this end, we recommend that the Committee of Ministers urges the Belgian Government to establish agreements with psychiatrics in the area in order to compensate for the shortage of psychiatrists within prisons. Next, we also recommend that Belgium is urged to create more places for prisoners with psychiatric vulnerabilities since there is a major shortage. Furthermore, prisoners or internees in prison also often suffer from suicidal thoughts, resulting in high suicide rates in Belgian prisons. The Belgian

⁶² Belgian Health Care Knowledge Center, 'Short report: health care in Belgian prisons. Current situation and scenarios for the future', 2017, 1. https://kce.fgov.be/sites/default/files/2021-11/KCE_293Cs_Prisons_health_care_Synthese_1.pdf

⁶³ The Central Supervision Board for the Prison System, "Action plan 2022", p. 12, <https://ctrg.belgium.be/wp-content/uploads/2022/03/2022-03-29-Plan-daction-2022-Actieplan.pdf>.

government should impose measures to reduce this risk. Another measure that Belgium should imply is to obligate prior assessment by a psychiatric expert when imposing disciplinary sanctions. Lastly, we recommend that the committee of Ministers urges Belgium to transfer the powers with regard to penitentiary health care from the Minister of Justice to the Minister of Public Health and Social Affairs.

Seeing that the case of *Jeanty v. Belgium* is part of a wider pattern of the inadequate treatment of detainees with psychological disorders and a failing health care system in Belgian prisons and the continued failure to tackle this structural and complex problem, we propose that the Committee of Ministers examines the case under the enhanced supervision procedure.