5 SAH
FIVE ST ANDREW'S HILL
+44 (0) 207 332 5400

Prison Reform in Belgium

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The issue of overcrowding in Belgium prisons is not new and has long had an impact on both prisoners and prison staff. The Covid pandemic put pressure on the system creating more difficult working conditions for prison staff. The prison estate in principle should accommodate 9,500 prisoners but now 10,700 are serving. Reports of floor-sleeping and overcrowding within the Belgian prison estate of 35 prisons are frequently seen and there have been multiple strikes in response to staff shortages and issues relating to overcrowding. This is despite the legal mechanism for guaranteed services in prison strikes in Belgium coming into effect on 1 July 2019, with the intention that every prison would guarantee the minimum rights of the detainees during a strike. This was indeed one of the improvements for which the CPT had called in the past. However, continued reports in the media of strikes in Belgium indicate that guaranteed minimum services have still not been agreed given the continued industrial action since.

It was understood generally that the issue with Belgian prisons had been resolved following the Divisional court consideration of Belgium prison conditions, following strikes by prison officers in the case of *Purcell v Belgium* [2017] EWHC 1328 (Admin) and *Purcell v Belgium* [2017] EWHC 1981 (Admin) and later in *Tincu v Belgium* [2019] EWHC 3335 (Admin). In *Tincu* the divisional court reconsidered the issue in relation to Belgian prison conditions and confirmed that the conclusion remain unchanged given the changes in Belgian law which the court considered catered for the minimum safeguards which prisoners had a right to enjoy even during strikes. The Court held that the presumption that Belgium will comply with its obligations in Article 3 ECHR had not been displaced.

However, it is arguable given the continuation of strikes and overcrowding in prisons that these minimum standards are not being observed and that an assurance is required. In a recent decision in the Netherlands of the 24 June 2021 *Case Number 13-751422-21* regarding an EAW issued on the 13 April 2021 by the Court of First instance West Flanders, the court postponed extradition to Belgium to obtain more information on detention conditions following the decision in *Pîrjoleanu v Belgium 26404/18*

(ECtHR, 16 March 2021). In *Pîrjoleanu* the ECHR concluded that Article 3 ECHR was violated during a strike by the prison staff, in which, among other things, the requirement of 3 m² personal space per detainee was not met. Parliamentary questions were asked about floor sleepers which indicated that this problem exists in several prisons, namely: Antwerp, Ghent, Bruges, Oudenaarde, Hasselt, Dendermonde and Mechelen. The Amsterdam Court determined that it appeared from the judgment of the ECtHR that the floor sleepers in 2018 led to a situation where the personal space per detainee was less than 3 m², so that the ECtHR concluded that there was a violation of Article 3 of the ECHR. At the time of the guards' strikes, there were 125 ground sleepers. However, the situation in March 2021 was that there were 148 floor sleepers in 7 prisons, while there were currently no known strikes.

In *Pal Aranyosi and Caldararu C-404/15* and *C-659/15* the ECtHR stated in relation to the execution of the European arrest warrant that where a judicial authority is confronted with objective, reliable, accurate and duly updated data with regard to the detention conditions in the issuing Member State, indicating deficiencies which are either structural or fundamental, or affecting certain groups of persons or concerning certain detention centres, it must specifically and precisely verify whether there are compelling factual grounds for believing that the requested person, will face a real risk in that Member State, because of such conditions, of being subjected to inhuman or degrading treatment, if surrendered to that Member State.

It seems therefore that these strikes remain widespread and that during industrial strikes, there is no guaranteed minimum service in prison and that this remains the case despite changes to the law in 2019. As a result, prisoners remain detained in their cells for prolonged periods of time in intolerable conditions. As a result, this also impact on their access to health care, legal advice, and family visits and that the problems in Belgian detention institutions have not yet been resolved.

The CPT carried out an ad hoc visit to Belgian prisons of Antwerp, Lantin, St-Gillies and Ypres prisons in November 2021, focusing on issues such as material conditions, overcrowding activities, health-care services – specifically in the context of prison staff strikes and the implementation of legal provision on guaranteed service. The report is still not published and is unlikely to be published until later this year. However, considering this and recent reports of continuing strikes it seems that further information will come from the CPT in due course and that practitioners should be aware that the issue of Belgian prisons remains a live issue. Practitioners should where possible obtain specific evidence in relation to the prison that their client is likely to be detained.

Sharmistha Michaels is a barrister specialising in Human Rights, Extradition, Immigration, Asylum and Professional Discipline & Regulatory law. Sharmistha has been instructed in both Part 1 and Part 2 extradition matters. She both prosecutes and defends at Westminster Magistrates Court and in the High Court on appeal. She has a wide range of experience in dealing with complex legal arguments. Sharmistha is on the CPS Specialist list for Extradition.