1. What are the **key human rights risks and violations** affecting older persons deprived of their liberty?

The key human rights risks in **Belgian prisons** are (Humblet & Snacken 2016):

1. **Human dignity**
2. Inadequate accommodation, regime, services and activities

The duty of care of the authorities for the health and wellbeing of older prisoners includes offering prison regimes adjusted to meet their special needs (ECtHR: *Papon v* *France* 2001; *Priebke v Italy* 2001; *Sawoniuk v the United Kingdom* 2001). In Belgium, most older prisoners are allocated to “normal” landings and cells and subjected to the same prison regime as other prisoners. Virtually no allowances are made for older prisoners in terms of work, activities, time-tables or disciplinary rules. This “institutional thoughtlessness” may result in a very impoverished regime and severe social isolation within the prison. Frail adults are especially vulnerable for inmate-on-inmate victimization, and as a result, are at risk of withdrawal and extreme feelings of loneliness (De Smet, 2017).

1. Lack of adequate medical and psychiatric care

The lack of mental health care in Belgian prisons results in inhuman and degrading treatment, both for mentally ill offenders (“internment”) and for pretrial or sentenced prisoners (*W.D. v Belgium* 2016; CPT reports on Belgium). In most prisons, permanent medical care is not available and there is no medical staff at night. This disproportionately affects older prisoners, due to the indeterminate nature of the internment and the growing need for (unnoticed) somatic and mental health care in old age. In addition, systematic screening of prisoners > 50 years for signs of early aging is lacking (De Smet, 2017).

1. Prison overcrowding and prison officers’ strikes

Prison overcrowding is a systemic and long-lasting problem in Belgium. This often results in inhuman and degrading treatment, especially in the old and dilapidated remand prisons, where prisoners spend 22/24 hrs. in a cell of 9 m3, not seldom with 3 prisoners, one sleeping on the floor. This situation is exacerbated by repeated and lengthy strikes by prison officers (CPT 2017 Public Statement concerning Belgium; CPT reports on Belgium since 1993; ECtHR *Vasilescu v Belgium* 2014; *Pîrjoleanu v Belgium* 2021).

1. **Reintegration**

Age-tailored services and programs in support of community transition are underdeveloped (De Smet, 2017). Special needs regarding reintegration (housing, care, labour market) are unmet, which hampers successful (early) release from prison for older adults (Maelstaf & Claessens, 2016). By de-institutionalising care and reducing the number of psychiatric nursing homes, reintegration options for care dependent prisoners have become scarce.

1. Please provide **figures and data** on older persons deprived of their liberty. Has the number of older persons deprived of their liberty increased or decreased over the past decade?

Mirroring worldwide trends, the number of older prisoners has doubled over the past decade in Belgium (Humblet, 2021). Whilst they constitute a *significant*, yet largely *overlooked*, *minority* in Belgian prisons to date, dealing with an older incarcerated population will become even more pressing in the future, in view of *general population ageing* and increasing *punitiveness*. In view of these trends, we have been calling on the Belgian government to act more proactively (cf. infra no. 5).

Recent numbers from last year show that 1079 people in prison were aged over 55, of which 240 individuals aged over 65. An increase of 30% among men is observed between 2017 and 2021, but the group of older males is less than 2.5% of the overall male prison population.

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| **Evolution of the number of 65-plus adults in Belgian prisons (reference date 1 January)** |
|  | **2017** | **2018** | **2019** | **2020** | **2021** |
| **Male** | 173 | 178 | 189 | 209 | 231 |
| **Female** | 8 | 7 | 6 | 6 | 9 |
| **Total** | 181 | 185 | 195 | 215 | 240 |

Source: Federal Ministry of Justice (2021)

Based on the latest numbers provided by the Federal Ministry of Justice, 270 people in prison were older than 65 (reference date: November 17, 2021).
Broken down into age groups:

* 222 in the 65-74 age group
* 42 in the 75-84 age group
* 6 in the 85+ age group
1. What kind of **specific measures** have been taken and implemented concerning older persons deprived of their liberty in the context of **the COVID-19 pandemic**?

1. Inside prison

At the start of the covid pandemic, in March 2020, the prison in Merksplas decided to protect *all elderly people* from the disease by isolating them. This prison holds a higher concentration of older people.

1. Interruption of the execution of the sentence COVID-19

Enabled convicted prisoners to temporary leave the prison on the condition of having a fixed address and sufficient means of subsistence and either 1) having already spent a prison leave outside without any problem or serving the prison sentence in the regime of limited detention with prison leave; or 2) belonging to the at-risk group of people who are vulnerable to the development of severe coronavirus symptoms, being those aged 65 or more, those with serious chronic illnesses and those with a weakened immune system. Were excluded: sentences of 10y and more; sex offences, terrorism, ...; negative risk analysis (Nederlandt et al., 2022).

1. Could you give us an **overview on the national and local legal frameworks** which prevent and protect older persons deprived of their liberty from human rights violations? Are there effective and available national monitoring and accountability mechanisms? Please provide a detailed answer with supporting information/documents.
2. Legal framework

Act on the Prison Service and the Legal Position of Prisoners (12 January 2005): aims at protecting human dignity and fundamental rights of prisoners; defines in which circumstances and through which procedure “relative” rights may be curtailed (e.g. family visits); regulates local and central monitoring agencies; introduces local complaint and concertation mechanisms for prisoners.

1. Monitoring and complaint

Local Supervision Committees: for each prison; volunteers; supervision and mediation; no decision-making power.

Central Supervisory Council of Prisons: transferred under Federal Parliament since 2019; permanent and professional body; coordinates work of Supervision Committee; policy advice.

Since 1 October 2020: independent Complaint Commission in each Committee and an Appeal Complaint Commission in the Central Council.

Overview of decisions only very recently made public: around 2000 complaints lodged in one year; 20% of complaints were found justified; % older prisoners as yet unknown (3 March 2022: <https://rechtspraak.ctrg.belgium.be/>).

Federal Ombudsman: last decade increasing numbers of complaints from prisoners; produced several reports on prison issues.

1. General legal remedies

Prisoners still have access to the general legal remedies open to all citizens, but with varying and rather limited success:

* Civil action: compensatory remedy, e.g. family of prisoner who committed suicide in prison. Not an effective remedy to tackle prison conditions, overcrowding (*Clasens v Belgium* 2019)
* Criminal court: in case of alleged offences by prison staff; occasional success (e.g. beatings); problems of evidence
* President of the court in urgent matters: occasional success, e.g. continuation of methadone treatment for drug addicted prisoners; sometime overturned by subsequent judgment on the merits
* Administrative appeal to the Council of State: annulment of an administrative decision
* Constitutional Court: e.g. annulment of 2013 legislation reintroducing general strip-searching into the 2005 Prison Act
1. Concertation platform

Platform (since September 2018) with a selected group of prisoners, prison officers and a prison governor to discuss issues of general interest to the prisoners. Older prisoners sometimes participate to tackle (specific) concerns.

1. Please share examples of **good practices** on how to ensure that older persons deprived of their liberty can exercise their human rights.
2. Local level: Concertation platforms including older prisoners
3. Increased attention at political/policy level

The question how we should deal with an older prison population is gradually receiving more attention in Belgium. It has been, for instance, brought before the Federal as well as the Regional Parliament during parliamentary questions.

In 2016 a local Think-Tank was created, made up of academics[[1]](#footnote-1) and policy officers[[2]](#footnote-2) who share their knowledge and concerns about the fate of older people in detention, and advocate for their rights. The Think-Tank recently launched its [White paper](https://www.hogent.be/sites/hogent/assets/File/Witboek%20Denktank_final%281%29.pdf) (2021) (original version in Dutch) with recommendations to assist legislators, policymakers, prison managers, staff, and NGOs in addressing the specific needs of older people in prison. Under Think-Tank auspices, the topic also received wide media coverage in the public broadcast.

1. Positive initiatives policy:

In 2016 the Justice Department declared to renovate one of the prisons in Flanders, with a view to build a unit for older people and a unit for people in need of geriatric care.

Awareness is growing that catering to older people in prison requires a special sort of expertise. In the prison of Merksplas, they have mandated a part-time psychiatric nurse to care for older people. This should be considered as an improvement but remains minimal.

More recently (2021), it was decided that a small-scaled unit will be installed in the prison of Bruges for ten older adults who are self-reliant (‘Ageing with Dignity’).

We are hopeful that older adults will also benefit from the larger differentiated prison policy, that is currently in the making: distinction between passive and dynamic security (functions, training, remuneration: Act 2019); creation of small-scale “detention houses” better oriented towards the specific needs of a particular group (potentially including older prisoners); more emphasis on mental health care for prisoners from the regional authorities (Strategic Plan 2020-2025 Flemish Community).

In collaboration with the Belgian Prison Staff Training Centre, researchers from Odisee University of Applied Sciences have developed *vocational training* for both uniformed and non-uniformed prison staff to recognize and address the specific physical, mental and social needs of older people who have been deprived of their liberty. This project[[3]](#footnote-3) is aimed at supporting prison staff to find a proper way to care and cater for older adults in prisons. The program consists of a classical training for novel prison officers and an e-learning for all staff.

1. Academic

From October 2021 to October 2024, a unique project on *ageism in prison[[4]](#footnote-4)* will expose and tackle stereotypes, prejudice and/or discriminatory actions or practices in prison against older persons that are based on their chronological age or on a perception that the person is ‘old’. The project is made up of work package on a *photovoice project* among older people in prison, a work package on the impact of *experiential learning* through age simulation among prison staff, and a work package on the views and praxis of *psychosocial services* in relation to old age and release from prison.

Very recently, a new international academic network[[5]](#footnote-5) on ageing in the criminal justice system has emerged. This network serves as a European counterpart for the US-based ARCH-network.

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1. Diete Humblet, Stefaan De Smet, & Hilde Maelstaf. [↑](#footnote-ref-1)
2. Sara Buelens & Marieke de Jong. [↑](#footnote-ref-2)
3. For more information, contact diete.humblet@odisee.be or visit the website [www.odisee.be/oscar](http://www.odisee.be/oscar) [↑](#footnote-ref-3)
4. The research is funded by the FWO and conducted by Diete Humblet (e-mail: diete.humblet@vub.be). [↑](#footnote-ref-4)
5. More information can be obtained via Diete Humblet (e-mail: diete.humblet@vub.be). [↑](#footnote-ref-5)