From Prison Sentence to Deprivation of Liberty
A Brief History of Two Centuries of Legal Regulation of the Belgian Prison Regime (1795–2006)

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1. Introduction

Since the end of World War II more and more attention is paid to the question of (the protection of) prisoners’ rights. In 1956 the Belgian Director-General of the prison administration, Jean Dupréel, stated that imprisonment needed to be restricted to the deprivation of the ‘liberty to come and go’ and that prisoners should preserve all other fundamental rights, although only under certain strict conditions.¹

Internationally and on the European level, the recognition and protection of prisoners’ rights were promoted too, through the drawing up and ratification of the ‘Standard Minimum Rules for the Treatment of Prisoners’ (adopted on August 30th, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders) and the later European version of these rules (adopted by the Council of Europe in 1973, and revised in 1987 and 2006: the so-called ‘European Prison Rules’). Shortly after the Second World War, the Netherlands adopted prison legislation in which some prisoners’ rights (‘Beginselenwet Gevangeniswezen’,

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21 December 1951) were defined; and later, in 1977, complaint procedures were introduced. Around the same time, Germany promulgated legislation on the execution of prison sentences (‘Strafvollzugsgesetz’, 16 March 1976).

Notwithstanding the abovementioned ‘early’ attention for prisoners’ rights, it is only very recently that Belgium adopted formal (parliamentary) legislation on the (internal and external) legal position of prisoners.\(^2\) In this respect, two important laws on imprisonment catch the eye. First of all, on 1 February 2005 the Basiswet betreffende het gevangeniswezen en de rechtspositie van de gedetineerden [Basic Law on the Prison System and the Legal Status of Inmates; further cited as ‘Basic Law’] of 12 January 2005 was published in the Official Journal (in Dutch: Belgisch Staatsblad; in French: Moniteur belge). Second, not that much later a new legal framework for the external legal status of inmates came into being in the form of the law of 17 May 2006 betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten [Law on the External Legal Status of those Convicted to the Deprivation of Liberty and the Rights Awarded to Victims in the Framework of the Modalities of the Execution of Sentences; further cited as: ‘Law on the External Legal Status’].\(^3\)

This (new) legislative framework for the execution of prison sentences was not only considered to be a necessity because of the legitimacy crisis in which the penitentiary system had gradually fallen. There was also a legality crisis. In a speech, more than ten years ago, during a conference about the Oriëntatienota Strafbelang en Gevangenisbelang [White Paper on Penal Policy and Prison Policy] of the Belgian Minister of Justice Stefaan De Clerck (Catholic Party), Prof. Luc Huyse stressed “[…] the years of neglect of the [Belgian] justice department (politically and budget wise) […]” (translated from Dutch).\(^4\) He also pointed in the direction of the considerable amount of time that would probably be needed to realize all the reforms that were foreseen in the Oriëntatienota. Indeed, the task imposed on the justice system implied that “[…] this sector is taken straight away from the nineteenth to the twenty-first century” (translated from Dutch).\(^5\)

As for the execution of prison sentences the Oriëntatienota contained a good number of promising projects. A reform of conditional release was announced, the elaboration of a law containing the basic principles of imprisonment was

\(^2\) Worth mentioning is also the recent development in France where a so-called ‘loi pénitentiaire’ was adopted (Loi n° 2009–1436, 24 November 2009).


\(^5\) L. Huyse, loc. cit., p. XV.