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# Conditional release in Belgium: how reforms have impacted recall

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***Abstract***

Following the Dutroux case in 1996, the Belgian parole system was thoroughly reformed in 1998 and 2006. Decision-making was transferred from the Minister of Justice to multidisciplinary "Sentence Implementation Courts", supervision and follow up of conditionally released prisoners was tightened and the proportion of recalls increased. Recall of conditional release hence results from the interaction between three main parties: the offender, the supervising probation officer ("justice assistant" in Belgium) and the Sentence Implementation Court who takes the final decision. This paper looks into the consequences of these reforms for two of these parties: the justice assistants, who struggle to keep their professional discretion in the decision to recall, and prisoners, who increasingly turn away from conditional release, thus avoiding recall to prison altogether.

**Keywords:** Conditional release – Recall – Professional discretion – 'Maxing out'

## Introduction

Since its enactment in 1888, conditional release has been the object of much debate, discussion and even disarray in Belgium – also among prisoners. In the 1970s, a famous Belgian prison revolt related to the prison administration's opaque decision-making in granting and refusing conditional release (e.g. Mary, 1988). One long-standing topic of concern and debate relates to the principled and practical issue of *who* should grant conditional release. The increased discretionary powers of the prison administration and Ministry of Justice to grant different forms of prison leave or early release were seen as conflicting with the judiciary's exclusive competence to decide on personal freedom matters (see Matthijs, 1974-75; Eliaerts and Rozie, 1978; Verdussen, 1994; for an overview of these discussions, see Maes, 2009a). The main reform however occurred after the "Dutroux affair' broke out in August 1996,

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involving the alleged abduction, rape, and murder of several children and young girls while the offender was under conditional release. The functioning of the police services and the whole judiciary, even the legitimacy of the entire Belgian political system, became the subject of intense societal debate and prolonged media attention. Pressure was placed on politicians to act and to reform what was perceived as the failing Belgian justice system, and more particularly the police services and the parole system. As a result, two legislative reforms (1998 and 2006) transferred decision-making on conditional release first from the executive to administrative multidisciplinary "Parole Commissions" (installed in 1999) and eventually to multidisciplinary "Sentence Implementation Courts" (put in practice as of February 2007). With this last reform, most release modalities, such as semi-detention, electronic monitoring, conditional release, are now granted – and revoked – by these courts. The failure of the supervision in the Dutroux case, however, also emphasized the risks presented by some parolees and the need for more professional risk assessments before release (leading to the introduction of 120 psychologists for 32 prisons) (Snacken et.al. 2010: 83) and a more stringent control and follow up of the released prisoners by the probation service (Ministère de la Justice, 1997). Particular attention was paid to sex offenders, who could be released on parole only if they agreed to enter treatment upon release in a specialized centre. Both the transfer of decision-making and the enhanced emphasis on risks had important consequences for the actors directly involved in conditional release practice: the justice assistants[4] and the offenders/prisoners. We will now look into some of these consequences.

**Conditional release: current Belgian legislation**

In 2006, two new Acts of 17 May 2006 were enacted, which came into force on 1 February 2007. These two Acts are linked: the first regulates the establishment of a new court responsible for decision-making and follow-up related to the execution of penal sanctions, i.e. the Sentence Implementation Courts. The second deals with the 'external legal position of persons convicted to deprivation of freedom and the rights accorded to the victim in the framework of the modalities of the execution of punishment'. Since 1 February 2007, nine multidisciplinary Sentence Implementation Courts, presided by a judge, with two assessors, one specialised in social reintegration, the other specialised in prison matters, have replaced the former "Parole Commissions" (established by the Acts of 5 and 18 March 1998). The Sentence Implementation Courts were established to increase their legitimacy by 'fostering their independence, professionalism and transparency' (Snacken et al., 2010: 99). Although the Act was supposed to be applicable to all prisoners considered for conditional release, its application has for practical reasons temporarily been limited to prisoners serving sentences of more than three years. Prisoners serving less than three years imprisonment are eligible to *provisional release,* which is still decided by the prison administration (for more detailed information about early release from prison in Belgium, see Snacken et al., 2010). In this paper, we will only focus on

[4] In 1999 probation officers became officially 'justice assistants'. This name change was the result of a global reorganisation of the probation agencies and the establishment of 'Houses of Justice' in each jurisdiction. This reorganisation has to be understood within a broader political attempt to regain legitimacy by taking the para-judicial agencies out of the often alienating court buildings and bringing them closer to the public. After having been part of the Directorate General of the Judicial Order and then the Directorate General of the Prison and Probation Administration, they became a separate Directorate General of the Houses of Justice within the Ministry of Justice on 1 January 2007 in order to enhance their professional status and organisational legitimacy.

*conditional release* for prisoners with a sentence over three years imprisonment (based on the sentence-related difference between both release modalities, we will call them long-term prisoners).

According to the 2006 legislation, conditional release *must* be granted when the minimum term has been served (one-third of the sentence, two-thirds of the sentence for legal recidivists), provided there are no counter-indications which might entail a serious risk for the community or could reasonably be thought to hinder the social reintegration of the offenders. These counter-indications relate to: (1) the absence of opportunities for social reintegration of the offender, (2) a risk of new serious offences, (3) a risk that the offender would cause further distress to the victim, and (4) the attitude of the convicted person towards the victim(s) of the crime(s) that have led to his/her conviction. Every offender admissible to conditional release has to present a 'reintegration plan' showing his/her willingness to reintegrate in the community and outlining the efforts already produced in this regard (Art 48; Art. 56 of the Act of 17 May 2006).

While the Sentence Implementation Courts have to release a prisoner who has served the minimum term and who presents no counter-indication, thus transforming parole in theory into a *subjective right* (Snacken, 2004: 56-57; Pieters, 2010), the requirements of presenting a credible reintegration plan and the absence of counter-indications are so wide ranging and require so much interpretation that the system can still be described as a *discretionary* one (Snacken et al, 2010: 74). The disadvantages of this 'discretionary model' compared to more 'automatic' systems were discussed during the preparation of the draft legislation: uncertainty for both the prisoners and the social services involved in preparation for release, inequality between prisoners serving similar sentences for similar offences, uncertainties in assessing risks of possible future behaviour. However, the possibilities for 'individualisation' or 'personalisation' of the decision-making were deemed more important than those disadvantages, both in order to cover individual risks as to allow an earlier release in individual cases than an automatic system would permit (Snacken, 2004: 64-65).

Conditional release may be revoked by the Sentence Implementation Court, upon request by the public prosecutor, when the person concerned is sentenced for a new offence, when (s)he seriously jeopardizes the physical or psychic integrity of others, in case of failure to comply with the imposed conditions, or when (s)he does not respond to appointments with the 'justice assistant' or does not inform him or her of any change of address. In all these cases, however, the court may also decide to make the previously imposed conditions stricter instead of revoking the release on parole. Except for information about sentences for a new offence or police reports, all other indicators for recall will usually involve reporting by the justice assistant involved in the supervision, thus making them an important actor in recall procedures.

**The recall process in practice**

In order to understand recall in Belgium, it is important to place the current developments in their context. We begin by providing some statistics on conditional release and recall in Belgium. We then describe the National Standards for offender supervision of the Houses of Justice and their implications for the use of professional discretion of justice assistants, and end by discussing the resulting tensions between justice assistants and Sentence Implementation Courts, including in matters of recall.

*Some statistics on conditional release and recall in Belgium*

While the number of long term prisoners steadily increased in Belgium, the number of persons released under conditional release declined under the "parole commissions" from 892 prisoners in 1997 to 678 in 2000 and 598 in 2006. The admission rate before the "parole commissions" equally went down from 68.3% of the cases in 1999 to 59.7% in 2004 (Snacken et al, 2004: 89-90; Maes, 2010). As a result, conditional release occurred increasingly late compared to the date of eligibility (Rihoux, 2000; Tubex and Strypstein, 2003/2005). The period that exceeds the eligibility date increased from four to five months in 1990 to about eight months in 1999 (Rihoux, 2000). In 2007, the first year decisions were taken by the Sentence Implementation Courts, prisoners serving a sentence of more than three years served on average 14.5 months more than they should serve following the law (Deltenre, 2008: 50; Maes, 2009b). As a result, figures for 2003-2007 show that on average, prisoners were released conditionally after serving 62% of their terms, while they were eligible for parole after 45.7% of their sentence (Deltenre, 2008: 52, table 15). The conditional release figures went slightly up again after the introduction of the Sentence Implementation Courts (2007: 753, 2008: 742, 2009: 711; Justitie in cijfers, 2010: 60), but stay below the 1997 level (892).

This decrease is also clear from the figures concerning persons supervised under a conditional release order by the Houses of Justice, which declined over the period 2000-2010 from 795 new cases in 2000 to 695 new cases in 2010, contrary to other forms of offender supervision which have steadily increased since 1999. In the area of offender supervision the highest totals in 2010 can be found for: 'autonomous work penalty' (10,516 new cases); probation orders (6,508 new cases); provisional release (4,439 new cases), and electronic monitoring (3,482 new cases). At the end of last year, the total charge of conditional release orders was 2162 cases, which represents only 3% of the total caseload of offender supervision (Devos, 2011).

No detailed official information is currently available on recall data under the Sentence Implementation Courts. However, earlier research on the "parole commissions" showed a steady increase in cases being referred back to the commissions for a new decision, hence increasing the risk of recall. In 2001, recall occurred in 46.3% of these cases in the Flemish commissions and in 64.2% of the cases in the French commissions (Maes, 2003: 415, table 10, 420, table 14).

As table 1 shows, official figures of the Houses of Justice reveal that in 2010 57,6% of conditional release orders were successfully completed while 42,4% were in breach of their release conditions.

Table 1: Reasons for ending conditional release (1 January - 31 December 2010)

| | Reasons for ending conditional release |
|---|---|
| Conditional release order not feasible or not continued | 9 |
| Order completed | 388 |
| Breach of the order | 302 |
| Deceased offender | 14 |
| Total | 713 |

Source: Activiteitenrapport Directoraat-Generaal Justitiehuizen 2010 (2011: 256)

A little more detail was provided by Ms. A. Devos, the director general of the Houses of Justice, in a recent newspaper article. She explained that of the 42,4% of the offenders who were given a conditional release order and who were breached last year, 86% had been referred back to the Sentence Implementation Courts for violating one or more conditions of release compared to 5,5% who were breached for committing a new offence (Devos, 2011). This illustrates the importance of technical violations under conditional release orders. These figures are in line with figures of, for instance, England and Wales were the most common reason for recall was also breaching conditions while less than 6% were recalled for committing a further offence (Padfield & Maruna, 2006).

*National Standards on offender supervision of the Houses of Justice*

The National Standards of the Houses of Justice on offender supervision offer guidance to justice assistants, who are in charge of supervising offenders, including on the recall process[5]. They cover all aspects of ensuring offender compliance during a conditional release order and of the breach process. This involves setting guidelines with respect to: induction, initial and follow-up appointments, following up non-attendance, warning letters, recording practices, a detailed breach section, and a section on completion of the order. The Standards require the justice assistant to supervise the offender's compliance with the requirements of the conditional release order, and to provide the offender with advice, guidance and assistance in order to help the offender to comply with his/her conditions.

It could be argued that because of the increasingly detailed procedural guidelines, the areas of discretionary decision-making by practitioners are much more circumscribed than they used to be. However, the Standards are essentially procedural documents, aimed at raising *minimum guidelines* of practice. They do not, in themselves, provide detailed guidance on the methods and approaches that might be adopted in offender supervision. Furthermore, official Belgian policy documents explicitly refer to the necessary use of professional discretion, as standards and guidelines do not always provide ready or instant solutions to the dilemmas practitioners face on a daily basis.

*Professional discretion of the justice assistant*

One of the tasks of a justice assistant is to supervise compliance with the requirements of the sentence or release modality given to the offender. In approaching the task of enforcement, which includes the initiation of breach proceedings, justice assistants should use their professional judgement to decide on the seriousness of non-compliance in any particular case[6]. The Standards indicate that 'the justice assistant should make his/her judgement by placing the difficulties of compliance in the offender's social and personal context'[7]. Exceptions are made for convictions for a further offence, which automatically lead to breach proceedings. There is hence room for the exercise of professional discretion in the case of failure to comply with one or more requirements. However, any failure to comply with a requirement in the order must be followed up, and wherever possible, the offender should be questioned about

[5] Reference: National Standards, section 2.1, edition 2.2, 1 June 2007 for conditional release orders. These National Standards are currently only accessible for employees of the Houses of Justice through their secured Intranet. The National Standards for probation and conditional release orders were provided to one of the authors, A. Bauwens, in a printed version.

[6] Reference: National Standards, section 2.1.12, edition 2.2, 1 June 2007 for conditional release orders.

[7] Ibid.

it in the next face-to-face justice assistant / offender supervision meeting. When the failure to comply has been investigated and the reason offered by the offender is not acceptable, the justice assistant is required to write a 'warning report' for the Sentence Implementation Courts. The 'warning report' contains a short template report itemising the licence condition that has been breached, and is submitted by the supervising justice assistant. It should be emphasised that the information and communication tool that is currently in use in the Houses of Justice does not have an automatic system of warnings in place for the justice assistants in case of breaches.

The Sentence Implementation Courts can then decide that the offender must appear in court, which can result in their deciding to warn the offender to encourage compliance; to suspend a condition; or to impose a new condition[8]. The Court may decide to make the previously-imposed conditions stricter, instead of revoking the conditional release. The decision of the Court is taken after having heard the Public Prosecutor, and the offender on conditional release (who may be assisted by a lawyer). An appeal may be lodged against the Court's decisions before the Court of Cassation, but only on points of law.

*Tensions between justice assistants and the Sentence Implementation Courts*

Recent research by one of the authors (Bauwens, 2011) has shown that there are increasing tensions between the daily working of the Courts and the daily working of the practitioners supervising an offender on conditional release. The research was undertaken as part of a PhD study between 2007 and 2011. Framed by Garland's (2001) 'The Culture of Control', the PhD study aimed to examine (1) the extent to which developments in probation policy in two jurisdictions (England and Wales and Belgium) are consistent with his account of penal transformation, and (2) to ask the same question of probation practice[9]. The analysis of practice was narrowed down to the justice assistants' interactions with offenders, who were given a probation or conditional release order. The research design combined a content analysis of policy documents and ethnographies of practice in both jurisdictions. The fieldwork made use of method triangulation (i.e. file analyses, informal talks, interviews, and, to a more limited extent, observations of justice assistant/offender one-to-one supervision meetings). In Belgium, twenty-three justice assistants over three probation areas took part in the research. All twenty-three justice assistants had fieldwork roles; they had at least three years' work experience, and all had experience in penal matters and had mainly worked with offenders who had been given probation orders or conditional release orders.

The research findings indicate that, on the one hand, the legislative reforms of conditional release after the Dutroux case have introduced a more controlling approach in the Belgian criminal justice system, emphasizing public protection at least as much as reintegration. On the other hand, the directives of the Directorate General of the Houses of Justice, while expressing a commitment to control current

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[8] Reference: National Standards, section 2.1.14, edition 2.5, 24 April 2008 for conditional release orders.

[9] 'Probation' in this study was understood as defined by the Council of Europe Recommendation CM/Rec (2010) 1: "Probation relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety." (Part I: definitions)

practice on offender supervision, still focus on reducing recidivism by assisting offenders to (re)integrate into the community, thereby continuing to use a client-centred social work practice. The practice is based on a one-to-one casework model: a model that emphasises the importance of the relationship between the practitioner and the offender, and a belief that offender supervision should be adaptive to the needs of the unique individual, without necessary working with standardised risk assessment tools and group work programmes. In addition, as mentioned earlier, the National Standards emphasise that offender supervision requires the exercise of professional discretion, including with regard to initiating breach proceedings.

The establishment of the Sentence Implementation Courts seems to have exacerbated the question of how much professional discretion justice assistants should have in decision-making. Justice assistants have face-to-face meetings with the offender as a routine part of their job and emphasize the need to establish constructive professional relationships in order to support compliance with the conditions imposed (see also Burnett & McNeill, 2005). This puts the justice assistants in an (uncomfortable?) 'intermediary position'. They are the only actors who have both knowledge of the offenders' situation, needs and demands and who have, at the same time, access to the organisational rules and procedures of supervision and recall. Their critical role is to be accountable to both the offender and the Court, whilst realising that the demands and needs of both parties are not always compatible. This might in turn lead to dilemmas and tensions between different principles, aims and demands. This is in line with research findings from other jurisdictions. See, for instance, in this edition also the articles of Herzog-Evans, who wondered: 'who is actually in charge of exercising discretion: the court or the probation service?', and of Barry about the curtailment of criminal justice social workers' discretion.

In current Belgian offender supervision practice, regular case records and (progress) reports perform an essential - if not the main - function in terms of organisational accountability. Justice assistants occasionally have to appear before the Sentence Implementation Court to answer questions by the judges or when called upon to account for their decisions made in offender supervision. This means that direct contact with the Court is not very common, and that written communication plays a pivotal role in the justice assistants' work. The justice assistants in the research indicated that the Sentence Implementation Courts, contrary to the former Parole Commissions, regularly sent letters and questions to the justice assistant with regard to conditional release orders. These letters and/or questions of the Courts often recapitulated the conditions imposed on the offender, and regularly requested information on one or two specific conditions for the next progress report. For example: *'Could you please inform us immediately if the offender has not changed his address and is still working?'* or *'Could you please send us the certificates which prove the offender is still attending his sex offender programme?'*

Some justice assistants liked this 'new' approach as it gave them something tangible to work on:

> *'Working with the Sentence Implementation Court has indeed advantages... Although, I can get at times very angry to receive this vast amount of letters from them: then they need to be informed on this, then I need to give feedback on a certain condition imposed on a certain offender… even though they get a*

*report every three, four months. But I know that at least they read our reports and they are knowledgeable about the matter'. (Respondent 5)*

By contrast, other justice assistants were more critical about this 'new' way of working with some of the Courts[10]. Bearing in mind that many judges find current offender supervision practitioners to overemphasize the guidance aspect to the detriment of the controlling side of their work (Vermeiren, 2011: 61), these justice assistants feared that an exceedingly direct involvement of the Courts in their work might result in overemphasizing control and downplaying the importance of care/guidance in achieving compliance. Although they were pleased that their reports were thoroughly read (which had not always been the case in the former parole system) and that their work was now carefully followed-up, they expressed concerns about this intrusiveness and were, in the long run, afraid of an erosion of their social work values and a curtailment of their professional discretion and autonomy.

At the same time, they mentioned the importance of formal lines of control and accountability and emphasised that transparency is important, but they felt that the Courts' interference in their way of working was inappropriate. Considering that a properly contextualised understanding of the offender's situation lies at the heart of their work (cf. a client-centred social work approach) this type of interference by some Sentence Implementation Courts was felt to carry the risk of actually compromising some of the basic principles of their professional practice. By focussing only on specific conditions imposed upon the offender, they feared the Courts would lose the more general picture of how the offender is doing when his/her situation is de-contextualised and the received information is fragmented. In addition, senior probation officers were apprehensive that their junior colleagues might follow the demands of the Courts 'somewhat mechanistically', by limiting their work to only answering the questions the Court had asked.

While these concerns were expressed by several justice assistants in interviews and informal talks, evidence was found only in a very limited number of case files that the justice assistant had replied to the Sentence Implementation Courts by referring to the reasons behind their way of working or standardised practice. While responding to a specific demand, one senior justice assistant, for instance, drew attention to the fact that a *complete* progress report would be sent to the Court in three weeks' time in accordance with the time lines indicated in the National Standards. She further stated in her letter that she would be very happy to provide additional information should they consider it necessary, *after* they had read the next progress report. No response from the Court with regard to her letter was received, and consequently the follow-up report was sent three weeks later.

Asked why so little evidence of communication to the Sentence Implementation Courts with regard to these concerns was found in the case files - the letters found in the files often indicated that they generally had just followed the Court's instructions - they often made reference to the power relationship between justice assistants and judges (see also Beyens and Scheirs, 2010: 323). More specifically, they emphasised

[10] It should be noted that the PhD focused on the workings of the Houses of Justice and did not go into detail of the workings of the Sentence Implementation Courts. More research is, therefore, needed to further explore the interactions between the Houses of Justice and the Sentence Implementation Courts.

issues of professional status and legitimacy. *'I am only a social worker... why would someone listen to me?' (Respondent 18))*
Justice assistants felt undervalued at times and experienced a certain anxiety when encountering the legal domain and judges in particular. In a study of Scottish criminal justice social workers in the sentencing process (Halliday et al., 2009) a similar picture of uncertainty about their place within the legal system and concerns about their credibility as 'professionals' was presented. The authors concluded their article by highlighting the significance of inter-professional relations encountered in street-level work. In addition, several justice assistants also mentioned that they were not sure whether their manager or director would defend their decisions and stand up for them in Court should this be necessary.

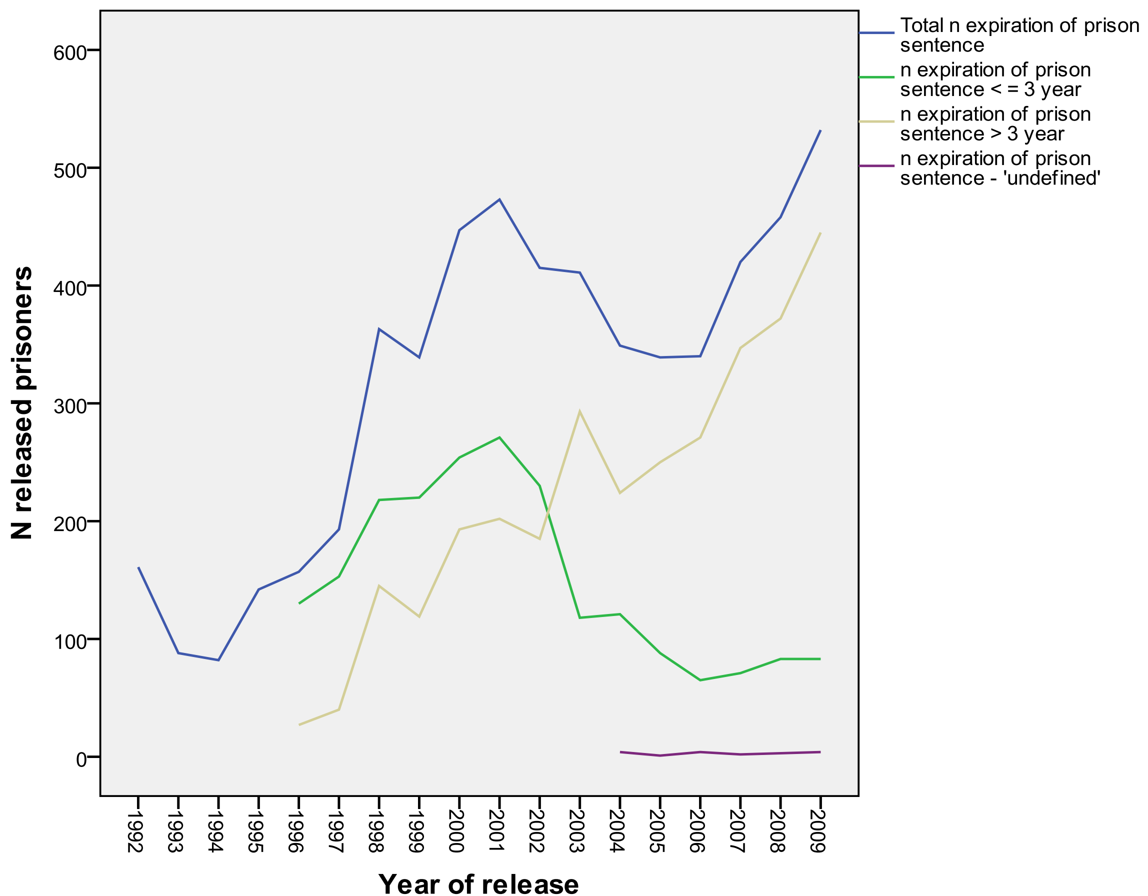
Consequently, there is a danger that the accountability requirements of the Sentence Implementation Courts might come to shape and confine offender supervision practice, curtailing the professional discretion of justice assistants. A real concern expressed by practitioners in the sample was that some of the new developments in offender supervision practice will cast the justice assistants in the role of 'criminal justice operatives' (Worrall, 1997: 74) rather than professionals, merely carrying out orders designed by the Courts and only concerned with the technological and no longer the social work aspects of their job.

Contrary to probation staff in other jurisdictions (for instance, in England and Wales) who have been obliged to follow increasingly stricter National Standards and enforcement, leading to a severe increase in the number of recalls and breaches (see, for instance, Fletcher, 2003), the Belgian National Standards have been less detailed and more flexible. In addition, although the areas of discretionary decision-making by practitioners have also become more circumscribed than they used to be, they still imply a high level of professional discretion. The decision to initiate recall proceedings therefore *currently* still remains at the discretion of the supervising justice assistant (with the exception of convictions for a new offence, which automatically lead to breach proceedings, or police reports). However, several justice assistants in the research referred to tensions with the Sentence Implementation Courts in this regard, as the Courts increasingly seemed to question their use of discretion in deciding whether to initiate breach proceedings.

**Avoiding recall**
A second and rather unconventional way of looking at recall to prison relates to the influence of prisoners' perceptions of the parole and recall system even before early release is granted. The widely shared assumption of prisoners wanting to leave prison as quickly as possible does not hold in the face of existing penological research – at least not in a general and unconditional way. Scholars have already shown in the past how some offenders *prefer to go to prison* depending on what the alternatives are (e.g. Petersilia, 1990) or how a group of prisoners might *opt to stay in prison* and turn away from early release (e.g. Bottomley, 1973), also called "*maxing out*" (e.g. Petersilia, 2003). In this section, and as far as it relates to recall, we will develop a similar argument by drawing on previously unpublished research (for a first indication of the research, see Robert, 2009). Just as ex-prisoners (e.g. Maruna, 2001), in spite of finding themselves caught in a very restricting structure (in their daily lives as prisoners, due to the highly structuring setting of a prison, but also legally, since there are only a few release modalities available), prisoners have to be considered as

persons imbued with *agency*. Prisoners are not merely passive agents receiving a release modality. Given the set-up of a release system and its (perceived) consequences, prisoners can interact with certain rules and regulations, which lead some prisoners to turn away from early release and opt to stay in prison until the entire sentence is served. This comes down to a very peculiar way of avoiding recall to prison.

Over the last two decades, release at the expiration of the full sentence seemed to become exceptional in Belgium, as quasi-automatic release-regulations for short-term prisoners were introduced in 1991 in order to fight prison overcrowding. Subsequently enlarged to sentences up to three years, provisional release now counts for 80% of all releases of sentenced prisoners (see also Maes, 2010; Snacken et al., 2010). For "long-term" prisoners, i.e. serving more than three years, however, another tendency gradually emerged. As from mid 1990s, a gradual and continuing increase can be observed of such prisoners leaving prison at the expiration of their sentence – i.e. 'maxing out' their entire prison sentence. Whereas in 1996 only 27 prisoners with a sentence over three years left prison at the end of their full prison term, by 2008 that number went up to 372 long-term prisoners (Robert, 2009: 175). In 2009, the number of long-termers maxing out continued to increase, going up to 445 prisoners, more than a 16-fold increase. In qualitative terms, release from prison changed profoundly over the course of two decades: prisoners with sentences up to three years nowadays rarely stay in prison until they have served their entire sentence (one notable exception: sex offenders, who have to fulfil certain conditions), while more and more prisoners with longer sentence are released at the end of their entire sentence.



Against the background of this change, a research was set up to look at *why* long-term prisoners max out (Robert, PhD in progress). During a period of nearly 2,5 years, data were collected in the prison of Andenne, in the French-speaking part of Belgium. Andenne is one of the few prisons in Belgium where the entire population is serving sentences of more than three years. The prison itself is one of the latest ones to be taken into use, opening in 1997. Architecturally, it has served as a model for the prisons built afterwards. In Belgian terms, Andenne can be considered to be a large prison, housing on average some 390 prisoners. In terms of security, due to its architecture and technology, the prison of Andenne is one of the few maximum security prisons in Belgium.
The study started with informal talks with prisoners and prison staff, followed by an extensive file analysis of 386 prisoners' files, including attention for previous release modalities, current sentences, prison-related variables such as disciplinary problems, eligibility,… Next, an in-depth study of a limited number of cases included interviews with 60 long-term prisoners and a detailed analysis of their files (prison files, reintegration plans, courts' judgments on release modalities,…), and some 40 interviews with prison staff (including prison directors, prison psychologists, prison clerks and prison officers) to further contextualize the research phenomenon and to check a number of emergent explanations. In March 2011, approximately 16 months after having left Andenne, a limited follow-up was undertaken. Access to the national prison database made it possible to control for the situation of all 386 prisoners and, particularly, of the 60 prisoners: were they still in prison; if not, under which modality were they released; if they had claimed to max out, did that actually occur?; how many had come back after release;... While the data collection has been finished, (statistical and qualitative) data analysis is under way and the study should be finished in 2012.

Here, we will briefly touch on a finding with particular saliency for the issue of recall to prison. As prison researchers in the past already mentioned, the study of what happens in a prison setting (and, to extend the argument here, in release from prison) is in very significant ways tied to formal aspects (e.g. Mathiesen, 1966). This is nothing less than to kick in a proverbial open door, yet due to its sheer simplicity, such a lesson risks being easily overlooked.

One important finding in the research on maxing out has to do with the regulatory make-up of the release system (here limited to conditional release) and how that interacts with and influences prisoners' decisions and choices. There are several dimensions to this, but for matters of clarity and available space, we will only illustrate two issues that came up in most if not all interviews with long-term prisoners eligible for release (n=60). One of the most pressing arguments prisoners gave in the study has to do with the minimum terms of supervision in case of conditional release. In case of serving their entire sentence, prisoners are released without any type of supervision or follow-up in the community – hence also excluding the possibility of recall. On the other hand, the period under supervision for conditionally released prisoners is at least 2 years, 5 years for prisoners serving sentences totalling over 5 years, and 10 years for lifers. Prisoners signalled two major problems in this respect. First, this means that the supervision period can last *much longer* than the remainder of the original sentence, depending on the date of conditional release. Research has indeed found that the supervision period equals the

remainder of the sentence in only 20% of the cases. In some extreme cases, the supervision period exceeds the remaining sentence tenfold (Maes, 2009b). Secondly, there is a complete absence of accounting for time served outside on conditional release *in case of recall*[11]. For example, a prisoner with a sentence of ten years, with only one year left to serve, faces up to a minimum of 5 years of supervision on the outside. In case of being recalled, the remainder of the sentence is re-activated, without any consideration of the time he was (successfully) out on supervision in the community. Only when he is not recalled to prison until the entire period of conditional release is finished (in this case, minimally 5 years for a sentence remainder of one year), will the remainder of the prison sentence be considered to have been served.

The less time prisoners have left to serve and the more the supervision period outweighs the sentence remainder, both qualitative and quantitative data in the ongoing study show, the more likely prisoners are to max out and to leave prison without any type of supervision or control. Once prisoners perceive their sentence remainder to be limited (and such is very dependent on the total sentence length and the minimum term of supervision awaiting them in case of conditional release), prisoners seem to reach a kind of 'tipping point' in which the balance is tilted away from conditional release in the direction of serving the entire sentence remainder. One interpretation some prisoners put forward has to do with a kind of *quid pro quo*: in order to obtain 'real' freedom, they have to opt *for* prison and abstain from conditional release – which many consider as a too long period delaying the return to 'real freedom', with *too many risks of being recalled*. Some prisoners then take *a risk-averse decision* and *stay in prison* – thus avoiding recall.

This kind of decision-making by prisoners may be reinforced by the negative perceptions and experiences in prison surrounding conditional release. For example, being recalled to prison during conditional release interacts either directly (for prisoners who have been recalled) or indirectly (for other prisoners, especially those already eligible for release) with prisoners' perceptions on conditional release. As Skolnick (1960) noted decades ago, prisoners are almost exclusively confronted with negative aspects of early release: in prison, they only meet prisoners who have been refused conditional release and/or those being recalled to prison after early release – in other words, they are exposed to negative stories and failures. Furthermore, positive exemplars of conditional release are much more distant for prisoners; the successful ex-prisoners are outside, with little or no direct contact between prisoners and former prisoners. This might push prisoners to a kind of 'negative selectivity', which for some might push the balance further towards refusing conditional release and thus avoiding recall.

## Conclusion

The Dutroux case in 1996 engendered severe criticisms with regards to the 'failures' of the Belgian parole system. As a result, the parole system was reformed in order to enhance public protection while also reinforcing its legitimacy through transferring decision-making first to multidisciplinary Parole Commissions and eventually to Sentence Implementation Courts. Both aspects of the reform had severe implications

[11] Such is not the case for electronic monitoring and semi-detention: a day served counts as a day of imprisonment.

for the two main actors involved in parole supervision and recall: the justice assistants and the offenders/prisoners. While the justice assistants and Houses of Justice continue to emphasize the necessary balance between guidance and control in parole supervision, the importance of establishing a relationship with the offender in order to foster compliance and the need to use their professional discretion in decisions on supervision and recall, they experience increasing pressure by the Sentence Implementation Courts to emphasize the control aspect of their work and to report back all information at their disposal. On the other hand, the scarce available statistical data indicate a decrease in admissions rates for conditional release since the reforms started, an increased delay in granting conditional release compared to the date of eligibility, an increase in the conditions imposed upon the offender and an increase in reporting cases back to the commissions/Courts, thus enhancing the risk of recall. This has influenced the perceptions of the parole system and the risks of recall by the prisoners. As the supervision period under parole can largely exceed the remainder of the original sentence, an increasing number of long term prisoners choose to max out the complete sentence, preferring the certainty of the prison term over the uncertainties of the parole decision-making and the risks of recall. As a consequence, the purpose of the legislative reforms to enhance public protection through reinforcing the conditional release system seems to fail at least partly, as an increasing number of long term prisoners leave prison without any guidance or supervision. Moreover, this mechanism may also contribute to the continuing increase in the prison population, as not only the recalls themselves, but also the perceptions of the risks of recall become a factor of increasing the average stay in Belgian prisons.

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