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Electronic monitoring in Belgium : a penological analysis of current and future orientations

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Abstract

Electronic monitoring was introduced nationwide in Belgium in 2000 and has expanded ever since. Currently important changes are taking place, radically transforming its operation and nature. The aim of this article is to describe and critically discuss the current shift in EM discourses and practices in Belgium from a penological perspective. We start with a brief sketch of the historical evolution of EM, explaining the penal and political context in which EM emerged and was further established, what goals it was supposed to meet and how these goals and practices shifted. With the new regulations of 2012 and 2013, both the rationale and the technology of EM have further evolved. These recent evolutions will be illustrated and situated in a consideration of the wider transformation of punishment in the community.

Keywords: Electronic Monitoring – GPS – Penology - Community sanctions - Penal policies

Introduction

In 2003, Lilly raised the question whether electronic monitoring (EM) would have a future in Europe (Lilly 2003). Ten years later, we can say it does. EM has found its way through the penal system of the majority of European countries and has come to stay. Being a relatively new penal measure, EM can be applied in a variety of ways, serving to meet diverse punishment goals. The discussion about *whether* EM has a future in Europe has been replaced by the question *how* it will be used in the future (Nellis, Beyens & Kaminski, 2013).

EM was introduced in Belgium more than ten years ago. After a pilot in 1998, it was implemented nationwide in 2000. Initially, a balance was sought between social support and technical control, resulting in the so-called 'Belgian model' (Beyens, Bas & Kaminski, 2007; Beyens & Kaminski, 2013). For a long time, the technology served as a means to support rehabilitative goals. However, throughout the years, EM's rationale has evolved, together with its application in practice. Today, the initial 'Belgian model' has faded away and EM is increasingly being used as a purely controlling and retributive way of executing punishment, with technology increasingly becoming a means in itself.

Although the penological goals of avoiding the harms associated with detention and the focus on reintegration and rehabilitation have not been abandoned altogether, economic rationales

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have become more prominent in the operation of EM. In the official governmental discourse it is emphasized that sanctions should be executed promptly and cost efficiently. EM is seen as the sanction par excellence to meet these economic and political goals.[2]

The aim of this article is to describe and discuss the current shift in EM discourses and practices in Belgium from a penological perspective. We start with a brief sketch of the historical evolution of EM in Belgium, explaining the penal and political context in which EM emerged and was further established, what goals it was supposed to meet and how these goals shifted through the years. With the regulations of 2012 and 2013[3], both the rationale and the technology of EM have further evolved. These EM developments will be illustrated and situated in wider penal trends with regard to punishment in the community.

The early 'Belgian model'

A first step to introduce EM in Belgium was taken in 1996 by the then Minister of Justice, Stefaan De Clerck, who stated in his White paper *Penal Policy and Prison Policy* that EM was an option to be explored (Beyens, 1996). Although a study of the literature by the Criminal Justice Policy Service (De Buck & D'Haenens, 1996) gave unfavourable advice, a pilot was set up in 1998 and lasted for two years. The target group for EM consisted of convicted prisoners serving a prison sentence of up to 18 months, who either had a job or were participating in an educational or therapeutic program. Right from the start, quantitative targets were formulated, which was quite unusual in Belgian penitentiary policies. At the time of the pilot, policy makers aimed for 300 prisoners under EM. Because of the strict eligibility criteria used at that time[4] and the very cautious attitude of the staff involved in the selection process, this goal was not achieved, as only 72 prisoners were placed under EM at that time.

The correctional context of the introduction of EM was, as in many other countries, one of a rising prison population. By 2000, the Belgian prison population counted 8.688 prisoners. With a prison capacity of 7.462[5], this resulted in prison overcrowding of 16.4%.

In 2000, a separate National Centre for Electronic Monitoring (NCEM) was established and this ushered in the national implementation of EM. At that time, EM was still only regulated through 'pseudo legislation' by Ministerial Circular Letters[6]. It took until 2006 for EM to get a legal basis.[7]

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[2] See for example *Hand.* Kamer (House of Representatives), 2010-2011, 5/07/2011, 53, 10-15.

[3] Ministerial Circular letter of 28 August 2012 on home detention with voice verification for persons convicted to one or more prison sentences of which the executable part does not exceed three years and who are two months or less from their early release date and the Ministerial Circular Letter Nr. ET/SE 1 of 12 March 2013 concerning the regulation of electronic monitoring as a sentencing modality for prison sentences of which the total does not exceed three years. It has to be pointed out that for a long time the execution of prison sentences and EM in Belgium has been, and still is to a great extent, regulated by Ministerial Circular Letters.

[4] Sexual delinquents, persons convicted for trading in narcotics or hormones and 'problematic cases', i.e. cases with severe family and relationship problems and detainees who posed a threat for public safety, were excluded from EM (*Hand.* Kamer (House of Representatives), 1997-1998, 5/01/1998, 7-9).

[5] Ministry of Economics, 2013, http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/andere/gevangenen/, consulted at July 9, 2013

[6] Ministerial Circular Letters are regulatory documents apart from the official legislation. They are usually issued to provide additional information for official legislation.

[7] The Act of 17 May 2006 on the External Legal Position of sentenced prisoners and the right of the victims in the framework of modalities of implementation of sentences, in short the act on the External Legal Position, provided EM with a legal basis in 2006. Later on, the EM practice was further regulated and adjusted in different succeeding decrees and Ministerial Circular Letters. The last adjustment is made in the Ministerial Circular Letter from March 2013.

The aim of introducing EM was twofold and can be linked to penological and economic or systemic purposes. From the beginning, EM was presented at the political level as a humane way to serve a prison sentence[8], serving as a means to avoid the harms associated with detention (Beyens, Devresse, Kaminski & Luypaert, 2007; Beyens & Devresse, 2009). A so-called 'penitentiary' model of EM was established, striving for a balance between social support and electronic control. This compromise would from then on be known as the 'Belgian model' of EM[9], which was characterized by a highly individualised approach with regard to its implementation as well as to its execution. As EM was introduced as a way of executing a part of a prison sentence it combined controlling and rehabilitative elements in its implementation. The technological control was seen as a way to support rehabilitative goals. This first period was characterised by a careful selection of the EM candidates and a thorough and individualised follow up and control by the 'social assistants' of the NCET. The supervisee further needed to comply with general conditions, such as no reoffending, being contactable at all times, having a fixed abode in Belgium, reacting to the requests of the social assistants, the NCET or the prison governor and complying with the time schedule. Electronic control was combined with regular home visits from the social assistant and having a useful daytime activity, preferably outside home, such as being involved in or looking for a professional occupation or participating in an educational or therapeutic programme was a prerequisite to be eligible for EM (Beyens, Devresse, Kaminski & Luypaert, 2007). This model constitutes a very individualised approach to executing prison sentences through EM. It is also a very demanding way of executing a sentence, both in terms of operation and of personal commitment of the supervisee (Vander Beken, 2013).

The EM selection procedure always started with a first home visit by the social assistant, aiming to investigate the future social environment of the person to be put under EM and resulting in a social inquiry report describing the future living conditions of the supervisee. This social report also served as a basis to take a decision about the imposition of EM and was useful to determine the individualised conditions for EM. Furthermore the home visit provided the opportunity to explain the EM procedure to the family members and to gauge whether they were willing to cooperate. For several reasons their cooperation is crucial for EM. Family members are very much involved in its execution and they even share the punishment with the person being put under EM (for example by feeling obliged to remain at home out of loyalty with the supervisee). Moreover, the support of the family is considered to be a crucial element in the process of compliance with the daily schedule and the other conditions imposed (Beyens & Devresse, 2009). Therefore, it is important that family members can express their view and potential objections with regard to serving an EM measure in their house. Until 2006, a written consent from adult family members living with the prisoners was obligatory (Beyens *et al*., 2007). To speed up the assignment procedure and for budgetary reasons, the preparatory home visits and social reports were abolished in 2006, to be reintroduced however in 2008 and to be abolished again in 2012 and 2013 for the biggest group of persons being subjected to EM (*infra*).

The fading away of the 'Belgian model'

After 2006, EM became a popular tool among all succeeding Ministers of Justice, to combat prison overcrowding in a cost-efficient manner (Beyens & Kaminski, 2013) and it was repeatedly presented as a solution for the crisis in the Belgian prison system in policy papers.[10] With a daily cost of approximately 39€, EM is three times cheaper than a day in

[8] See for example *Hand.* Kamer (House of Representatives), 2008-2009, 28/01/2009, 52, 57.
[9] Other researchers call it also the 'traditional model' of EM (Maes, Mine, De Man & Van Brakel, 2012).
[10] It has to be pointed out that, since the 1980s, prison overcrowding was dealt with through the use of 'back door' strategies by providing provisional release for prisoners with a sentence of up to three years. This practice,

prison (126 € per prisoner per day).[11] Academics remained however sceptical about its alleged problem solving effect and pointed at the variety in penal goals that make of EM an 'ambivalent penal compromise' (Beyens *et al.*, 2007: 33).

To date, EM is still solely used as a way of executing a prison sentence. The assignment is organised according to a two-track model, which can be seen as a continuation of the Belgian bifurcation penal policy. This penal policy makes a clear distinction between prison sentences of up to three years and prison sentences of more than three years.[12] This distinction applies to the use of early release and EM.

For prisoners sentenced to *up to three years* imprisonment, EM is used as a *front door* strategy. Although the offender is initially sentenced to imprisonment by a sentencing judge, many of the prisoners actually do not have to serve one day in prison. In the search for more virtual prison capacity, EM is applied almost automatically to this group sentenced to up to three years. The procedure is currently regulated by Ministerial Circular Letters of 2012 and 2013.[13] The prison governor plays a central role in the assignment procedure. He takes the first initiative to put the prisoner under EM, which includes providing information about EM and asking for the prisoner's consent to undergo his sanction under EM. If he agrees, the prison governor provides him with all relevant information and sets a date, together with the NCEM, to install the EM device at the home of the supervisee. He furthermore collects the information concerning the prisoner's residence and, when he is not the resident of the place where the EM will be executed, he consults the other residents about their consent.[14] In case of refusal by the prisoner or the other residents, the person is detained.

Although the prison governor plays a crucial role in the EM procedure, exceptions exist. In cases of a conviction for sexual offences, the Detention Management Service of the central Prison Administration takes the granting decision for EM and pre-specified individual conditions are set, based on a social inquiry report. For example, in cases with offenders who are facing a substance abuse problem, the prison governor may advise drug or alcohol treatment. The procedure for this (very small) group is stricter than for the bulk of other prisoners sentenced to a prison sentence of up to three years, where no social inquiry report is required and additional conditions are not set, unless the prison governor decides otherwise.[15] The main procedure shows thus a clear move away from the strongly individualised approach discussed above, towards a more standardised approach today. This standardised approach still leaves room for exceptions, when this is deemed necessary in the light of the offender's risk level.

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however, led to discontent among Belgian citizens, politicians and the judiciary (Beyens, Snacken & van Zyl Smit, 2013).

[11] *Vr. en Antw.* Kamer (House of Representatives), 2009-2010, 22/03/2010, 52, nr. 0462 X. Baeselen (question no. 0462 X Baeselen).

[12] For prison sentences of up to three years, the prisoner is eligible for *provisional* release; prisoners serving more than three years imprisonment are *conditionally* released (Snacken, Beyens & Beernaert, 2010). The decision to release prisoners provisionally after having served one third of their sentence is generally taken by the prison governor. With regard to prison sentences of three years or more, the decision to conditionally release is taken by the Sentence Implementation Court (see Scheirs, Beyens & Snacken, *forthc*. for a more detailed description and analysis of the decision making of the Sentence Implementation Courts).

[13] Ministerial Circular letter of 28 August 2012 on home detention with voice verification for persons convicted to one or more prison sentences of which the executable part is not longer than three years and who are two months or less from their early release date; Ministerial Circular Letter Nr. ET/SE 1 from 12 March 2013 concerning the regulation of electronic monitoring as a sentencing modality for prison sentences of which the total does not exceed three years.

[14] The consent of the other residents is thus no longer required when the offender is the official resident of the place where the punishment will be executed.

[15] The prison governor will make a case-based decision in this regard.

For the group of prisoners with a sentence of *three years or more* the procedure is more individualised and the Sentence Implementation Court takes the decision to place the prisoner under EM. Six months before the prisoner is eligible for conditional release, he can be placed under EM[16], which means that in these cases EM is used as a transitional measure between imprisonment and conditional release. For this category, EM serves thus as a *back door* strategy.

Operation of EM

The two major components of EM, i.e. human, individual support and electronic control, are provided by two different agencies, involving two different categories of staff. The National Centre for Electronic Monitoring (NCEM) is responsible for the electronic control. *Monitoring officers* check the alarms and the time schedule of the persons under EM and the *mobile team* installs the electronic devices at the prisoner's home. The justice assistants of the Houses of Justice (cf. Belgian name for the Probation Service) provide the social follow up since 2007. Before 2007, the social assistants who were located at the NCEM did the follow up[17], but a reorganisation of the operation of EM led to a move of the social supervision to the houses of justice.[18] From then on the 'justice assistants' were responsible for the social follow up of the EM supervisees. To date, there is no private sector involvement in the operation of EM in Belgium. There is a reluctance to transfer the supervision to the private sector. However, in 2009, the then Minister of Justice, Stefaan Declerck stated that he saw an opportunity for a private sector involvement in the installation of the monitoring device. All the tasks are nevertheless still performed by the public sector agencies.

Quantitative targets

As described above, benchmarks about the desirable number of supervisees under EM have been put forward since EM first came into practice. In 2000, the objective was to reach an average daily ratio of 300 prisoners under EM. By 2003, the average daily ratio was 238[19], but the numbers only rose slowly. It took until 2006 before the daily EM population reached 600 prisoners (Beyens & Kaminski, 2013). Ministers of Justice have been questioned about why the preconceived targets were not met and were put under political pressure to reach them (Beyens & Devresse, 2009), leading to a weakening of the eligibility criteria for EM, so that more offenders sentenced to a prison sentence were eligible. Today, no category of offenders is automatically excluded from EM. The average number kept increasing, and recent figures show that on 3 June 2013, 1318 prisoners were serving their prison sentence under EM, which is 9.7 per cent of the total prison population at that day (N = 12011). These figures show that EM has become a vested part of the Belgian penal system and confirms the assumption that EM smoothly facilitates an expansion of the (virtual) prison system.

The increasing number of eligible prisoners however also resulted in long waiting lists due to a lack of technical equipment and justice assistants available to prepare the social inquiry reports. The waiting times between being declared eligible for EM and effectively being put under EM increased dramatically. Until 2013, it could take up to one and a half years before the entire procedure was completed.[20] The Houses of Justice soon faced almost 5000 dossiers

[16] Art. 23 Act of 17 May 2006 on the External Legal Position of sentenced prisoners and the right of the victims in the framework of modalities of implementation of sentences.

[17] From the beginning, the then probation officers refused to be involved in the supervision of offenders being placed under EM for ideological reasons. So a separate group of 'social assistants', who were located at the NCET was created to provide the social follow up of the supervisees under EM (Beyens 2000).

[18] *Hand.* Kamer (House of Representatives), 2012-2013, 18/01/2012, 36-40.

[19] *Vr. en Antw.*, Kamer (House of Representatives), 2004-2005, 21/03/2005, 51, nr. 0531 S. Lahaye-Battheu (question no. 0531).

[20] *Hand.* Kamer (House of Representatives), 2011-2012, 14/03/2012, 53, 10-17.

waiting to be dealt with.[21] The creation of these waiting lists questioned the legitimacy of the EM system and its objective of rehabilitation. To counterbalance the waiting lists, a number of actions were taken, involving among others, the diminished use of the social enquiry report[22] (*supra*) and the rationalization of the operation of EM for the group of offenders sentenced to a prison sentence of up to three years (*infra*).

Current and future orientations

In the quest to expand the use of EM, several initiatives and policy strategies have been set and will further fundamentally change the operation of EM in Belgium. We believe that, through these different evolutions, EM in Belgium has reached a remarkable turning point.

EM as an autonomous sentencing option

To date, EM is still exclusively used as a way of executing prison sentences. However, from the start, the option to expand EM to the pre-trial and sentencing phase was kept open (Bollen, 2000). Laurette Onkelinx, who was Minister of Justice between 2003 and 2007, proposed to introduce EM as an autonomous sentencing option for offences punishable with a prison sentence between six months and three years. A research study was ordered at the National Institute for Criminalistics and Criminology to study this option (Vanneste, Goossens, Maes & Deltenre, 2005). Based on an inquiry with judges, the researchers concluded that there was no particular demand or need for such an option. It was stated by the judges that the introduction of EM at the sentencing level would be impractical and time consuming, due to the necessity to gather detailed information about the social situation of the offender before it could be imposed. The family member's advice would be difficult to obtain in time and with more sanctions existing alongside each other, it would be difficult to decide which sanction is considered the most severe. Moreover, EM was seen as a way to improve the prisoner's behaviour, a process that fits more in the execution phase of the sentence. However, the main point of critique of the researchers was the risk of net widening if EM would be introduced as an autonomous sanction (Vanneste *et al.*, 2005; Maes & Goossens, 2009; Beyens, 2000). Today, the option of introducing EM as an autonomous sanction is still kept open.

GPS tracking in the pre-trial phase

As remand prisoners form more than one third of the Belgian prison population, alternatives for pre-trial custody are sought to realise a reduction of the prison population.[23] So the option to use EM as a modality of remand detention is also seen as an attractive option by policy makers to solve the prison crisis in Belgium. In order to use EM in the pre-trial phase, GPS (global positioning system) is being proposed as a modality of replacing remand custody for a number of suspects.[24] GPS allows a constant surveillance of the accused at all times. Although Minister of Justice Laurette Onkelincx declared in 2005 that she was reluctant to use GPS in the context of EM, for being too intrusive and stigmatising[25], the latter Minister of Justice Jo Vandeurzen, declared in his White Paper in 2009 that expanding EM to the pre-

[21] Turtelboom, 2013, http://justitie.belgium.be/nl/nieuws/persberichten/news_pers_2013-04-11.jsp, consulted at 15/07/2013.
[22] *Vr. en Antw.*, Kamer (House of Representatives), 2011-2012, 9/08/2012, *Vr. nr. 570* E. Thiébaut (question no. 570).
[23] *Vr. en Antw.*, Kamer (House of Representatives), 2011-2012, 12/07/2012, 53, nr. 529 E. Thiébaut;
[24] Wetsontwerp houdende diverse bepalingen betreffende justitie, *Parl.St.* Kamer (House of Representatives), 2012-2013, nr. 53.
[25] *Vr. en Antw.*, Kamer (House of Representatives), 2004-2005, 17/03/2005, 51, nr. 0535 A. Borginon (question no. 0535).

trial phase using GPS would be a desirable option to reduce the prison population. The aim was to place five to ten per cent of the total remand population under GPS.[26]

The desirability and possibilities to introduce electronic monitoring as an additional alternative to pre-trial detention in Belgium were studied from a legal, practical and operational point of view by Maes, Mine, De Man & Van Brakel (2012) (see also Maes & Mine, 2013). They took the current use of pre-trial detention in Belgium into account and focused on the possible reductive effect of EM on the use of pre-trial detention and the size of the remand population. Using semi-structured interviews with judges, Maes *et al*. (2012) found that the risk of escaping was the primary factor for judges not to consider EM in the pre-trial phase. It was also stated that the application of GPS would be rather considered as a more intense form of release under conditions, than as a real replacement of pre-trial detention. The researchers concluded that EM "will probably enjoy a certain level of application in the context of pre-trial detention", and thus might have *some* reductive effect on the prison population.

However, the side effect of net-widening combined with an increased risk of re-incarcerations in case of non-compliance should moderate too optimistic expectations of a possible reductive effect on the prison population. Furthermore, some additional reservations can be made on the GPS technology as such, as it requires a comprehensive and well-trained technical service centre. It will allow for more detailed control but will also give rise to a high number of alerts. As a result, it is crucial that there is sufficient manpower, which makes of GPS an expensive control modality. Under the current Minister of Justice, Annemie Turtelboom, it has however been decided that GPS tracking will become operational in January 2014[27], as a means of enforcing pre-trial detention. The use of GPS will not be the subject of a pilot project. Instead, it will be put into practice right away and be evaluated after 18 months.[28] It will be a plain application of electronic control, detached from other supportive measures. It is stated that at this stage, rehabilitation is not (or may not be) an issue (yet), as the suspect has not been convicted yet and the measure is taken in order to guarantee public safety.[29]

'Home detention' with voice verification

In 2012, 'home detention' was introduced in conjunction with voice verification, meaning that the supervisee does not have to wear an anklet and that the control is done by phone.[30] Home detention as put into practice in Belgium, is to be understood as a simplified version of the earlier electronic monitoring model.[31] The term 'home detention'[32] intends to emphasise the element of pure confinement and spatial limitation of freedom of movement, without any other supportive measures.

[26] *Vr. en Antw.*, Kamer (House of Representatives), 2011-2012, 12/07/2012, 53, nr. 529 E. Thiébaut (question no. 529).
[27] Personal communication with a member of the Cabinet of current Minister of Justice Annemie Turtelboom.
[28] *Hand.* Kamer (House of Representatives), 2012-2013, 28/11/2012, 53, 19.
[29] *Hand.* Kamer (House of Representatives), 2011/2012, 27/06/2012, 53, 1-2.
[30] In the very beginning of the introduction of EM in 1998, there has been a short period in which voice verification was used. However, because the technique was not yet fully operational, this modality was soon abandoned.
[31] Federale Overheidsdienst Justitie, http://justitie.belgium.be/nl/nieuws/persberichten/news_pers_2011-07-06_1.jsp, consulted at 28 August 2013.
[32] 'Home detention' is a literal English translation of the Dutch word 'thuisdetentie', and is used by the government and in the regulations.

The idea of home detention was first raised in 2011[33], emphasising two main reasons to choose the option of plain voice verification. The first is the alleged lack of a positive outcome when providing social support for only a short period of time. A period of a couple of months or weeks[34] is considered to be too short to achieve any useful results. This thus points to a shift in punishment goals for short-term sentences, away from the initial rehabilitative goals. The second and more important reason is the low daily cost of voice verification,[35] being only 5.56€ per day.[36]In 2012 a pilot took place, where 308 persons with a sentence between six to eight months were put in home detention. In 2013 it was implemented nationwide and today, home detention can be applied to prisoners with a prison sentence of up to three years having to serve a maximum of two months until their provisional release.[37]

The use of home detention with voice verification introduces the idea of plain surveillance. Apart from the control provided by the electronic voice verification system, there is no longer a preceding social inquiry nor a follow up by or contact with the justice assistant in the execution of the measure. A standard time schedule is applied, giving the supervisee permission to leave his house to go to work or to participate in an educational programme. As with the 'classic' EM application, the Ministerial Circular Letter describes the time frame within which the person under EM can leave the house. For prisoners with no useful daytime activity, four hours of free time, between 8.00 and 12.00 am are granted. The hours of free time can increase until eight or 12 hours per day, depending on whether the person has a part-time or fulltime daytime activity. The prison director takes a decision regarding the execution of the prison sentence under home detention without being informed by a social inquiry report. The persons under EM are held responsible to take care of the prior administrative steps to be taken and the family members receive even less information than was previously the case (Vander Beken, 2013). This embodies a clear shift away from the principle of providing social support and rehabilitation.

The system of voice verification is, again, introduced to enhance the credibility of the sentencing execution system in Belgium, which is the main political driver of criminal justice policies today in Belgium and elsewhere. Until 2013, sentences up to eight months were scarcely or not executed and it is the main objective of the current minister of Justice's policy to execute all sentences, even those of only a few months. The plain voice verification system is explicitly introduced as a tool to reach this political goal.

From social support towards mere surveillance

Throughout the years, the rationale of EM has clearly evolved. It shifted away from the use of electronic devices combined with social follow up and support, once a central aspect of the EM application and a main argument for its legitimacy, towards more plain electronic control. The shift away from social support is to be understood in the context of search for political legitimacy, leading to shifting paradigms in penal practice. The changes with regard to EM also fit in a wider transformation of the work of social workers functioning in a judicial context, having become subject to more standardisation, efficiency and accountability and also leading to a general shift in the conception of the justice assistant's work (Bauwens,

[33] *Hand.* Kamer (House of Representatives), 2010-2011, 5/07/2011, 53, 10-15.

[34] In this case, prison sentences of between six to up to eight months, result in an actual execution of a maximum of two months, taken into account the possibility of provisional release.

[35] *Hand.* Senaat (Senate), 2010-2011, 7/07/2011, 5/29, 14-17.

[36] *Vr. en Antw.*, Senaat (Senate), 2011-2012, 28/12/2011, nr. 5-4706 B. Anciaux (question no. 5-4706).

[37] Ministerial Circular letter of 28 August 2012 on home detention with voice verification for persons convicted to one or more prison sentences of which the executable part is not longer than three years and who are two months or less from their early release date

2011).[38] Together with these wider evolutions the way of looking at EM has evolved, leading to organisational and operational changes.

The shift away from and the changing nature of social support was definitely installed with the introduction of the Ministerial Circular Letters in 2012 and 2013 and will be illustrated here with a number of examples.
Firstly, the changing role of the justice assistant, particularly for the sentences of up to three years, is very illustrative for these developments. Previously, they were in charge of constructing the timetable, taking into account the individual needs and activities of the person being put under EM. This task has become standardised now and the justice assistant is no longer involved in it for all sentences up to three years being executed under EM or voice verification. Fixed timetables are defined in the circular of 2013, for three categories of supervisees: 1) supervisees without work or educational activities can leave their house for four hours a day, from 8:00 am until 12:00 am. This 'free time' has to be spent doing 'useful activities', connected to looking for a job, familial or medical activities, etc.,) supervisees with a part-time daily occupation can leave their house for eight hours in order to fulfil their duties and 3) supervisees with a full-time daily activity receive twelve free hours without being electronically monitored. These fixed schedules leave little discretionary power to the professionals involved in the operation and follow up of the EM measure.
Secondly, home visits from the justice assistants to prepare the EM are abolished for offenders sentenced to a prison sentence of up to three years. This personal contact with the supervisee prior to the EM is now being replaced by a brief (five to ten minutes) telephone contact with the prison governor in case of home detention or with the justice assistant in other cases. During this call the procedure is explained to the supervisee and it is checked whether he has filled in all necessary forms so that additional information is available in order to start the EM. In general home visits during the course of EM are replaced with telephone contacts, with either the justice assistants or the monitoring staff. It has however been pointed out that telephone contacts are reductionist and different from personal visits and that interpersonal contacts remain very important to provide a useful and humane sentence (Beyens et al., 2007). Within seven days after the telephone contact, the justice assistant receives the supervisee at his office (not in the case of home detention, where there is no follow up by the justice assistant any more). If there are no exceptional conditions to be fulfilled, which is the case in the majority of cases, there will be no further contact between the justice assistant and the person under EM. When the supervisee breaches the time schedule or the general conditions at least four times, the justice assistant can be called in to do a first follow-up.

These new practices show a tendency towards a less personalised contact and follow up and the introduction of a more virtual 'relationship' between the supervisee and the supervisor or controller. This evolution may lead to a difference in the way persons under EM experience the sanction, but also to how supervisors deal with particular cases and the compliance with the EM measure.

Another major shift away from the Belgian model of EM since 2012 – 2013 is that a social inquiry report is no longer required to decide about the assignment of EM or home detention for sentences up to three years. This obligation had already been abolished in 2008 for a

[38] In 2004, the working principles of the Houses of Justice were reviewed, using the Business Process Reengineering (BPR) methodology, aiming for effective and efficient work procedures (Federale Overheidsdienst Justitie, 2009).

particular category [39], but remained for the other prisoners. Because 95% of the social inquiry reports led to a positive evaluation, this procedure was considered to be too time consuming and expensive.[40] As a solution for dealing with the long waiting times and waiting lists (*supra*), it was decided to abolish the social inquiry report and only reserve it for exceptional cases. The prison governor has to decide on a case-by-case basis whether or not a social inquiry report might be useful. This decision can be understood from a proportionality point of view, where one does not invest in intensive social reports for minor sentences (Bas & Pletinckx, 2005). When the prison governor decides that a social inquiry report has no added value, the justice assistant is excluded from the assignment process and the NCEM is immediately contacted to schedule the installation of the device. The exceptions to this rule are, again, cases of sexual offenders with a prison sentence of more than one year. For these prisoners, the Detention Management Service of the central Prison Administration will request a social inquiry report. It is however very obvious that the prison governor becomes a more important actor in the assignment of EM because of this new procedure. However, he has already a lot of administrative duties to fulfil with regard to the early release procedure (Scheirs, Beyens & Snacken, *forthc*.), with the risk that he will become even more overburdened and that the decision-making will become even more routinized.

This all points to a clear shift away from individualised decision-making and social support and supervision for the group of offenders sentenced to a prison sentence of up to three years. Fixed timetables and strict guidelines on how to deal with non-compliance limit the discretionary power of the professionals involved in the supervision and controlling process and allow little participation from the person subject to EM or home detention. This shift is further reinforced by the introduction of new technologies such as the use of plain voice verification and of GPS tracking in the pre-trial phase.

Conclusion: Expansion, rationalization and differentiation

Notwithstanding the initial 'Belgian model', it is clear that EM has been used and generalised rather quickly as a tool to provide a cheap and easy way of executing prison sentences. Although the succeeding Ministers of Justice invoked EM to solve the crisis of prison overcrowding, no structural decline in the prison population has however taken place since the expanded use of EM. On the contrary: with prison overcrowding of 16.4% in 2000, when EM was implemented nationwide, thirteen years later, the prison population rocketed up to 11.330, resulting in an overcrowding ratio of 23.7% (Directoraat-generaal Penitentiaire Inrichtingen, 2013). It is obvious that EM, through its increased use, is primarily a vehicle to realise expansionist, 'credible' penal policies, allowing serving sentences that were not executed before[41] and leading to more punishment in society.

However, being a way of executing a prison sentence, we can state that the prison population in Belgium would have been even higher without EM. As the prison sentence is converted to EM in the execution phase, undesired net-widening at the sentencing level is avoided. However, we do not know to what extent judges anticipate the quasi-automatic conversion of prison sentences of up to three years into EM. With regard to the quasi-automatic application of provisional release we know that sentencing judges admit that they do anticipate this by imposing longer prison sentences to compensate for the alleged reduction of the sentence

[39] The so-called category of 'self representers' (*zelfaanbod*) consists of persons who have received a prison sentence up to three years and who report themselves in prison to execute their punishment, and of persons who have received a prison sentence up to one year who have been captured (Vanneste et al., 2005).
[40] Turtelboom, 2013, http://justitie.belgium.be/nl/nieuws/persberichten/news_pers_2013-04-11.jsp, consulted at 15/07/2013.
[41] Cf. prison sentences between six months and up to eight months through home detention

length in the execution phase (Beyens, Françoise & Scheirs, 2010; Beyens, Snacken & van Zyl Smit, 2013). With the announced introduction of EM as an autonomous sanction in the sentencing phase and of GPS in the pre-trial phase, the risk of net-widening becomes however more likely.

Although EM is still a way of executing a prison sentence, serving the reintegration of the prisoner, the way in which this is realized has totally changed for the majority of people being put under EM.[42] These changes were driven by budgetary reasons, by reducing the costs of supervisory staff through curbing their interventions, changing the nature of their interventions and even replacing or abolishing their supervisory activities. The use of plain home detention, detached from any kind of support, marks this shift and makes EM a cheap means to facilitate the execution of prison sentences of up to three years. By focussing on this particular group of prisoners, the Belgian twin-track penal policy with regard to sentence implementation is further expanded. The difference in assignment procedures and operation of EM between short-term and long-term prisoners has become huge. To date, prisoners serving sentences of more than three years still are subjected to a profound selection process by the sentence implementation court and are followed up by justice assistants, who are helping and controlling them in the course of the EM measure. Social support (and control) is thus reserved to an ever-smaller fraction of persons subjected to EM.

The role of the justice assistant in most of the cases is standardized or has been taken over by the prison governor or the monitoring officers, who are not trained to take up social tasks. If the justice assistant is involved, her/his activities are mostly downgraded to a mere administrative function, performed by phone or fax, which is far away from the traditional conception of social work in a judicial context. For prisoners serving a prison sentence of up to eight months under home detention, the involvement of the justice assistant is abolished. So, with the decreasing discretion of professionals working with EM- supervisees, EM becomes more and more a standardized form of punishment.

Not only has the role of the professionals involved in the implementation changed, but this transformation also involves a different view of the convicted offender having to serve an EM. He is expected to be autonomous (no support anymore) and responsible for his own sentence administration. He is supposed to do his paper work on his own without any support from the justice assistant. This far-reaching responsabilisation is combined with less information to and attention for the family members, whose consent is no longer required in most of the cases, but who have to share the punishment with the supervisee in their home.
The shift in the operation of EM goes hand in hand with the emergence and application of new technologies, i.e. GPS tracking and voice verification. Offenders and their families are thus supposed to accommodate themselves to different technologies in different stages of the criminal justice system.

We believe that the decrease of social support in favour of plain technological control ushers in a new era of sentence implementation in Belgium for the biggest group of people subjected to EM. Rehabilitative objectives have fundamentally been transformed and easily been abandoned for cheap punishment, allowing to process groups of offenders trough their punishment. Future orientations point at more of what can be regarded as ‘e-punishment’, a kind of substance-less, contract based punishment, where offenders are paying for their crimes in days and hours of being under a more or less intrusive form of electronic control.

[42] Although accurate data are not available for the moment, it can be estimated that about 80% of all persons subjected to EM are serving a prison sentence of up to three years.

From this point of view EM has become a purely just-desert oriented retributive punishment. By contracting out the punishment to the offender and his family the boundaries between the penal system and the community and the private home become further blurred. Although this blurring has always been the case with EM, this is increasingly problematic for a number of reasons. As indicated before, the family member's consent is no longer enquired, but they are assumed to cooperate with the punishment. The offender is also increasingly being held responsible for the correct implementation of the sentence, in terms of meeting the administrative prerequisites. And just as a lot of activities in society now have become subject to self-government and informatisation (cf. banking, registration, purchasing plane tickets through the internet, etc…) in order to rationalize costs, also punishment does not escape this evolution. Home detention can be regarded as the cheapest 'Ryan Air option' in the scale of modalities of EM in Belgium, where services are no longer offered. However, many offenders are particularly socially vulnerable and not very competent in this regard.

We can conclude that the developments described for EM in Belgium are not unique. Earlier we pointed at similar transformations of rehabilitation with regard to the operation of community service in Belgium, which are also mainly financially and management driven (Beyens, 2010). Also the majority of work penalties are imposed today without a social inquiry report (Directoraat-generaal Justitiehuizen, 2013) and with a restricted number of allowed contacts between the person under EM and the justice assistants. Contacts are strictly limited to contractual and administrative matters and supervisory or supportive activities are excluded. An international comparative analysis of community service in Scotland, the Netherlands, Spain and Belgium also revealed a more narrowly defined form of rehabilitation in all of the jurisdictions, where most orders were increasingly carried out without much personal support, leading to more standardized and less interventionist practices and a greater relative emphasis upon the retributive aim of community service, attached to the deprivation of the offender's free time. This is described as a practical shift from offender supervision to offender *management* (McIvor, Beyens, Blay & Boone, 2010).

Looking at the four 'visions on punishment in the society' that are distinguished by Robinson, McNeill & Maruna (2013), i.e. 'managerial', 'punitive', 'rehabilitative' and 'reparative' views, recent EM developments in Belgium show several aspects of the three first 'visions' they describe. It is clear that EM has increasingly been dominated by 'managerial' strategies and concerns, driven by a pragmatic rationale to provide for credible 'alternatives to custody' to relieve pressure on the prison capacity. With regard to the punitive community sanctions and the punitive turn they describe, we would like to point out the janus face of EM in Belgium. On the one hand we recognize several drivers Robindon, McNeill & Maruna (2013) discern with regard to the punitive vision, such as the politicisation and systemic pursuit of 'just deserts' and the loss of constructive potential of EM in favor of its retributive qualities, which can be measured in length, intensity and intrusiveness. However, we are hesitant to unproblematically equate retribution with more punitivity here. From a macro-quantitative perspective it is an undeniable truth that EM has led to more punishment or judicial intervention in society. From a substantive approach EM is not always a very punitive sanction per se. The 'punitive bite' depends on the intensity of the surveillance, with GPS at the deep end and home detention at the less intrusive side and on how EM is used or combined with other controlling or rehabilitative measures or conditions. Finally, EM is an inherently managerial measure which might be used to support rehabilitation or to support punishment, of varying intensities. In both cases it does not cease being "managerial in essence" even when it is packaged in rehabilitative or punitive discourses. In that sense EM does not easily fit into only one of the four proposed "visions of crime control" by Robinson, McNeill and Maruna (2013).

And how can we understand the meaning of punitiveness in this context? The recent forms of EM that have been introduced in Belgium (apart from GPS) are called 'EM-light' by the practitioners, referring to the weakening of the individual follow-up but also to a reduced electronic control. These forms are regarded as less intrusive and less punitive. Less or no supervision by the justice assistant and a form of EM where the EM technology is used in its purest form as 'nothing more or less than a form of remote surveillant control, a means of flexibly regulating the spatial and temporal schedules of an offender's life' (Nellis, 2011) probably also means less 'punitive bite'. It will be interesting to study and compare the lived experiences of the persons being subjected to the different forms of EM and wait for the perverse side-effects to discuss the real nature and meaning of this form of control.

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