

What is the value of mutual recognition today?: Compatibility of passive extraditions to Belgium with the fundamental human rights in the light of the detention in Belgian prisons

¿Qué valor tiene hoy en día el Reconocimiento mutuo?: Compatibilidad de las extradiciones pasivas a Bélgica con los derechos fundamentales a la luz de la detención en las prisiones belgas

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Abstract

This article examined the current value of mutual recognition within the European Arrest Warrant system, focusing on passive extraditions to Belgium and their compatibility with fundamental human rights. Particular attention was given to detention conditions in Belgian prisons.

The research aimed to assess whether extraditions to Belgium remain compatible with fundamental rights obligations, especially in light of structural deficiencies in prison conditions and evolving case law.

A doctrinal legal analysis was conducted, combining the study of Euro-

pean Union legislation, case law of the Court of Justice of the European Union and the European Court of Human Rights, and reports from national and international monitoring bodies on Belgian prison conditions.

The findings showed that, although the European Arrest Warrant system was based on mutual trust, this trust had been increasingly challenged by persistent human rights violations in Belgian prisons, including overcrowding, inadequate hygiene, violence, and insufficient healthcare. Case law established a two-step assessment allowing suspension or refusal of extradition in cases of real risk of inhuman or degrading treatment, yet imposed a high evidentiary burden on executing states. Despite repeated condemnations of Belgium, structural improvements remained limited, raising doubts about the practical effectiveness of fundamental rights safeguards.

The research concluded that the principle of mutual trust was under significant strain and that the current legal framework insufficiently addressed systemic deficiencies, making a reassessment of the European Arrest Warrant system necessary.

Key words: European Arrest Warrant; Mutual recognition; Passive extradition; Fundamental rights; Belgian prisons; Detention conditions; Human rights violations; Overcrowding; European Court of Human Rights; Judicial cooperation

Resumen

Este artículo examina el valor actual del reconocimiento mutuo en el marco del sistema de la orden de detención europea, centrándose en las extradiciones pasivas a Bélgica y su compatibilidad con los derechos humanos fundamentales. Se prestó especial atención a las condiciones de reclusión en las prisiones belgas.

La investigación tenía por objeto evaluar si las extradiciones a Bélgica siguen siendo compatibles con las obligaciones en materia de derechos fundamentales, especialmente a la luz de las deficiencias estructurales en las condiciones carcelarias y la evolución de la jurisprudencia.

Se llevó a cabo un análisis jurídico doctrinal, combinando el estudio de la legislación de la Unión Europea, la jurisprudencia del Tribunal de Justicia de la Unión Europea y del Tribunal Europeo de Derechos Humanos, y los informes de organismos de supervisión nacionales e internacionales sobre las condiciones carcelarias en Bélgica.

Los resultados mostraron que, aunque el sistema de la orden de detención

europea se basaba en la confianza mutua, esta confianza se había visto cada vez más cuestionada por las persistentes violaciones de los derechos humanos en las prisiones belgas, entre las que se incluyen el hacinamiento, la higiene inadecuada, la violencia y la atención sanitaria insuficiente. La jurisprudencia estableció una evaluación en dos fases que permite la suspensión o denegación de la extradición en casos de riesgo real de trato inhumano o degradante, pero impuso una elevada carga probatoria a los Estados de ejecución. A pesar de las repetidas condenas a Bélgica, las mejoras estructurales siguieron siendo limitadas, lo que suscitó dudas sobre la eficacia práctica de las garantías de los derechos fundamentales.

La investigación concluyó que el principio de confianza mutua se encontraba sometido a una presión significativa y que el marco jurídico actual no abordaba de manera suficiente las deficiencias sistémicas, lo que hacía necesaria una reevaluación del sistema de la orden de detención europea.

Palabras clave: Orden de detención europea; Reconocimiento mutuo; Extradición pasiva; Derechos fundamentales; Prisiones belgas; Condiciones de detención; Violaciones de los derechos humanos; Hacinamiento; Tribunal Europeo de Derechos Humanos; Cooperación judicial

Introduction

The European Arrest Warrant (EAW) system constitutes a cornerstone of judicial cooperation within the European Union, replacing traditional extradition mechanisms with a framework based on mutual recognition and mutual trust between Member States. Since its introduction, scholars such as Steven Dewulf

and Michael Plachta have emphasized the transformative nature of this system, highlighting its efficiency and its shift from political to judicial decision-making. At the same time, other authors, including Tom Daems and Joost Huysmans, have critically examined the limits of mutual trust, particularly in light of divergent detention conditions across Member States and the risk of fundamental rights violations. The evolving case law of the Court of Justice of the European Union and the European Court of Human Rights further contributes to this debate by introducing safeguards that allow, under strict conditions, the refusal or suspension of surrender where there is a real risk of inhuman or degrading treatment.

Against this background, increasing attention is being paid to the compatibility of extraditions with fundamental rights, especially in countries facing structural deficiencies in their prison systems. Belgium has repeatedly been subject to criticism and condemnation by international monitoring bodies and courts for issues such as overcrowding, inadequate hygiene, insufficient health-care, and prison violence. These persistent shortcomings raise serious questions about whether the presumption of compliance with fundamental rights – on which the EAW system is built – can still be upheld in practice.

This article therefore examines the extent to which passive extraditions to Belgium remain compatible with fundamental human rights, with particular focus on detention conditions and their assessment under European legal standards. It aims to evaluate the current value of mutual recognition in this context and to determine whether the existing legal framework provides sufficient safeguards or requires reconsideration in light of ongoing systemic deficiencies.

Methodology

This research was conducted using a qualitative and doctrinal legal approach, focusing on the analysis of legal norms, case law, and authoritative secondary sources. The study adopted an explanatory and exploratory design, as it sought both to clarify the functioning of the European Arrest Warrant system and to assess its compatibility with fundamental rights in the specific context of extraditions to Belgium.

The scope of the research was limited to passive extradition within the European Union, with particular emphasis on Belgium as the receiving State. Rather than relying on a statistical population or sample, the study examined a purposive selection of legal sources. These included European Union legislation, notably the Framework Decision on the European Arrest Warrant, as well as leading judgments of the Court of Justice of the European Union and the European Court of Human Rights. In addition, reports and findings from international monitoring bodies, such as the European Committee for the Prevention of Torture, and national oversight institutions were analysed to assess detention conditions in Belgian prisons.

The research was carried out through systematic legal analysis and comparative interpretation. Case law was examined to identify the criteria developed for assessing risks of fundamental rights violations, particularly under Articles 3, 6, and 8 of the European Convention on Human Rights. Furthermore, doctrinal literature was reviewed to contextualise the evolution of mutual recognition and to incorporate differing scholarly perspectives on its limits.

The practical implementation consisted of collecting, selecting, and critically analysing relevant legal mate-

rials, followed by synthesising the findings to evaluate whether current legal safeguards adequately address structural deficiencies in detention conditions. This methodological approach ensured transparency and allows for the reproduction of the analysis by consulting the same legal sources and applying similar interpretative techniques.

I. Passive Extradition Based On The EAW-ACT

1.1 EXECUTION OF A EUROPEAN ARREST WARRANT

Passive extradition within the European Union is today primarily governed by the European Arrest Warrant (EAW) system. The EAW system represents a fundamental transformation of traditional extradition law, replacing political and diplomatic decision-making with a system based on judicial cooperation and mutual recognition between Member States.

According to Article 1(2) of the EAW Framework Decision (hereafter: EAW-FD), Member States are in principle obliged to execute arrest warrants issued by other Member States. The logic underlying the EAW is that judicial authorities in the European Union should trust each other's criminal justice systems. Consequently, surrender of the requested person constitutes the rule, whereas refusal must remain the exception and must therefore be interpreted restrictively and motivated extensively (Article 17 (6) EAW-FD).¹

Nevertheless, the execution of an EAW is not entirely automatic. The Court of Justice of the European Union (hereafter: CJEU) has explicitly ruled that there is no absolute obligation to execute an EAW.² The executing judicial authority must verify whether the conditions for surrender are fulfilled and whether one of the legally defined refusal grounds applies.³ These grounds constitute an important safeguard within the system, ensuring that cooperation does not take place at the expense of fundamental legal principles or individual rights.⁴

The Framework decision on the implementation of the EAW mentions mandatory and optional refusal grounds.

1.2 GROUNDS OF REFUSAL

1.2.1 Mandatory refusal grounds

a. Amnesty

One of the mandatory refusal grounds concerns situations in which the offence underlying the EAW is covered by amnesty. Article 3 EAW-FD provides that surrender must be refused where the offence is subject to an amnesty.

Amnesty differs from other forms of clemency in that it removes the criminal nature of an act retroactively and extinguishes both criminal liability and punishment. When such a measu-

1 Court of Justice of the European Union (CJEU), Samet Ardic, Case C-571/17 PPU, 22 December 2017, §70; Court of Justice of the European Union (CJEU), Dawid Piotrowski, Case C-367/16, 23 January 2018, §48; Belgian Court of Cassation,

13 December 2006, AR P.06.1557; Steven Dewulf, *Overlevering* (Mechelen: Wolters Kluwer Belgium, 2020), 102.

2 Court of Justice of the European Union (CJEU), João Pedro Lopes Da Silva Jorge, Case C-42/11, 5 September 2012, §30.

3 Michael Plachta, "European Arrest Warrant: Revolution in Extradition," 2003.

4 Dewulf, *Overlevering*, 102.

re applies, prosecution or punishment for the relevant offence becomes legally impossible. In that case, executing the arrest warrant would contradict the domestic legal order.

b. Ne Bis in Idem

Another important mandatory refusal ground is the principle of *ne bis in idem*, which prohibits an individual from being prosecuted or punished twice for the same acts. This principle, also referred to as the *res judicata* principle, forms a fundamental rule of criminal law and is widely recognised in both national and international legal systems.

Under Article 3(2) EAW-FD, surrender must be refused where the requested person has already been finally judged for the same facts and further prosecution is therefore impossible.

c. Age of the person

Pursuant to Article 3(3) EAW-FD, minority is considered to be a mandatory ground for refusal of the execution of a foreign EAW. More specifically, if, given their age, the person to whom this warrant relates cannot yet be held criminally responsible under the national law of the Member State for the offences underlying the warrant, the arrest warrant cannot be executed.

1.2.2 Optional refusal grounds

The executing judicial authority retains discretion to refuse execution of a European Arrest Warrant on a number of optional grounds, which are listed in Article 4 EAW-FD.

These include situations where: (1) the conduct underlying the warrant does not constitute an offence under the law of the executing Member State in cases falling outside the list of offences

subject to automatic recognition, subject to the exception that differences in tax, customs, or exchange regulations cannot justify refusal; (2) the requested person is already being prosecuted in the executing Member State for the same acts; (3) the competent authorities of the executing Member State have decided not to prosecute, have terminated proceedings, or where a final judgment has been delivered in a Member State in respect of the same acts, precluding further proceedings; (4) prosecution or punishment is time-barred under the law of the executing Member State, provided that the acts fall within its jurisdiction; (5) the requested person has been finally judged by a third State for the same acts, provided that any sentence imposed has been served, is being served, or can no longer be executed; (6) the warrant has been issued for the enforcement of a custodial sentence or detention order and the requested person is a national or resident of, or stays in, the executing Member State, which undertakes to enforce the sentence domestically; and (7) the offences are deemed, under the law of the executing Member State, to have been committed wholly or partly within its territory, or outside the issuing Member State's territory where the executing Member State does not permit prosecution for such extra-territorial conduct.

1.3 PLACE OF FUNDAMENTAL RIGHTS WITHIN THE GROUNDS OF REFUSAL

1.3.1 In general

The Framework Decision notably omits explicit grounds for refusal based on fundamental rights, relying instead on mutual trust among Member States, all presumed to respect fundamental rights under the European Convention on Hu-

man Rights (hereafter: ECHR).⁵ The respect for fundamental rights and the possibility to refuse execution is only mentioned once in the EAW-FD, in article 1 (3), but mostly it is mentioned in the preamble of this Framework Decision. The judicial value of the latter is uncertain to say the least.⁶

The fact that the respect for the fundamental rights is not marked as an explicit refusal ground, does not mean that it does not have an important place within the Framework Decision. Since this premise is a part of the chapter 'Definition of the European arrest warrant and obligation to execute it', every Member State has the obligation to take the fundamental rights into consideration when executing a European Arrest Warrant.⁷

In addition, a lot of Member States implemented their own refusal ground when incorporating the EAW-FD into their national framework, mentioning that an EAW cannot be executed when there is a real risk that the fundamental rights of the person concerned could be breached.⁸ How these 'self-made' refusal grounds relate to the principle of mutual trust, is unclear.⁹

1.3.2 In practice: case law of the CJEU and ECtHR

Although the EAW system is based on mutual trust between EU Member Sta-

tes, this trust cannot be absolute. As several commentators and judicial authorities have pointed out, violations of fundamental rights may still occur within the Union, and the executing state must remain vigilant in this respect. The execution of European Arrest Warrants or the transfer of prisoners presupposes sufficient mutual trust in each other's prison systems, which –given the deplorable detention conditions in various EU Member States– is by no means a given.¹⁰

The most important judgement in this discussion is, without a doubt, the *Aranyosi and Căldăraru* case. In this judgement, the CJEU reiterates the fundamental principle that the principles of mutual trust and mutual recognition are of essential importance to EU law, as they make possible and sustain the area without internal borders.¹¹ According to the Court, this mutual trust also means that, as regards the area of freedom, security and justice, each Member State assumes, barring exceptional circumstances, that all other Member States comply with EU law and, in particu-

5 Dewulf, *Overlevering*, 141.

6 Ibid., 144.

7 Dewulf, *Overlevering*, 145.

8 Ibid., 145.; Mark Mackareel, "The European Arrest Warrant – the Early Years: Implementing and Using the Warrant," *European Journal on Criminal Policy and Research* 2007: 37–47.

9 Dewulf, *Overlevering*, 145.

10 Tom Daems, "Wederzijds vertrouwen is geen blind vertrouwen: het Europees aanhoudingsbevel en detentiecondities binnen de Europese Unie" (KU Leuven, 2016), <https://lirias.kuleuven.be/retrieve/831d6d1c-0495-41c2-9475-9de66e18a446>.

11 Court of Justice of the European Union (CJEU), *Aranyosi and Căldăraru*, 5 April 2016; Court of Justice of the European Union (CJEU), *Minister for Justice and Equality v LM*, 25 July 2018; Court of Justice of the European Union (CJEU), *Nicolaie Aurel Bob-Dogi*, Case C-241/15, 1 June 2016; Joost Huysmans, "Overbevoelde gevangenis kunnen leiden tot weigering uitvoering Europees aanhoudingsbevel," *Juristenkrant* 2016, no. 329: 2.

lar, with fundamental rights.¹² However, the Court has developed a nuanced jurisprudence confirming that executing authorities can suspend, or in some cases refuse, an execution of a European Arrest Warrant. This decision must be preceded by two-factor authentication, which works as follows:

The Member State must assess credible evidence of real risk of inhuman or degrading treatment (Article 3 ECHR, Article 4 EU Charter) in the issuing State's detention facilities.

Executing courts must base their assessment on objective, reliable, and up-to-date information such as judgments from the European Court of Human Rights (hereafter: ECtHR), European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT) reports, or reports by international bodies.¹³ They must consider concrete detention conditions including cell size, hygiene, and freedom of movement. However, a genuine general risk of a violation of fundamental rights is not sufficient grounds to refuse to execute an EAW. The executing judicial authority must, after all, still assess specifically and precisely whether there are substantial and fact-based grounds for believing that the person concerned will be exposed to –in this case– inhuman or degrading treatment, given the circumstances to be expected in the issuing Member State.¹⁴ If the Member State comes

to the conclusion that there is an individual risk, the execution of the EAW can be suspended. Both Member States then have the opportunity to exchange information and guarantees as to exclude the breach of fundamental rights in the specific case that is pending.¹⁵ Only if the risk – which is the ground for the suspension of the execution of the EAW – cannot be remedied within a short period of time, the execution of the EAW can be denied definitively.¹⁶

The Court creates in this arrest¹⁷ a new refusal ground and states that it is a mandatory one.¹⁸ This standard applies to other fundamental rights, notably the right to a fair trial and independent judiciary.¹⁹

The ECtHR has also affirmed that its Soering principle applies to EAW cases, emphasizing the need for individualised risk assessment.²⁰ The ECtHR has condemned Belgium for failing to conduct such a specific assessment in the Romeo Castaño case.²¹ The ECtHR once again expressly states that it is aware

2022, no. 450: 13; Dewulf, *Overlevering*, 149.

12 Daems, “Wederzijds vertrouwen is geen blind vertrouwen.”; Dewulf, *Overlevering*, 147.

13 Huysmans, “Overbevolkte gevangenissen,” 2.

14 Paul Bekaert, “Twintig jaar Europees aanhoudingsbevel: geen verjaardagsfeest voor de grondrechten,” *Juristenkrant*

15 Huysmans, “Overbevolkte gevangenissen,” 2.

16 Dewulf, *Overlevering*, 149.

17 Court of Justice of the European Union (CJEU), *Aranyosi and Căldăraru*, 5 April 2016.

18 Huysmans, “Overbevolkte gevangenissen,” 2.

19 Court of Justice of the European Union (CJEU), *LM*, 25 July 2018.

20 European Court of Human Rights (ECHR), *Pirozzi v. Belgium*, 17 April 2018; Soering-principles: regarding the potential obstacle that a breach of Article 6 of the ECHR may pose to extradition.

21 European Court of Human Rights (ECHR), 9 July 2019.

that the EAW is based on the principle of mutual trust and that the instruments of mutual recognition are of crucial importance for the establishment of the area of freedom, security and justice within the EU. The Court reiterates that it supports this aspiration and states unequivocally that, in itself, the mechanism surrounding the EAW does not conflict with the ECHR. Nevertheless, the ECtHR goes on to point out that the creation of such an area and the application of such instruments must not be carried out in a manner that infringes the fundamental rights of the persons concerned. This also means that the Court must ensure that instruments of mutual recognition –such as the EAW– are not applied in an automatic and mechanical manner to the detriment of these fundamental rights.

It is recognised that detention conditions in European prisons vary greatly and that –as the European Court of Human Rights, the CPT and numerous NGOs have established– human rights violations do occur and inhumane detention conditions exist within the EU.²² The ‘two step verification’ written down in the arrest of the CJEU *Aranyosi and Căldăraru* gives Member States the possibility to remain vigilant regarding the fundamental rights of their people. It is nevertheless worrying that a horizontal dialogue is now emerging between Member States regarding compliance with fundamental rights in the context of an EAW –a kind of peer review, if you will– rather than an overarching oversight by the institutions of the European Union or the Council of Europe.²³

22 Daems, “Wederzijds vertrouwen is geen blind vertrouwen.”

23 Ibid.

II. Current Circumstances Of Detention In Belgium

II.1 INTRODUCTION

The Belgian prison system is facing a severe crisis characterised by overcrowding, inadequate facilities, insufficient access to healthcare, and escalating violence, which raise serious concerns about compliance with Article 3 of the European Convention on Human Rights (ECHR). These issues, including poor living conditions and increasing violence both among prisoners and towards staff, directly contravene the protections guaranteed under the ECHR.

Above all those things, there are strikes in combination with aggression from the prisoners, leading to inhuman conditions.

Article 3 of the ECHR, states that an inhuman treatment is forbidden. The fact that people are sleeping on the floor, that there are strikes leading to inhuman conditions, and that there are pests in certain prisons, leads to a breach of that article.²⁴

It is important to mention that Belgium has been convicted several times by the ECtHR for the current condi-

24 Bente Vandekeybus, “Antwerpse cipiers klagen met staking ook staat van het gebouw aan: overall ongedierte en asbest,” VRT Nieuws, 12 April 2024, <https://www.vrt.be/vrtnws/nl/2024/04/11/staking-in-antwerpse-gevangenissen-som-mige-gebouwen-zijn-echt/> (accessed April 23, 2026); Dorien Brosens, “Overbevolking Belgische gevangenissen is bedreiging voor fundamentele mensenrechten,” Knack, 12 January 2024, <https://www.knack.be/nieuws/belgie/justitie/overbevolking-belgische-gevangenissen-is-bedreiging-voor-fundamentele-mensenrechten/> (accessed April 23, 2026).

tions in the prisons.²⁵ The subjects of the convictions vary, such as overcrowding, lack of safety or failure to prevent injuries.

Even the CPT has published a report in 2021 on the conditions in Belgian prisons.²⁶ Topics such as violence between detainees, very poor hygiene and overcrowding are covered extensively in the report. It is clear that Belgium is under international scrutiny regarding prison living conditions.

II.2 OVERCROWDING AND/OR FLOOR SLEEPING ISSUES

Overcrowding is one of the most critical and persistent issues that Belgian prisons are facing. All prisons in Belgium have an overpopulation for many years and a solution is not in sight.²⁷ In all the prisons, the overcrowding leads to floor sleepers and lack of hygiene.

The monitoring committee's report of 15 March 2024 already raised the issues of overcrowding and ground sleepers again, with some remedies/suggestions, leading to no results for the time being. The impact of these suggestions remains insufficient to address overpopulation. It was found to be inversely proportional to the scale of the crisis prevailing in all prisons.²⁸ The Penitentiary Policy Council also wrote an opinion on the issue, sounding the alarm firmly.²⁹ Overcrowding has been an issue in Belgian prisons for a long time and there are no clear actions taken by the government. The numbers of 2024 indicate that, at that point, there was an overcrowding of 12.7 % over all, meaning that there were 12,249.7 detainees whereas the capacity was 10,868.9.³⁰

Although efforts have been made to tackle overcrowding, one cannot deny that it is an issue until today, with even in early 2025 over 100 prisoners throughout the different Belgian prisons ha-

25 European Court of Human Rights (ECHR), *B.D. v. Belgium*, 27 August 2024; European Court of Human Rights (ECHR), *Vasilescu v. Belgium*, 25 November 2014; European Court of Human Rights (ECHR), *Clasens v. Belgium*, 28 May 2019; European Court of Human Rights (ECHR), *Sylla and Nollomont v. Belgium*, 16 May 2017; European Court of Human Rights (ECHR), *Jeanty v. Belgium*, 31 March 2020; European Court of Human Rights (ECHR), *Rooman v. Belgium*, 31 January 2019; European Court of Human Rights (ECHR), *Horion v. Belgium*, 9 May 2023; European Court of Human Rights (ECHR), *Pirjoleanu v. Belgium*, 16 May 2021.

26 Council of Europe, "European Committee for the Prevention of Torture (CPT)," <https://www.coe.int/en/web/cpt>.

27 Tobias Santens, "Kwart te veel gedetineerden in Vlaamse gevangenissen: zo ziet de overbevolking per gevangenis eruit," *VRT Nieuws*, 4 March 2024, <https://www.vrt.be/vrtnws/nl/2024/03/04/overbevolking-gevangenissen-cijfers/>.

28 Centrale Toezichtsraad voor het Gevangeniswezen, "Advies maatregelen overbevolking," 2024, https://ctr.g.be/wp-content/uploads/2024/04/NAV_2024_01_Advies-maatregelen-overbevolking.pdf (accessed March 16, 2026).

29 *VRT Nieuws*, "Penitentiare beleidsraad slaat alarm over de overbevolking van gevangenissen," 13 January 2025, <https://www.vrt.be/vrtnws/nl/2025/01/13/penitentiare-beleidsraad-slaat-alarm-over-de-overbevolking-van/>; Federale Overheidsdienst Justitie, "Penitentiare beleidsraad," https://justitie.belgium.be/nl/themas/gevangenissen/toezicht_en_advies/penitentiare_beleidsraad.

30 Directoraat-generaal Penitentiare Inrichtingen, *Jaarcijfers 2024* (Brussel: FOD Justitie, 2024), <https://justitie.belgium.be/sites/default/files/jaarcijfers%202024%20-%20Penitentiare%20inrichtingen%20.pdf> (accessed April 9, 2026).

ving to sleep on the ground due to overcrowding.

The issue of overcrowding should not only be assessed on raw numbers of capacity compared to the prison population, since it also has to be viewed in relation to the available staff members. The Belgian prisons face serious challenges to have sufficient staff members available in compliance with the minimum staff which should be present. Not having sufficient staff members makes that the prisons should be considered overcrowded even if it does not appear from the raw numbers. It is in an issue which is often overlooked but even more problematic than the aforementioned overcrowding figures.

II.3 GENERAL FACILITIES AND HYGIENE

The general facilities in almost all Belgian prisons are substandard and fail to meet the basic needs of detainees. Many prisons are plagued by insufficient infrastructure, leading to poor living conditions. Reports are made of poor hygienic conditions (a bucket instead of toilet for urgent needs, limited options for personal hygiene etc.).³¹ Overcrowding exacerbates these issues, leaving insufficient space for adequate sanitary facilities, proper ventilation, and safe living environments.³²

Unsanitary Conditions: Detainees in overcrowded facilities are often forced to endure unsanitary conditions. The lack of proper cleaning resources, overcrowded cells, and inadequate hygiene measures lead to the spread of diseases and pest infestations. These conditions undermine prisoners' health and violate their right to live in humane conditions.

Inadequate Infrastructure: The prison buildings themselves are often outdated and not fit for purpose, with many facilities lacking basic infrastructure such as proper heating, ventilation, and appropriate spaces for exercise or recreation.

The unhygienic conditions are further exacerbated by the infestation of vermin, such as silverfish, which are found in both the kitchen and the cells. Additionally, mold in the showers has become a significant concern, adding to the already poor sanitary environment.

A recent report from the "Commissie van Toezicht" revealed the alarming extent of these issues, including structural issues, poor hygienic conditions and frequent food shortages, which have led to some cells being skipped during distribution.³³

One particularly concerning case mentioned in the annual report involved an inmate who contracted a skin infection from the mold in the showers and was required to pay for the necessary medication out of pocket. The report also highlighted additional concerns

31 Belgische Senaat, Parlementaire vraag nr. 2974, <https://www.senate.be/www/?Mlval=/Vragen/SVPrint&LEG=4&NR=2974&LANG=nl> (accessed February 12, 2025).

32 Vandekeybus, "Antwerpse cipiers klagen met staking"; "Gedetineerde probeert verpleegster te wurgen met schoenveter in Brugse gevangenis," *VRT Nieuws*, 31 augustus 2024, <https://www.vrt.be/vrtnws/nl/2024/08/31/brugge-gevangenis-verpleger-schoenveter/>

33 Rani Aertgeerts, "Van schimmel tot tekort aan voedsel: opnieuw schrijnende toestanden vastgesteld in Antwerpse gevangenis," *Het Laatste Nieuws*, 13 March 2025, <https://www.hln.be/antwerpen/van-schimmel-tot-tekort-aan-voedsel-opnieuw-schrijnende-toestanden-vastgesteld-in-antwerpse-gevangenis.>

such as water shortages in the showers and heating systems being left on during the summer months.

These persistent problems have led to unacceptable situations for the inmates. The oversight committee noted that the frustration arising from such conditions often contributes to heightened aggression toward staff.

II.4 VIOLENCE AND STRIKES

In response to the high level of violence, in which it was pointed out that violence towards detainees has increased, numerous strikes took place.

In theory, there should be a minimum service during strikes to make sure the detainees receive the same treatment as in cases of no strikes. In practice, strikes lead to understaffing and less rights for the detainees, who have less opportunities to leave their cell, less possibilities to shower, cannot attend their court hearings due to no transportation services, etc.³⁴

The minimum service in many prisons is not guaranteed, creating a situation where, on the one hand, there are protests against violence in prisons, but on the other hand, the risk of violence increases due to the absence of staff.³⁵ Reportedly, 12 out of 18 Flemish

prisons are facing issues.³⁶ While minimum service is enshrined in law, it cannot be enforced during the first 48 hours. This means that the system designed to provide better service during strikes only begins to function once a strike lasts longer than 48 hours. For shorter strikes (which are often 1 to 1.5 days long), no solution is available as the measures cannot be enforced. Due to staff shortages during strikes, police forces have to step in. However, they are already under immense pressure due to understaffing (*“politiediensten worden leeggeplukt”*³⁷).³⁸

Furthermore, the strikes that happen regularly cause issues within the prison that affect the inmates. A recent and important one happened in the prison of Antwerp, where a case of torture occurred. During almost 72 hours, a detainee was tortured by his cellmates and it went undiscovered due to the fact that only 10 staff members were present during the strike to supervise more than 700 detainees. The victim was tortured and humiliated, while his cellmates made video footage of their atrocities, leading to discovery.³⁹ They raped him with a broomstick, forced him to eat a sandwich with excrement etc. It lasted several days without the prison staff no-

34 “Gedetineerde probeert verpleegster te wurgen met schoenveter in Brugse gevangenis,” *VRT Nieuws*, 31 augustus 2024, <https://www.vrt.be/vrtnws/nl/2024/08/31/brugge-gevangenis-verpleger-schoenveter/>; “Staking in gevangenissen,” *VRT Nieuws*, 27 januari 2025, <https://www.vrt.be/vrtnws/nl/2025/01/27/staking-gevangenissen/>.

35 “Staking in gevangenissen,” *VRT Nieuws*, 27 januari 2025, <https://www.vrt.be/vrtnws/nl/2025/01/27/staking-gevangenissen/>.

36 According to Roby De Kaey of the socialist trade union ACOD.

37 Translated: Police services are being depleted.

38 According to Serge Rooman, prison director of Merksplas.

39 Hanne Decré and Caroline Van den Bergh, “Tijdslijn – ‘Ik stop pas als hij dood is’: een reconstructie van de dagenlange barbarij in cel 1311 van Antwerpse gevangenis,” *VRT Nieuws*, 19 March 2024, <https://www.vrt.be/vrtnws/nl/2024/03/19/tijdslijn-foltering-gevangenis-van-antwerpen/>.

ting due to the strike and understaffing as a result of this strike.

March 2024, staff refused to admit new detainees because of overcrowding. Poor infrastructure⁴⁰ adds to frustration among staff members.⁴¹

As mentioned before, Belgium has nearly 12,000 detainees, many of whom sleep on the floor. It has been established that overcrowding also leads to more cases of aggression.⁴² The situation is described as untenable even then.

Incidents of violence are numerous. On 24 April 2024 there was a massive brawl in the Antwerp prison with several getting injured, after knives had been thrown over the prison wall. Iron cutlery was used during the fight.⁴³

In all the prisons in Belgium, violence is a consistent issue. Newspapers report several incidents where detainees either express physical violence among themselves or towards the staff. In 2024 and the start of 2025, there is an average of 2 to 3 reported violent incidents per prison. Below, you can find examples of reported incidents in the prison

of Antwerp and Haren, but the other prisons have the same issue.⁴⁴ The incidents talked about in these articles include attempted rape of a social worker by a detainee, a stabbing with multiple serious injuries, a brawl that was subsequently shared on TikTok and an arson in the cell in which a detainee died. All these incidents happened over a period of a few weeks.

To conclude, aggression is emergent, which leads to more strikes. Strikes on the other hand, lead to understaffing which leads to more frustration amongst detainees and thus violence. The situations in the prisons are unbearable and seem to have no end in sight. Approaching the future is unsettling, because of numerous strikes and too few staff to prevent such acts.

II.5 CONDITIONS IN THE BELGIAN PRISONS IN RELATION TO ARTICLE 3 ECHR

From the above, one can conclude that prison conditions in Belgium are unbea-

40 Vandekeybus, "Antwerpse cipiers klagen met staking";

41 Ibid.

42 "Vakbonden gevangenen dienen stakingsaanzegging in voor 11 januari," *Het Nieuwsblad*, 18 December 2023, https://www.nieuwsblad.be/cnt/dmf20231218_96403376; Nette Loots, "Gevangenis personeel is agressie door overbevolking meer dan beu," *Gazet van Antwerpen*, 12 January 2024, https://www.gva.be/cnt/dmf20240111_94025802.

43 Nora Eurlings, "Grote vechtpartij in Antwerpse gevangenis nadat verboden voorwerpen over de gevangenis muur waren gegoid," *VRT Nieuws*, 24 April 2024, <https://www.vrt.be/vrtnws/nl/2024/04/24/vechtpartij-gevangenis-antwerpen/>.

44 Decré and Van den Berghe, "Tijdslijn – 'Ik stop pas als hij dood is'; "Sociaal assistente aangerand in gevangenis van Haren," *VRT Nieuws*, 11 februari 2025, <https://www.vrt.be/vrtnws/nl/2025/02/11/sociaal-assistente-aangerand-in-gevangenis-van-haren/>; "TikTok-filmpje toont afranseling in gevangenis Haren: man bewusteloos achtergelaten," *BRUZZ*, 11 december 2024, <https://www.bruzz.be/actua/justitie/tiktok-filmpje-toont-afranseling-gevangenis-haren-man-bewusteloos-achtergelaten-2024>; "Gedetineerde zwaargewond na steekincident in gevangenis Haren," *VRT Nieuws*, 6 augustus 2024, <https://www.vrt.be/vrtnws/nl/2024/08/06/incident-zwaargewonde-haren-gedetineerde/>; "Gedetineerde overleden die brand in cel stichtte in Haren," *VRT Nieuws*, 15 april 2024, <https://www.vrt.be/vrtnws/nl/2024/04/15/gedetineerde-overleden-die-brand-in-cel-stichtte-in-haren/>

rable and nothing changes for the better. Because of numerous strikes and too few staff to prevent such acts, incidents happen all the time.

The Belgian prisons are all overcrowded. The general overcrowding rate was 15,5 % in March 2024 with 12.397 people detained for 10.736 available spaces.⁴⁵ The Belgian State has already been convicted for the overcrowding of the prisons of Sint-Gillis and Vorst.⁴⁶

The material conditions of the prison are poor. Reports are made of poor hygienic conditions (a bucket instead of toilet for urgent needs, limited options for personal hygiene etc.).

During strikes, it is almost impossible to get visits from family. Only lawyers should have access at all time (although there will be additional waiting time). Personal hygiene is even more of a problem, since it happens that detainees don't get the chance to take a shower for several days up to more than a week.

As mentioned before, Belgium has been convicted frequently for prison conditions which violated article 3 of the ECHR, mostly in relation to long lasting strikes.

Reference is made to some cases tried before the European Court of Human Rights in Strasbourg.

Pirjoleanu vs. Belgium, a judgement of 16 May 2021,⁴⁷ also resulted in a con-

viction of Belgium for a violation of article 3 ECHR. The applicant in this case, Mr. Pirjoleanu, was detained at Antwerp Prison from 18 to 23 March and from 20 May to 21 September 2018. During the latter period, prison officers went on strike for three weeks. The statutory minimum service provision was not yet in force at that time.

In March, the applicant shared an 8.24 m² cell with another prisoner, and from May to September he shared an 8.36 m² cell with two other prisoners. During the strike, access to the showers was provided almost every day and, from 24 to 28 June, access to the courtyard was also granted, but this was subsequently withdrawn or severely restricted. Family and social visits were cancelled until 4 July.

The Court reiterates that a requirement of 3 m² of floor space per prisoner (including the space occupied by furniture, but not the space occupied by sanitary facilities) constitutes the minimum standard in a shared cell: *"A personal space of less than 3 m² in a shared cell gives rise to a strong but not irrefutable presumption of a violation of Article 3 of the ECHR."*

This presumption may, however, be rebutted by the cumulative effect of other aspects of the conditions of detention, such as adequate compensation for the lack of personal space. In this regard, the Court takes into account factors such as the duration and extent of the restriction, the degree of freedom of movement and the availability of activities outside the cell, as well as the general adequacy of the conditions of detention in the institution concerned.

The Belgian State did not even try to argue this presumption. In the present case, the Belgian State did not dispu-

45 Santens, "Kwart te veel gedetineerden."

46 *Het Laatste Nieuws*, "België riskeert dwangsom voor overbevolking in gevangnissen Vorst en Sint-Gillis," <https://www.hln.be/binnenland/belgie-riskeert-dwangsom-voor-overbevolking-in-gevangnissen-vorst-en-sint-gillis>.

47 Council of Europe, "SPACE Report / Prison statistics," <https://rm.coe.int/1680a922ac>.

te that the applicant was held in a cell with dirty, damp and mouldy walls, containing two beds which he had to share with three other inmates, and in which the toilet was not fitted with a partition. He was provided with only two worn-out and irritating shirts and trousers, and the bedding was limited to two sheets which were washed every two weeks.

The Court then found that the State had not put forward any evidence that could have decisively alleviated the discomfort caused by the lack of sufficient personal space. Nor did the State dispute the persistent lack of physical exercise, the repeated breaches of hygiene standards and the lack of contact with the outside world during the prison staff strike.

In the case *Clasens vs. Belgium* (judgment of 28 May 2019),⁴⁸ the applicant was being held in Ittre Prison (Belgium), in execution of a final criminal conviction.

In April 2016 strike action by prison wardens affected prisons in Brussels and Wallonia. As a result, the guaranteed minimum service was no longer provided and the ordinary prison regime was suspended, to a greater or lesser degree depending on the prison in question.

In May 2016 Mr Clasens lodged an urgent application with the president of the tribunal de première instance (TPI), asking her to order the Belgian State to restore the ordinary regime and complaining about his conditions of detention. The next day, the president of the TPI allowed this request in part, ordering the Belgian State to provide and/

or restore various services, subject to a daily penalty of 10,000 euros (EUR) per offence for non-compliance. About three weeks later, in view of the difficulties in executing the order, Mr Clasens had served on the Belgian State a demand for payment of the penalties. The Belgian State lodged an appeal.

In April 2017 the court of appeal – to which the Belgian State had applied in the interim period– upheld most of the order issued by the TPI president; however, it reduced the penalty to EUR 250 per day. In its judgment the court of appeal noted, in particular, that the prisoners' conditions of detention had deteriorated significantly, in breach of Article 3 of the Convention.

Thus, for almost two months Mr Clasens had had no access to activities outside his cell, to which he had been confined for 24 hours a day with the exception of a one-hour period in the recreation yard every three days, and had been able to take a shower only once or twice a week, with no opportunity to obtain hygiene products, distribution of which had been discontinued. Moreover, the prisoners had found themselves dependent on the refusal to work of large numbers of prison wardens, and obliged to accept the unlawfulness and uncertainty of the minimum services provided, without knowing when the strike would end and thus with no prospects of seeing the situation improve. They had been deprived of almost all contact with the outside world, including by telephone, family visits or meetings with their lawyers.

Rooman vs. Belgium, a judgment of 31 January 2019,⁴⁹ signifies an impor-

48 Council of Europe, "SPACE Report / Prison statistics," <https://rm.coe.int/1680a922ac>.

49 Council of Europe, "SPACE Report / Prison statistics," <https://rm.coe.int/1680a922ac>.

tant issue in Belgium. Mr. Rooman was interned in 2004 in the French speaking region of Belgium. He had only access to a French speaking psychiatrist, but he himself only spoke German (one of the three native languages of Belgium). There was no facility in the German speaking part of Belgium that could assist internees.

He requested to be released due to inadequate healthcare, but the Belgian State refused. In the meantime, Mr. Rooman had sued the Belgian State before a Brussels judge hearing applications for interim measures. Mr. Rooman requested to be discharged and, alternatively, to have authorities take the necessary measures in light of the state of his health. At the end of 2014, the judge concluded there was a violation of the right of access to health care and of the prohibition of inhuman and degrading treatment. In this respect, the Belgian State was ordered to appoint a German-speaking psychiatrist and medical assistant to take care of Mr. Rooman. In that same year, Mr. Rooman had likewise lodged a negligence claim against the Belgian State. In September 2016, the Brussels Court of First Instance observed a failure to provide psychological and psychiatric care in the Applicant's mother tongue between 2010 and 2014. According to the Court, this type of care should, unquestionably, be provided in the German language, being the only language Mr. Rooman had mastered and one of three official languages in Belgium. The Belgian State was ordered to pay a compensation amounting to 75,000 euros.

Lastly, in the case *Horion vs. Belgium* (judgment of 9 May 2023),⁵⁰ Belgium

was convicted for making it impossible for Mr. Horion to return to society. Mr. Horion was sentenced to life imprisonment by the Assize court of Belgium for committing several murders. In the opinion of both the behavioural experts and the Sentence Enforcement Court (*Tribunal d'application des peines/TAP*), he was eligible for reintegration. In their view, this reintegration must take place under supervision and within a psychiatric clinic. However, the psychiatric institutions suitable for this purpose were unwilling to admit him because such admission is not funded by the state. The ECtHR concludes from these facts that, whilst Horion has a legal prospect of release, he has no realistic prospect. This constitutes a violation of Article 3 of the ECHR.

In each of these cases, Belgium has been convicted for a violation of article 3. Not much has changed since. Needless to say that only a small minority of detainees has the energy and means to start proceedings before the European Court of Human Rights and there are other convictions by the ECtHR as well, which are not discussed in this article. It signifies the constant lack of appropriate detention and healthcare for prisoners in Belgium. These are fundamental human rights which, given the mutual trust that underpins the EAW, other Member States expect to be respected when they extradite a national. Belgium does not have the means or capacity to ensure this.

The Council of Europe, the inter-governmental organization whose aim, among other things, is to protect human rights, analyses the situation in European prisons every year. New figures, covering a period from January 31, 2022 to January 31, 2023, were published on June 6. Belgium again was among the

50 Council of Europe, "SPACE Report / Prison statistics," <https://rm.coe.int/1680a922ac>.

worst in Europe.⁵¹ The Council of Europe collected figures until January 31, 2023, but since September 1, 2023, Belgium has also been carrying out shorter custodial sentences of 6 months to 3 years.⁵² Since then, even more people have actually had to be detained. According to Kati Verstrepen, Chairperson of the League for Human Rights, the situation is worse today than ever. And, it's not just the overpopulation: *"Every day there are also smaller violations that make life hell for people in prison"* The Chairperson raises the example of a detainee who has a broken hand and has not seen a doctor for 14 days: *"There is still no scan taken from the hand and still no plaster cast has been placed"*.

Lastly, the CPT held its periodic visit to Belgium from 15 to 26 May 2025. A new report is expected soon. The latest report from this facility was drafted in 2021 and published on 29 November 2022.⁵³ It reflects all the issues which are discussed in the previous chapters. The CPT notices violence from guards towards prisoners, and from one prisoner to the other. It also reiterates the importance of clean cells. The report states the following: *"The detention conditions*

for the person in question were downright humiliating." The healthcare provided within the facilities (or rather: the lack of healthcare) was also a subject where the CPT formulated a lot of recommendations for the Belgian State.

In other words: it has been stated by multiple national and international entities that the circumstances of detention in Belgium are a breach of article 3 ECHR. As mentioned before, when executing an EAW, the extraditing Member State assumes that the State to which the person concerned is extradited, respects the basic human rights. Does this mutual trust still have value today, given the circumstances of detention in Belgium as stated above?

III. Conclusion: Possibility To Refuse Extradition Based On Article 3, 6 And 8 ECHR When Extraditing To Belgium

The Aranyosi and Caldaru judgment, which plays a central role in this article, has an ambiguous effect on extradition to Belgium.

On the one hand, this judgment opens the door to a nuance in the principle of mutual trust when executing an EAW. On the other hand, this nuance is subject to rather strict conditions. It requires a huge amount of effort on the part of the executing state, raising the question of whether a Member State will allocate the necessary resources for these investigations. The risk of a breach of article 3, 6 or 8 ECHR must be assessed individually, which results in a high burden of proof for the extraditing Member State. In this regard, the mutual trust stands strong and takes precedence over the possibility of possible breaches of human rights.

51 Lies Wijns, "Overbevolking in gevangenissen: België opnieuw bij de slechtsten van de klas in Europa," *VRT Nieuws*, 6 June 2024, <https://www.vrt.be/vrt-nws/nl/2024/06/06/overbevolking-belgische-gevangenissen/>

52 Before, these sentences were actually not enforced in prison, but through other means of enforcement (such as electronic surveillance) not resulting in having to detain people in prison.

53 Council of Europe, *Rapport au Gouvernement de Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 2 au 9 novembre 2021*, <https://rm.coe.int/1680a922ac>

In the light of all the aspects discussed in this article regarding the prison conditions of Belgium, which have been all-round inhumane for several years, even decades, one can pose the question whether an individual risk assessment is still necessary. It seems that the mutual trust which all the Member States should have, is breached on a daily basis by Belgium without any possibility of a refusal without following the two, rather strict, steps laid out by the CJEU.

An author in Belgium in 2016 assumed that this judgment would result in extraditions to Belgium becoming more difficult.⁵⁴ Whether the judgment has actually had this effect is unclear.

The Framework Decision with which the EAB was brought to life, dates back to 2002. Even the judgement that made it possible to refuse extradition based on a suspected breach of human rights, celebrates its tenth birthday this year. In the past 24 years, and even 10 years, a lot has changed on political, social and economic aspects. It is therefore perhaps time to reevaluate the EAB and all that it stands for, to ensure that the mutual trust can once again become a tangible reality.

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⁵⁴ Huysmans, “Overbevolkte gevangenissen,” 2.

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