



Probation in Europe

Belgium

Aline Bauwens
Annie Devos



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Aline Bauwens

Lecturer
Vrije Universiteit Brussel
Aline.bauwens@vub.ac.be

Annie Devos

Director General
Administration générale des
maisons de justice
Fédération Wallonie Bruxelles
Rue de Louvain 38
1000 Brussels
annie.devos@cfwb.be

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Ioan Durnescu

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1. Introduction

1.1 Probation organization

The Houses of Justice are administered by the federal Ministry of Justice and were, until 1 July 2014, funded 100% by the central government (through the Ministry of Justice) (see also section 10. Developments to be expected). There are 28 Houses of Justice, one in each judicial district. The Department of Offender Guidance, previously called ‘the probation service’, is thus one of the departments falling under the Directorate General of the Houses of Justice. The Department of Offender Guidance is responsible for the implementation of all community penalties in Belgium; working with adult offenders aged 18 years and over. The primary aims of the Houses of Justice, Department of Offender Guidance are to reduce re-offending and to reintegrate the offender.

1.2 Probation activities in a nutshell

Upon inception in 1999, the Houses of Justice were assigned the following numerous tasks, formalised by the Act of 13 June 1999 (*Belgisch Staatsblad / Belgium Law Gazette* 29 June 1999):

- The tasks of supervision, guidance and social enquiry reports on the basis of statutory acts relating to the mentally ill, habitual offenders, pertaining to suspended sentences, probation, conditional sentences, and preventive detention;
- The task of providing information and advice to all clients of the Houses of Justice, and if necessary, the tasks of referral to the appropriate services (see also 4.2.3 Other organizations involved in probation work);
- The tasks of structuring and promoting collaboration among the key stakeholders, both within and outside the criminal justice system;
- The tasks of coordination, promotion and disclosure of information with regard to alternatives in the area of the settlement of disputes, and of community sanctions;
- And the task of making offices available to support the provision to all citizens of initial legal aid dispensed by barristers, and to facilitate the holding of legal aid and Probation Commissions meetings.¹

This means that, since 1999, the Houses of Justice are legally put in charge of the following distinct pillars: penal applications, civil applications, victim support and primary legal aid available to all citizens.

1.3 General remarks about the implementation of Probation Rules

The Probation Rules were in Belgium mentioned by the then Minister of Justice, S. De Clerck, in 2009 at the Conference for 10 years Houses of Justice. He referred to the 1992 European Rules on CSM and the upcoming Council of Europe Probation Rules as important guidelines for probation policy in Belgium, but emphasised that the translation of such standards into practice is the biggest challenge. In addition, the Directorate General of the Houses of Justice proposed amendments to the earlier drafts of the Council of Europe Probation Rules, as can be seen in their ‘Vision Statement on Offender Guidance’ written in 2010.

¹ Art. 2, Section 1 Act on the organisation of the Houses of Justice of 13 June 1999, own translation.

The Director General of the Houses of Justice, Annie Devos, adds that the Probation Rules have not been implemented as such in the Houses of Justice, but the methodology of the Houses of Justice and the work approaches of justice assistants are in full alignment with the European Probation Rules. In conclusion, no formal or explicit mention is currently made to the Probation Rules in any written Belgian document. That is, no mention is made in policy documents, in training programmes, in academic research linked to the work of Belgian probation policy and practice, in scholarly analysis, and probably field staff is – highly likely - unaware of the existence of the European Probation Rules.

2. Historical Development of the Probation System

2.1 History from the origins to 1990 ²

In Belgium, the Penal Code of 1867 was influenced by the classical school and consisted of two penalties, namely the fine and the prison sentence. A *patronage* group, a group of middle-class volunteers of 'high-moral value' took over the moral education and control of the released prisoners. However, the volunteers exerted limited control over the former detainees ³. This led in 1888 to the first law, the 'Loi Lejeune', on suspended sentence and conditional release. Prisoners were eligible for conditional release once they had served one-third of their sentence and at least three months, and recidivists had to serve two-thirds of their sentence and at least six months. The introduction of conditional release into the penal system gave the patronage committees real power, as non-compliance with the conditions and guidance could result in re-incarceration. The patronage's moral supervision and guidance could be seen as an adjunct of the rehabilitation philosophy.

At the end of the nineteenth century, a 'doctrinal clash' between the classical school and the positivist school set in. The proponents of the classical school, who believed in the concept of free will, considered the application of the punishment to be proportional to an objective assessment of the seriousness of the crime, while the positivists, who believed that individual behaviour was determined, considered that punishment had to be replaced by preventive measures proportional to the dangerousness of the offender. Snacken et al. conclude that 'the conflict between the classical penal theory of retribution and deterrence versus the positivist theory based on the protection of society by scientific analysis and treatment of the causes of crime, led to the eclectic Belgian penal school of thought'⁴. While the classical theory remained valid for all offenders who were considered to be responsible for their actions, the social defence theories and legalisation were limited to special categories, such as vagrants and beggars (Act 1891), juvenile offenders (Act 1912), mentally ill offenders and habitual offenders (Act 1930) ⁵.

2 Based on Chapter 1 'Setting the scene: the research in context', PhD Bauwens, A. (2011) *The Transformation of Offender Rehabilitation?*, Department of Criminology, Vrije Universiteit Brussel, unpublished, p. 33-36.

3 Snacken, S., Beyens, K. and Tubex, H. (2004) 'Adult corrections in Belgium', in J. Winterdyk (ed.), *Adult corrections: international systems and perspectives* (pp. 21-61). Monsey, New York: Criminal Justice Press.

4 Ibid.

5 Tubex, H. (2002) 'Dangerousness and risk. From Belgian positivism to new penology', in N. Hutton and C. Tata (eds.), *Sentencing and society: international perspectives* (pp. 452-468). Ashgate: Aldershot.

Throughout the twentieth century this neoclassical two-track system between 'normal' offenders and 'dangerous' offenders or juveniles determined the Belgian penal policies and practices. The classical penal theory elements of individual responsibility, retribution and deterrence were applicable to adult offenders. Exceptions were still made for mentally ill offenders (Acts of 1930 and 1964), who were subjected to indeterminate measures, for juveniles (Acts of 1912 and 1965), who were subjected to protective and pedagogical measures, and for recidivists, who were subjected to enhanced punishment combined with preventive detention as a protective measure. The neoclassicism had important consequences for the use of community sanctions. Conditional release was introduced in 1888, but was applied to a limited number of prisoners (especially long term and life sentence prisoners). Probation was only introduced in Belgium in 1964 for offenders over the age of 18, although not as an autonomous sanction, but as an additional measure to be imposed with a suspended sentence. Its application remained marginal and mainly limited to medical treatment.

This mainly classical penal theory tradition also resulted in criminological theories seldom being explicitly accepted as a basis for sentencing practices. However, under pressure from the increasing prison population and resulting prison overcrowding, political support for community sanctions and measures increased. Conditional freedom was introduced in 1990 as an alternative to remand custody. In 1994, the use of probation was extended to offences punishable by up to five years of imprisonment. However, despite the increase in its application since 1994, probation remains a marginal measure within the Belgian Criminal Justice System and is still seen by judges as a favour or warning ⁶. Community service was also introduced in 1994 as a condition of probation at the sentencing level, but became a standalone sanction in 2002 and was renamed 'work penalty'.

2.2 History since the 1990s to 2012 ⁷

In August 1996, the 'Dutroux affair' broke out, involving the alleged abduction, rape, and murder of several children and young girls while the offender was under conditional release. The functioning of the police services and the whole judiciary, even the legitimacy of the entire Belgian political system, became the subject of intense societal debate and prolonged media attention. The scandal culminated in a mass protest, the so-called *White March*, in October 1996, with 300.000 demonstrators in the streets of Brussels. The Dutroux case proved a critical turning point for the legitimacy of the Belgian justice system. It led to a parliamentary inquiry into judicial and police effectiveness and worked as a catalyst to force a number of reforms on the political agenda. The results of the inquiry highlighted serious problems relating to the 'war' between and (dis)functioning of the three major Belgian police forces (local police, judiciary police, and national police), and to the marginalisation of victims and their families in criminal procedures. Pressure was put on the Justice and Interior Ministers to act and reform what was perceived as the failing Belgian justice system and the police services.

6 Snacken, S. (2007) Penal policy and practice in Belgium, in M. Tonry (ed.), *Crime, punishment and politics in comparative perspective*. Crime and justice: a review of research n°36 (pp. 127-216). Chicago: Chicago University Press.

7 Based on Chapter 4 'Policy reform in Belgium', PhD Bauwens, A. (2011) *The Transformation of Offender Rehabilitation?*, Department of Criminology, Vrije Universiteit Brussel, unpublished, p. 128-133.

The Minister of Justice announced in a policy note addressed to the Council of Ministers in August 1996 the urgent need to devote increasing attention to the victims *and* the perpetrators of sexual offences and ordered a screening of the supervision of all offenders who at the time were serving a conditional release order. On 30th August 1996 the Council of Ministers decided to take measures to improve the efficiency of all judicial activities, internal coherence, the transparency, and supervision and the control of offenders. In the preparatory Parliamentary works ⁸, the Minister explained the fragmentary nature, within the former structure, of six services, established at different times, in charge of psychosocial tasks, being: the observation- and treatment units in some of the prisons, the social services in the prisons, the external social service of the Prison Service, the Probation Service, the Penal Mediation Service and the Victim Support Service. The Minister proposed to join together all social work services *extra muros* into local 'Houses of Justice', which would come under the Directorate General of the Judicial Order. The workers employed by these services included the external social workers of the Prison Service, the probation workers, the workers of the Victim Support Service and the employees of the Penal Mediation Service. As a consequence of the merger, all social workers of judicial and para-judicial services, including external social workers of the Prison Service, probation officers, victim support workers, and penal mediators, officially became 'justice assistants'. Besides the establishment of the Houses of Justice, the Council of Ministers decided on 29th April 1997 to establish Psychosocial Services inside all penal institutions within the province of the Directorate General of Penitentiary Institutions ⁹. Attention should be drawn here to the fact that the Belgian Psychosocial Services in prison assume responsibility for the preparations of release forms within the correctional system; the Houses of Justice take on tasks emanating from the preparations and follow-up *extra muros*.

In addition, the reorganisation into Houses of Justice would in turn lead to a more transparent, faster, accessible and humane justice procedure. In this context, the change from the more daunting courthouses into the 'Houses of Justice' that were created in each judicial district (county level) was meant both literally and symbolically to bring the criminal justice system closer to the general public (see also map in 4. The Organization of Probation Services /4.1 Main characteristics).

3. Legislative Basis of the Probation System

3.1 Legislative Basis

As required by the European Probation Rules (Rule 8), probation law has always been grounded in law (statute, secondary legislation and rules). It is, however, fair to say that the European Probation Rules have had little or no direct impact upon practice in Belgium. As mentioned above, they are neither well known nor widely circulated. On the other hand, since the rules reflect best practice in many European jurisdictions, their principles and prescriptions are familiar and established in practice.

⁸ Preparatory works, Parl. St. Kamer, 1989-1999, nr. 49-1889/3, 17.

⁹ Ibid.

For instance, in accordance with the first principle ‘Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion’, it should be noted that this basic principle is emphasised in the current Belgian probation methodology.

The mission of the Directorate General of the Houses of Justice was to provide primary judicial aid and victim support, to conduct civil inquiries and mediation, to conduct inquiries and offender ‘guidance’ in the scope of the application of penal law (for those on conditional release; on temporary release or on probation) (Act of 13 June 1999), and since 1 September 2007, formalised by the Act of 29 January 2007 (*Belgisch Staatsblad / Belgium Law Gazette* 1 February 2007), to supervise offenders on electronic surveillance.

3.2 Mission and Mission statement

The management plan 2006-2012 of the Directorate General of the Houses of Justice set out six objectives in its vision statement. The vision statement mentions that the Directorate would like:

- to contribute actively to a humane and transparent justice, whereby the approach of ‘responsibilising’ the client/offender gets priority;
- to promote and stimulate the social basis for alternatives in the area of the settlement of disputes and of community sanctions;
- to become a privileged partner of the Minister of Justice as well as its key stakeholders, based on broad experience and expertise of their employees;
- to pursue a policy of structured partnerships with all parties involved;
- to be an innovative, transparent and result-oriented organisation, based on the professionalism, loyalty and high level of expertise of its employees;
- to continue to develop a methodology and deontology for the execution of all tasks, based on a balance between individual rights and community rights, and conform to general principles of human rights.¹⁰

The vision statement of the Directorate General of the Houses of Justice is clearly derived from the numerous tasks that were assigned to the Houses of Justice and were formalised by the Act of 13 June 1999. For instance, the tasks of promoting and stimulating alternatives in the area of the settlement of disputes and community sanctions, as well as the tasks of promoting collaboration with all key stakeholders can literally be found back in the Act of 13 June 1999. The first point of the vision statement mentions that the Directorate General would like to contribute actively to a ‘humane and transparent justice’, which was actually the start of the reorganisation of the judicial services into Houses of Justice (cf. ‘more transparent, faster and humane justice procedure’ - see above). The last two points of the vision statement indicate that the Directorate General seeks legitimacy by means of ensuring the professionalism of all their employees and by stressing the importance of human rights.

¹⁰ Management plan 2006-2012 Directorate General of the Houses of Justice, 2007, p. 11-13, own translation.

3.3 Crime Prevention

Reducing re-offending and (re)integrating the offender are bound together as primary policy objectives of the Houses of Justice, Department of Offender Guidance. As such, tertiary crime prevention is the aim. The Department of Offender Guidance does not consider active involvement in primary or secondary crime prevention as part of its job.

3.4 Victim assistance

Every House of Justice has a number of justice assistants specialised in dealing with victims. They have four different responsibilities: to inform, to assist, to refer and to raise awareness.¹¹

- To inform: to give the victim specific information about his/her individual file, about the possibilities in terms of legal assistance, about psychological assistance, about compensation or financial aid or by passing on the victim's questions to the magistrate
- To assist: to assist the victim at emotional level, during difficult times, during the various phases of the judicial procedure.
- To refer: to refer the victim to a specialised service where applicable.
- To raise awareness about the victim's rights and needs among the judiciary and the police force.

The Houses of Justice are not responsible for providing counselling to victims. This is provided by other specialist services, such as the Centres for General Welfare Work and 'Les services d'aide aux victimes'.

3.5 Volunteers involvement

Although historically volunteers were used to provide support to offenders, this went through a period of decline as practice become more skilled and more professional. Volunteers are currently being used to mentor and support sex offenders in the COSA-project (Circles of Support and Accountability). The Circles involve a group of volunteers from a local community forming a 'circle' around a sex offender, supporting them and providing practical guidance. The COSA pilot project is taking place in the House of Justice Antwerp ¹².

11 Article 3bis 'van de Wet houdende de voorafgaande titel van het Wetboek van Strafvordering'

12 See for further information: http://www.ccp-probation.org/uploaded_files/COSA%20European%20Handbook.pdf & Höing, M., Snatersen, Y., & Pasmans, V. (2010). COSA in België. Aanpassingsstudie [COSA in Belgium. Adaptation study]. 's-Hertogenbosch: Programmabureau Circles-NL.

4. The Organization of Probation Services

4.1 Main characteristics ¹³

Organisational change literature makes reference to many different scales and in many different ways. The broadest distinction is between what Callan (1993) and Dunphy and Stace (1993) have termed ‘incremental change’ and ‘transformational change’. Incremental change is the form of change characterised by adjustments and modifications within existing management processes, while strategic goals, organisational structure, and cultural values remain the same. Transformational change is the form of change characterised by radical shifts in strategy, reorganisations of systems and structures, changing values and changes in the distribution of power across the whole organisation.

The change that has occurred in the Houses of Justice, on a policy level and in official discourse, can be defined as *incremental change*. In line with other services within the criminal justice system and the wider public sector, probation in Belgium has been subject to public criticism, political pressure and calls for reform. Belgian probation policies have been guided by the politicisation of criminal justice policy. Crime control issues play an important role in electoral processes, often with an emphasis on tackling insecurity and restoring public confidence.

While in other jurisdictions the politicisation, tackling insecurity and restoring public confidence took place by the paramount importance of public protection from crime and recidivism, an emphasis on risk management, ‘get tough’ policies and on victim awareness and empathy, Belgium followed a different path. In Belgium, tackling insecurity and restoring public confidence happened through a reform of the conditional release system; a reform of the police; the establishment of the High Council of Justice, the reorganisation of the existing judicial and para-judicial services in general, and the reorganisation into Houses of Justice in charge of penal applications, civil applications, victim support and primary legal aid available to all citizens in 1999.

The first House of Justice was founded, in November 1997, in Kortrijk (which happened to be the place of residence of the Minister of Justice); this was followed, in 1998, by the other 27 Houses of Justice. Flanders and Wallonia each have 13 Houses of Justice and Brussels has two, one French-speaking and one Dutch-speaking, each serving different boroughs.

13 Bauwens, A. (2011). Organisational change, increasing managerialism and social work values in the Belgian Houses of Justice, Department of Offender Guidance. *European Journal of Probation*, 3(3), p.15-30.

Figure 4.1 : Map Houses of Justice (FOD Justitie, www.just.fgov.be)



4.2 Internal Organisation ¹⁴

Please note that this paragraph 4.2 Internal Organisation as written below will only be valid till 1 January 2015, due to the recent de-federalisation of the Houses of Justice (see also section 10. Developments to be expected). There are currently no new organisational charts available.

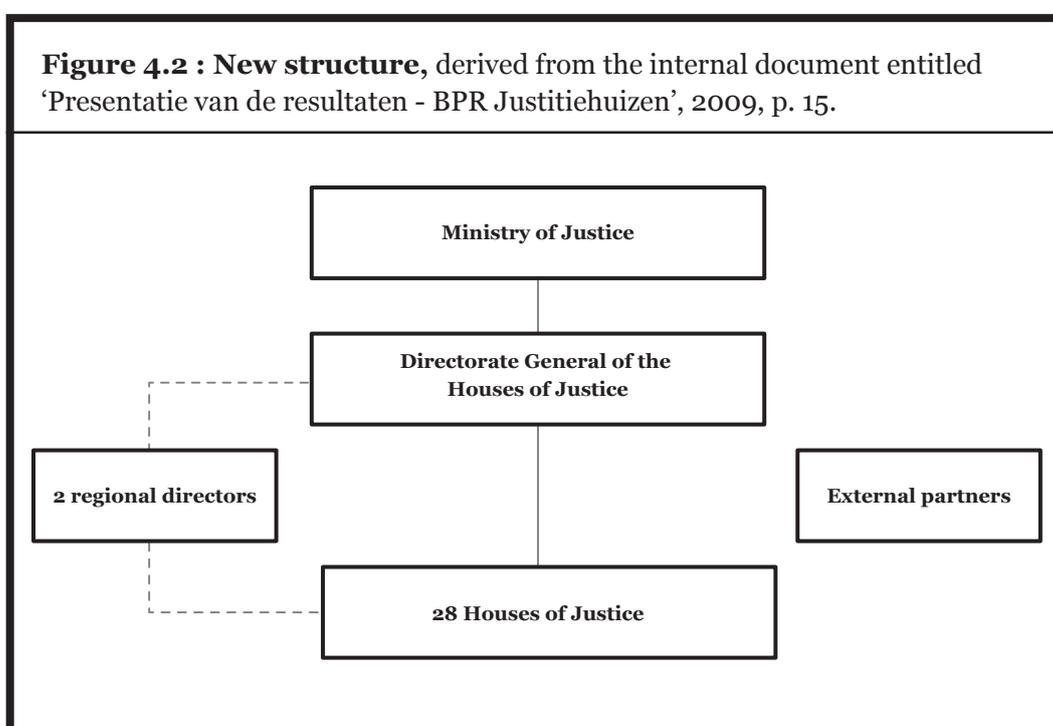
After a seventy-year history of successive integration and separation of the Belgian probation and prison services, the Directorate General of Execution of Sanctions and Measures was, on 1st January 2007, divided into two separate Directorates General: the Directorate General of the Houses of Justice and the Directorate General of Penitentiary Institutions. The Houses of Justice including the probation service are integrated as part of the Directorate General of the Houses of Justice. Both Directorates General fall under the exclusive competence of the federal Ministry of Justice and contribute towards accomplishing the task of ensuring the implementation and enforcement of judicial orders, which is one of the missions of the Federal Public Service of Justice.

The establishment of a separate Directorate General of the Houses of Justice was an unexpected result of the Business Process Re-engineering (BPR) process. The then Minister of Justice, Laurette Onkelinx, decided on 17th October 2005, in the aftermath of the 'to be' BPR implementation phase, that the allocation of a single Directorate General for the Houses of Justice would:

¹⁴ Based on Chapter 4 'Policy reform in Belgium', PhD Bauwens, A. (2011) *The Transformation of Offender Rehabilitation?*, Department of Criminology, Vrije Universiteit Brussel, unpublished, p. 150-155.

Create a unique hierarchical structure for all employees working in the Houses of Justice, enhance their specific characteristics of social work under judicial mandate, create an institutional context that can optimise their tasks in cooperation with their stakeholders and partners, and enhance their professional status and organisational legitimacy in the eyes of both the citizens and the judicial and administrative authorities.¹⁵

The BPR introduced two regional directors in order to ensure better interaction between the central level of the Directorate General and the local Houses of Justice: one regional director for the Northern (Dutch-speaking) and one regional director for the Southern (French-speaking) region, who both have a managerial position. Each House of Justice is independently governed by a director of the House of Justice responsible for what happens in his/her area. With ‘independently governed’ it is meant that a director takes complete responsibility for all *support processes* in their House of Justice, including: budgets, logistics, personnel and organisation, and information and communication technology.¹⁶



4.2.1 Probation workers

The directorate general of the Houses of Justice is headed by a director general who is expected to provide leadership to deliver the strategy and policy of the Government.

The senior management team will include the director general, advisors with responsibility for operations and the range of corporate services (finance, human resources, business development, ICT, legal services etc.) and the two regional managers.

15 Onkelinx, L. (2005) Algemene beleidsnota van de minister voor Justitie [Policy note, Minister of Justice], Belgische Kamer van Volksvertegenwoordigers, DOC 51 2045/005, p. 55.

16 Directorate General of the Houses of Justice, internal document entitled ‘Presentatie van de resultaten - BPR Justitiehuisen’, 2009, p. 13.

Attachés are middle managers who work to senior managers.

Each House of Justice is independently governed by a director of the House of Justice responsible for what happens in his/her area. With ‘independently governed’ it is meant that a director takes complete responsibility for all *support processes* in their House of Justice, including: budgets, logistics, personnel and organisation, and information and communication technology.

Key process managers are to be found only in larger Houses of Justice. They are middle managers, supporting a team and often working under the direct leadership of the director of the House of Justice.

The total staff in post of the Houses of Justice on 31 December 2013
(**full-time equivalent**)

| | | |
|-------------------------|------------------------|--------|
| Total staff | | N=1147 |
| Directorate General | Director General | 1 |
| Houses of Justice | Advisor | 7 |
| | Attaché | 22 |
| | Support staff | 21 |
| | | |
| Management of | Regional director | 2 |
| Houses of Justice | Directors | 21 |
| | Financial advisor | 1 |
| | Managers key processes | 16 |
| | Attaché | 8 |
| | | |
| Operational staff | | |
| Houses of Justice | Justice assistants | 793 |
| | | |
| Support staff Houses of | Administrative staff | 135 |
| Justice | Logistics staff | 30 |
| | | |
| Electronic Monitoring | Director | 1 |
| | Attaché | 5 |
| | Administrative expert | 4 |
| | Administrative staff | 57 |
| | Mobile Unit | 23 |
| | | |

4.2.2 Education, training requirements and opportunities

Justice assistants are trained at a higher education level as social workers, social advisors, social nurses or assistants in psychology, while others are trained at a university level as social scientists (i.e. criminologists, psychologists, sociologists and educationists). This increase can be explained by the heterogeneity of the different tasks, formalised by the Act of 13 June 1999.

In addition, an in-house training is provided for all new justice assistants. The in-house training, which is meant for all new justice assistants, takes over a week or sometimes two weeks. It currently consists of a basic training course focusing on the general principles of the Houses of Justice, the applied methodology, professional ethics and professional issues, which underpin confidentiality decisions. Additional training courses and seminars can be attended by justice assistants according to the requirements of the Houses of Justice in terms of the acquisition of knowhow and new skills and competences. Examples of courses and seminars for justice assistants include:

- communication skills;
- intercultural communication;
- communication training: speaking with children;
- speaking in front of groups;
- reporting skills;
- dealing with aggression;
- dealing with difficult clients;
- judicial supervision of problematic substance users;
- psychopathology;
- time and priority management;
- dealing with denial;
- interfamilial violence;
- and self-care strategies for stress reduction.

It should be noted that the choices of courses and seminars have not been made at random. As a matter of fact, additional training takes into consideration the training needs of front-line practitioners. Proposals for additional courses can be put forward by practitioners and management staff, which are then followed by a request for several price quotes. The additional training is delivered by colleges and universities, non-profit organisations, government registered training organisations, and specialist mental health and welfare services.

After the in-house training, *the possibility* is given to junior justice assistants to have internal supervision sessions provided by the training department of the Directorate General of the Houses of Justice or external supervision provided by private training companies.

The annual national in-house training budget has dropped from 1.200.000 Euro to an annual 800.000 Euro.

4.2.3 Other organizations involved in probation work

Although the Houses of Justice are responsible for supervising offenders subject to community orders and post-custody licences, the Houses of Justice have always worked closely with other organisations to help deliver interventions. In fact,

according to the probation service instruction of 28 July 2003 regarding ‘*The service instruction clarifying the code of good practice of a justice assistant and some methodological aspects*’² (own translation), the justice assistant should ‘inform, advise and refer the parties’ (p. 4).

The law thus stipulates that justice assistants have a function of referring the client of the Houses of Justice to other resources in the community for help which the justice assistant or his/her own agency cannot provide. Referral tasks can include referral to psychological, medical and social services. For instance, referral to the public employment service for vocational counselling or to the National Office for Employment for unemployment benefits, to the Centres for General Welfare Work, to a legal resource for advice, to a Public Centre for Social Welfare for budget planning and/or for receiving a minimum income, etc.

4.3 Probation and offenders in other countries

There is currently no special attention given to Belgian offenders in foreign prisons.

5. Different Stages of the Criminal Justice Process

5.1 Pre-trial/remand/trial stage

The Houses of Justice have a limited role at the pre-trial and court stage. The main activities are the preparation of pre-sentence reports (see 5.1.1. below) and the offender supervision of persons under conditional freedom (‘vrijheid onder voorwaarden’ in Dutch). Following the Pre-trial Detention Act of 20th July 1990, it allows the investigating judge or the court, in cases where preventive detention can be ordered or sustained, to release defendants by imposing conditions upon them. The justice assistant will check the conditions imposed upon the defendant and provide the investigating judge or the court with the appropriate information, which in turn will allow the judge/court to evaluate the defendant’s situation.

Table 2. Sanctioning system and probation involvement in the pre-trial/trial stage

| Sanctions/Measures/Penalties/ Conditions attached to a conditional decision or sentence | Provided in your legislation | Probation service involvement | Main characteristics of the probation activity |
|-----------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|---------------------------------------------------------|
| Unconditional waiver by the public prosecutor | | | |
| Conditional waiver by the public prosecutor | | | |
| Conditional suspension of the pre-trial/remand detention | Yes | Yes | Offender supervision |
| Pre-trial/remand detention | Yes | Yes | Offender supervision |

| Sanctions/Measures/Penalties/ Conditions attached to a conditional decision or sentence | Provided in your legislation | Probation service involvement | Main characteristics of the probation activity |
|-----------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|---------------------------------------------------------|
| Police custody | | | |
| Bail | | | |
| Caution | No | | |
| Surety | | | |
| House arrest | | | |
| Electronic monitoring | Yes | Yes | |
| Community service | Yes | Yes | |
| Treatment order | Yes | Yes | Within the scope of conditional freedom |
| Training/learning order | | | |
| Drug/alcohol treatment program | Yes | Yes | Within the scope of conditional freedom |
| Compensation to the victim | | | |
| Mediation | Yes | Yes | |
| Semi-detention | | | |
| Attending a day centre | Yes | Yes | Within the scope of conditional freedom |
| Liberty under judicial control | Yes | Yes | Within the scope of conditional freedom |
| Interdiction to leave the country | Yes | No | |
| Interdiction to enter different cities/places | Yes | No | |
| Interdiction to carry out different activities | Yes | No | |
| Interdiction to contact certain persons | Yes | No | |
| Psychiatric treatment | Yes | Yes | Within the scope of conditional freedom |
| Deferment of sentence | Yes | No | |
| Fine | | | |
| Other financial sanctions | | | |
| Others, please add to this list | | | |

5.1.1 Pre-trial/pre-sentence report

The tasks performed by justice assistants are different in each stage of the penal procedure.

In the pre-sentencing stage, pre-sentence reports can be requested by judges, public prosecutors, investigating magistrates or investigating courts (the so-called 'commissioners'), to assess the suitability of a work penalty or a probation order. Judges are not obliged to make use of a pre-sentence report; they have extensive professional discretion as to whether or not to call for a report. They can choose between two different types. The extended 'social enquiry report' (maatschappelijke enquête / enquête sociale), which involves a detailed social investigation and the 'concise information report' (beknopt voorlichtingsrapport / rapport d'information succinct). The latter was introduced in 1999 for reasons of simplification and accelerating of the procedure for carrying out pre-sentence investigations.¹⁷

Since the Act of 7 June 2000, every (comprehensive) social enquiry report structure template comprises fixed headings. These are:

- basic facts about the offender (identification, current family situation);
- relevant data on education, environment and social context;
- relevant individual characteristics;
- an offence analysis;
- the vision of the 'client';
- the view of the justice assistant.

5.2 Enforcement stage

Following sentence the justice assistant is responsible for supervising offenders in the community. This includes, according to the structured work processes written in the National Standards:

1. Receipt of the judicial mandate, and for the administrator verification of the territorial authority of the House of Justice;
2. Administrative preparation of the file;
3. [After the director of the House of justice has assigned the case to a justice assistant] Verification of the intelligibility of the conditions imposed upon the offender by the justice assistant;
4. Inviting the offender for a first face-to-face meeting at the House of Justice;
5. Conducting the first face-to-face meeting;
6. Writing the 'first report' (aanvangsverslag/rapport de prise en charge);
7. Conducting the second face-to-face meeting and preparing the supervision plan;
8. Writing a supervision plan (begeleidingsplan/plan de guidance);
9. Conducting the following face-to-face meetings;
10. Issues management (with regard to compliance with conditions by offender);
11. Writing 'progress reports' (evolutieverslagen/rapports d'évolution) and 'warning reports' (meldingsverslagen/rapports de carence);
12. Stakeholder's (judge/court/probation commission) reaction after receiving report written by justice assistant;

¹⁷ For more information see Beyens, K., & Scheirs, V. (2010) Encounters of a different kind. Social enquiry and sentencing in Belgium. *Punishment & Society*, 12(3), 309-328.

13. Steps taken by the justice assistant after a decision made by a stakeholder;
14. Steps taken by the justice assistant on his/her own initiative;
15. Accomplishment of tasks requested by a stakeholder;
16. Suspending offender guidance or suspending specific conditions requested by a justice assistant;
17. Bringing the file to a close;
18. Archiving files.

(National Standards, section 2.3, edition 2.5, 24 April 2008, own translation)

The offender guidance in the Belgian standards specifies that formal reviews of progress should be carried out at months one (first progress report) and four (supervision plan) and, where the length of the order permits, every three months thereafter. The Standards define a minimum contact with the offender, which is one face-to-face meeting every month.

One of the tasks of a justice assistant is to supervise compliance with the requirements the sentence given to the offender. In approaching the task of enforcement, which includes the initiation of breach proceedings, the justice assistant should use their professional judgement to decide the seriousness of non-compliance in any particular case. The justice assistant should make his/her judgement by placing the difficulties of compliance in the offender's social and personal context. Exceptions are made for convictions for a further offence, which automatically lead to breach proceedings.

Table 3. Sanctioning system and probation involvement in the enforcement stage

| Sanctions/Measures/ Penalties/Conditions attached to a conditional sentence | Provided in your legislation | Probation service involvement | Main characteristics of the probation activity |
|--------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Imprisonment | Yes | Yes | Adult offenders (18 years and over) who are conditionally or provisionally released will be subject to supervision. |
| Suspended sentence | Yes | Yes | Offender supervision |
| Conditional sentence | Yes | Yes | Offender supervision |
| Affidamento in prova | | | |
| House arrest | | | |
| Electronic monitoring | Yes | Yes | Offender supervision |
| Community service as sanction | Yes | Yes | Offender supervision |
| Semi-liberty | Yes | | |
| Semi-detention | Yes | Yes/no | Offender supervision |

| Sanctions/Measures/ Penalties/Conditions attached to a conditional sentence | Provided in your legislation | Probation service involvement | Main characteristics of the probation activity |
|--------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|------------------------------------------------------------------------------|
| Treatment order | Yes | Yes | Offender supervision (following up on condition imposed upon offender) |
| Training/learning order | Yes | Yes | Offender supervision (following up on condition imposed upon offender) |
| Drug/alcohol treatment program | Yes | Yes | Offender supervision (following up on condition imposed upon offender) |
| Educational measures | Yes | Yes | Offender supervision (following up on condition imposed upon offender) |
| Compensation to the victim | Yes | Yes | Offender supervision (following up on condition imposed upon offender) |
| Attending a day centre | Yes | Yes | Offender supervision (following up on condition imposed upon offender) |
| Interdiction to leave the country | Yes | No | |
| Interdiction to enter different cities/places | | | |
| Interdiction to carry out different activities | | | |
| Interdiction to contact certain persons | | | |
| Fine | | | |
| Day fine | | | |
| Other financial penalties | | | |
| In/out patient order (psychiatric treatment) | | | |
| Security measures | | | |
| Combined order | | | |
| Community punishment | | | |
| Conditional release / Parole | Yes | Yes | Offender supervision |
| Automatic release | | | |

| Sanctions/Measures/ Penalties/Conditions attached to a conditional sentence | Provided in your legislation | Probation service involvement | Main characteristics of the probation activity |
|--------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|---------------------------------------------------|
| Open prison | | | |
| Penitentiary program outside the prison | | | |

For more detailed information we would like to refer to the list ‘Probation Measures and Alternative Sanctions in the European Union - Belgium’ .¹⁸

Table 4. Other probation activities in the enforcement stage

| | |
|----------------------------------------------------------------------------------|----|
| Providing support to the families of the offenders/ detainees | No |
| Coordinating volunteer prison visitors | No |
| Preparing offenders for (conditional) release | No |
| Preparing prisoners for home leave and/or providing support during home leave | No |
| Providing support to persons that have been pardoned or amnestied | No |
| Providing advisory report with respect to amnesty or pardon | No |
| Other tasks that are not included here. Please add to this list and explain. | |

5.3 Care and after-care outside the criminal justice system

The main role of the Houses of Justice, Department of Offender Guidance is to supervise offenders on court orders and on licence following conditional or provisional release from prison.

Justice assistants do not provide voluntary after-care for offenders after their supervision has finished. They will however seek to signpost offenders to (local) agencies and other organisations which can provide this support.

¹⁸ Belgian Ministry of Justice (2011), http://www.euprobationproject.eu/national_detail.php?c=BE

6. Probation Methodology ¹⁹

As the centralisation of all probation activities under the umbrella of the Directorate General of the Houses of Justice is relatively recent (since 2007), the official vision statement ‘offender guidance’ has only been available since June 2010. Vision statements have been defined as ‘primary management tools’ to communicate the strategic direction of an organisation, to establish a common goal among workers and to provide a unique identity.

The 6-page document is based on three main themes. It starts by explaining the role of the government, the administrative and judicial authorities and the legal aim of offender guidance .²⁰

In particular, the vision statement begins with the legal principles of a ‘Rechtsstaat’ (State governed by law). In a ‘Rechtsstaat’ the recognition of fundamental rights for all citizens is the rule. Limits to these fundamental rights are the exception and must be explicitly enumerated in legislation. This means that the ‘Rechtsstaat’ has the legitimacy to adopt repressive policies enumerated in penal/criminal law towards offenders. The regulatory mechanism of the ‘Rechtsstaat’ stresses the protection of human rights, highlighting the importance of the relationship between the Belgian authorities and social work under judicial mandate. The purpose is to find a balance between offender rights on the one hand and community rights on the other, while respecting human rights. In this context, the justice assistant is seen as one of the legal actors who can interfere at different stages in the regulatory process. However, any intervention of the justice assistant will always have to remain within the framework of the ‘mandate’.

The social work under judicial mandate gives shape to the ‘primary intended outcome of offender guidance, i.e. *non-recidivism* and so contributes to *restorative justice*’ . Elements of restorative justice can be found in certain victim-related conditions imposed on the offender while on probation or conditional release, such as paying compensation to the victim or avoiding any direct contact with victims who requested so during the conditional release procedure.

The second theme of the vision document describes the means justice assistants have to accomplish the primary intended outcome of non-recidivism in offender guidance. Reference is made to the fact that the conditions imposed on the offender are means to foster a learning process for the offender to encourage him/her to adopt a certain type of behaviour, which will no longer provoke judicial interference. In addition, the conditions imposed on the offender are of pivotal importance to build a relationship of mutual trust between the justice assistant and the offender.

19 Based on Chapter 4 ‘Policy reform in Belgium’, PhD Bauwens, A. (2011) *The Transformation of Offender Rehabilitation?*, Department of Criminology, Vrije Universiteit Brussel, unpublished, p. 187-192.

20 Directorate-General of the Houses of Justice, *Vision statement Offender Guidance, 22 March 2010*, later referred to as ‘Vision statement, 2010’.

The last theme of the vision document defines five core principles that have been identified as underpinning 'offender guidance'. The justice assistant should work emancipatorily towards empowerment; encourage the need for offenders to take responsibility for their actions and for the behaviour that led to the offence; work non-normatively; work non-substitutively; and limit the damage caused by judicial interference towards the offender. It should be noted that the core principles of working non-normatively and non-substitutively are valid for all tasks performed in the Houses of Justice.

The vision text elucidates that working emancipatorily means that justice assistants must aim for the development of the competencies of each individual, within their own interactional context (environment), for the purpose - as much as possible - of delivering the effort of complying autonomously with the conditions imposed upon him/her. This has to take place within the context of the judicial interference that led to the mandate. Furthermore, the text states that this principle requires that the justice assistant should adopt a pro-active attitude, thereby supporting the offender to undertake actions.

The second core principle of offender guidance stresses the responsabilisation of the offender. The offender is free to choose to accept or reject help and advice. The offender is free to make active choices in his/her life, in such a way that the justice assistant should aim at letting the offender make his/her own decisions by respecting an offender's capacity to make his/her own choice. The justice assistant should effectively inform the offender of the consequences should he/she not wish to comply with certain conditions. It is therefore crucial that the justice assistant should have professional knowledge concerning the consequences of non-compliance with the conditions, concerning how compliance is supervised and how the stakeholder (the Court and/or Probation Commissions) is informed in case of non-compliance.

The third and fourth principles are to work non-normatively and to work non-substitutively, which means the justice assistant should not use his/her own normative framework and put forward their own values and life choices; neither should the justice assistant act on behalf of the client. A note could be added here. These two principles raised several questions, especially when applied in a penal context, which is by definition a 'normative' context.

And the fifth principle is to limit the damage caused by judicial interference towards the offender. In a 'Rechtsstaat' the objective of non-recidivism has to be pursued in such a way that is least detrimental to the civil rights of the offender. The violation of rights has to be restricted to an absolute minimum to reach its goal. Therefore, the principles of proportionality and 'minimal intervention' need to be respected, so that the intrusions that offender guidance imposes on the offender are never greater than is foreseen by the imposed conditions. Consequently, the justice assistant carries a large responsibility should a condition imposed upon the offender no longer be adequate, be counter-productive or create difficulties leading to breach of the community sanction. In these cases, the role of the justice assistant relates to the need to support compliance with the terms and conditions of community sanctions. In these particular cases, the justice assistant should contact the key stakeholder, taking into account a possible suspension or amendment of a condition in offender supervision.

In conclusion, the approach is still based on a client-centred casework model; a model that emphasises the importance of the relationship between the practitioner and the offender, and a belief that offender supervision should be adaptive to the needs of the unique individual, without necessary working with standardised risk assessment tools and group work programmes.²¹

7. Finances, Accounting, Registration Systems and Evaluation Procedures

7.1 Finances

The federal Ministry of Justice is responsible for the funding of the Houses of Justice till 31 December 2014 (see also section 10. Developments to be expected).

The annual budget for the Houses of Justice in 2014 is 77.000.000 Euro

Table 5. Prison / Probation expenditure

| | Probation Services | Prison System |
|------------------------------------------------------|--------------------|------------------|
| Total current yearly expenditure | 77.000.000 Euro | 650.000.000 Euro |
| Average number of employed staff | 1.343 | +/- 10.000 |
| Daily average number of offenders/clients dealt with | 51.900/day | 11.000/day |

7.2 Accounting

Probation expenditure is subject to different levels of audit:

- Internal audits
- External audits:
 - The Belgian Court of Audit ('Rekenhof'/'Court des Comptes'): The Court of Audit performs financial audits and examines the sound use of public funds. Their tasks are, among other tasks, to check the incomes and expenses of the Federal State, the Communities, the Regions, and public service institutions.
 - Inspectorate of Finance: they are acting in control on behalf of the Minister of the Budget or the Minister for the Public Service.

7.3 Registration Systems and Evaluation Procedures

The ICT department provides support for activities of the Federal Justice Department through the administration and coordination of an ICT Platform.

²¹ For more information see: Bauwens, A. (2011) 'Organisational change, increasing managerialism and social work values in the Belgian Houses of Justice, Department of Offender Guidance', European Journal of Probation, 3(3), p.15-30.

Registration systems being used by the Houses of Justice are:

- SIPAR = platform for the Houses of Justice, provides detailed analyses of all activities of the Houses of Justice and their clients, internal managerial use only, encrypted data are used – after approval has been granted - for scientific purposes and policy development.
- Siset = platform for Electronic Monitoring; internal managerial use only.
- SOSIP = platform for the services of the Houses of Justice in charge with victims, internal managerial use only.

Evaluation procedures: registration of motives of the end of the offender supervision period, either due to end of the supervision order or due to breach of the supervision order. In case of breach proceedings/procedures, the reasons of breach will also be mentioned (re-offending or non-compliance).

8. Societal Support and Clients' Views

8.1 Societal Support and public opinion

It is fair to say that probation in Belgium as well as the Houses of Justice, as in many other countries, are not well understood and struggle to gain confidence of the public. In Belgium, the Houses of Justice may not have such a high profile within the criminal justice system compared to the police, the Prison Service and the Courts, and its coverage in the mass media is indeed very little. In fact, in the third and latest report of the 'Justice Barometer 2010', which is a quantitative survey administered by the Ministry of Justice to the Belgian population about their attitude towards the justice system (i.e. functioning, proceedings and practitioners), the Houses of Justice are not even mentioned. The only two questions in the survey concerning community sanctions relate to the respondents' attitude in favour of or against community service and electronic surveillance. 66% of the respondents were in favour of electronic surveillance and 81% were in favour of community service. Unfortunately, the survey does not mention why the respondents did or did not prefer those community sanctions.

8.2 Clients' Views

It would also be fair to say that the views of offenders and in general 'clients' of the Houses of Justice have received inadequate attention. Feedback has currently not been sought in a systematic way or collated in a way that might enable the Houses of Justice to learn as much as it should from these responses. In addition, very limited academic research is available on how offenders perceive the guidance and supervision of justice assistants.

More recently, Minister Rachid Madrane, in charge of the Houses of Justice of the French Community (see also section 10. Developments to be expected), has announced his interest in finding out more about the 'clients' of the Houses of Justice and how they perceive offender supervision.

9. Probation Clients' Rights

Information about an offender's obligations and about what they are entitled to expect from probation is given to offenders at the start of the period of contact or supervision.

Offenders are likely to be told that:

- You should expect to be seen regularly and on time.
- You should expect to co-operate in the supervision sessions with your supervising justice assistant.
- You should expect to have a say in some parts of your supervision plan (justice assistants go through the supervision plan and the progress reports together with the offender. Offenders are aware what is written in the reports about them to the judge/court(s)/probation commission).
- You should expect to be treated fairly and with respect.

Complainants are encouraged to try to sort out their concern informally by talking to a justice assistant in charge of the offender supervision, by another senior member of staff, or by the Director of the House of Justice in charge of supervision. There is no complaint procedure available at the level of the Houses of Justice. Where the complainant is still dissatisfied, he or she can appeal to the Ombudsman of the Federal Justice Department, whose office will undertake an independent external investigation.

10. Developments to be expected

Since 1 July 2014 the Houses of Justice are de-federalised. Following the political agreement of the sixth Belgian State Reform, entitled '*A more efficient federal State and a larger autonomy for the federated entities*' (launched in 2010 and 2011), a competences transfer took place from the federal level to the regions (Flanders, Wallonia and Brussels) and the (language) communities. This means that the federal government is no longer in charge of the Houses of Justice. Consequently, as of 31 December 2014 the Directorate General of the Houses of Justice, created on 17 October 2005 with the purpose to enhance social work under judicial mandate as well as to enhance their professional status and organisational legitimacy, will no longer exist.

Consequently, the Dutch-speaking Houses of Justice will be embedded in the Flemish Government, Department of Welfare, Public Health and Family; the French-speaking Houses of Justice will become '*une Administration Générale*' (somewhat comparable with the structure of the current Directorate General of the Houses of Justice), and the House of Justice of Eupen will form a separate division or '*ein Fachbereich*' at the Ministry of the German-speaking Community.

Between 1 July 2014 and 31 December 2014 the actual transfer is taking place, paying particular attention to practical and organisational issues and needs (staff structures, organisation charts, relocation, ICT ...). Whilst the Houses of Justice are currently in the middle of the change management process, there is very limited (public) information available on how the regional administrations prepare themselves optimally to succeed in the implementation and integration of the new competences.

At this point, it is uncertain which vision of the probation future will come about. Will reform move the Houses of Justice away from its original purpose of judicial social work with offenders? Or will the Houses of Justice continue to represent and to stress the importance of its values, such as promoting the social inclusion of offenders in the community and to limit the damage caused by judicial interference towards the offender? Furthermore, the different notion of organisational and professional culture between the federal and the regional levels has yet to be explored, defining culture as ‘the way we do things round here’.

Given the very recent de-federalisation and the new policies (and/or practices?) that will probably be developed (which is too early to comment on as both regions are currently in the first phase of the reform by working out an organisational chart at the moment) a critical stand towards these new developments will be taken at the next edition of Probation in Europe.

11. Important Publications

Books or articles by national authors that had or still have a profound influence on the Houses of Justice or without which it is difficult to understand the probation organisation and the work of justice assistants:

- Two recent PhD studies:
- Bauwens, A. (2011). *The transformation of offender rehabilitation?* PhD thesis, Department of Criminology, Vrije Universiteit Brussel, Belgium.
- Jonckheere, A. (2012). *Des assistants de justice aux prises avec SIPAR: un regard sur le management des maisons de justice* [The justice assistants struggling with SIPAR: an insight perspective on the management of the Houses of Justice]. PhD thesis, Ecole de Criminologie, Université Catholique de Louvain, Louvain-la-Neuve.

- Although the Directorate General of the Houses of Justice values the insights of desistance literature and research, there are currently no (academic) studies available on desistance and the desistance paradigm related to the role of justice assistants, effective offender supervision, staff skills and competencies, skills and strategies in probation supervision.

- Influential books for the Houses of Justice, according to the director general:
- Dindo, S. (2011) *Sursis avec mise à l'épreuve, une analyse des pratiques de probation en France*, Etude pour la Direction de l'administration pénitentiaire, Bureau MPJI, France
- Marwan, M. (2012) *Les sorties de la délinquance. Théories, méthodes, enquêtes*, Paris, La Découverte, coll. « Recherches », 240 p.

- It should be noted that if academic studies are already available, than often the role of **one particular actor** in the Belgian criminal justice system is analysed (i.e. not studying or elaborating on the interaction and relationships between key actors in the delivery of offender supervision and other relevant professionals) or **one particular community sanction** is studied (often not elaborating/ including the interaction and relationship between key actors in the delivery of offender supervision and other relevant professionals).²²

12. Main Addresses, Phone & Fax Numbers, E-mail Addresses, Home Pages

From 1 January 2015

For region Wallonia:

Administration générale des maisons de justice
Fédération Wallonie Bruxelles
Rue de Louvain 38
1000 Brussels
annie.devos@cfwb.be

For region Flanders:

Vlaams Ministerie van Welzijn, Volksgezondheid en Gezin
Justitiehuisen
Koning Albert II laan 35 bus 30
1030 Brussel
General information: <http://www.vlaanderen.be/welzijnegezondheid>

²² For more references see, McNeill, F., & Beyens, K. (Eds.) (2013) *Offender Supervision in Europe*. Palgrave Macmillan.



General Information

- Number of inhabitants (January 2015): 11.1 million
- Prison population rate per 100,000 inhabitants: 108:100,000 (2013)
- Link to Probation Services: www.just.fgov.be Federal Department of Justice
- Link to websites:
www.vlaanderen.be/welzijngezondheid
www.cfwb.be
- Member of the CEP in: (not known – check with CEP)

Characteristics of the Probation Service

- The Belgian Houses of Justice work with adult offenders aged 18 years and over.
- The aims of the Houses of Justice are to reduce reoffending and the social inclusion of offenders.

Tasks

- The tasks of offender supervision, offender guidance and social enquiry reports on the basis of statutory acts relating to the mentally ill, habitual offenders, pertaining to suspended sentences, probation, conditional sentences, and preventive detention.
- The task of providing information and advice to all clients of the Houses of Justice, and if necessary, the tasks of referral to the appropriate services.
- The task of making offices available to support the provision to all citizens of initial legal aid dispensed by barristers, and to facilitate the holding of legal aid and Probation Commissions meetings.

Number of staff: 1,147 (FTE, 31 December 2013)

| | |
|-------------------------------------------|-----|
| Probation Officers (Justice Assistants): | 793 |
| Probation Managers, all grades: | 88 |
| Administrative support staff, all grades: | 266 |

New developments

Since 1 July 2014/31 December 2014 the Houses of Justice are de-federalised. Following the political agreement of the sixth Belgian State Reform, entitled ‘A more efficient federal State and a larger autonomy for the federated entities’, a competences transfer took place from the federal level to the regions (Flanders, Wallonia and Brussels) and the (language) communities. It is currently too early to comment on the impact of this reform with regard to current probation policies and practices.

Probation during the different stages of the criminal procedure

| | Pre-Trial Phase | Trial and Enforcement Phase | Post Release Phase |
|-----------------------------------------------------|-----------------|-----------------------------|--------------------|
| Preparing pre-sanction report | X | | |
| Supervising etc. sanction of probation | | X | |
| Supervising etc. conditional sentence | | X | |
| Supervising etc. special measures drug addicts | X | X | |
| Supervising etc. community service | | X | |
| Supervising training or learning projects | | X | |
| Interventions with young offenders | | | |
| Supervising etc. suspended sentence | | X | |
| Assistance/support of offenders in prison/detention | | | |
| Preparing pre-release reports, prisoners | | | |
| Supervising conditional release/parole | | X | |
| Supervising post custody, sex offenders | | X | |
| Preparing victim impact reports | | | |