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Recall to prison in Belgium: back-end sentencing in search of reintegration

Kristel Beyens, Lars Breuls, Lana De Pelecijn, Marijke Roosen & Veerle Scheirs

Abstract

In recent years, the United States and England and Wales have witnessed growing re-incarceration rates. This growth is not only due to the courts sending more people to prison ('front-end sentencing'), but also due to an increasing number of revocations of early release measures, mainly following technical violations of licence conditions ('back-end sentencing'). It is, however, unclear whether this also happens in other (European) countries. Therefore, we empirically studied prison recall decision-making processes in Belgium by file analysis, complemented with focus groups with the decision-makers involved in the recall process of prisoners with a sentence of more than three years. We found that the recall process in Belgium is embedded in a strong narrative of 'giving chances' and that all decision-makers dispose of a large amount of discretion, which they use to make deliberate decisions in an attempt to facilitate parolees' reintegration process. Non-compliance with imposed conditions does not automatically lead to recall and even when a parolee is sent back to prison, recall is framed by the decision-makers as a step in the reintegration process, not the end of it.

Keywords

Recall to prison, back-end sentencing, conditional release, social reintegration

1. Introduction

The revocation of early release measures has led to a growing number of re-incarcerations. In the United States, parole violators accounted for 35 percent of the total number of prison admissions in 2008, compared to 17 percent in 1980 (Steen et al., 2012). In England and Wales, there has been a steady growth in the number of persons being recalled to prison since the 1970s and in 2010 the number of revoked conditional releases was five times as high as in 2001 (Padfield, 2012a). This number has been rising throughout the years. In 2017, approximately 21.900 persons were recalled to prison in England and Wales (Fitzalan Howard, 2019).

As technical violations of license conditions is the most common reason for recall to prison, increased reoffending of parolees cannot provide a solid, all-embracing explanation for this sharp rise (Collins, 2007; Padfield and Maruna, 2006; Petersilia, 2003; Steen and Opsal, 2007; Steen et al., 2012). Other explanations refer to how changes in the legal framework and/or organisational context led to an increased sensitivity of the supervision system to violations (Reitz, 2004; Weaver et al., 2012) or to the extension of licence supervision for prison sentences (Fitzalan Howard, 2019). It is argued that legal

and managerial adaptations of the penal system have limited the discretion of actors in the supervision system, which resulted in more restrictive and risk-based enforcement practices and even (quasi) automatic recall in case of breach of the license conditions (Robinson, McNeill and Maruna, 2013).

There are however indications that the trends observed in England and Wales and the US cannot carelessly be transposed to (all) European countries. First, differences are observed in revocation rates between countries. According to the SPACE statistics, England and Wales have the highest number of prison admissions after revocation of a conditional release or probation in Europe (Aebi and Tiago, 2018) and are thus rather exceptional. In Germany, for instance, the relative number of recalls has decreased since the 1970s (Pruin, 2012: 67). Yet, reliable and comparable figures are often not readily available (Boone and Maguire, 2017; Padfield, 2012b). Also, in the SPACE statistics, recall figures are missing for a lot of countries (Aebi and Tiago, 2018). Moreover, to understand (and compare) recall decision-making, in-depth analysis of daily local practices is required (Padfield, 2012b; Padfield and Maruna, 2006). This ‘sociology of prisoner recall’ (Padfield and Maruna, 2006) only recently started to gain attention and empirical research on back-end sentencing, i.e. the practice of sending people back to prison for violations of the terms of their parole supervision (Travis, 2007: 631), still remains scarce.

This paper presents the results of an in-depth study of the recall process in Belgium.¹ It focuses on the views and rationales of the different actors involved in the different stages of decision-making: (1) police and/or justice assistants, (2) the public prosecutor and (3) the multidisciplinary sentence implementation court. Belgian justice assistants are equivalent to probation officers and are responsible for the supervision of the licence conditions. Since 1 February 2007, multidisciplinary sentence implementation courts decide upon granting and revoking early release measures of prisoners convicted to more than three years imprisonment in Belgium. They are presided over by a professional judge with a minimum of five years’ judicial experience who has been trained for appointment to the sentence implementation court. The two assessors are not professional judges, nor are they equivalent to lay-magistrates, as they are full-time professionals actively serving as a member of the court and require a minimal professional expertise of five years in matters of social reintegration or prison (Scheirs, 2016: 86). Their decision-making regarding recall and their interplay with the other actors in the recall procedure are the main focus of this article.

First, the legislation and the available figures on recall in Belgium will be briefly sketched. Based on an analysis of closed recall files in Belgium and focus groups with the main actors involved in the decision-making process, the recall process is then analysed as a multi-layered and highly discretionary decision-making process. The study shows that non-compliant behaviour does not necessarily lead to an immediate decision to revoke a release. The nature of the decision-making practices is examined from the preciously described reintegration-oriented penal culture of the sentence implementation courts by Scheirs (2016). Our central finding is that the recall process is embedded in a strong narrative of ‘giving chances’ (see also Beyens and Scheirs, 2017) and that recall decision-makers consider breach of the license conditions as part of the reintegration process. Even recall to prison is framed by them as a phase in an ongoing reintegration trajectory of the parolee, rather than the end of it. In the conclusion, this reintegrative narrative is discussed.

2. Legal framework

In Belgium, the multidisciplinary sentence implementation courts decide on the imposition of release modalities for prisoners convicted to a prison sentence of more than three years, i.e. semi-detention, electronic monitoring and conditional release.² License conditions are always imposed for a minimum period of two to maximum ten years. The legislator enacted three general conditions every parolee has to comply with when released (cf. Article 55 of the Act on the External Legal Position):

- The prohibition to commit new offences;
- To have a fixed address and immediately notify the public prosecutor and justice assistant in case of change of address;
- To follow up on the convocations of the public prosecutor and, where appropriate, the justice assistant who is in charge of the supervision.

Next to these general conditions, the sentence implementation court can impose specific individualised conditions, such as e.g. the obligation to maintain a meaningful day activity and/or to follow a treatment plan, the prohibition to drink alcohol, to use drugs, to possess guns and/or to contact the victim(s) of the offences that have led to the conviction (Beyens and Scheirs, 2017). The release procedure is oriented at both social reintegration and public protection, so the conditions are in practice formulated to enhance the social reintegration of the released person and/or to minimise possible risks of reoffending (Scheirs 2014; 2016).

Throughout the licence period, recall to prison is possible. This process is depicted in figure 1. In order to decide about prison recall, the sentence implementation court relies on regular reports (at least every six months) of the justice assistants, who supervise compliance with the licence conditions. These reports contain an overview of the parolee's situation, indicate potential pitfalls regarding the reintegration trajectory and show how compliance with the conditions is achieved. These evolution reports of the justice assistant give insight in the long-term course of the release modality as certain (negative or positive) evolutions are explained, whereas alarming events are reported through warning reports. Also, the police can report infringements on the conditions that prohibit behavior.

The public prosecutor can initiate a recall procedure when the conditions are violated, but is never obliged to do so. On the other hand, as a single breach of one of the license conditions may initiate the recall procedure, the legal requirements for recall are easily met. Article 64 of the Act on the External Legal Position explicitly stipulates the circumstances in which the public prosecutor *can* refer the case to the court in view of recall, i.e. if the parolee:

- 1) Is definitely convicted for a new offence during the license period;
- 2) Has seriously jeopardised the psychosocial or physic integrity of others;
- 3) Has violated the imposed individualised conditions;
- 4) Does not respond to the appointments with the justice assistant;
- 5) Does not inform the justice assistant of any change of address;
- 6) Does not comply with the specific program and schedule of the release modality (semi-detention and electronic monitoring).

The public prosecutor can also opt to provisionally detain a parolee for a maximum period of seven days if the legal requirements for recall are met.

After referral, the sentence implementation court must take the final decision: a warning; suspend the release modality for a maximum of one month by detaining the person; tighten the previously imposed conditions; impose additional conditions without revoking the release modality; impose another release modality; and ultimately, revoke the release modality and send the parolee back to prison. If the conditions are tightened or reformulated, the consent of the person is required (Article 67 of the Act on the External Legal Position).

Figure 1. Recall decision-making as a multi-layered interactional process

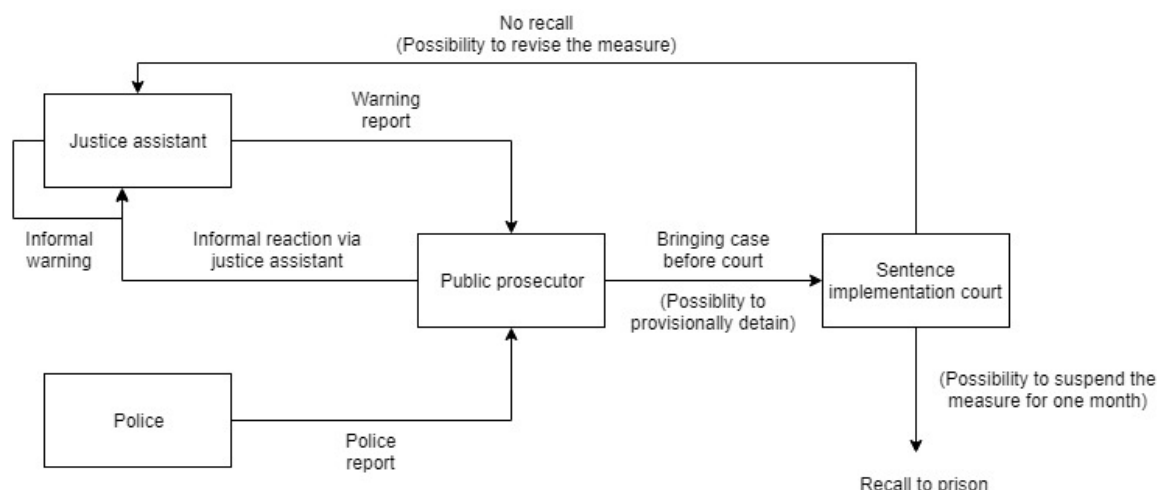


Figure 1 shows the long procedure a breach case takes until the final decision of the sentence implementation court. With regard to the time frame of the procedure, the Act on the External Legal Position only stipulates that the justice assistant must provide a report at least every six months (article 62), that the court hearing after the initiation of the recall procedure by the public prosecutor needs to take place within fifteen days (article 68) and that a decision needs to be taken within seven days after closing the hearing. In practice, however, sentence implementation courts can decide not to close the hearing, but to postpone the final decision, so that the parolee gets another chance to update the reintegration plan (see further). As already indicated above, the time frame is more strict in case of provisional detention: within seven days, the sentence implementation court must decide on the suspension of the release modality, i.e. on continued detention.

This process in practice and the rationales of the decision-makers are further analysed in the findings section.

3. Numbers

Belgium does not have a strong record of systematic and reliable data on recall to prison. Figures show, however, that the number of revoked conditional releases accorded to persons sentenced to a prison sentence of more than three years (up to life imprisonment) decreased in the period 2010-2014, both in absolute and relative numbers (see table 1). National revocation figures of conditional release are only available up to 2014, as they were provided by the Houses of Justice. Following the sixth state reform, in January 2015 the Houses of Justice were split and transferred to the Flemish and the Brussels-Walloon communities. Since then revocation data are not published anymore.

Table 1: Number of revocations of conditional release (2010 – 2014)

	2010	2011	2012	2013	2014
Number of conditional releases in progress on December 31 th (prison sentence of more than 3 years)	2162	2250	2231	2137	2160
Number of closed files	713	724	729	768	680
Absolute number of revocations	302	295	312	289	240
Relative number of revocations	42%	41%	43%	38%	35%

Source: Yearly reports of the Houses of Justice³

4. The study

The numbers in table 1, however, do not tell us anything about the underlying decision-making practices. What kind of sentence implementation justice do they express? How are the recalls 'produced' by the consecutive decision-makers? A recall to prison for non-compliance of conditions or for committing a new offence can have far-reaching consequences for the breach subject and interrupts an on-going, often difficult re-entry process. Being subjected to a breach procedure can also impact on the perceived legitimacy of the sentence implementation process (Fitzalan Howard, 2019). To understand how the final recall decision is produced, this research focuses on the role of the different decision-makers in the process, their rationales and their motivations.

In order to do so, file analyses were conducted in all six Belgian sentence implementation courts in the period October 2015 - February 2017. Access to the files of 2014 was granted in all sentence implementation courts after a formal request for research access, i.e. Brussels (Dutch speaking and French speaking), Ghent, Antwerp, Liège and Mons. Our previous research at these courts (Scheirs, 2014; 2016) has obviously facilitated access. The target population of the study was all cases in which a breach procedure was initiated leading to a decision to revoke, revise or to not revoke/revise a release modality in 2014. Table 2 gives an overview of these 768 decisions taken in 2014.⁴ It also shows that about 40% of all recall procedures in Belgium did not lead to a recall decision in 2014, but to revision of the license conditions or to no change in the early release measure (i.e. non-revocation).

Our research only focuses on persons sentenced to a prison sentence of more than three years who are made subject to a complex release procedure with several checks and balances. However, as a consequence of the bifurcated Belgian early release system, persons sentenced to a prison sentence of up to three years, who are about 75% of all cases in 2017, are semi-automatically released after an administrative procedure without procedural safeguards (see Scheirs, Beyens and Snacken, 2015; Beyens, 2019). In practice this means that the majority of convicted prisoners are released under a quasi-automatic and fast administrative procedure, where the imposition of conditions is quite rare. This is thus a completely different procedure with a very different rationale, i.e. to relieve prison overcrowding. Follow-up is far less stringent in these cases and when a violation of release conditions is nevertheless detected, the Direction Detention Management decides upon recall. The recall decision-making processes of the Direction Detention Management is still a black-box and was not part of our research project. It is however important to note that even in this administrative procedure, people are not automatically recalled to prison: there is always a decision-maker involved who can revise conditions or decide not to recall.

Table 2: Overview of revocation decisions over all release modalities in 2014 (target population)⁵

	Conditional release	Electronic monitoring	Semi detention	Total	Percent
Revocation	281	136	40	457	59,5%
Revision	57	22	10	89	11,6%
Non-revocation	148	55	19	222	28,9%
Total	486	213	69	768	100%

Table 2 shows that in 2014 the sentence implementation courts decided on 486 (63%) recall cases of conditional release and on 213 (28%) recall cases of electronic monitoring. This article therefore particularly focusses on these two measures.

Table 3: Overview of the target population and sample per sentence implementation court (2014)⁶

Court	Total number of persons in a recall procedure (2014)	Total number of decisions (2014)	Number of analysed decisions (2014)	Number of analysed subsequent decisions (> 2014)
Antwerp	203	222	67 (30%)	15
Brussels (Dutch)	36	40	38 (95%)	4
Brussels (French)	194	214	80 (37%)	10
Ghent	107	120	72 (60%)	5
Liège	106	116	40 (34%)	4
Mons	54	56	36 (64%)	2
Total	700	768	333	40

At each sentence implementation court, we used disproportional sampling in order to analyse enough files for every possible decision (e.g. revision of electronic monitoring, revocation of conditional release). A total number of 373 decisions have been analysed, i.e. 333 decisions taken in 2014 and 40 subsequent decisions taken after an earlier decision of revision or non-revocation in 2014 (see table 3). As the research aim is to gain insight in the full recall procedure, we did not solely analyse the selected decisions, but the full case file with the motivations and observations of all the previous decision-makers. A registration form was used to guide the data collection process, including all information in the files relevant to understand the decision-making practices of the different actors in the recall procedure (sentence implementation courts, public prosecutors, justice assistants, police).⁷ The data was analysed using what Morgan (1993) calls ‘qualitative content analysis’. He states that this tool of analysis is ‘an appropriate choice when the available data and the research goals call for the advantages of content analysis in describing what patterns are in the data *as well as* the advantages of grounded theory in interpreting why these patterns are there’ (Morgan, 1993: 199, emphasis in original).

To complement the file analysis, five member-check focus groups with members of the sentence implementation courts (two focus groups, one French speaking and one Dutch speaking), with public prosecutors (one focus group with Dutch speaking members) and with justice assistants (two focus groups, one with French speaking and one with Dutch speaking justice assistants) were organised, where the initial findings of the file analysis were presented and commented on by the participants.

5. Findings

General overview

The file analysis shows that recall was differently used in the different courts, ranging between 54 percent and 83 percent in electronic monitoring cases and between 38 percent and 74 percent in case of conditional release. This indicates that persons under electronic monitoring are more at risk to be recalled to prison than parolees. This can be explained by the fact that electronic monitoring can be imposed in an earlier stage of the prison trajectory. Because they are eligible for electronic monitoring six months before the legal eligibility date for conditional release, most prisoners first request electronic monitoring. After being granted electronic monitoring, it is possible to request conditional release. Sentence implementation courts consider electronic monitoring as an ideal test to see if someone is able to comply with conditions before deciding upon conditional release. This is also known

as the ‘gradual way’ of release or the progressive system of release (for the unintended consequences of this system, see Beyens, 2019). It therefore seems logical that more revocations take place during this ‘test period’. Moreover, electronic control is more continuous and more strict than human control by justice assistants or the police; so, non-compliance with the time schedule (being late at home) can be determined more easily and more often. However, non-compliance with the time schedule is rarely the only reason to bring the case to the court or to recall; persistent non-compliance with the time schedule is mostly seen as an indicator of a broader picture of non-compliance leading to the initiation of a recall procedure.

Table 4: Reasons for recall to prison

Reason for recall to prison	Absolute number	Percent
Non-compliance with the individualised conditions	155	76,7%
Posing a serious danger to the physical integrity of others	4	2,0%
Non-compliance with the individualised conditions AND posing a serious danger to the physical integrity of others	36	17,8%
Final conviction for a new offence	7	3,5%
Total number of analysed files with a decision to recall	202	100%

Non-compliance with the individualised conditions is the most frequent reason for bringing the case to the court and for revoking the release order: in 95% of the analysed revocations, non-compliance with the individualised conditions was (one of) the reason(s) to recall. Although the legislation mentions ‘individualised’ conditions, our file analysis shows that these conditions are imposed in a rather standardised way. Examples of frequently/standardly imposed conditions are the requirement to perform a daytime activity, such as working or following an education, the prohibition to (mis)use alcohol or the prohibition to meet with ex-detainees. Nonetheless, the courts have complete discretion in deciding which and how many individualised conditions are imposed as well as in choosing the wordings that are used. As a consequence, although all courts standardly impose certain conditions, their number and phrasing may differ. The prohibition to meet with ex-detainees, for instance, is by several sentence implementation courts phrased as ‘the prohibition to meet with people who have an infamous reputation related to crime’. Such broad, even vague descriptions leave the door open for discretion and quick revocations, as ambiguous license conditions can more easily be (considered) violated. However, the large discretionary leeway is seldomly used to briskly recall parolees to prison as will be demonstrated below.

Multi-layered decision-making

The justice assistants are important first actors in the recall procedure and have the power to initiate it or not. Our empirical research indicated that, as long as parolees actively and sincerely collaborate with the justice assistant, show motivation and self-insight, and take further steps in the reintegration trajectory, the justice assistant is willing to trust, to give chances and time. The fragilities of the parolee are taken into account, but it is considered the parolees’ responsibility to search for adequate services to address these needs. Time and opportunities to tackle problems are given as long as these opportunities are actively and successfully taken advantage of. Moreover, the justice assistant also takes into account the different chances the parolee already received from the public prosecutor (e.g. interim warnings), the sentence implementation court (e.g. non-revocation) and from other actors, such as therapists.

The reports of the justice assistant serve as a basis for further (inter)action. If certain conditions are not (yet) fully met and/or if the guidance of the parolee evolves negatively, the public prosecutor will correspond with the justice assistant in order to give indirect warnings to the parolee. Relying on the reports of the justice assistant and the police, the public prosecutor takes the parolees' attitude and how this attitude is shown in concrete (desirable or undesirable) actions, into account. The motivation of the parolees and their behaviour accordingly are thus again important foci of interest for the next decision-maker in the breach process.

In general, however, the public prosecutor is considered to be the strictest actor in the recall procedure. But only in serious cases (e.g. when the parolee poses a great danger to the physical integrity of others), the public prosecutor decides to immediately provisionally detain the breach subject awaiting the decision of the sentence implementation court. During the focus group, public prosecutors said to use the provisional detention to protect wider society in cases of 'acute danger', and when the risk of committing severe offences is considered to be high. However, it also became clear that the boundary between severe and less severe violations is a grey zone for them. Our file analysis further shows that a police report almost certainly prompts a referral of the case to the sentence implementation court.

But even when a parolee is referred to the court, the public prosecutor does not necessarily want to see the release modality (immediately) revoked. In some cases, the referral to the court is rather considered a preventive act and a formal warning sign that compliance with the conditions is required. Although the public prosecutor is the most public protection-oriented actor in the procedure, recall to prison is thus not always advocated. The data indicate that the public prosecutor also aims, to some extent, to support parolees in view of a successful reintegration. This contrasts with the position of their colleagues in the sentencing phase, where the public prosecutor's role is mainly public protection-oriented. This atypical approach can be explained by the fact that the public prosecutors in the sentence implementation phase are specifically recruited and trained for this function, as, according to the Act on the Legal External Position, social reintegration is an important aim.

It is important to note that the legislator has not prescribed how the prosecutorial oversight should be carried out. As a consequence, different prosecutorial follow-up practices can be observed between districts, ranging from proactive to merely passive oversight. The prohibition of drug use, for instance, is standardly imposed by all sentence implementation courts. Yet, in only one district, the public prosecutor proactively verifies compliance with this condition by asking the police to carry out drug testing at irregular time intervals. In other districts, drug use is only done after an occasional control by the police.

We have observed more differences in oversight practices between judicial districts. For example, only in one district, the court members – and not the public prosecutor – respond to the reports of the justice assistants and correspond directly with them. This practice of continuous follow-up by the sentence implementation court seems at odds with the legal requirement of impartiality and independency of the court, that is applied more literally in other sentence implementation courts. It can however also be seen as another indicator of the specific character of the sentence implementation phase. The fact that different practices and local penal cultures are developed can be understood as a consequence of the discretionary nature of the process and the fact that the judicial actors are independent and thus enjoy a considerable freedom to act. When being confronted with the different practices of their colleagues during the focus groups, we observed a respectful attitude and to date there is no general policy to remedy or monitor the different practices.

By giving interim warnings, the public prosecutor and/or the sentence implementation court nevertheless can give some extra trust to the parolee. However, it is also clear that, notwithstanding the different follow-up practices between districts, the public prosecutor wants to keep the finger firmly on the pulse.

‘Doing reintegration’ when deciding upon recall

A case is brought to the sentence implementation court when the parolee seriously violated the imposed conditions, poses a serious threat to the physical or psychosocial integrity of others or when the public prosecutor is convinced that a formal warning or formal intervention by the sentence implementation court is needed. In all these cases, but especially in the latter, hearing the parolee in court is considered essential in order to assess the further possibilities for a positive evolution of the release modality. Our file analysis reveals that the discretionary power built into the law does not lead to a restrictive recall context. Brisk, abrupt recalls in which release orders are revoked without hazard are exceptional. Rather we observed a deliberate decision-making process in which the ‘misconduct’ of the parolee is evaluated and weighted in view of their broader reintegration trajectory. The sentence implementation court often decides not to revoke the release order or to revise it by tightening existing conditions or imposing additional conditions as recall is deemed not necessary in the light of the interests of society or the social reintegration of the parolee. The members of the sentence implementation court explicitly describe reintegration as a process of trial and error, in which small mistakes are inherently made along the way.

A discourse of second or third, and exceptionally even more chances can be observed in the verdicts of the sentence implementation courts. Statements like *‘an ultimate chance is given’* or *‘he is now warned: he can make this error once, but not twice’* are regularly found in the analysed files. Throughout the focus groups, members of the sentence implementation courts stressed the importance of ‘giving chances’ as they acknowledged the difficult structural and social context in which parolees have to execute their reintegration plan. At the same time, however, they also emphasized their duty to protect the public in case severe violations have occurred and they also referred to the responsibilities of parolees to ‘take the chances’ they get.

From our data, we identified four important elements that are assessed by the sentence implementation courts when deciding on recall.

The (proven) severity of the violation of conditions

First of all, the sentence implementation court assesses whether the violation of the conditions, as stated by the public prosecutor, is proven. The Act on the External Legal Position strongly focusses on the procedural and substantive statutory rights of the released person. The research of Scheirs (2014) showed that principles such as due process, fairness, legitimacy and the presumption of innocence are highly valued by the members of the sentence implementation court and guide their decision-making practices. As a result, and from within this decision-making culture, not every assumption of breach is seen as convincingly proven by the public prosecutor (for example, contradictions in statements of witnesses) or as attributable to a deliberate shortcoming of the parolee (for example, loss of job due to a closedown of a company). In case the breach is proven and attributable to a deliberate deficiency of the parolee, the severity of the misbehavior or non-compliance is evaluated. The court generally considers acts that pose a serious danger to the physical integrity of others or that are connected to a form of organised crime as more severe. However, if the recall procedure is initiated for a parolee who is suspected of having committed a new offence, the sentence implementation court cannot legally

recall for this reason as long as the parolee is not definitely convicted for this offence (cf. presumption of innocence). As the process until final conviction can take months or years, this legal principle explains the low number of recalls for committing a new offence, i.e. only three and a half percent of all the recalls in our sample (see table 4). However, this does not imply that parolees who have been alleged for having committed a new serious offence will not be recalled at all. In practice, the sentence implementation court will be creative and look for other motivations to revoke the release modality, for example by referring to the violation of one of the imposed license conditions (e.g. prohibition to carry guns, prohibition to meet ex-detainees, etc.), as the following quote illustrates:

“He confessed that he knows Mr. X and Mr. Y, whom have committed several acts of theft. Let alone the question if he himself has committed a new offence, the frequentation of these convicted people is definitely proven.” [Verdict – recall conditional release, file 2.69]

The actual prospects for reintegration

At every appointment, the justice assistant will check the (non-)compliance with the imposed conditions, among which the conditions related to the reintegration plan (for example, the requirement to work, the requirement to follow a psychological treatment, etc.). It is however not exceptional that certain conditions are not lived up with during a certain period of the release modality and the sentence implementation court tends to be conscious of the difficulties and challenges accompanying the transfer from custody to society. So, not every violation of conditions immediately leads the public prosecutor to refer the case to the court, nor is every violation attributable to a deliberate shortcoming of the parolee.

When a case is referred to the court in view of revocation – independent of the reason why – the prospects for reintegration will nevertheless, again, be re-evaluated during the court hearing and again function as a leading principle for (continued) release. When little or no feasible prospects for reintegration can be demonstrated, the risk of recall increases. The sentence implementation court can also postpone the final decision, so that the parolee gets another opportunity to update the reintegration plan.

The awareness of and the sincere intention to tackle the problems underlying the undesired conduct

As sentence implementation courts adhere to the idea that most parolees are vulnerable individuals with visible needs and underlying problems that have placed them in this socially vulnerable position (Scheirs, 2016), reintegration is seen as a process with possible lapses and relapses. However, this approach only applies if parolees acknowledge their needs and underlying problems and are willing to take responsibility for their actions. Consider following indicative examples:

“At the court hearing, he acknowledged that he sometimes cannot resist his urges to consume alcohol, that his willpower weakens. Recently, he again grabbed a bottle of alcohol after he was confronted with the death of a relative, problems with a colleague and the ending of his fixed-term employment contract. He realizes that his use of alcohol can trigger aggression and he absolutely wants to avoid this in the future.” [Verdict – revision conditional release, file 3.11]

“The parolee again has relapsed to a situation in which the risk of committing new serious offences is increased given the unceasing use of heroine, even after being warned. The lack of problem awareness is poignant: at the court hearing, he stated that his reintegration is a success.” [Verdict – recall electronic monitoring, file 1.27]

In the first case, the sentence implementation court did not recall the conditional release order, despite the breach of one of the license conditions, referring to the acknowledgement of the underlying problem. This was not the case in the second example, resulting in a recall.

When parolees claim to be aware of their problems, these statements are however also assessed on their sincerity. Moreover, a realistic prospect of effectively tackling these problems is seen as desirable in order to avoid that empty words are spoken. In other words, taking responsibility for the violation, acknowledging the problems and co-operatively taking the necessary steps towards a more law-abiding live are considered the premises for reintegration.

The truthful cooperation with the justice assistant

Given the importance of the reports of the justice assistant, on the basis of which the credibility and sincerity of the parolee can be assessed, it is not surprising that the court attaches great importance to a continuous and truthful cooperation with the justice assistant. It is considered essential that appointments with the justice assistant are met and that this cooperation is not merely a masquerade:

“The parolee does not respect the rules of the conditional release. A ‘false front’ is employed towards the justice assistant.” [Verdict – recall conditional release, file 2.61]

Recall framed as a ‘last resort decision’ in an ongoing reintegration trajectory

The file analysis and the focus groups with the members of the sentence implementation court and the public prosecutors reveal that recall is not surrounded by a restrictive idea of permanent future incapacitation. A re-incarceration is often referred to as a ‘time-out period’, which is intended to give the breach subjects the opportunity to think through the ‘failure’ of the release modality in order to come back with an adapted and more suited reintegration plan. Members of the sentence implementation court explicitly state in the focus groups that an ‘irrevocable revocation’ is rather exceptional.

Unless the remaining detention period until the end of the sentence is too short, recall is depicted by the court members as a new phase in the release process and in the re-entry trajectory. Recall – an evidently coercive intervention – is in this way (re)framed as having a reintegrative value (Lynch, 2000). After being recalled, the parolee’s attitude, the awareness of and the sincere intention to tackle problems are taken into account to determine how long a detainee has to wait before submitting a new request for a release modality (maximum six months in case of a prison sentence of up to five years, maximum one year in case of a prison sentence of more than five years):

“[...] Given the current cooperative attitude, the possibility is given to immediately submit a new request for a release modality. This request should better be well-considered and established in cooperation with the psychological service and the social workers in prison.” [Verdict – recall conditional release, file 1.28]

“[...] Since July, the electronic monitoring order went downhill. There was suspicion of drug use, you threatened your girlfriend and you are no longer allowed to stay at her place. You went to the hospital, but escaped there. You are untraceable ever since and you did not show up at the court hearing. [...] The court revokes the electronic monitoring order and thinks that a return to the prison is necessary at this moment to protect society. The court puts off the possibility to submit a new request for a considerable time.” [Verdict – recall electronic monitoring, file 5.41]

Recall to prison is thus considered and used as part of a pedagogic strategy, to allow the breach subject to be put back on track. Although risk-oriented deliberations may influence the determination of the length of the 'time-out period', recall in these cases is nevertheless also regarded as a transitional phase in the penal trajectory rather than as the final outcome of it.

6. Conclusion

In the US and England and Wales, the rise of the prison population is partly seen as a consequence of an increasing number of recalls to prison. Parolees are primarily recalled to prison due to technical violations of licence conditions. However, besides the book of Boone and Maguire (2017), which brings pilot studies from different European countries together, existing research into the practices of recall is to date very limited, and both comparable figures of revocation rates as well as theorisation about the underlying process of recall are currently lacking. In order to fill this gap, we analysed the process and rationales of recall in Belgium. The available national statistics, indicating a slight decrease of recalls between 2010 and 2014, were the starting point of a more thorough study of recall trajectories.

In line with our study, Maguire and Boone (2017: 106) suggest to adopt a holistic approach by 'beginning with the first construction of behaviour as non-compliant and examining the whole process right through to the final decision-making stage'. Adopting such a serial conception of decision-making does not imply that the recall procedure should be considered a 'one-way track' (Blay, Boone and Pruin, 2017). By carefully analysing the entire breach process and the underlying assumptions with all the actors involved, this study fits perfectly in this approach. Only through an in-depth analysis of the recall *trajectory* we could understand the rationales behind the final decisions.

An interesting picture of the practice of recall in Belgium emerges. First, from the data up to 2014, we see that Belgium has not witnessed a rise in the number of parolees being recalled to prison. On the contrary, the overall numbers have slightly decreased over time. However, it is uncertain whether this picture will hold in the future, as we also know that currently the number of prisoners who are firstly released from prison under electronic monitoring before being granted conditional release is increasing (cf. progressive system of release, see Beyens, 2019). As our research shows that recall is more frequently used for those who are under electronic monitoring, this might result in a rise of recalls in the future. Second, we found that all legally defined role-players in the recall process have a great amount of discretion in making decisions: the impact of managerialism on offender supervision – although tangible – seems to be still limited and the importance of professionalism is valued in official policy documents (Bauwens, Robert and Snacken, 2012). This suggests a rather different picture than the findings in the US and England and Wales. We found that the discretion in the Belgian case is primarily used as a way to enhance reintegration, as opposed to choosing for strict and repressive practices with regard to re-incarceration.

So, our results illustrate that sentence implementation courts operate – or at least believe and claim that they are operating – in a reintegration-oriented penal culture (Scheirs, 2016). Breach of the license conditions is considered as an inherent part of the reintegration process and even sending parolees back to prison (for a while) is seen as a phase in the reintegration trajectory that is full of ups and downs. However, behind this reintegration rhetoric lies the idea of the responsible parolee (Lynch, 2000) and the ideal of the cooperating person. Problem awareness and intentions and efforts to tackle problems are indeed crucial in permitting continued release. Parolees are encouraged to take responsibility in the process of social reintegration in order to let the release modality succeed. Parole is thus certainly not seen as a single-sided gift, but rather a mutual binding arrangement between two – unequal – parties. This does not imply that the actors in the supervision system do not take the structural constraints that parolees have to deal with during and after release from prison into account.

Difficulties to find a job or to find appropriate residential care on short notice are in this way acknowledged. However, due to structural problems in the larger society, parole supervisors have little tools to offer real assistance or to provide services that facilitate reintegration (Lynch, 2000; Scheirs, 2016). While recognising and considering these structural limits, sentence implementation courts and other actors can have little impact on these shortcomings. An active follow-up and guidance is all they can offer in order to (try to) facilitate the social reintegration dimension (Scheirs, 2016). A broader view on reintegration is therefore necessary (Kirkwood and McNeill, 2015) that includes not only the responsibilities of parolees, but also of the society in which someone is released.

We are conscious that this study only focuses on the narratives of the supervisors and decision-makers, and that we do not have any insight in how these 'reintegration-oriented' decisions are perceived and experienced by the breach or recall subjects themselves. The small-scale study of Fitzalan Howard (2019), analysing in-depth accounts of seven men, showed that recall was experienced as painful and damaging rather than rehabilitative and lacking in credibility and legitimacy. This definitely deserves further attention in the Belgian context too as the number of prisoners who max out their sentence in prison, and thus do not leave the prison under supervision, is rising (Bauwens, Robert & Snacken, 2012; Robert, 2018; Beyens, 2019). In 2017, the number of prisoners maxing out their sentence (N = 812; 8,2% of all releases) even outnumbered those who are conditionally released (N = 739; 7,7% of all releases). This is a creeping evolution and can be interpreted as an indication of the difficulties of getting parole (Beyens, 2019).

After being rejected during the application process for a release modality or after being recalled, we see that prisoners who are approaching the end of their sentence 'decide', not to ask for early release measures anymore. An important explanation is that the time under supervision would exceed the remaining sentence length and prisoners do not want to run the risk of being recalled to prison during the probation period that exceeds the initial prison sentence. A consequence of serving a full sentence in prison is a release without supervision. An important question remains how many of these maxing out prisoners have been granted early release measures earlier in their detention trajectory, but lost their confidence in the legitimacy and credibility of this system after being subjected to a recall procedure. The legitimacy of supervision and recall processes in the eyes of (recalled) parolees should therefore be an important focus in future research.

We also believe that our findings are relevant to be further explored at an international level. Collecting and comparing reliable data on prison recall is an important first step to contribute to the sociology of prison recall. Furthermore, investigating decision-making processes of actors involved in parole decisions is essential for fully comprehending recall figures.

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² Act of 17 May 2006 on the External Legal Position of convicted prisoners and the right of the victims in the framework of modalities of implementation of sentences (further Act on the External Legal Position).

³ The yearly reports can be accessed via <http://justitie.belgium.be/nl/publicaties> (2010: 253-256; 2011: 246-251; 2012: 98-100; 2013: 110-111) and <http://www.justitieuuizen.be/publicaties> (2014: 74-75).

⁴ It should be noted that there is a difference between the number of revoked conditional releases in our data (based on the local databases of each sentence implementation court) and the numbers reported by the Houses of Justice (see table 1): 281 vs. 240. It is unclear how the numbers reported by the Houses of Justice are calculated, so we could not verify the reliability of these figures. However, they give an indication of a general trend.

⁵ The overview of the target population is constructed by using the local database of each sentence implementation court and thus relies on the codifications that are used by the court administration. The numbers may therefore be subject to small errors. For instance, in one court the codification 'revision' was also used – legally speaking incorrectly – for an adaption of the imposed conditions on request of the parolee. In these cases, the parolee still complied with the imposed conditions and the decision was therefore not taken in the context of a recall procedure. As it was practically impossible to check every file, the numbers are thus a slight overestimation.

⁶ The total number of decisions to (not) recall is higher than the number of persons in a recall procedure, because, in several cases, the person was again referred to the court after an initial decision to revise or to not revoke was already taken. When one of these decisions was included in the sample, all other decisions taken in 2014 and all subsequent decisions taken at a later moment in time were included in the analysis as well.

⁷ More concrete, the registration form included: general information related to the legal situation of the parolee (number of convictions, nature of offences, sentence length, presence of identified victims, penal trajectory, ...); the request of the offender for a release modality; the psychosocial report of the psychosocial service, assessing the psychological and social background of the prisoner and evaluating the efforts towards and possibilities of achieving reintegration; the advisory reports of the prison governor and the public prosecutor; the verdict granting the requested release modality, in which several individualised conditions are imposed; the follow-up of the release modality by the justice assistant and the police; the notification of non-compliance and the referral to the court by the public prosecutor; and the verdict with the decision to revoke, to revise or to not revoke the release modality.