Pre-trial Detention in Belgium. An Empirical Study of Explanatory Factors in the Use of the Arrest Warrant and its Duration

La détention avant jugement en Belgique. Étude empirique des facteurs explicatifs du recours au mandat d'arrêt et de sa durée

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1. Introduction

For several decades, Belgium has had to cope with the problem of overcrowded prisons. This has been particularly acute since the early 1990s when the country faced a sharp rise in the penitentiary population, which has now risen largely beyond the available prison capacity (Beyens et al., 1993). According to the most recent annual reports from the General Directorate for Penitentiary Institutions (DGEPI) for the years 2015 and 2016, the prison population is once again over capacity. Although the degree varies depending on the penal institution the overall rate is 10%, and this is excluding individuals serving a prison sentence under electronic monitoring (Maes et al., 2016, 19-21).

From 1980 to 2016, the total prison population virtually doubled (from 5,677 in 1980 to 10,619 in 2016, an increase of 87.05%). This rise does not concern solely prisoners actually convicted and serving a final sentence: in 2016 people serving pre-trial detention represented 33.5% of the total prison population (DGEPI, 2017, 42). Despite a law on pre-trial detention (in Belgium referred to as "voorlopige hechtenis", in Dutch, and "détention preventive", in French) which in 1990 reinforced the criteria for issuing an arrest warrant and introduced new alternatives to pre-trial detention (release under conditions: RuC), the population under an arrest warrant rose almost 150%. Although
alternatives to the arrest warrant seem to be applied fairly often, they have not (substantially) reduced the number of people detained under an arrest warrant. In 2016, Belgium’s total prison population was under the European average: an adjusted figure of 93.6 detainees per 100,000 inhabitants, compared to the European average of 129. The number of persons not serving a final sentence (excluding the "other" category) is nevertheless one of the highest in western Europe and is close to the European average. From 1980 to 2010, this population more than doubled, from almost 1,500 pre-trial detainees in 1980 to slightly over 3,600 in 2010 (Maes et al., 2016, 23). At the European level, in 2016 Belgium was fairly high on the list, with 30 detainees awaiting final sentence for 100,000 inhabitants; in any case this rate is higher than the European median (27.1) and also above the figures for neighbouring countries, such as France (29.1) or the Netherlands (22.4) (Aebi et al., 2017, 77). Since that time, although this population no longer seems to be growing, it remains at approximately 3,500 (DGEPI, 2017, 43). The situation is even more acute when we look at the proportion of foreigners among the prison population (44.0 %, DGEPI, 2017). If only in virtue of its role in the prison (over)population, pre-trial detention has been and still is a major challenge.

For many years the Belgian government has been searching for "new" ways to cope with overcrowded prisons and the constant rise of the inmate population. When it comes to pre-trial detention, various options – simultaneously evaluated by scientific research towards development of the policy – have been envisaged, such as more stringent admissibility requirements for issuing an arrest warrant, drawing up a positive or negative list of offences (for which pre-trial detention could or could not be applied) introducing an (absolute) limit for the length of pre-trial detention (see point 3 below). Major changes in legislation have been adopted in recent years, one establishing the right to a lawyer’s assistance from the first police questioning and the first appearance before an investigating judge, another law to introduce electronic monitoring as an alternative to – more precisely as a way to serve or a modality of execution of – pre-trial detention and a 2017 law that increases the maximum length of judicial arrest from 24 to 48 hours (in Dutch, "gerechtelijke aanhouding"; in French, "arrestation judiciaire"). Lastly, in 2017 as well, Belgium transposed the European Supervision Order into federal law, along with other European Union countries and in agreement with the European Framework Decision 829.

The question of pre-trial detention, and by extension, its alternatives, regularly have a prominent place in discussions among professionals, parliamentary debates and any changes to the law. In addition to concerns about its impact on prison overcrowding, pre-trial detention also affects the very foundations of a democratic state of law.

While the "new" Act of 1990 on Pre-trial Detention already had, inter alia, the aim to limit pre-trial detention (even more), it must be recognised that the population of pre-trial detainees in Belgium never really dropped substantially. Not only did the number of pre-trial detainees rise considerably over time, the alternatives to it, introduced in 1990, also increased sharply as well. If in 1995, the Maisons de Justice/Justitiehuizen (Justice Centres, i.e. the Probation Service), in the context of release under conditions (RuC; in Dutch, "vrijheid of invrijheidstelling onder voorwaarden", VOV; in French, "liberté ou mise en liberté sous conditions", LSC), registered over 600 (new) supervision orders, in 2010 this number had risen to over 4,400 orders (N=4,436) and by 2016 was over 5,000 (N=5,289) (Aebi, Chopin, 2017).
The rise in the general prison population during the past decades – and the ensuing constant overcrowding – can ultimately not be imputed solely to an increase in the length of sentences handed down or more difficulty in obtaining early release for those serving long sentences. It must also take into account the increasing use of pre-trial detention (whether in frequency or in duration). In the context of this article, we present the main results of a study that, instead of evaluating (possible) measures to limit the use of pre-trial detention, attempted to highlight the factors correlated to the use and duration of pre-trial detention in Belgium. Indeed, few studies on this subject have been carried out in Europe, and the study on which we report the main results is also unique in its area in Belgium. Its scope was not to provide a definite explanation for the general evolution observed, but rather to provide the means to understand the evolutions affecting three judicial districts, which were major factors in feeding the prison system with pre-trial detentions (see point 5. for the limitations and future research). Taking several years into account ensured stability in the explanatory nature of the fluctuation observed in a number of variables.

Before presenting the main results, we shall quickly summarise the context of Belgium’s implementation of pre-trial detention and the debates on the subject that regularly occur, particularly in the concern to reduce its frequency, duration and impact on prison overcrowding. We shall also outline earlier research that had studied both implementation of pre-trial detention and possibilities to reduce the phenomenon.

2. Pre-trial detention in Belgium

In Belgium, the Act of 1990 on Pre-trial Detention stipulates that the investigating judge, who is still the only one with the authority to apply such a custodial measure (served in prison or "at home"), must take various criteria into account (art. 16 of the Law of 20 July on Pre-trial Detention). There must be serious indications of guilt in the charges against the person in question, the measure must also be of absolute necessity for public safety and the offences the person is accused of must be punishable by at least one year imprisonment. If the charges are punishable by a maximum 15 years imprisonment, or five years for acts of terrorism (exception introduced in 2016, following the 22 March 2016 attacks in Brussels), the arrest warrant must mention one or several additional motives. There must also be a risk of recidivism, absconding, destruction of evidence or collusion with others.

Just like the arrest warrant, the same criteria condition recourse to pre-trial detention alternatives (release under conditions – bail). Release under (posting of) bail is an alternative that predates the law of 1990. It is comparable to the American or British security bond system. Although not many figures are available on its use, comments from people directly concerned indicate that it is not really a frequent practice.

The "release under conditions" system, introduced by the law of 1990 allows the investigating judge to impose respect of a series of conditions: to follow therapy or a treatment, attend professional or other type of training or even respect victim-centred conditions. The investigating judges and courts can decide freely which conditions to impose; there is no limiting list.
An arrest warrant used to be valid for five days’ time, then renewable for one month and in some cases three months. These periods are presently an initial five days, followed by two times one month and then for renewable periods of two months. There is no absolute maximum to duration. The alternative measures, however, are limited to three months, renewable. It is also possible to appeal decisions by the judicial council before the chamber of indictments. The investigating judge who issued the arrest warrant can also, at any time, decide to lift it and release the person; the public prosecutor does not have the right to oppose the decision.

After an arrest by the police, the public prosecutor has the option of requesting that an arrest warrant be issued for the person accused. This is something only an investigating judge can do. The judge must decide whether or not to issue an arrest warrant within 24 hours following the initial judicial arrest, i.e. from the moment the police took the person into custody. Since 2017 this maximum time has been extended to 48 hours. Since electronic monitoring was introduced as a modality of execution of an arrest warrant, the investigating judge or investigating courts also determine where the warrant will be served: in prison or another residence indicated.

3. Scientific research and political interest in the implementation of pre-trial detention

Over the past decades in Belgium, scientific research on pre-trial detention and its alternatives has regularly evaluated the legal and/or practical interventions that policy-makers hoped would exert pressure on the use of pre-trial detention: raising the eligibility threshold for pre-trial detention, drawing up positive or negative lists of offences, limiting the duration of pre-trial detention, introducing electronic monitoring as an alternative, working with maximum quota for prison capacity (Deltenre, Maes, 2001, 2002a, 2002b, 2004; Daeninck et al., 2005; Maes et al., 2007, 2011, 2012; De Man et al., 2009; Maes, Mine, 2010, 2013; Maes, 2012; Jonckheere, Maes, 2011; Maes, Jonckheere, 2011).

Most of these proposals, in the end, never saw the light, except for the alternative of electronic monitoring as a way to serve pre-trial detention and legislation to extend the maximum length of judicial arrest from 24 to 48 hours.

At the European level as well, political initiatives have been taken to limit application of pre-trial detention and encourage alternatives to custodial measures. To begin with, we can cite the creation of the European Court of Human Rights and its jurisprudence as well as that of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), promoting the criteria set in its reports. We can also cite various initiatives by the European Union: the "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings" (European Council Resolution of 30 November), the European Commission’s "Green Paper on the application of EU criminal justice legislation in the field of detention" (COM, 2011, 327 final) or, more recently, the position taken by the European Commissioner for Justice (Vera Jourovà), identifying the excessive use of pre-trial detention by Member States as a priority of the Justice DG. Another example is the European Parliament’s Resolution of 5 October on prison systems and conditions (2015/2062, INI). We can also mention calls for projects in the framework of EC action...
grants regarding protection of defendants' rights; the 2015 call included "reducing the use of pre-trial detention". The Council of Europe has issued various general recommendations: a 1999 recommendation, not limited to pre-trial detention, concerned prison overcrowding; two 2006 texts on European prison rules and the use of pre-trial detention (Committee of Ministers, 1999, 2006a, 2006b), along with the Framework Decision 829 on the "European Supervision Order", which – based on the principle of mutual trust – foresees execution modalities in the defendant's country of origin of alternatives to pre-trial detention that are decided in another Member State. This (latest) EU instrument at first glance appears to be promising, given that the issue of illegality (absence of a legal residence status) and cross-border crime is a growing source/cause of an increase of the prison population serving pre-trial detention.9

While greater attention, in terms of policy, is being given to the issue of pre-trial detention, we have noted that up to now, international academia has shown relatively limited interest. In an overview of empirical research on pre-trial detention and decision making processes regarding use or non-use of this measure, Boone and Herzog-Evans opened their article with a clear-cut observation: "Empirical studies on decision-making in the pre-trial phase are rather scarce, and totally lacking in most [European] countries." (Boone, Herzog-Evans, 2013, 62). They were able to refer only to a few (rare) studies, primarily regarding a limited number of Belgian, Dutch, Scottish, English and Welsh jurisdictions. We can also mention a Russian study (Titaev, 2017), as well as French research (Tournier, 1995; Gautron, Retière, 2013). Only recently have we seen a renewed interest in pre-trial detention in Europe, in the form of comparative research looking into the decision making process that characterises implementation of pre-trial detention (Fair Trials, 2016, 2018; Hammerschick et al., 201710).

In Belgium, various descriptive studies have analysed the outcomes of decisions taken in this area: profiles of detained defendants, occasionally compared with suspects under supervision in the community in the framework of alternatives to pre-trial detention, the length of pre-trial detention, the evolution of the measure's implementation over time, and so on.

In addition to the above studies, research on pre-trial detention and its alternatives can be broken into two main approaches: on the one hand, as already mentioned, research is focusing on legal measures or practices that could limit the use of pre-trial detention. On the other hand there is research on the decision-making process and the factors at play. Such research, both qualitative and quantitative, is also interested in the factors that intervene in the decision to issue an arrest warrant or not, or that determine the duration of pre-trial detention, whether they are personal or case-related characteristics, or else contextual or organisational aspects.

With the exception of an exploratory study by Christiaensen et al. (1991), research in this latter area not only focuses primarily on a specific and limited period of time, but especially on a particular type of crime: serious theft (see de Coninck van Noyen, De Nauw 1989) and essentially drug-related offences (see Snacken et al. 1997, 1999; De Pauw 2009).

Together all these works have helped suggest hypotheses about growth of the pre-trial detainee population. This could be explained by an increasing use of pre-trial detention, for various reasons. To begin with, one mentions a rise in the most serious forms of criminality, an increasing recourse to pre-trial detention to remediate the
non-application of short-term sentences and also pressure from the police to opt for custodial measures.

21 As a factor in this rise in pre-trial detention, some studies also mention its use as a measure to protect public safety (in relation with the development of actuarial justice), as well as growing pressure from public opinion to not take any risks. Yet other studies mention that a heavier workload and less time available for the decision process, and the limited time within which the investigating judge has to take a decision after a police arrest, tends to foster the option that poses the least possible risks.

22 As for the increasing duration of pre-trial detention, one explanation may be a rise in the number of investigative acts or the time needed for (forensic) expert reports, as well as fewer releases being granted by the investigating judges and the investigating courts. This extension of time in detention before the trial may also be linked to a greater lapse of time between the determination of the court proceedings (committal ruling) and the judgement.

23 Earlier studies also attributed a failure of alternative sentences to reduce application of pre-trial detention to the possibility that use of the alternatives was restricted to "other" cases, for which, in the past, pre-trial detention would not have been applied anyway (the net widening hypothesis).

4. An empirical research in Belgium

24 The research we present in this article is in the area of studies on factors influencing the decision and duration of pre-trial detention (Burssens, 2011). The objective was to build on this body of research and end up with more elements that could explain their evolution by studying all the factors that were observed, in particular their correlation with the recourse to and the duration of pre-trial detention. The study also diverges from the others in that it expands the focal point, both in terms of the offences and in the time period studied. Unlike the earlier studies (de Coninck van Noyen, De Nauw, 1989; Snacken et al., 1997), it does not concentrate on a certain type of crime, nor does it look at a specific year, but collects data covering an extended period. The object was also to have a longitudinal view of any evolution in the correlations.

4.1. Research design

4.1.1. Sample selection

25 The sample of 1,387 persons for the study was compiled on the basis of criminal cases, with no specific focus on a particular crime, referred to the prosecutor’s office in the months of May and November in 1993, 1998, 2003 and 2008 in the judicial districts of Antwerp, Brussels and Liege and which led to an investigation under control of an investigating judge being opened (in Dutch, “gerechtelijk onderzoek”; in French, “instruction”). The period and specific years were chosen in order to allow for a minimum of distance from any impacts on pre-trial detention from the political, institutional and media climate of the times: the 1990 law on pre-trial detention, repercussions from the explosive Dutroux case that came to light in 1996, renewed political interest in pre-trial detention (in particular the Minister of Justice commissioned studies from the NICC simulating effects of possible measures to limit it),
as well as various changes in the means to monitor pre-trial detention in 2005. The months of May and November were chosen to avoid periods where the judicial activity was slack. They are also the same months chosen in the past by other studies, for the same reasons (de Coninck van Noyen, De Nauw 1989; Snacken et al., 1997).

For each reference month, we needed to ensure a minimal sample size for each reference year. This was to enable regression analyses on both the use and the duration of pre-trial detention. As these analyses serve to articulate these decisions and durations into a minimum of variables that are potentially explainable and found in the case files, we decided that 35 cases had to be collected for each reference month, in principle in the order of their admission to the prosecutor’s office. The people included in the sample, therefore, are those who appeared in the context of cases reported to the prosecutor’s office, for which an investigation had been launched and a final decision taken (by an investigating or trial court), with the additional condition that at least one suspect had been identified.

4.1.2. Dependent variables

The variable that operationalises placement under arrest warrant is split into two types of outcomes. On the one hand, the investigating judge placed the suspect under an arrest warrant during the investigation process. In this case the decision to place under arrest warrant is implemented by appearance before the investigating judge, followed by a custodial measure. On the other hand, there is the inverse situation: a decision to not place under arrest warrant, observable through the fact that either the suspect did not appear before the investigating judge or else the suspect did appear but without any decision for a custodial measure.

The length of the pre-trial detention was calculated based on a population of persons who were subject to one or several periods of pre-trial detention between their first appearance before the investigating judge and a decision by an investigating court to cancel pre-trial detention or else a first trial court decision on the merits of the case. These are thus situations where the suspect had been placed under an arrest warrant after the first appearance, with the duration of detention calculated up to the maximum date of the decision taken by a judgement court. This analysis shows that in addition to the 585 persons for whom a decision to place under arrest warrant was made immediately following appearance before the investigating judge, a certain number of arrest warrants were decided at a later stage.

4.1.3. Independent variables

For each person involved in a case, data were collected in line with the main working hypotheses developed by earlier scientific research. The variables thus concerned:

- identification of the case and the actors involved in its investigation procedure;
- description of the investigative acts and (forensic) expert assessments (type and duration) undertaken at the request of the case’s investigating judge, and indication of whether additional investigation was requested by the suspect or a plaintiff;
- identification, socio-economic and judicial characteristics available in the case file regarding the suspect;
- description of the nature and the circumstances of the facts;
• detailing of the motivation for the investigation procedure, the decision taken during any first appearance before the investigating judge and situations of detention or release of the person in question, as well as any other people involved as suspects in the case;
• description of the evolution of the person’s situation at the time of the determination of the court proceedings (committal ruling) and the judgement;
• description, if relevant, of the motivations and modalities for placing under pre-trial detention, how it was carried out and when it came to a close.

30 The criteria for inclusion in the sample was that a decision had been taken on the continuation of the case at the time of the final determination of the proceedings (committal ruling, i.e. a decision as to whether or not refer the case to the sentencing court).17 For each person involved in these cases, various data were collected that concerned their situation after the case was opened until any final decision taken on the merits of the case.

31 As mentioned earlier, both for the decision (to issue an arrest warrant or not) and the duration (of pre-trial detention), any correlations with these independent variables were tested each time both overall and also in relation to the reference year (Burssens et al., 2015).

4.2. Main results

32 In addition to a description of the overall sample (for the decision) or limited just to persons placed under arrest warrant (for the duration), according to the different variables entered and their evolution over time, we also carried out multivariate (inferential) analyses for each dependent variable for which we wanted to identify the explanatory factors.

4.2.1. Description of the sample
Table I. Distribution of the cases studied according to the personal or institutional (case-related) characteristics of the suspects (in %)

<table>
<thead>
<tr>
<th>Personal characteristics</th>
<th>Sample (N = 1,387)</th>
<th>Institutional Characteristics (case-related)</th>
<th>Sample (N = 1,387)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex</td>
<td></td>
<td>(Prison) Record</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>116</td>
<td>No previous prison sentence</td>
<td>68.5</td>
</tr>
<tr>
<td>Male</td>
<td>122</td>
<td>Previous prison sentence</td>
<td>31.5</td>
</tr>
<tr>
<td>Age</td>
<td>36.7</td>
<td>Victim not known to suspect</td>
<td>66.6</td>
</tr>
<tr>
<td>&lt; 35 years of age</td>
<td>38.4</td>
<td>Witness common du suspect</td>
<td>33.2</td>
</tr>
<tr>
<td>35 to 45 years of age</td>
<td>14.2</td>
<td>Offence groups</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: not serious - property offence</td>
<td>13.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: serious - property offence</td>
<td>86.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: violence property/goods offence</td>
<td>4.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: fraud against property</td>
<td>22.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: intentional against a person</td>
<td>16.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: unintentional against a person</td>
<td>1.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: against honour and reputation</td>
<td>2.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: of a sexual nature</td>
<td>5.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off: narcotics</td>
<td>21.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Criminal associations</td>
<td>8.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other</td>
<td>3.6</td>
</tr>
<tr>
<td>Nativity</td>
<td>31.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>52.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Europe (excluding Belgium)</td>
<td>25.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outside Europe</td>
<td>22.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place of residence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domiciled in Belgium</td>
<td>77.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other or with no domicile</td>
<td>22.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presence of problem factors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>75.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>24.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Living situation</td>
<td>63.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Typical</td>
<td>81.9</td>
<td>No other suspects contained</td>
<td>75.5</td>
</tr>
<tr>
<td>Alternative</td>
<td>18.1</td>
<td>Other suspects contained</td>
<td>24.5</td>
</tr>
<tr>
<td>Marital status</td>
<td>23.9</td>
<td>Judicial District</td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td>74.1</td>
<td>Brussels</td>
<td>6.0</td>
</tr>
<tr>
<td>Other</td>
<td>2.9</td>
<td>Dutch</td>
<td>25.6</td>
</tr>
<tr>
<td>Children</td>
<td>1.7</td>
<td>Antwerp</td>
<td>32.8</td>
</tr>
<tr>
<td>No children</td>
<td>75.6</td>
<td>Liege</td>
<td>35.6</td>
</tr>
<tr>
<td>At least 1 child</td>
<td>24.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from employment</td>
<td>44.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Replacement Income</td>
<td>17.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Income</td>
<td>38.5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

33 Of the 1,387 persons included in the sample (Table I), 32% of the cases were opened in the judicial district of Antwerp (n=455), 35.6% of the cases in that of Liege (n=494) and 31.6% in that of Brussels (n=38). A large majority of the Brussels cases concerned French-speakers (over 80%). The sample for 1998 contains a higher number of defendants compared to the other years. No direct indication for this difference could be found in the files. It is apparently due to the random selection of cases with a higher number of defendants. Our sample is primarily composed of men, hardly one of ten defendants is female. The cases concern persons who tend to be younger: although the average age for the total research sample is about 32, the group of persons under 35 is by far the most represented (66.7%).

34 Over half of the defendants were born in Belgium (52.3%) and more than two tenths were born outside Europe. A similar proportion could be seen for the nationality category. Although most of the defendants were residents in Belgium, a significant number had their residence outside Belgium or did not have a (permanent) domicile address in Belgium (22.4%). About 25% of the cases mention a social, psychological or drug-related problem. On the question of a certain number of important characteristics, factors which the literature indicates as playing or liable to play an important role in deciding whether or not to place a suspect under arrest warrant, we were able to find little information in the judicial case files. For example, it is surprising to see that the files seldom mention the defendant’s living (housing) situation (data missing in 419 cases!), income, marital status or the fact of having dependant children. When the files do contain such information, it appears that only a small group of defendants are married (25.9%) and are responsible for one or more children (24.4%). Most live in a typical situation (alone or in a couple with or without children, living...
with parents), almost two tenths are living in an 'alternative' situation (in a residential institution, in prison, at a friend’s house, with other family members, homeless). Less than half have an income from employment: four out of ten have no (official) income and a small group have replacement income. On the question of penal and offence-related indicators, we can observe that it is rare to find clear information regarding any relation between the defendant and victim. When such data about the relationship between suspect and victim are available, it appears that in about one third of the cases the victim is "known" to the offender. Almost one in three defendants was already sentenced to a prison term (whether or not a fully or partially suspended custodial sentence). In most files there is question of more than one defendant: six out of ten defendants in our sample were not the sole ones in the case. The types of offences are quite varied, some occur fairly often, others tend to be more exceptional. Excluding the "other" category, covering offences that did not fit into any of the ten groups that we defined, in our sample the most highly represented (>10%) groups – from most to less frequent – are: drug-related offences (21.4%), property fraud (21.1%), intentional offences against the person (16.2%) and not serious property offences (13.7%).

When we look more specifically at the group of persons who appeared before an investigating judge, some observations reflect what we have seen in various studies and discussions on the way to change the legal framework for pre-trial detention, especially concerning the time already spent under arrest before the investigating judge has taken a decision. For some background, Christiaensen et al. (1991) were of the opinion that a longer time under (judicial) arrest actually led to more detentions, because of the lack of time (available) for the investigating judge to sufficiently examine the appropriateness of detention. In such a case, there is the temptation to opt for limiting any risk. According to various studies, this situation could be imputed to non-optimum use of time by the upstream services, such as frequent delays in information from the police services (Christiaensen et al., 1991; Snacken et al., 1999). Our study did not provide variables enabling us to appreciate the quality of time-use before the investigating judge’s involvement. However we can nonetheless note that the investigating judge usually had less than eight hours to take a decision (in 450 cases out of 826), the nature of this decision and, as shown by Table II, indication that there is no significant difference in the recourse to pre-trial detention depending on the time within which the investigating judge had to take a decision.

Table II. Time available to decide whether or not to issue an arrest warrant, in relation with the type of the decisions taken (N = 826, 99 missing)

<table>
<thead>
<tr>
<th>Decision time left under judicial arrest</th>
<th>% of decisions to place under arrest warrant</th>
<th>χ²</th>
<th>p (sig.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 8 hours</td>
<td>70.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8-16 hours</td>
<td>62.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt; 16 hours</td>
<td>65</td>
<td>4.977</td>
<td>0.083</td>
</tr>
<tr>
<td>Total</td>
<td>67.2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

When we then look at the group of persons who were placed under pre-trial detention, it can be seen that the hypothesis of an influence of release decisions (by the investigating judge or courts) on the duration of pre-trial detention, is clearly
unfounded. Within the limits of our sample, and thus among only those who had been placed under arrest warrant, we have not found any truly notable decrease in the proportion of people still in pre-trial detention at the time of judgement in first instance, but rather a noticeable shift towards other modalities that put an end to periods of pre-trial detention, namely from decisions to release without conditions to decisions to release under conditions.

Table III. Evolution of the relative importance of the modalities to lift pre-trial detention (until the judgement)

<table>
<thead>
<tr>
<th>Modality for ending PTD</th>
<th>1993</th>
<th>1998</th>
<th>2003</th>
<th>2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Release without conditions</td>
<td>27.60%</td>
<td>32.10%</td>
<td>19.00%</td>
<td>8.00%</td>
<td>22.20%</td>
</tr>
<tr>
<td>Release under conditions</td>
<td>9.00%</td>
<td>9.20%</td>
<td>18.20%</td>
<td>27.30%</td>
<td>15.60%</td>
</tr>
<tr>
<td>Release, bail</td>
<td>4.10%</td>
<td>7.10%</td>
<td>5.10%</td>
<td>4.00%</td>
<td>5.20%</td>
</tr>
<tr>
<td>Release, conditions + bail</td>
<td>0.70%</td>
<td>1.60%</td>
<td>2.20%</td>
<td>0.70%</td>
<td>1.30%</td>
</tr>
<tr>
<td>Case dismissed</td>
<td>0.70%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.20%</td>
</tr>
<tr>
<td>Provisional release</td>
<td>1.40%</td>
<td>1.10%</td>
<td>0.70%</td>
<td>0.00%</td>
<td>0.80%</td>
</tr>
<tr>
<td>Intermittent measure (not guilty by reason of insanity)</td>
<td>1.40%</td>
<td>1.60%</td>
<td>0.70%</td>
<td>2.00%</td>
<td>1.50%</td>
</tr>
<tr>
<td>Judgement in the first instance</td>
<td>55.20%</td>
<td>47.30%</td>
<td>54.00%</td>
<td>58.00%</td>
<td>53.20%</td>
</tr>
<tr>
<td>Total Count</td>
<td>145</td>
<td>184</td>
<td>137</td>
<td>150</td>
<td>626</td>
</tr>
</tbody>
</table>

Pre-trial detentions that are not closed at the time the suspects are judged on the merits of the case (with or without release; release at this stage is fairly rare) represent, almost unchangeably over the years, approximately 55% of the modalities to end pre-trial detention (with the exception of cases investigated in 1998, where an increase in the proportion of release without conditions could be found) (Table III).

4.2.2. Discussion of the results of the multivariate analyses

Let us now look at the main objective of our research: drawing up predictive models for the decision taken and the length of pre-trial detention.

Following our preliminary analyses, we developed two sets of variables. They overlap somewhat, but their categories were often adapted in virtue of the dependent variable:

- sex (male or female);
- age (at the time the case was opened), split into three categories for the decision and in two for the duration (see note 21);
- origin (country of birth), split into three categories: Belgium, European Union, outside EU;
- nationality (same categories as for origin);
- domiciled in Belgium or not;
- problem issue mentioned or not;
- previous sentencing to a prison term or not (whether or not to a fully or partially suspended custodial sentence);
- presence of other defendants involved in the case or not;
- another defendant detained or not;
- type of offence, split into 10 category variables for the decision, 5 for duration;
• investigative actions: whether or not there were "specific" investigative actions/(forensic) expert reports for the decision, the number of these investigations and (forensic) expert actions for the duration;
• judicial district.

These variables were included in the multivariate analyses in the aim to produce prediction models, both for the recourse to pre-trial detention and for the length of this detention (Table IV). Some variables were discarded in the end for a variety of reasons (see below).

Other than a variable’s non-significant nature once it is taken up in an multivariate analysis, the main reason for discarding a variable is that it holds – thus contributes to – a too large number of missing variables (which in itself is liable to become an indication concerning their importance in decision-making and determining the length of pre-trial detention). Some variables were occasionally preferred to another with similar influence on the dependent variable because they reinforced the quality of the model (see below), notably by contributing fewer missing variables (the typical example was the choice between nationality and origin, according to the dependent variable).

Table IV. Models (explaining factors) for the decision and the duration of pre-trial detention

Image 10012BA0000089E100006CBB8EA4596039357A.emf

Factors having a significant correlation with the decision

The results of the multivariate logistic regression pertained to 1,253 cases (134 were excluded because of missing values for one or several characteristics). The factors included in the model drawn up for the decision enabled us to make relatively accurate predictions about the decisions observed. The 48.9% value for "Nagelkerke R²" in this area is quite high for a logistic regression in the social sciences (the total number of
correct predictions, or overall accuracy, is 77.9%). A significant part of the variation in
the decision variable can thus be explained by the variables included in the model. The
predicted decisions largely correspond to the decisions actually found in the sample.

In virtue of this model, we can see, to begin with, that older defendants, particularly those
over the age of 45 have less probability of being detained than those under the age of 35, or
inversely: those who are 35 or younger are at least twice as likely to be detained than
those over 45. Already in 1989, de Coninck van Noyen et De Nauw (1989) had observed
that age had an influence. In their study they nevertheless traced the limit at 21 years
of age, while, on our side, we found two thresholds: at 35 and 45 years of age.

Defendants born outside Belgium run a greater risk than those born in Belgium. In particular,
the probability of being detained rises sharply for those born outside Europe,
regardless of whether or not the person has a residence in Belgium. This confirms
earlier studies showing that judicial actors often established a link between foreign
nationality and/or origin and the risk of absconding (Snacken et al., 1997; Snacken et al.,
1999; De Pauw, 2009).

A resident in Belgium has almost half the chance of being detained than someone who has no
fixed domicile or who resides abroad. A residence in Belgium is also mentioned in all
erlier studies as a factor that lowers the probability of being placed in pre-trial
detention (de Coninck van Noyen, De Nauw 1989; Snacken et al., 1997; Snacken et al.,
1999; De Pauw, 2009). Among other factors studied by Snacken et al., (1999), the legal
residence seems to be linked to the judges’ concerns about the risk of fleeing the
country and evading justice.

The presence of another problem (drug use, psychopathology, social problems) more than
doubles the risk of detention. Snacken et al., in 1997, already mentioned one of these
underlying problems: among various motives for issuing an arrest warrant in Brussels,
a frequent one was the fact that the suspect was a drug user.

The existence of one or several earlier prison sentences also increases the chance of detention,
also shown by two other studies to be a major factor in the decision (de Coninck van
Noyen, De Nauw, 1989; Snacken et al., 1997).

The presence of one or several other defendants reduces the probability of detention, but when
another defendant is detained (whether before or at the same time as the person’s
appearance before the investigating judge) the probability of the defendant him - or herself
being detained rises sharply (over 25 times more likely to be detained than when no other
defendant has been). This is a factor that did not seem to have been noticed until now.

Even though the types of offences do not seem to be as significant as suggested by
earlier studies, our research is pointing out the importance of some characteristics that
are specific to a narrower set of offences. The "risk" of detention is thus lower when the
defendant is accused of fraud (compared with suspects not accused of such an offence). In
other words, when a defendant is accused of an offence that is not a form of fraud, the
chance of being detained rises.

The probability of detention also rises when there is a question of a serious or violent property
offence, and also when "criminal association" is mentioned. This provides some major
clarification of earlier studies, hitherto limited to specific offences (serious theft and,
especially, drug related offences). Those studies suggested that the characteristics of
these offences were major factors, perhaps the ones weighing most heavily in the
decision to place someone in pre-trial detention (de Coninck van Noyen, De Nauw 1989;
Snacken et al., 1997; De Pauw, 2009). More specifically, the value of the goods stolen (for serious theft, de Coninck van Noyen, De Nauw 1989) or importing, exporting or trafficking of drugs (De Pauw, 2009) were indicated as factors taken into account by the judicial actors. However, although Snacken et al., (1999) observed that recourse to pre-trial detention seemed to be the rule in managing drug-related cases, the regression model brings some nuances to this observation. When we look at other types of offences, an arrest warrant is generally far from automatic, even if it is the main outcome when a suspect appears before the investigating judge (Table V). Our research shows that the influence is limited to violence in the case of illegal forms of acquisition, excluding crimes against the person (in the legal sense).

Table V. Decisions to issue an arrest warrant or not for a suspect presented before the investigating judge, overall total and totals by year (N = 920; 5 missing)

<table>
<thead>
<tr>
<th>Image</th>
<th>10004A64000007441000017B5FA22C3F0418A0F73.emf</th>
</tr>
</thead>
</table>
| Snacken et al. (1997) already noted significant differences among the districts they studied (Brussels and Antwerp). Our model confirms the importance of the judicial district per se, in other words: a factor unrelated to other factors in the model.

Models specific for each year were also established (Table VI). This showed that although some variables of the global model seem to hardly have an impact in one year, or more often in two of four years under study, other variables are more stable. This is the case, for example, of whether or not a case involves several suspects, the fact that at least one other suspect has or has not been detained and the presence of an underlying problem. The main tendencies of the global model are confirmed overall.
Table VI. Results of the logistic regression based on the year the file was opened in the prosecutor’s office (N = 1,250; 137 missing; enter procedure with all relevant variables)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Male (ref = female)</td>
<td>1.52</td>
<td>0.92</td>
<td>1.00</td>
<td>0.95</td>
<td>2.73</td>
<td>0.94</td>
</tr>
<tr>
<td>Age (ref = 18-24 years of age)</td>
<td>0.61</td>
<td>0.64</td>
<td>0.87</td>
<td>0.69</td>
<td>0.37</td>
<td>0.28</td>
</tr>
<tr>
<td>30-44 years of age</td>
<td>0.52</td>
<td>0.69</td>
<td>0.44</td>
<td>0.32</td>
<td>0.52</td>
<td>0.31</td>
</tr>
<tr>
<td>Over 45 years</td>
<td>1.50</td>
<td>0.76</td>
<td>1.61</td>
<td>0.86</td>
<td>2.67</td>
<td>0.31</td>
</tr>
<tr>
<td>Offence: not serious (property offence)</td>
<td>1.75</td>
<td>0.90</td>
<td>1.74</td>
<td>0.85</td>
<td>2.69</td>
<td>0.36</td>
</tr>
<tr>
<td>Offence: serious/violent property offence</td>
<td>1.97</td>
<td>0.92</td>
<td>1.67</td>
<td>0.86</td>
<td>4.34</td>
<td>0.09</td>
</tr>
<tr>
<td>Fraud</td>
<td>0.46</td>
<td>0.40</td>
<td>0.45</td>
<td>0.69</td>
<td>0.42</td>
<td>0.56</td>
</tr>
<tr>
<td>Offence: intentional against the person</td>
<td>1.80</td>
<td>0.81</td>
<td>1.78</td>
<td>0.24</td>
<td>1.50</td>
<td>0.60</td>
</tr>
<tr>
<td>Offence: unintentional against the person</td>
<td>0.68</td>
<td>0.52</td>
<td>0.90</td>
<td>0.34</td>
<td>1.54</td>
<td>0.74</td>
</tr>
<tr>
<td>Offence: against honour</td>
<td>0.50</td>
<td>0.20</td>
<td>1.90</td>
<td>0.76</td>
<td>2.48</td>
<td>0.45</td>
</tr>
<tr>
<td>Offence: of sexual nature</td>
<td>1.83</td>
<td>0.20</td>
<td>2.03</td>
<td>0.25</td>
<td>1.58</td>
<td>0.84</td>
</tr>
<tr>
<td>Offence: drug-related</td>
<td>1.80</td>
<td>0.44</td>
<td>1.77</td>
<td>0.54</td>
<td>0.19</td>
<td>0.90</td>
</tr>
<tr>
<td>Criminal association</td>
<td>2.46</td>
<td>0.02</td>
<td>2.15</td>
<td>0.12</td>
<td>2.90</td>
<td>0.28</td>
</tr>
<tr>
<td>Other</td>
<td>0.96</td>
<td>0.50</td>
<td>0.43</td>
<td>0.23</td>
<td>1.06</td>
<td>0.83</td>
</tr>
<tr>
<td>Criminal record (prison)</td>
<td>1.72</td>
<td>0.00</td>
<td>1.72</td>
<td>0.39</td>
<td>2.01</td>
<td>0.04</td>
</tr>
<tr>
<td>Presence of underlying problem</td>
<td>2.12</td>
<td>0.00</td>
<td>1.95</td>
<td>0.86</td>
<td>1.43</td>
<td>0.54</td>
</tr>
<tr>
<td>Residence</td>
<td>0.22</td>
<td>0.01</td>
<td>0.22</td>
<td>0.12</td>
<td>0.63</td>
<td>0.79</td>
</tr>
<tr>
<td>Origin (ref = Belgium)</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.24</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>European</td>
<td>1.79</td>
<td>0.10</td>
<td>1.60</td>
<td>0.80</td>
<td>2.35</td>
<td>0.44</td>
</tr>
<tr>
<td>Non-European</td>
<td>2.00</td>
<td>0.00</td>
<td>2.45</td>
<td>0.03</td>
<td>5.22</td>
<td>0.00</td>
</tr>
<tr>
<td>Judicial district (ref = Brussels)</td>
<td>0.01</td>
<td>0.33</td>
<td>0.00</td>
<td>0.52</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Antwerp</td>
<td>1.99</td>
<td>0.01</td>
<td>1.62</td>
<td>0.29</td>
<td>2.01</td>
<td>0.22</td>
</tr>
<tr>
<td>Liège</td>
<td>1.89</td>
<td>0.00</td>
<td>2.27</td>
<td>0.43</td>
<td>2.22</td>
<td>0.07</td>
</tr>
<tr>
<td>Other suspects</td>
<td>26.09</td>
<td>0.00</td>
<td>22.89</td>
<td>0.00</td>
<td>42.56</td>
<td>0.00</td>
</tr>
<tr>
<td>Number of investigation actions &amp; forensic expert investigations</td>
<td>1.76</td>
<td>0.05</td>
<td>1.78</td>
<td>0.15</td>
<td>3.52</td>
<td>0.22</td>
</tr>
<tr>
<td>Contact</td>
<td>0.17</td>
<td>0.00</td>
<td>0.97</td>
<td>0.27</td>
<td>0.63</td>
<td>0.00</td>
</tr>
</tbody>
</table>

54 On the whole, among the variables not significantly correlated to the decision, we can particularly note the absence of most offence groups (only some appear in the final model: see Tables IV and VI). Furthermore, whereas De Pauw observed in 2009 that women were less likely to be detained, with 45.0% of men placed under arrest warrant for 23.8% of women, this correlation was not significant in our analysis (Bursens et al., 2015). Whenever a significant correlation for sex appeared during the bivariate analyses, this relation was basically due to other factors.

55 As for the group of persons presented before the investigating judge, we can note that the same factors play a role, except for the mention of underlying problem, criminal record, presence of fraud or serious/violence property offences (for example, see Snacken et al., 1997; Raes, 2001). It also appears that the time available for the investigating judge to make a decision is not significant either (Table VII).
Table VII. Model predicting the decision for the sole group of persons presented before the investigating judge (N = 749; 176 missing; enter procedure with all relevant explanatory factors, except for nationality)

<table>
<thead>
<tr>
<th>Image</th>
<th>1000B34C00004BC200007793E1DF18C5DB40E29D4.emf</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Factors significantly correlated with duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completing the multivariate analysis of the decision, the linear regression, based on situations where pre-trial detention had been assigned (625 of the cases analysed, making up the total number at the start of the regression analysis), also helped build an optimal model for the lengths of the pre-trial detention cases observed (an average of 102.5 days for the whole period 1993-2008). This model concerns 544 cases and can explain 29.0% of the total variance of (the square root of) pre-trial detention ($R^2$), or 27.4% (adjusted $R^2$) after correction for random effects.</td>
</tr>
<tr>
<td>When we interpret this duration model, it seems that detention lasts longer when various factors can be found. They are described below in the order of their increasing relative weight.</td>
</tr>
<tr>
<td>To begin with, these factors refer to personal characteristics: presence of one or another underlying problem, male defendant and also relatively young. In this case sex appears more clearly significant than in the decision model. As for the decision, mention of an underlying problem comes along with longer detention periods, while being older than 40 has the inverse effect.</td>
</tr>
<tr>
<td>Another factor intervening is being under suspicion of certain types of offences: those of a sexual nature or linked to narcotics. While Snacken et al. (1997) point out somewhat generally, in the context of their study limited to drug offences (and linked to narcotics), that the characteristics of the offence influenced the duration, we can note in our study that only offences linked with drugs or else of a sexual nature correlate significantly with duration, in extending the period under detention.</td>
</tr>
</tbody>
</table>
A highly specific motive, and virtually omnipresent as soon as pre-trial detention is assigned: protecting society is also an important factor. While the presence of certain motivations, especially frequent since adoption of the Act of 1990, is highlighted: risk of recidivism, absconding, danger for public health and safety or else in the interest of the investigation (de Coninck van Noyen, De Nauw, 1989; Snacken et al., 1997), Christiaensen et al., already in 1991 pointed out their stereotypical use and their nature as "catch-all" formulas for multiple purposes in a variety of criminal situations. Over the years, the only motive that appears significant in our model, and whose presence increases with time, is that of "protecting society". This appears to concur with the hypothesis put forward by Snacken, Raes (2001) of a contemporary inflation of a mindset based on security/safety and risk management. Echoing various other works, especially on security policies, they also underline a so called "punitive turn" when it comes to pre-trial detention (in particular see Garland, 2001). A phenomenon found in other western countries, this combines multiple macro-sociological factors beyond the judicial system and promotes a logic which, as Mary points out, presents pre-trial detention as providing several benefits: administering an immediate sanction with effects multiplied by harsh detention conditions, guaranteeing a prison sentence (in the face of the anticipated non-execution of short sentences), preventing recourse to other sentences later, enabling increased control of foreigners and/or persons accused in narcotics cases. Lastly, pre-trial detention makes it possible to avoid any political responsibility, as the problem of pre-trial detention has been designed and presented as arising from individual decisions by investigating judges (Mary, 2011, 195-196).

Two important personal characteristics, but linked to the person's institutional trajectory and already found in the decision model, are mention of a prison sentence in the criminal record and nationality (not Belgian). Indeed, de Coninck van Noyen and De Nauw already mentioned in 1989 that pre-trial detention lasted significantly longer when the defendant had been sentenced to a prison term in the past.

Similar to the decision model, the judicial district of the investigation (here Brussels or Liege) correlates significantly with longer lengths of pre-trial detention. When these data are crossed with results obtained on the decision, it appears that there is a higher probability, for example in Antwerp, of being placed under arrest warrant, but for shorter periods of time.

One final factor holds particular weight: the presence (already correlated with the decision) and, even more, the number of specific actions, investigations and/or forensic expert reports, requested in the case by the investigating judge. In addition to their number, the duration of the investigative and forensic actions was also highlighted as a potential cause extending the length of pre-trial detention (Christiaensen et al., 1991). Yet, ultimately, more than merely the time taken for the actions requested by the investigating judge, our research shows that their number is actually what heavily influences the length of pre-trial detention. And when the time taken for these actions varies, this also seems to affect variability in the length of pre-trial detention. The length is clearly more variable when a case involves multiple actions and thus their own multiple variable lengths. The sheer number, more than the type or duration of these individual actions, seems to play a role in burdening a case. The linear regression model is thus clarified.

As for the factor of having a residence in Belgium, pointed out during the decision and often noted in the past, we point out that when Belgian residence led to a shorter period or detention, it was not significant and thus not included in the optimal model.
Furthermore, the multivariate analysis shows that the apparent influence of certain factors (presenting a significant relation for the bivariate analyses) is ultimately due to other factors. Thus from the final model were discarded the presence of multiple suspects in the case, detention of other suspects, certain types of offences (theft, violence, or "others"), and all motivations justifying an arrest warrant (except that of protecting society). Lastly, other factors were discarded due to the high number of missing values in the model: having children, living situation, marital status.

5. Conclusions

In the context of this research, we studied factors explaining the increase in recourse to pre-trial detention over the past decades (in the sample, from 1993 to 2008 the detention rate rose from 39.3% to 48.6%, while the duration shows a more capricious evolution).

For this period, we studied how the cases opened at the prosecutor's office and investigated were evaluated and attempted to see whether certain characteristics weighed more, or less, in the choice to issue an arrest warrant. Our results show that the characteristics correlated to pre-trial detention (country of birth, presence of an underlying problem, number of co-defendants, detention of at least one co-defendant) remained stable throughout the whole period. In other words, we found no indication that the investigating judges may have evaluated similar cases differently over time, which to a certain degree would have helped explain the increased recourse to pre-trial detention. Our results suggest that the explanation for an increase in decisions for pre-trial detention must be sought elsewhere. The most plausible hypotheses are described below.

First of all, the impact of a "punitive turn" in the social context and a reinforced safety/security-related discourse (see above). Our research revealed some indications favouring this hypothesis. For example, on one side when we look at the motives for an arrest warrant (thus after the decision to place in detention), we see that "protecting society" becomes increasingly central: this motive was mentioned in 94.0% of cases in 2008 (compared to 69.7% in 1993). As indicated by the multivariate analysis (see above), the motive also translates into a longer time of detention. It also appears quite clearly that alternatives to pre-trial detention do not seem to replace pre-trial detention. When someone is presented before the investigating judge, the alternatives tend rather to serve as replacements for release without conditions. In cases where the defendant appears before the investigating judge, not only is there higher recourse to detention; among the modalities for non-detention, a decrease is seen in the simple option for release without conditions. A similar tendency is also found when it is a question of ending periods of pre-trial detention. Although release under conditions apparently has a degree of success, it definitely fails to achieve its objectives.

A second hypothesis, also formulated previously in other studies and often cited by professionals (see especially Tange, 2011; Burssens, 2011), is a possible change in crime trends, leading to a more frequent application of pre-trial detention. This may be linked to a growing number of (serious) crimes or to a change in the suspects' profiles. A rise in the number of young defendants, formation of gangs or defendants without a residence in Belgium may have an impact on the extent to which pre-trial detention is applied.
Thirdly, it is also possible that there has nevertheless been a change of approach within the investigation system, but one that was not captured in the characteristics of the files studied in this study. It is possible that the investigating judges increasingly mobilise other elements that were not detected in the files. Such changes could also come about in phases preceding the investigating judge's decision. For example, when the police or the prosecutor's office evaluate the classification of the facts differently (for example, more readily qualifying the acts of a group as criminal association), this can also have an impact on the tendency to resort to pre-trial detention.

Other hypotheses that might explain rising recourse to pre-trial detention, such as external pressure (other actors like the police, public opinion or the media) and frustrations regarding the implementation of sentences (such as shorter prison terms) are hard to examine using the research methods employed in this study. Nonetheless, earlier – qualitative – research indicates that these elements certainly do play a role (see especially Burssens, 2011; Tange, 2013).

Now that our research has made it possible to identify a certain number of explanatory factors for the implementation and the length of pre-trial detention, the challenge for future research in this area can be found mainly in the analysis and description of possible movement or evolution in influx at the level of the investigation process and management schemes (motivations, use of alternatives). In particular for this influx, it would be interesting to look more deeply into the evolution in the number of investigations or the number of defendants "at risk", that is those with characteristics conferring a greater probability of being detained or staying longer in detention.

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NOTES

1. In the aim of an optimal comparison among different countries, the figures given above are adjusted figures. The use of unadjusted figures can lead to mistaken interpretations: some countries do not take certain categories into account in the overall total, while others do. In Belgium, for example, people under electronic monitoring (in the context of serving prison sentences or pre-trial detention orders), even though not physically in prison, are nevertheless counted in the unadjusted SPACE figures as detainees.

2. On 1 September, the breakdown of this population was 2,713 detainees awaiting trial compared to 682 sentenced prisoners who had appealed or who were within the statutory limits for doing so (Aebi et al., 2017, 74).

3. The so-called "Salduz" Law of 13 August, in effect since 1 January, followed by the so-called "Salduz bis", in effect since 21 November, transposing other European directives into Belgian law.

4. Law of 27 December, in effect since 1 January.

5. Entered into effect in 2018.


7. These recent cases of evolution were studied on the basis of the DGEPI annual reports and those of the General Direction for the Maisons de Justice/Justitiehuizen (Justice Centres) (Maes, 2016; Maes et al., 2016).


9. This inventory of European initiatives was inspired by a presentation by Christine Morgenstern (University of Greifswald) during an in-house seminar organised by the NICC Criminology Department (Brussels, 19 September).

10. www.irks.at/detour.

11. In virtue of our interest in any impact that the number, nature and duration of investigative actions and (forensic) expert reports could have on the length of pre-trial detention, it seemed crucial for us to register data on each forensic report requested by the investigating judge. It also appeared even more useful and realistic to list just those investigative actions that could be undertaken only at the request of an investigating judge or that presented a certain degree of complexity, even if the prosecutor’s office could legally require them or the police carry them out automatically. Thus the data entered on general investigative actions concerned those...
usually associated with longer completion times by the police services. Therefore, actions such as identity verification, hearing, frisking, confiscation, or withdrawing a driver licence were excluded.

12. As the research sample does not include cases opened after 2008, it was not possible to study any impact of later legislative developments: the "Salduz" law; introduction of detention under electronic monitoring as a way to serve an arrest warrant and the law extending the duration of judicial arrest from 24 to 48 hours.

13. Although the sample is not representative for all of Belgium, these three judicial districts provide about a half of all the arrest warrants issued at the national level (for example, see Daeninck et al., 2005; De Man et al., 2009).

14. The so-called "immediate appearance" procedure (introduced by the Law of 28 March) could have been a factor intervening in our study. Nevertheless, in so far as an order by the Belgian constitutional court rendered it void from 2002 (http://www.justice-en-ligne.be/mot714.html), it did not appear in any of our case files opened in 2003 and 2008. If it had been applied from 2000 to 2002, it would not have been possible to assess any impact, primarily on the duration of pre-trial detentions.

15. In earlier studies that had analysed the distribution of prison admissions under arrest warrant or the execution of an arrest warrant during an ongoing detention (for the years 2003 and 2008), no obvious pattern had been deduced, other than a noticeably lower number of ongoing arrest warrants during the holiday months of July and August (Daeninck et al., 2005, 240; De Man et al., 2009, 211).

16. Among the suspects in pre-trial detention at the time of the final ruling on the proceeding, nearly 89% were still in detention at the time of the judge’s first decision on the merits of the case. We systematically recorded the date of the final ruling in order to calculate the duration of detention from the time of this ruling up to the first judgement on the merits of the case. Some persons appearing in the registers of cases opened at the prosecutor’s office therefore may not have been included in the count, while others, on the contrary, may have appeared – and been included in the count – while examining some files.

18. The more limited number of analysis units sometimes called for regrouping offences under broader categories. These categories were adjusted later on the basis of analyses made specifically on the decision and duration (see below).

19. This value indicates that the model (thus its variables) make it possible to explain 49.9% of the variance observed, with the remainder liable to be attributed to variables that we could not identify in the context of our study.

20. See note 12.

21. After a more in-depth examination of the "age" variable, we saw that it had to be recoded to make 40 a pivotal age. Indeed, the values recorded through the average of pre-trial detention length were fairly close for the age categories up to that of 40, representing a quite large majority of the population of suspects placed under arrest warrant in our sample. After 40 years of age, the average seems to clearly settle, even if the median of the 41-45 years category remains similar to the 36-40 years category.
ABSTRACTS

This article presents the main results of an empirical research aiming to explain the evolution in recourse to and the duration of pre-trial detention in Belgium. A set of hypotheses was tested by analysing case files processed from 1993 to 2008 by investigating judges in three judicial districts (Brussels, Liege and Antwerp). Statistical models for factors associated with the decisions and durations observed were then established.

INDEX

Mots-clés: détention avant jugement, juge d'instruction, libération sous condition, alternatives à la détention avant jugement, prise de décision

Keywords: pre-trial detention, investigating judge, bail, alternatives to pre-trial detention, decision-making

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