

***Recommendation from the Council for the Administration of Criminal Justice and the
Protection of Juveniles
Summary***

Title : Decree on the supervision of telephone calls in correctional institutions
Issued to : The Minister of Justice
Date : 30 May 2008

The Decree on the supervision of telephone calls in correctional institutions (regulation) decree [*Besluit toezicht telefoongesprekken justitiële inrichtingen*] (hereinafter: the Decree) contains regulations on retaining and providing information on telephone calls in correctional institutions.

In the opinion of the Council, the regulations have not yet been elaborated on sufficiently. This concerns all of the various aspects: recording, retaining and providing information.

The grounds for supervision have not been specified sufficiently and the powers applicable for the governor have been formulated very openly. In a general sense, the Council feels that the regulations should contain a form of reporting obligation, governing each occasion where the power to provide information is used. This is all the more important given the requirements that the European Court of Human Rights imposes on these regulations and the fact that the European Court of Human Rights convicted the Netherlands in connection with telephone tapping in 2004. The Council also considers these points important in connection with the safeguarding of legal rights and the proper treatment of persons subject to jurisdiction, particularly where a curtailment of their civil rights is concerned, as is the case in situations where telephone calls are regulated.

The regulations also lack specific information on procedures for supervision. The way in which telephone data are recorded, retained and provided will lead to a lack of clarity in a number of areas:

- It is not clear whether all calls will be recorded or only when there is a specific reason for doing so.
- The Council would like to see provisions on the way in which deletion (the technical procedure designed to guarantee that data are actually deleted) takes place and on the protection available for telephone calls with persons under a duty of confidentiality.
- In the opinion of the Council, the eight-month retention period requires substantiation.
- The Council would like to see a clear description of the grounds for the provision of recorded telephone calls to third parties, clarity about the limits to the power that the governor has and proper safeguards against the abuse of powers. As such, the present regulations contrast with the safeguards applicable for the provision of information in relation to prosecution, with regard to the points indicated.

Finally, the Council would like to see an indication of the significance of the Personal Data Protection Act [*Wet bescherming persoonsgegevens*], as well as a distinction between traffic data on calls and content information.

Based on what the Council considers to be the insufficient elaboration of the regulations and the importance of this with a view to informing persons subject to jurisdiction in full, the Council makes a number of recommendations for further elaboration on the regulations.

This advice can be requested from the secretariat for the Council

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