

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

Title : Detention of foreign nationals
Issued to : The State Secretary of Justice
Date : 16 June 2008

More than 2000 people are currently in detention centres awaiting their deportation from the Netherlands. These are foreign nationals who do not have a valid residence permit for the Netherlands and are assumed to evade deportation. In this advice, the Council looks at detention conditions within the custody of foreign nationals and makes a number of recommendations for modification of the regime.

The effectiveness of the detention of foreign nationals is limited: less than half of all detentions actually lead to deportation. Effectiveness can be increased by placing detention and deportation efforts in the greater context of the reasons that foreign nationals have for coming to the Netherlands.

In itself, detention is a 'last resort'. This idea is also supported by European regulations and recommendations, and means that a foreign national who is required to leave the Netherlands must first be given the opportunity to leave of his own accord. The likelihood of the success of this approach will increase where a foreign national is assisted in the above. Where a foreign national fails to cooperate, coercive measures will be necessary, using different ways of restricting freedom. Detention is the most extreme tool. The Council believes that the Dutch government could do more to avoid detention.

Recommendations

1. Wherever possible, align the regime to the nature of detention for foreign nationals: maximum freedom of movement within detention centres, as little time as possible in the cell, possibilities for contact with the outside world, a day programme with possibilities for a meaningful use of time and preparation for repatriation.
2. To this end, where necessary, replace the term 'detention centre' used in Article 5.4(1), Chapter A5, of the Aliens Decree [*Vreemdelingenbesluit 2000*] to 'prison'; move Section 9(2)(d) of the Penal Institutions Act [*Penitentiaire beginselenwet*] to Section 10.
3. Intensify efforts to achieve repatriation to the country of origin.
4. Devote attention to staff training with a view to the specific problems of these detainees.
5. Introduce a right of appeal for the detention of immigrants based on Section 6 of the Aliens Act [*Vreemdelingenwet*].
6. Perform a judicial review of the lawfulness of a decision in accordance with the EU Proposal Returns Directive.

7. Restrict the length of time for which foreign nationals are detained to half a year, which period may be extended by a court if exceptional circumstances arise, recognised as such by legal precedents.
8. Specify the 'prospect of deportation' criterion in more detail in the Aliens Act implementation guidelines [*Vreemdelingencirculaire*].
9. Actually use the detention of foreign nationals as intended, namely as a last resort. Ascertain and test the usefulness and effectiveness of other forms of certainty for foreign nationals who are currently still detained under the grounds indicated in legislation. Test the freedom-restricting measures used for families with children on other groups as well. When doing this, consider the experience gained in this country in relation to how foreign nationals cooperate in their departure in a setting other than a detention setting (surety/report obligation/handing in identification document). Use experiences that other European countries have in this respect.
10. Promptly inform foreign nationals who are expected to leave the country of the possibility of obtaining help and support from organisations specialized in the reception and guidance of foreign nationals.
11. Restrict the detention of minors to an absolute minimum, whether or not in connection with the detention of (one of) their parents. Never place an accompanied or unaccompanied minor foreign national in an institution for adult detainees, but always in a juvenile institution.

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