

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

The ISD order for foreign nationals without a valid residence permit

Recommendation to the Dutch State Secretary of Justice, dated 17 August 2010

The ISD order

Since 1 October 2004, persistent offenders may be sentenced to two years of custody at a Persistent Offenders Facility (in Dutch: *inrichting voor stelselmatige daders*, hereinafter referred to as: *ISD*). The primary aim of ISD orders is to promote public safety. This is firstly achieved by a relatively long period of detention and supervision. Secondly, offenders who show sufficient motivation can receive behavioural interventions.

The Minister of Justice intends to accommodate all foreign nationals without a valid residence permit in the Netherlands sentenced to an ISD order together in a designated institution or unit within the prison system. The aim is to concentrate expertise available within the prison system and the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*) and to use this expertise more effectively for compiling and offering a programme for this group. With a view to placing together these individuals, the Minister wants to adapt the Selection, Placement and Transfer of Detainees Rules (*Regeling selectie, plaatsing en overplaatsing gedetineerden* or *RSPOG*).

In the opinion of the Council, introducing the option of imposing an ISD order upon foreign nationals without a valid residence permit is not necessary, as both the provisions under penal law and aliens law offer enough options for fighting crime and illegal residence in the Netherlands respectively. An ISD variant enforced in full within an institution is at odds with the aim of the order, as its characteristic aim of reintegration into Dutch society is lacking and is 'replaced' by the pursuit of repatriation. The legal rights safeguarding aliens detention are 'circumvented' by applying the ISD order as well.

A contribution towards effective repatriation is not to be expected from an ISD order for foreign nationals without a valid residence permit, nor from placing them together in special accommodation. There are appropriate measures in place for the repatriation of foreign nationals, such as aliens detention and the VRIS regime¹. Furthermore, compiling a programme for this group seems practically unfeasible. The order's target group is probably very small: there are indications suggesting that crime committed by foreign nationals without a valid residence permit is limited in terms of seriousness and scope. Given the above considerations, there is no reason for placing foreign nationals without a valid residence permit sentenced to an ISD order together in special

¹ Detainees who are (expected) to be deported from the Netherlands upon completion of their sentence are placed together during detention in the so-called VRIS-regime. See also the RSJ-recommendation Development of the regime in Institutions for Foreign Nationals Detained under Criminal Law of 9 July 2010.

accommodation.

The Council recommends the Minister to:

1. refrain from amending the Selection, Placement and Transfer of Detainees Rules in order to place foreign nationals without a valid residence permit sentenced to an ISD order together in a special unit or facility;
2. consult with the Board of Procurators General to realize that the possibility of demanding the ISD order against foreign nationals without a valid residence permit is removed from the Prosecution guidelines for persistent adult offenders (*Richtlijn voor strafvordering bij meerderjarige veelplegers*).

The recommendation can be obtained from the secretariat of the Council

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