

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

**Draft Bill for the Act establishing the Council for the Application of Criminal Justice and Protection of Juveniles**

*Recommendation to the Dutch State Secretary for Security and Justice, dated 30 September 2013.*

The draft bill contains the following adjustments as compared to the current Act:

1. a sharper division of both tasks (advise and administration of justice) which especially has consequences for the composition and organisation of the Council;
2. expliciting "the security of society" and "the interests of victims and surviving relatives" as grounds for evaluation in complaints and appeal in the Custodial Institutions Framework Acts;
3. making rulings on appeal susceptible for cassation in the interest of the law.

The Council examined the bill's objectives, as explained in the Explanatory Memorandum. The purpose and the effect of the proposals evoke serious objections and questions to be answered by the legislature, regarding important elements, especially where the adjustments can impede the proper functioning of the Council.

**Separation of tasks and independence**

The combination of the two tasks in itself does not raise objections. The Council shares the conclusion substantiated in the Explanatory Memorandum that a certain separation of tasks is necessary. On the other hand a certain overlap is important, in order to be able to take advantage of the combination of the tasks. The Council has serious objections to the way in which the organisational separation is interpreted by largely following the organisational model of the Council of State (Raad van State).

Whereas the substantive relationship with the Minister of Security and Justice may be rated as functional, the Minister's intended interference with the design and organisation of the Council is less desirable with respect to the independence of the Council.

**Grounds for evaluation**

The Council has no paramount objection to "the security of society" and "the interests of victims and surviving relatives" being mentioned specifically in the Act as grounds for evaluation. However, the impact of this is rather limited. In the first place, these interests (being part of "all qualifying interests") are currently already weighed anyhow, which is expressed in the Council's rulings. In the second place, the judiciary concerning complaint and appeal is supplementary to correctional practice. Judicial authorities are already obliged to especially take these interests into account when granting freedoms. This is obviously of much greater importance than the similar explicitation of grounds of objections, the more so as only a limited part of the prison authorities' decisions is brought before the courts of complaint or appeal.

Besides, to be able to weigh the interests mentioned, the courts of complaint and appeal depend on the information brought in by the prosecuting parties. Only if (specifically) the National Agency of Correctional Institutions further informs the court about the interests of the victim, the court can take these into account. The Sounding Board Group for the Supervisory Committees also stresses this precondition.

**Cassation in the interest of the law**

The necessity of cassation in the interest of the law is substantiated in the Explanatory Memorandum by pointing out the importance of legal formation and legal unity. The Council endorses both interests and therefore has no fundamental objection against the creation of this possibility of cassation.

The Council however sees no urgent necessity to introduce this special legal remedy. Currently the Prosecutor General usually has possibilities to submit rulings of other courts than the correctional courts of complaint and appeal to the Supreme Court. As this possibility has not been used, there is obviously no need for it.

*The recommendation can be obtained from the secretariat of the Council  
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