

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

***Draught Bill reviewing the implementation of criminal court decisions***

*Recommendation to the Dutch State Secretary for Security and Justice,  
dated 30 January 2014*

The Council appreciates combining statutory provisions on the enforcement of criminal court decisions into a new, sixth book of the Code of Criminal Procedure: not only from the viewpoint of legal methodology, by which the Council places great score based on the principle of legitimate or statutory implementation<sup>1</sup>, but achieving greater accessibility of regulations is also favourable from the viewpoint of legal protection.

Whereas current law (Article 553 of the Code of Criminal Procedure) considers the enforcement of court decisions to be the responsibility of the Public Prosecution Service, in practice this enforcement is, to an increasing extent over the years, being implemented by the Minister of (Security and) Justice. Explicitly assigning this enforcement to the Minister of Security and Justice will create clarity about his responsibility for this task, notably in his relation to the parliament that checks him. At the same time, this will make execution a much more political/politically sensitive subject than the current Article 553 of the Code of Criminal Procedure does.

The review provides a ground for a stronger central control of the organisations involved in the execution of judgments, which is deemed necessary for the best possible enforcement. The Council is missing a problem analysis to confirm that such central control is now lacking, and that this could not be achieved under the direction of the Public Prosecution Service either. Keeping the Public Prosecution Service co-responsible may result in a promotion of quality. The remaining tasks of the Public Prosecution Service are, however, not such as to constitute a substantial co-responsibility. Pursuing a more central control, directly by the Minister, therefore requires a more far-reaching substantiation, which will safeguard that the problems identified by the Netherlands Court of Audit will be solved.

The cancellation of Article 11 of the Code of Criminal Procedure results in a legal lacuna. For this article does not only provide *that* implementation matters should be regulated by law, but also *what* should be regulated by law 'in any case. So as this article is cancelled, the list of matters that should be provided for by law is cancelled as well.

The proposed Article 6.1.3 refers to the rehabilitation of convicted persons, the interests of victims and their families and the safety of society as equal purposes of enforcement. According to the Custodial Institutions (Framework) Act, the purpose of enforcement is to prepare convicted persons for their return to society, with due observance of the nature of the punishment or measure. It is therefore suitable that this should also be upheld in the Code of Criminal Procedure, the other interests stated being regarded as 'interests to be taken into account'.

The Public Prosecution Service continues to be charged with setting special conditions in case of a conditional release. The MOU shows that it was considered making the Minister responsible for this task as well. The Council heartily agrees that the Public Prosecution Service continues to be responsible for this task.

The Public Prosecution Service plays a central role in giving advice with respect to the enforcement of judgments. The Council assumes and, for the sake of a detailed picture, also attaches importance to the fact that authorities such as the probation service and the police (also) continue to give independent advice – in mutual coordination where possible,

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<sup>1</sup> RSJ, *Principles of proper treatment 2012*, principle of legitimate enforcement: "Adequate statutory regulations form the basis for the set-up and enforcement of sanctions".

but also independently from each other where necessary.

The Council believes that advice by Victim Support Netherlands is not very obvious.

The regulations on service of legal documents during the various phases of criminal proceedings have been combined into the proposed Articles 27 et seq. of the Code of Criminal Procedure, which rightly deal with the importance of the ECHR. The Council is not convinced of the practicability of the solution chosen. The proposed regulations may result in a legal remedy no longer being available to a suspect, as a service is considered to be a service on the suspect in person (marking the start of the remedy periods), while it could be that the relevant document has not reached the suspect in person. For released persons (offenders having to perform community service, offenders on probation), service on household members should not by definition be considered to be service in person.

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

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