

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

Bill on repatriation and administrative detention of foreign nationals

Recommendation to the Dutch State Secretary for Security and Justice of 20 February 2014

Three important components of the bill meet the recommendations of the Council from 2008 and of numerous other advisory bodies and organisations.

- By separate legislation for administrative detention of foreign nationals, taking it outside the scope of penitentiary legislation, it is closer to the nature of the administrative detention of foreign nationals as an administrative measure.
- Declaring European legislation and recommendations including the European Repatriation Directive applicable, underlines the ultimatum remedium nature of administrative detention of foreign nationals and offers possibilities for a more humane execution.
- Letting go of the public order criterion for imposing administrative detention of foreign nationals will result in a clearer ground for the application of the measure.

The Council appreciates this and supports the aim of a humane execution of administrative detention of foreign nationals.

The bill should be reconsidered or adjusted on essential points however.

The purpose of the administrative detention and its execution is limited to keeping the detainee available for procedures under the Aliens Act. The director of the institution for the administrative detention of foreign nationals has no role in these procedures. He therefore has no competence in the sense of the forced departure as such. A neutral attitude in this respect will offer the staff room to build a relationship of trust with the foreign nationals, which is valuable in terms of a humane approach.

By structuring the bill on the basis of and according to the pattern of the Custodial Institutions Act, the institution and the regime of administrative detention of foreign nationals maintain a stronger penitentiary nature than is in agreement with the administrative nature and objective of the measure.

In order to do justice to the principle of minimal restrictions, the execution regime would better be structured by starting from the other side of the spectrum: *no* limitations, unless required to prevent escape or to protect detainees and staff against aggression or harassment. A maximum of internal freedom can be placed against an adequate external security. The total of the ample range of containment measures and competence of the director plus the setting up of a containment regime is disproportionately heavy given the characteristics of the population of these foreign nationals, who are not being detained because of having committed a crime. The containment regime is characterised by punishing elements which have no place in administrative detention of foreign nationals. The Council therefore considers the introduction of a containment regime to be unnecessary, offensive and therefore undesirable.

When offering activities intending to remove any impediments for the return, it is best to (only) connect to the individual needs of the foreign nationals. What is useful in this respect, becomes clear especially from the assistance of non-governmental organisations such as the International Organisation for Migration. Apart from this, an ample offer of activating day activities is fitting, from a humanising point of view, to counter the atmosphere of lethargy and boredom which is characteristic of the administrative detention. Forced participation in activities on pain of disciplinary sanctions is rejected as not fitting in with the objective of administrative detention of foreign nationals.

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