

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

**Draft decree on repatriation and immigration detention**

*Recommendation to the Dutch State Secretary for Security and Justice, dated 30 November 2015*

The Decree on repatriation and immigration detention adds detail to the legislative proposal of the same name that was brought before the House of Representatives on 30 September. In view of the current text of the legislative proposal the RSJ (the Council for the Administration of Criminal Justice and Youth Protection) recognises that the draft decree forms an adequate elaboration of it on the key points.

The RSJ issued its recommendation on the draft version of the legislative proposal on 20 February 2014. The purpose of this Act is to give immigration detention an entirely administrative basis rather than carrying it out in penitentiaries. The RSJ did however note that the proposed regime in the institution for immigration detention largely retains its penitentiary nature. This objection in principle does of course apply also to this elaboration. The most sensitive aspect of assuming the penitentiary regulations is found in the area of the order and security measures. The RSJ advises against the introduction of the punishment cell in immigration detention in any form. Not only is this inappropriate in a non-penitentiary setting, the punishment cell is also superfluous as the governor has sufficient alternative measures at his disposal. Furthermore, if a varied day programme is fully substantiated it will rarely be necessary to resort to disciplinary measures.

The principles of 'prospects, resocialisation and aftercare' and 'minimum restrictions' call for a forward-looking approach to custody. With regard to the principle of prospect, unlike the situation in criminal detention the activities should be aimed not at bringing about behavioural change but at creating opportunities for a successful future life. It should also be noted that there is no sign of future prospects being offered in the programme of activities: the examples of possible activities given mostly take the form of passing time.

The Council further notes that transferring a foreign national to a penitentiary for management reasons should be based on behaviour in the current situation rather than on documented past behaviour. Finally, the Council calls for visiting times to be opened for the entire daily 'operating period' of the institution rather than limiting them, as proposed, to four hours a week.

*The recommendation can be obtained from the secretariat of the Council  
P.O. Box 30137  
NL-2500 GC The Hague  
+31 (0)70 - 36 19 300,  
[www.rsj.nl](http://www.rsj.nl)*