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

*- Summary-*

Draft legislative proposal for an amendment to the Code of Criminal Procedure further to a number of amendments to pre-trial detention

*Recommendation to the Dutch State Secretary for Security and Justice, dated 1 December 2015*

Firstly, the proposed legislative change makes it possible to immediately put an unconditional custodial sanction into effect, within the scope of the regulations of pre-trial detention. To this end, it is proposed to create an extra ground for the application of pre-trial detention. The proposal is in keeping with the government's policy of aiming for a correct and prompt handling of criminal cases and reducing the number of custodial sentences that have not been enforced.

- The Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming* or RSJ) agrees in itself with the aims of this government's policy, however, the RSJ misses a clear analysis of the problem that the legislature attempts to resolve in the clarification of the draft legislative proposal. Without a clear analysis of the (intended) effect of the proposed amendments, it is not easy to assess whether the legislative change provides an effective solution and whether it has an added benefit; the aforesaid also in respect of the expected effects of the other activities aiming to reduce the custodial sentences that have not been enforced, as well as the existing possibilities of arrest after a court judgment.
- The RSJ finds that the proposed amendment pertains to a relatively small percentage of the number of sentenced offenders.
- The intended amendments also refer to juveniles. The RSJ finds that the scope of application of the proposed legislative amendment for juvenile criminal law is of minimal benefit.
- The basic principle of not enforcing a sentence until it has become final and conclusive (the presumption of innocence) is in danger of being eroded too much in the proposed legislative amendment.
- The RSJ furthermore determines that the very possibility is there to arrest a sentenced offender - who is free at the time of the judgment - immediately after the pronouncement of the judgment. The RSJ wonders to what extent a legislative amendment is necessary to reduce the number of custodial sentences that have not been enforced. In addition, the question is raised whether the means of a legislative amendment is in proportion and whether such an aim cannot be reached in a different and less drastic manner, such as tightening up the enforcement policy and/or more frequently demanding the arrest of a sentenced offender on the grounds that already exist.
- Under the proposal, in his final judgment, a Judge is obliged to substantiate the decision in respect of the arrest, either in the event of an arrest warrant or in the event of this not being the case. In the opinion of the RSJ, the latter is not appropriate as it is not clear why such a double substantiation requirement must apply specifically and exclusively in respect of this ground.

Secondly, the possibilities of appeal against decisions that concern pre-trial detention are extended in the draft legislative proposal, for both the suspect as the Public Prosecutor.

The RSJ appreciates the extension of the possibilities of appeal from the point of view that decisions that concern pre-trial detention may have far-reaching consequences for individuals and for the Public Prosecution Service (*Openbaar Ministerie* or OM) as a representative of society; in addition, it has an impact on the interest of the (surviving relatives of) victims. The RSJ is of the opinion that the aforesaid sufficiently justifies the proposed extension of the possibilities of appeal.

Thirdly, the proposed legislative amendment has the objective of making the regulations of conditional release applicable to the termination of pre-trial detention.

- By this amendment, the legislature intends to make a gradual return to society from pre-trial detention possible and to simultaneously attach conditions. In principle, the RSJ has no objections, however, it is not clear as to whether the group that may be within the scope of the proposed regulations has such a size that it justifies a legislative amendment. The RSJ therefore advises to examine the aforesaid in more detail before proposing a legislative amendment.

Finally, the RSJ advises not to present the proposal in its current form for a parliamentary debate but to critically scrutinize the proposal where the extra ground for pre-trial detention and the extended application of the regulations in respect of conditional release are concerned – particularly in relation to the expected effects and benefits – and to reconsider.

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

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