

Recommendation on the amendment of the Judicial Data and Criminal Records Decree

Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands

Recommendation to: Minister for Legal Protection

Date: 22 February 2018

Recommendation on the amendment of the Judicial Data and Criminal Records Decree, in relation to the provision of judicial data to municipalities on the beginning and the end of deprivation of liberty, in the interest of the reintegration of (former) detainees.

Summary

In its report entitled '*Van detineren naar re-integreren*' (From detention to reintegration), the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) emphasizes the importance of properly arranging the exchange of data. The Advisory division appreciates that a regulation has been drawn up recently. The Advisory Division is aware of the need to exchange data between the Custodial Institutions Agency (DJI) and the municipality the detainee will be returning to, in order to facilitate the proper reintegration of the former detainee into society.

Proper reintegration is in the interest of the individuals involved. However, like any other citizen, they are not obliged to accept aid in their reintegration process and furthermore have a right of their personal data being protected. The latter applies even more stringently to detainees, given their dependent position. The right to respect for private life is set out in, inter alia, Article 10 of the Constitution of the Kingdom of the Netherlands, Article 8.1 of the Charter of Fundamental Rights of the European Union, Article 8 of the European Convention on Human Rights, and in addition, specifically with regard to youth, Article 16 of the international Convention on the Rights of the Child, which has been elaborated in European and national regulations. The basic principle is that the individuals involved must grant permission for their judicial data and other data being provided to and processed by a municipality in the interest of their reintegration. Based on the Judicial Data and Criminal Records Act (*Wsjg: Wet justitiële en strafvorderlijke gegevens*), this may only be derogated from on the basis of a compelling public interest, for example in the event of a threat to public order or a risk of reoffending. By no means it is permitted to provide municipalities automatically with judicial data of every prisoner in the interest of reintegration. In addition, since there is no general legal order for municipalities to support the reintegration of former detainees, the proposed regulation is an inadequate legal basis for the provision of judicial data.

The Advisory Division concludes that based on Section 10 of the Judicial Data and Criminal Records Act, the proposed amendment would not apply to the category of individuals in preventive custody, since it states that data will only be provided pertaining to final judgments. As it is for adults, a general legal remit for municipalities is also lacking for the youth category, and in principle permission is required (from the legal representative) for the provision of judicial data and other data to municipalities.

Based on the aforementioned, the Advisory Division recommends not to implement the proposed regulation.