



Summary

Advisory report on ministerial regulations following the adoption of the Sanctions and Protection Act

Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)

On 1 April 2021, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands (hereinafter referred to as the RSJ) issued an advisory report on the proposed amendment of a number of ministerial regulations following the adoption of the Sanctions and Protection Act (Wet straffen en beschermen).

After several discussions concerning the impact of the amended regulations on the legal position of prisoners, the RSJ has the following comments to make with regard to the amendments:

- leave for prisoners;
- prison labour;
- placement in low-security wings; and
- transitional law.

Legal position of prisoners

The proposed reintegration leave scheme will weaken the legal position of prisoners. Short-term and long-term reintegration leave and reintegration leave for extramural work will be granted only in the final stage of imprisonment and are linked to functional reintegration objectives. In addition, reintegration leave can be granted only on the basis of (a) a prisoner's good behaviour, (b) the scope for limiting and controlling security risks, c) controlling the interests of victims, surviving relatives and other relevant persons, and (d) a prisoner's efforts to compensate for the damage caused. The RSJ believes it is important to clarify the weighting of those aspects.

The starting point of the Sanctions and Protection Act and the regulations is that prisoners should be self-reliant and take responsibility for themselves throughout their imprisonment and upon their return to society. Good behaviour will be rewarded while bad behaviour will be punished. The intention is for prisoners to learn from the consequences of their behaviour. The RSJ notes that prisoners with a slight mental impairment, an addiction, a behavioural disorder and/or a psychiatric illness find it difficult or even impossible to demonstrate good behaviour. This may lead to prisoners experiencing an inequality of opportunity to develop in a positive direction while serving their sentences and a reintegration outcome that does not reflect their capabilities. The RSJ believes that more attention should be paid to the circumstances in which prisoners

display undesirable behaviour and to introducing the necessary changes. This may mean having to adjust the treatment/counselling received by prisoners and/or having to deal with addictions, disorders or illnesses. Proper screening for slight mental impairment, addictions, behavioural disorders and psychiatric illnesses among prisoners is therefore essential. In addition, the RSJ recommends that staff receive training to equip them with the knowledge and skills needed to assess the behaviour of prisoners with disabilities, addictions and/or disorders.

Leave for prisoners

Short-term reintegration leave

The RSJ believes that prisoners who spend six weeks or less in prison should also be given the opportunity to arrange practical matters for their reintegration while imprisoned.

According to the Explanatory Memorandum to the Sanctions and Protection Act, prisoners who are not eligible for placement in a prison programme or conditional release may in fact qualify for short-term reintegration leave. This is leave granted solely to allow practical matters to be arranged. However, these exceptions have not been included in the draft regulation. The RSJ recommends the inclusion of this particular exception.

Reintegration leave for extramural work

Prisoners carrying out extramural work but who are taken off the programme because of their behaviour will be ineligible for reintegration leave for extramural work for a period of three months. The RSJ recommends that a maximum period of three months be applied so that the necessary and desirable action can be assessed on an individual basis.

Prison labour

According to the draft Regulation on prison labour, prisoners do not have to be offered any work during the first two weeks of their imprisonment. The same applies during the first eight weeks of imprisonment for detainees. The RSJ recommends that those groups should generally also be offered work to provide them with structure and a daily routine.

At present, the main focus is on physical impairments when it comes to allocating work and carrying out medical examinations to identify incapacity for work. However, psychiatric and psychosocial problems should also be routinely included.

Placement in low-security wings

The RSJ recommends that clarity be provided as to how the new scheme for the placement of prisoners in low-security wings compares with the various ongoing pilots, such as the Huis van Herstel project five-year pilot.

Transitional law

It is unclear whether prisoners who are already being held in a low-security wing will be allowed to remain there under the transitional law. If this is not the case, the RSJ believes that a smooth transitional arrangement should apply to them.

In the advisory report various problems are identified and recommendations are made for the amendment and/or clarification of the ministerial regulations.

The full advisory report (in Dutch) can be consulted on the [RSJ website](#).