



## Summary

### Advisory report on the amendment of leave rules for foreign nationals placed under a hospital order

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

On 29 July 2021, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor Strafrechtstoepassing en Jeugdbescherming; hereinafter referred to as 'the RSJ') has issued an advisory report on the proposed amendment of the leave rules for foreign nationals placed under a hospital order (in Dutch called *terbeschikkingstelling*). The proposed amendments concern the extension of escorted leave for foreign nationals who are placed under a hospital order and are not lawfully resident.

#### Extension of escorted leave is a step in the right direction

At present, escorted leave can only be applied for if, in the Minister's opinion, this is necessary to arrange departure from the Netherlands. The proposed amendment to the leave rules for foreign nationals placed under a hospital order will extend the opportunity to apply for permission for escorted leave to all cases in which such leave is indicated from a treatment perspective. The RSJ is positive about the proposed extension of escorted leave for foreign nationals placed under a hospital order and who are not lawfully resident. This is a step in the right direction to promote the treatment and rehabilitation of foreign nationals who are not lawfully resident.

#### Further leave opportunities are necessary

The RSJ is of the opinion that leave opportunities that go further than the proposed amendment are necessary to tackle the problem of foreign nationals placed under a hospital order effectively. In order to avoid dead-end situations caused by stagnating treatment and to promote repatriation, unescorted and extramural leave should also be possible. This is in line with the previous RSJ advice on foreign nationals detained under a hospital order, in which the RSJ stated that more far-reaching leave opportunities are the only way to resolve the conflict between criminal law and immigration law. The granting of leave makes it possible to continue treatment and implement the hospital order.

In addition, it will avoid a situation in which limited leave opportunities again give rise to Dutch criminal court decisions condemning the hopeless situation of foreign nationals who are placed under a hospital order and are not lawfully resident. A refusal to grant unescorted and/or extramural leave may constitute a violation of Articles 3, 5 and/or 14 of the ECHR.

Moreover, a positive outcome of unescorted and/or extramural leave may in some cases be a requirement for access to a suitable facility in the country of origin, where less intensive treatment can be continued. This promotes repatriation and thus the outflow of forensic patients from the hospital order system.

### **Provide documentation for legitimization purposes**

The absence of the right of residence and/or valid identification may cause problems for foreign nationals who are placed under a hospital order while they are out on leave, for example if they are asked to identify themselves by the police or officials in charge of monitoring foreign nationals. For this reason, the RSJ recommends ensuring that foreign nationals who are granted leave are issued a document with which they can prove that they are permitted to be outside the forensic hospital (namely on the basis of a leave authorisation).

### **Recommendations**

In conclusion, the RSJ submits the following recommendations:

1. Do not only extend escorted leave in the amendment to the leave rules for foreign nationals who are placed under a hospital order, but amend the rules in such a way that foreign nationals who are not lawfully resident may also apply for unescorted and extramural leave if this is appropriate and responsible in the light of their treatment.
2. Make sure that foreign nationals who are not lawfully resident who are granted leave are issued a document with which they can prove that they are permitted to be outside the forensic hospital.

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

