



Summary

Advisory report: Foreign nationals in young offenders institutions

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

On 20 December 2022, at the request of the Minister for Legal Protection, the Council for Administration of Criminal Justice and Protection of Juveniles (hereinafter: the RSJ) issued an advisory report on foreign nationals in young offenders institutions (*Justitiële Jeugdinrichtingen*, JJIs). In this advisory report, the RSJ makes recommendations aimed at coming to an improved and more appropriate approach to unaccompanied foreign minors (UFMs) and young adult foreign nationals in young offenders institutions in accordance with the objectives of juvenile criminal law justice.

Background

The request for this advisory report was precipitated by the issues that the JJIs experience in practice in respect of the supervision, treatment and rehabilitation of foreign nationals detained at JJIs. The problems experienced by the JJIs mainly concern unaccompanied minors and young adult foreign nationals who are not (or are no longer) lawfully resident in the Netherlands or whose right of residence may be rescinded by the Immigration and Naturalisation Service (IND). Various factors, such as the complexity of the problems (including addiction and post-traumatic stress disorder (PTSD)), the language barrier, the lack of prospects for (permanent) lawful residence in the Netherlands and the often short length of stay at the JJI for part of this group of foreign nationals, all play a key role in this regard.

Findings

Over the past five years (2017–2021), the proportion of foreign nationals entering the JJIs was between 10.2% and 15.1% of the total influx. These foreign nationals are detained at a young offender institution either because they have been remanded in custody, for juvenile detention purposes or because they are subject to an order for Placement in a judicial institution for juvenile offenders (*Plaatsing in een Inrichting voor Jeugdigen*, PIJ) (also known as a youth hospital order). On the reference date of 30 September 2021, a total of 49 foreign nationals were detained in young offenders institutions, of which 21 foreign nationals were subject to an order for Placement in a judicial institution for juvenile offenders (PIJ). These 49 foreign nationals constituted roughly 10% of the total population of the JJIs at that time.

Foreign nationals are placed at various JJIs. At the RJJi Den Hey-Acker young offenders institution there is a group specifically for UFMs. In principle, all UFMs are placed in RJJi Den Hey-Acker's UFM ward. The UFM group is able to accommodate ten young people. In the second half of 2022, on average 8 to 10 UFMs were accommodated in this group.

The RSJ concludes that out of all the unaccompanied minors and young adult foreign nationals who reside in the Netherlands, only a small proportion end up being detained in a young offenders institution. Foreign nationals who end up in a JJI will usually have been detained for relatively minor criminal offences and their stay in the JJI is therefore usually short – often only a few weeks. These young people relatively often come from so-called ‘safe countries of origin’, which means that in principle they are not entitled to a residence permit on the grounds of asylum, although they may have applied for one on that basis. The RSJ suspects that foreign nationals who are not lawfully resident in the Netherlands are more likely to be remanded in custody (or for custody to be extended) or to be placed in juvenile detention than other young people.

The contribution that a JJI can make to the supervision, treatment and rehabilitation of these foreign nationals is limited due to the short length of their detention. At the same time, there are serious problems and difficulties in relation to their rehabilitation. The RSJ therefore emphasises that importance of continuity in the reception, supervision and treatment of minors and young adult foreign nationals ahead of, during and after their detention at the JJI. Centralised placement of UFM and young adult foreign nationals at a single young offenders institution may contribute to pooling expertise with regard to this group.

Foreign nationals subject to a youth hospital order will often be detained at the JJI for a longer period of time, for up to a maximum of six years. In their case, there is more time available for supervision, treatment and rehabilitation. However, rehabilitation is hampered if they have no right of residence or if there is a risk of it being revoked. The RSJ believes that foreign nationals who are detained at a JJI under a youth hospital order (PIJ) should be able to participate in a leave programme aimed at rehabilitation even if they no longer lawfully reside in the Netherlands.

The RSJ notes that there are tensions between the pedagogical approach of juvenile criminal law and the approach under immigration law to the group of foreign nationals detained at JJIs but who are (most likely) not allowed to remain in the Netherlands. Deprivation of liberty as an ultimate remedy and offering a pedagogical approach aimed at the most favourable possible development of the minor or young adult foreign national and at his or her return into society are key principles that, in the opinion of the RSJ, are insufficiently realised for this group. The RSJ therefore advocates in favour of limiting the application of remand in custody as well as promoting alternatives to deprivation of liberty, such as the (extra-criminal) HALT intervention, community service or conditional sentencing, for these young people, therefore limiting placement in a JJI. Furthermore, the RSJ recommends greater investment in the future prospects of unaccompanied minors and young adult foreign nationals who are not permitted to remain in the Netherlands through (initiating) vocational training programmes and employment reintegration initiatives aimed at the country of origin. To this end, it is crucial that chain organisations, including the JJIs, guardianship institution Nidos and the Central Agency for the Reception of Asylum Seekers (COA), collaborate with one another more effectively.



Finally, although outside of the scope of the advisory request, from a youth protection perspective, the RSJ wishes to draw attention to the concerns regarding the reception, supervision and treatment of all minor and young adult foreign nationals received by the Dutch government.

Recommendations

The RSJ makes the following recommendations:

1. The application of alternative settlements and alternatives to the deprivation of liberty for foreign nationals should be promoted – as is the case in respect of Dutch youths, including for foreign nationals who do not have lawful residence. Alternatives to deprivation of liberty should be developed that are in line with the specific circumstances of UFM and young adult foreign nationals.
2. A single (R)JJI should be designated for the central placement of minors and young adult foreign nationals. Foreign nationals who have been remanded in custody or placed in juvenile detention should be placed in a separate group. Foreign nationals subject to a youth hospital order (PIJ) should be kept separate from this group on the basis of care needs and length of stay. The age and maturity of the foreign national should be taken into account when placing him or her in a group. In addition, a distinction should be made between foreign nationals with or without a prospect of (permanent) residence in the Netherlands – the degree of occupancy of these groups permitting.
3. The same quality requirements for staff and staffing (group leaders, psychiatrist) should be applied towards where foreign nationals are placed as apply to staff in regular groups.
4. Within the JJI, education aimed at learning the English language as well as on reintegration into the labour market (brief vocational training programmes aimed at opportunities in the labour market of the country of origin) should be provided for the group of foreign nationals who are not permitted to remain in the Netherlands. To this end, the Young Offenders Institutions Regulations (*Reglement justitiële jeugdinstellingen*) should be amended. Continuity in terms of education and reintegration into the labour market should be ensured both before, during and after detention.
5. The guardian and the COA mentor should always be involved in drawing up the future prospects plan (*perspectiefplan*) for the UFM and the JJI should hand over the plan to the COA mentor and/or guardian of the respective foreign national at the end of the detention period. The future prospects plan for the young adult foreign national returning to a COA reception centre for adult asylum seekers should be handed over to the COA. The future prospects plan should include education/reintegration to the labour market and care.
6. Registration of the group of minors and young adult foreign nationals in JJIs should be improved to enhance cross-chain collaboration and ensure the workable handover of the case file. A distinction should be made between accompanied and unaccompanied foreign national minors and information should be added about their right of residence.



