



Summary

Advisory report on the amendment relating to the proposed amendment of the Repatriation and Detention of Foreign Nationals Act (Wet terugkeer en vreemdelingenbewaring)

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

On 29 August 2023, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands (referred to below as the RSJ) issued an advisory report on the amendment relating to the proposed amendment of the Repatriation and Detention of Foreign Nationals Act (Wet terugkeer en vreemdelingenbewaring, proposal).

In this advisory report the RSJ examined the following:

- The creation of a basis for the authority of the Minister for Legal Protection to deviate for a maximum of three months, in exceptional circumstances such as in the event of a pandemic, from the number of hours that a foreign national is allowed to move around the institution freely and is entitled to daytime activities and visits.
- The right of the foreign national to spend time in the open air during isolation under the accommodation and detention regime.

Basis for general measures in exceptional circumstances

In the detention of foreign nationals regime a balance must be sought between a humane regime with, on one hand, an eye for the human dimension and, on the other hand, the need to be able to maintain security and manageability in the institution.

The RSJ is critical about the introduction of a basis for taking measures which, in exceptional circumstances such as a pandemic, would limit the freedom of movement and the right to daytime activities and visits of all, or a large group of, foreign nationals in a detention centre. The RSJ is of the opinion that there is no need to include this basis in the legislation. The director of a foreign nationals detention centre ought first and foremost to examine suitable and workable solutions at other institutions in society where groups of people are accommodated, such as centres for asylum seekers, mental health care institutions and institutions for forensic care. In the case of a pandemic the use of this measure may result in a large number of the foreign nationals being unnecessarily isolated in the institution (for a long period of time). That can cause permanent damage to people's brains and personality. These effects apply particularly to foreign nationals

who are already psychologically vulnerable, for example due to traumas and long-term stress.

In the event that the Minister for Legal Protection nevertheless proceeds to arrange for a basis to be included in the legislation for measures which limit the freedom of movement of all, or a large group of, foreign nationals, the RSJ recommends that the 'exceptional circumstances' are specified in more detail in the explanatory memorandum and that a two-phase procedure is introduced for the implementation of the general measure. This means that, after he has established that an exceptional circumstance has occurred, the minister can issue an authorisation for a maximum of three months to the director of one, several, or all foreign national detention centres to introduce the measure for a maximum of one month, if such is necessary. The director can extend the application of the measure by a maximum of one month as long as the authorisation is valid and the measure is necessary. In the case of a phased procedure, the arrangement will continue to be workable for the minister and a situation will be avoided in which the arrangement is unnecessarily applied to all, or a large group of, foreign nationals.

The RSJ also recommends that a complaints and appeals procedure is put in place if the rights and freedoms of detained foreign nationals are generally restricted in exceptional circumstances.

The right of the foreign national to spend time in the open air during isolation under the accommodation and detention regime

The right to spend time in the open air during isolation under the accommodation regime should not be downwardly adjusted from two hours to one hour a day.

The disparity in the right to exercise for foreign nationals during isolation under an accommodation and detention regime is the result of the difference between both regimes and can therefore be justified. If this disparity in implementation leads to problems, the RSJ would like consideration to be given to allowing the foreign nationals of both regimes to exercise for two hours a day during the period of isolation.

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

