



Summary

Advisory report on the draft decree amending the Penitentiary Decree and the Police Data Decree

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

On 31 October 2023, 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 draft decree amending the Penitentiary Decree and the Police Data Decree.

In this advisory report, the RSJ addresses the elaboration of some additional measures to be laid down in the Custodial Institutions (Framework) Act to combat continued serious organised crime in detention. These measures concern:

- visually monitoring a prisoner's contact with a legal aid provider
- limiting the number of legal aid providers with whom confidential contact may take place per prisoner to, in principle, two and,
- having medical professionals and spiritual counsellors work in pairs (four-eyes principle).

Scope of the measures

The measures are applied to all prisoners placed in the extra secure institution (EBI) or at intensive supervision departments (AITs) in prisons. This is a potentially large group: 24 prisoners in the EBI and 90 prisoners at AITs. The RSJ believes that the far-reaching restrictive measures can only be justified based on possible danger emanating from the prisoner. Therefore, the RSJ recommends not to generically apply the measures to all prisoners in the EBI and at AITs, but only to prisoners residing in the EBI pursuant to the c- or d-ground of Article 6 of the Selection, Placement and Transfer of Prisoners Regulation. A tailored approach for prisoners should be the starting point when taking security measures that affect prisoners at AITs and in the EBI.

Visual monitoring and interruption of the conversation between a prisoner and legal aid provider

The proposed measure to interrupt the conversation between a prisoner and legal aid provider based on visual monitoring is not sufficiently concrete and raises several questions. Does 'interrupting the conversation' refer to suspending or terminating the conversation? What is the role of the prison officer and the (deputy) director in this case? What should be understood by a sudden intense and suppressed or unsuppressed emotion that may be reason for suspending the conversation?

If the conversation is not suspended and it is intended to end the conversation immediately, the RSJ recommends using the term "termination" instead of the term "interruption" in the text of the decree. If it is intended to first suspend the conversation and then, after consultation with the (deputy) director, terminate it, this should be included in the text of the decree.

The RSJ recommends retaining the camera footage of the conversation between the prisoner and the legal aid provider until three months after the expiry of the complaints period, in connection with any excusable failure to meet the deadline.

Four-eyes principle for medical professionals and spiritual counsellors

If the minister wants to apply the four-eyes principle for medical professionals and spiritual counsellors for all prisoners in the EBI and at AITs, a potentially large group of prisoners will be affected by this. When two spiritual counsellors should be involved, it is required that these are of the same religion or philosophy of life. The RSJ recommends that in principle this should be the aim, however, an exception to this requirement should be possible in light of possible capacity problems among spiritual counsellors of particular denominations.

Recommendations

The RSJ recommends the following:

1. Do not generically apply the restrictive measures in contact with legal aid providers and the four-eyes principle for spiritual counsellors and medical professionals to all prisoners in the EBI and at AITs. Apply these measures only in the EBI and only for prisoners placed pursuant to the c- and d-grounds of Article 6 of the Selection, Placement and Transfer of Prisoners Regulation. A tailored approach in individual cases should be the starting point for placement and restrictions. To this end, amend the legislative proposal to amend the Custodial Institutions (Framework) Act and the present amendment to the Penitentiary Decree.
2. Clarify the procedure of interrupting the conversation between the prisoner and legal aid provider in case of dangerous behaviour of the prisoner and describe the role of the prison officer and the (deputy) director in the process. If necessary, adjust how this is regulated in the Penitentiary Decree. If interrupting the conversation means in fact terminating the conversation, use the term 'termination'.
3. Retain the camera footage of the termination of (the visually monitored) conversation between the legal aid provider and the prisoner until three months after the expiry of the complaints period, in connection with any excusable failure to meet the deadline.

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

