

Summary

Advisory report on the amendment of the Detainee Selection, Placement and Transfer Regulations (SPOG Regulations) regarding earlier eligibility for transfer of Terrorist Ward detainees

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

On 20 June 2024, 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') issued an advisory report on the proposed amendment of the Detainee Selection, Placement and Transfer Regulations (SPOG Regulations) regarding an earlier eligibility for the transfer of detainees from the Terrorist Ward (TW) to a ward with a different, less stringent regime. The proposal for a less strict interpretation of the transfer scheme follows, among others, from the RSJ advisory report 'Increasing security in a broader perspective' (2023) and the Justice and Safety Inspectorate's report 'Follow-up investigation into terrorist wards in the Netherlands' (2022). In its previous report, the RSJ stressed, among other things, the importance of customised security measures, resocialisation and a gradual return of the detainee from the TW into society.

Transfer on an individual basis based on security risk assessment

The RSJ notes the lack of a careful and clear procedure for the resocialisation of the individual TW detainee. Detainees suspected or convicted of a terrorist-motivated offence are placed in a TW based on the nature of the offence and not on the security risk posed by the detainee. As a result, the population of TW detainees is very diverse with regard to the security risks they pose. Amongst the TW detainees there are, for example, leaders and followers, dominant individuals and vulnerable and easily influenced people. To prevent networking and peer pressure from taking place, it is important to remove the so-called followers/vulnerable persons from the group and to place them in a different regime. TW detainees who are hardened may be kept in the Terrorist Ward longer and should be provided with specific guidance.

The RSJ does not support a generic scheme for the transfer of a TW detainee to a ward with a different, less stringent regime. The security risk of the individual TW detainee should be the decisive factor for transfer. The RSJ argues for customised security measures and recommends transferring TW detainees on an individual basis based on periodic security risk assessments.

Generic scheme for a limited target group

The proposed less strict interpretation of the generic transfer scheme only applies to TW detainees serving a prison sentence of eight years or more. They may be eligible for transfer from 18 months before the end of detention, with a minimum sentence remaining of four months. Transfer can only take place if it is deemed to be safe.

The RSJ believes that earlier eligibility for transfer to a ward with a different, less stringent regime is also important for detainees with a prison sentence of less than eight years. The RSJ also believes that detainees eligible for the conditional release scheme should not be withheld from this because of a late transfer to a regular prison ward.

New condition for transfer

A detainee is not eligible for transfer if he does not actively participate in his resocialisation or is not open to counselling or interventions. The RSJ suggests amending this condition and replacing the phrase 'who does not actively participate in his resocialisation' with 'who is unwilling to participate in his resocialisation'. After all, the point is that the detainee has the intention to demonstrate desirable behaviour.

It is not clear from the explanatory note to the draft regulation what exactly is meant by 'not participating in his resocialisation'. According to the explanatory note, this can consist of refusing to perform work. Although performing work in detention is no longer an obligation, it can contribute to a detainee's reintegration. According to case law of the RSJ's Jurisdiction Division on promotion and degradation in detention, mere refusal to work is not sufficient to conclude that the detainee is not working on his reintegration. Other reintegration goals, such as to study, can also contribute to the prisoner's resocialisation.

Recommendations

The RSJ makes the following recommendations:

1. Ensure a more individual customised approach in security with periodic assessment of the security risk of the individual TW detainee and make transfer possible on that basis.
2. Ensure that the transfer scheme does not result in a restriction of the conditional release scheme.
3. Amend Section 26a(2)(d) of the SPOG Regulations and replace the phrase 'who does not actively participate in his resocialisation' with 'who is unwilling to participate in his resocialisation'. Provide more detail in the explanatory note on what is meant by the phrase 'not participate in his resocialisation'.

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