Raad voor
Strafrechtstoepassing
en Jeugdbescherming

Summary

Advisory report with regard to the implementation of the motion concerning the limitation of the number of detainees a lawyer is allowed to assist in the Maximum Security Institution (EBI) and Intensive Supervision Ward (AIT)

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

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (referred to below as 'the Council') has issued an advisory report on the implementation of a motion by Members of the Dutch House of Representatives Ellian and Wilders. The motion concerns the possibilities of introducing a limit on the number of detainees in the Maximum Security Institution (EBI) and the Intensive Supervision Ward (AIT) who can be assisted by one and the same lawyer. In this report the RSJ explained how such a limit relates to existing standards (including under European law), as well as its feasibility and guarantees within the legal profession.

RSJ Advice

The RSJ recognises the need to be able to impose additional and temporarily far-reaching measures on detainees in order to protect society, but, as a matter of principle, objects to and sees no possibility of limiting the number of detainees in the EBI and AIT who are assisted by one and the same lawyer.

Legal framework

The RSJ does not see sufficient need for introducing a generic measure limiting the number of clients a lawyer may assist. Given the requirement of necessity, an intensive monitoring of detainees should be (and should continue to be) regarded as exceptional. Restrictions on contact with a lawyer are justified only when necessary in an individual case and based on a valid and current justification.

The RSJ also considers that the right of free access to a lawyer is of such fundamental importance that it should not be obstructed. Imposing a limit on the number of clients a lawyer may assist, the detainee may be restricted in accessing legal aid. This could seriously undermine the right to a fair trial and the right to legal assistance of one's own choosing, as enshrined in Article 6(3)(c) of the European Convention on Human Rights (ECHR).

Within the framework of the current Penal Principle Act (Pbw), a warden can deny (privileged) access in very exceptional situations in view of, among other things, the order and security of the institution. In addition, there are further possibilities to

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intervene in the privileged contact between detainees and their lawyer. If the proposed amendments to the Pbw, as currently outlined in the bill are adopted and implemented, all detainees on the AIT and in the EBI will be subjected to a restriction limiting them to a maximum of two legal aid providers as well as visual supervision of conversations with their lawyers. In addition, a new power grants the minister the authority to order location-based calls for lawyers.
Finally, the criminal procedure framework allows intervention in the privileged communication between a lawyer and their client during a criminal investigation in which the lawyer is a suspect. For example, conversations can be recorded.

Feasibility

The RSJ sees objections to the feasibility of limiting the number of detainees a lawyer is allowed to assist in the EBI and AIT. As the capacity of EBI and AIT facilities will be expanded in the future, the demand for a much larger number of specialised lawyers who can take on the criminal cases of these detainees will therefore increase. This will affect the right of free access to a lawyer. Moreover, detainees have varying detention statuses and they can be transferred from a regular regime to a high-security regime and vice versa. The RSJ questions what consequences this will have on the trust relationship between client and lawyer, as well as who will oversee this issue and how prolonged appeals will be managed.

Safeguards from the legal profession

The RSJ believes that safeguards against possible integrity violations within the legal profession are primarily the responsibility of the Netherlands Bar (NOvA) and individual lawyers and that these safeguards should mainly be regulated from within the profession itself. The NOvA has already initiated several developments. For example, the NOvA has set up resilience training, appointed a confidential lawyer and established a hotline for lawyers who wish to report threats or who feel threatened.
The RSJ welcomes the NOvA's commitment to strengthen these safeguards.

Broad concerns about stringent security measures

Finally, the RSJ reiterates that the rapid accumulation of far reaching restrictive measures without solid justification poses a serious risk to the long-term sustainability of the Dutch prison system. There appears to be an ongoing tendency to continuously introduce new security measures in the prison system. However, increased security measures do not automatically result in greater security, neither within correctional facilities nor in society at large.

The advisory report (in Dutch) can be consulted on the website of the Council for the Administration of Criminal Justice and Protection of Juveniles