



Proper Treatment

Principles for the government approach
of individuals
serving a custodial sentence or measure

Principles of proper treatment: why, for what purpose and for whom?

Individuals sentenced to undergo a custodial punishment or measure will be dealing with the government enforcing it. These people include detainees, young adults and minors, persons subject to a community service order, forensic patients, and aliens. In this special relationship between the government and the individual, *treatment* plays a vital part, in a broad sense, therefore not just in daily, personal contact.

The Council uses the term 'treatment' to include everything involving the implementation of a custodial punishment or measure.

'Detainee'

In this report, the term 'detainee' is defined as 'any person whose liberty has been taken or restricted on the basis of judicial intervention'.

The principles comprise various situations in which the authorities remove or restrict a person's liberty on the basis of a criminal conviction, including the implementation of prison sentences, TBS¹, pre-trial detention, juvenile detention, PIJ measures² and detention of foreign nationals, temporary leave, electronic supervision or home detention. Many principles are also relevant to the probation and aftercare services: supervision and assistance within a judicial framework. No suitable umbrella term can define all these persons in these various situations and a constantly recurring general description would make the report unreadable. Therefore, the term 'detainee' is used as well for persons who have not (yet) been, or are no longer actually detained.

Reason for laying down these principles

The mission of the Council for the Administration of Criminal Justice and Protection of Juveniles is to ensure an appropriate enforcement of penalties by the government and the relevant implementing bodies with due observance of principles of proper treatment.

- 1 Placement under a hospital order (in Dutch 'Terbeschikkingstelling' or tbs) is a court-imposed treatment measure for persons having committed a serious offence while suffering from a psychiatric illness or disorder. The aims of tbs are treatment of the disorder and protection of society. Tbs may or may not be imposed in combination with a prison sentence, depending on the person's degree of accountability.
- 2 Placement in a juvenile institution (in Dutch 'plaatsing in een inrichting voor jeugdigen' or 'pij') is a court-imposed treatment measure for juveniles having committed a serious offence and requiring intensive care and treatment. The duration of the measure is limited to two to six years, depending on the seriousness of the crime and the disorder.

In this mission statement proper treatment and the legal position of the detainee are leading concepts. The Council wishes to ensure that the government respects 'principles of proper treatment'. This naturally raises the question of what 'proper treatment' is. That is why the Council has been developing its own concept of proper treatment. The objective is to ensure that the government treats detainees not just 'according to the rules', but also decently, with due observance of the individual and aimed at social reintegration.

For whom?

The government is responsible for the organisation and enforcement of punishment. Many different institutes and persons somehow take a share of this responsibility. Not only the workers applying the rules, but also the persons making the rules and determining the frameworks and budgets. They include the managers of institutions, the persons who carry out treatments and execute programmes and members of supervising bodies. The principles of proper treatment are of vital importance for all of these people's performance. Within this comprehensive framework, the Council's responsibility comprises the rendering of advice and administering justice.³ The Council advises the State Secretary of Security and Justice on improvements of the enforcement. Examples of current improvement are the programmes *Renewal of Forensic Care* and *Stimulating Treatment* (Prison System Modernisation Programme) and *Fitting Aftercare*. As a Court of Appeal, the Council examines practice for compatibility with legal provisions and for reasonableness and fairness. The values expressed by the principles form the basis for the Council's activities. All in all, these principles must be regarded as a common good, which we must further develop and bring into practice together.

Nature of the principles

Legislation and regulations protect detainees against abuse of authority and arbitrariness, and they prescribe the government how to give form and substance to implementation. Conventions, acts and case law provide 'hard' rules in this respect. In addition, there is also the 'soft law' of national and international recommendations that provide guidance regarding the treatment of detainees. Proper treatment is more than enforcing the rights and duties set out in the rules. These rights and duties (in detention) find their basis in universal values and ethical principles. We wish to provide a practical expression thereof in these principles.

³ In 2011, the Council was also designated as National Preventive Mechanism within the framework of OPCAT, the optional protocol to the Convention Against Torture (1984) of the UN (http://www.un.org/ga/search/view_doc.asp?symbol=a/res/57/199).

The principles are rather starting points than hard assessment criteria. They do not provide hard legal criteria and standards to be applied one on one in specific situations. Actual practice is far too complex to do so.

The principles make explicit what is implicitly present in working with and for detainees. Values become effective in this way for the purpose of orientation, inspiration and motivation.

The principles provide a basis for assessing specific situations. They help regulations and practices to outgrow the minimum level. They may stimulate improvements but may also serve as handles for a positive assessment of the quality of the treatment. First of all, they promote a continuous striving towards improvement, positive intentions, and a flexible attitude. An appropriate enforcement of sanctions costs money; personnel costs are a major item in the budget of executive organisations. Even though the enforcement of punishment is often subject to budget cuts, we wish to emphasise and illustrate that working on the basis of a positive attitude is in itself not a question of finance.

The principles refer to a wide range of penalties in terms of nature and execution, including pre-trial detentions, youth detentions, hospital orders and community service orders. This implies that the values and standards expressed in the principles must always be interpreted within the context of the relevant penalty or enforcement situation. For instance, a certain level of treatment (such as the offered activities) that works well in a detention situation may be insufficient and therefore 'improper' within the context of TBS hospitalisation.

Preface to this second edition

With a view to today's instrumentality and efficiency it has been found that there is a need for establishing core values as a guideline for the organisation and execution of penalties. This has been the reason for making proper treatment explicit.

This Proper Treatment mission statement is 'under construction': a document that will be adjusted to the social and custodial context. Comments on the first edition (2010) from those active in the field, policymakers and supervisors have been worked into this second edition. The document is not yet finished, nor is it likely that it ever will be. Thinking about the principles of proper treatment will not stop, and most certainly not as a result of the publication of this document.

Sources

The principles are primarily based on positions and opinions of the Council itself. The European Prison Rules also form a source for principles of detention standardisation. The CPT has built up its own standards for detention as well.⁴ In particular, the CPT's formulations relating to practical situations constitute a major source of inspiration for these principles. When consulting other sources for principles of proper treatment, the focus was on finding formulations that are as specific as possible to situations concerning deprivation of restriction of liberty. The 'decency requirements'⁵ of the National Ombudsman can without doubt be applied here and its purport can therefore be found in the principles several times.

4 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe. These general detention standards (The CPT Standards CPT/Inf/E (2002) 1 – Rev. 2004) have been bundled and can be consulted via the CPT's website: www.cpt.coe.int.

5 These have been bundled in the 'Decency Guide', accessible via www.nationaleombudsman.nl.

Reading guide

The principles are:

- The basic principle: treatment must be proper
- The principle of decency: quality of daily treatment
- The principle of perspective, resocialisation and aftercare
- The principle of legitimate or statutory implementation
- The principle of a meaningful programme
- The principle of safety
- The principle of individualisation
- The principle of minimal restrictions
- The principle of legal citizenship

Sequence

The basic principle forms the basis for all other principles as elaborations thereof. The principles being equal, the sequence in which they are presented is of no consequence.

Good practices

Each principle is briefly explained and illustrated by good practices. These good practices will allow people active in the field to recognise the abstract principles. The examples do not indicate that 'this is the only way'. Every practical situation is unique, after all. If we want to make anything at all clear by means of these principles, it would be that there are no clean-cut and simple answers to difficult dilemmas. The good practices are no ideal pictures either: they are situations actually encountered in the field, extracted from reports and statements of supervisors.

The Principles

Basic principle: treatment must be proper.

Proper treatment as a basic principle requires of the government, from legislation to daily practice, to be constantly aware of situations in which quality, appropriate behaviour and humanity are compromised.

The Dutch framework acts and implementing regulations determine the lower limits of what should be offered to detainees, as well as the conditions to which they are legally entitled. Proper treatment is more than that.

Proper treatment is more than the standards and rules laid down in writing. It is the positive intention towards the detainee, and the humane manner in which a person is treated, which makes the difference between proper treatment and observing rights and obligations.

Proper treatment also goes beyond the standards set out, in the sense that it comprises a continuous striving towards improvement.

Proper treatment means: continuously reassessing laws, regulations and procedures on the basis of social development, scientific findings and changes in the characteristics of detainees. And in daily practice the rules and procedures are applied in a manner that is in line with the situation of the individual detainee.

Proper treatment is looking at the individual instead of looking at the standard; dealing responsibly with unexpected situations; being able to improvise when the rules stop.

The basic principle has been elaborated and given substance in all other principles in order to indicate whether a practice should be allowed to bear the designation 'good' per aspect of implementation.

Good practice:

The institution was pleased to hear that government officials in The Hague had indicated that it was functioning above average and serves as an example for other custodial institutions. The institution would like to be top of the list in the Netherlands. (From the annual report 2010 of a supervisory committee at a custodial institution).

The principle of decency: quality of daily contacts

Daily treatment, contact with detainees, satisfies the requirements set in respect of quality, professionalism, decency and ethics.

The success of proper treatment depends on daily detention practice and the manner in which employees implement it, mainly in personal contact with detainees. Each employee will be guided by the principles of correctness at all times: their behaviour will be appropriate, moderate and with attention for the situation of the individual detainee.

Treat others as you would like to be treated yourself if you were detained, is another way of formulating this principle.

An employee may be expected to act professionally, and irrespective of the person, towards the detainee. Dealing with detainees in a professional manner in all situations is an art. Many detainees have limited social skills, are 'ill' or vulnerable. A professional assesses why someone acts or expresses himself in a certain way and takes this into account. He represents 'the authorities' but must acquire personal authority as well. He realises that many detainees have a biased look upon 'the authorities' and may offer resistance. A professional can put up with a lot. But he also sets boundaries on acceptable behaviour from the detainee, both towards himself and towards the other detainees. And he challenges the detainee in this respect. The employee's behaviour is therefore often a reaction to the detainee's behaviour in all its manifestations: willing, passive, manipulative, disturbing.

The fact that a person's freedom is restricted does not make him a completely dependent human being without responsibility. Personal contact is mutual: employee-detainee, detainee-employee and also: detainees among each other. The detainee himself plays a major part and has a responsibility of his own. The detainee, the youth, the patient forms part of the ward community, the group in which he is living on a temporary basis, even if he has not chosen that group himself. His attitude and behaviour have a substantial effect on the atmosphere and the character of the communal unit (the ward, the unit, the group), the safety, in brief: 'life' in the institution.

The Council acknowledges the special assignment and challenge for the employees. They are requested to create an agreeable environment in this complicated, stressful situation, preferably one aimed at a return to society, but in any case safe and fair.

Two decisions of the Complaints Committee of the Probation Service indicate how the behaviour of the Probation Service's client is weighed in the assessment of the treatment (italics by RSJ):

- On the one hand, the complaints committee finds that the Probation Service should have taken into account the working hours of the complainant when making arrangements, more so than it has done, but on the other hand the complaints committee finds it very understandable that the Probation Service reacted less adequately than desirable, in retrospect, *due to the formal and in some respects rigid attitude of the complainant in his contacts with the Probation Service.*
- The Probation Service was not required to tolerate such behaviour towards one of its employees and was at liberty to decide to refer the supervision of the complainant back to the Public Prosecutor – *even if such behaviour was caused by anger and rage about the extent of the Probation Service's interference in his life, which was going too far, in the opinion of the complainant.*

In a *detention situation* the detainee is stimulated to participate in activities and (reintegration) programmes. A detainee who fails to show any interest (yet) will not be treated less positively or with less respect for that reason. Employees will try and make him realise that he is selling himself short by taking that attitude. In a *therapeutic environment* the entire treatment and, consequently, also the stimulation of activities are geared towards the purpose of the treatment. In a *youth institution* the group leader explicitly takes the role of a professional tutor.

Good practices:

- *Employees have been trained in dealing with and assisting specific groups, they are able to recognise care requirements and take appropriate action.*
- *Employees do not automatically assume that their message comes across, but they actively establish whether the detainee hears and understands information, instructions and announcements. This applies in particular to cultural differences.*
- *Treatment promotes and offers possibilities to solve problems between personnel and detainees and between detainees among themselves; the (continued) existence of such problems or the submission of a notice of complaint by detainees does not, however, lead to less positive or less respectful treatment.*
- *In the past, control and the strict compliance with applicable rules was emphasised, but the focus has increasingly changed to a flexible, personal approach. This development corresponds with the changes intended by the nationwide project Prison System Modernisation Programme (Inspectorate for Implementation of Sanctions, inspection report investigation of PI Vught, May 2011).*

The principle of perspective, resocialisation and aftercare

The enforcement of a sanction focuses on the detainee's return to society and adequate aftercare is systematically guaranteed.

Temporary custodial sentences end by returning to society. It is a giant leap from 24-hour detention or treatment to the outside world. Therefore, a system of increasing responsibility and freedom forms part of the custodial sentence. This means that a person will learn how to take responsibility and that he will be allowed the freedom needed to do so, unless it appears, at any time, that he cannot handle such freedom yet. Therefore, the government provides for an active system of getting used to social life, reintegration and aftercare. These activities, which are also intended to prevent detainees from reverting to criminal behaviour, already start during the detention.

Detention severs social ties. Insofar as these are 'criminal' contacts, this must be regarded as a positive effect. However, relationships supporting the detainee psychologically and socially must not be hindered. The government should make active efforts to prevent such 'damage' and remedy it by providing social alignment and helping the detainee to build a network.

However, resocialisation is more than repairing detention damage. Resocialisation focuses on personal development and dealing with problems experienced, in particular if these relate to the crime in respect of which a person has been detained. The detainee is encouraged to participate in programmes to reduce recidivism, but social assistance is also offered without this specific objective.

Resocialisation should not disappear entirely even during long-term detention. Life imprisonment and detention in a long-stay ward (hospital order) should not deprive a person of every perspective of resumed resocialisation treatment or placement in the regular Mental Health Care Association (GGZ). If this is not feasible, the possibility of accompanied social activities will always be considered.

Detainees must be able to learn social behaviour (again), also in their own environment. Consequently, reintegration is supported by leave, unless this is demonstrably irresponsible. Granting leave, both in general and specific cases, may encounter resistance and a lack of understanding by the public. The institution will take this into account by safeguarding the safety of victims and making arrangements/having conversations with the detainee in this respect. In general, the judiciary communicates clearly and openly

about granting leave and the risks attached to it, which have to be taken for the sake of resocialisation.

An example of proper treatment with a view to resocialisation is an individualised implementation of the regionalisation policy. This constitutes placing a person in the region where he will live (again) after detention, unless it would be better, with a view to his personal circumstances, not to do so (as yet): for example, because temporary residence at an institution elsewhere offers better treatment possibilities. Differentiation policy that concentrates detainees with certain characteristics (age, problems, behaviour, and gender) in only a few places in the country makes such proper treatment impossible. When a region of (re)location is chosen, the interests of victims will be taken into account.

Perspective, resocialisation and aftercare

Perspective is defined as hope for the future, but also as 'depth' (for example in painting or photography). This meaning of perspective refers to relationship, putting things 'into perspective', attaching relative value. Detention may change the detainee's perspective of essential interests and vital questions completely. What was close will be far away, and vice versa. Certain problems will become less important, while other problems will be magnified. *Spiritual assistance* may play an important role in dealing with confusion and finding a new balance.

In the 'refuge' of spiritual assistance, in which nothing is required or requested, a person may recover and look upon relationships as separate from the omnipresent 'here and now' of prison life. The detainee can tell his story and get some breathing space. Proper treatment is recognising these functions of spiritual assistance and providing facilities for it.

Good practices:

- *Juveniles will receive a pedagogic approach, because of their vulnerable position as a developing human being, which approach will especially focus on developing own responsibility and plans and hope for the future. The pedagogic approach is based on rewarding good behaviour rather than punishing undesirable behaviour. In order to be able to learn from his mistakes, a person must be given an opportunity to make them.*
- *Sexual development is a vital aspect in a juvenile's life. Deficiencies in their upbringing relating to sex may be the source of (sexual) offences. Therefore, learning how to deal with sexual feelings in relation to others is a central issue in the treatment of juveniles. Their sexual education will be supported wherever possible by making*

activities available (not only education but also other activities in the day programme) to mixed groups.

- *TBS-convicted persons will be offered all possibilities and circumstances of treatment that may reduce the term of their detention. The socio-therapeutic environment will stimulate the patient to participate in the treatment.*
- *The institution will not apply privileges as a disguised means of coercion. This would be the case if the patient were to cooperate in certain aspects of the treatment without motivation, just for the sake of acquiring privileges. The clinic considers the advice of the Probation Service or other experts not involved in daily treatment of special importance.*

The principle of legitimate or statutory implementation

Adequate statutory regulations form the basis for setting up and implementing penalties.

This principle guarantees that there are general regulations, not merely incidental decisions; it promotes motivated and well thought-out regulations and policy decisions in accordance with democratic procedures. General provisions for the entire system have been laid down in formal law (in particular the framework acts) and have been effectuated by governmental decrees or ministerial regulations.

The statutory regulations obviously satisfy quality requirements. One of the most important ones is that, in particular, drastic restrictions of the rights of detainees have to be legitimised by a special and specific regulation of the relevant restriction and that (too) general grounds for restriction do not suffice.

Legitimate implementation is in line with the objective of the sanction, but also remains within its boundaries. The difference between punishment and measure is important, for example. Measures such as placement in an institution for repeat offenders, hospital orders or the PIJ measure have a therapeutic treatment objective (in addition to making society safer), which custodial sentences do not share. The measure is not implemented properly if no or insufficient treatment is offered.

Statutory guarantees may not be circumvented by formally acting according to the letter of the law, but materially acting contrary to its purpose.

The principle of legitimacy requires that the detainee knows what the rules of the institution are, but also why these (in his situation) are applied in a certain way.

Imposing disciplinary penalties and other restrictions takes place with due observance of proportionality and subsidiarity, and arbitrariness is avoided.

The central government is responsible for proper treatment as a whole; the governor of the institution is responsible for creating a positive climate for treatment in the institution and for decisions regarding the individual detainee. One aspect of legal enforcement is that decision-makers are accountable for their actions, both to the person involved (e.g. in complaint proceedings) and to supervisors.

Good practices:

- *Solitary confinement will never be applied as a (disguised) punishment and its use as a measure is avoided and its term is limited insofar as possible.*
- *Compulsory treatment, medical treatment against the will of the person concerned is not allowed as a matter of principle. The same applies to therapies forming part of the treatment plan as agreed with the patient.*
- *Procedural safeguards apply to acts performed by a physician or nurse, which acts must be tolerated by the detainee in specific cases, such as a body search.*
- *If acts are performed that must be 'tolerated', the institution will opt for the least drastic measure. Whenever possible, it will be explained to the detainee why the measure was inevitable and which alternative measures were considered and not opted for; this explanation will preferably be provided before, but at any rate after the measure is taken.*

The principle of a meaningful programme

The enforcement of the penalty offers sufficient space for activities that are useful and meaningful to

- *the structure of life in the institution*
- *variation in daily rhythm*
- *social reintegration;*
- *development and realisation of the detainee's potential.*

The day programme provides structure to life in the institution and variation to daily rhythm. A meaningful complex of activities promotes a successful return to society and is thus effective even after the end of the detention.

The programme includes activities that are useful and meaningful: work, education, being together with others, sports, relaxation and spiritual counselling, and being able to maintain contacts with the outside world. The objective of self-reliance is of special importance: the detainee needs to learn to take care of himself and to stand up for himself during and after the detention.

A meaningful activities programme creates room for development. Employees encourage the individual detainee to participate in specific activities geared to his interests.

What is meaningful?

The meaning of activities is related to the nature of the penalty and to the institution's population. Many detainees consider the here-and-now activities especially meaningful, such as sports, recreation, library and work. Their motivation for these activities is that 'it gives them something to do', to get out of the cell, to have contact with other detainees, to have a daily rhythm. These activities may not be especially geared towards reintegration, but they do contribute to a humane stay. For persons in preventive custody and persons serving a short sentence, these are often the only activities that they engage in or that are available to them. The meaningfulness of resocialisation activities is especially experienced by persons serving a long-term sentence, juveniles, persons placed in an institution for repeat offenders and TBS-convicted persons. A longer detention offers room for learning, development and practicing skills and new behaviour. The participation in such activities must therefore be included in the detention or residence plan drawn up by the institution in consultation with these detainees.

Continuity is of vital importance for the education of juveniles: if a juvenile

fails to get an education in line with his earlier training, the interruption may be of such an extent that he will be unable to catch up anymore.

Good practices:

- *Institutions for long-term residence have work places (timber, metal, concrete) and domestic services (laundry, farm, nursery, kitchen, bakery) where detainees can make a contribution to the institution's organisation and learn a trade or skill.*
- *The institution does not wait and see if the detainee shows responsible behaviour but gives him responsibility where possible.*
- *In a therapeutic environment, activities constitute a coherent whole, aimed at the treatment's objective. Work can improve a person's self-respect and contribute to the treatment as a result. At the same time, the detainee can feel 'free' from therapy sessions and show different behaviour as a result during his work.*
- *The living environment of juveniles is the group, providing opportunities to learn social behaviour. The juvenile is taken out of the group or may leave the group only if and as long as it is absolutely necessary with a view to his own interest or the interests of others.*
- *Juveniles receive education at their own level. The youth penalty is used to assess the juvenile's level of education and to decide what education/training/professional training he needs to obtain a better position in society.*
- *Detainees sharing a cell will be offered a shifts schedule⁶ by the institution (State Secretary of Justice in a letter to the Lower House of Parliament of 4 July 2008; Inspectorate for Implementation of Sanctions, Assessment Framework Penal Institutions, 2009).*

⁶ i.e. a schedule allowing detainees to take turns in staying in the cell or participating in an activity.

The principle of safety

The government imposing custodial sentences guarantees physical and mental safety for the detainees.

It is up to the government to guarantee the physical and mental safety of detainees.

Bringing delinquents together entails the risk of aggression and violence. A fellow detainee can jeopardise the safety of the institution. The institution should avoid this risk. If an incident does occur, the government will have to demonstrate that it has done everything within its power to protect the safety of the detainees.

This principle comprises extra care for detainees whose physical or mental safety is vulnerable. Attention is particularly required for sex detainees who are often faced with aggression from fellow detainees.

The number one condition for safety is that everybody, both detainees and employees, have a sense of safety at all times.

Good practices:

A safe living environment and non-violent treatment are promoted by

- *a clear code of conduct, both for the employees and the detainees between themselves;*
- *psychological security: an active, preventive attitude of employees, based on a positive relationship with the detainees;*
- *effective measures against the use or possession of drugs;*
- *availability of a confidential counsellor and psychological assistance.*

As juveniles are especially vulnerable, additional guarantees must be put into place to prevent them from using violence against, inflicting injuries on or causing damage to themselves, other juveniles, employees and other persons. These guarantees will entail:

- *effective measures against bullying;*
- *a secured living environment for persons fearing danger or threats from other juveniles;*
- *special care for victims of sexual abuse or other violence.*

The principle of individualisation

The government takes into account the interests, needs and circumstances of each individual detainee.

Proper treatment requires customisation.

This means that there must be room for daily treatment (both its general quality as well as its specific implementation) to be geared towards the situation of the individual detainee.

Proper treatment includes a reasonable weighing of interest in line with the individual situation of the detainee. This principle makes demands of the enforcement, but especially requires flexibility in its implementation in daily practice. Specific situations require individual treatment. Exceptions to the rules will be made where necessary. Management supports the employees who implement this.

Individualisation and flexibility can lead to inequality, but unequal treatment that can be explained is not the same as injustice, prejudice or arbitrariness. An exception to the general rule is made, which *in the given circumstances* would have been made for any other detainee. 'What's sauce for the goose is sauce for the gander' is the pre-eminent motto in the application of criminal justice, especially when maintaining public order and safety and applying disciplinary rules within that context. However: the goose and the gander are equal, but not identical. Penalties are imposed on the basis of the offence, but also with a view to the person and the background of his behaviour.

An adequate special regime or programme is introduced for groups of detainees who require such regime, focusing on specific attention and care for detainees with a psychological disorder and for juveniles. In addition to safety, *therapeutic treatment* should explicitly be the starting point in forensic care. *Education* constitutes a central aspect of the deprivation and limitation of the liberty of juveniles, who are in a developmental phase. A practical individual approach entails the recognition of a person's specific needs and the avoidance of detainees being permanently (group)marked. The individual development is monitored. A special regime or programme is imposed if necessary, but is also terminated if possible and justified.

Good practices:

- *Provide for solitary cells in the unit insofar as possible, which can be adjusted to the individual situation of the detainee, for the benefit of creating a differentiated supply (Implementation of Sanctions*

Inspectorate, recommendation in report Placement in Confinement, May 2012).

- *As workshop employees take the abilities of individual detainees in consideration, detainees of a specific unit go to different workplaces to perform work that is in line with their individual abilities and interests insofar as possible (Implementation of Sanctions Inspectorate, inspection report investigation Penal Institution Vught, May 2011).*
- *Long-term detainees and long-stay patients will be offered a living environment with a combination of freedom and incentives tailored to the individual.*

The principle of minimal restrictions

Detainees are subjected to restrictions only insofar as they are necessarily inherent in the deprivation of liberty.

This principle is contained in so many words in each of the framework acts. Proper treatment requires that policies and implementation ensure that prohibitory provisions are actually unavoidable. Only those restrictions that are necessary for the objective of the deprivation of liberty or for said deprivation of liberty itself are allowed, including the maintenance or restoration of order and safety in the institution.

Drastic restrictions to which detainees can be subjected require, in particular, a special statutory regulation. Restricting the rights of detainees in practice is explicitly not based on (general) grounds for restriction.

The line of reasoning behind this principle is that the punishment in itself constitutes deprivation or restriction of liberty, but that the implementation of this punishment should not restrict a person's actions any further than intrinsic to that deprivation or restriction of liberty. The severity of a punishment is expressed in the term of the detention, not in the severity of the 'regime'. People are incarcerated as a punishment, not to be punished. An important starting point in this connection is the equivalence or normalisation principle: 'inside as it is outside'. Even though life in a detention centre can never be 'normal', the circumstances of the detention should be as similar as possible to life as a free citizen, apart from the aspect of being detained. There has to be a reason, which arises directly from the deprivation of liberty itself, for everything a detainee, contrary to a free citizen, is not able or allowed to do. An important example is that persons are not restricted in the manner in which they experience their faith or personal beliefs. This principle applies, however, to all aspects of the detention: contacts, care and activities.

'Minimal restrictions' also means: acknowledging that a person

- a. has a personal life apart from the punishment: family relations and social contacts will survive, or must be able to survive. The detainee remains a spouse, father or mother, member of social groups, resident of our country. Professional and other business ties will not be lost by definition. The detention makes it more difficult to maintain these relations and fulfil the obligations arising from them. Where necessary, the institution must make additional efforts in this respect;
- b. gains another position in detention: the position of 'resident' of an

institution. Residents of an institution⁷ have responsibilities comparable with the responsibilities of a free citizen in his social environment. A detainee is not simply a person abiding by the rules and carrying out the instructions of the employees. Insofar as he actively contributes to the quality of life in the institution, he must get cooperation and opportunities. This is also included in the principle of 'minimal restrictions'.

The living environment of juveniles is developing at a fast rate. Both in comparison with the adult world and as regards the social behaviour and conduct of juveniles among themselves. It is vital for the juvenile's development that he keeps in contact with that environment. Youth institutions in particular must ensure that the distance between the detainee and society does not become too great. It is important to strive for compensation of the restrictions as a necessary component of the detention. At the same time, for the sake of protection, undesirable contacts must be avoided. The institution can:

- offer juveniles the opportunity to have frequent contact with parents/ carers, siblings, boy- or girlfriend, unless this is in contradiction with the purpose of the detention. This applies to both personal and telephone contact;
- create an active policy with regard to the dilemma of normalization versus (social) safety and security. Special attention should be paid to the use of social media and the Internet in general, contact between boys and girls (which is already awkward anyway), and the positive and negative aspects of youth/pop culture.

Good practices:

- *When applying measures restricting the liberty of detainees, the institution will take the least drastic measure.*
- *Detainees have unrestricted access to the physician/dentist affiliated with the institution at all times.*
- *Leave will enable detainees to make the necessary arrangements before being released, such as registration with a housing association or the Centre for Work and Income.*
- *The Inspectorate for Implementation of Sanctions is very positive on the ... drastic change ... in dealing with aliens: from 'no – unless' to 'yes – if' (Implementation of Sanctions Inspectorate, inspection report investigation of the Rotterdam Detention Centre, January 2012).*

⁷ See also the principle of decency.

The principle of legal citizenship

Detainees continue to be members of Dutch society as citizens.

This principle is based on Section 15 (4) of the Dutch Constitution: a person who has been lawfully detained, may be restricted in the exercise of his fundamental rights only insofar as these rights are incompatible with the restriction of freedom.

Proper treatment exists if detainees are recognised and treated with respect, also as *legal citizens*, even when the exercise of a fundamental right requires an effort from the institution, such as allowing a detainee to exercise his voting right. Foreign detainees must also be allowed to participate in elections in their country and European elections.

Other fundamental rights are⁸:

- *freedom of association* and to assemble (e.g. detainees among themselves);
- *the right to petition*, especially for a person in the hands of the government, this is good way of discussing confidential matters affecting him; this right has been guaranteed by the designation of certain means of communication with the government as privileged mail, which may not be opened or checked by the institution;
- *physical and mental integrity* (among other things: no compulsory treatment);
- *freedom of religion* (entitlement to spiritual assistance; special diets);
- *contact with the outside world* (to be defined in rules on visiting, telephone calls, correspondence, Internet access);
- *housing* (even though, naturally, the residence in a custodial institution cannot be regarded as a dwelling towards the penitentiary government, it can be regarded as such in respect of other detainees; this requires the acknowledgment that individuals have a fundamental need to be alone, with a view to their continuously forming part of a community);
- *equal treatment* (implying an obligation of the government to meet the diversity among detainees).

The principle of legal citizenship implies that detainees will have the opportunity to contest at law decisions directed against them, regarding detention as well as outside of it, therefore also in civil proceedings that are otherwise unrelated to the detention. The institution will inform detainees in respect thereof and offer them the opportunity to make use of the relevant

⁸ Text quoted from: E.R. Muller and P.C. Vegter (editors), *Detention, serving a prison sentence in the Netherlands, 2009.*

legal proceedings.

Detainees may also invoke the right to freedom of speech. In general, this freedom is limited in custodial institutions, but individual circumstances must be taken into account as well. An example can be found in the RSJ-appeal case 04/2943/GA:

Furthermore, it must be taken into account that the imposition of a penalty or measure on the basis of a drawing containing comments on the detention conditions and the behaviour of prison staff, will especially require substantial justification, with a view to the detainee's vulnerable position. This substantial justification is required in order to be able to consider punishments and measures necessary in a democratic society, as is required for a restriction of the freedom of speech as referred to in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Within this context, in the case of Yankov versus Bulgaria (ECHR 11 December 2003, NJ 2005, 11) the European Court found, among other things, that prison staff must be able to handle more criticism than private persons, by virtue of their position.

Article 15 (4) of the Constitution also forms the basis for constitutional recognition of the *principle of minimal restrictions* as described above.

