

***Recommendation from the Council for the Administration of Criminal Justice and  
Protection of Juveniles  
Summary for publication***

*title* : *the transfer of detainees within a Court District*  
*submitted to* : *The State Secretary for Justice*  
*date* : *8 June 2007*

*Reason for the investigation*

The transfer of detainees is, in accordance with the present statutory procedure, carried out on the grounds of a decision from the Minister, who has appointed a Selection Officer for that purpose. For reasons of efficiency, the Custodial Institutions Service (*DJI*) would prefer prison Governors to decide about certain transfers, i.e. those between penal institutions located within the same Court District and run under the same regime.

*Advice*

Legislation and regulations<sup>1</sup> form the basis for the procedure of transferring detainees and give the Selection Officer particular powers with good reason. Any change to the procedure must therefore be within the law. The proposal takes no account of the legal history of the present regulation; shifting such powers to the prison Governors would depreciate the powers of both the Minister and the Selection Officer.

The philosophy behind the current regulation is that the decision on placement in or transfer between institutions should be made by an impartial, unrelated official, acting under the responsibility of the Minister for Justice. The quality and objectivity of the placement decision are better guaranteed when the person empowered to make the decision has appropriate expertise and is independent of all parties concerned.

Shifting these powers could have significant consequences in the longer term. At present it is a question of decisions about transfers within similar institutions run under similar regimes. A next step could be to extend the powers to decisions about regional transfers, irrespective of the regime or differentiation.

Under the new proposal, the detainee becomes dependent on a decision made by his prison Governor. There is a good chance that issues such as the detainee's behaviour in the institution will be included in the Governor's deliberations. That will not always be apparent, but it can affect the interests of the detainee.

There are already plans to radically alter the structure and management of the prison system. In the new situation the custodial institution to be managed by a Governor will probably be larger, or multiple institutions will be managed by the same Governor. It is not clear what consequences this will have on the statutory powers of the Governor.

All in all, the Council cannot support this proposal. Transfer can have an impact on the continuity of the activities in which detainees take part; these include labour. For that reason, if the transfer procedures are to be changed, some form of legal protection should at least be provided.

---

<sup>1</sup> As currently laid down in Article 11f of the Dutch Criminal Code [*Wetboek van Strafrecht*], Article 8 (1) and (15-18) of the Prisons Act [*Penitentiaire beginselenwet*] and the Regulation on the Placement and Transfer of Detainees [*Regeling Plaatsing en overplaatsing van gedetineerden*].