

Subject: Reaction to SPT letter on COVID-19 measures

With reference to your letter of 14 April 2020 containing a request to inform the SPT about the measures taken to address the effects of the pandemic in places of deprivation of liberty, including places of quarantine, I have the honour to present the following response from the Dutch authorities.

The COVID-19 pandemic has led to an unprecedented situation. The Government has adopted extraordinary measures to protect citizens and overcome the crisis. Inevitably, these measures affect fundamental rights. The Government is fully aware of the importance to limit the measures to what is strictly necessary and aims to make sure that all the measures adopted are proportionate and temporary in nature, are subject to regular scrutiny, respect fundamental rights and comply with international law obligations.

Parliament, stakeholders and the wider public are kept informed in various ways about the measures taken.¹ This letter outlines the measures taken during the period 13 March – 30 April 2020. The response is structured in accordance with your request.

a) Measures taken to reduce numbers held in detention settings

The Government has taken several measures to combat the possible spread of coronavirus within custodial institutions. These measures apply to all custodial institutions including young offenders' institutions and forensic psychiatric centres for convicted adults who require psychiatric care.

Some of the measures are aimed at reducing the numbers held in detention settings:

- The Minister for Legal Protection announced that for a small group of prisoners leave has been temporarily extended and combined with electronic supervision. This applies to detainees who are nearing the end of their sentences and who were already spending much of their time outside the custodial institution (working outside the institution and spending only the night there). The situation will be normalised after this measure has ended.
- In addition, on 1 April 2020 the Minister for Legal Protection announced that the placement of new prisoners in minimum security facilities (*zeer beperkt beveiligde inrichting; zzbi*) is suspended.
- The influx of detainees has been limited by excluding certain groups of prisoners. It concerns, amongst others, persons convicted of relatively minor offences carrying a short sentence and individuals who have to undergo detention in lieu of payment of a fine or performance of community service. This measure is intended not only to prevent infection but also to cope with potential staffing shortages.
- On 9 April 2020 it was announced that the police, the Royal Military and Border Police (*Koninklijke Marechaussee*) and the Repatriation and Departure Service (*DT&V*) are taking an extremely cautious approach to the detention of migrants.² The current temporary obstacles to expulsion are being taken into account. However, new detention orders or the extension of detention can be supported by an overriding public interest.
- Due to the current crisis, transfers under the Dublin Regulation to and from all EU Member States are suspended.³ This means that limited action on transfers can be taken. The

¹ The website of the national government has pages on the measures taken during the crisis (<https://www.rijksoverheid.nl/onderwerpen/coronavirus-covid-19>).

² Minister for Justice and Security, Minister for Legal Protection and Minister for Migration, 'Stand van zaken coronamaatregelen in de justitie-, veiligheids- en Migratieketen', 9 April 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/09/tk-stand-van-zaken-coronamaatregelen-in-de-justitie-veiligheids-en-migratieketen>.

³ Minister for Migration, 'Uitwerking van de maatregelen in de asielketen met betrekking tot het coronavirus', Letter to the House of Representatives, 20 March 2020, available at: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/documenten/kamerstukken/2020/03/20/tk-uitwerking-van-de-maatregelen-in-de-asielketen-met-betrekking-tot-het-coronavirus>.

detention of all Dublin claimants has therefore been suspended and the authorities are taken a very cautious approach to new detention orders for Dublin claimants.⁴

- The number of migrants in detention has dropped considerably: from 460 in January 2020 to 300 on 16 April 2020.⁵

The measures taken have resulted in a sharp fall in the occupancy rate in custodial institutions, from over 98% to 85%. This has created more scope to place inmates in single cells. The use of multi-person cells has fallen from 30% to 15% in recent weeks.⁶

- - b) Measures taken concerning the provision of appropriate healthcare facilities for those in detention*
 - Adequate access to health care remains guaranteed during the current crisis.
 - Specific measures are in place for vulnerable detainees, e.g. prisoners over 70 or persons with conditions such as asthma or diseases affecting the immune system. Such inmates can have 24/7 access to medical care if they develop symptoms of COVID-19 and can be transferred to another institution if necessary.
 - c) Measures taken which may limit or reduce movements within places of detention*
 - General guidelines on mental healthcare during the COVID-19 crisis have been drawn up in cooperation with relevant parties. These guidelines also apply to compulsory mental healthcare and focus on keeping care delivery as close to normal levels as possible.⁷ The guidelines include information on what to do in case a client shows a sign of infection with COVID-19. In case of a (possible) infection a client can be asked to stay in his or her own room. If a client does not cooperate with the measures that institutions take in the context of COVID-19, a number of existing legal options are available and outlined in the guidelines.
 - As a precautionary measure detainees with signs of a COVID-19 infection can be placed in isolation in their cell.
 - d) Measures taken concerning visits and maintaining family contacts, etc,*
 - As of 14 March, all visits were suspended. In order for family contact to continue as far as possible, alternatives such as contact via telephone and video calls are being offered more than usual. The only visits allowed are those necessary in the context of the legal process, such as by lawyers (if contact via telephone or other digital tools is not possible). Young people in young offenders' institutions were still permitted to receive visits from their parents or legal guardians
 - As of 14 March, leave has been suspended for all detainees. Where possible, individuals are compensated for the suspension and given extra opportunities to make telephone and video calls.
 - As of 1 April 2020 young people in young offenders' institutions are no longer allowed to receive visits either. In certain special circumstances the governor of an institution may allow visits. To continue contact with the outside world as much as possible, young inmates are offered more opportunities for contact via telephone and video calls.
 - Inmates have been given additional call credit, allowing them to use the phone for an extra hour every week.

⁴ Minister for Migration, 'Schriftelijk overleg uitwerking van de maatregelen in de asielketen met betrekking tot het coronavirus', Letter to the House of Representatives, 17 april 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/17/tk-schriftelijk-overleg-uitwerking-van-de-maatregelen-in-de-asielketen-met-betrekking-tot-het-coronavirus>.

⁵ There are currently no families with children in immigration detention.

⁶ Minister for Legal Protection, 'Reactie op open brief medewerkers DJI d.d. 9 april 2020', Letter to House of Representatives, 14 April 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/14/tk-reactie-op-open-brief-medewerkers-dji-d-d-9-april-2020>.

⁷ https://www.ggzstandaarden.nl/uploads/pdf/project/project_65a48ddb-87bc-4f22-ae4f-6f5269977fa7_ggz-en-corona-richtlijn_authorized-at_03-04-2020.pdf

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- On the basis of section 7 of the Public Health Act (*Wet publieke gezondheid*), visits to care homes for the elderly and people with dementia have been suspended.
- There has been no general suspension of visits to institutions that provide care for persons with a psychiatric disorder or mental disability. Mental healthcare providers may adapt their house rules to the specific needs and circumstances of the patient population and to the setting of their facilities. To make these adjustments possible, relevant stakeholders have drawn up policy guidance on visits.⁸
- As a general rule, face-to face contact between clients and their family members and/or representatives is preferable. If this is not possible, other alternatives for communication are provided (e.g. telephone or video communication). This also applies to judicial hearings concerning compulsory mental healthcare, and for contact with a client's lawyer or patient advocate. The Dutch Parliament has passed temporary legislation providing an explicit legal basis for judicial hearings to take place via a telephone or video link. The relevant legislation entered into force on 22 April 2020.⁹
- Patient advocacy and support organisations (MIND, the Foundation for Patient Advocates and the Foundation for Family Counsellors) are systematically involved in the Corona-crisis structure for the mental healthcare field.
- Dutch policy aims to keep the healthcare system in operation while protecting vulnerable groups in society. The Government has taken several measures to prevent the further spread of coronavirus and will continue to adjust its policy in accordance with the latest findings. If need be, new measures will be announced, current measures will be modified and where possible emergency measures lifted.

⁸<https://www.ggznederland.nl/uploads/assets/Richtlijn%20GGZN%20en%20Valente%20bezoekersbeleid%20in%20tijden%20van%20Corona%2023-03-2020.pdf>

⁹ https://www.eerstekamer.nl/wetsvoorstel/35434_tijdelijke_wet_covid_19