The Council of State delivers its opinion on legislative amendments on return and immigration detention

A bill on return and foreigners' detention has been pending since 2015, and the government amended the previous proposal, in order to bring the bill in line with GDPR requirements and the Penitentiary Principles Act. Amendments also touched upon the right to freedom of movement, daytime activities, and the possibility to use ministerial regulation of visits in exceptional circumstances (for example, the outbreak of a pandemic).

The Council of State highlighted three elements.

In relation to the use of ministerial regulation in exceptional circumstances, the council moted that the explanatory memorandum to the amendment does not explain the added value of this derogation compared to already existing possibilities. The council also advised the government to clarify the relation with the specific derogation in the bill and the general framework of state emergency law.

The council also advised the government to specify the bases for data processing, and especially, lay down rules on carrying out searches on objects that the foreigner has or receives.

The council suggested the government to provide an explanation of the relationship between the suggested amendment and the Pact on Asylum and Migration.

Source(s)

- Council of State | Raad van State (24 March, 2025), Advies nota van wijziging bij novelle terugkeer en vreemdelingenbewaring [Advice on the letter of amendment to the return and immigration detention novella], https://www.raadvanstate.nl/actueel/nieuws/maart/nota-wijziging-novelle-terugkeer/

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