



Custodial Institutions Agency
Ministry of Justice and Security

Transfer of mentally disordered offenders

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International Transfer of Sentenced Persons

- Central authority for transfer of custodial sentences and measures involving the deprivation of liberty in the Netherlands
- Decide on behalf of the Minister of Justice and Security
- Handle incoming and outgoing requests for prisoner transfer under the 1983 Convention and EU Framework Decision 909
- Transit
- Coordination of transport of the prisoners



Dutch measures for mentally disordered offenders

- Terbeschikkingstelling (TBS) met dwangverpleging: hospital order with compulsory treatment
- TBS met voorwaarden: conditional hospital order
- Plaatsing in een psychiatrisch ziekenhuis: placement in a psychiatric hospital



TBS: Placement under a hospital order

- Treatment measure the court imposes on people who have committed serious offences and suffer from a mental disorder which influences their behaviour
- Mental disorder : 'deficient development or morbid disorder of the mental faculties', at the time the offence was committed (advice from psychologist and psychiatrist)
- Offender is not fully accountable for his actions (combined sentence possible)
- Crime that carries a maximum sentence of 4 years or more (usually serious violent crime)
- Offender must be a danger to society (risk of reoffending)
- Aim: reduce risk. Means to protect society, not a means of retribution.



TBS: hospital order with compulsory treatment

- Custodial measure carried out in a forensic psychiatric centre
- Aim: reduce the risk of recidivism, reintegration into society.
- Two kinds: limited in duration in case of non-violent offences (4 years max), unlimited duration in case of a violent crime.
- First term is 2 years, after this extension by the court by 1 or 2 years
- If after a certain treatment period sufficient progress has been made, leave is granted by the Minister of Justice and Security
- Termination by the court when the risk of reoffending has been reduced to a socially acceptable level



Other measures

- Conditional hospital order:
 - not a custodial measure, but a measure for the restriction of liberty
 - court imposes conditions on the offender's conduct
 - aim: to reduce risk of reoffending through treatment
 - duration: max 9 years
- Placement in a psychiatric hospital:
 - offender is not accountable for actions due to mental disorder
 - danger to him or herself
 - duration: 1 year



Foreign nationals under a hospital order

- Clinic Veldzicht: Forensic Psychiatric Centre
 - government clinic
 - treatment and repatriation of foreign nationals under a hospital order with compulsory treatment
 - mental health staff have a large international network with countries to which mentally disordered offenders can be sent. They are closely involved in returning these offenders to their countries of origin
- Lose their resident permit or are declared undesirable by Immigration and Naturalisation Service.
 - Sliding scale: the duration of the sentence and the length of time the offender has already lived in the Netherlands is taken into account
 - Not possible to reintegrate into society
 - Difficult for the court to terminate the hospital order



Repatriating foreign nationals under a Hospital Order

1. Transfer of the Hospital Order with compulsory treatment:
 - European Convention on the Transfer of Sentenced Persons
 - Council Framework Decision 2008/909/JHA
 - Bilateral treaties
2. Termination of the Hospital Order by the Minister of Justice and Security (*suitable facilities must be arranged in the country of origin; there has to be, at the very least, some form of treatment to reduce the risk of reoffending*)
3. Termination of the Hospital Order by the Court on condition that the offender does not return to the Netherlands



Repatriation of a Belgian national

- Belgian national, has resided in the Netherlands since 1996
- Sentenced in 2006 for the abduction, abuse, threatening and rape of 3 women: prison sentence of 7 years and a hospital order with compulsory treatment
- The Immigration and Naturalisation Service has declared him undesirable
- Request for transfer of the hospital order under Art. 3 of the Additional Protocol. Belgium refused to take over the hospital order.
- Termination of the hospital order by the Court, under the condition that the offender would not return to the Netherlands.
- Deportation to Belgium
- Arrested in the Netherlands, Court orders reinstatement of the order. Procedure of transfer under FD 2008/909?



Procedure of transfer of Hospital Orders

1. Start of the procedure: all foreign nationals under a Hospital Order with compulsory treatment are discussed during monthly meeting, if it is a EU national, we initiate procedure under FD 2008/909
2. Judgment is irrevocable and contains a custodial sentence or measure
3. In the case of a mentally disordered offender under a Hospital Order consultation first: does the executing state have a compatible measure? What are the treatment options for the offender?
4. Advice of the public prosecutor whether a transfer is desirable (severity of the offence, social unrest it may have caused, interests of the victim, possibilities for treatment e.g. are taken into account)



Procedure of transfer of Hospital Orders

5. Decision on behalf of the Minister whether or not to send a certificate for transfer
6. Offender is informed that they are entitled to file an objection with the Court of Appeal in Arnhem-Leeuwarden within 14 days of receiving the letter of notification.
7. Certificate together with judgment, psychiatric reports and relevant information about the Dutch measure is sent to the executing state
8. If executing state consents to the transfer: transport arrangements can be made: offender is accompanied by 2 escorts from the Dutch Military Police and often by social workers from the psychiatric centre.



Challenges of transfer

- Getting the relevant information
 - interpreting the legal system from the executing state
 - what kind of measures exist in the executing state?
 - treatments /facilities available for mentally disordered offenders?
- Recognition of the judgment
 - is an equivalent measure available in the executing state?
- Transfer issues
 - immediate placement in hospital or detention first?
 - sharing medical information



Information

www.dji.nl

- information sheets
- country overview

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