

Response

of the Government of the Netherlands to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Netherlands

from 16 to 18 October 2013

The Government of the Netherlands has requested the publication of this response. The CPT's report on the October 2013 visit to the Netherlands is set out in document CPT/Inf (2015) 14.

Strasbourg, 5 February 2015

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Cooperation between the CPT and the authorities of the Netherlands

1. *The CPT recommends that, when negotiating future readmission agreements and/or implementation protocols, an explicit reference should be made to the possibility for national or international monitoring bodies (such as the CPT) to observe removal operations to the country of destination, including the handover procedure to the local immigration authorities. Specific arrangements should be made, on an ad hoc basis, as regards readmission agreements already in force; the same principles should apply vis-à-vis FRONTEX JROs (paragraph 6).*

Readmission agreements are generally concluded between the European Union and third countries. The presence of international monitoring bodies is not provided for in the standard text of such agreements. Implementation protocols for EU readmission agreements and for bilateral readmission agreements are negotiated at Benelux level. Incorporating an explicit reference to international monitoring bodies in the text of readmission agreements and implementation protocols requires the agreement of all parties involved. This can hinder the conclusion of such agreements and protocols.

However, in cases where it is leading negotiations, the Netherlands is prepared to include a reference to the desire for monitoring to be carried out by international monitoring bodies.

Preliminary remarks

2. *The CPT considers that a State's fundamental obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment (i.e. the "non refoulement principle") must be kept in mind in the context of the removal of foreign nationals by air ("return flights") (paragraph 7).*

The Government fully supports this remark. If an alien believes that returning would place him/her at risk of treatment contrary to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), then he/she can submit an application for asylum to this effect. As part of the asylum procedure, an assessment is made as to whether returning an alien would put him/her at risk of treatment contrary to article 3 of the ECHR. Under the Dutch procedures, asylum applications are considered with due care and can be assessed by an independent court. If it is determined that returning an alien would not put him/her at risk of treatment contrary to article 3 of the ECHR, then return procedures begin. The Netherlands' return policy is implemented with due care and includes the necessary safeguards.

Preparation for removal

3. *The CPT recommends that access to legal advice and avenues of legal recourse to be maintained until the moment of departure (i.e. until the moment the doors of the plane are closed) (paragraph 15).*

The current 'last minute' application procedure offers sufficient safeguards for access to legal assistance and legal remedies until the moment of departure. The alien's legal representative is given prior written notice in due time of when removal will occur to allow enough time to utilise any available legal remedies. The alien is also informed of this. Any request by the alien to contact his/her legal representative on the day of departure will, in principle, always be granted by staff on the ground (Repatriation and Departure Service (DT&V), Immigration and Naturalisation Service (IND), Royal Military and Border Police (KMAR)). In addition, an IND duty officer, who is familiar with the case at hand, stands on the stairs to the aircraft until the actual moment of departure to deal with any possible 'last minute' applications for admission.

4. *The CPT recommends that steps should be taken to ensure that a "last call procedure" be put in place as regards removal operations by air organised by the authorities of the Netherlands (paragraph 16).*

As noted in the response to the previous recommendation, aliens and their legal representatives are informed in due time of the planned flight date so that, if desired, they can make use of any available legal remedies. At least 24 hours before actual removal, it is standard practice for DT&V to make a final removal check; it asks the IND whether the alien's residence status has changed and whether he/she is still required to leave the Netherlands. DT&V does not take any action on actual removal prior to being notified by the IND, and shortly before removal the IND verifies whether the alien can still be removed. The Government will therefore not act upon this recommendation.

5. *The CPT recommends that steps should be taken in future to ensure the presence of medical/nursing staff throughout the whole journey (i.e. from the point of collection to the point of final destination) (paragraph 20).*

As the CPT itself points out, medical/nursing staff are present on official flights. The recommendation of ensuring the presence of medical/nursing staff from the time of departure from the detention location will be acted upon. The course of action obviously depends on the individual circumstances of the patient/alien, however. Such action will not be necessary for every patient, for instance when medical assistance has already been arranged on account of the air travel itself or the length of the journey.

6. *The CPT recommends that in future, in exceptional circumstances, when criteria justifying the use of a diaper are met the diaper to be placed in a correct manner (i.e. under the trousers) (paragraph 21).*

The Government pledges that staff will be made aware of this recommendation, which the Government supports in principle.

7. *The CPT recommends that the use of physical control and restraint techniques by escorts during ground transfer(s) should be justified in each case by an individual risk assessment (paragraph 22).*

An individual risk assessment is undertaken for each alien, based on the M118 form submitted by the chief of police. This form gives KMAR advance notification of the circumstances, including information on the alien's conduct and any medical issues, which could affect the safety of the officials charged with overseeing the flight. During preparations, the escort commander makes an assessment of the situation on the basis of the information provided in this form. During removal, the escort commander continually assesses how an alien should be approached, spoken to and treated, taking account of the applicable procedures. This working method will be maintained.

8. *The CPT recommends that a medical examination of the person to be removed be systematically carried out whenever the prolonged use of force or means of restraint during the removal is expected or highly likely (paragraph 27).*

Prior to a flight, it is not always possible to assess which aliens will exhibit systematic and prolonged resistance. In practice, only a small number of aliens exhibit resistance immediately prior to or during an official flight. Such conduct is generally not sustained, as the alien's resistance normally decreases once the flight commences. In addition, aliens are under medical supervision in detention centres. Should there be indications that removal would be medically irresponsible due to anticipated resistance, this is reported, and a decision can be made on this basis as to whether extra measures are required. Such measures may include a fit-to-fly assessment or the presence of medical/nursing staff on board.

9. *The CPT recommends that all persons returning to detention after an aborted removal operation to undergo a medical examination upon admission to the detention centre (paragraph 27).*

When the removal of an alien is aborted and the alien is returned to a different detention centre than the one in which he/she was previously detained, an assessment will be made by medical staff upon his/her return to the centre. If he/she is returned to the detention centre where he/she was housed prior to the aborted removal, then updated information is provided upon return.

10. *The CPT comments that preparing the person to be removed from the Netherlands well in advance for his/her removal has proved in the long-term to be the most humane and efficient approach (see also paragraph 23) (paragraphs 17 and 23).*

Aliens are kept informed during return procedures and are notified of their removal in due time. During the first removal interview, they receive an information leaflet from DT&V. Should it become possible to remove the alien from the Netherlands, then the destination, date and time of removal are discussed with him/her, if these details are already known. Any medical issues which could play a role during removal are discussed at this point also. The alien's legal representative is informed in writing of the flight details as soon as these are known. The alien is also informed of the flight details in due time.

11. *The CPT recommends that efforts should be made by KMAR – through appropriate training – to develop further ground staff communication skills and facilitate thereby the handling of difficult detainees (paragraph 18).*

All ground staff have received specialised training, focusing on the correct use of means of restraint and on working as part of a team. Staff are trained on how to deal with rising levels of resistance, although it must be noted that simulated resistance does not always accurately correspond to actual resistance by an alien during removal. In order to avoid excesses, staff practise using means of restraint during training and a sports instructor is present and ready to intervene if required. In response to the recommendation, a programme of best practice exchange will take place with the Transport and Support Services Department (DV&O).

12. *The CPT considers that the number of KMAR staff involved in the "standard" pick-up procedure applied to four detainees to be removed on 17 October 2013 appeared to be somewhat excessive (paragraph 19).*

During initial ground staff training, team procedures are practised, with each staff member being allocated a specific task. The effectiveness of this arrangement stems from its nature as a team process and from the manner of its implementation. When waking and collecting aliens from their cells, each team member carries out a specific role. The team can be scaled up if the alien's conduct so requires. Initially, only two ground staff are actively involved, while other members of staff stand and observe from a distance, only intervening if this becomes necessary. The Government will maintain the current working method.

13. *The CPT welcomes the advance procedure (personal belongings being collected the night before departure and put in transparent bags) that made it possible to considerably shorten the waiting time (by a few hours) on the day of departure (paragraph 19).*

The Government has taken note of this (positive) observation.

14. *The CPT observes that far too many staff (including the FRONTEX TV crew) were present in the very small room while the replacement of the means of restraint was taking place (paragraph 21).*

As regards the number of KMAR staff present, the Government refers to the answer given in the response to point 12. As regards the presence of various monitoring bodies (Repatriation Supervisory Committee (CITT), the Security and Justice Inspectorate (IV&J), the CPT and the FRONTEX TV crew), the Government notes that this was a highly exceptional situation and one which ought not to be repeated. The Government also wishes to note that it is not up to the Government to refuse monitoring bodies access.

15. *The CPT observes that the long and tiring procedure described in paragraph 21 would have been unnecessary if the DV&O special escort team had been equipped with a "French" body-belt from the start (paragraph 21).*

DV&O has stated its willingness to work with the 'French' body-belt in future, with the result that means of restraint will not need to be changed, thereby avoiding unnecessarily long procedures. When the 'French' body-belt is used, humane treatment of the alien remains paramount. DV&O staff will be trained in the use of this device. A knowledge exchange programme between KMAR and DV&O has already been announced to this end. Training may form a part of this programme.

16. *The CPT observes that the extended period of time (from 6.10 a.m. to 3.45 p.m.), during which a detainee remained body-cuffed appears excessive for someone who was under constant and close surveillance by three experienced escorts throughout the whole journey to Lagos (paragraphs 24 and 42).*

Based on the alien's conduct during the procedure leading up to the flight and on board the aircraft, the escort commander made the decision not to remove the body-cuff for the duration of the flight, despite escorts being seated next to the alien. The risk that the alien would offer physical resistance if the body-cuff were to be removed was too great, in the escort commander's view. This is not normal procedure, but in this case it was carried out with a view to maintaining safety on board the aircraft. The escort commander makes the decision on whether to remove means of restraint based on the alien's conduct. In general, means of restraint are not used for longer than necessary. In this case, the escort commander deemed it necessary to guarantee the safety of the alien, escorts and other occupants of the aircraft.

17. *The CPT recommends that every person being forcibly removed by air be given the opportunity to undergo a medical examination prior (i.e. a few days before) his/her departure (paragraph 27).*

A medical examination at the alien's request prior to departure is not standard procedure. A fit-to-fly assessment takes place on the basis of guidelines from the International Air Transport Association (IATA). The IATA's 'medical manual' focuses on whether passengers in general are fit to fly. For the passenger's own safety it is important that he/she is found to be sufficiently healthy to allow air travel and that the airline is informed of any conditions that need to be fulfilled to allow him/her to fly. Naturally, the same principles apply to aliens.

A fit-to-fly assessment is not carried out in every removal case, however. All persons are fit to fly in principle, unless there are medical reasons to the contrary. It is therefore the alien's own responsibility to state whether there are any medical reasons preventing him/her from flying. A fit-to-fly assessment is always carried out if the need to do so is evident from advice given by the Medical Advisers' Office (BMA) or the medical service. When there is doubt as to whether a fit-to-fly assessment must be requested, the medical service is contacted for advice. It can also be asked for advice if medical complaints are reported during a removal interview, if it appears from the M118 form that there may be medical issues, or if the alien's authorised representative argues that there are medical obstacles.

18. *The CPT considers that it would have been highly advisable for a Rotterdam Detention Centre health-care professional to be present on the morning of departure, to ensure the fast, smooth and adequate transfer of medical information to the medical team flying to Lagos (as well as to offer the possibility of responding to any last-minute questions they might wish to raise) (paragraph 29).*

The Government will act on this recommendation. Under the working method which has now been adopted, a nurse from the medical service must be present on the morning of departure of all official flights.

19. *The CPT would like to receive detailed information on the comments of the authorities of the Netherlands on the remarks concerning the possibility for the doctor to appropriately assess the medical condition of the person to be removed without having access to his/her medical file, and regarding the possibility for the detainee to establish a proper doctor-patient relationship, based on mutual trust, if the medical doctor is only identifiable with a code number (paragraph 27).*

Any doctor who carries out a fit-to-fly assessment is an independent physician who must make their own judgement of the situation at that moment and of whether an alien is fit enough to fly. If an alien gives permission for the doctor in question to view his/her medical file then this file can be used during the assessment. Otherwise the doctor must make do with the information available to him/her. Whether or not the doctor has access to the alien's medical file is therefore the choice and responsibility of the alien. It is explained that it is in his/her best interests that an assessment be made of his/her fitness to fly. Any consequences arising from a refusal to allow the assessing doctor to view the medical file are at the alien's own risk.

Doctors carrying out fit-to-fly assessments are identified by a code on the fit-to-fly form. These doctors are independent physicians who carry out fit-to-fly assessments alongside their regular medical duties. The reason that a code, rather than a name, is given on the form is due to an incident where a doctor's name appeared on the internet. Doctors do, however, introduce themselves to aliens, stating their name and explaining why the assessment is taking place. The code can always be checked to see which doctor carried out the assessment. In general, aliens only meet a fit-to-fly doctor once, just before removal.

20. *The CPT would like to receive detailed information on the procedures followed during FRONTEX flights as regards the sharing of medical information relating to detainees removed by other PMS with the "Organising State" medical team (paragraph 29).*

See the response to point 22.

Execution of the removal

21. *The CPT is of the opinion that the determined and skilful intervention of the Dutch back-up team leader during the incident on the first flight segment prevented any further escalation of the problem and helped to resolve it in the most appropriate manner (paragraph 32).*

The Government has noted this positive feedback and has informed the official concerned of the CPT's findings.

22. *The CPT is of the opinion that the time is now ripe for more in-depth discussions among FRONTEX State Parties on the subject of promoting more precise common rules on the use of means of restraint (paragraph 32).*

FRONTEX has drawn up a Code of Conduct (attached) which is used during FRONTEX joint return operations. The procedure for sharing medical information is described in this Code of Conduct. Led by FRONTEX, doctors are currently working on a presentation on the transfer of medical details which can be given during escort leader training. A fit-to-fly template is also being prepared. These resources are expected to be completed in autumn 2014. In addition, the use of means of restraint is looked at during escort leader training. For the record, it must also be noted that no practical training is offered on using means of restraint. It is the responsibility of member states to train their own escorts in this respect. As the CPT is already aware, every state has its own techniques and own types of means of restraint. During escort leader training, some attention is paid to legal issues, the periods for which means of restraint can be used, which means of restraint are permitted and who has the authority to use them. Finally, the Government pledges to raise the recommendation in question within FRONTEX when the opportunity arises.

23. *The CPT invites the authorities to reconsider their policy on keeping the door of the toilet systematically slightly open for security reasons when a detainee is complying with the needs of nature; decisions in relation to these matters should be based on an individual risk assessment (paragraph 33).*

See the response to point 7. An individual risk assessment is undertaken for each alien, based on reports of the alien's medical and conduct issues.

24. *The CPT welcomes the approach followed by the two health-care professionals, which reflects the Committee position that the use of chemical restraint during removal operations is unethical and strictly prohibited by law (paragraph 36).*

The Government takes note of this positive finding from the CPT.

25. *In the CPT's opinion, health-care staff accompanying removal operations by charter flight should be systematically provided with a fully equipped emergency case (i.e. including a variety of medical equipment, as well as the medication most commonly used in emergency situations) (paragraph 37).*

It has been agreed with the service that supplies medical escorts for official flights that a fully-equipped emergency case will be carried on every official flight.

Handover to the Nigerian authorities and debriefing-related issues

26. *The CPT recommends that both preliminary (i.e. on board) and in-depth debriefing sessions be systematically organised after removal operations, both at team and senior levels, in the light of the remarks in paragraph 40 (paragraph 40).*

Briefings take place at various moments during the removal operations process. Prior to the departure of a joint return operation (JRO) for a final destination, the escort commander from the organising state organises a briefing with all escort commanders from participating states and the FRONTEX observer. Following handover, a debriefing occurs in the aircraft involving the escort commander from the organising state, all the escort commanders from participating states and the FRONTEX observer. During the return flight, the escort commanders fill out debriefing forms. Upon arrival in the Netherlands, an immediate debriefing involving the Dutch escorts is held following disembarkation of the aircraft. DT&V is subsequently responsible for the creation of a Final Return Operation Report (FROR). Shortly after the completion of an operation, DT&V also issues a written request for feedback to all the partners involved. An evaluation meeting is organised by DT&V if this is felt to be necessary. The JRO is then evaluated at the next FRONTEX JRO Evaluation and Planning Meeting.

Other issues related to the CPT mandate

Use of force

27. *The CPT recommends that all KMAR escort staff wear a visible identification tag that would make them easily identifiable (either by their name or an identification number) (paragraph 43).*

Escorts do not currently wear any visible identification that would make individuals easily identifiable. Prior to the flight, KMAR staff members show their identification to the deportee and FRONTEX staff members. There is also a seating plan which establishes which escorts are accompanying a given alien and where they are seated within the aircraft. This means that it is always possible to establish which escort has been in contact with a given alien after the fact. Furthermore, when accompanying aliens, KMAR makes use of an exceptional circumstances form, in which the names of the escorts and any exceptional circumstances are recorded. This means that observers can always find out the names of given escorts. As an alternative to visible identification, jackets clearly stating the role of the KMAR staff member (escort commander, escort or back up) are now in use. On the basis of the foregoing, the Government believes it has acted sufficiently on the CPT's recommendation.

Role of national monitoring bodies

28. *The CPT recommends that the precepts detailed in paragraph 48 regarding the monitoring of a person to be removed to be followed by the IV&J monitors when performing their new duties (paragraph 48).*

IV&J recognises the importance of this recommendation from the CPT. Like the CPT, IV&J views establishing a good relationship between the escort team and the deportee as essential to ensuring that removal procedures run smoothly. The monitoring of removal procedures by IV&J therefore includes witnessing the (first) meeting between these parties. In the Netherlands, this does not – in contrast to what is perhaps suggested in the text of the CPT report – usually coincide with the moment that the deportee is collected from a detention centre or similar institution on the day of removal. It takes place at the Schiphol departure centre, to which DV&O brings the deportee three hours prior to his/her removal. IV&J monitors are present as witnesses from the moment a deportee arrives at the departure centre. In the near future, monitoring of how immigration policy is implemented will be further extended and the processes preceding actual removal will also be subject to monitoring by IV&J.

29. *The CPT would like to receive information on the protocol being drawn up by DT&V regulating the transfer of medical information the health-care staff of the detention centers and the contracted external medical services (paragraph 45).*

As a result of doctor-patient confidentiality, DT&V does not have access to the medical files of aliens. It can however play a facilitating role by passing details provided by the medical service where the alien is residing on to the medical escort who is present on the flight. This medical escort can then contact the medical service.

30. *The CPT would like to receive detailed information on the mandate, the powers and the means assigned to the IV&J in order to fulfil the new monitoring mission of removal operations by air (paragraph 47).*

The Return of Aliens (Monitoring) Order of 13 December 2013 (Government Gazette, 35638, 23 December 2013, see attached) outlines the monitoring mandate and powers. The main points of this ministerial order are as follows. IV&J is the designated monitor. The order explicitly states that IV&J receives no instructions for carrying out this task from the Minister of Security and Justice or others concerning the methods to be used, IV&J's appraisal and its subsequent report. Furthermore, provisions on the following are included: the report (i.e. who to report to and the availability of the report); the granting of powers (such as physical access and the obligation to cooperate); and the notification of the relevant institutions about planned monitoring activities. Monitoring is now carried out by four observers engaged by IV&J. These experienced monitors previously carried out similar duties for IV&J's predecessor, CITT. This pool is currently being further supplemented by a number of inspectors from IV&J itself. All those charged with monitoring have the necessary resources to carry out their duties effectively, such as a monitoring framework, monitoring forms, passes for Schiphol Airport, diplomatic passports and clothing which renders them identifiable.

Staff related issues

31. *The CPT observes that regular team debriefings (see paragraph 40) also play a very important role in the context of the prevention of professional exhaustion syndrome and the risks related to routine, as well as the provision, on request, of specialised psychological support for staff (paragraph 50).*

Escorts are currently debriefed following every flight. This includes a complete run-through of the flight and of any exceptional circumstances in relation to the deportee. If possible, debriefing occurs while still on board the aircraft. Escorts and the back-up team are briefed separately, for practical reasons. Current practice is that if debriefing takes place on board, no further debriefing takes place upon arrival in the Netherlands. As well as a debriefing by the organising state, FRONTEX observers are always on board and escorts fill out an evaluation form during the flight for the FRONTEX Final Report. FRONTEX discusses the flight with the organising state. The practicalities of arranging for an additional debriefing upon arrival in the Netherlands are currently being examined.

Complaint procedures

32. *The CPT would like to receive detailed information on the complaints made in 2013 (substance, action taken, etc.) regarding misbehaviour of KMAR escort staff during repatriation operations (paragraph 51).*

2013	1st quarter	2nd quarter	3rd quarter	4th quarter	Total
Number of contacts with aliens within the Alien Affairs Brigade (BVZ)	4,116	3,979	3,687	4,365	16,147
Number of instances of use of force reported within BVZ	178	135	161	112	586
Number of instances of use of assistive device(s)	59	64	60	37	220
Number of instances of use of means of restraint	170	175	108	98	551
Number of instances of use of physical force	38	31	31	12	112
% of contacts with aliens in which physical force was used	0.9%	0.8%	0.8%	0.3%	0.7%
Total number of complaints	2	3	2	3	10
Number of complaints pertaining to physical force	2	2	2	1	7
Number of parts of which complaints were comprised	2	3	3	8	16
Number of parts of complaints declared well founded	0	0	0	1	1
Number of parts of complaints declared unfounded	1	3	0	7	11
Number of parts of complaints not ruled on	1	0	3	0	4
% of contacts with aliens within BVZ in relation to which complaints were registered	0.05%	0.08%	0.05%	0.07%	0.06%

% of instances of use of force reported within BVZ in relation to which complaints were registered	1.1%	2.2%	1.2%	2.7%	1.7%
% of total number of complaints relating to use of force	5.3%	6.5%	6.5%	8.3%	6.3%
% of total number of complaints relating to use of physical force	100.0%	66.7%	100.0%	33.3%	70.0%
% of parts of complaints declared well founded	0.0%	0.0%	0.0%	12.5%	6.3%
% of parts of complaints declared unfounded	0.0%	0.0%	0.0%	0.0%	0.0%
% of parts of complaints not ruled on	50.0%	0.0%	100.0%	0.0%	25.0%

33. *Is a similar complaint system in place concerning DT&V and DV&O activities in the context of removal operations (paragraph 51).*

There is currently a gap in the complaints system, which is being addressed in the Bill amending the Custodial Institutions Act, the Hospital Orders Framework Act, the Young Offender Institutions Framework Act and other legislation in connection with transport, the medical right of complaint and other subjects (Parliamentary Papers, House of Representatives, 2013-2014, 33 844). Once the amendments have been implemented, aliens will be able to submit complaints about (a) body and clothing searches, (b) the use of force and (c) the use of means of restraint.

DT&V operates a complaints procedure based on the General Administrative Law Act (AWB). The Government provides a summary of written complaints submitted to DT&V 2013 below.

	Number in 2013
Written complaints (total)	25
Nature of the complaint:	
1. Concerning processing period (<i>complaints relating to the time taken to process permit applications etc.</i>)	7
2. Concerning provision of information (<i>complaints relating to the provision of information</i>)	2
3. Concerning the conduct of a staff member	6
4. Concerning other issues	10
Manner of disposal in 2013:	Number in 2013
- complaint will not be processed (<i>merits of the complaint not to be assessed</i>)	1
- complaint unfounded (<i>complaints assessed as – manifestly – unfounded</i>)	7
- complaint well founded (<i>complaints assessed as – manifestly – well founded</i>)	4
- complaint partially well founded/unfounded (<i>some parts of the complaint assessed as well founded, others as unfounded</i>)	3
- other manner of complaint disposal/settled amicably (<i>this relates to a settlement, when a complaint is informally disposed or withdrawn, see article 6 of the model complaints procedure</i>)	3
- complaint pending	7



FRONTEX



CODE OF CONDUCT

**FOR JOINT RETURN
OPERATIONS
COORDINATED
BY FRONTEX**



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PART I

CHAPTER I

INTRODUCTION

Article 1

Scope and subject matter

This Code sets out common principles and main procedures to be observed in the joint return operations of Member States coordinated by Frontex (hereinafter “JRO”).

Article 2

Relation with Frontex Code of Conduct and other relevant texts

1. This Code complements the provisions of the Code of Conduct for all persons participating in Frontex activities¹ and builds upon the Common Guidelines on security provisions by air annexed to Decision 2004/573/EC² (hereinafter “Annex of Decision 2004/573/EC”) which shall – in accordance with Article 8(5) of the Return Directive 2008/115/EC³

1 Decision of the Frontex Executive Director No 24/2011 of 21 March 2011.

2 Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders, OJ L 261 of 6.8.2004.

3 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348 of 24.12.2008.

(hereinafter “Return Directive”) – be taken into account in each case of removal by air.

2. Technical and detailed instructions for the practical implementation of Frontex coordinated JROs are included in separate and relevant Best Practices for operations developed and updated by Frontex together with the authorities of Member States.

Article 3

Definitions

For the purpose of this Code, the following definitions apply:

- a) The term “Member State” (hereinafter “MS”) means a Member State of the European Union or a Country associated with the implementation, application and development of the Schengen *acquis*.
- b) The term “Organising Member State” (hereinafter “OMS”) means the MS which is responsible for the organisation of a JRO.
- c) The term “Participating Member State” (hereinafter “PMS”) refers to the MS which participates in a JRO organised by the Organising Member State.
- d) The term “returnee” means a third-country national who is subject to a return decision.
- e) The term “participant” means any person, including escorts, monitors, interpreters and medical staff, taking part in a JRO, other than the returnee.
- f) The term “escort(s)” refers to the security personnel, including persons employed by private contractor, responsible for accompanying the returnees, in particular during their transportation out of the Member State.
- g) The term “escort leader” means the escorts who are, in accordance with the instructions given, in charge of managing a national group of escorts

during a JRO. Each organising and participating MS appoints its escort leader.

- h) The term “head of operation” means the person appointed by the OMS as having the overall responsibility for a JRO. Where no particular person is appointed, the escort leader of the OMS is to be considered as the head of the JRO.
- i) The term “back-up team” means a group of escorts – usually provided by the OMS – acting as support to the escorts of both OMS and PMSs.
- j) The term “monitors” refers to persons who monitor the JRO in accordance with the effective monitoring system established by MSs pursuant to Article 8(6) of the Return Directive.
- k) The term “fit-to-travel” refers to a returnee’s medical condition⁴, which allows the person to travel safely.
- l) The term “pre-departure phase” means, according to the Annex of Decision 2004/573/EC, the period starting with transportation to the airport.

4 Both physical and mental.

GENERAL PRINCIPLES

Article 4

Respect for Fundamental Rights

1. JROs are to be conducted in a humane manner and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights and in other relevant international instruments, in particular the principles of human dignity, the right to life, the principle of *non-refoulement*, the right to asylum, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security, the rights of the child, the rights to the protection of personal data and non-discrimination, and the right to respect for private and family life.
2. JROs are to be conducted without discrimination on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
3. While respecting the dignity of the returnees, their safety as well as the safety of the other participants and of the crew members are paramount during the JRO. The JRO must be interrupted or terminated in case:
 - a. its continuation would be considered unsafe by the flight captain, the Head of Operation

- or Frontex, in close liaison, in accordance with point 3.1.d of the Annex of Decision 2004/573/EC and Article 3(1a) of the Frontex Regulation;
- b. of violations of fundamental rights of a serious or persistent nature in accordance with Article 3(1a) of the Frontex Regulation⁵.

Article 5

Cooperation with returnees

1. The competent authorities of the MSs as well as the other participants, taking into account individual risk assessments, shall seek cooperation with each returnee at all stages of the JRO in order to avoid, or limit to the minimum extent necessary, the use of force.
2. The competent authorities of the MSs are expected to give sufficient and clear information to the returnees about the JRO, including the possibility to lodge a complaint concerning alleged ill-treatment during the operation.

Article 6

Use of Coercive measures

1. Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal, or in response to an immediate and serious risk of the returnee escaping, causing injury to herself/himself or to a third party, or causing damage to property.

5 Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union as amended by Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011, OJ L 304 of 22.11.2011.

2. The use of coercive measures must be proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and his/her physical integrity.
3. Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally, must not be used.
4. The OMS and Frontex decide on a list of authorised restraints in advance of the JRO. This list must be distributed to the relevant PMSs prior to the JRO. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security.
5. No PMS is required to use coercive measures not allowed under its national legislation even if those measures are accepted by the OMS and Frontex for that particular JRO.

ORGANISATION OF THE REMOVAL

Article 7

Fitness to travel and medical examination

1. The returnees are to be removed only as long as they are “fit-to-travel” at the time of the JRO. The OMS must refuse the participation in a JRO of a returnee who is not fit-to-travel.
2. In a reasonable time prior to the JRO, the authorities of the MSs are required to provide a medical examination of a returnee, subject to his/her agreement, when he/she has a known medical condition or where medical treatment is required.
3. Relevant PMSs inform the OMS in advance about any medical condition of a returnee which would need special care and attention.
4. The processing of medical information must be carried out in line with applicable and relevant personal data protection legislation.

Article 8

Escorts

1. While escorts are primarily and individually responsible for their actions in their work, the authorities of the MSs have the overall responsibility in accordance with general principles of state responsibility (e.g. for damages or for investigating and

sanctioning actions of escorts acting under their instructions, according to Article 17 of this Code), irrespective of whether the escorts are State employees or employed by a private contractor.

2. The number of escorts is determined in accordance with an appropriate risk assessment by each MS taking part in a JRO, and in consultation, if necessary, with Frontex, OMS and the relevant PMS.
3. Escorts are carefully selected and trained taking into account their particular functions in the JRO.
4. The appropriate back-up team of escorts is provided by the OMS in order to give assistance to escorts (both OMS and PMSs) during the JRO. PMSs may also provide their own back-up team if deemed necessary.

Article 9

Identification

The participants should be identifiable and fully distinguishable from returnees. For this purpose official vests, armbands, badges or some other distinguishing signs are required to be worn while on duty.

Article 10

Recording

1. Photographing, filming or any other form of recording during a JRO is possible only when specifically agreed between the OMS, PMSs, Frontex and the company operating the means of transport, and in compliance with applicable data protection legislation.
2. The JRO should be fully documented by the OMS and the PMS(s) according to their national requirements, in particular with respect to any significant

incidents that occur or any coercive measures used in the course of the operation.

Article 11

Medical staff and interpreters

1. During a JRO, at least one medical doctor should be present.
2. The OMS provides *appropriate* medical staff and, depending on an assessment of the returnees' needs and escorts' language skills, suitable interpreters during the JRO.
3. If necessary, the PMS(s) may also provide its own medical staff for the JRO.

Article 12

Presence of external representatives during the Joint Return Operation

1. The OMS informs the PMS(s) when external representatives (e.g. Embassies/Ministries/International Organisations/NGOs) are intending to be present during a JRO.
2. When external representatives from the PMS(s) intend to be present during a JRO, the PMS(s) should obtain agreement in advance from the OMS.

MONITORING SYSTEM

Article 13

Scope and Nature

1. The monitoring of JROs aims to gather information and ensure they are conducted in a humane manner and in compliance with fundamental rights as stated in Article 4 of this Code.
2. The monitoring system established in accordance with Article 8(6) of the Return Directive must be effective and involve monitoring by organisations/bodies independent from the authorities enforcing return. Pursuant to the principle set forth in the Frontex Fundamental Rights Strategy⁶, MSs taking part in a JRO are required to ensure that they have in place an effective forced return monitoring system. Failing to meet this condition could ultimately lead to postponement or cancellation of the participation of the respective MS.
3. The monitoring of JROs, in accordance with Article 9(1b) of the Frontex Regulation, should be carried out on the basis of objective and transparent criteria and cover the whole JRO, from the pre-departure phase until the hand-over of the returnees in the country of return or back to the country of departure.

6 Frontex Fundamental Rights Strategy, endorsed by the Frontex Management Board on 31 March 2011.

Article 14

Monitors

1. The assigned monitors are responsible according to their applicable obligations.
2. In order to ensure an effective monitoring system, monitors must have access to all relevant information concerning the JRO, including:
 - a. timely communication of the date and time of the JRO, the country(ies) of return and necessary travel documents, the number and origin of returnees particularly including any forms of vulnerability, e.g. pregnant women, families with children, elderly people, persons with disabilities or with a medical condition;
 - b. access to returnees, unless prevailing risk assessment prescribes otherwise;
 - c. unimpeded access to all areas used for the JRO.
3. Monitors may observe the briefings prior to the JRO as well as participate in the debriefings where they may provide a brief account of the main findings.
4. Monitors may inform the head of operation and/or the escort leader(s) of any perceived irregularities but may not interfere with the planned execution of the JRO.
5. When feasible and subject to prior agreement between the MSs concerned, monitors may also monitor on behalf of other MSs taking part in the JRO.
6. Unless contrary to national rules and procedures, the report(s) of the monitors is (are) sent to Frontex in a timely manner after the end of a JRO and their observations are included in the Final Return Operation Report to be delivered to Frontex.

FINAL PROVISIONS

Article 15

Information on this Code

1. All participants in the JRO, prior to their engagement in the operation, are required to get acquainted with the content of this Code and fundamental rights through appropriate training.
2. Frontex will ensure that the content of this Code is communicated to the national authorities of the countries of return.

Article 16

Reporting

Any participant in the JRO who has reasons to believe that a violation of this Code or of fundamental rights has occurred is required to report it to Frontex via the appropriate channels, for example via Frontex Serious Incident Reporting system.

Article 17

Investigation procedure and Right to be informed

1. If the violation was committed by a person assigned by a MS, the facts must be communicated

to the competent national authority concerned that provides for an effective and independent investigation.

2. The authorities of the MS are expected to inform Frontex of the conduct and results of the investigation.
3. The Frontex Executive Director may request information on the conduct and results of the investigation and may decide to inform the Management Board accordingly.
4. The returnee may request information and should be informed of the measures taken and his/her possible right to compensation.

Article 18

Sanctions

1. In accordance with Article 9 of the Frontex Regulation, Frontex' financial support to MSs for the JRO is conditional upon full respect of the EU Charter of Fundamental Rights.
2. In the case of violation of this Code by a Frontex staff member, the Frontex Executive Director takes appropriate measures in accordance with the relevant applicable rules.



PART II

Decision of the Executive Director
No 2013/67 on

CODE OF CONDUCT FOR JOINT RETURN OPERATIONS COORDINATED BY FRONTEX

THE EXECUTIVE DIRECTOR,
Having regard to the Frontex Regulation¹, in particular Article 25(3), read together with Article 9(1a) thereof,

WHEREAS:

- (1) Pursuant to Article 9(1a) of the Frontex Regulation, Frontex has developed a Code of Conduct for the return of illegally present third-country nationals which applies during all joint return operations coordinated by Frontex (hereinafter "the Code").
- (2) The Code aims at describing common standardised procedures regarding the organisation of joint return operations, and assures return in a humane manner and with full respect for fundamental rights. The Code is applicable to all participants taking part in joint return operations coordinated by Frontex and must be respected by them. Any financial support from Frontex for a joint return operation is conditional upon the full respect of the Charter of Fundamental Rights of the European Union².

1 Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349, 25.11.2004), as last amended.

2 Charter of Fundamental Rights of the European Union, 2000/C 364/01.

(3) The provisions of the Code of Conduct for joint return operations coordinated by Frontex reflect the principles contained in the Charter of Fundamental Rights, Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals³, Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders⁴, Council of Europe's Twenty guidelines on forced return⁵, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁶, United Nations Code of Conduct for Law Enforcement Officials⁷, Frontex Fundamental Rights Strategy and its Action Plan⁸ and Frontex Code of Conduct for all persons participating in Frontex activities⁹, Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders.

3 Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

4 Council Decision 2004/573 of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders.

5 Twenty Guidelines on forced return of the Council of Europe, September 2005.

6 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

7 United Nations Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.

8 Endorsed by the Management Board on 31 March 2011 and 21 September 2011 respectively.

9 Decision of the Frontex Executive Director No 24/2011 of 21 March 2011.

- (4) Frontex mandate includes the responsibility for providing the necessary assistance and, at the request of the participating Member States, ensuring the coordination or the organisation of joint return operations of Member States.
- (5) In accordance with Article 9(1) of the Frontex Regulation, Frontex is not empowered to enter into the merits of return decisions taken by the Member States. Therefore, it is up to the Member States concerned to ensure that the legal situation of each of the returnees for which they are responsible allows for the return.
- (6) Pursuant to Article 26a of the Frontex Regulation the content of the Code was consulted with the Frontex Consultative Forum.

HAS DECIDED AS FOLLOWS:

Article 1

The Code contained in the Annex to this Decision is hereby adopted.

Article 2

A copy of the Code is annexed to all plans referring to the joint return operations coordinated by Frontex. A copy of the Code is delivered to all participants taking part in the joint return operations coordinated by Frontex prior to the operation.

Article 3

The Code is regularly reviewed on the basis of experience gained through its operational application, and further developed where necessary.

Article 4

This Decision and its Annex enter into force on the day following its signature.

Done at Warsaw, 07.10.2013

[signed]

Ilkka Laitinen
Executive Director



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Regeling van de Staatssecretaris van Veiligheid en Justitie van 13 december 2013, houdende de regeling van het toezicht op de terugkeer van vreemdelingen (Regeling toezicht terugkeer vreemdelingen)

De Staatssecretaris van Veiligheid en Justitie,

Handelende in overeenstemming met de Minister van Defensie;

Besluit:

Artikel 1

In deze regeling wordt verstaan onder:

inspectie: de Inspectie Veiligheid en Justitie;

instanties waar het toezicht wordt uitgeoefend: de Immigratie- en Naturalisatiedienst, de Koninklijke marechaussee, de Dienst Justitiële Inrichtingen, het Centraal Orgaan opvang asielzoekers, het landelijke politiekorps of de Dienst Terugkeer en Vertrek;

inspecteurs: ambtenaren of andere personen werkzaam bij of voor de inspectie;

minister: de Minister van Veiligheid en Justitie;

terugkeerproces: de handelingen, anders dan rechtshandelingen, gericht op de terugkeer van de vreemdeling naar het land van herkomst of een veilig derde land, in verband met het onrechtmatig verblijf in Nederland, de verwachting van het verlies van het verblijfsrecht op korte termijn, of de weigering van de toegang tot Nederland.

Artikel 2

1. De inspectie houdt toezicht op het terugkeerproces.
2. Bij de uitvoering van de in het eerste lid bedoelde taak, ontvangt de inspectie geen aanwijzingen van de Minister of anderen over de te hanteren methodiek, haar oordeelsvorming en de rapportage daarover.
3. De inspectie rapporteert periodiek omtrent de uitoefening van de in het eerste lid bedoelde taak aan de Minister en aan andere betrokken bewindspersonen. Een afschrift van deze rapportage wordt verzonden aan de instanties waar het toezicht wordt uitgeoefend.
4. Indien een rapportage niet binnen zes weken na het uitbrengen ervan aan de Minister door de Minister of een andere bewindspersoon openbaar is gemaakt, wordt deze openbaar gemaakt door plaatsing op de website van de inspectie.
5. De inspectie brengt over de uitoefening van de in het eerste lid bedoelde taak jaarlijks schriftelijk verslag uit aan de Minister en andere betrokken bewindspersonen.

Artikel 3

1. De inspecteurs belast met de uitvoering van de in artikel 2, eerste lid, bedoelde taak hebben te allen tijde toegang tot de ruimten die worden beheerd door de instanties waar het toezicht wordt uitgeoefend, voor zover daar het terugkeerproces wordt uitgevoerd, en de in die ruimten verblijvende vreemdelingen, tenzij er, naar het oordeel van de leidinggevende ambtenaar van betreffende instantie ter plaatse, gegronde reden bestaat om aan te nemen dat de orde daardoor zal worden verstoord.
2. De in het eerste lid bedoelde inspecteurs worden door de instanties waar het toezicht wordt uitgeoefend geïnformeerd over de ter plaatse geldende veiligheidsvoorschriften en dienen de op grond daarvan gegeven aanwijzingen van die instanties terstond op te volgen.
3. De instanties waar het toezicht wordt uitgeoefend verlenen de in het eerste lid bedoelde inspecteurs terstond alle medewerking die zij redelijkerwijs voor hun taak behoeven en voorzien deze inspecteurs desgevraagd van inlichtingen, middelen en mogelijkheden om het toezicht uit te oefenen.



-
4. Toezichthandelingen met betrekking tot de feitelijke uitzetting van vreemdelingen worden vooraf door de inspectie gemeld aan de Commandant Koninklijke marechaussee en de algemeen directeur van de Dienst Terugkeer en Vertrek, tenzij het met het oog op de onafhankelijke en effectieve uitvoering van het toezicht op het terugkeerproces naar het oordeel van de inspectie noodzakelijk is om deze melding achterwege te laten. Indien de instanties waar het toezicht wordt uitgeoefend van oordeel zijn dat een voorgenomen toezichthandeling in een specifiek geval niet mogelijk is, wordt dit met redenen omkleed aan de inspectie bericht.
 5. Artikel 5:12 van de Algemene wet bestuursrecht is van overeenkomstige toepassing op de in het eerste lid bedoelde inspecteurs.

Artikel 4

Deze regeling treedt in werking met ingang van 1 januari 2014.

Artikel 5

Deze regeling wordt aangehaald als: Regeling toezicht terugkeer vreemdelingen.

Deze regeling zal met de toelichting in de Staatscourant worden geplaatst.

's-Gravenhage, 13 december 2013

*De Staatssecretaris van Veiligheid en Justitie,
F. Teeven.*



TOELICHTING

Algemeen

Mede met het oog op een humane en zorgvuldige uitvoering van het terugkeerproces, is het van belang dat onafhankelijk toezicht wordt uitgeoefend op dat proces. Met de onderhavige regeling wordt het integrale toezicht op het terugkeerproces aan de Inspectie Veiligheid en Justitie (hierna: de inspectie) opgedragen. Het toezicht wordt uitgeoefend bij de instanties die betrokken zijn bij het terugkeerproces, te weten de Immigratie- en Naturalisatiedienst, de Koninklijke marechaussee, de Dienst Justitiële Inrichtingen, het Centraal Orgaan opvang asielzoekers, het landelijke politiekorps en de Dienst Terugkeer en Vertrek. De meeste van deze instanties zijn werkzaam onder de verantwoordelijkheid van de Minister van Veiligheid en Justitie, die ingevolge de Vreemdelingenwet 2000 belast is met de feitelijke uitvoering van de terugkeer van vreemdelingen. De Minister van Defensie is korpsbeheerder van de Koninklijke marechaussee. Gezien de rol van de Koninklijke marechaussee binnen het terugkeerproces is deze regeling ook in overeenstemming met de Minister van Defensie vastgesteld.

Ten behoeve van de uitoefening van haar toezichtstaak ingevolge deze regeling, worden aan de inspectie enige bevoegdheden toegekend, die met name zien op het verkrijgen van toegang tot de ruimten waar het terugkeerproces wordt uitgevoerd en de in die ruimten verblijvende vreemdelingen. In deze regeling zijn voorts bijzondere bepalingen opgenomen om de onafhankelijkheid van het toezicht te waarborgen.

Uit artikel 8, zesde lid, van de Richtlijn 2008/115/EG van het Europees Parlement en de Raad van 16 december 2008 over gemeenschappelijke normen en procedures in de lidstaten voor de terugkeer van onderdanen van derde landen die illegaal op hun grondgebied verblijven (PbEU 2008, L 348) (hierna: de Terugkeerrichtlijn), volgt dat er een effectief mechanisme voor het houden van toezicht op het terugkeerproces in de lidstaten dient te zijn. Het terugkeerproces vangt aan met een terugkeerbesluit en eindigt op het moment dat de vreemdeling daadwerkelijk arriveert in en toegang krijgt tot het land waarnaar hij uitreist of wordt verwijderd. Het begrip 'terugkeer' heeft in de Nederlandse regelgeving, met name de Vreemdelingenwet 2000, thans de betekenis die daaraan in de Terugkeerrichtlijn wordt gehecht. Het terugkeerproces zoals in deze regeling gedefinieerd omvat evenwel geen rechtshandelingen. Het toezicht richt zich op het correct en efficiënt functioneren van de bij het terugkeerproces betrokken instanties. Met deze regeling wordt het toezicht belegd bij een organisatie die onafhankelijk opereert van de diensten die met de uitvoering van het terugkeerproces zijn belast.

De hiervoor omschreven toezichtstaak is tot de inwerkingtreding van deze regeling uitgevoerd door de op 22 juli 2007 in het leven geroepen Commissie Integraal Toezicht Terugkeer (hierna: CITT). Bij brief van 17 april 2013 is de Tweede Kamer geïnformeerd over het voornemen de taken van de CITT per 1 januari 2014 onder te brengen bij de inspectie (Kamerstukken II, 2012/13, 19 637, nr. 1655). Met deze regeling wordt aan dit voornemen uitvoering gegeven.

De met deze regeling aan de inspectie opgedragen toezichtstaak ten aanzien van het terugkeerproces omvat niet de behandeling van individuele klachten over het terugkeerproces. Door de inspectie ontvangen klachten over de bij het terugkeerproces betrokken diensten worden dan ook conform artikel 2:3, eerste lid, Algemene wet bestuursrecht onverwijld doorgezonden naar de tot behandeling van die klachten bevoegde bestuursorganen.

Artikelsgewijs

Artikel 1

In deze bepaling worden inspecteurs gedefinieerd als ambtenaren of andere personen werkzaam bij of voor de inspectie. Bij die andere personen kan bijvoorbeeld worden gedacht aan externe deskundigen, door de inspectie aangetrokken omwille van hun bijzondere expertise op het onderhavige toezichtsterrein. Onder het terugkeerproces wordt ook de weigering van vreemdelingen aan de grens begrepen, nu bij deze categorie vreemdelingen ook sprake kan zijn van escortering door de Koninklijke marechaussee en de mogelijke toepassing van dwangmiddelen.

Artikel 2, tweede lid

Deze bepaling beoogt te waarborgen dat de inspectie bij de uitoefening van het toezicht op het terugkeerproces onafhankelijk te werk gaat. Deze onafhankelijkheid geldt niet alleen ten opzichte van de instanties waar het toezicht wordt uitgeoefend, maar ook ten opzichte van de bewindspersonen die



de verantwoordelijkheid dragen voor die instanties c.q. voor de uitvoering van het terugkeerproces. Nadere invulling van de werkwijze van de inspectie geschiedt in een door de inspectie zelf op te stellen protocol.

Artikel 2, derde lid

Deze bepaling regelt de wijze van rapportage door de inspectie over de uitoefening van haar taken ingevolge artikel 2, eerste lid. Gerapporteerd wordt aan de Minister van Veiligheid en Justitie alsmede andere bewindspersonen die bij het terugkeerproces betrokken zijn. In dat verband kan bijvoorbeeld worden gedacht aan de Minister van Defensie, verantwoordelijk voor de Koninklijke marechaussee, of de Minister van Buitenlandse Zaken, die betrokken is bij het afsluiten van terug- en overnameovereenkomsten met de landen van herkomst.

Artikel 2, vierde lid

Doorgaans zullen rapportages van de inspectie openbaar worden gemaakt door de voor het terugkeerproces verantwoordelijke bewindspersoon of bewindspersonen. Met het oog op het op zorgvuldige wijze afleggen van verantwoording over het onafhankelijk toezicht op het terugkeerproces is het van belang dat hierover in het openbaar wordt gerapporteerd. Het vierde lid voorziet er daarom in dat rapportages na uiterlijk zes weken na het uitbrengen ervan openbaar worden gemaakt. Ter voorkoming van enig misverstand zij opgemerkt dat de gronden, genoemd in de artikelen 10 en 11 van de Wet openbaarheid van bestuur, zich kunnen verzetten tegen openbaarmaking van rapportages of gedeelten daarvan.

Artikel 2, vijfde lid

Met het oog op het op zorgvuldige wijze afleggen van verantwoording over het onafhankelijk toezicht op het terugkeerproces is het voorts van belang dat jaarlijkse openbaar verslag wordt gedaan door de inspectie over het uitgevoerde toezicht. Dit verslag kan een onderdeel zijn van het Jaarverslag Inspectie Veiligheid en Justitie, waarin de verslaglegging ten aanzien van het toezicht op het terugkeerproces dan een afgebakend onderdeel vormt.

Artikel 3, eerste lid

Deze bepaling beoogt te waarborgen dat inspecteurs van de inspectie, belast met de uitoefening van het toezicht op het terugkeerproces toegang hebben tot de ruimtes die bij de instanties waar het toezicht wordt uitgeoefend in beheer zijn, voor zover daar het terugkeerproces wordt uitgevoerd. Deze waarborg voor toegang is noodzakelijk om het onafhankelijk toezicht daadwerkelijk vorm te kunnen geven. In zeer uitzonderlijke gevallen kan er evenwel grond bestaan om de toegang van inspecteurs toch te weigeren. Met het weren van inspecteurs dient terughoudend, en alleen in gevallen van gegronde vrees voor ordeverstoring om te worden gegaan.

Artikel 3, derde lid

De instanties waar het toezicht wordt uitgeoefend, zijn op grond van deze bepaling verplicht terstond alle medewerking te verlenen die de inspectie redelijkerwijs voor de uitoefening van haar taak behoeft, bijvoorbeeld door het bieden van inzage in documenten. Dit laat onverlet dat de inspectie zich ook buiten de instanties waar het toezicht wordt uitgeoefend kan wenden tot organisaties en bedrijven die faciliteiten leveren in het kader van het terugkeerproces, zoals de Internationale Organisatie voor Migratie (IOM) en de KLM. De verplichtingen die op grond van dit artikel gelden voor de instanties waar het toezicht wordt uitgeoefend, gelden evenwel niet voor deze overige bedrijven en organisaties.

Artikel 3, vierde lid

Deze bepaling geeft als hoofdregel dat voorgenomen toezichtshandelingen met betrekking tot de feitelijke uitzetting in het kader van het terugkeerproces door de inspectie vooraf worden gemeld aan de betrokken instanties. Naar aanleiding van die melding kunnen deze instanties aangeven dat in een specifiek geval een voorgenomen toezichtshandeling onmogelijk is. De gronden hiertoe dienen te worden gemotiveerd aan de inspectie. Daarnaast maakt deze bepaling het mogelijk dat de inspectie ook onaangekondigd toezichtshandelingen in het terugkeerproces kan uitvoeren. Over de wijze waarop de inspectie aan deze mogelijkheid invulling geeft, treedt de inspectie in overleg met de instanties waar het toezicht wordt uitgeoefend.

*De Staatssecretaris van Veiligheid en Justitie,
F. Teeven.*