

RECOMMENDATIONS

Draft legislative proposal on the *tijdelijke wet bestuursrechtelijke maatregelen terrorismebestrijding* ('Temporary administrative (counterterrorism) measures Act') to the Minister of Security and Justice and the Minister of the Interior and Kingdom Relations in connection with the Internet consultations from 17 March 2015 to 29 April 2015, 28 April 2015

SUMMARY

The Institute recognises and endorses the need to protect the Dutch democracy, rule of law and population from terrorist violence. Implementing measures to improve the protection of the population from terrorist attacks is logical in the current societal conditions. Nevertheless, the Institute establishes that all the legislative proposals formulated to date in connection with the Integral Approach to Jihadism action programme, of which this draft legislative proposal is one, primarily create powers to implement measures that impair specific human rights. This draft legislative proposal relates to measures that will affect citizens in areas including their right to respect for their private and family life and their right to freedom of movement. Moreover, the impairment of the rights to freedom of thought and to freedom of expression looms in the background.

Infringements on the exercise of these rights are justifiable solely when they are founded on a sufficiently clear and precise legal basis, there is a compelling societal need to implement the measures, the measures are in proportion to the objective they are designed to achieve and the measures are accompanied by an adequate form of legal protection.

The draft legislative proposal's criterion 'when that person can be connected to terrorist activities or the support of such activities, based on the behaviour of that person' does not form a sufficiently clear and precise legal basis for the justification of the limitation of human rights.

The Institute has doubts about the decision to adopt administrative law measures rather than criminal law provisions. The Institute recommends an a priori review by the court.

The need for the draft legislative proposal has not been demonstrated to an adequate extent. It should be noted that criminal law already includes a number of provisions designed to prevent terrorism, and that the added value of the draft legislative proposal's supplement to these provisions is not clear.

The prohibition on leaving the country infringes the right to freedom of movement. Moreover, this prohibition on leaving the country can infringe the right of persons of non-Dutch nationality to travel to the country of which they are a subject and, when members of the person's family live in that country, their right to a family life. In conclusion, the Institute draws attention to the potentially stigmatising effects of the legislative proposal on groups of migrants with Islamic religious beliefs