

LEGAL SUPPORT GROUP (AG) INFO

Activists in foreign detention

**For more information,
updates and contact:**

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Since the introduction of the Law on Identification (Wet op de Identificatieplicht) in 2005 it happens more and more often that political activists are put into foreign detention. If you choose to remain anonymous and not give your name to the cops it can be that the police will transfer you to foreign detention to force you to reveal your identity.

What is foreign detention?

According to the law foreign detention is a measure that can be used on people who are assumingly 'illegal' in the Netherlands. The purpose of foreign detention is to give the state the possibilities to deport any person who is, according to the law, illegal. It's not yet punishable to be 'illegal' in the Netherlands, therefore foreign detention is officially not called a punishment.

A criminal defense lawyer can't assist you in foreign detention because it's part of the administrative law. Therefore it's practical to have an immigration lawyer standby when doing actions.

Why are activists put into foreign detention?

Often activists are put into foreign detention because they refuse to reveal their identity to the state and not because they suspect you to be

illegal'.

The reason of transferring someone to foreign detention is that without revealing your identity, the state can not be absolutely sure that the person in question is legal in the Netherlands.

Even people that speak Dutch fluently might be considered 'illegal'.

Just to be clear, we don't want to make a difference between activists and non-activists who are put into foreign detention. For the cops there is just a different motivation to putting activists in foreign detention. Activist who are not from the EU and/or without a valid visa can be considered 'illegal'.

You are arrested. When are you transferred to foreign detention?

Activists are usually arrested because they are suspected of a legal offense. If you refuse to give your name out of principle or if your stay in the Netherlands is not 'legal', you can be put into foreign detention on various moments.

The foreign detention process will only start after the criminal law procedures are finished or when you can not be held longer on a

criminal justice basis.

This means that you can be put into foreign detention the moment you are being released from your criminal justice time or your previous case has been terminated.

THE PROCEDURE

Arrest:

The immigration administration will only be notified after your apprehension or arrest. If you refuse to reveal your identity or they determine that your stay in the Netherlands is not legitimate you will be transferred to a place for interrogation, often at the police station or at the immigration administration. This all needs to happen within a 6 hour time frame. (The hours between midnight and 9.00 am do not count.) This period can be prolonged with 48 hours. You are entitled to have your lawyer and a interpreter present during this interrogation.

Custody:

If they can't determine in the time of the arrest that your presence in the Netherlands is legitimate you will be put into custody. It might happen that custody will be in a 'regular' jail instead of foreign detention centers, because the presence of activists might 'disturb the general peace in the detention centers'.

In practice:

In theory it all sounds really nice but in practice the last person to leave

foreign detention without given their ID was in 2008. Nowadays it seems that the only way to get out of foreign detention anonymously is to stay as long as the process of gathering information about your identity takes, and until the judge states that the cost of your deportation is not worth more than the length of your detention. This can be months. On the upside, it has not happened (yet) that people that are being arrested in one group (30+ people) are put into foreign detention. Simply because they don't have the capacity to process all those people at once.

'Persona non grata' (ongewenstverklaring)

After a criminal law sentencing it can happen that under certain circumstances you become a *persona non grata* (ongewenst verklaard). If that happens it means that it's punishable to be in the Netherlands. If you are persona non grata and you are arrested, you will be deported after your prosecution (and possible jail time) ends.

Who can become a persona non grata?

Everybody who does not have the Dutch nationality can become a *persona non grata*. Although people with a EU passport and people from Switzerland and Turkey who work in the Netherlands are less likely to get the persona non grata status, because of very strict EU rules. In those cases people can

become persona non grata if their behaviour is an actual, real and serious threat towards the Dutch society (this includes very serious crimes, like terrorism, threats against the Royal family, parliament etc).

All other people without a Dutch passport can become persona non grata in the following cases:

1. If you're not 'legal' in the Netherlands and you have been arrested several times for legal offenses.
2. If you don't have a dutch passport but you are 'legal' in the Netherlands and have been convicted for a legal offense that has a maximum sentence of at least 3 years, or you have been sentenced to psychiatric detention.
3. If you don't have a Dutch passport but you are 'legal' in the Netherlands and according to the state you are a threat to national security.
4. Because of some covenant/treaty that has been signed by the Netherlands.
5. When it is in the interest of international relations of the Netherlands.

In appeal:

You can appeal to your persona non grata status. As long as you are awaiting the appeal you will stay persona non grata, which means you can be arrested and deported while you are awaiting the verdict of your appeal.