

Summary

The workload of the administrative fine

Indicators for the work load in the administrative legal system

In Dutch administrative law, there has been a steady increase in the use of punitive administrative sanctions or administrative fines. Traditionally, the criminal courts have had the sole authority to impose punitive sanctions. However, due to the increasing workload in the criminal legal system, some of the less severe infractions have been transposed from criminal law to administrative law. In this manner, criminal law can focus all of its attention on the more serious cases. Besides, specialized administrative bodies are sometimes more suited and capable to enforce specific laws such as competition or food safety laws. Consequently, this has led to an increase in administrative fines, from the areas of illegal parking or littering to transparency on the stock market.

Against this background, the question arises to what extent the increase of administrative fines has affected the workload and costs in the administrative legal system. One should know that Dutch administrative law is characterized by a two stage appeal system: before the start of a court procedure, the government agency has to reconsider its decision in an administrative procedure. This reconsideration procedure is meant to restrict the number of cases that make it to court: the so-called filter effect of reconsideration procedures. On the one hand, one would therefore expect a decrease in the number of legal procedures. On the other hand, the Dutch Council for the Judiciary charges significantly higher costs-per-case for administrative cases than for criminal court cases. The lack of clarity on the workload effects of administrative fines induced us to conduct this research.

The purpose of this study was to design an instrument to analyse the workload effects of legislation with punitive administrative sanctions. This analysis can help to substantiate the choice for the administrative punitive sanction instead of a criminal law sanction. Thus far, this choice has often been based on rather unfounded expectations of workload effects. What is more, the instrument can contribute to a better evaluation of the effects of administrative sanctions.

The central question of this research project has been: what factors determine the work load regarding court cases on administrative fines? 'Work load' has been defined as the amount of cases times the costs per case. For five different laws, both the workload and its determinants have been investigated. We studied relevant documents, and we have held interviews with judges and administrative employees. The laws that have been studied are competition law, unemployment law, the administrative traffic law, municipal parking taxes and the law on safety and health circumstances in the workplace. All of these laws contain punitive administrative sanctions.

The research has resulted in some 40 determinants of the workload of administrative fines. Factors that help explain why people will bring their case to court not only include the material and immaterial costs and expected benefits of starting a procedure, but also the clarity and the legitimacy of the rules. Also, the number of court procedures is affected by the quality of the explanation of the decisions by the administrative agency, at the moment the fine is imposed and in reconsideration.

Factors explaining the time spent per case are (not surprisingly) related to the complexity of the case. In this respect, it makes a huge difference whether the illegal character of the facts is unambiguous, or has to be interpreted by the judge. Also, the availability of guidelines to decide on the severity of the fine saves time in the judicial procedure. Finally of course, the availability of relevant jurisprudence can expedite judicial decisionmaking.

Other interesting findings are:

- The number of court procedures varies significantly between the different laws, from 3% (in traffic law) to +/- 90% (in competition law) of the number of fines imposed.
- Despite this difference, the filter effects of the administrative reconsideration procedure are quite similar for the five laws that have been studied: between 94 and 99%. Hence, variation in the number of cases occurs mainly at the moment of starting a reconsideration procedure, court procedure percentages do not vary strongly between the different laws.
- One of the reasons why administrative procedures on punitive sanctions are more costly than criminal law procedures is that punitive sanctioning in criminal law has a longer tradition with more jurisprudence and guidelines on the severity of sanctions. Punitive administrative law has not yet developed such a tradition; judges have less points of reference to make their decisions. Therefore cases take more time and are costlier.