

# Bestuurlijke Strafbeschikking en Bestuurlijke Boete overlast

## English summary

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## RAPPORT



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# English summary

## Two new enforcement instruments

As of January 2009, Dutch municipalities can make use of two new instruments for out-of-court settlements of public order violations: the 'bestuurlijke strafbeschikking overlast' and the 'bestuurlijke boete overlast'. These instruments give local law enforcers the authority to issue a penalty for minor punishable offences such as stray dogs, dog droppings, household waste dumps or violation of other local bylaws. In the case of the 'bestuurlijke boete' the municipality is responsible for the administrative process. In the case of the 'bestuurlijke strafbeschikking overlast', the municipality sends the written charge ('proces-verbaal') to the Central Fine Collection Agency ('Centraal Justitieel Incassobureau or CJIB) after which the CJIB sends a copy of the charge with a giro payment slip to the accused. If the accused refuses to pay the penalty, the case is submitted to the public prosecutor for further judgement. After that, the case can be brought to court. If the fine is paid, the case will not be evaluated by the public prosecutor.

## Evaluation

Three years after the introduction of both instruments, this evaluation has been conducted. To what extent have both instruments been implemented by municipalities? What are the results of the instruments and of the financial compensatory allowance scheme? To answer these questions, DSP-groep has conducted research from November 2011 to April 2012 for the Scientific Research and Documentation Center (WODC) of the Ministry of Security and Justice. The legal framework and the legal and political reasoning resulting in the introduction of both instruments has been studied by Prof. Mr. Dr. Arthur Hartmann of Erasmus University, Rotterdam. DSP-groep conducted the rest of the research: a survey among Dutch municipalities in which 301 municipalities participated (72% response), in-depth interviews with 23 representatives of six municipalities and representatives of the CJIB, the Central Processing Unit of the Public Prosecution Service (CVOM) and the Ministries of Security and Justice and the Ministry of the Interior. In addition, DSP-groep has performed a quantitative analysis on a database containing all 'bestuurlijke strafbeschikkingen overlast' issued between early 2009 and February 2012 (over 50.000 cases). The CVOM has analysed all cases that have been evaluated by the Public Prosecution Service and cantonal judges. An independent committee has supervised the progress and quality of the research.

## General conclusion

The central question in this research was:

“What is the current state of affairs regarding the implementation of the 'bestuurlijke boete overlast' and the 'bestuurlijke strafbeschikking overlast', and what are the results of the introduction of these instruments and the financial compensatory allowance scheme?”

In this summary, the three main parts of this question are discussed: the state of affairs, the results and the compensatory allowance scheme. The rest of the report, in Dutch, discusses and answers a large number of more detailed research questions.

### *State of affairs*

The 'bestuurlijke strafbeschikking overlast' is used by 270 municipalities, according to the database of the CJIB. No municipality has chosen to implement the 'bestuurlijke boete' – in this sense, this instrument could therefore be abolished without consequences. Between January 1 2009 and February 11 2012, in total 51.290 'bestuurlijke strafbeschikkingen overlast' have been issued by municipalities and registered by the CJIB. In 2009, the four largest cities started issuing the 'beschikkingen' and in the rest of the municipalities, the instrument has been introduced over the course of the years 2010 and 2011, in the different legal regions of the country. During the first year, 2009, some 8.000 'bestuurlijke strafbeschikkingen' were issued; in 2011 there were almost 27.000. Most 'bestuurlijke strafbeschikkingen overlast' are issued for stray dogs, dog droppings and illegal household waste dumps. A smaller number pertains to drinking alcohol in alcohol-free zones, urinating in public or violating outdoor cafe rules ('terrasverbod'). Put together, this 'top five' accounts for 86 per cent of all 'bestuurlijke strafbeschikkingen' from municipalities.

Of all concluded cases, in nearly 75 per cent, the execution was succesful: the penalty was paid. One in five cases has not been prosecuted ('sepot' – 19%), predominantly owing to an administrative transition to a new system in 2010. Legal reasons for not prosecuting were mainly that the person was unjustly accused or insufficient evidence.

### *Effects and results*

The intended outcome of the 'bestuurlijke strafbeschikking overlast' and the 'bestuurlijke boete overlast' was a more effective tackling of anti-social behavior and public nuisance by municipalities. Looking back on the previous years, it appears that during a relatively short period of time, several administrative and criminal enforcement instruments have been developed and introduced. In hindsight, it becomes clear that no explicit theory on the intended mechanisms of these instruments was formulated. Rather, as some commentators have suggested, the instruments were the result of a strong political 'urge to act'.

Regarding the effectiveness of the 'bestuurlijke boete overlast' only one conclusion is possible, although no explicit goals were formulated. Whatever the desired goals were, these have not been reached, since no municipality has chosen this instrument. For a number of municipalities, mainly the larger cities, this instrument still remains a viable alternative, especially if the compensation that municipalities receive for the 'bestuurlijke strafbeschikking overlast' were to be lowered substantially or abolished.

The 'bestuurlijke strafbeschikking overlast' has been introduced in a large majority of municipalities, but it is not clear whether this has resulted in a reduction of public nuisances. The six municipalities that have been studied more in-depth, could not answer the question whether the 'bestuurlijke strafbeschikking' influenced the amount of nuisances in public areas: too many other variables influence this outcome.

At first sight, it appears that the 'bestuurlijke strafbeschikking overlast' did not lead to a new way of thinkin or working. Even before the introduction of the 'strafbeschikking', municipalities could enforce local by-laws regarding nuisances. The introduction of the 'strafbeschikking' only provided them with an extra tool in their toolbox. But the 'bestuurlijke strafbeschikking overlast' does appear to have had an influence on municipalities' approach to the problems of nuisance and anti-social behavior. The work-processes 'behind the scenes' in several municipalities have changed, the

attention given to the quality and the performance of local law-enforcers has increased, and work-processes – for instance automation of work-procedures – have improved. The ‘bestuurlijke strafbeschikking overlast’ acted as a catalyst in this process, even though the transformation was already in motion. Especially local politicians, city councils and mayors, triggered by the nation-wide introduction of the instrument and by the corresponding financial compensation scheme, were encouraged to intensify their enforcement efforts. More local priorities are being set and the work of local law-enforcers has received more focus. The effects must however not be exaggerated: the introduction seems to have led to a shift in focus, and not an increase in enforcement. By this we mean that it is not so much a case of new goals being set, but a new instrument being used for existing goals.

An important side-effect of the ‘bestuurlijke strafbeschikking overlast’ is an increased importance of the quality of the written charges. Because these have to be sent to the central unit for processing, municipalities receive quick feedback when something is wrong with the ‘paperwork’. This, however, only pertains to the completeness of the written statements, not their quality. To date, no structural feedback can be given by the Public Prosecution Service on the reasons why cases are not prosecuted or why accused people refuse to pay the fine. The *number* of cases is known, but not the *reasons*, because they are not included in the central database of the Public Prosecution. Recently, a monitoring instrument that can give qualitative feedback to municipalities has been developed and is being tested.

Municipalities have started to improve the quality of the written charges (‘on paper’) and the quality of the local law enforcers (‘in the street’). Education and training of enforcers receive most attention. Besides this, many municipalities invest in the automation and standardisation of (parts of) the written charges. Attention for these issues has increased because of the introduction of the ‘bestuurlijke strafbeschikking overlast’.

#### *Financial compensation*

For each ‘bestuurlijke strafbeschikking overlast’ that has been issued correctly and sent to the CJIB, a municipality receives a standard financial compensation of € 40. This proves to be a strong stimulus for many municipalities to actively enforce local nuisance and anti-social behavior. If the compensation were to be abolished, almost two out of three municipalities would decrease their enforcement efforts (63%). If, on the other hand, the compensation were to be substantially *increased*, this would encourage half of all municipalities to increase their enforcement efforts (46%). There are, however, municipalities (especially smaller cities and villages that receive only a small compensation) where the financial compensation is not an important consideration: these municipalities invest in enforcement because they regard it as an important part of their enforcement policy. They think of the financial compensation as a minor benefit that will never outweigh the costs. The alternative instrument, the ‘bestuurlijke boete’, will not become an attractive alternative to most municipalities (62%) if the compensation for the ‘strafbeschikking’ is decreased or abolished. For 21 per cent of all municipalities, the ‘bestuurlijke boete’ becomes a viable alternative if the compensation were to be abolished.

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DSP-groep, opgericht in 1984, is een onafhankelijk landelijk bureau voor onderzoek, advies en management, met zestig medewerkers. We werken in opdracht van de overheid (ministeries, provincies en gemeenten), maar ook van maatschappelijke organisaties op landelijk, regionaal en lokaal niveau.

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#### **Dienstverlening**

We ondersteunen onze opdrachtgevers bij complexe vraagstukken. We kunnen onderzoek doen, een registratiesysteem of monitor ontwikkelen, een advies uitbrengen, een beleidsvisie voorbereiden, een plan toetsen of tijdelijk het management voeren. DSP-groep geeft ook trainingen, workshops en lezingen.

#### **Meer weten?**

Neem vrijblijvend contact met ons op voor meer informatie of om een afspraak te maken. Bezoek onze website [www.dsp-groep.nl](http://www.dsp-groep.nl) voor onze projecten, publicaties en opdrachtgevers.