

**Introduction**

Until January 2015, municipalities received a reimbursement for expenditures made for issuing penalties with the administrative penal order for nuisance or parking violation (*bestuurlijke strafbeschikking overlast en parkeren*). This compensation is known as the compensation for written charges issued by local, special investigators (*proces verbaal-vergoeding*). This research is motivated by the discontinuance of the compensation, and the resolution proposed by the members of the parliament Dijkhoff and Segers. In this resolution, they request an investigation into the effect of the discontinuance of the compensation.<sup>1</sup>

After the Law Public Prosecutors-settlement (*Wet OM-afdoening*) came into force in 2008, the administrative penal order for nuisance or parking violations was introduced in 2009, as a new enforcement tool. The Law Public Prosecutors-settlement provides legal grounds for special investigators (*buitengewoon opsporingsambtenaren, BOA's*), to issue an administrative penal order for offenses. In practice, the administrative penal order is mainly used to punish minor nuisances. This makes the administrative penal order an out-of court settlement: penalties are issued outside of court. Filed appeals are brought to court. With the granted authority to issue penalties, municipalities are given more freedom to direct law enforcement concerning public order and security. Next to this, local law enforcement through the administrative penal order reduces the workload of the police.<sup>2</sup> The Central Fine Collection Agency (*Centraal Justitieel Incassobureau, CJIB*) is in charge of the collection of the fines issued by the special investigators. When appeal is filed, the case will be handed to the Public Prosecution Service (*Openbaar Ministerie*) and the case is brought to court. The financial benefits coming from the administrative penal order flow back to the Ministry of Security and Justice (and thereafter to general funds).<sup>3</sup> In 2009, the administrative penal order is implemented in the four largest municipalities (Amsterdam, Rotterdam,

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<sup>1</sup> Second Chamber, *official documents 2014/2015, 34 000 VI, nr. 28*.

<sup>2</sup> Flight, S. et al. (2012). *Bestuurlijke strafbeschikking en bestuurlijke boete overlast*. Amsterdam: DSP-groep/Den Haag: Wetenschappelijk Onderzoek- en Documentatiecentrum.

<sup>3</sup> Letter from the Ministry of Security and Justice to the Chairman of the Second Chamber, number 271738, July 5, 2012

The Hague and Utrecht). The other municipalities followed their lead in the years thereafter.

In 2008, the Ministry of Justice has created an arrangement by which municipalities could receive a compensation for issuing certain penalties, documented in the *Compensation code municipalities for the enforcement of nuisance or parking violation 2008 (Vergoedingsregeling gemeenten voor handhaving parkeren en overlast 2008)*.<sup>4</sup> The compensation for public nuisance offences was set at 15 euros per offence and 7.5 euros per parking offence. Since 2009, this compensation includes administrative penal orders. Municipalities can receive an annual compensation since 2009, with a maximum of 40 euros per properly submitted public nuisance offence and 25 euros per parking offence.

In this research, we formulate an answer to the following research question:

What can we say about how the compensation for written charges (*proces-verbaal-vergoeding*) is registered and allocated by municipalities, since the implementation of the administrative penal order for nuisance or parking violation?

### **Research approach and sample**

We have used three data sources in this research:

- Data from the CJIB on numbers and amounts of the compensation for written charges of all municipalities using the administrative penal order and subscribed for the compensation;
- Interviews with the municipalities in the sample;
- Budgets (2009 t/m 2015) and financial statements (2009 t/m 2014) of the municipalities in the sample.

The Netherlands is divided into ten police units. To provide representative results, we have tried to include three large, two medium and one small municipality per police unit in the research sample. Next to these six municipalities per police unit, we have included the G4 in the research sample. In order to distinguish between small, medium and large municipalities, we have adopted the definition used by Flight et al. (2012):<sup>5</sup>

- Small municipality: less than 40.000 residents;

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<sup>4</sup> Vergoedingsregeling gemeenten voor handhaving parkeren en overlast 2008.

<sup>5</sup> Flight, S. et al. (2012). Bestuurlijke strafbeschikking en bestuurlijke boete overlast. Amsterdam: DSP-groep/Den Haag: Wetenschappelijk Onderzoek- en Documentatiecentrum.

- Medium municipality: 40.000 to 100.000 residents;
- Large municipality: 100.000 to 250.000 residents;
- Largest four municipalities (G4): Amsterdam, Rotterdam, The Hague and Utrecht.

Therewith, the sample consisted of 64 municipalities in total. Non-responsive municipalities were replaced by a similar municipality in the reserve sample. Due to the limited time frame of this research, and some delay in approaching the right respondents at the municipalities, the definite research sample consists of 51 municipalities. As of January 1st 2014, the Netherlands comprises 403 municipalities and 16.8 million residents. The research population consists of 357 municipalities in the Netherlands that have subscribed for the compensation in 2014. This means that 89 percent of the municipalities have received the compensation for written charges. At January 1<sup>st</sup> 2014, 16.8 million residents lived in these municipalities. Following from this, the definite research sample incorporated 51 municipalities, with a total of 5.8 million residents. Thus, we have included in our sample 14 percent of the municipalities and 36 percent of the residents in the research population.

The sample contains 7 small municipalities (14 percent), 28 medium municipalities (55 percent) and 16 large municipalities including three of the four G4-gemeenten (31 percent). Further, the sample consists of ten municipalities in the police unit Oost-Nederland, seven in Midden-Nederland, six in The Hague, five in Noord-Nederland and five in Limburg, four in Noord-Holland, four in Rotterdam and four in Zeeland-West-Brabant, three municipalities in Amsterdam and three municipalities in the police unit Oost-Brabant.

### **Implementation of the administrative penal order for nuisance and parking violations**

All of the G4 and the large municipalities have implemented the administrative penal order for parking violation in 2009. Most of the medium municipalities (86 percent) and small municipalities (51 percent) have implemented the instrument in 2010, but some of them did so in the subsequent years.

The administrative penal order for nuisance was only implemented in the G4 in 2009. All of the other large municipalities followed in 2010, as did most of the medium (85 percent) and the small municipalities (59 percent). A few municipalities implemented the administrative penal order for nuisance later.

### **Amount of received compensations**

The total amount of compensations, for administrative penal orders based on parking offences, the municipalities received in 2009 was 9.8 million euros. The

compensations reached a peak in 2011 of 13.2 million euros and the total amount of compensations fall down to 10.0 million euros in 2014. The total amount of compensations, for administrative penal orders based on public nuisance offences, was 0.3 million euros in 2009 and peaked in 2013 and 2014, in which it was 1.3 million euros.

### **Registration of the compensation for written charges**

#### *Revenues*

Based on interviews, all municipalities in the research sample (of which we know whether they have registered the compensation) have registered the compensation in their budgets since they implemented the administrative penal order. Nevertheless, the compensation is seldom found in the budget. This is caused by the increased density of the budget and financial statement, compared to the trading account of the municipalities, in which the compensation is registered. The compensation is registered in one or more financial statements of twelve municipalities (24 percent) and in seven municipalities (14 percent) in one or more budgets. Altogether, fifteen individual municipalities (29 percent) have registered the number or amount of compensations received in at least one budget or financial statement.

The compensation is registered in the budget of one small municipality (14 percent), two medium municipalities (7 percent), three large municipalities (19 percent) and of one municipality of the G4 (33 percent). In the financial statements, the compensation is registered in one small municipality (14 percent) too, and next to this in seven medium municipalities (28 percent), two large municipalities (13 percent) and two municipalities of the G4 (67 percent).

The municipalities that register the compensation belong to nine out of ten police units. Noord-Holland is the only police unit in which the compensation has never been registered in the budgets or financial statements of the municipalities. A relatively large number of municipalities in the police units The Hague and Oost-Nederland have registered the compensation in their budget or financial statement.

Based on the interviews, 28 percent of the municipalities have registered the compensation on a separate item in the budget. A total of 64 percent of the municipalities have registered it on a general item, on which more revenues than just the compensation for written charges are registered. Small municipalities (43 percent) registered the compensation more often on a specific item, compared to medium (27 percent) and large municipalities (21 percent).

In the interviews, 30 percent of the municipalities indicated they separated the registration of the compensation received for public nuisance offences and parking offences. Seventy percent of the municipalities did not make this distinction.

The medium and larger municipalities, made this separation more often. Of the small municipalities, 14 percent distinguished between compensations for public nuisance offences and parking offences. 34 percent of the medium municipalities did this too, as well as 31 percent of the large municipalities. In the analyzed budgets and financial statements, the compensation has never been split up into public nuisance and parking.

#### *Expenses*

Based on the interviews, all municipalities (of which we know whether they registered the allocation) have registered the allocation of the compensation in their budget. Because the compensation for written charges is frequently registered on a general item, the allocation cannot be traced in the analyzed budgets.

26 percent of the municipalities indicated in the interviews that they spent the compensations based on parking offences separately from the compensations based on public nuisance. Fourteen percent of the small municipalities make this distinction in their allocation of the compensation. This is 32 percent among medium municipalities and 23 percent among large municipalities.

#### **Allocation of the compensation for written charges**

48 out of 51 interviewed municipalities (94 percent) told us where they spent the compensation on. 40 percent of the municipalities have allocated the compensation for the expenses of special investigators. This concerns labor costs, education and material costs such as uniforms, technical equipment and vehicles. In 46 percent of the municipalities, the compensation is used to cover costs for law enforcement in general. This not only entails expenses for the special investigators, but also costs for local supervisors and overhead. In 15 percent of the municipalities, the compensation is allocated to the general funds making it impossible to trace where it is spent on exactly.

In the interviews, independent of size, approximately 40 percent of the municipalities spent the compensation on the costs for the special investigators. In 57 percent of the small municipalities, the compensation is spent on enforcement in general. 40 percent of the medium municipalities have spent the compensation on enforcement in general and the other 20 percent allocated it to the general funds. Half of the large municipalities used the compensation to cover the costs of enforcement in general, 38 percent on expenses for special investigators and 13 percent of these municipalities assigned it to the general funds.

#### **Quality of the registration**

The interview with the CJIB showed there are no specific requirements concerning the content of the written charges. At the end of the year, the CJIB calculated

the compensation to be granted by multiplying the number of written charges, based on the qualified offences, with the established amount per public nuisance offence and parking offence.

### **Other resources**

What other resources municipalities have for public order and security depends on how municipalities organize their budgets. Not all revenues are parted, thus making other revenues used to cover the costs for law enforcement, next to the compensation for written charges, untraceable. When the revenues are separated, revenues named are permits, fire stations and a policy for large cities (*grote stedenbeleid*). The budgets do not elaborate on these revenues.

### **Cost public order and security and the administrative penal order**

Based on both the interviews and the budgets and financial statements, the costs for public order and security are difficult to define. This is equally true for the expenses of using the administrative penal order. The organization of budgets and financial statements differs greatly from municipality to municipality, making it impossible to compare the content. Moreover, general conclusions on the balance between the compensation and the costs drawn from these data would not be reliable. Municipalities express this as the compensation being a drop in an ocean of needs. Nevertheless, the compensation for written charges concerns significant amounts, covering for instance the annual salary of a special investigator.

### **Other reactions from the municipalities**

Because the discontinuation has been pronounced at the end of last year, some of the municipalities have not had the opportunity to explore alternatives. Others who did consider alternatives to the compensation for written charges mentioned:

- Outsourcing law enforcement;
- Setting up or expanding partnerships with other municipalities to share the costs for law enforcement;
- Extending areas for toll parking;
- Change to enforcement with the *bestuurlijke boete* instead of the administrative penal order.

In accordance with the resolution proposed by the members of the parliament Dijkhoff and Segers,<sup>6</sup> municipalities emphasize the relevance of the work of the

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<sup>6</sup> Tweede Kamer der Staten Generaal, *Kamerstukken 2014/2015, 34 000 VI, nr. 28.*

special investigators. Therefore, the discontinuance of the compensation for written charges does not always affect law enforcement by municipalities directly.