

pro facto

Summary

Evaluatie Wet maatregelen bestrijding
voetbalvandalisme en ernstige overlast

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Summary

This is the second evaluation of the Football Hooliganism and Serious Public Nuisance (Measures) Act. [Wet maatregelen bestrijding voetbalvandalisme en ernstige overlast, MBVEO], commissioned by the Research and Documentation Centre [WODC] of the Ministry of Justice and Security. The Act, also referred to as the 'Nuisance Act' or 'Football Act', came into force in 2010, was evaluated for the first time in 2012 and, partly as a result of this, was amended on a number of points in 2015. The Nuisance Act offers various instruments for different actors to tackle nuisance:

- The mayor can impose an area ban, group ban¹ and reporting obligation pursuant to Article 172a of the Municipalities Act [Gemeentewet or Gemw];
- Based on Article 172b of the Municipalities Act, the mayor can give an order to parents/carers of minors under twelve to ensure that their child is not present in certain areas of the municipality and/or is on the streets unaccompanied during the evening or night [bevel twaalfminners];
- Pursuant to Article 509hh of the Dutch Code of Criminal Procedure [Sv], the public prosecutor can impose rules of conduct on a person suspected of committing a criminal offence (ban on entering an area, reporting obligation, contact ban and obligation to accept help).

The tightening of the law in 2015 included the following:

- The mayor may issue an order as referred to in Article 172a of the Municipalities Act *also on behalf of* another mayor [tevens namens-regeling];
- Mayors' orders pursuant to Article 172a of the Municipalities Act can also be imposed on first-time offenders who commit serious nuisance, so not only in the event of repeated nuisance;
- The mayor may give an order to someone on whom a sanction has been imposed by a private organisation (such as the Royal Dutch Football Association [KNVB]);
- The maximum duration of mayors' orders has been changed from three consecutive months to 90 days within a 24-month period;
- It became possible to impose a digital reporting obligation;
- The criminal court can impose an area ban pursuant to Article 38v of the Criminal Code.²

¹ Ban on gathering with more than three others in a specific area in a publicly accessible place without reasonable purpose.

² With the tightening of the MBVEO Act in 2015, the area ban imposed by the court was added to the other freedom-restricting judicial measures of Article 38v of the Criminal Code (the area ban, the contact ban and the reporting obligation). Because the

Research question and research approach

The evaluation's main question was:

To what extent and based on what considerations are the instruments of the act applied, how is this experienced, to what extent are the objectives of the act achieved and in what way can the achievement rate of the objectives be further improved?

To answer this question, we used a combination of research methods. By studying documents, we reconstructed the policy theory behind the different instruments of the MBVEO Act. After a number of exploratory interviews, a survey among municipalities followed in the in-depth phase (response: 72% to the most important questions), case studies (interviews and a file study) in seven municipalities (Amsterdam, The Hague, Groningen, Leeuwarden, Rotterdam, in a limited form Westerwolde³, and a smaller municipality that wished to remain anonymous). In addition, we conducted research at the Public Prosecution Office (interviews and a survey). The response to that survey was too low to be representative, but in combination with the interviews it does give us some idea.

The MBVEO Act: reconstruction of policy theory and intervention strategies

The administrative and criminal law instruments introduced by the MBVEO Act focus on two problems: serious neighbourhood nuisance and football-related disturbances. In addition, it appears from the legislative history that the legislator considered the instruments, in particular the rules of conduct, which the public prosecutor can impose, also useful for the protection of victims of nuisance in the relational sphere, such as stalking or domestic violence. From the legislative history, it can be concluded that the MBVEO Act has only a limited empirical basis with regard to the nature and scope of the problem and the need for the legislation. Signals from local authorities were the most important reason for coming up with this act; they indicated that they were increasingly confronted with structural serious nuisance and football hooliganism. There are no figures to support this increase. Moreover, the 2007 National Safety Monitor, referred to in the explanatory memorandum, showed that the indicator 'nuisance caused by groups of young people, nuisance caused by drunken people on the street, drug-related nuisance and harassment of people on the street' had not increased but had remained stable. No figures at all were provided for the extent of football hooliganism.

For each instrument under the MBVEO Act, we have mapped out its intended application and effect (intervention strategy/theory). The legislator has not made these intervention theories very explicit or broken them down by instrument. Our own reconstructions show that there is a considerable overlap between the intervention theories underlying the mayor's orders and the rules of conduct issued by the public prosecutor. The intended effects are to combat and prevent serious nuisance, public order disturbances and criminal offences, which should ultimately lead to a safer society. Sub-goals are the prevention of (troublesome) group formation, the protection of persons and the prevention of serious abusive behaviour towards (individual) persons, the protection of property, and addressing the problem of the suspect. The objectives are not formulated in a specific and measurable way. In addition, all instruments aim to contribute to some extent to all goals and sub-goals, with some goals and sub-goals being more directly linked to a specific instrument. The case studies, interviews and

application of the area ban cannot be seen in isolation from the other Article 38v Sr measures that have not been introduced with the MBVEO Act, we do not discuss the MBVEO area ban imposed by the courts in this evaluation.

³ Westerwolde (Ter Apel) was selected because preliminary research showed that although serious/repeated nuisance occurs there, the MBVEO Act is not applied.

survey do not show that the municipalities and the Public Prosecution Office have different objectives or a different policy theory to that of the legislator.

Application of the MBVEO Act in practice

72% of the municipalities participated in the quantitative survey. Of these municipalities, approximately a quarter indicated that they had applied the MBVEO Act in the period 2018-2019. Municipalities were asked whether they had to deal with serious/structural nuisance. It emerges that municipalities with more than 100,000 inhabitants in particular have to deal with this (94%). Of these municipalities, 74% indicate that they also apply the MBVEO Act. At the same time, small municipalities also report having to deal with serious/structural nuisance, although they apply the MBVEO Act much less frequently (47% of municipalities with less than 25,000 inhabitants report having to deal with serious/structural nuisance, while 11% of small municipalities apply the act).

Subsequently, municipalities were asked about the type of instrument they use when the MBVEO Act is applied. It turns out that it was almost exclusively the area ban that was applied. In a very limited number of cases, the obligation to report is imposed, and the prohibition of groups and rules for minors under twelve are not imposed at all.

Few municipalities apply the area ban frequently (twenty times or more) each year. In 2018, there were only four municipalities and in 2019, five. The vast majority of municipalities that use the area ban apply it 1 to 5 times a year. Despite the fact that the numbers are limited and that effects are difficult to measure, municipalities say they have the impression that area bans are effective.

Case studies

For the case studies, interviews were conducted with key informants within the municipalities and the police force who are closely involved in the application of the MBVEO Act. First of all, the policy per municipality was studied per municipality. This showed that each municipality has a different policy in terms of scope, content and depth. Two of the municipalities included in the case studies have not adopted any policy or policy rules. Rotterdam, Leeuwarden and The Hague have elaborate enforcement arrangements/matrices that specify the circumstances in which the Act is applied and for which target groups. In principle, municipalities regard the MBVEO Act as an *ultimum remedium*. Although since the previous amendment of the law it is possible to impose a measure on first-time offenders, in most cases the law is only applied after several incidents have occurred, with exceptions such as nuisance around the new year.

When we look at the perceived effectiveness, we must first conclude that it is difficult for municipalities to determine the effectiveness. In any case, the effectiveness of the measures is not monitored. Positive (short-term) effects are, however, certainly experienced by municipalities and the police, in the sense that the nuisance decreases for a certain period of time in a certain area. The perceived effectiveness also differs per target group on whom measures are imposed. In short, young people are generally receptive to the threat and the signal emanating from an area ban, while the homeless are more inclined to violate an area ban because they have little to lose.

The case studies also clearly show differences between municipalities in the organisational safeguarding of the Act's application. In some municipalities the expertise, experience and cooperation between all chain partners is more structurally and also more evenly spread than in other municipalities, where not all relevant parties know how to contact each other, are

aware of the MBVEO Act and/or see any benefit in its application. The administrative police reports on which the measures are based also differ from one municipality to another. One municipality may work with standardised reports, others may not. Just as the national picture shows, in the municipalities included in the case studies it is also almost exclusively the area ban that is applied. Although the obligation to report is seen as a useful instrument, particularly in the case of football-related nuisance, its application requires a great deal of time and capacity on the part of the police. The arrival of a digital reporting obligation is being eagerly awaited. Municipalities consider the group ban to be complicated in its justification, so that it is not applied and municipalities opt for an area ban. The under-twelves' order is not applied because the general tenor is that nuisance from this target group should not be solved on the grounds of the MBVEO Act, but rather in the pedagogical sphere. The instrument allowing a mayor to also act on another's behalf is considered a good idea by the municipalities included in the case studies in principle, but is seen as unworkable. The implementation and, in particular, the legal protection are experienced as being both legally and practically complicated.

Concluding observations

The picture that emerges from this evaluation is that municipalities that use MBVEO area bans are positive about them, but that more awareness of the instrument is needed. This is where gains can be made. The obligation to report has added value, provided that a digital application is possible. The group ban and the under-twelve's order are not applied, but that does not mean they should be removed from the act. If we look at the possibilities for improvement in the application of the act, the problems regard implementation rather than the need to resolve legal problems. The municipalities that are ahead in the application and are also satisfied with the possibilities the act offers, have experience and expertise in-house to be able to apply the act well. That is where gains can be made. This means overcoming any cold feet, gaining experience and, where necessary, asking for help and support from more experienced municipalities or the Centre for Crime Prevention and Safety (CCV)⁴, which can support municipalities in this. An important precondition for the successful application of the MBVEO Act is that the municipal organisation (and its partners) has or develops expertise. It may help here to replace its abbreviated name 'Football Act', which leads to misunderstandings about the scope of the law, with the broader 'Nuisance Act'.

⁴ The CCV is an independent foundation that helps identify and solve safety problems. To this end, it offers knowledge, instruments, quality marks, information material and tailor-made advice aimed at safe housing, safe working and safe living. Prevention is always the starting point.



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