

Summaries

Justitiële verkenningen (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in cooperation with Boom Juridische uitgevers. Each issue focuses on a central theme related to judicial policy. The section *Summaries* contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (vol. 31, nr. 6, 2005) is *The punitive administration*.

Councils, fines and nuisances

J. Terpstra and T. Havinga

April 2005 the Dutch government introduced two Bills in Parliament to empower local governments to impose administrative fines for violations such as urinating in public, graffiti, leaving behind dog dirt or trash, nuisance in a shopping centre and unauthorized parking. These proposals fit in with a more general shift from criminal law enforcement to alternative enforcement. The last decades, administrative fines were introduced in several laws (financial legislation, food law, labour law, social security law). This allows state authorities to impose fines for violations of regulations without court proceedings. The empowerment of local government to impose fines reflects a changed political climate favouring strict enforcement by police and other agencies, the high workload of the police and criminal justice system, discussion on core business of the police, and developments in local public safety policy. The authors discuss the backgrounds and potential consequences of these proposals.

Reach of administrative fine is too limited

J. van der Pal and H.M.G. Slangen

The image that civilians have of their government is strongly coloured by what this government achieves in the field of safety and the maintenance of rules and regulations. Local governments try to guarantee their citizens the highest possible safety and do everything to assure them pleasant and good living surroundings. The introduction of the administrative fine, a consequence of the safety program 'Towards a safer society', should enable municipalities to effectively and efficiently maintain rules and regulations. The VNG (society of Dutch municipalities) has been rallying for years now to

intensify the administrative maintenance of rules and regulations, in particular the introduction of the administrative fine. Not long ago the Dutch Cabinet introduced two bills in Parliament: 'Administrative fine nuisance in public space' and 'Administrative fine wrong parking and other small traffic misdemeanours'. Does this mean there is a reason for cities to cheer? That remains to be seen.

Administrative fine system should do justice to municipal autonomy

A.G. Mein

The expectation of the current bill 'Administrative fine nuisance in public space' isn't running very high. At first glance there seems to be a strong approach on local public safety problems, but on closer consideration it contains some limitations and conditions which make the bill less effective when put into practice. In order to make the bill more effective, the local council should be in the position to determine the range of facts for which a penalty can be imposed instead of the national legislator. Secondly, the costs of the implementation and execution of the bill should be brought in balance with the benefits. In order to minimize the cost and maximize the effect, local councils should be working together by organizing a joint introduction and execution of the bill. Furthermore, is it necessary to obtain skilled personnel and to make an agreement with the local police on close collaboration.

Zero tolerance in practice; maintaining the 'minor norms' by the police or special enforcement teams?

B.A.M. van Stokkom

In this article the author examines the so-called Streetwise policy in Amsterdam. Since 1998 the Amsterdam police force fines citizens for small breaches of the law like urinating in public and cycling on footpaths. The force aims to break off the tolerant attitudes that have characterized Dutch policing for a long time. Police officers are obliged to produce more fines and call citizens to account. It is argued that this more repressive policy in many ways enhances compliance with the law, but also generates many complaints because officers treat citizens without respect. Next the question is dealt with whether police officers or special enforcement teams (that are qualified to fine) might better be suited to supervise citizens in public domains. The author stresses that police officers are better equipped to exercise

authority. Moreover, the police are not relieved when other enforcers partly take over their work because the police always have to give back-up when these enforcers are in trouble. In the last sections it is argued that enforcement of 'minor norms' in the public sphere is senseless when public institutions, like schools, do not cooperate. Core question is how to augment the sense of public norms. A community oriented enforcement perspective might be more successful because residents trust enforcers when they are familiar and approachable.

The administrative fine and enforcement deficits

FC.M.A. Michiels

In different policy fields various degrees of enforcement deficits can be detected. The question to be answered in this article is to what extent the administrative fine can be expected to decrease these enforcement deficits. First the author explores how an enforcement deficit can be defined, what kinds of deficits exist, and what the causes of these deficits are. Next some methods that might diminish the deficit in enforcement are being discussed, such as better enforceable regulations or alternative ways of regulating. Subsequently the objectives of imposing an administrative fine are examined. The conclusion is that the administrative fine has a limited additional value. Introduction of the instrument on a large scale cannot be recommended. It is not to be expected that the introduction of the instrument of fining, in cases in which sanctions aimed at restoring the situation are not used to its fullest potential, will substantially decrease the enforcement deficit.

Administrative fines: more work for the courts?

M.D. van Ewijk and B. Niemeijer

In the Netherlands, administrative fines have been introduced in 51 laws since 1992. The aim is to improve enforcement by giving administrative bodies the competence to punish offenders with fines under administrative law. The prosecutor's office and criminal courts can thus focus their capacity on enforcing more serious criminal offences. The introduction of administrative fines will probably lead to increased enforcement by administrative bodies. But it will also increase the workload of administrative courts due to appeals. A recent study by the Research and Documentation Centre of the Dutch Ministry of Justice (WODC) has shown that the burden on

administrative courts is influenced by factors that lie within the process of enforcement, the law, the offenders, the preceding complaint procedure and the way the courts themselves handle the appeals. By taking these factors into account, the impact on the workload of administrative courts caused by the introduction of administrative fines can be assessed and managed.

Penal order and administrative fine; the proliferation of enforcement

A.R. Hartmann

In this article the background and details of the the proposed bill 'Settlement by the public prosecutor office' are discussed in relation to the proposed bills Administrative fine nuisance in public space and unauthorized parking and other minor traffic offenses. According to the author this will lead to a proliferation of settlements without a trial and a very obscure situation for citizens. The author proposes a simple solution, which makes the aforesaid bills superfluous. The bill 'Settlement by the Public Prosecutor Office' makes it possible to give to persons or bodies with a public task the authority to impose sanctions, in this case fines. This means that for example nuisance in the public space, wrongful parking and small traffic offences may be settled by simple sentence arrangements. Only some flanking legislation measures will be necessary, whereas the advantages with respect to the legal security and legal protection of the citizen are obvious. Moreover also (a part of) the revenue from the imposed fines can flow to the municipalities along the way of the sentence arrangement.

The Public Prosecutors Office punishes; a criminal novelty

J. van Zijl

In the proposed bill 'Settlement by the public prosecutor office' the present transaction and the conditional dismissal are being turned into a penal order. For the first time in the history of the Dutch penal process the public prosecutor office is authorized to apply sanctions itself. This change of criminal proceedings has led to many questions and discussions. Sometimes these are of a more fundamental nature, especially when the position of the public prosecutor is under discussion. Sometimes there still is insecurity on whether the organisation of the sanctioning by the public prosecutor is constantly well balanced. This leads to a situation in which it is not always clear that the desired effects are in fact sufficiently produced and undesired

side effects do not materialize. A transitional arrangement has therefore been chosen. This arrangement will give the opportunity to keep a finger on the pulse and steer away from unwanted consequences if necessary. This way risks are controllable and it is possible to emphatically steer towards a clear improvement of the way penal law cases are being treated.

Orchestrated openness; public prosecution and the visibility of transactions

M. Malsch

In the Dutch criminal justice system, a still growing number of criminal cases is dealt with by the public prosecution and the police in the stage before a hearing in open court. These cases do not reach a trial by an independent judge. New legislation increases the powers of the public prosecution and the police to bring criminal cases to an end without engaging a judge. This article discusses the consequences of these developments for the principle of open justice. It is contended that the way in which compensation is sought for the lack of visibility of these cases and the procedure for dealing with them, is insufficient for guaranteeing checks and balances. Guidelines by the public prosecutions office with regard to transactions and conditional dismissals are commented upon. The consequences of lack of visibility of these procedures for citizens and the media are discussed. The article ends with conclusions and recommendations.

Plea bargain and penal order as functional equivalents?

J.F. Nijboer

The author discusses the question if by means of settlement by the Public Prosecutor Office a form of plea bargaining is introduced in the Dutch criminal law system. The transaction already gave room for negotiations between the Public Prosecutor Office and suspects, the law 'Settlement by the Public Prosecutor Office' will only widen those possibilities, according to the author. Increased pressure to work efficiently and to economize on the use of expensive and specialised investigation capacity, will create a situation in which the Public Prosecutor Office has a big interest in getting as much collaboration of suspects as possible. At the same time many suspects will find a low profile settlement of their case attractive. The disadvantages of this entanglement of interests make themselves felt in the field of truth finding, the publicity, the transparency of law enforcement and the soundness of fact research and proof.