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Evaluatie Wet OM-aftoening

English summary

Bonger Reeks

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Evaluation Public Prosecution Service (Settlement) Act

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Colophon

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Summary

The Public Prosecution Service (Settlement) Act (*Wet OM-afdoening*) provides for the imposition of a sentence in a criminal law context without court intervention by issuing a “punishment order” (*strafbeschikking*). The Act has been gradually phased in, starting on 1 February 2008 with the implementation of the punishment order issued by the public prosecutor (Art. 257a, Code of Criminal Procedure, *Wetboek van strafvordering*, Sv). In 2010, the police punishment order was introduced (art. 257b Sv) and, in 2012, the administrative punishment order (art. 257ba Sv).

The Act has been evaluated by researchers at the University of Amsterdam’s Faculty of Law, on a commission from the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*) WODC.

1 Stating the Problem and Establishing a Research Plan

The problem statement of this research project was broken down into two parts, which can be defined as follows:

- *What did the legislator envisage with the Public Prosecution Service (Settlement) Act?*
- *How is the Public Prosecution Service (Settlement) Act being implemented in practice, and is this in accordance with the legislator’s objectives and expectations?*

The problem statement was rendered into twelve research questions which have been answered by making use of a combination of qualitative and quantitative methods. First, on the basis of an examination of the relevant regulations, policy documents and literature, as well as interviews with those directly or indirectly involved in the legislative process, the presumed effect of the Public Prosecution Service (Settlement) Act (the *policy theory*) was reconstructed. This resulted in an overview of expectations and assumptions which subsequently served as a normative framework for the process assessment (the investigation into the practical implementation of the Public Prosecution Service (Settlement) Act). The process evaluation was carried out by means of a quantitative analysis of judicial data, file research and interviews with a varied group of officials responsible for the implementation of the Act (police; the Public Prosecution Service *Openbaar Ministerie* OM; judges; lawyers; administrative bodies; the Central Judicial Collection Bureau *Centraal Justitieel Incassobureau* CJIB) and with citizens who have been issued a punishment order.

2 The Public Prosecution Service (Settlement) Act: Objectives, Expectations and Assumptions

Whereas in the case of so-called “transactions” criminal proceedings can be avoided if conditions set by the Public Prosecution Service are met, the Public Prosecution Service (Set-

tlement) Act instead refers to prosecution and punishment by - or under the auspices of - the public prosecutor without the intervention of a court. The reconstructed policy theory reveals three main objectives that can be ascribed to the Public Prosecution Service (Settlement) Act: (i) to increase the efficiency of the out-of-court settlement; (ii) to strengthen the legal basis of the out-of-court settlement; and (iii) to increase the work capacity of the judiciary.

Efficient out-of-court settlement of criminal cases is considered an important means by which to meet the growing demand for law enforcement and security. The basic principle is that cases should only be referred to the courts if there is a need to impose a custodial sanction, if the nature of the offence requires this, or if there is a difference of opinion between the suspect and the Public Prosecution Service. In clear departure from transaction practice trends, mutual consent is no longer regarded as the basis for out-of-court settlements.

It had been expected that the possibility of imposing fines which could be enforced without court intervention in the event of non-payment would lead to significant efficiency gains in "bulk cases", i.e. straightforward in terms of fact and evidence. It had been assumed that fewer summonses would be required than in cases involving transactions and that objections would be filed in only a relatively minor number of cases. Recovery - with or without an order entitling summary execution - and committal for failure to comply are measures intended to induce the reluctant but financially solvent suspect to make payment. The possibility of imposing community service penalties of up to 180 hours and driving disqualifications should make it possible to settle cases involving an even more serious category of offences outside the courts.

In order to achieve the objective of *strengthening the legal basis* of the out-of-court settlement, issuing a punishment order is unambiguously framed as an act of prosecution. This is a clear break with transaction practice, which is geared to avoiding prosecution. The punishment order is based on a unilateral determination of guilt, and furthermore signals a departure from the notion that only a judge can pass sentence. The suspect may object to a punishment order - irrespective of the issuing person or authority; when this occurs, the criminal proceedings follow their usual course: the criminal court assesses the underlying offence on the basis of the charges and *not* on the basis of the punishment order. Prosecution guidelines (and thus the supervision by the Board of Procurators General) are seen as an important tool for ensuring legitimacy.

As regards *increasing the work capacity of the judiciary*, it was expected that out-of-court settlement of cases eligible for punishment orders would leave more capacity for cases better suited to the courtroom. It was expected that three quarters of punishment orders would be complied with; if a punishment order includes the imposition of a fine, execution is possible without the suspect's cooperation or, if necessary, with the aid of a motion for committal for failure to comply. The threat of being given a notice of payment due, increased fines for late payment, being confronted with the means available to exact recovery

(with or without orders entitling summary execution) and committal for failure to comply were expected to lead to an increase in the number of successful executions.

3 The Public Prosecution Service (Settlement) Act in Practice: The Figures

In order to map the implementation practice of the Public Prosecution Service (Settlement) Act, registration data provided by the Public Prosecution Service and the Central Judicial Collection Bureau (CJIB) were analysed. A selection was made from the punishment orders issued in 2014. To provide a point of comparison, data were collected from cases from 2008 that were concluded with a transaction.

The number of punishment orders issued in 2014 (more than 350,000) was considerably lower than the total number of transactions offered in 2008 (more than 550,000). Upon analysis of the data, it became clear that cases which would previously have been resolved with a transaction were progressively disposed of by means of a punishment order.

Most punishment orders issued in 2014 were complied with, i.e. 61%. Although this percentage is lower than the anticipated 75%, it is comparable with the proportion of Public Prosecution Service transactions settled in 2008 (63%) and considerably higher than the number of police transactions paid in 2008 (40%).

Objections were filed against 10% of the punishment orders issued in 2014, of which more than half (54%) went to trial. Of the failed punishment orders, 30% ended at trial. In 2008, 81% of failed Public Prosecution Service transactions and 65% of failed police transactions went to trial.

In 2014, hearings were held in nearly 50,000 cases as a result of a filed objection or failed execution. Police transactions and Public Prosecution Service transactions from 2008 together resulted in more than 200,000 legal actions. Even if the approximately 67,000 outstanding cases are still dealt with at trial, the number of cases from 2008 is still far from being equalled. This research can therefore point to a sharp decrease in the number of suits related to out-of-court settlements since the introduction of the Public Prosecution Service (Settlement) Act. However, it should be noted that in 2014 approximately 200,000 *fewer* punishment orders were issued than transactions offered in 2008, a decrease of more than 30%. This decrease can be seen in the light of decreasing crime figures across the board.

When a filed objection or failed execution led to trial, the court's judgment often involved sentencing (30% and 24% respectively, versus 9% and 1% respectively of cases that ended in acquittal). Judges are more likely to impose a milder sanction after an objection has been filed than the sanction originally imposed by the punishment order. Objections filed against administrative punishment orders are the likeliest to result in greater leniency. As many as 38% of the cases against which an objection was filed have resulted in milder punishment (with only 5% resulting in a harsher penalty).

4 The Public Prosecution Service (Settlement) Act in Practice: file research

200 police files were examined in which a police punishment order was imposed in 2014. In addition, 67 files from two regional services were examined in which an administrative punishment order was imposed in 2014. A preliminary finding is that a high degree of care is taken before police and administrative punishment orders are issued; for police punishment orders, this is mainly achieved by means of automated work processes. Another finding is that, although the numbers involved are relatively modest, file research also indicates that most police punishment orders (68%) are executed without problem. Nevertheless, the file research indicates, as does the quantitative analysis of registration data, that it is worthwhile to file an objection against a police punishment order; a case can as yet be dismissed or the suspect acquitted. Not paying also seems to be a worthwhile strategy. It is also striking that in none of the cases in which committal was demanded was it ever actually applied. Despite the careful procedure followed before an administrative punishment order is issued, objections are nonetheless often filed. This finding is in line with what emerged from analysis of the registration data. A possible explanation is the prescribed high fine imposed in the punishment order.

5 The Public Prosecution Service (Settlement) Act in Practice: interviews with parties involved in the implementation of the Act

A total of 42 interviews were conducted with employees of the Public Prosecution Service, the police, administrative bodies and the CJIB, with members of the judiciary, and with lawyers and citizens. Although this selection does not constitute a representative sample, it does provide insight into practical experience with the punishment order, certainly considered in terms of the interviewees' interaction with one another.

The practical obstacles encountered in the implementation of the Public Prosecution Service (Settlement) Act, the possible side-effects of statutory regulation, and the wishes concerning the Act, are mainly related to matters of automation, processing time and execution, the level of fines, the possibilities for making individual arrangements, the absence of conditional forms of punishment, the wide divergence in sentencing orientation points provided by the National Consultations Professional Criminal Law (*Landelijk overleg Vakinhoud Strafrecht*) LOVS, and the Public Prosecution Service prosecution guidelines and feedback after objections have been filed.

6 Conclusion: Practical Implementation versus Policy Theory

In line with policy theory, efficiency gains have been realised by issuing punishment orders in so-called bulk cases in which a fine was imposed that could be executed without court

intervention in the event of non-payment. However, not all underlying assumptions seem to be correct. In accordance with the expectations, analysis of the registration data shows that far fewer summonses are served than when it was common practice to offer transactions, but the question is why this is. Analysis also shows that far fewer punishment orders were issued in 2014 than transactions offered in 2008. The assumption that objections would be filed in only a limited number of cases has proved to be unfounded. In practice, the objection rate in 2014 was 11% for police punishment orders, 15% for Public Prosecution Service punishment orders and as high as 29% for administrative punishment orders. The assumption that the recovery of unpaid fines would be less problematic than for unpaid transactions also appears to be incorrect; execution failed in 36% of Public Prosecution Service punishment orders and 23% of police punishment orders. One possible explanation for this is that committal for failure to comply, which is intended to induce the reluctant, but financially solvent, suspect to make payment, is hardly if ever used. However, a more likely explanation is that plans for more socially responsible debt collection and for allowing more individualised arrangements to be made have in general not yet come to fruition (the option of issuing orders restricting behaviour is still hardly ever used). Moreover, if conditional forms of punishment were to be instituted, this could lead to higher success rates, fewer objections filed and fewer failed executions. Finally, the expectation that three quarters of punishment orders would be complied with has failed to materialise. In practice, this turned out to be 61% in 2014, which is virtually the same as the percentage of transactions paid in 2008.

The punishment order finds itself on firmer legal ground compared to the transaction. Establishing guilt in accordance with a procedure laid down by law and - depending on the nature of the sanction - the obligation to hear the accused and the possibility of legal assistance being provided, guarantees greater legal protection than is the case with the transaction.

The punishment order has effectively increased the capacity of the judiciary to deal with cases more appropriate to it. However, the cases that remain are more substantial; most suspects who have filed objections appear in court with a story to tell. In this way, an important objective of the Act has been realised; the finite work capacity of the courts is spent on cases that give cause to do so because there is an evident difference of opinion between the Public Prosecution Service and the suspect.