

Abstract

The laws of 1999 and 2004 concerning the implementation of municipal administrative sanctions (in short GAS legislation) gave local authorities new legal instruments to act more vigorously against phenomena of nuisance. Local authorities can now impose an administrative fine of up to 250 euros for behaviour which is contrary to public order (cleanliness, safety and quiet enjoyment) or which causes "public nuisance". This publication purports to assess how the 19 municipalities of Brussels Capital Region formulate and apply this local "nuisance law". Many differences emerge in terms of the content, the procedure and the modalities of municipal administrative sanctions (mediation, taking the minutes, amounts) and in terms of the choice between fines or police punishments. Even though some de facto harmonisation has taken place among Brussels police and security matters and the Region intervenes to make adjustments where necessary, the Brussels Region needs more institutionally-based guidance.

Authors

Paul De Hert is lecturer at the Faculty of Law and Criminology of the Vrije Universiteit Brussel (VUB), where he teaches law of human rights, theory of law and European (and constitutional) criminal law.

Karen Meerschaut is a lawyer and associated with the VUB as a postgraduate researcher, research group *Metajuridica*. She has been charged with the study "A practical and theoretical judicial analysis of the options available for a joint regional urban project in the field of safety and petty crime", in the context of the programme "Prospective Research for Brussels".

Serge Gutwirth is lecturer at the Faculty of Law and Criminology of the VUB, where he leads the research group *Law Science Technology & Society*.

Ann Vander Steene is a researcher at the Criminal Law and Criminological Studies department of the Ghent University (Belgium). She studied the implementation of mediation in the administrative sanctions system.

Karen Meerschaut, Paul De Hert,
Serge Gutwirth and Ann Vander Steene¹

The use of municipal administrative sanctions by the municipalities of Brussels.

Is there a need for a regulating role for the Brussels Capital Region?

Translation : AdK Translation

1. Introduction: the new nuisance legislation

Local authorities traditionally have the authority to define sanctions in municipal police regulations and to apply them through police fines. A violation of police regulations can be only prosecuted by the public prosecutor and can be sanctioned only by the judge. In practice, however, offences such as petty crimes are often not booked by the police and they are not prosecuted by the public prosecutor's office. In addition, until recently, the competence of local authorities has been limited to disturbance to the public order, while other less serious offences ("nuisance") could not be tackled.

At the end of the nineties, policy-making circles started to feel that local authorities were not, or not sufficiently, allowed to act against nuisance behaviours which resulted in either any or very slight disturbance to the public order.

¹ This article is a part of a study developed by the Free University of Brussels (VUB) about the options available to the Brussels Capital Region for a joint regional urban project in the field of safety and petty crime (by order of the I.W.O.I.B. of Brussels Capital Region), and of a recent study on the implementation and further specification of the mediation procedure in the context of municipal administrative sanctions (by order of the Ministry of Cosmopolitan Policy). Karen Meerschaut has been working on a research-study "A practical and theoretical judicial analysis of the options available for a joint regional urban project in the field of safety and petty crime", in the context of the programme "Prospective Research for Brussels 2006". Supervisors of this study are Prof. Paul de Hert and Prof. Serge Gutwirth (*Metajuridica* research group). Ann Vander Steen is a criminologist. She was responsible for the part of the research dealing with the implementation and further specification of the mediation procedure in the context of the municipal administrative sanctions (by order of the Ministry of Cosmopolitan Policy, VUB, *Metajuridica* research group, February-August 2007).

Contacts :

Miichel Hubert - hubert@fusl.ac.be

Paul De Hert - paul.de.hert@vub.ac.be
Serge Gutwirth - Serge.Gutwirth@vub.ac.be
Karen Meerschaut - kmeersch@vub.ac.be
Ann Vander Steene - anneke_vds25@hotmail.com

Brussels Studies is published thanks to the support of the ISRIB (Institute for the encouragement of Scientific Research and Innovation of Brussels - Brussels-Capital Region)



The law of 13 May 1999 on the implementation of municipal administrative sanctions broadened the enforcement authority of local authorities by giving them the option to impose administrative fines for the violation of public order and for behaviour which caused nuisance. Political circles suggested that the law would relieve the burden put on criminal courts and on the prosecutor's office (and also on the police if officials other than police officers were given the task of recording offences). In general, endorsing administrative bodies with the prosecution of nuisance and petty crime was seen as a viable solution to the weak level of law enforcement.

Therefore, the newly introduced option to impose administrative fines for facts of nuisance and public order was considered an important development. These non-criminal fines are not included in the criminal record nor are they inserted in the "certificate of good conduct". Moreover, administrative fines could be easily managed without the involvement of the public prosecutor and without the intervention of a judge. This was thought to give local authorities better means to enforce their own police regulations.

As of 1 April 2005 the municipal enforcement authority was further extended (laws of 7 May and 17 June 2004 amending the Youth Protection Act and the New Local Authority Act) by allowing local authorities to include in municipal regulations offences punishable under the provisions of the Belgian criminal code (see below). Moreover, the law introduced an optional prior mediation procedure was put in place in 2005. It is obligatory for minors.

In this article we intend to assess the application of the law on administrative fines in the Brussels Capital Region and in the 19 municipalities of Brussels. In particular, we propose to evaluate whether municipal practices differ and, if so, to what extent. In the context of Brussels Capital Region, the pertinent question rises of whether it is justified, effective and legitimate, that the 19 municipalities interpret the concept of nuisance differently and organise the imposing of administrative fines differently. The Region of Brussels comprises a relative small territory where the boundaries between municipalities can be crossed in short time and even by foot. In context, These 19 municipalities form a city, which is not the case for the two other regions, Antwerp and Ghent. Likewise, unlike Antwerp and Ghent, the Brussels Region does not have a local authority but 19 local authorities, complemented by a regional framework, community institutions and a governor. A well-known long-standing issue is that of parking regulations, which are different between the 19 municipalities. Does this fragmentation bode well for the feeling of security of citizens, or for the legal certainty and equality between citizens?

A similar situation arises with regard to the application of administrative sanctions for nuisance behaviour. The concept of "nuisance" encompass so very many types of actions that it is not inconceivable that neighbouring municipalities list different types of behaviour as nuisance and punish them accordingly.² Moreover, it is quite sensi-

² The concept of "nuisance" has an open and vague character. Despite a negative advice given by the Council of State, the concept of nuisance was included in the New Municipal Law, next to the existing concept of "public order" (advice of the Council of State with the Bill for the implementation of the municipal administrative sanctions, *Parl. St.*, Kamer, 1998-1999, nr. 2031/1, 13-22). The municipalities have a broad margin of discretion in deciding which acts are governed by this law.

ble to think of similar acts being tackled in tough manner in some municipalities and not in others, e.g. in some municipalities by applying police fines and in other through administrative sanctions, or some may recur to mediation and other not. Likewise, different treatment may well arise in relation to the amounts of the fines, interpretation of nuisance, and the appointment of different local officials for recording the offences, etc...

2. What are the acts of nuisance punishable in Brussels?

2.1. Introduction to the overview of nuisance provisions

Municipalities have a broad margin to determine what has to be understood as “nuisance”. The preoccupation that local measures on acts of nuisance would focus on risk groups (Liga voor Mensenrechten, Lokaal Veiligheidsbeleid, 2006; Hebberecht, 2005, De Hert, 2005, Verfaillie, K. e.a., 2007) does not seem to be completely unfounded. Our study about the application of the law on administrative sanctions in the Brussels Region has shown that acts such as wearing a burqa, spitting and urinating in public, the hanging around of homeless people and caravans in public spaces, begging and playing music on public transport either suddenly appear to be punishable facts in police regulations or are suddenly prosecuted or are more prosecuted and fined than before the law on administrative sanctions. Before taking a look at the acts treated as nuisance by the municipalities of Brussels, we must signal the remarkable choice made by the municipalities of Schaarbeek, Sint-Joost and Evere (joined in the police zone BRUNO) to not implement the municipal administrative sanctions system. Interrogated about the reasons of such a decision, the town clerk of Schaarbeek contended that the maintenance of local public order and the tackling of nuisance problems are tasks for the courts and for the police. According to the Schaarbeek law-man, appealing to the legislation on administrative sanctions as an “emergency route” to complement an inadequate judicial machine is not the appropriate solution. The municipal administrative culture is preventive, while the new administrative sanctions are repressive.³ Other officials of the municipality of Schaarbeek explain the non-implementation of administrative sanctions as due also to a lack of clarity about the role of respectively the judicial and the local administration, the prohibition for double penalization (e.g. illegal dumping), the complicated procedure in case of mixed offences (via the public prosecutor), the vague status of the offence-recording official, the limited amount of the fine (e.g. in case of illegal dumping), the complicated procedure for minors (lawyer and mediation) and the financial burden of the implementation of the system (Leemans and Bouvy, 2007).

Despite the choice against municipal administrative sanctions the municipality of Schaarbeek can hardly be accused of inertia. In the field of cleanliness, the municipality handles a zero tolerance policy, on the example of New York. However, this policy is not imposed via the legislation on administrative sanctions, but via a tax regulation “on soiling public roads and pollution visible from public places”. All other

³ The town clerk of Schaarbeek, Mr Jacques Bouvier, expressed his reservations about municipal administrative sanctions during a colloquium about administrative sanctions held at UCL in Louvain-La-Neuve on 22 February 2007.

municipalities of Brussels also have a tax regulation on public cleanliness. The regulation of Schaarbeek e.g. imposes a tax of 380 euros for graffiti and tags. In addition, urinating in the public road, non-compliant bin liners, soiling public roads, blocking drain holes and dog dirt, are also taxed. Polluters can be caught by patrols, ad hoc interventions, investigation and cctv. The municipality also organises a 5-hour long “trash operation” twice a month. This is a structured joint action to which officials of the municipal cleaning department, *Net Brussel*, the police and a representative of the foreign citizens department take part and which takes place in very polluted districts (Leemans and Bouvy, 2007). Such a 5-hour long action has resulted in an average of 29 police reports on urinating in public in the *Noord* district (Brussel Deze Week, 27 September 2007, 12).⁴

2.2. Provisions of nuisance in relation to burqas

The first striking conclusion about the new nuisance regulations is that more and more municipalities in Brussels are taking measures against wearing burqas. In this field, the existing municipal “carnival” provisions are being used, and reformulated in the new police regulations to explicitly prohibiting the wearing of burqas. Previously existing provisions prohibited wearing masks or other types of disguises because they obstructed identification by the authorities. The old police regulations read:

“It is forbidden to access public roads or places open to the public in general in a disguise (...) Except if a permit has been granted, wearing a mask is forbidden” (municipal regulations Schaarbeek 1986).

Now it reads:

“It is forbidden to access public roads or places open to the public in general with your face covered, in disguise or with make-up on (...) Except if a permit has been granted, wearing a mask is forbidden”

The legislation on administrative sanctions also makes it possible to tackle the phenomenon of disguise in public roads in a broader, quicker and stricter manner. Whether the general prohibition of wearing a burqa, which is not a very common habit in Brussels anyway, to guarantee public safety or countering public nuisance is necessary, is open to question. It seems to be a rather disproportionate reaction to a marginal problem. Recent actions in different western countries against burqas in public areas are undoubtedly related to the current negative climate surrounding Islam as a religion, which resulted in associating wearing burqas to Islamic extremism and terrorist threats.

As far as the prosecution of this violation is concerned there is, again, great divergence between the 19 municipalities. Wearing a burqa [by Muslim women] has led to police reports in only four municipalities of Brussels, headed by Sint-Jans-Molenbeek with 21 police reports, the city of Brussels (7 PRs), Sint-Gillis (2 PRs) and Koekelberg (3 PRs). In the city of Brussels only one case has been concluded through a mediation procedure, in which the woman agreed to comply with the prohibition. In Sint-Gillis no further action was taken out of fear of criticism from human

⁴ The municipalities of the police zone BRUNO are currently in the process of discussing and drafting new police regulations, which are going to include the administrative sanctions. To date, these regulations have not been adopted.

rights organisations, such as MRAX. No fines were imposed for these offences in Brussels and in Sint-Gillis. In Sint-Jans-Molenbeek the 21 police reports resulted in the imposition of a fine ranging between 50 and 150 euros⁵; in Koekelberg a 75 euro fine seems to have been imposed each time. In some municipalities (Watermaal-Bosvoorde, Ukkel, Sint-Lambrechts-Woluwe and Vorst) the officials in charge of the legislation on administrative sanctions have explicitly declared that wearing a burqa cannot be classified under the provisions on disguises and masquerades.

2.3. Provisions of nuisance in relation to caravans

It is also new that the legislation on administrative sanctions is used against caravan dwellers, notably “gypsies” and “nomads”. According to the circular letter OOP30bis the legislation on the administrative sanctions can apply to the problem of caravans stationed on locations that are not intended for that purpose. All police regulations in Brussels specify that it is forbidden to remain in the territory of the municipality or on the public road for more than 24 hours in a car, a caravan or to camp there (except if a permit has been granted), or to remain on a private site for more than 24 hours in a caravan, camper or mobile home. This provision partially draws from an article of the Road Code which prohibits the parking of vehicles (which are not driving anymore) and trailers on public roads for a period longer than 24 hours. The part about caravans stationing in private sites is governed by the legislation on urban planning. In these regulations a permit is required to station caravans in order to avoid illegal camp sites.⁶ Therefore, the question arises whether the municipalities can still regulate this matter in their police regulations, as this matter is already governed by other laws. Moreover, including the prohibition on the stationing of caravans in police regulations seems to be at odds with European case law in this field, the constitutional right on housing, and with the proportionality principle, as this provision seems to be not justified by the objective of maintaining public order or avoiding nuisance. However, the provisions concerning caravan dwellers in Brussels police regulations do not seem to have been applied anywhere yet.

2.4. Provisions of nuisance in relation to begging

Even though begging has been removed from the criminal code for some time, two considerations can be put forward. First, the new police regulations of the municipalities Sint-Joost-ten-Node, Schaarbeek and Evere contain a new specific provision which makes begging an offence punishable by a fine. However, this new provision has not yet resulted in legal action. Secondly, the Brussels regional transport company MIVB has recently reiterated its intention to get rid of begging musicians and beggars in the underground, on busses and trams, claiming that beggars cause nuisance to the passengers. We take note that the region, within the limits of its competence in the field of public transport, issued administrative fines (84 euro) for a

⁵ According to the local authorities, the reactions of the persons at the time of the administration of the fine has been variously characterised by general indifference, feeling of incomprehension, feeling of injustice.

⁶ Article 84 § 1, 10°, c) of the organic ordinance of 29 August 1991 concerning the organisation of planning and urban development.

number of nuisance behaviours, including playing music & singing and begging in public transports.⁷

2.5. Provisions of nuisance in relation to urinating in public and teen loiterers

A prohibition on urinating in public places exists in all municipalities. The prohibition on urinating in public place is now enforced more vehemently, at least in some municipalities. In municipalities like the city of Brussels and Sint-Gillis a significant part of the cases (especially involving minors) is about minor nuisance phenomena, such as spitting and urinating in public – referred to in Brussels as “*manneken pis*” files.

The problem of “loitering” is usually dealt with indirectly by means of a provision in the general police regulations on gatherings or failure to respect closing times (e.g. Sint-Gillis). The city of Brussels only acts if youths obstruct the traffic. Municipalities try to solve the problem through means of local social projects, or by deploying social street workers and city stewards.

2.6. Provisions of nuisance copied from the older municipal regulations

The examples of nuisance discussed above, which affect certain groups directly or indirectly and which are relatively “new”, are not the most frequent forms of nuisance. Besides spitting and urinating in public (which are more systematically booked and prosecuted in some municipalities) and wearing a burqa, there have hardly been any prosecutions (leading to a fine) against beggars, caravan dwellers and loitering youths.

The interviews and surveys⁸ we have carried out in the 19 municipalities of Brussels have revealed that other acts of nuisance have been the principal object of prosecution: illegal dumping, damage to public roads, private works on pavements and bad maintenance as such, bad and double parking, night-time noise, insults to a police officer, driving on car-free Sundays, noise nuisance, dish antennas, dog dirt, throwing small waste on the street, searching rubbish containers, poor maintenance of sites, gathering (e.g. demonstrations), destroying municipal landscaping, feeding pigeons, taking out rubbish outside allowed hours and urinating in public (GAS study Brussels, VUB, early 2007).

It is striking to see that many of these acts, which are today often classified as nuisance are not new. Many acts concern infringements on the security, cleanliness and quiet enjoyment which already appeared in old police regulations, such as e.g. the prohibition of gathering, the obligation to maintain pavements, the prohibition to soil public areas, the prohibition to bathe in public ponds, the prohibition of disturbing and dangerous activities on public roads such as climbing or noisy games, the

⁷ Decree of the Brussels Capital government concerning the establishment of some management criteria of public transport in Brussels Capital Region, 13 December 2007, the Belgian Official Gazette, 10 January 2008. This prohibition apparently already existed in a ministerial circular letter of 1997 concerning the presence of beggars, musicians and street-traders in the vehicles and installations of the Public Transport Company of Brussels.

⁸ Written questionnaires were sent to all the municipalities of Brussels in the month of February 2007. These written questionnaires have been complemented by an additional questionnaire about the application of the mediation procedure which were sent to the three municipalities in Brussels which have already set up mediation procedures, and by information gathered by telephone and by e-mail.

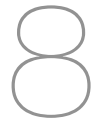
obligation to prune private trees and plants hanging onto the public road, the prohibition to do repair and service jobs on vehicles such as changing the oil, the prohibition to hang posters on walls, the prohibition to spit, feed animals, using the horn and run, the prohibition to dwell on public roads in disguise, etc. What is new is the fact that the possibility of issuing administrative fines in some cases puts an end to a previously prevalent culture of tolerance. We also notice that some earlier prohibitions or obligations are getting tighter in the new police regulations, like the one in relation to disguises, dog dirt and keeping animals on a leash (e.g. the new obligation in Watermaal-Bosvoorde to have a “dog dirt bag” with you and the prohibition of an extensible leash; many old police regulations stated that dogs should be held on a lead, only if required).

2.7. Provisions of nuisance coming from the national Criminal Code

We mentioned in the introduction that the laws of 7 May and 17 June 2004 made it possible for the municipalities to transfer acts included as offences in the Belgian criminal code into municipal regulations. The legislator achieved this result in two ways. First, the legislator removed a number of offences from the criminal code (such as the failure to clean roads, failure to repair slums, firing fireworks and theft of vegetables from fields) and then left to the municipalities the choice to include them in their municipal police regulations. Secondly, the legislator defined a number of offences and crimes of the criminal code as “mixed” (e.g. graffiti, vandalism, night noise, threats, theft, insults, desecration of graves). These mixed offences still remain punishable under criminal law and can only be dealt under administrative law by the municipality if the public prosecutor agrees with an administrative sanction, if he drops the charges or remains inert (depending on the kind of mixed offence). Municipalities are free to criminalise or not decriminalised offences and mixed offences in their police regulations. This group of mixed offences also turn up in the new Brussels police regulations, though to differing extents (not in all municipalities and not for all mixed offences).

Examples of recriminalised offences are the failure to clean passages, obstructing the public road, failure to repair ramshackle buildings, throwing objects to persons, letting off fireworks and letting animals stray. Mixed offences can be divided into serious and minor mixed offences. Examples of serious mixed offences are threats, deliberate assault and battery, theft, insults and destroying or damaging graves, statues, monuments and works of art. These are included only in the police regulations of the police zone of the city of Brussels and Elsene and in police zone West (Koekelberg, Sint-Jans-Molenbeek, Sint-Agatha-Berchem, Ganshoren and Jette). In practice, this complex procedure meets with quite some difficulties, notably the coordination with the public prosecutor who has to approve the administrative prosecution by the municipalities of these offences. The public prosecutor has already announced, through the College of Public Prosecutors that, in view of the seriousness of these offences, it will not authorise administrative sanctions (Verbeek and Van Heddeghem, 2006). Some members of the Brussels parliament said they were worried about this situation, notably because the public prosecutor was not prosecuting those offences either (Br.Hoofdst.Parl., 2004-2005, Full report, no. 24).

Examples of the minor mixed offences are minor vandalism, night-time noise and graffiti. Again, not all the municipalities of Brussels have included these offences. In addition, some municipalities have not opted for the new administrative sanctions



system (if the public prosecutor fails to take action), but for traditional police punishments. Graffiti e.g., which is punishable in all municipalities, is punished in 12 municipalities by police fines (besides the municipalities of the police zone BRUNO, also Etterbeek, Sint-Lambrechts-Woluwe, Sint-Pieters-Woluwe and the municipalities of the police zone Brussel-West). The remainder seven municipalities punish it directly with administrative sanctions.

2.8. Provisions of nuisance overlapping with provisions in other legislations

A basic rule in relation to the municipal authority to tackle certain offences is that no overlapping should take place with other offences which are tackled by other authorities. It is not always easy, even for lawyers, to apply this rule properly, because of the large number of laws enacted in our country. Many “new” facts of nuisance in the nuisance regulations in Brussels ignore this rule and are in fact already sanctioned by other laws, such as the large group of waste offences (illegal dumping, putting rubbish out too early, etc.). The same applies for all kinds of noise-related nuisances. In the Brussels Capital Region those matters have already been regulated by, respectively, the ordinance in relation to fighting noise nuisance (1997) and the waste ordinance (1991). Noise, e.g., in many cases can no longer be sanctioned by the municipality. Night-time noise is a mixed offence and regulations already exist about noise disturbance by road traffic (see traffic code) (Verbeek and Van Heddeghem, 2006). The provisions in the police regulations about polluting public spaces can only refer to small rubbish, more specifically rubbish not included in the waste ordinance, such as dog dirt, cigarette boxes, food boxes, and the content of ashtrays. Likewise, domestic waste cannot be regulated by a police regulation because it comes under the waste ordinance and the agglomeration regulations on domestic waste collection. The extensive regional regulations about the environment, waste and noise leave little room for the municipalities to act on the pretext of nuisance.

3. Mediation in the context of the legislation on administrative sanctions

The amendments to the law of 2004 introduced a mediation phase in the procedure of administrative sanctions. This is compulsory for minors and optional for adults.

In principle the rationale behind the idea of mediation is that offender and the victim of the nuisance causing behaviour (or the offender and the administration if there is no direct victim) sit together at the same table and try to solve their problem with the assistance of a neutral third party. According to the letter of the law (article 119, 3° N. Gem.) the only purpose of the mediation is to restore or compensate the inflicted damage.

In practice, we notice that some municipalities use this procedure to propose alternative sanctions (such as community service). Even though many lawyers have doubts about the legality of such practice, it does probably bode well for those politicians who plead for the development of alternative sanctions at this level (Vandenhove, 2007).

In Belgium only 33 municipalities (out of a total of 475) have started up an mediation for adults and/or minors. The number of mediations which has been organised until

now is also very low, in the 19 municipalities of Brussels. This means, *inter alia*, that the number of files concerning minors is very low. On 31 May 2007 – i.e. two years after the last version of the law entered into force (1 April 2005) only three municipalities had set up mediations (Brussels, Oudergem and Sint-Gillis). Brussels and Oudergem have also done so for adults. In Brussels the following offences were involved, for adults: “covering the face” (only once), minor acts of violence, night noise, lack of maintenance of a building or urinating in public. For minors, the largest part of mediation files concerned urinating in public. These mediations led to the adoption of the following measures: reminders of the norm and explanation, apologies, a fine and attending dog training.⁹ The city of Brussels and Sint-Gillis are not only at the forefront in administrative sanctioning; these two municipalities also cleared the path for the application of alternative sanctions in the context of the mediation procedure. In the city of Brussels the reparation of damage is aimed for by a proposal to perform a 6-hour shift, e.g. helping in a kitchen.¹⁰

Some municipalities, such as Sint-Gillis, city of Brussel, Koekelberg and Sint-Jans-Molenbeek¹¹, have adopted separate mediation regulations. The mediation rules of the city of Brussels (which took effect on 1 November 2006) specify that mediation is started up by the sanctioning official and that the intervention of specialised associations can be sought to give concrete implementation to the mediation. The mediation rules of Sint-Gillis (which took effect on 1 January 2006 with 5 applications, so far) clarifies that the mediation is only proposed when the amount of the fine exceeds 61.79 euros. In this case the sanctioning official will explain to the offender that the municipality offers him/her the option to replace paying a fine with accomplishing a community service (a “performance of general interest”). The performance should, where possible, be related to the offence committed and the damage caused. The duration of the measure (between 8 am and 12 pm) is to be decided by the sanctioning official. After a successful performance the legal action stops. In case of an unsuccessful performance, an administrative fine can still be imposed. Examples of restorative mediation which have been proposed in Sint-Gillis include assisting in rubbish collection during one day, watching an informative film of 30 minutes about cleanliness and the (free) attendance of a French language course.

In this context we may point out that Schaarbeek also experiments alternative methods before imposing tasks on minors. Cleanliness officials ask youths to restore the damages they have done e.g. sweeping the square they have soiled, with the assurance that they will not be booked [recorded??], (Bouvy and Leemans, 2007).

⁹ “Study about the implementation and further specification of the mediation procedure in the context of the law on the GAS”, Final report, by order of the Minister of Civil Service, Social Integration, Metropolitan Policy and Equal Opportunities, VUB, February-August 2007, 97 p.

¹⁰ For the period from January 2006 to 1 September 2007 the leader of the project only organised 50 mediations (on a total of 2000 files) as opposed to 5 (on a total of about 900 files) in Sint-Gillis and 2 (on a total of 100 files) in Koekelberg.

¹¹ The council meeting of Sint-Jans-Molenbeek has adopted mediation regulations for minors on 30 June 2005, but these regulations have never been applied.

4. Which administrative sanctions are imposed?

The legislation on administrative sanctions provides the following administrative sanctions (article 119bis, N. Gem. W): a fine of maximum 250 euros (which is the double of the maximum police fine for offences), a suspension of a permit or licence granted by the municipality, withdrawal of a permit or licence issued by the municipality, or temporary or final closing of an institution. Up to now, in most of the cases, it has been administered a fine. In only very few municipalities other sanctions have been imposed (mainly in the city of Brussels). Several municipalities also use warnings. In police zone West (Koekelberg, Sint-Agatha-Berchem, Ganshoren, Jette and Sint-Jans-Molenbeek) the maximum amounts of the fine fluctuate according to the offence (predefined in the police regulations). In the other municipalities the legal maximum of 250 euros applies to all offences, which broadens the discretion of the sanctioning municipal official. For instance, spitting on the street in the municipality of Sint-Jans-Molenbeek results in a maximum fine of 150 euros and in the city of Brussels and Sint-Gillis a maximum fine of 250 euros. Within the limits of the legal maximum amount of 250 euros, the municipalities may also issue different warning and sanctioning policies: e.g. in the city of Brussels spitting results in a fine of 75 euros, in Sint-Gillis, Sint-Lambrechts-Woluwe and Etterbeek a fine of 50 euros and in Anderlecht a fine of 10 euros.

5. Similarities and differences between the municipalities of Brussels

According to the 2003 "Urban Policy Whitepaper" an integrated urban policy in Brussels requires firm direction from the city-regional administration. New instruments to fight nuisance can boast more vigour but not necessarily results in more consistency. The new legislation on administrative sanctions assigns a larger role to municipalities in terms of nuisance. More offences can be punished, leaving less say to the judicial system and giving municipalities a greater role in the prosecution of federal offences which can, from now on, also be "punished" under municipal regulations. In general this has already resulted in the blurring of the boundaries between criminal law and administrative action, and in increased fragmentation between different cities and municipalities. The consequence is undoubtedly more legal insecurity and inequality.

Our study reveals that in the Brussels Region there are significant differences in the field of content, procedure and modalities (mediation, recording, amounts), and in the choice of sanction. As for the content, we can refer to begging (which is only an offence in the BRUNO zone), to the different interpretations given to provisions on "disguise", to the different attitudes towards including mixed offences and decriminalised offences in Brussels police regulations. In the field of modalities of execution, we shall refer to the different role attributed to mediation in the 19 municipalities. In some municipalities (like the city of Brussels and Sint-Gillis) mediation entails the possibility to impose alternative "restoration-oriented sanctions" which replace fines. In other municipalities the mediation phase plays no or hardly any role. Finally, we have found that, as far as the choice between police fines and administrative sanctions is concerned, not only the municipalities of the BRUNO zone have not yet implemented administrative sanctions (they are currently working on new police

regulations in which administrative sanctions are going to be implemented), but also the police regulations of other municipalities still opt, for some offences, for police fines instead of administrative sanctions.

In the context of Brussels we therefore have to ask ourselves whether nuisance may and should be a competence for each of the the nineteen individual municipalities. What would indeed remain of the regional image of Brussels as a multi-coloured gateway to the world if risk groups such as foreigners, the unemployed, the deprived, the homeless, youths and beggars are targeted by means of nuisance provisions? Isn't an approach targeted at punishing urinating in public without providing public toilets too 'one-sided'? Should a more integrated approach be developed at regional level? ¹²Isn't there, if the national legislator transfers a number of offences onto the municipalities (by deleting them from the national criminal code), a task for the Region to see which of these offences have to be ruled out, in particular in light of the fact that some of this 'to-be-deleted' offences are useless, and in view of achieving some consistency in practically dealing with nuisance and administrative sanctions in Brussels?

6. A larger role for Brussels Region?

The question whether nuisance can be treated as a purely municipal matter is difficult to answer. What is the most appropriate administrative level for handling metropolitan concerns such as safety, cleanliness, quietness and nuisance? With regard, in particular, to the field of nuisance, harassment and incivilities, the work group of the Belgian Forum for Urban Safety (BFPVS) sees the need for an integral urban policy, because that is the only way to create clarity about the objectives and the strategy to deal with different domains and sectors in an urban policy (see observations about inter-sectorial policy between mobility, cleanliness, noise nuisance, urban planning, social integration; ...)' ¹³The city of Antwerp has one local administration, one police code and one policy in terms of nuisance and administrative sanctions. In Antwerp, there also are districts, but they do not have individual competencies on nuisance and police. The "local administration" of Brussels Capital Region, on the other hand, is very fragmented because of the existence of a municipal and a regional structure, each with their specific competencies in the field of "safety". Sometimes competences are closely related or overlapping: public cleanliness is competence of the municipalities and waste prevention and management are competencies of the region. This stirs up discussions about who is competent in relation to illegal dumping, dog dirt and putting out bin liners too early.

The legislation on administrative sanctions does not meet with equal enthusiasm at local level. It has more success in urban regions than in rural regions. Especially smaller municipalities lament the heavy financial and organisational burdens they have to carry for the implementation of the legislation on administrative sanctions. In the specific context of Brussels region the question arises as whether the Region

¹² Paul De Hert & Karen Meerschaut, 'Plassen in het land van manneke pis', *De Morgen*, 27 October 2007, 8.

¹³ Report of the work group BFPVS concerning nuisance, harassment and incivilities, January 2004, <http://www.urbansecurity.be/fbpsu/>; last consulted on 5 January 2006.

should, or not be given a larger role in e.g. quality testing, coordination and fine-tuning. In this respect a Brussels member of parliament (Mr Beghin) submitted a proposal for resolution about general police regulations in the region. This proposal contained the recommendation to assist the Brussels municipalities in the development of uniform police regulations with uniform administrative fines. According to its drafter, this initiative would fall within the authority to impose measures concerning the coordination of municipal police services which the Brussels Capital Council took over from the Brussels agglomeration council. In another proposal for resolution, the same lawmaker suggested, that as a result of the Lambermont agreements, Brussels region has the possibility to review the authorities of the region and of the municipalities in order to reach a better distribution of competencies (Brussels Capital Council, ordinary sitting 2003-2004, 15 January 2004, A-552/1 and ordinary sitting 2004, 10 September, A-32/1).

A 2001 study carried out by the Association of the City and the Municipalities of Brussels Capital Region demonstrates that the region could be a regulator in terms of the modalities, the procedure, the recording of offences, the effects and even the nature and the amounts of administrative sanctions. The study undertook to evaluate the consequences of the Lambermont regionalisation of the New Municipal Code in terms of composition, competences and functioning of provincial and municipal institutions, in relation to the provisions on administrative sanctions in the municipal code (article 119bis N.Gem.W.).¹⁴ The region could adopt an ordinance in which, for instance, the maximum amount of the fine is reduced or increased, the possibility of oral defence is restricted or extended, and other administrative sanctions, such as works of general interest, are introduced.

A large harmonisation has de facto taken place in the Brussels Region through the creation of six police zones within the Region. We have seen that municipalities within the same police zone often adopt identical police regulations (police zone *Brussel Noord*, *Brussel West*, *Brussel Zuid*, and police zone Montgomery). Moreover, there are profound similarities between the police regulations of the 19 municipalities of Brussels and between the police zones which have not adopted identical regulations. The different police regulations were shaped after the model of the Brussels association for cities and municipalities (see http://www.avcb-vsgeb.be/nl/mati/pol/missions/pol_rgp.htm). Furthermore, the introduction of the concept of nuisance does not seem to introduce too many new items. Besides a number of decriminalised offences and mixed offences, lots of rules in the new police regulations can hardly be called innovative, even when they deal with spitting or “disguise”. We can say, however, that the new police regulations are more accurate and more detailed. The stricter formulation of some offences or the introduction of additional, more explicit prohibitions (e.g. additional provision on urinating in public places instead of a general prohibition to soil public space) may have a net-widening effect. We also notice that that existing offences listed under the criminal code and under the police regulations which have had a sloppy penal relevance (such as urinating in public and disguise) are revived through administrative means. For a number of specific offences (such as the prohibition of burqas,

¹⁴ Report of the task “Administrative Sanctions – Promotion and application in the municipalities”, Brussels, 2003, by order of Brussels Capital Region and executed by the Association of the City and the Municipalities of Brussels Capital Region, 116 p.

urinating in public, caravans, begging) a degree of unprecedented paternalism or moralism can be detected (either in the standards or in the practice of enforcement). This is also illustrated, e.g. by the initiative undertaken in the city of Mechelen against “nuisance due to skating on a public square”, against talking loudly on a mobile phone, or by the fuzz made about nuisance caused by playing children in the playground in Lauwe. The most important innovation unveiled by the legislation on administrative sanctions is however the possibility to introduce a fully-fledged municipal criminal law system in which recording (?), prosecution and punishment can be completely entrusted to municipal officials.

Despite the presence of elements which should allow for a more steering role of the Brussels Capital Region, there still exists differences in how Brussels municipalities interpret and apply the legislation on administrative sanctions. Without wanting to overestimate these differences, we are of the opinion that they are such to justify a greater role for the institutions of the Brussels Region in this socially sensitive domain.

Bibliography

- Bouvy, M. en Leemans, W., 'Netheidstaks als alternatief voor gemeentelijke administratieve sancties. Het reglement ter bestrijding van de vervuiling van de gemeente Schaarbeek', *Politiejournaal-Politieofficier* no. 5, May 2007, 17-22.
- Bouvier, J., 'Sanctions Administratives Communales: La saveur d'une justice de proximité' in R. Andersen, D. Déom and D. Renders, *Les Sanctions Administratives*, Brussels, Bruylant, 2007, 331-339.
- Bottamedi, C., 'Welk maatschappelijk model willen we? Korpschef Bottamedi stelt zich vragen bij de visie achter de administratieve sancties', *Politiejournaal-Politieofficier* no. 5, May 2007, 6-11.
- Bruggeman, W., 'Hoe lokaal kan een veiligheidsbeleid zijn? Lokale integrale veiligheid: nakende realiteit of een natte droom?', *Panopticon*, 2006/2, 1-4.
- Cartuyvels, Y., Mary, Ph., Réa, A., « L'État social-sécuritaire », in Van Campenhoudt, L., Cartuyvels, Y., Digneffe, Fr., Kaminski, D., Mary, Ph., Réa, A., eds, *Réponses à l'insécurité. Des discours aux pratiques*, Bruxelles, Labor, 2000, 407-429.
- Decorte, T., De Ruyver, B., Ponsaers, P., Bodein, M., Lacroix, A.C., Lauwers, S., Tuteleers, P., *Drugs en Overlast*, Ghent, Academia Press, 2004;
- De Hert, P., 'Ontwikkelingen inzake veiligheid en vergelding: onderzoeksuitdagingen op het vlak van juridische argumentatie' in P.L. Bal, E. Prakken & G.E. Smaers (eds.), *Veiligheid of vergelding? Een bezinning over aard en functie van het strafrecht in de postmoderne risicomaatschappij*, Deventer, Kluwer, 2003, 57-78.
- De Hert, P., 'Privatisering, Decodificatie, Instrumentalisering en Wurging', M. Santens (ed.), *Gewapend bestuur? Gemeentelijk bestuur(srecht) en gemeentelijke administratieve sancties ter bestrijding van overlastfenomenen en kleine criminaliteit, tegenspraak-cahier 24*, Bruges, die Keure, 2005, 67.
- De Hert, P., 'Handhaving van de openbare orde ondanks het vergaderingsrecht', boekbespreking G. Plas, *Het vergaderingsrecht, de ordehandhaving en de bestuurlijke overheden*, UGA, 1999, *Vigilis*, 2000.
- De Hert P., Gutwirth S., Snacken S. & Dumortier E., 'La montée de l'Etat pénal : que peuvent les droits de l'homme ?', in Cartuyvels, Y., Dumont, H., OST, Fr. en Van De Kerckhove, M. & Van Drooghenbroeck, S. (Eds), *Les droits de l'homme : bouclier ou épée u droit pénal ?*, Publications des FUSL/Bruylant, Bruxelles, 2007, 235-290.
- De Hert P. & Meerschaut, K., 'De Belgische morele openbare orde beschermd. Vroeger was het vrijer', *Rechtsfilosofie en Rechtskritiek*, 2007, vol. 36, no. 3, 112-120.
- Devroe, E., 'Last van overlast: volle G.A.S. vooruit?' in: 'Last van overlast', *Orde van de dag*, Kluwer, issue 24, Dec. 2003, pp. 7-32.
- Devroe, E., 'Last van overlast' (red.), *Themanummer Orde van de dag*, Kluwer, issue 24, Dec. 2003.
- De Wree, E., Vermeulen, G. en Christiaens, J., (Strafbare) overlast door jongerengroepen in het kader van openbaar vervoer. Fenomeen, dadergroep, onveiligheidsbeleving, beleidsevaluatie en -aanbevelingen, in opdracht van Federale Overheidsdienst Binnenlandse Zaken, ICRP, University of Ghent.
- Mary, Ph., 'l'Etat sécuritaire, un mythe?', *J.T.*, nr. 6265-16/2007, 28/04/2007, <http://jt.larcier.be/docip/display.php>.
- Rea, A. 'Les ambivalences de l'État social-sécuritaire', *Lien social et politique*, 57, 2007, 15-34.
- Pieters, P., 'Burgemeester, gouverneur, minister: de tussenkomst van de (hogere) bestuurlijke overheden bij verstoringen van de openbare orde', *Panopticon*, 2006, no.2, 92-97.

- Plas, G., *Het vergaderingsrecht, de ordehandhaving en de bestuurlijke overheden*, Kortrijk-Jeule, UGA, 1999.
- Pleysier, S. en Deklerck, J., 'Over hondenpoep en hangjongeren. Een verkennend onderzoek naar overlastfenomenen in parken en groenzones', *Tijdschrift voor Veiligheid*, 2006 (5) 1, 6-8.
- Ponsaers, P., 'Voor meer (crimineel) beleid, voor meer veiligheid, voor iedereen', in : *Criminologie : tussen kritiek en realisme - Liber amica/orum Christian Eliaerts, CHRISTIAENS, J., ENHUS, E., NUYTIENS, A., SNACKEN, S., VAN CALSTER, P. (eds.), VUBPress Criminologische Studies, Brussels, 2007, p. 253-280.*
- Raad van State, 11 januari 2007, *Bvba L&S Vending tegen de stad Hoogstraten*, *Rechtskundig Weekblad*, 2007-2008, noot P. De Hert & K. Meerschaut, to be published.
- Schuermans, F., 'Gemeentelijke administratieve sancties en gewapend-bestuursrecht: naar een embryo van bestuurlijke parketten', in M. Santens (ed.), *Gewapend bestuur? Gemeentelijk bestuur(srecht) en gemeentelijke administratieve sancties ter bestrijding van overlastfenomenen en kleine criminaliteit, tegenspraak-cahier 24, Bruges, die Keure, 2005, 25-28.*
- Smeets, S., 'Nouveaux uniformes' et état social actif: vers une recomposition du champ de la sécurité en Belgique? , Thèse présentée en vue de l'obtention du grade de docteur en criminologie, Ecole des sciences criminologiques Léon cornil, ULB, 2006.
- Vandenhove, L., *Iedereen veilig*, Antwerp/Apeldoorn : Cyclus, 2006.
- Van Heddeghem, K., 'Bestuurlijke aanpak van overlast: de gemeentelijke administratieve sancties', *Panopticon*, 2006/2, 30.
- Veny, L. en De Vos, M. (ed.), *Gemeentelijke administratieve sancties*, Brugge, Vanden Broele, 2005
- Verslag van de werkgroep van het BFPVS betreffende overlast, hinder en onburgerlijkheden, January 2004, <http://www.urbansecurity.be/fbpsu/>; last consulted on 5 January 2006.
- Verbeeck, M. en Van Heddeghem, K. (eds.), *Handboek Gemeentelijke Administratieve Sancties. De bestuurlijke aanpak van overlast*, Politea, Brussels, 2006.
- Verfaillie, K., Beyens, K., Blommaert, J., Meert, H. en Stuyck, K., 'De 'overlastmythe'. Het geïnstitutionaliseerd onvermogen om constructief om te gaan met samenlevingsproblemen?', *Panopticon*, 2007, vol. 28, 6-20.
- Witboek De eeuw van de stad. Over stadrepublieken en rastersteden, onder redactie van Linda Boudry, Peter Cabus, Eric Corijn, Filip De Rynck, Chris Kesteloot en André Loecx, Brugge, Die Keure, 2003.