

When a chapter becomes a book. Reflections on the legitimacy of local administrative sanctions in Belgium

Workshop on Legitimacy | Ghent |

6 December 2012

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1. Legitimacy

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Research has shown that people obey the law and cooperate with legal authorities primarily if and when they view those legal authorities as legitimate (Tyler 2006).

Legitimacy, in turn, is a product of how authorities treat people and make decisions when they are exercising their regulating power – that is procedural justice. Fairness in decision-making – that is, neutral and non discriminatory behavior – and fair interpersonal treatment are the key to securing cooperation. (Tyler 2011).

Institutions can avoid the cost, danger and alienation that are associated with policies based on external rules underpinned by deterrent threat (Schulhofer *et al.* 2011; Jackson *et al.* 2012)

“Legitimacy is the right to rule and the recognition by the ruled of that right” (Sternberger 1968)

Normative (are certain standards met?) and empirical (how much legitimacy do subjects attribute to an authority or institution?) legitimacy (Hough *et al.* 2010)

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2. Empirical legitimacy of local administrative sanctions

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No specific surveys or survey questions on appreciation/trust in the local administrative sanction systems in Belgium

Well-covered by the media

For this paper: scan of written media from introduction of the sanctioning system (1999) till today in Flanders (2279 hits in Mediargus)

Looking for explanations for (changes in) legitimacy questions.

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3. The system of local administrative sanctions

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1999: Act gives the power to municipal authorities to define acts as public nuisance (incivilities) and sanction them with a local administrative sanction (mostly fines) (LAS) with a possibility to appeal to the police court. Only possible for those types of behaviour for which neither the federal nor regional Parliament has provided penalties. Empty barrel? Not much leeway for local councils (no overlap allowed with existing provisions elsewhere) and no special enforcement staff (incivilities to be established by a report of the police)

2004-2005: Amendments allowing municipalities to sanction some “mixed violations”, i.e. behaviour that both qualifies as a criminal offense and a local incivility. For “milder” mixed violations the municipalities can sanction if the public prosecutor does not take action, more “serious” mixed violations can only be taken up if the prosecutor explicitly refers the case to the municipalities. Reports can be made by others than police. Minor (16-18) can be subjected to LAS, after a mediation process.

2012: Bill to lower the age limit for LAS to 14, raise the amount of the fines (175/350 Euro vs. 125/250 Euro)

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4. Implementation of local administrative sanctions

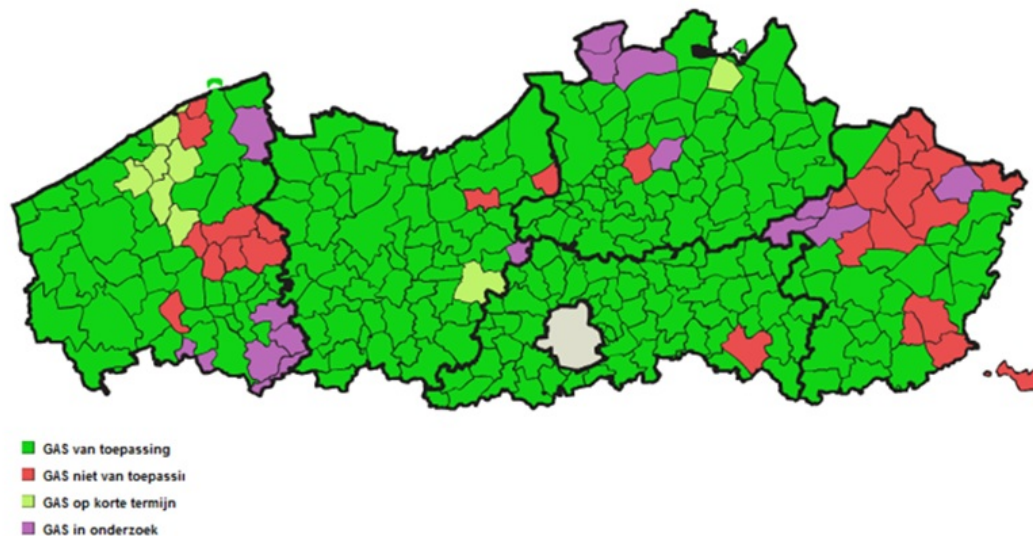
7 juni 2012 | Toezicht op vrijheidsberoving en klachtrecht in België

2005: 10% implementation in Flanders (VVSG)

2006: 41% (N=183) Belgian municipalities have implemented LAS (Ponsaers, Vander Beken & Cammaert 2006)

2012: 83,12% (N=256) of Flemish municipalities apply LAS (VVSG 2012)

GAS – invoering Vlaanderen – © VVSG – 1/8/2012



5. Changes in perception and legitimacy

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- a. A well-supported idea...
- b. ... gets some conceptual remarks
- c. But when things get real...
- d. ... questions come...
- e. ... and lead to protest and distrust...
- f. ... throughout society

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a. A well supported idea...

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“The safety monitor shows that citizens especially worry about so-called petty crime like problems with neighbours, dog poop in the public space, noise, flyposting, graffiti etc. This, however, remains unpunished. Luc van den Bossche, Minister of the Interior, wants to do something about this.” (Gva, January 1999)

“There is indeed a cost for the municipalities [related to LAS], but if the system is applied well, it will be self financing.” (Gva, March 2004)

“The LAS is a strong weapon in the fight against petty crime. Lokeren should be ready with its homework to be able to start at once.” (Gva, October 2004)

b. ... gets some conceptual remarks

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“If the government believes that certain acts are so refutable that they have to be sanctioned, it should include them in the criminal code. [...]

Who guarantees that all municipalities will follow the same policy? [...]

What guarantees an independent and impartial treatment? [...]

Hopefully MPs will have enough common sense to realize that this bill will destabilize the policy of prosecutors, prosecutor-general and the minister. The local government as judge: it takes less to spit in a tram...”

(Hugo Lamon, Flemish Bar Association, De Morgen, 30 december 2002)

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c. But when things get real...

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“Almost no appeal against administrative sanctions” (GvA, 7 May 2008)

“Administrative sanctions work” (HLN, 10 May 2008)

“Administrative sanctions widespread” (DS, 18 November 2008)

“Each year 20,000 administrative sanctions in Antwerp” (DS – 20 februari 2009)

“14 year old criminals should be punished for nuisance” (DM, 27 Februari 2010)

“More and more administrative sanctions in Ghent” (HLN, 9 March 2010)

“17 administrative sanctions for one person” (GvA, 12 March 2011)

“Petty crime promptly sanctioned by administrative fine in Antwerp and Ghent” (DM, 10 maart 2011)

“Ghent deals with impunity” (HLN, 16 April 2011)

“Drastic rise in administrative sanctions” (GvA, 22 April 2011)

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d. ... questions come...

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“We don’t want to become sheriffs” (DM, 4 April 2012)

“Are we all more repressive?” (DS, 12 May 2012)

“Already as many LAS as in the previous year” (HLN, 9 October 2012)

“LAS is an instrument to hurt the young and socially vulnerable” (DM, 13 November 2012)

“LAS costs higher than revenues” (DM, 22 November 2012)

“The most absurd administrative sanctions of the country” (HLN, 21 November 2012)

e. ... and lead to protest and distrust...

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“Flanders has become a strained old people’s home. Local administrative sanctions are the end of civilisation” (Jan Leyers, singer, songwriter and television personality)

“An administrative fine for eating a sandwich, was a mistake” (Bart Somers, Mayor of Mechelen, 2 november 2012)

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f... throughout society

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“In this case effectivity and principles of law should go hand in hand and balance each other [...] I would reduce the law to what I have submitted in 1999. That’s what I believe in. Not in the amendments that followed.” (Luc Van den Bossche, Interior Minister in 1999 who introduced the Bill on local administrative sanctions, November 2012).

“Local administrative sanctions threaten fundamental democratic rights. When peaceful protest actions can be considered as incivilities, we disgrace the democratic rights we have fought for. The presence of activism and movements is a good indicator for the democratic level of our society. Their existence shows the room (that needs to be) given to raise critical voices and is a condition to work in a democracy where injustice can be put on the agenda and action can be taken to create a viable society for all citizens.” (Open letter of 30 social and cultural organisations, October 2012)

“We dream of a society in which you can put your feet on the seats and party without fines... Local administrative rules sanction these dreams and turn them into a nightmare. Being young has become a criminal act.” (Youth movement organisation Chirojeugd Vlaanderen , October 2012)

“An icon against GAS: For an open and spontaneous society.”
(Human Rights League Belgium, September 2012)



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6. What happened?

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Reflections inspired by the results of two PhD's:

Elke Devroe. *A swelling culture of control? Origins and applications of the Act on LAS in Belgium* (2012, Free University Amsterdam & Ghent University, Bruinsma/Vander Beken)

Tom Van den Broeck. *Formalization/informalization of social control processes. 20 years of police- and security policy in perspective* (2011, Ghent University, Ponsaers/Vander Beken)

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6a. Les années de plomb in Belgium

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1980ies: raids and killings of “Bende Van Nijvel”, attacks of Cellule Communistes Combattantes, Heysel,...

1990ies: issues of migration (riots in Brussels), changing demography within cities, political success extreme right *Vlaams Blok* (1991): “**Crisis of legitimacy of politics and politicians**” (Huyse 1996)

1996: Dutroux case (abduction and murder of children) and disclosure of serious malfunctioning of police and justice: “*Si, on me laisse faire...*” Spaghetti-judgement, White March of 300,000 people in Brussels (October 1996)

1998: Escape Marc Dutroux

Rather stable crime rates, rise (in reporting on) petty crimes (poor statistics)

Feelings of insecurity (especially for what happens in cities) - Security Monitor from 1997 onwards: not (serious) crime but all sorts of nuisance/petty crime/incivilities are related to **feelings of insecurity**.

Loss of informal control – consumerism of the citizen – managerialism – hyperlexia

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6b. Duality in the policy environment

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From 1980 onwards, **constitutional reforms** transfer policy domains and regulatory powers to the regional level (communities and regions). Most social welfare (and preventive) instruments move to the regions/communities (education, environment, labour, urban planning, care,...). Loss of power on the federal level: repression (justice) and public order (interior).

How to deal with the call for action against feelings of insecurity in a state in which the demarcation between social preventive action (welfare) and public order and repression (penal) is embedded in the constitution?

Sensu latu was the reaction to public insecurity not limited to public order and repression alone. Constitutional restraints divided policy and federal policy could only work on a **punitive sensu stricto** reaction: a **federal** instrument to react to incivilities in the cities.

7. Legitimacy issues of a disconnected policy

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Legitimacy problems in the security arena (the criminal justice system does not function properly and does not respond to the “real” feelings of insecurity)

From crimes to incivilities, nuisances, “risks”, also downsizing of the state to the city. Police as an information broker and networker. Community oriented policing.

Who is responsible to take action? Belgian choice for an integrated policy implying a variety of actors, with a constitutional distinction between social welfare and repression and public order.

Some cities try to develop integrated (security) policies (Antwerp: from “sweet to sour” policy), but many of them opt for a control policy (zero tolerance, broken windows): “*in a risk society there is no fear for control, but for chaos*”. LAS is a perfect tool within the *sensu stricto* control policy - mayors love it (2012 local elections)

BUT:

Frequently applied and introduced as one issue policy measure without connection to concrete “feelings of insecurity” (what do we need it for?)

More people feel that the system can really “hurt” and potentially affect all of us and not just “the other” (It could be applied to me!)

Procedural fairness issues (municipalities acting like a judge, vagueness of definition of nuisance) have been raised from the beginning and seem to be less dominant than expected in the legitimacy debate.

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