ADMINISTRATIVE SANCTIONS IN THE EUROPEAN UNION

Oswald Jansen (ed.)
PREFACE

This book is focused on administrative sanctions and offers a thorough overview of the sanctioning systems of 13 EU Member States. The initial idea for this elaborate and challenging project is based on the impression that although sanctioning powers are of great importance in practice both at EU level and nationally, little comparative study has been done on this subject. More importantly, when studying law enforcement one should study both administrative law and criminal law sanctioning systems. In legal scholarship there is clear division between the scholarship in administrative law and the scholarship in criminal law. In the discussion of deterrent administrative sanctions, such as administrative fines (as we will see, in some legal systems remedial measures are not considered sanctions, only punitive measures are) both areas of scholarship should meet, as according to case law of the ECHR and many national constitutional courts, certain criminal law guarantees apply to administrative sanctions that have a punitive aim. The authors that have contributed to this book are both criminal law specialists and administrative law specialists, and they have all managed to address the theme from the perspective of both disciplines. This approach makes this book special.

The project to arrive at this result started with an international meeting of experts on 16 July 2004. Almost all the authors came to Utrecht that day to discuss the subject-matter and design of the project with each other and with colleagues from the Dutch Ministry of Justice and other practitioners interested in administrative sanctions. In the process of finalising this book since then, authors have updated their contributions, many of them even two or more times. They deserve admiration for their patience with the occasionally headache-inducing process to arrive at this result.

The realisation of the research project would not have been possible without the financial support of the Dutch Scientific Council (NWO) and the Dutch Ministry of Justice.

We would like to thank all colleagues and assistants involved for their efforts in publishing their work in most cases in a non-native language. All translators involved, and especially Maris van der Laak, cannot underestimate the value of their work to this book. Special thanks should also be addressed to Lucia van Tellegen and Lionel van den Berg, both students at the law school of Utrecht.
Preface

University, for their valuable support in finalising this book. And last but not least, we would also like to thank Intersentia for their willingness to publish this book.

We have every confidence that the present book will find its way to everyone who is interested in both administrative law and criminal law, and more precisely in law enforcement and administrative sanctioning.

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Oswald Jansen
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<td>AACA</td>
<td>Athens’ Administrative Court of Appeals</td>
</tr>
<tr>
<td>AAI</td>
<td>Autorités administratives indépendantes – independent administrative agencies</td>
</tr>
<tr>
<td>AAFDL</td>
<td>Associação Académica da Faculdade de Direito de Lisboa</td>
</tr>
<tr>
<td>AB</td>
<td>Administratiefrechtelijke beslissingen – Legal periodical</td>
</tr>
<tr>
<td>abbb</td>
<td>algemene beginselen van behoorlijk bestuur</td>
</tr>
<tr>
<td>ABRvS</td>
<td>Afdeling bestuursrechtspraak Raad van State – Administrative Jurisdiction Division, Council of State</td>
</tr>
<tr>
<td>ACPC</td>
<td>Administrative Court Procedure Code</td>
</tr>
<tr>
<td>ACS</td>
<td>Administrative Jurisdictional Section</td>
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<tr>
<td>AFM</td>
<td>Autoriteit Financiële Markten – Authority for the Financial Markets</td>
</tr>
<tr>
<td>AG</td>
<td>Advocate-General of the European Court of Justice</td>
</tr>
<tr>
<td>AJPA</td>
<td>Administrative Judicial Procedure Act</td>
</tr>
<tr>
<td>All ER</td>
<td>All England Reports</td>
</tr>
<tr>
<td>AMF</td>
<td>Autorité des marchés financiers – Financial Markets Authority</td>
</tr>
<tr>
<td>AmvB</td>
<td>Algemene maatregel van Bestuur – Order in Council</td>
</tr>
<tr>
<td>AnwBL</td>
<td>Anwaltsblatt</td>
</tr>
<tr>
<td>AO</td>
<td>Abgabenordnung – German Tax Code</td>
</tr>
<tr>
<td>AöR</td>
<td>Archiv des öffentlichen Rechts</td>
</tr>
<tr>
<td>APA</td>
<td>Administrative Procedure Act</td>
</tr>
<tr>
<td>APC</td>
<td>Administrative Procedure Code</td>
</tr>
<tr>
<td>APV</td>
<td>Algemene Plaatselijke Verordening – General municipal by-laws</td>
</tr>
<tr>
<td>Arbowet</td>
<td>Arbeidsomstandighedenwet – Working Conditions Act</td>
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<tr>
<td>ASAE</td>
<td>Autoridade de Segurança Alimentar e Económica – Authority for the Safety of Food and Economy</td>
</tr>
<tr>
<td>ASL</td>
<td>Aziende Sanitarie Locali – Local health agencies</td>
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<tr>
<td>AVG</td>
<td>Allgemeines Verwaltungsverfahrensgesetz – Code of Administrative Procedure</td>
</tr>
<tr>
<td>a.v.v./avv</td>
<td>algemeen verbindend voorschrift – collective binding agreement</td>
</tr>
<tr>
<td>Awb</td>
<td>Algemene wet bestuursrecht – Dutch General Administrative Law Act (GALA)</td>
</tr>
</tbody>
</table>
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AWBi Algemene wet op het binnentreden – General Act on Entry into Private homes
Awr Algemene wet inzake rijksebelastingen – State Taxes Act
BAC Blood Alcohol Concentration
BayGO Bayerische Gemeindeordnung
BayPAG Bayerisches Polizeiaufgabengesetz – Bavarian Police Act
BDG Bundesdisziplinargesetz – Civil Service Disciplinary Act
BGB Bürgerliches Gesetzbuch
BJagdG Bundesjagdgesetz – Federal Hunting Act
BlgNR Beilagen zu den stenographischen Protokollen des Nationalrats (Annexes to the stenographic records of the National Council)
BNB Beslissingen in Belastingzaken, Nederlandse Belastingrechtspraak – Legal Periodical
BVerfG Bundesverfassungsgericht
B-VG Bundes-Verfassungsgesetz – Federal Constitution Act
BW Burgerlijk Wetboek – Dutch Civil Code
BZRG Bundeszentralregistergesetz – Federal Repository Act
CA Suomen perustuslaki – Constitution of Finland
CAP Common Agricultural Policy
Cass. Cour de cassation – Court of Cassation
CBb College van Beroep voor het bedrijfsleven – Trade and Industry Appeals Tribunal
CC Belgian Criminal Court
c.c.p. Code of Criminal Procedure
CCDRs Comissões de Coordenação e Desenvolvimento Regional – Commissions of Coordination and Regional Development
CE Conseil d’Etat
Charter Charter of Fundamental Rights of the European Union
CML Rev Common Market Law Review
CNIL Commission nationale informatique et libertés – National Commission for Computerised Data and Freedom
COE Council of Europe
Const. Italian Constitution
c.civ.p. Code of Civil Procedure
cf. confer – compare
c.p. Código Penal (Criminal Code)
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<tr>
<th>Abbreviation</th>
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<tr>
<td>CPC</td>
<td>Criminal Proceedings Code</td>
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<tr>
<td>CPP</td>
<td>Código de Processo Penal – Criminal Procedure Act</td>
</tr>
<tr>
<td>Cr. App.R.</td>
<td>Criminal Appeal Reports</td>
</tr>
<tr>
<td>CRP</td>
<td>Constituição da República Portuguesa – Portuguese Constitution</td>
</tr>
<tr>
<td>CRvB</td>
<td>Centrale Raad van Beroep – Central Appeals Tribunal</td>
</tr>
<tr>
<td>CS</td>
<td>Council of State</td>
</tr>
<tr>
<td>DC</td>
<td>Déclaration de conformité -</td>
</tr>
<tr>
<td>DCC</td>
<td>Dutch Criminal Code – Wetboek van Strafrecht</td>
</tr>
<tr>
<td>DCP</td>
<td>Dutch Code of Criminal Procedure – Wetboek van Strafordering (Sv)</td>
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<tr>
<td>DD</td>
<td>Delikt en Delinkwent – Legal periodical</td>
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<tr>
<td>DMOS</td>
<td>Direito de Mera Ordenação Social – Administrative Offences Law</td>
</tr>
<tr>
<td>DNB</td>
<td>De Nederlandsche Bank N.V. – Dutch National Bank</td>
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<tr>
<td>DL</td>
<td>Decreto-Lei – Decree-Law</td>
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<tr>
<td>DPC</td>
<td>Dutch Criminal Code – Wetboek van Strafrecht (Sr)</td>
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<td>Ds.</td>
<td>Departementsserien</td>
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<td>DVBI</td>
<td>Deutsches Verwaltungsblatt</td>
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<tr>
<td>EEA</td>
<td>Agreement on the European Economic Area</td>
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<tr>
<td>EEEvrD</td>
<td>Elliniki Epiteorissi Evropaikoou Dikaiou – Revue hellenique de droit Européen</td>
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<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>E(E)C</td>
<td>European (Economic) Community</td>
</tr>
<tr>
<td>ECSC</td>
<td>European Coal and Steel Community</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>EFET</td>
<td>National Institution for Food Inspection</td>
</tr>
<tr>
<td>e.g.</td>
<td>exempli gratia – for example</td>
</tr>
<tr>
<td>EGC</td>
<td>The General Court – European Union (formerly known as The Court of First Instance)</td>
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<tr>
<td>EGStGB</td>
<td>Einführungsgesetz zum Strafgesetzbuch – Introductory Law of the Penal Code</td>
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<tr>
<td>EGVG</td>
<td>Einführungsgesetz zu den Verwaltungsverfahrensgesetzen – Introductory Act for the Acts on Administrative Proceedings</td>
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<td>ENDS</td>
<td>Environmental Data Services</td>
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<tr>
<td>etc.</td>
<td>et cetera</td>
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<td>EU</td>
<td>European Union</td>
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EU-JZG Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union (Federal Act on the judicial cooperation in criminal matters with the Member States of the European Union)

EU-VStVG Bundesgesetz über die Vollstreckung von Geldstrafen und Geldbußen von Verwaltungsbehörden im Rahmen der Europäischen Union (Federal Act on the execution of financial penalties imposed by administrative authorities of other EU Member States)

EWCW England and Wales Court of Appeal

FGD Fundo de Garantia dos Depósitos – Fund for the Guarantee of Deposits

FGG Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit – German Ex Parte Jurisdiction Act

FIOD-ECD Fiscale inlichtingen- en opsporingsdienst en Economische controledienst – Fiscal Intelligence and Investigation Service/Economic Investigation Service

FPA Freedom of Press Act

FSA Financial Service Authority (of the United Kingdom)

GALA Algemene wet bestuursrecht – General Administrative Law Act

GastG Gaststättengesetz – German Licensing Act

Gem.wet Gemeentewet – Municipalities Act

GewO Gewerbeordnung – Industrial Code

GG Grundgesetz – German Constitution

GPCL General principles of criminal law

GPPA General principles of proper administration

Gst. De Gemeentestem – Legal periodical

GVG Gerichtsverfassungsgesetz – German Judicature Act

Gwwd Gezondheids- en welzijnswet voor dieren – Health and Welfare of Animals Act

HaO Administrative Court of Hämeenlinna

HAO Regional Administrative Court of Kuopio

HE Hallituksen esitykset – Government proposal to parliament for new legislation

HC Hellenic Constitution

Report HC Report of the House of Commons of the United Kingdom

HR Hoge Raad – Supreme Court in the fields of civil, criminal and tax law

Hw Huisvestingswet – Housing Allocation Act

ib./ibid. ibidem – in the same passage or page quoted above
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<tr>
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<tbody>
<tr>
<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
</tr>
<tr>
<td>i.e.</td>
<td><em>id est</em> – <em>it is/that is more precisely</em></td>
</tr>
<tr>
<td>IGA</td>
<td>Inspeção Geral do Ambiente – General Inspectorate for the Environment</td>
</tr>
<tr>
<td>IMOPPI</td>
<td>Instituto dos Mercados das Obras Públicas e Particulares do Imobiliário – Institute for the Market of Public and Private Real Estate Works</td>
</tr>
<tr>
<td>IRS</td>
<td>Instituto de Reinserção Social – Institute for the Rehabilitation of Offenders</td>
</tr>
<tr>
<td>JAP</td>
<td>Juristische Ausbildung und Praxisvorbereitung</td>
</tr>
<tr>
<td>JBI</td>
<td>Juristische Blätter – Legal periodical</td>
</tr>
<tr>
<td>JBPlus</td>
<td>Jurisprudentie Bestuursrecht Plus – Legal periodical</td>
</tr>
<tr>
<td>JCL</td>
<td>Journal of Criminal Law – Legal periodical</td>
</tr>
<tr>
<td>JGG</td>
<td>Jugendgerichtsgesetz – Juvenile Court Act</td>
</tr>
<tr>
<td>JM</td>
<td>Jurisprudentie Milieurecht – Legal periodical</td>
</tr>
<tr>
<td>JO</td>
<td>Justitieombudsmannen – Parliamentary Ombudsmen</td>
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<tr>
<td>JOR</td>
<td><em>Jurisprudentie Onderneming &amp; Recht</em> – Legal periodical</td>
</tr>
<tr>
<td>JüR</td>
<td><em>Jahrbuch des öffentlichen Rechts der Gegenwart</em> – Legal periodical</td>
</tr>
<tr>
<td>JUSTICE</td>
<td>United Kingdom section of the International Commission of Jurists</td>
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<tr>
<td>JV</td>
<td><em>Jurisprudentie Vreemdelingenrecht</em> – Legal periodical</td>
</tr>
<tr>
<td>KB</td>
<td>King’s Bench</td>
</tr>
<tr>
<td>KHO</td>
<td>Korkein Hallinto-Oikeus – Supreme Administrative Court of Finland</td>
</tr>
<tr>
<td>KM</td>
<td>Komiteanmietintó – Committee Reports</td>
</tr>
<tr>
<td>L.</td>
<td>Law</td>
</tr>
<tr>
<td>LDJG</td>
<td>Librairie générale de droit et de jurisprudence</td>
</tr>
<tr>
<td>LSI</td>
<td><em>Law &amp; Social Inquiry</em> – periodical</td>
</tr>
<tr>
<td>M&amp;M</td>
<td>Markt &amp; Mededing – Legal periodical</td>
</tr>
<tr>
<td>MLR</td>
<td><em>Modern Law Review</em> – Legal periodical</td>
</tr>
<tr>
<td>Msw</td>
<td>Meststoffenwet – Fertilizers Act</td>
</tr>
<tr>
<td>Mw</td>
<td>Mededingingswet – Competitive Trading Act</td>
</tr>
<tr>
<td>NAO</td>
<td>National Audit Office of the United Kingdom</td>
</tr>
<tr>
<td>NbSr</td>
<td><em>Nieuwsbrief Strafrecht</em> – Legal periodical</td>
</tr>
<tr>
<td>NJ</td>
<td><em>Nederlandse jurisprudentie</em> – Legal periodical</td>
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NJA  Nytt Juridiskt Arkiv, Avdelning I – Publication of cases from the Swedish Supreme Court
NJV  Nederlandse Juristen Vereniging – Dutch Law Association
NJW  Neue Juristische Wochenschrift – Legal periodical
NMa  Nederlandse Mededingingsautoriteit – Dutch Competition Authority
NSTZ  Neue Zeitschrift für Strafrecht – Legal periodical
NTB  Nederlands Tijdschrift voor Bestuursrecht – Legal periodical
NVWA  Nederlandse Voedsel- en Warenautoriteit – Dutch Food and Consumer Product Safety Authority
NZ  Österreichische Notariatszeitung
OGH  Oberster Gerichtshof – Supreme Court in civil and criminal matters
ÖJZ  Österreichische Juristen-Zeitung
OLG  Oberlandesgericht – Regional Appelate Court
OM  Openbaar Ministerie – Public Prosecution Service
OPTA  Onafhankelijke Post en Telecom Autoriteit – Independent Post and Telecommunications Authority
öStGB  Österreichisches Strafgesetzbuch 1974 – Austrian Criminal Code
öStPO  Österreichische Strafprozessordnung – Austrian Code of Criminal Procedure
ÖStZ  Österreichische Steuer-Zeitung
OWiG  Ordnungswidrigkeitengesetz – Administrative Offenses Act
Paris  Cour d’appel de Paris
PA  Public Administration
PeVL  Perustuslakivaliokunnan Lausunto
PeVM  Perustuslakicaliokunnan Mietintö
PG  Parlementaire Geschiedenis – (Dutch) Parliamentary History
PPS  Public Prosecution Service
PRCC  Public Revenue Collection Code
R.  Rex or Regina
RÅ  Regeringsrättens årsbok – Yearbook of cases from the Swedish Supreme Administrative Court
Rb.  Rechtbank – Regional Court
RF  Regeringsformen – Instrument of Government (Swedish Constitution)
List of Abbreviations

RFDA  
Revue française de droit administratif

RGCO  
Regime Geral de Contra-Ordenações

RGICSF  
Regime Geral das Instituições de Crédito e das Sociedades Financeiras – General Legal Framework of Credit Institutions and Financial Corporations

RIW/AWD  
Recht der Internationalen Wirtschaft / Außenwirtschaftsdienst des betreiberbetaters

RSV  
Rechtspraak Sociale Verzekeringen – Legal periodical

RZ  
Österreichische Richterzeitung

SACA  
Constitution and Special Act 6 January 1989 concerning the Court of Arbitration

SAC  
Korkein Oikeus – Supreme Administrative Court

SARI  
Special Act of 8 August 1980 concerning the Reform of the Institutions

SEW  
Tijdschrift voor Europees en economisch recht – Legal periodical

SFO  
Serious Fraud Office

SII  
Sistema de Indemnização aos Investidores – System for the Compensation of Investors

SOU  
Statens Offentliga Utredningar – Swedish Government Official Reports

SSC  
Supreme Special Court

StG  
Strafgesetz – Criminal Code

StGB  
Strafgesetzbuch – German Criminal Code

StPO  
Strafprozeßordnung – German Code of Criminal Procedure

StVG  
Österreichische Steuer- und Wirtschaftskartei

T&C  
Tekst & Commentaar – Text and Comments on Dutch Law

TEC  
Treaty establishing the European Community

TEU  
Treaty on European Union

TFEU  
Treaty on the Functioning of the European Union

ToS  
To Syntagma (The Constitution) – Legal periodical

TOS  
Tijdschrift voor Onderneming en Strafrecht – Legal periodical

Tw  
Telecommunicatiewet – (Dutch) Telecommunications Act

UKUT  
United Kingdom Upper Tribunal

UU  
Universiteit Utrecht – University of Utrecht

UvA  
Universiteit van Amsterdam – University of Amsterdam
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<td>UVSs</td>
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<td>VAT</td>
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<td>vid. (infra)</td>
<td><em>vide (infra)</em> – see (below)</td>
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<td>Wet arbeid vreemdelingen – Foreign Nationals (Employment) Act</td>
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<td>Wet administratiefrechtelijke handhaving verkeersvoorschriften (also: Wet Mulder) – Traffic Regulations (Administrative Enforcement) Act</td>
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<td>Wtt</td>
<td>Wet toezicht trustkantoren – Trust Offices (Supervision) Act</td>
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