De handhaving der sociaal-economische wetgeving. Rechtsvergelijking met Zwitserland en Amerika
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SUMMARY

THE ENFORCEMENT OF SOCIAL-ECONOMIC LEGISLATION

At the present time Dutch economy is controlled by many regulations with regard to prices, production and distribution, imports and exports. Similar provisions were in operation during the period 1914—1918. At that time the enforcement of these regulations gave rise to special difficulties. After the first World War, however, the scarcity of food and services which had called for these regulations soon came to an end and, as a consequence, the regulations were abolished before the difficulties of enforcement had been solved.

The same difficulties rose again when, in the years after 1930, the crisis on the world market created an economic situation in the Netherlands which made it necessary to introduce a great number of regulations for the control of economic life.

First of all, agriculture and horticulture had to be protected and subsidies were given to farmers and growers. At the same time the cultivation of those products for which there was no ready market was restricted and the trade in agricultural and horticultural products was controlled by the Government.

Other industries, too, were controlled. In the retail trade the establishment of new enterprises was prohibited except under Government licence. It was also forbidden to set up a business for the transport of passengers by omnibus or taxi except under licence. The purpose of these regulations was to prevent the immoderate competition which existed in these trades as a result of the crisis.

The large number of regulations contained many new penal provisions. Offences had to be dealt with quickly and efficiently, as otherwise the intervention of the Government would have been in vain and the only result would have been that offenders would have gained an advantage over those who strictly kept to the regulations.

It soon became apparent that the ordinary criminal courts were not proficient to maintain these economic regulations. The courts were not sufficiently specialized, the criminal procedure was too formal, the administration of justice took too much time and the penalties inflicted were insufficient.

Thus the enforcement of the economic regulations became a problem. This problem became greater and, at the same time, more threatening, when the second World War compelled the Government to control not only some industries but the whole process of production and distribution, prices and wages, imports and exports.

It is true that several of these regulations were abolished since the end of 1948 and that the realisation of the economic union of Belgium, the Netherlands and Luxemburg (Benelux) will require further abolishments; in the opinion of economists, however, it is unquestionable that the Government will not be able to avoid altogether the application of measures concerning economic life.

How the enforcement of economic legislation might be most effectively ensured is the object of this study.

Planning of economic life is found in nearly all countries which have attained a certain degree of economic development although not necessarily to the same extent as in the Netherlands. Moreover, national economic planning is an example for international economic planning which, especially during and after the
ECONOMIC LEGISLATION

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which, especially during and after the
second World War, is widely advocated. In Benelux, whose members will have
a common investment policy, international economic planning will find its
first realisation.

The efficiency of maintaining economic legislation has been tested in this
study firstly in respect of the regulations which, up to the present time, have
been made in Holland. Furthermore a comparison was made with the economic
sanction legislation of other countries. For this purpose two countries were
chosen, viz. Switzerland and the U.S.A.

Since a first general Penal Code was introduced for Switzerland on the 1st
of January 1942, it seemed instructive to study the aspect of the economic penal
law of that country against the new ordinary penal law.

Of the United States of America it was reported in our country that their
way of maintaining the economic laws during the second World War had been
particularly effective, so that a comparison with America should provide valuable
data on this subject.

As far as the U.S.A. and Switzerland are concerned only the economic legis-
dation during the second World War has been dealt with. This was more com-
prehensive than the legislation before or after that time; also the sanction legis-
lation of this period drew special attention to the particular features of the
systems of enforcement prevalent in these countries.

In my investigation of the legislation of these countries I had the valuable
support of M. Péquinot, Dr h. c., secretary general of the Ministry of Economic
Affairs in Bern, and Mr. William E. Remy, Director of Enforcement of the
Office of Price Administration, Washington, D. C. I cannot refrain from repea-
ting here my sincere thanks to both gentlemen.

In Chapter I the scope of the investigation has been framed and the problem
exposed. In Chapters II and III an analysis has been made of the emergency
economic legislation and sanctions both in Switzerland and America. Chapter
IV contains an analysis of the present Dutch legislation (not only during war-
time) and of its enforcement, while in Chapter V a comparison is made between
the data obtained from Switzerland, the U.S.A. and the Netherlands, from
which conclusions are drawn for the course to be steered in future.

CHAPTER 1, § 1. PLANNING AND ECONOMIC LEGISLATION

In order to limit the sphere of this inquiry two points should be more pre-
cisely defined.

1. The contents of economic legislation.
2. The particular features of the economic offence as the punishable infringement
of economic legislation.

An analysis of the economic legislation — which in the Dutch language might
be called social-economic legislation — shows that the regulations are made
not only by the central Government (1). A law invests marketing boards with
the power to make regulations (2). Since 1922 article 152 of the Constitution
of the Netherlands makes this possible. The regulations made by these bodies
are binding on everyone in the industry concerned.

Moreover, the provisions of contracts made between certain groups of employ-
ers and workers (collective labour contracts), as well as contracts between cer-
tain groups of employers (collective employers contracts), can be declared by the central Government to be generally applicable to all employers (and workers) in a given industry (3).

Finally a law states that certain actions are prohibited unless one is a member of a certain trade association and observes the articles, regulations and resolutions of such association (4). By right the person concerned is free to join the association or not, but economically he is compelled to join and to submit himself to its articles, regulations and resolutions.

The Government regulations (1), the regulations of the marketing boards (2), the articles of the collective contracts as far as they are applicable in general (3) and the articles, regulations and resolutions of the trade associations (4) form together the economic legislation.

In spite of the diversity of design of all these regulations they have one common characteristic: they all aim at exerting a direct or indirect influence on the market. The market is — as has been fully set out — the central point of all economic legislation.

CHAPTER I, § 3. ECONOMIC OFFENCES

In § 2 it has been pointed out in how far, in connection with the provisions dealing with enforcement, an independent place should be given to the disciplinary law. This problem bears particularly on the Dutch legislation and cannot be handled for comparison with American and Swiss legislation.

The particulars of economic offences, on the contrary, are of a general nature. These offences differ on certain points from the ordinary criminal offences. The particular features of the offence arise from the special nature of the economic legislation, especially from the fact that it is intended to influence the market. Consequently,

1. the regulations are variable, and any person who by reason of his economic activity has to follow the changes closely must develop a high degree of skill;
2. the regulations must be elastically drawn up and passed with due speed; they should not be interpreted strictly;
3. the seriousness of the offences has to be measured according to the condition of the market at the time when the offences have been committed.
4. Delinquents will be influenced more by economic considerations than by moral feelings, and will try to calculate the expected punishment in advance.

CHAPTER I, § 4. STATEMENT OF THE PROBLEM

The problem of enforcing economic legislation is twofold. First, the question arises as to which sanctions will be required for the most efficient enforcement of the regulations, and secondly, as to which bodies should be entrusted with the enforcement.

The sanctions can be divided into three groups: criminal, administrative and civil. Are these to be of equal value or is one group to have preference and will the others have to perform a merely complementary function?

The bodies to whom the enforcement is entrusted must in the first place be acquainted with the central point of the economic legislation, viz. the market.
The executive bodies would be suitable for that task if they had not a serious
defect: they are not impartial. The judge is impartial, but he, in his turn, is not
fully acquainted with the market.

It is obvious that the problem concerning the bodies to whom the enforce-
ment is to be entrusted is the conflict between objectivity and specialism.

CHAPTER II. ECONOMIC LEGISLATION IN SWITZERLAND

The emergency regulations in Switzerland are noted for the simplicity of their
design: they are all based on one act, the Federal Act (Bundesbeschlusz) of the
30th of August 1939, which sets up one central regulating body, the Federal
Department of Economic Affairs (Eidgenössisches Volkswirtschaftsdepar-
tement, shortly E.V.D.).

This unity of legislation and execution, which at the same time comprises
centralization, is the more remarkable since in nearly every sphere of social
life the Swiss „cantsons” possess a great independence in matters of legislation.

With regard to the organization of economic life, however, their independence
had to be yielded to the central authority of the Confederation, since economic
control could not be limited by canton borders, but, on the contrary, demanded
a uniform organization for the whole territory of the Confederation.

Functional decentralization of legislation and execution, however, was possi-
ble. With regard to industries economic life could be divided. In several trades
syndicates have been formed, of which every employer in the particular trade
must be a member. These compulsory bodies (kriegswirtschaftliche Syndikate)
are entirely controlled by the E.V.D.. Among other things all the articles, regu-
lations and resolutions need the approval of the E.V.D..

The simplicity of design which, from the very beginning marked the legis-
lation as a whole, was not immediately to be found in that part which pertains
to the sanction legislation. The latter comprises two kinds of measures of enfor-
cement, the criminal and the administrative. The criminal sanctions, after year's
of great diversity, have been codified in one decree, the „Bundesratsbeschlusz”
of the 17th of October 1944. The administrative sanctions, however, have re-
tained their diversity.

CHAPTER II, § 6. CRIMINAL SANCTIONS

The economic criminal law and the law of criminal procedure were spread
over many different regulations in the first years after 1939.

Nearly all economic regulations contained separate penal provisions. Some
of these corresponded with the ordinary criminal law, others differed consid-
erably and threatened offenders with penalties foreign to the ordinary criminal law.

The criminal procedure was originally regulated very summarily, and the
main provisions concerned the judicial organization. On the one hand, this encou-
raged endeavours towards centralization and uniformity. Thus all cases which
could be dealt with by imposing a fine as the principal penalty were tried by
one of the 10 commissions of the E.V.D., each consisting of a president (a
member of the normal cantonal judicial authority), a lawyer member and a spe-
cialist member (a business man). There was a right of appeal to one federal com-
mision against their decisions.
On the other hand, the judicial organization was influenced to some extent by the organization of the ordinary judiciary which has an independent existence in each of the 25 cantons. Economic criminal cases which, in the opinion of the E.V.D. commissions, were so serious as to justify imprisonment, had to be referred to the ordinary court.

This system did not work well. In practice it was found that the offenders in these serious cases often received lighter punishment at the hands of the ordinary court than the offenders in the less serious cases which were dealt with by the E.V.D. commissions. Moreover, in these serious cases there was much variation in the degree of punishment in the different cantons.

In this initial system not only two kinds of judges were appointed but also two kinds of prosecuting officers. In the E.V.D. commissions an officer of the secretary-general's department of the E.V.D. (i.e. a specialist) acted as prosecutor. In the ordinary courts the prosecuting officer was a member of the ordinary judiciary (i.e. a non-specialist).

This system broke down already in 1942 when the E.V.D. commissions, to the exclusion of the ordinary court, became competent to punish all economic offences. In the same year the articles of the general Criminal Code, having come into force on the 1st of January 1942, were declared applicable to economic offences in so far as other regulations did not contain any provisions to the contrary. The foundation for the unification and codification of economic criminal legislation and criminal procedure was thus laid, but the construction was not fully accomplished until the 17th of October 1944. The new regulation, the „Bundesratsbeschluss“ of the 17th of October 1944, is in principle identical with the provisions of the general Penal Code, except with regard to those cases in which the real nature of the economic offence demands special provisions.

Points on which the Decree differs from the general Penal Code therefore illustrate the cases in which the effective enforcement of economic legislation requires special provisions. The following have been found:

a. The administration of justice is not entrusted to an ordinary court but exclusively to special tribunals (no longer the E.V.D. commissions but independent tribunals) consisting, just as these commissions, of a president (a member of the ordinary judiciary), one lawyer-member and one specialist-member (not a lawyer).
b. The prosecution is entrusted to the above mentioned special officers belonging to the secretary-general's department of the E.V.D.
c. Other special officers, also falling under the E.V.D., are charged with the preparation of the case.
d. Uniform maximum penalties are prescribed for all kinds of economic offences, whether committed intentionally or through neglect; offences committed neither intentionally nor through neglect are not liable to punishment.
e. Besides the supplementary penalties and measures of the Penal Code, the emergency economic criminal law recognizes a number of special supplementary penalties and measures. These relate especially to the deprivation by sentence of profits derived from an economic offence, quite apart from the question of punishment of the offender.
f. Although, as a rule, corporations and other organized groups of individuals as such are not punishable under Swiss law, the economic criminal legislation contains clauses which make it possible to hold them responsible for the payment of fines imposed on their employees for economic offences committed in their service.
organization was influenced to some extent by Switzerland which has an independent existence for all kinds of economic offences, in the opinion of the law, the economic criminal legislation does not have the same character as the penal code, and other organized groups of individuals are included. The E.V.D., comprising a number of special supplementary functions, acts as to justify imprisonment, having an independent existence for all kinds of economic offences, in the opinion of the law, the economic criminal legislation does not have the same character as the penal code, and other organized groups of individuals are included.

CHAPTER II, § 7. ADMINISTRATIVE SANCTIONS

Besides these criminal sanctions which correspond with the modern criminal law, there are administrative sanctions (the so-called Verwaltungsstrafen). They are spread all over several regulations, and the following are the main: placing the business under trusteeship, withholding allocations of raw materials and other necessities, suspension orders and withholding of subsidies. Enterprises affiliated with the syndicates can also be punished by the managers of the syndicates, e.g. by suspension or cancellation of the offender’s membership (which entails practically closing down the business), or by means of fines. Any decision of the syndicate to impose a penalty can be annulled by the E.V.D.,

With regard to the procedure of the application of administrative sanctions there are hardly any provisions. The accused is not entitled to defend himself during the administrative procedure, nor is he allowed to see the documents of the case. But he has a right of appeal to the head of the E.V.D. against the decision. For the rest he has no rights.

In special cases, persons to whom administrative sanctions have been applied, can appeal to an emergency economic tribunal consisting of a president and two specialist members, the president being a member of the ordinary judiciary.

CHAPTER III. ECONOMIC LEGISLATION IN THE U.S.A.

In the United States of America the control of economic life in wartime was not based on one fundamental law like in Switzerland. The different sanctions were dealt with separately by various laws and, even in later days, the legislation affecting distribution and that affecting price control remained separated from each other.

The organization was also entrusted to various bodies. The most important of these is the Office of Price Administration (O.P.A.) which, besides controlling prices, regulates the distribution to consumers and retailers. This Office finds its origin in two Acts, the Emergency Price Control Act and the Second War Powers Act of 1942.

Trade organizations are forbidden by the anti-trust acts. The assistance of industrial committees, however, was considered to be necessary, but they had only an advisory task with regard to the preparation of regulations.

It took a great deal of trouble to make sure that the regulations were acceptable to the producers as well as to the consumers. Therefore it was laid down that each regulation was to be provided with a statement of its considerations. Moreover, appeal was possible against each price regulation to a special court—the Emergency Court of Appeals.

Only this court is empowered to judicial review. The exclusion of the ordinary court was intended to ensure uniformity of application over the whole of the United States.

No special court was installed to enforce the emergency regulations; only special sanctions were applied.

There are three forms of sanctions, criminal, civil and administrative, the most important of which are the civil.

A criminal suit is possible only in case a regulation has been wilfully violated. The ordinary (Federal) court tries the case while the prosecution is carried out.

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by the U.S. Attorney, but only at the request of an attorney of an emergency body. The attorneys of the O.P.A. are instructed to bring such an action only exceptionally, in the first place because the ordinary courts are not sufficiently accustomed to deal with complicated cases, and secondly because, in general, they cannot be expected to punish severely enough. As a matter of fact, in the United States the non-specialization of ordinary courts is looked upon with a certain degree of mistrust.

The civil sanction is applied through an ordinary law-suit. Legal proceedings can only be instituted by the body which is responsible for the execution of the regulations concerned.

There is, however, one exception. When an excessive price has been asked from a consumer (that is, not for resale), he has the right to make a claim himself. If, however, the consumer has not taken action within 30 days from the time of the alleged offence, then the O.P.A. can make the claim and the private action is not allowed anymore.

Petition in court can be made for the following orders:

a. An injunction that the defendant must refrain from any action which is generally forbidden to him, the order having the effect of making the restriction more concrete and of removing all doubt as to the offender's liability to punishment. If the injunction is not obeyed, the offender is liable to be punished for contempt of court.

b. That the defendant's business be closed for a maximum time of one year. This is called a licence-suspension.

c. That the defendant (seller) shall be condemned to pay reasonable attorneys fees and costs as determined by the court, plus whichever of the following amounts is the greater: (1) three times the overcharge, or (2) a sum of $25 to $50; however, if the defendant proves that he committed the offence neither wilfully nor through neglect, the condemnation shall be equal to the amount of the overcharge. The money has to be paid either to the State (if claim has been made by the O.P.A. attorney) or to the buyer who sustained damage (if he has instituted the proceedings himself). This claim is known as the treble damage suit.

The order mentioned sub b. is actually a punishment. The order mentioned sub c. can be considered as a penalty if the suit is aimed at obtaining more than the real damage. If only the actual damage is restored to the plaintiff, then it is a real civil sanction.

If the cases were brought before a criminal court with all the formalities which according to the American conception attend this part of the law, there would be no way of ensuring adequate penalties. Therefore, the imposition of a penalty in the form of a civil court order instead of by a penal sentence has the following advantages:

1. The prosecution can be entrusted to special and specialized officers — the attorneys of the body which is responsible for the execution of the regulations.

2. The court has less freedom in determining the penalty, especially in connection with the treble damage suit.

3. It provides the possibility of imposing penalties which the ordinary criminal law does not know (e.g. licence suspension).

The Constitution of the U.S.A. does not allow any administrative sanctions as such. It is, however, with regard to economic matters, still possible for the administration to apply sanctions, because such sanctions are not looked upon
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instructed to bring such an action only
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There are two administrative sanctions possible:
a. The suspension order, whereby the administration cancels an allocation.
b. The withholding of subsidies, whereby the administration cancels a subsidy in
case it appears that the person or firm subsidized has been selling his goods at
an excessive price.

Although the Supreme Court does not regard administrative sanctions as
penalties, their application has nevertheless been guaranteed, the same as if it
concerned the imposition of penalties. Before a decision is arrived at by the
administrative body, the person in question has been heard by special officers, the
Hearing Commissioners, who are in fact specialized judges. These commissioners
do not take up the cases on their own initiative but only at the demand of an
attorney of the O.P.A. or some other emergency body.

The orders are subject to the ordinary judicial review.

As a matter of fact we also discern here a specialized judge, a specialized prose-
cuting body and special penalties.

CHAPTER IV. ECONOMIC LEGISLATION IN THE
NETHERLANDS

The Dutch economic legislation shows a multiplicity of regulations and a
multiplicity of executive bodies. This is mainly a result of the fact that the regu-
lations were originally made to counteract the consequences of the crisis on the
world market (since 1930) and that this same framework was used in a completely
different way after 1939 in the form of emergency regulations. The wartime
legislation, therefore, was not a separate entity, but only served to complete what
the crisis regulations did not cover. During the occupation German legislation
was added to this as well, and after the liberation there was not sufficient time to
sort the problem out properly, except for the abrogation or replacement of those
regulations which had become inefficient or too un-national.

The multiplicity of regulations has, of course, influenced the method of enfor-
cement of the economic law.

At present the administration of justice as regards economic offences is en-
trusted (a) partly to the ordinary judiciary, whereby offences, committed intention-
ally, are dealt with by a District Court (Rechtbank) and offences, committed
not intentionally, by a justice of peace (Kantonrechter); (b) partly to a specialized
judge of a District Court (bijzondere Politierechter), who deals with these offences,
whether committed intentionally or not intentionally, and (c) for the rest to
special judges not belonging to the ordinary judiciary (the so-called Disciplinary
Judge of food administration, and the so-called Disciplinary Judge of price-
control).

The prosecution is entrusted (a) partly to one of the ordinary Public Prosecu-
tors, (b) partly to specialized Public Prosecutors and (c) partly to officers attached
to the Ministry of Agriculture, Fisheries and Food and appointed as prosecutors
with the Disciplinary Judge of food administration. With the Disciplinary Judge
of price-control there is no prosecutor (d), the price cases having first been prepared
by special officers attached to his office.

by the court as penalties but as a mere act of policy. Just as the allocation of
supplies is an act of policy, so, according to the Supreme Court of the United
States, the suspension of an allocation is also an act of policy and not a penalty.
The enforcement law is greatly varied and laid down in a great number of regulations.

Since the liberation serious efforts have been made to bringing the whole legislation affecting the enforcement of economic law under the ordinary judiciary, while retaining the particular features of the special jurisdiction (the so-called disciplinary jurisdiction), the value of which having been proved.

Among these particular features are:

1. Specialization of judges and prosecuting attorneys.
2. The penalty by which illegal profits are taken away.
3. The penalty of confiscating all goods, pertaining to the offence, whether belonging to the offender or not.
4. Penalties restraining the offenders in the conduct of their business (e.g. closing of the business, suspension of licences and allocations, and placing the business under trusteeship).
5. The liability of corporations (which is unknown in the general Dutch penal law).
6. The elasticity of the procedure.

During the occupation a Decree was passed by which a large number of economic offences was brought under the jurisdiction of a specialized member of the ordinary judiciary. It also contained provisions for a more elastic procedure, whilst at the same time it was made possible to impose penalties which were more adapted to the nature of the economic offence.

This Decree was revoked at the time of the liberation and replaced by the Royal Decree of the 31st of October 1944 (Besluit Berechting Economische Delicten) which is based on similar principles. At present the merits of this modern Decree are more and more appreciated, especially since its execution has been entrusted to specialized judges and public prosecutors. As a result many prosecuting officers attached to the Disciplinary Judges of food-administration and also some Disciplinary Judges of price-control have gone over to the ordinary judiciary. There is also a better contact between the judiciary and the executive bodies because, on the one hand, the prosecuting officers sit on committees of representatives of the bodies charged with the issue and execution of regulations and, on the other hand, officers of the executive bodies are regularly invited to meetings of the members of the judiciary to explain the purpose and the background of their regulations.

The time is now ripe for a new regulation of the economic enforcement law by which the cases will be brought under the jurisdiction of the ordinary judiciary, while retaining the advantages of the special procedure, viz. specialization of judges and public prosecutors, special penalties, liability to punishment of corporations and a flexible procedure.

A bill for such a regulation has already been introduced in Parliament on the 17th of October 1947 and will probably come into force in 1950.

Since the liberation important changes have been prepared in the Netherlands with regard to administrative sanctions. Up till now each regulation allows the application of one or more sanctions (such as suspension of allocations, confiscation of guarantees, etc.) but in practice a point has been reached at which many bodies no longer apply any sanctions at all, whilst many other bodies apply them only after having consulted the Public Prosecutor, so that the Court can take the administrative sanction into consideration when deciding the case. In various branches of industry, however, administrative sanctions are still applied without any preliminaries.
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This is the more serious because usually the agencies or bodies concerned have
no sufficiently experienced officers at their disposal in order to be able to arrive
at well defined decisions. Moreover they are not always impartial. It is also a
grave defect that there is no guarantee for a fair trial, and the person administra-
tively punished seldom has a right to appeal to an (administrative) court.
In this respect, too, the future legislation will solve the problem: it prohibits
all administrative sanctions.

CHAPTER V. DIRECTIVES DERIVED FROM COMPARISON

Two subjects are to be dealt with: the means of maintaining the regulations,
and the bodies charged with that maintenance.

SUBDIVISION I. THE MEANS OF MAINTENANCE

§ 1. PREVENTION AND REPRESSION

All economic regulations aim at either a direct or an indirect influence on the
market. The market, however, is not always steady but continually fluctuating,
and it is this fluctuation which the Government want to control. This means that
the Government will have to intervene continually and in doing so will often
arrive at a decision which many people may not immediately understand.
Before applying the measure of enforcement, however, it must be made clear
to the public that intervention in general has to take place in a certain way and
not in any other. This requires first of all good information to be spread by the
press, by broadcasting and through meetings.
It is further essential that as many representatives of the industry concerned as
possible are made to take part in the preparation of the regulations. With regard
to spreading information the Dutch Government have still a tendency to fail now
and again.
As a matter of fact it is necessary that each regulation is provided with a clear
statement of its considerations, the same as it is laid down in the Emergency Price
Control Act in the U.S.A..
But even when information is spread in the best possible and most extensive
way, it may not reach everybody. It is therefore desirable that first-offenders by
ignorance shall not be punished but only cautioned.
Sometimes, however, a single warning will not be sufficient. Then it may be
advisable to convince the offender more impressively of the fact that his present
offence should be the last. For this purpose an injunction as it is known in America,
seems to be a satisfactory expedient. This injunction might have a further useful
effect in case the offender presumes that he can refer to the fact that he was not
in a position to act in a different way, e.g. because otherwise his business would
deteriorate. It appears namely that when this plea is made in court, the judge has
a tendency to leniency which does not deter the offender from further infrin-
gements.
The injunction, as a means of maintaining the economic legislation, should be
introduced into the Dutch law.
§ 2. CIVIL SANCTIONS

As we have seen, most of the civil sanctions of the American economic legislation were in reality of a penal character. There is no reason to follow the American system in this respect. It is, however, desirable that the buyer who has sustained damage should be able, on a larger scale than at present, to reclaim the amount to which he has been overcharged.

Under the existing legislation an action for repayment has, in most cases, to be combined with an action for annulment of the contract. This means that in such cases the goods that have been purchased must be returned. It is evident that this is a great drawback for the person who sustained the damage and it will often prevent him from co-operating in the enforcement of the economic regulations.

In order to acquire in such a case the support of the person who suffered damage, it is necessary, in general, that he should not be liable to punishment and that he should be in a position to reclaim the overcharged amount. It is also necessary that, if a prosecution is instituted, he may join in as a civil party and reclaim the overcharged amount in this way.

§ 3. ADMINISTRATIVE OR PENAL SANCTIONS?

The question arises if in addition to the administrative sanctions which, as it has been shown, perform an important function in the maintenance of the economic legislation in Switzerland, America and the Netherlands, penal sanctions are indispensable. This clearly appears to be the case.

In the first place, because administrative sanctions in general are only possible against those who need licences or allocations, or against those who can be compelled to be a member of a trade-association. Practically no one else can effectively be punished by administrative sanctions.

Secondly, because the offences are sometimes so serious that imprisonment should be imposed.

On the other hand the question arises whether, in addition to criminal sanctions, administrative sanctions will be indispensable. This question, too, must be answered in the affirmative. It might indeed be possible that the administration would not be able to carry out their task of influencing the market, if certain unwilling elements cannot be expelled from it. For that matter it became clear in the U.S.A., where the law does not allow administrative sanctions, that these sanctions could not be dispensed with.

§ 4. ADMINISTRATIVE SANCTIONS WHICH HAVE TO BE MAINTAINED

The administration should refrain from imposing sanctions, unless in those few cases in which, without those sanctions, the influence on the market could not be efficient. For that purpose it is necessary that the Government should have the power:

a. to withdraw licences or allocations;
b. to suspend or remove an offender from the membership of trade associations.

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In all other cases the imposition of punishment has to be left to the court. Consequently the following measures should be removed from economic regulations as administrative sanctions:
1. the imposition of fines;
2. the confiscation of guarantees;
3. the seizure of goods to which the offence pertained; and
4. the destruction of buildings which were built in defiance with the legal regulations.

§ 5. PENALTIES AND MEASURES DESIRED

It will be necessary on the one hand to consider that the administration will have to refrain as much as possible from imposing sanctions and that the court must have sufficient means to keep the market "pure". On the other hand it has to be taken into account, as shown already when comparing various laws, that the penalties should make it in particular possible that the offender should be deprived of all illegal profits.

Finally, economic offences in their most serious form have to be penalized with imprisonment for a time of at least equal to the maximum punishment for larceny or swindle (four years).

So there should be three kinds of penalties:
a. deprivation of liberty;
b. penalties affecting the property;
c. penalties affecting the business.

For the first group (a) imprisonment and confinement to a labour-camp are expedient.

The other two categories of penalties have already been dealt with in Chapter IV.

SUBDIVISION II. THE BODIES CHARGED WITH THE MAINTENANCE

§ 6. ADMINISTRATIVE BODIES

The bodies charged with the execution of the regulations have also to fulfil a task with regard to enforcing the regulations. They should 1. provide information to those to whom the regulations are applicable, 2. assist in detecting punishable offences, and 3. in some cases, apply administrative sanctions.

Owing to the fact that there are, in the Netherlands, a great number of these bodies, each body cannot have its own attorney, like in the U.S.A.. Nor is it possible for each body to have its own investigating-officers.

Each body will have to endeavour to provide the necessary information in abstracto.

Providing information in concreto is the task of the investigating-officer who performs two functions: supplying information and tracing punishable offences. With regard to the first mentioned function he should act in accordance with the directions of the administrative bodies, and with respect to his second function in compliance with those of the prosecuting body.

For the co-ordination of the tasks of the administrative body, the investigating-officer and the prosecuting body officials should be appointed who, on the
one side, have sufficient administrative experience and, on the other side, are practised in legal matters. These contacting-officers form part of the main bodies of the administration, so that they can survey a large part of the market. One or two contacting-officers might be added to each Ministry concerned.

The administrative sanctions should be imposed by the body entrusted with the execution of the violated regulation. If possible the advice of the contacting-officer should be obtained.

§ 7. INDUSTRIAL TRIBUNALS

In all three countries whose legislation has been examined a need for specialization of the judges and the prosecuting officers has become apparent. The question has arisen whether specialization cannot be secured by establishing an economic tribunal for each branch of industry. Several authors in the Netherlands are in favour of such an institution.

It is true that in this way specialization would be attained, especially if — in accordance with the views of these authors — persons from the industry itself were to sit on these tribunals, possibly with a member of the ordinary judiciary as president. This system, however, has serious drawbacks.

In the first place controversies will soon arise as to the jurisdiction of each tribunal. It is impossible to draw the exact dividing line between the various branches of industry. Besides, one industrialist is often connected with more than one branch of industry.

Moreover, there will have to be a great many tribunals. In the Netherlands there are at this moment more than 500 various branches of industry. So this would mean that in principle there would have to be about 500 economic tribunals.

These different tribunals would be inclined to interpret the acts and regulations each in their own way, so that in one branch of industry an action might be looked upon as liable to punishment, while in another branch that same action might be deemed quite lawful. This would certainly cause a disturbing influence on the entire market.

Finally, as regards the most serious offences, which are to be punished heavily, public opinion would not tolerate this to be done by others than the ordinary judiciary. It is of course inconceivable that the 500 tribunals would be invested with the power to inflict imprisonment.

Therefore the disadvantages of having one tribunal for each branch of industry surpass the advantages.

The following solution might be suggested: one economic tribunal for the whole country with one expert for each branch of industry as a member. Specialization as well as uniformity in the interpretation of the law will then be guaranteed. The main objection that might be raised in this connection is that economic offences will then be made a separate category and be considered of a minor order.

§ 8. THE BODIES OF THE JUDICIARY

It is desirable to entrust the maintenance of economic legislation to the ordinary judiciary, provided that the judge will be sufficiently specialized and that all appeals against the decisions of the District Courts shall be submitted to one
experience and, on the other side, are officers form part of the main bodies of a large part of the market. One or two officers im imposed by the body entrusted with the possible advice of the contacting-officers has become apparent. The question whether it can be secured by establishing an economic tribunal especially if — in persons from the industry itself with a member of the ordinary judiciary serious drawbacks. On arise as to the jurisdiction of each act dividing line between the various industries is often connected with more than at many tribunals. In the Netherlands various branches of industry. So this would be about 500 economic tribunals. Needed to interpret the acts and regulations of each branch of industry an action might be taken in another branch that same action and that certainly cause a disturbing influence on economic offences, which are to be punished heavily, to be done by others than the ordinary lower courts. At the 500 tribunals would be invested one tribunal for each branch of industry mentioned: one economic tribunal for the whole branch of industry as a member. Specialization of the law will then be guaranteed. The need in this connection is that economic matters are to be considered of a minor order.

SUMMARY

The need of economic legislation to the ordinary law shall be sufficiently specialized and that all District Courts shall be submitted to one

Court of Appeal for the whole country and not, as it is now the case, to five different Courts of Appeal.

In this way an expert procedure and a uniformity of punishment will be secured. Besides this, there should always be unity of jurisdiction, not only with regard to the economic offences themselves but also in respect to other punishable delicts. Although there should be one Court of Appeal for economic offences, it should be possible to appeal from the decision of that Court to the Supreme Court at The Hague, which finally decides on all points on which there is uncertainty regarding the interpretation of legal provisions.

The prosecuting officers, too, will have to be specialized and be placed under one central administration instead of, as at present, under five Attorneys-general (one for each Court of Appeal).

If it is arranged in this way, care must be taken to ensure regular contact between the prosecuting officers and the executive bodies. It will be the task of the contacting-officers, mentioned before, to stimulate and maintain this contact. Only then a unity of execution and maintenance of economic regulations can be achieved.