6 Fit for the Purpose? The Use of Administrative Law Against Organised Crime

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1 Introduction

In many countries the governments identify organised crime as a serious threat to the public order as it threatens citizens, businesses and institutions and therefore undermines the economic welfare.[1] The crime stems from international drug trafficking, human trafficking and exploitation. Organised crime becomes visible in high-profile incidents, such as the assassination of a criminal defence lawyer in 2019, a murder of a journalist in 2021 and an attempt to kidnap a Belgian minister in 2022. Incidents like these fuel the debate on strengthening the legal framework, with special attention to administrative actors.

Over time, administrative bodies are increasingly taking on responsibilities that traditionally fall within the purview of the public prosecution (Prins, 2016). This gradual shift is justified with the idea that administrative law might be more effective as it provides an immediate solution. It is further driven by the growing complexity and reach of undermining crime (Huisman, 2017; Tops & Van der Torre, 2024),[2] where criminal networks exploit legal and administrative loopholes.

As a result, municipalities and other administrative bodies are empowered to address aspects of organised crime proactively. Measures like administrative closures of properties linked to drug production or money laundering illustrate how these bodies are stepping into roles once exclusive to the public prosecution. This expanded role of administrative bodies reflects a strategic response to organised crime, underscoring the need for an integrated approach where prevention, enforcement and prosecution overlap to counter criminal infiltration more effectively.

This trend is evident not only in the Netherlands but also in other countries, such as Belgium (Weber & Töttel, 2018) and Australia (Ayling, 2014).[3] In all

1. https://www.consilium.europa.eu/en/policies/eu-fight-against-crime/.
2. There is an ongoing debate on the concept of 'undermining crime'.
3. Bill DOC 55 1381/001 and in Australia, several licences have a 'fit and proper' test.

these cases, a similar rationale can be observed: administrative bodies collaborate with law enforcement agencies to address organised crime, employing tools like property closures and asset seizures traditionally managed by the judiciary. This shift reflects a broader, cross-border strategy to strengthen the administrative response to organised crime, recognising that tackling such deeply embedded criminal networks requires both judicial and administrative action.

This raises the question of how well this role shift aligns with the core functions of administrative bodies. Are these institutions adequately equipped to take on tasks that are traditionally managed by judicial authorities? In other words: does administrative law provide an effective solution to combat organised crime, or are there limitations that hinder its impact? With this question we intend to add to a 'jurisprudence of consequences' as we try to enhance the understanding of the effects of the particular administrative law system that aims to combat organised crime.

To answer these questions we will first reflect on the actual problem, namely the main characteristics of organised crime (Section 2). We will then describe the development of the legal framework to tackle this problem (Section 3), followed by a theoretical reflection on the problems of collaboration (Section 4). This theoretical framework helps us to identify potential effects or lack of effects of the actual object of our study: the Dutch Integrity Screening Act (Wet Bibob) (Section 5). We will try to show the effects of this act by using secondary data (existing evaluation reports) alongside some newly gathered primary data. Further details on the sources of empirical data are provided in Section 5.3. This contribution concludes with some general remarks (Section 6). In the final section (Section 7), we offer some overarching reflections on the significance of this case for the 'jurisprudence of consequences' and propose a research agenda for the future.

2 Organised Crime

Organised crime is a phenomenon that is not clearly defined in criminological literature (Finckenauer, 2005; Paoli, 2022). Often, it involves drug-related offences, encompassing the production and trafficking of drugs. However, it can also encompass human trafficking, arms trafficking and various forms of fraud (Pardal et al., 2023, p. 5). In his review article Finckenauer identifies the main characteristics that constitute a definition of organised crime. The first is that the criminal activities are indulged in by groups that are non-ideological in the sense that they lack a political agenda of their own. This distinguishes them from, for example, terrorist groups that wish to overthrow the existing political order. A second characteristic is the presence of a structure or hierarchy, in which leaders or bosses and those that are actually executing the orders from above, for example, commit the homicide or plant the bomb. This group operates with a degree of

continuity, remaining independent from individual actors. That means that if an individual actor is prosecuted and put behind bars, the enterprise might just continue. Another characteristic is that this group uses violence or threat of force, which is not only aimed at potential enemies but is also applicable to the group itself. Membership is rather restricted, and force is frequently used to reinforce group cohesion. The reports on the functioning of the so-called 'outlaw motor gangs' with its internal violent structure are a good example of this.[4]

The main concerns of organised crime relate to their external activities: illegal enterprises (e.g. related to gambling, prostitution, drug trafficking), penetration of legitimate business and potential corruption of public institutions. The infiltration of the legal economy is visible when the organised crime invests illegal profit into enterprises, thereby creating an unfair level playing field. In particular, small-scale enterprises, like cafés or barber shops with an abundance of cash, are threatened by this phenomenon. In addition, real estate investments create opportunities to penetrate into legal business. To realise these goals (both the criminal activities *and* the penetration of the legal business), it is sometimes necessary to bribe public actors that should function as a safeguard.

It is important to note that these elements of organised crime are based on the literature (Van Duyne, 2004). Organised crime, as such, is not defined in the law. Instead, what is often defined in the law is the membership of a criminal organisation. In the Netherlands membership of a criminal organisation caries a prison sentence of up to 6 years (Art. 140 Dutch Criminal Code). Criminal law, however, appears to be a difficult and not always effective response to combat these forms of organised crime (De Vries, 1995; Keulen, 2007).

3 Administrative Law as a Legal Response

In this context it is not surprising that the legislature increasingly relies on mechanisms of administrative law as an alternative means of disrupting organised crime (Van Heddeghem et al., 2002). In this section we will discuss the main features of administrative law, resulting in an overview of potential difficulties that might impede its effectiveness.

Administrative law is characterised by its focus on the relationship between government bodies and citizens. Administrative bodies include entities at various levels of government responsible for implementing the laws and decide on individual matters, for example in the form of granting a licence or subsidy or sanctioning with notices or orders if the public order is threatened. By issuing permits, these bodies can ensure that the activities meet legal standards and conditions, fostering a controlled environment while upholding the rights of

4. https://nscr.nl/factsheet/outlaw-motorcycle-gangs/.

individuals and businesses. This regulatory approach helps balance individual freedoms with societal interests, although it also raises questions about efficiency, transparency and potential limitations in addressing complex issues such as organised crime.

The operation of administrative bodies is governed by legislation. This means that the legislature both empowers and limits administrative bodies. This is especially relevant if the administrative action restricts the freedom of the individuals.

The legal response to organised crime shows a shift towards more administrative law (Tollenaar, 2023). This resulted in an expansion of the types of sanctions that administrative bodies can impose. Traditionally, administrative bodies have had the authority to enforce administrative coercion, a means of maintaining public order. This power enables them to take direct action to prevent or mitigate disturbances to public safety, health and order, often without needing prior judicial approval.

In recent decades, there has been a shift towards alternative enforcement measures, including administrative fines and the preventive revocation of permits. These tools provide authorities with greater flexibility to address a wide range of infractions proactively, reflecting a broader strategy to maintain order and prevent escalation before situations call for more severe intervention. The expanding use of such administrative actions underscores the evolving role of administrative bodies in safeguarding public interests while still necessitating oversight to ensure fair and proportionate application.

This shift presents new challenges for administrative bodies, including the need for greater capacity, specialised expertise, access to new information sources and the establishment of robust protective procedures. With a broader mandate, administrative bodies must enhance their resources and expertise to handle complex enforcement tasks that traditionally fell under criminal jurisdiction. This includes the integration of diverse data sources, such as financial records and criminal intelligence, to identify risks proactively and make informed decisions. Moreover, to ensure fairness and legal integrity, it is essential to develop robust procedures that protect citizens' rights, especially in the context of preventive measures and sanctions. Balancing swift enforcement with due process thus requires both structural adjustments within administrative bodies and a careful approach to safeguarding transparency, accountability, and citizen protection in this expanded enforcement role.

4 Theoretical Framework: Challenges of Network Management

The new challenges administrative bodies face require collaboration with other organisations, like the police and public prosecutor or, for example, the tax office. The information is thus gathered using a network (De Bruijn & Ten Heuvelhof,

2017). The network approach, commonly used to analyse organised crime operations (Bouchard, 2020), can also be applied to those tasked with combating it – public bodies such as administrative authorities, police, prosecutors and other enforcement agencies. These actors play a vital role in sharing information and coordinating efforts to address the potential threats posed by criminal activities. This can be seen as a network. Assessing and influencing the effectiveness of networks remains a challenge (Provan & Milward, 1995; Provan & Milward, 2001; Provan & Kenis, 2008).

In collaborative networks, a primary concern is that the participating organisations often operate with distinct missions, structures and operational procedures. As participation expands, each entity introduces distinct policies, resources and constraints, adding to the network's structural complexity (Klijn & Koppenjan, 2014). This complexity intensifies when the organisations hold varying values, making alignment even more challenging. For instance, administrative law, when used to combat organised crime, primarily aims to restore public order rather than punish offenders. This divergence in objectives can lead to friction within the network, as the priorities of law enforcement agencies may not always align with those of administrative bodies. For example, prosecutors may be reluctant to share sensitive information with administrative bodies if it risks compromising an ongoing criminal investigation.

In managing the complex network of often-conflicting interests, coordination through effective 'network management' is frequently proposed as a solution. However, Hovik and Hanssen emphasise the significant challenges involved in coordinating such diverse stakeholders. Their research demonstrates that successful network management must be flexible and adaptive, tailored to the specific needs and structures of each network. This flexibility is essential, as the diverse goals, resources and constraints of participating organisations add layers of complexity that standard management approaches may not adequately address (Hovik & Hanssen, 2015).

A primary challenge in network management is defining the role and authority of the network manager. A network manager is the person or organisation that attempts to govern the processes in the networks (Klijn et al., 2010, p. 1065). Network managers may assume various roles based on the network's needs: a 'convenor', who fosters collaboration and alignment among members; a 'mediator', who facilitates conflict resolution; or a 'catalyst', who identifies and promotes value-generating opportunities within the network. In many cases, an effective network manager will need to embody all these roles to varying extents, dynamically adjusting their approach to foster cohesion, address conflicts and drive the network towards its goals. This multifaceted role demands both strategic oversight and operational flexibility, highlighting the necessity of managers who can seamlessly adapt to different functions to address the network's evolving needs (Hovik & Hanssen, 2015, p. 510).

5 Network Management and the Integrity Screening Act (Wet Bibob)

5.1 *Background of the Integrity Screening Act as a Legislative Response to Organised Crime*

As mentioned in the introduction, 'organised crime' is seen as a major policy challenge. In the early 1990s, pressure to target the highest levels of organised crime in the Netherlands led some specialised crime squads to employ inadmissible investigative methods. In 1993, this resulted in a major scandal, the dissolution of the crime squad and the resignation of the ministers of Interior and Justice. More importantly, in 1995, Parliament launched an inquiry into police methods in the context of the nature and extent of organised crime (Bovenkerk, 1996; Fijnaut et al., 1996).

This inquiry became a major public event during which reputations were made (or broken) and which had many legislative consequences for the fight against 'organised crime'. A key aspect relevant to our study involves (a) business sectors vulnerable to organised crime infiltration and (b) the integrity of public administration when dealing with licensed enterprises linked to organised crime.

The main findings were that some sectors are adjacent to organised crime, such as the transport sector, which goes without saying, as a central aspect of the organisation of contraband trade is transport. Bars, restaurants and clubs have also been mentioned in relation to 'organised crime' due to potential protection rackets, although supporting evidence for that risk was thin. In general, it had to be conceded that in the Netherlands 'organised crime' did not hold social and economic sectors 'in its grip': there was no octopus having its 'tentacles in everything'.

A few months after the Parliamentary Commission's report was issued, on 10 October 1996, the Minister of Justice sent a letter to Parliament advocating for enhanced powers for local authorities to vet applicants for services such as licences and permits. This empowerment would avoid the dual position of, on the one hand, fending off 'organised crime', while, on the other hand, facilitating crime by issuing licences and permits to the same criminals when they intend to operate in upperworld business sectors. This would affect the integrity of the public administration. Another aim is to prevent the intertwinement of underworld and upperworld, particularly if the authorities play a facilitating but unwitting role by providing licences or, worse still, subsidies.

However, it soon appeared that the intended reach of the law broadened considerably. 'Organised crime' got a second position: the law should address *all* systematic and structural serious criminal activities if these activities would be furthered by obtaining licences and permits. Furthermore, the proposed

administrative law instrument would strengthen the integrity of the authorities by enabling them to avoid deals with serious criminals (of any sort and calibre).

This was to be elaborated and refined in the coming 5 to 6 years because in 1996, the Minister of Justice initiated an inter-ministry project group that picked up earlier proposals for further legislative preparation. Concerning the sectors at risk, the ministers took a shortcut by adopting all the sectors mentioned in the report of the Parliamentary Commission, even if there was no evidence of a connection (infiltration or otherwise) to 'organised crime' beyond a few anecdotes. These concerned mainly the city of Amsterdam with its flourishing half-criminal sex industry and tolerated hash outlets, the 'coffee shops' which the town council tried to clean up. The Bibob Act was submitted to Parliament on 11 November 1999.

5.2 The Aim of the Bibob Act

The Bibob Act has an important role to play in the fight against organised crime. The purpose of this law is to prevent public administration from inadvertently facilitating organised crime through mechanisms such as permit issuance and subsidies (Tollenaar & Van der Vorm, 2023). Administrative bodies can refuse or revoke permits if there is a serious risk that the decision will be used to benefit from criminal activities ('a-ground') or to facilitate future criminal offences ('b-ground'). In addition, it is also possible to refuse or withdraw a permit on the basis of Article 3, paragraph 6, of the Bibob Act. Failure to fully complete the Bibob form or provide requested additional information is considered a serious risk of abuse under Article 4(1) and (2) of the Bibob Act.

In the years following the enactment of the Bibob Act, the scope of the act has been gradually expanded. This means that it can be applied in a wider range of situations. Initially, it covered only a limited number of municipal permits and public contracts in a few sectors, but eventually it was extended to all municipal permits and all public contracts. Additionally, the number of national licensing systems in which the administrative authority can apply the act has gradually increased.

5.3 Effectiveness of the Bibob Act

The expansion of the Bibob Act is related to the expectation that it provides a promising tool to combat organised crime by allowing administrative bodies to deny or revoke permits, grants or contracts if there is a serious risk of criminal influence. However, its practical application has fallen short of expectations. To

evaluate the effectiveness of the Bibob Act, we analysed existing reports and data published by the Ministry of Justice.[5]

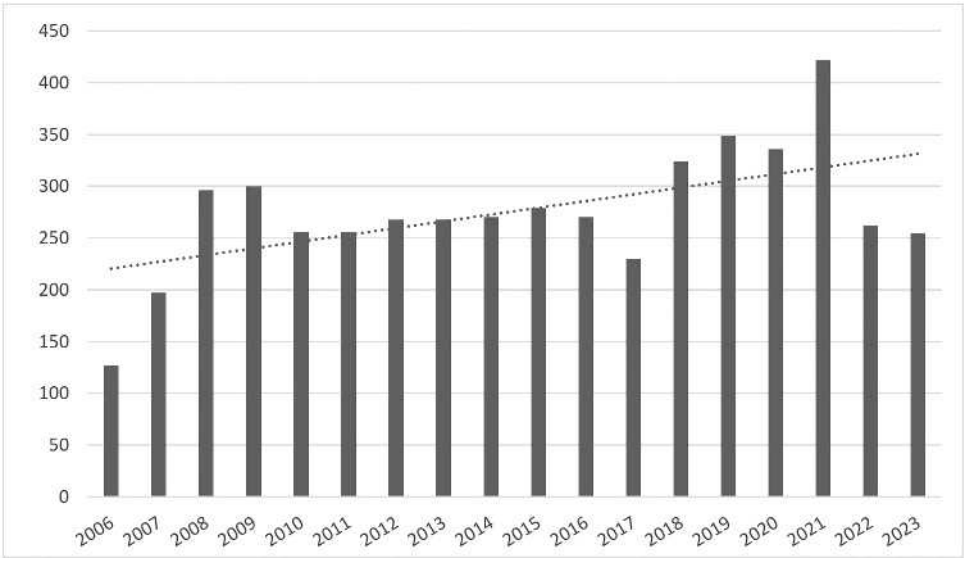
Two primary indicators can be used to assess the effectiveness of the Bibob Act. First the use of the act by administrative bodies. Evaluation studies indicate that nearly all relevant administrative bodies have established policies defining when and how the Bibob Act should be applied (Kuin et al., 2020). This policy also follows the entire scope of the Bibob Act, meaning that the administrative bodies have established policy for all areas for which they can use this act and vet the applicant or the holder of the permit.

A second indicator is the actual use of the Bibob Act in individual situations. To assess this use we took the number of cases in which the National Bureau Bibob issued an 'advice'. This agency is part of the Ministry of Justice and can be approached by the administrative authorities to assess the degree of 'danger' posed by potentially criminal influences. This advice is based on information that is open only for this National Bureau Bibob and the specific expertise of this bureau. It is not mandatory to ask for an advice, but since it is very likely that administrative authorities apply for such an advice, this forms a reasonable indicator for the actual use of the Bibob Act.

The number of advisory reports can be derived from the annual report of the National Bureau Bibob. Initially, legislatures anticipated that the Bureau would be consulted at least 500 times annually. So this number is the intended effect of the Bibob Act. The actual number of advisory reports has consistently fallen short of this benchmark, as reflected by the graph in Figure 1. Notably, this underuse persists despite the Act's scope having been expanded to cover a broader range of cases, theoretically enabling its application in more situations. The discrepancy between the expected and actual usage suggests that administrative bodies may encounter barriers in applying the Bibob Act effectively, whether due to operational limitations, lack of awareness or possible reluctance to use the Act's provisions fully.

5. http://www.justis.nl, more particularly, the site of the Landelijk Bureau Bibob (National Bureau Bibob) that keeps records of the number and sort of advices.

Figure 1 The number of advisory reports issued by the National Bureau Bibob



Source: Annual reports National Bureau Bibob, compiled by the authors

A third indicator of the effectiveness of the act relates to the actual content of the assessed 'danger'. Does it indeed refer to 'organised crime', or is it applied mainly in situations of less importance? This is mainly a qualitative indicator, so we took a few examples in which the administrative authority used the act to intervene with organised crime. While there are instances where the Act has been used against high-profile criminal networks,[6] it is more commonly applied in cases involving minor offences, such as tax violations by small business owners. For example, a violation of tax regulations by a partner in a small restaurant or grill room may trigger the Act's application.[7] Although such offences are certainly unlawful, they fall short of the public perception of organised crime, which typically involves violent, large-scale criminal activities like gang-related shootings or bombings.

Moreover, minor tax violations or administrative infractions are generally within the expertise of the Internal Revenue Service or other regulatory agencies, raising questions about whether the Bibob Act is the appropriate tool for these cases. The focus on lower-level offences may divert resources from addressing the complex, high-risk criminal enterprises the Act was originally intended to combat,

6. ABRvS 20 juli 2011, ECLI:RVS:2011:BR2279, AB 2012/7, noot A. Tollenaar and Rechtbank Midden-Nederland 11 september 2024, ECLI:NL:RBME:2024:5262. Both are related to Holleeder, a well-known criminal, once convicted of kidnapping Heineken.
7. ABRvS 13 september 2023, ECLI:NL:RVS:2023:3473 and ABRvS 13 september 2023, ECLI:NL:RVS:2023:3480, Gst. 2023/87, noot B. van der Vorm.

suggesting a misalignment between the Act's use in practice and its intended purpose.

The main conclusion is that the Bibob Act is not as effective to combat organised crime as the legislature expected. It is implemented largely 'on paper' (as reflected in policy documents) rather than in practice (given the relatively low number of advisory reports) and not necessarily in situations where it combats organised crime effectively.

5.4 The Networks that Assist in the Application of the Bibob Act

The question is, what might explain this limited use? Why do municipalities, in particular, not make greater use of the Bibob Act? In the evaluation reports of the act the most explanatory factor mentioned is the insufficient administrative capacity within administrative bodies to implement it fully. Properly applying the Bibob Act requires significant expertise, resources and capacity, which many administrative bodies lack (Kuin et al., 2020).

A key challenge is that administrative bodies often struggle to access the relevant information needed to assess potential risks. Such information is often sensitive, as it may not yet have led to a conviction or formal sanction. It mainly concerns observations and information that has not yet resulted in a conclusion.

To address this issue, Regional Intelligence and Expertise Centers (RIECs) were established. These centres serve as collaborative networks where municipalities, public prosecutors, police, tax authorities and national inspectorates coordinate efforts by sharing information and developing strategic approaches to combat organised crime. However, the establishment of RIECs has introduced additional challenges. This is the second challenge in the application of the Bibob Act: there is no clear example or model in the way the actors collaborate and how they share information or support each other. Some RIECs provide direct assistance, assuming tasks from municipalities with limited capacity or expertise, while others merely offer information or issue advisory reports on request. The application of the Bibob Act then fully relies on the administrative bodies, who have another focus and aim for different interests then just to combat organised crime.

5.5 Analysis: A Need for a Better Network Management?

Given the observed shortcomings in the application of the Bibob Act, redesigning the organisational framework supporting its implementation may be beneficial. Insights from network management literature indicate that a significant gap exists in the current management structure, particularly regarding the lack of a clear network manager. In other words, it is unclear who is ultimately responsible for orchestrating efforts to combat organised crime comprehensively. Recognising this, the Dutch government has launched numerous initiatives to encourage

administrative bodies to take an active role, providing incentives to promote awareness of organised crime issues and nudging these bodies towards assuming a more proactive management role that leverages the full suite of tools, including the Bibob Act.

For the Bibob Act specifically, administrative bodies are arguably the most logical choice as network managers. However, their limited capacity poses a significant barrier to fulfilling this role effectively. Auxiliary structures, such as the Regional Intelligence and Expertise Centers (RIECs), could potentially fill this gap, yet their performance in network management roles has been inconsistent. Some RIECs operate primarily as 'convenors', bringing parties together, while others act as 'mediators', focusing on resolving conflicts within the network. This variability in roles and expectations can hinder a cohesive approach to applying the Bibob Act effectively.

To optimise the use of the Act in combatting organised crime, a more explicit and standardised role for RIECs could be established, ensuring that responsibilities are clearly outlined to support administrative bodies in exercising their full range of competencies. By defining the RIECs' role as network managers more prominently, these centres could facilitate consistent support for administrative bodies, enabling them to address organised crime with greater coordination and effectiveness.

6 Conclusion

Is administrative law fit for the purpose of combating organised crime? The short answer is, not really. Administrative law is fundamentally ill-suited to addressing organised crime, as its core objectives differ significantly from those of criminal law. Administrative law primarily aims to ensure regulatory compliance, uphold public order, and manage government operations lawfully and fairly, rather than to combat serious criminal activity.

The complex and clandestine nature of organised crime requires rigorous investigative methods and specialised knowledge, which are typically beyond the resources and mandate of administrative bodies. Dealing with organised crime therefore demands in-depth investigative resources, highly specialised law enforcement skills, and a deep understanding of criminal structures – capabilities typically found within criminal justice institutions rather than in administrative agencies. As a result, administrative bodies often lack the resources necessary to deter and dismantle organised crime. The network structures that have emerged as a result are too diverse and unstructured to meet this capacity demand effectively.

Moreover, the structure of administrative legal protections brings up an additional barrier to effectively combating organised crime. In the administrative system, individuals and organisations have the right to appeal decisions, sometimes through multiple layers of review. While these protections are essential

to guard against arbitrary government action, they can delay or even obstruct efforts to counter organised crime. Administrative bodies must follow formal procedures and respect due process, which criminal organisations can exploit to evade or postpone enforcement actions. Combined with limited capacity and expertise of administrative bodies, as mentioned in this article, these procedural safeguards make administrative law a weak tool in confronting the sophisticated tactics of organised crime.

Ultimately, administrative bodies are tasked with combating organised crime yet remain ill-equipped, relying on tools that are often applied in contexts unrelated to organised crime. In this context, the designation of the Bibob Act as a central instrument in tackling subversive crime appears somewhat misplaced.

7 Some Overarching Reflections

A 'jurisprudence of consequences' aims to provide a reflection on the role of empirical information in assessing the impact of laws and legal decisions. In our case, which examines the administrative law approach to combating organised crime, we observed the high ambitions of the legislature in designing the Bibob Act. This act was expected to serve as an effective tool for administrative authorities to counter organised crime. The persistence of this expectation is evident in the act's gradual expansion over time.

However, empirical data shows that these intended goals were never fully realised. Administrative authorities struggle to apply the act effectively due to a lack of capacity and expertise. The primary explanation for this shortcoming is the absence of a uniform and supportive network that actively assists authorities in implementing the act.

From the perspective of a 'jurisprudence of consequences', this case demonstrates that law enactment alone does not drive change; effective implementation requires a well-structured support system, often necessitating collaboration among multiple organisations with differing, and sometimes conflicting, priorities. Therefore, future research should focus primarily on the challenges of implementation rather than the law itself. After all, a law that is not implemented is nothing but a dead letter.

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