

# More clarity on requirements for collecting evidence in administrative fine proceedings

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Violations of law are increasingly enforced by imposing an administrative fine instead of prosecuting under criminal law. Administrative fines were originally solely used for minor violations, but are now more frequently imposed for serious and complex violations; the fines themselves are also for higher amounts. A relevant question is which requirements should exist regarding the collection of evidence in administrative fine proceedings. On 5 July 2017, the Council of State clarified in two cases the rules for submitting new evidence after the decision-making process. This had already been the subject of a non-binding opinion from the advocate general. The opinion also included various other elements of the collection of evidence in administrative fine proceedings; the Council of State has not yet been called upon to decide on these other elements.

## Submitting new evidence after the decision-making process

Case law was not entirely clear regarding the time until which an administrative body is allowed to submit new evidence in proceedings regarding administrative fines. The Council of State ruled that the submission of evidence after the investigation has been closed by the supervisor is not categorically excluded. This possibility, however, is limited by the principle of due process of law. The alleged offender must be able to defend himself timely and adequately against the accusation. If the administrative body does not have a justifiable reason to submit new evidence after the completion of the decision-making process, it is not allowed to do this later at the appeal stage; this would be a breach of the principle of due process. However, if the administrative body in the decision-making process has used all the evidence that was reasonably available to impose the fine, and the discussion in appeal gives a reason to submit new evidence, this usually will be allowed. The Council of State did not rule out the possibility that the administrative court may allow the administrative body to correct defects in the evidence during the legal proceedings (known as the administrative loop), but emphasised that the court should exercise caution in doing so; again, due process of law will be decisive.