

Summary

2006 trend report concerning bailiffs

Accessibility, continuity and quality of official services

Background

Bailiffs perform official acts in the realm of civil law: ranging from serving summons, judgments and other orders to those involved, to enforcing judgments. The bailiff is, as is the civil-law notary, both a business man and a public servant, and is in principle not allowed to refuse the performance of official acts. When enforcing judgments, the bailiff exercises public power. To prevent creditors from taking the law into their own hands and enforcing judgments themselves, the bailiff has been entrusted with this duty. In doing so, he must act independently and remain impartial in the interest of a reliable and due administration of justice. Apart from the interests of the principal, the bailiff must also serve the interests of any other party involved.

When serving summons, there is no coercion. The official competence is in this case based on the idea that it is important to be certain that the other party has been informed of a particular communication (which may come from the court). Bailiffs also carry out non-official tasks, including the collection of debts, consultancy and litigation. This sideline, however, must neither predominate so that the bailiff is in fact no longer available for his official duties nor may it injure a bailiff's position of trust.

In July 2001, the Dutch Bailiffs Act (*Gerechtsdeurwaarderswet*) came into force, one of its aims being to promote competition within the professional group. Under the new act, bailiffs have jurisdiction throughout the country, the possibilities of setting up a bailiff's office have been relaxed and the rates chargeable to principals have been liberalized. Moreover, regulations on the profession have become stricter by introducing disciplinary rules and financial supervision, and by converting the professional organization into an organization governed by public law with the power to introduce bylaws.

The Dutch Minister of Justice is responsible for the primary duties of bailiffs, because these duties are in the interest of the administration of justice, which is bound by statutory rules. The Minister is responsible for a properly functioning system that guarantees accessibility and the quality of services provided that we may expect. To keep up to date with the system's workings, the Ministry has asked for a bi-annual report on the situation and developments in terms of a) accessibility, b) continuity and c) quality of the services provided.

Questions

- 1 What is the situation and what are the developments in terms of *accessibility* of the official services?
 - a supply: the number of bailiffs and junior bailiffs and offices; increase in scale and expansion of the territory;
 - b demand: principals; scope of official acts; factors influencing demand;
 - c the choice of principals: principals criteria; accessibility of official services; rates, and negotiations by principals.

- 2 What is the situation and what are the developments in terms of *continuity* of the official services?
 - a headcount increase and decrease in the professional training courses;
 - b increase and decrease in bailiffs: number of business plans, age distribution; male/female ratio;
 - c obstacles to join the profession;
 - d Commercial situation of bailiff's offices: turnover; costs; profitability.

- 3 What is the situation and what are the developments in terms of *quality* of the official services?
 - a quality assurance;
 - b results of regulation;
 - c professional ethics;
 - d quality assessment.

Study method

For the report, we have used existing data (data from Statistics Netherlands, KBvG, BFT, professional training course at *Hogeschool Utrecht*), documentation and supplementary study. The latter comprised:

- interviews with staff from eleven bailiff's offices of different sizes. Working visits were paid to two offices;
- interviews with seven clients: a housing association, two debt collection agencies (that deal with debts owed to banks, credit providers, telecom operators, health-care insurance companies and mail order companies), two lawyers, IBG and CJIB;
- analysis of annual accounts received by *Bureau Financieel Toezicht* (Financial Supervision Agency, hereinafter: BFT) from 171 bailiff's offices over the financial year 2003 and 186 offices over the financial year 2004;

- a questionnaire sent to 156 junior bailiffs (response rate 48%). The questionnaire covered questions about any obstacles to become a bailiff (by appointment) in different settings (existing office with one bailiff, office to be set up, existing office with more bailiffs) and about what perspectives junior bailiffs have;
- file analysis in respect of 268 complaints filed between January 2005 and 22 November 2005 with the *Kamer voor Gerechtsdeurwaarders* (Bailiffs' Chamber) and an interview with the chairman and secretary of that Chamber.

Results

Accessibility

Demand and supply seem to be fairly in equilibrium. There are no indications that clients have insufficient access to the official services. In 2005, there were 368 bailiffs and 414 junior bailiffs in the Netherlands. The number of bailiffs (including junior bailiffs) increased by 33% in eight years. The number of offices, however, decreased in that same period, i.e. there is a growth in scale. Scaling can also be seen in the form of an increase in the number of alliances between offices. In total, there are seven official alliances that offer national or regional coverage. Just under fifty percent of the offices in the Netherlands are part of an alliance. Due to liberalization of rates for creditors and nationwide jurisdiction, there is more competition between bailiffs. A worrisome development is the advent of performance-related price agreements with principals, as a result of which the bailiff's independent position may come under pressure.

Continuity

About twenty-five per cent of the bailiffs will retire within the next decade. In principle, there are enough junior bailiffs to compensate that headcount decrease. However, we anticipate that only a few new offices with one bailiff will be set up. It is not attractive for junior bailiffs to set up an independent office (with just one bailiff); the same applies to civil-law notaries. Their primary objections are difficulty with acquiring a reasonable market share, the investments required and working part-time. Most junior bailiffs aspire to accept the bailiff appointment within a partnership.

The average profit per office increased with 24% between 2003 and 2004. The differences between the offices have increased. Especially the larger offices with more than 21 employees saw an increase in profit by about 30%. Whereas, at the small offices with fewer than six employees, profits dropped by 27%. In 2001, about half of the turnover was earned with official services. More recent data are not available. In 2005, the number of

bailiffs with a risky financial situation under stricter supervision by BFT rose to 20, and one office went into liquidation. Risks that affect continuity of existing offices are pre-funding of principals, performance-related price arrangements and being too dependent on one single principal.

Quality

With a view to developments in terms of quality of the official services, we have mapped the results of supervision by the Bailiffs' Chamber and BFT, professional ethical dilemmas and quality assessment.

The number of complaints filed with the Bailiffs' Chamber increased from 350 in 2002 to 528 in 2005. That increase can be accounted for in part by the increase in work by bailiffs and the number of official acts that have to be performed. The majority of the complaints were filed by debtors. The disciplinary court held in 40 to 65 cases that the complaints were well-founded. Comments on the disciplinary rules include long disposal time, the minor sanctions imposed by the Chamber and late and anonymous publication of disciplinary rulings. BFT kept a closer eye on about 5% of the bailiffs in 2004 and 2005. The financial situation of these bailiffs was so tricky that their books have been audited at least once per year and they have had to submit financial data several times per year. Moreover, BFT found in about one third of the offices it audited in 2004 and 2005 shortcomings in the payment organization, in keeping principals updated or the balance in the designated account. In 2005, three bailiffs were removed from office further to complaints from BFT. One office, where two of them were working, went into liquidation. This event has raised questions as to the effectiveness of supervision. It should be possible to deal with problems more swiftly, for example by appointing an administrator who can put things right.

There are several other developments that threaten the independent and impartial position of the bailiff and that may be at the expense of the services provided to the debtor. Firstly, turnover of a firm may depend too much on one major principal; sometimes excessive commercial risk is taken, bringing bailiffs in a vulnerable position. Secondly, the independent and impartial position of bailiffs is under pressure when they agree with principals on a price whereby they have a financial interest in the outcome of a case or in situations whereby bailiffs 'buy' packages of claims. Another matter is the official and non-official work ratio. If the emphasis is too much on non-official work, the question arises as to whether the official post is not used too much for the benefit of commercial activities. Another question is how many of the extrajudicial debt collection cases end up in court. In such cases, the bailiff has an interest in succeeding in collecting the debt. Recent data on the official/non-official work ratio of offices and the flow of non-official work to the official channel are unknown. We recommend that such data be gathered in the future.

Thanks to a higher level of automation and alliances with nation-wide coverage, work is done more efficiently and principals are able to check more easily whether things are done as agreed. The quality of the services for major principals seems to have improved. For debtors, however, that situation is different. Because bailiffs now have jurisdiction throughout the country, debtors are faced with more and more different bailiffs. That makes it harder to come to payment arrangements. Moreover, bailiffs look less at the debtor's individual situation, making the debtors more part of a standard procedure due to scaling and automation.