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Evaluation of the Royal Dutch Bailiffs' Association (KBvG)
Management Summary

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Management summary

Background

The entry into force of the Court Bailiffs Act (Gdw) in 2001 reshaped the profession of the court bailiff. Court bailiffs have a special position in the Dutch legal system. As public officials, they are authorised to carry out tasks entrusted to them under the Gdw whilst simultaneously being commercial operators. The Gdw introduced a system of free establishment to replace the previous system in which establishment was restricted and there was a national authority for court bailiffs. These changes were designed to introduce more competition into the system. The legislator also chose to rename the Royal Association of Bailiffs (KVG) as the Royal Professional Association of Bailiffs (KBvG). The task of the KBvG is laid down by law in Article 57 of the Gdw, which stipulates that the KBvG must support good professional practice and professionalism among its members. To this end, this organisation has been given the form of a Professional Organisation under Public Law (PBO), with the power to issue regulations.

Article 85 of the Gdw stipulates that every four years the minister must send the Staten-Generaal a report on the effectiveness and efficiency of the KBvG's operations. The first evaluation of the professional organisation, entitled *Noblesse Oblige*, was carried out by the Van der Winkel committee in 2009. The present study is the second evaluation study of the functioning and role of the KBvG.

Research questions

The study was carried out with reference to three themes: a policy reconstruction, describing the establishment of the KBvG as a PBO and the policy theory underlying it; the functioning of the KBvG in practice; and the efficiency and effectiveness of the KBvG. The main research questions are:

- Why was the KBvG established, what were the intended aims of the KBvG, and what bodies and instruments have been given to the KBvG to achieve these aims?
- Which recommendations from the Van der Winkel Committee report have been adopted by the Dutch government?
- How has the KBvG functioned as a professional organisation under public law (PBO) since the government's response to the Van der Winkel committee's report? How did the KBvG promote good professional practice and professional competence among its members during that period? What has been the contribution to quality improvement in terms of supervision and discipline?

- What can be said about the efficiency and effectiveness of the KBvG in relation to the intended objectives of the Gdw and the recommendations from the first evaluation adopted by the government? Is there currently any reason to amend the Gdw?

Research methodology

The research started with exploratory talks with the Chairman of the KBvG and representatives of the Ministry of Justice and Security. Next, a literature and document study was carried out, on the basis of which a reconstruction was made of the policy behind the establishment of the KBvG as a PBO and the policy theory underlying this. Particular attention was given to the implementation of the Gdw around 2001, which laid the legal basis for the KBvG, and the period after 2009 following the publication of the first evaluation of the KBvG.

Desktop research was carried out to look into the functioning of the KBvG. The information obtained from the desktop research was then supplemented and tested by means of interviews with individuals within the KBvG and with external stakeholders. Interviews were conducted with representatives of all the bodies within the professional association: the board, the executive office, the members' council, various committees and some former chairmen. Subsequently, discussions were held with stakeholders of the professional organisation, including representatives of the Ministry of Justice and Security, the Financial Supervision Agency, the association of bailiffs' interests 'Deurwaardersbelangen.Nu', the disciplinary court, other public professional organisations and other researchers and experts in the field of the KBvG and its functioning. In total 32 interviews were conducted.

A digital survey of court bailiffs asked for their opinion on the functioning and the role of the KBvG. At the end of the survey, respondents were asked if the researchers could contact them for a short additional interview by telephone. This led to some nineteen additional interviews with court bailiffs.

Finally, an expert meeting was held with a number of experts and people directly involved to reflect on the research findings and the analysis of these.

Governance and structure of the KBvG

This evaluation examined the governance and structure of the KBvG and used the assessment framework to determine whether the relevant standards are being met. These include: a solid grounding and adequate status within the professional group (assessment standard 2); an internal organisation that functions adequately and democratically (assessment standard 4); promotion of the 'guild feeling' (assessment standard 5) and an internal relationship function (assessment standard 6).

Functioning of the bodies

The interviews and the document research have shown that the bodies within the KBvG function in line with their statutory mandate. No cases were identified where the board, the members' council or the General Assembly did not fulfil their tasks or did so inadequately, or where they acted outside their mandate. We do note, however, that some developments with regard to the bodies do give rise to areas of concern and recommendations. Firstly, we note that the decision has been taken to reduce the size of the board in the coming year, with the associated aim of improving the professionalism of the KBvG executive office. This requires a clear reassessment of the roles and tasks of the board members, and also of the tasks of the executive office. The KBvG is aware of this.

During interviews, it was pointed out that the current integrity rules for the board could be further fleshed out and safeguarded. Without overly defining the functioning of the board, it is important that the risks of (the appearance of) conflicts of interest among board members in this relatively small professional group remain limited. It is therefore probable that an additional consultation of members and the members' council with regard to their wishes in respect of integrity rules will result in valuable contributions. A second step towards better safeguarding the integrity of the bodies is the establishment of an independent integrity committee. This should prevent the current reliance on the investigative power of the members of the board and members' council leading to the appearance of subjectivity. This appearance must be avoided wherever possible, which can be done by setting up a committee specifically for this purpose, chaired by an external person who is able to operate fully independently.

We note that in the period following the previous evaluation and the reduction from thirty to fifteen members, the members' council started to function better. There are more active discussions in which more members participate. Also, the members' council has taken more initiative in recent years in formulating the KBvG's general policy. A development has been started whereby the members' council takes on a more steering and proactive role instead of following the board's lead. An example of this is the creation of the Long-term Policy Plan 2016-2020, through which the members' council has given direction to the KBvG's general policy. Members of the members' council are also involved in committees that prepare regulations. At the same time, however, we note that the board still remains in control.

The researchers have identified a number of improvement opportunities that could strengthen the position of the members' council and put it in a better position to take on a leading role. For example, the members' council's task of setting out the KBvG's strategic lines through the long-term plan could be better safeguarded. In addition, the members' council could be structurally better informed, for example by providing insight into the alternatives considered by the board and the reactions of external stakeholders to draft versions (especially of regulations). Finally, it is recommended that the information provided by the members' council to the members be improved.

It has also been noted that the General Assembly is functioning well. It should be observed here that the current situation is a clear improvement compared to a few years ago, as is apparent from various interviews with members of the KBvG. The survey conducted among bailiffs shows that about two-thirds of the members are satisfied with the way in which the board currently accounts for its actions during the General Assemblies, and 85% of the members consider the provision of information sufficient to good.

Representativeness of the board and the members' council

Some in the profession are critical of the structure of the bodies, arguing that small firms are not adequately represented in the bodies and that their specific interests are not sufficiently taken into account in policy-making.

It is difficult to understand this criticism. Candidates for the members' council - and for the board - have been elected in accordance with the established democratic procedures and there are regular vacancies for (deputy) members of the members' council or board. Small firms also have - at least in theory - the opportunity to sit in on these bodies. The over-representation of large firms can partly be explained by the fact that membership of the members' council and board takes up a lot of time and that members from smaller firms often cannot free up that time. Members of the members' council receive no remuneration; the basic

principle is that they take up their position out of their intrinsic motivation to contribute to the proper functioning of the KBvG and thus of the profession. The remuneration for board membership is also limited and does not adequately compensate for the time involved and any loss of income.

It is probable that the remuneration structure sometimes prevents suitable and enthusiastic candidates from applying for board and members' council membership. In order to prevent a fall in production for the firm and thus a loss of income from discouraging potential candidates, the remuneration should be so high that this consideration no longer plays a role, either for members from larger firms or for those from smaller firms.

We have established that within the current board (and also in the past) the under-representation of small(er) firms is a fact. The critics within the profession are convinced that this has consequences for the representation of the interests and position of smaller firms. The survey results support this dissatisfaction. We observe that respondents from smaller firms are significantly more critical than respondents from larger firms with regard to representation by the board and the members' council, the main reason being the inadequate representation of smaller firms. Respondents from smaller firms are also more critical on many other points, for example, when it comes to the regulations adopted and the organisation of quality reviews.

To what extent the KBvG can be blamed for this is difficult to judge, but this criticism may be at the expense of the 'guild feeling' and of the solid grounding and status of the PBO within the profession as a whole. It is clear that the KBvG's mandate is to look after the general interest, not to look after partial interests (of larger or smaller firms).

With respect to the representation of different groups, the researchers note that the legally required representation of subgroups of court bailiffs (regular, associate or candidate) has not been achieved in practice, but that this does not appear to be problematic either. The subgroups that are underrepresented do not voice any critical opinions, and the survey carried out in the context of this evaluation also showed that the respondents from this subgroup do not have a significantly different view of the functioning of the KBvG than the other respondents.

Interest representation

The Dutch Association of Court Bailiffs (Deurwaardersbelangen.Nu) was established in 2014. This association regularly expresses its dissatisfaction with the functioning of the KBvG when it comes to representing the interests of smaller firms. This is not the only reason why Deurwaardersbelangen.Nu was established. It is also a fact that the KBvG, unlike the KVG in the past, is not an interest group that only defends the interests of court bailiffs. The KBvG has to put the general public interest first. Deurwaardersbelangen.Nu can play this role of representing interests without any reservations or limitations. The researchers see opportunities in establishing a long-term cooperative relationship between both parties, allowing them to complement each other.

Support structure

The board and the members' council are supported by the executive office and various work groups and committees. The executive office is limited in size. This is a significant liability for the functioning of the PBO and for the performance of all its tasks, certainly in the light of some of the recommendations that require extra input from the KBvG. The executive office must therefore be strengthened and made more professional so as to improve the KBvG's functioning and ensure that it can continue to properly fulfil its mandate and duties as a

professional organisation in the interests of society. However, there is limited room in the budget for expansion of the executive office, even taking into account the attendance fees that will be saved as a result of the downsizing of the board. A higher contribution would not be advisable in view of the shrinking professional group and the pressure on the business operations of the firms.

The declining membership also has consequences for the future stability of the KBvG's financing in a broader sense. The KBvG is mainly financed by contributions levied on its members. The declining membership numbers mean that the professional organisation's income will decline (assuming that the contribution per member remains unchanged).

The KBvG has sought to strengthen its financial position by means of external funding, but this has not yet produced a structural solution. In view of his responsibility for the system, the Minister for Legal Protection must consider with the KBvG whether and what adjustments are needed to the present financing structure in order to guarantee that the KBvG can continue to perform its mandate and duties as a PBO adequately. It should be taken into consideration that for some years now, passing on the costs of supervision and discipline to the profession has imposed a significant financial burden on the sector. Both the principle of passing on costs to a small professional group for a system of supervision and discipline that serves the public interest and the method of allocation based on official acts (while non-official acts also require supervision and discipline) should be taken into account.

Efficiency and effectiveness

A financial analysis of the structure and development of the budget items and the relationship between budgeted and actual costs gives the impression that the funds are being spent efficiently. An analysis of the development of costs for the KBvG executive office has shown that, after a restructuring in 2015, the actual wage costs and gross salaries have been reduced, but that these costs per FTE have increased in recent years. This can partly be explained by the fact that, when recruiting and selecting employees, a critical look is taken at suitability and quality, and that, as a result, relatively more expensive people are hired. The shortage on the labour market may also play a role. For further improvement of professionalism, the gap between budgeted and actual costs should be closed and, in addition, use should be made of the attendance fees that will soon be saved as a result of the downsizing of the board. This would benefit the efficiency of the executive office and of the KBvG as a whole.

The KBvG contribution fell from 2010 to 2015 and went up from 2015 to 2019. In recent years, the contribution has been reduced considerably by drawing on the general reserve. The latest contribution is about 20% lower than in 2020 (and in 2010). This indicates that the KBvG is succeeding in not allowing the pressure on contributions caused by the shrinking number of members to affect the contribution. It should be noted, however, that if our recommendation to this effect is followed, the costs of the members' council and board will increase. Finally, we note that since 2018, the costs passed on for supervision and discipline have imposed a heavy burden on the profession; on average, court bailiffs spend more on these costs than on the KBvG itself.

Performance of the duties

General

The KBvG has a mandate to promote the professional competence and proper practice of court bailiffs. The legislator has left the KBvG largely responsible for the way in which this duty

is fulfilled. The KBvG has been given the authority to adopt regulations on the matters referred to in the Gdw.

In a general sense, the KBvG continued to develop during the period under review. In the period studied by the Van der Winkel committee, the PBO was still young; that period was characterised by the switch from interest group to PBO. In order to allow the PBO to come into its own, the Van der Winkel committee made a large number of recommendations. In the years following the evaluation, the KBvG set to work energetically on these recommendations; the majority of these have been implemented. The recommendation that the KBvG should make more active use of its regulatory power, in particular, was guiding. The KBvG has also started to engage more actively in the social debate, as recommended by the committee. In recent years, the KBvG has set its own course, for example by drawing up and implementing a Long-Term Policy Plan.

The KBvG is more aware of its mandate, of its role and position in society and of its responsibilities as a PBO. It is also noteworthy that there is much appreciation for the various tasks that the KBvG has undertaken in recent years with limited resources. The survey also showed that about two-thirds of members think that the KBvG has improved in the past five years as representative of the profession's interests and in the performance of its duties. The study also revealed some areas of concern regarding the KBvG's performance of its duties.

Regulatory power

After the first evaluation, the KBvG made active use of its regulatory powers: nine regulations have been adopted in the past ten years, some of which address issues raised by the Van der Winkel committee. The impression gained from the interviews is that there are no gaps in the regulations at present. It did transpire, however, that the KBvG has deliberately refrained from adopting a regulation on the establishment of a general complaints and disputes procedure. This is however prescribed by the Gdw. The KBvG does not see any added value in such a procedure, because this would be too costly, there are sufficient possibilities to submit a complaint (to individual court bailiffs and the National Ombudsman) and because the profession is subject to disciplinary law, quality reviews and external supervision.

Several regulations have been the subject of heated debate, both internally - within the profession - and externally - with the Minister, among others. Most of these regulations involved limiting the scope that court bailiffs and bailiff firms have as entrepreneurs and businesses. This creates conflict with society's interest in the court bailiff's independent and impartial position and their integrity.

The consistency and clarity of the regulations is a matter of some concern. This is recognised by the KBvG and has led to a review of all regulations. In this context, efforts are being made to create an all-encompassing regulation on court bailiffs, which should result in a more organised, uniform and consistent body of regulations.

From the research it can be concluded that the policy-making process and the underpinning of policy choices with regard to the following aspects needs improvement and more structure:

- a. *Underpinning of choices*: with regard to the underpinning of choices, more insight should be provided in advance into the likely social impact of new rules and policies. Furthermore, alternatives or scenarios are not (or only to a limited extent) used in the policy-making process. By paying more attention to alternatives and/or scenarios in the decision-making process - in which advantages and disadvantages are described - more

well-considered choices can be made (by the members' council). The development of alternatives and/or scenarios, does however place demands on the capacity of the board and the executive office: the limited size of the executive office creates additional problems here.

- b. *Distinction between regulations and supplementary rules*: the distinction between regulations and supplementary rules is not clear for every issue. There is some imbalance in the regulatory framework, as there is no clear and consistent distinction between what should be regulated by regulations and what should be set down in supplementary rules. The regulatory review offers an opportunity to take a fresh critical look at this.
- c. *Stakeholder consultation*: in practice, the consultation of the members' council and relevant external stakeholders (such as the Ministry of Justice and the Financial Supervision Office) when drawing up regulations varies. There are no set procedures for this. Therefore, it is not clear which stakeholders are involved (or when) in the preparation of regulations and policy.
- d. *Complete policy cycle*: to date, there has been little evaluation of regulatory and policy measures. The impact and effectiveness of regulations and other policies are not systematically monitored or evaluated. For example, the question of whether regulatory measures are still effective, whether they impose a disproportionate burden on or benefit certain types of firms, and whether they are still in line with current practice in the profession is not systematically addressed. Thus, there is no question of a complete policy cycle.

Support for quality by the KBvG

The KBvG fulfils its statutory duty to support the professional practice and professional competence of court bailiffs in various ways. In the first place, the professional organisation has adopted regulations for the purpose of standardising the quality of professional practice. The KBvG Standards for Quality Regulation contains quality standards for professional practice. The KBvG Regulation on Professional Training and Continuing Education sets out obligations in respect of refresher courses and training and the attainment of a minimum number of training points, and the Long-term Policy Plan elaborates on the core values of the court bailiff.

In addition to setting substantive standards for professional practice, the KBvG undertakes various activities to promote and maintain these standards within the profession. Conducting quality reviews is an important (self-regulatory) instrument in this respect. To this end, an external auditor conducts an audit (based on the quality standards set by the professional organisation) at a firm every two years and an assessment report is drawn up. The KBvG Assessment Committee then assesses the report and advises the board on it. The board will then issue a final assessment. If the opinion is unfavourable, the board can file a disciplinary complaint with the Chamber of Bailiffs. The system of quality control generally functions satisfactorily. One area of concern is that the KBvG annual reports do not provide any insight into the performance of quality reviews, such as the number of reviews performed, the opinions of the Assessment Committee, the number and type of standards violations and the follow-up to these violations. Owing to the absence of this information, it is not possible to assess what results are achieved by the performance of quality reviews. As a result, the KBvG does not appear to have any insight into the effects of these quality reviews and whether quality reviews lead to an improvement in the quality of professional practice. From the point of view of independence, another area of concern is that the (accredited) auditors are not appointed by the KBvG, but may be appointed by the firm itself. Also, interviews and the survey show that the biannual audits (when the final assessment is favourable) take place too frequently and are therefore too burdensome (in connection with data collection and delivery).

In addition to performing quality reviews, the KBvG also focuses on improving professionalism by sharing knowledge. This is done in various ways, including by developing information material, organising webinars, a weekly newsletter and actively seeking court rulings on issues that are unclear within the profession.

External profiling and cooperation with external stakeholders

A well-functioning PBO may be expected to play a role in internal and external relations and to initiate and determine the agenda. The role in relation to external relations involves networking and maintaining active relationships, lobbying and cooperating with other relevant players. Compared to ten years ago, the KBvG has become more prominent in the social debate and has developed into a relevant, professional stakeholder and discussion partner. The KBvG is less internally focussed and has a stronger external profile. The professional organisation adopts a more active stance on specific issues and acts as the representative of the profession, for example in important policy and legislative dossiers. The KBvG is increasingly becoming involved in setting the agenda and taking the initiative.

Cooperation with various stakeholders, especially the Ministry of Justice and the Financial Services Authority, has been difficult. The disrupted relationship with the Ministry of Justice (as the party responsible for the system) resulted from the discussions on the indexation of debtor rates and the withholding of approval of several regulations, resulting in a number of legal actions. The impression is that relations between the KBvG and the minister have improved in recent years. An example of this improved cooperation is the signing of a covenant in 2020. The covenant is intended to lead to more constructive cooperation and identifies several themes that will be on the agenda in the coming years.

The court bailiffs' profession is supervised by the Financial Supervision Office (BFT). Since 1 July 2016, this supervision has been comprehensive, which means that the BFT not only supervises finance matters, but also the quality and integrity of the court bailiff. This supervision of quality and integrity overlaps the general task of the KBvG. Both organisations are required to focus on monitoring and promoting the quality and integrity of the court bailiffs' professional practice and professional competence. It was partly as a result of this overlap, that the relationship between the BFT and the KBvG became under strain. Both organisations were (and still are to some extent) critical of each other's role and activities. Consequently, cooperation and the coordination of tasks between the BFT and the KBvG were difficult at first. Nowadays, both parties seem to respect each other's roles, cooperation has improved and supervision has evolved. With recent cooperation agreements - namely the agreement of a cooperation covenant in 2017 and a letter of intent in 2021 - the BFT and the KBvG have made progress towards good cooperation.

Recommendations

The research has produced a number of recommendations that focus on the governance structure and organisation of the KBvG and the performance of its duties:

1. Consider whether among the members (council) there is a desire for any additions or adjustments to the current integrity rules.
2. Set up a permanent integrity committee, chaired by an external person, with representatives from the members' council and the board. Make this committee responsible for investigating complaints and signals regarding possible violations of integrity rules.

3. Incorporate a commitment in the Gdw or in a regulation that the members' council will periodically draw up the long-term policy plan, so that it is assured that this plan will form the basis for the KBvG's strategic policy.
4. Make sure that when decisions are to be made, the members' council is presented with sufficiently detailed alternatives (provided that real alternatives are conceivable), so that the members' council is better positioned to independently weigh up and choose from different alternatives.
5. Improve the information provided by the members' council to the members, so that the members get a clearer idea of the profile of the members' council and so that it is made clearer what the members' council decides and how those decisions were arrived at.
6. Provide a remuneration for members of the members' council and increase the remuneration for board members.
7. Abolish the idea of court bailiffs, candidate court bailiffs and assistant court bailiffs being represented in the council of members and the board of the KBvG by elected representatives by amending Article 61, paragraph 1, and Article 63, paragraph 1, of the Gdw.
8. Commit to an improvement plan aimed at a more sustainable cooperative relationship between the KBvG and Deurwaardersbelangen.Nu.
9. Strengthen the executive office and make it more professional.
10. Consider whether adjustments to the KBvG's financing structure are necessary. In doing so, also consider the passing on of the costs of supervision and discipline, both in terms of the basic principle of this passing on and the method of allocation applied.
11. Contemplate repealing the legal provision of Article 57 (3) Gdw that rules must be laid down by regulation on the establishment of a general complaints and disputes procedure, including the establishment of a disputes committee.
12. Improve the policy-making process by:
 - a. Better substantiate policy choices by providing more insight into their impact and by working more extensively with detailed alternatives/scenarios to support the decision-making process;
 - b. Make a clear and consistent distinction between matters regulated by regulations and those regulated at a lower level;
 - c. Establish fixed procedures for consulting external and internal stakeholders in the preparation of regulations and policies;
 - d. Monitor and evaluate regulations and policies periodically - for example, every five years - and adjust them where necessary.
13. Provide insight into the KBvG's annual reports on the performance of the quality reviews and report at least on the number of reviews conducted, the opinions of the Review Committee, the number and type of violations of standards, the number of measures imposed and disciplinary complaints lodged.
14. From within the KBvG, appoint the auditors who will perform the quality audits at the respective firms.
15. Extend the validity period of favourable review reports.
16. Implement the agreements in the covenants between the Ministry and the KBvG and the BFT and KBvG. Continue to invest in the cooperation and regularly consider whether new or additional agreements are necessary in view of new developments, opportunities and threats to the profession.

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