

Justitiële verkenningen

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On bailiffs

Summaries

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History of the bailiff's office; from 'humble servant' to self conscious professional

C.H. van Rhee

Huissiers or, in Dutch, 'deurwaarders' are judicial officers performing a variety of official tasks such as serving summons and enforcing judgements. Originally, they were also charged with duties in court, for example the announcement of cases, but these duties have become less important and are nowadays often fulfilled by others. Apart from their official duties, huissiers also perform non-official tasks, for example in the area of debt collection and as legal counsel at the County Courts (Kantongerecht). The office of huissier originated in France, where it is mentioned at the beginning of the fourteenth century in regulations concerning the Royal Court of Paris known as the Châtelet. From France, the huissier found his way to the Low Countries, where he is mentioned from the end of the fourteenth century onwards. During the ancien régime the powers of the huissier were often extensive, even more extensive than today. While serving summons, for example, the huissier from the ancien régime could effect compulsory measures and investigate the case, e.g. by way of hearing witnesses or consulting documents. Therefore, it is surprising that the requirements he had to meet in order to be appointed huissier were rather modest: being able to read and write was often enough, and even these requirements were occasionally not met in practice. In the Low Countries, this situation changed during the Napoleonic era, when the territories of the present-day Kingdom of the Netherlands became part of the French Empire. From that time onwards, some practical legal experience was required for candidates who wished to be appointed to the office of huissier. However, it lasted until 1928 before a state exam was introduced, and it was not until the 1970's before a centrally organised course for huissiers came into existence. As a result of these recent changes, today's huissiers cannot be compared with their predecessors. Nowadays, they are highly skilled professionals with an extensive legal knowledge who often possess a university degree. The position of the huissier is currently subject to change. One of the most striking changes concerns the introduction of competition between huissiers. This situation requires new legislation, for which the huissiers have been campaigning since the 1970's. Hopefully, this campaign can soon be concluded successfully as a result of the introduction of a statute on huissiers (Gerechtsdeurwaarderswet).

Notaries and bailiffs; public officials and private entrepreneurs

E.J. Kruisheer

In the Netherlands both professions, the Latin type of notary and the bailiff, are free professions as well as public officials. The legal statutes are based on the Napoleonic (continental) legal system: the professions are of an ambiguous character. They render publicly invested services to the public on the basis of private payment. Although the notary and the bailiffs are both subject to the actual Dutch policy of deregulation, until this moment no attempt has been made to change the legal statutes of these professions. On the contrary, while measures are taken in order to further competition, at the same time their position as public official is explicitly reaffirmed. This approach in deregulation seems to be mainly pragmatic. Observers of Dutch legal policy may well wonder whether this is another example of the Dutch formula in economic policy (poldermodel). In reality it is more likely that at the moment we observe a transition phase following changes in the socio-legal context of these professions. In this contribution the present experiences with deregulation of both professions are

presented from the government's point of view. In view of future continuation of the policy of deregulation, theoretical approaches of the free professions in market economics are considered in the framework of the legal system and the need to preserve essential system functions.

Bailiffs in the legal market; new developments

A.W. Jongbloed

In 1990 most bailiffs' offices were rather small in size. First of all, there had not yet been mergers such as was the case with law firms. Furthermore, there were only 370 (associate-)bailiffs and 1,400 persons supporting staff. But as expected in the year 2000 those figures will have risen to respectively more than 600 and 3,000. The explanation for this is that due to automation and standardisation, bailiffs have made use of the opportunities which computers have given them. Furthermore, now the possibility of advertising exists, so more people now know that bailiffs are very good at debt-collecting and, moreover, bailiffs do have the opportunity to directly canvass for customers. Finally, in 1991 the Subdistrict Court Rules were changed. The intention was to make it easier for people to litigate themselves, but it turned out to be so difficult that most people consulted a bailiff in labour-, landlord- and tenant related claims and for monetary claims up to Dfl. 5,000. The expectation is that bailiffs in the next decade will also be successful in the legal market, partially because from New Year's day 1999 bailiffs can handle money-related claims up to Dfl. 10,000 (approximately ú 3,000), but there will be fewer offices with more bailiffs and supporting staff. A resulting danger could be that in the future probably also other persons will be able to serve a writ of summons.

Debts and destitute people; towards a more restricted seizure

A. Buik

By Dutch civil law restrictions are given for the seizure of a person's goods, wages and social benefits. The restrictions regarding goods are out of date and should be adjusted to modern conditions. Problems arise when, as well as his worldly goods, a person's wages and/or social benefits are seized. Although the latter is only possible up to a certain percentage, leaving the debtor a limited income for his daily needs, a person may be forced to part with a larger percentage of his income, in order to prevent compulsory sale of his household possessions. Bailiffs have a moral responsibility towards the debtors, who should in theory be allowed to keep a minimum of household goods and income. Most of them, however, experience difficulties when trying to execute in a responsible way. For this reason legislation should be updated. New, clear definitions should be given of what can be seized and what cannot, taking into account the delicate balance between interests of creditors and of debtors.