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The influence of economic developments on the bailiffs' practice

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Introduction

The economic crisis is having a great impact. Countries are confronted with increasing numbers of unemployed persons and tax revenues that are under pressure. Businesses see their turnover decrease and are often compelled to adjust the prices of their products to avoid losing market share.

Employers will monitor their costs more stringently and be more fastidious in their selection of employees: they are able to choose from a larger supply of employees. They will sometimes decide not to fill vacancies. Some companies will not survive and will be wound up. Citizens will become jobless or (such as school leavers) will not be able to enter the labour market and will be compelled to undergo further training. Others are working on a lower level and/or under more austere employment conditions. Those who have a job will more easily accommodate the employer's wishes, certainly if the influence of the trade union is limited. Employers will be more restrained in offering permanent contracts: more temporary contracts and temporary workers are being used on the labour market. Homeowners are confronted with a fall in the prices of houses: the value of their home sometimes falls considerably and the house comes to stand `under water': the mortgage debt is higher than any proceeds of sale, which makes the house difficult or impossible to sell. This in turn precludes accepting a job at a somewhat greater distance. Few houses are available to starting tenants, so that they have to spend a substantial part of their income on housing expenses. In the short term, it appears that this will not change much because investors such as pension funds are unable to invest substantially in housing construction: they are faced with calculation rules that are supposed to ensure that they will be able to pay their pensions over several decades, but the low interest rate sees to it that they cannot or are barely able to achieve the necessary coverage ratio.

As a rule, the negative sides of the economic crisis are emphasised, but as we know, there are two sides to every coin. Car sales are falling but, on the other hand, there are fewer tailbacks and less CO2 is emitted. It is less easy for employees to change jobs and while sickness absence is falling, work productivity is rising. Some employees are dismissed, retrained and consequently switch to a career

that gives them more pleasure in their work than before. It can be said nonetheless that the negative consequences dominate. For instance, the Government receives fewer taxes and families have to budget their expenditure more so that, all things considered, less is being spent. This gives rise to the question of how economic developments influence the bailiffs' profession.[1]

Many people worse off, bailiffs better off?

Outsiders often believe that if the economy is bad, bailiffs will do well. Because in that case there will be many defaulters who have to be reminded or against whom attachment has to be imposed, and there will be many tenants who are no longer able to pay their rent and have to be evicted after proceedings. This, however, is only half the story. Not much can be recovered from those who have little. Before proceedings are started it is advisable to check whether the person subject to an order will eventually have possibilities to comply with the order, because a creditor who starts proceedings has to 'advance' the fee of the person he engages. The debtor may well be ordered to pay the costs of the proceedings, but it can take a long time before the costs can be recovered if they can be recovered at all.

Think also of a tenant with arrears of payment. The tenant did not simply let those arrears of payment happen: if he had been able to do so, he would indeed have paid the rent. Everyone wants to have a roof over their head. When arrears of payment occur, additional costs have to be paid in the form of statutory or contractual interest and/or penalty clauses. Consequently, no tenant in his right mind allows arrears of payment to occur if he is able to pay the rent. A landlord will ask himself whether the tenant will indeed be able to pay the rent in the future. There might have been temporary inability to pay in connection with incapacity for work, unemployment or another temporary cause (for example matrimonial problems). Should it prove to be a temporary matter, agreements can then be made for the future. Sometimes others, such as family and friends or a church community, are also willing to help and sometimes the government intervenes by providing special assistance.[2] In other cases the payment problems will be more structural and the landlord, certainly if this is a cooperative, will seek a solution, for example in the form of a cheaper home which will eventually enable the arrears of rent to be made up. If all of the foregoing is a ship that has sailed, the landlord will aim at terminating the tenancy agreement. In this regard, the preference is expressed that the tenant will terminate the existing tenancy agreement in due time, because in that case the landlord does not have to incur (additional) costs. For if the landlord takes the initiative, the costs quickly rise. If a non-natural person is involved, such as a housing association, the court fee will be €466 for claims between €500 and €12,500, whereas a natural person has to pay €221.[3] In that case additional costs have to be paid if a representative ad litem is engaged,[4] while costs are also

[1] In this context, I cannot avoid approaching this topic from a Dutch viewpoint.
[2] If the tenancy agreement is terminated and the person concerned is put out onto the street, a municipality will then have to provide assistance and the costs of this will often be higher than the amount to be paid occasionally. An eviction can cause someone to have psychological problems and end up in a downward spiral. It does not require much fantasy to imagine what can happen in that case.
[3] All this is included in an annex to the Act of 30 September 2010, Bulletin of Acts and Decrees (*Stb*.) 715, introducing a new court fee system in civil cases (Court Fees (Civil Cases) Act). A choice was made to include the amounts in an annex and not in the act itself, because amendments can then be made more quickly.
[4] Although Section 79 subsection 1 of the Netherlands Code of Civil Procedure (*Rv*) reads: `The parties can conduct proceedings in person in cases before the Subdistrict Court', in practice one often prefers to engage a representative ad litem, and that is usually a bailiff or bailiffs firm. Conducting proceedings is after all a profession in itself and, moreover, it is more pleasant for a tenant not to face the landlord him/herself in the proceedings.

incurred within the organisation. If the tenancy agreement ends, the next question is whether the tenant will leave voluntarily. If the latter is not the case, a bailiff will be engaged. This course of affairs explains the fact that forced evictions are relatively limited in number in legal practice: in a certain sense it is a last resort. The Netherlands legislature limited the fees bailiffs charge to debtors in the Bailiffs' Fees Decree (*Btag*), whereby the amounts are adjusted annually.[5] €201.39 (in 2014: €200.56) may be charged for a forced eviction.[6] In view of the time spent on a forced eviction, this is not an excessively high amount.

If the collection of a monetary claim is concerned, the foregoing largely applies. Initially, the creditor will try to collect the claim himself by sending an additional payment reminder and possibly try to see to it by way of telephone contact that payment is finally made. But if that does not work, a simple cost-benefit analysis is made: What is the chance of success and what costs to be incurred are over and against this? It goes without saying that in such a case, a veterinarian will decide not enforce a claim, for example for €50, at law.[7] And who as a natural person would file a claim of about €500 while knowing that the court fee is €221? Moreover, by a legislative amendment of 1 July 2012 the extrajudicial collection costs were increased,[8] so it is more attractive for clients to conduct this process themselves.

In that context it is not surprising that it is stated in the Annual Report 2014 of De Rechtspraak (Justice):
`The intake of commercial cases at the Subdistrict Courts decreased further in 2014 by approximately 3 per cent. This decrease is less than in the period 2011-2013, when there was a sharp fall. Owing to the farther-reaching fall, this group of cases fell below 500,000 for the first time since 2007. Summons cases (including many collection cases) constitute the largest group of commercial cases and their volume decreased by approximately 3 per cent to approximately 462,000 cases. Behavioural effects in parties (businesses, private persons, bailiffs and collection agencies) play a part in this continuous decrease, under the influence of the economic crisis, but also the increases of court fees for many frequently occurring cases in the past years and the standardisation of extrajudicial collection costs.'[9]

[5] Decree of 4 July 2001, Bulletin of Acts and Decrees 325, containing further rules relating to official acts of bailiffs and their fees (Bailiffs' Fees Decree (*Btag*)). The amounts were last adjusted on 1 January 2015 in Regulations of the State Secretary for Security and Justice of 17 December 2014, no. 594423, containing adjustment of bailiffs' fees, Government Gazette (*Stcrt*.) 2014, no. 37554.
[6] The client (the creditor in relation to the tenant/debtor) may be charged higher fees. The legislature assumes that negotiations can be conducted freely on those fees and that there are enough bailiffs to compete with one another. De facto such competition sometimes results in lower amounts being charged.
[7] In that case the court fee is €78. For a non-natural person this would be €116.
[8] Cf. Act of 15 March 2012, Bulletin of Acts and Decrees 140, amending Book 6 of the Netherlands Civil Code and the Netherlands Code of Civil Procedure in connection with standardisation of the reimbursement of costs for obtaining satisfaction out of court and the Extrajudicial Collection Costs (Fees) Decree and the corresponding Decree of 27 March 2012,Bulletin of Acts and Decrees 141, containing rules on standardisation of the reimbursement of costs for obtaining satisfaction out of court (Extrajudicial Collection Costs (Fees) Decree).
[9] Annual Report De Rechtspraak 2014, p. 38.

That 3% does not seem to be so much, but if we consider the number of cases over a few years, these are significant percentages: 2013 -9%, 2012 -7% and 2011 -8%[10] compared to the preceding year. This means roughly one fourth fewer cases in four years' time.

What is stated in the Annual Report 2013 is illustrative: `The intake of commercial cases at the Subdistrict Courts decreased sharply across the board just as in 2011 and 2012 by approximately 9% to approximately 501,000. Summons cases (including collection cases) make up the largest group of commercial cases and their volume decreased by approximately 8% to approximately 475,000 cases. Behavioural effects in parties (businesses, private persons, bailiffs and collection agencies) play a part in this continuous decrease, under the influence of the economic crisis, but also the successive increases of court fees in the past years and the standardisation of extrajudicial collection costs. Bailiffs and collection agencies say that under the influence of the high court fees they are less likely to go to court.'[11] It is evident from the foregoing that bailiffs have to do with cost-conscious clients and that the number of engagements is falling.

Another significant factor is that bailiffs may no longer advance the costs to be incurred. In the past, settlement was usually made only when the claim had been collected in full. At the time, the costs incurred were deducted only from the amounts to be paid out. For bailiffs, this meant that there were sizeable claims against the clients (of which the risk passed to the bailiffs) and this was also used as a possibility to compete. For the clients, the situation could be characterised as favourable: they did not have to settle the costs to be incurred and had them set off against the amount to be paid out. As such prefinancing has not been possible anymore since 1 December 2013, clients will rather pay heed to whether it is worthwhile to start collection proceedings and this will also result in fewer proceedings being conducted.

It is not surprising therefore that the regulator, the Financial Supervision Office (BFT), stated in the Annual Report 2013: `With costs remaining virtually the same, the turnover in 2013 decreased by about 8% compared to 2012. During the same period the net result fell by 50%. Bailiffs have to perform more acts than before in relation to a file. In addition, the number of files is increasing in which the debt to the claimant has not been paid or has not been paid in full.'[12] Recently, on 17 February 2015, a press release from ING Bank[13] showed that in 2013 the profitability of the bailiffs' sector was only 3% on average. This has its origins in less full order portfolios and a decreasing amount per debtor, which put the turnover under pressure, while at the same time the cost per debtor has risen because it is more difficult to collect amounts. On 1 January 2014 the number of bailiffs and assigned junior bailiffs was 919. According to reports, the number of members has meanwhile decreased by approximately 45, which is equal to a fall of about 5%.

Digitisation

The work of bailiffs has changed in the past few years. Bailiffs used to travel a lot, but now the necessary work can be done from the office and this will soon be entirely the case. It is true that

[10] This is in spite of an increased intake due to a change in the limit of competence: on 1 July 2011 it became possible to bring monetary claims up to and including €25,000 before the Subdistrict Court; this was previously €5,000.
[11] Annual Report De Rechtspraak 2013, p. 35.
[12] Financial Supervision Office (BFT), Annual Report 2013, Utrecht 2014, p. 5
[13] https://www.ing.nl/nieuws/nieuws_en_persberichten/2015/02/ing_kwartaalbericht_winst_deurwaarders_sterk_onder_druk.html. See also *NRC Handelsblad* 23 February 2015, Bailiffs themselves do not have it easy either.

bailiffs drove many kilometres by car in the past and that official documents were prepared by typing over the contents of another document. A lot has changed in the meantime and digitisation has made its entry. Section 45 subsection 2 of the Netherlands Code of Civil Procedure reads, for example: 'A bailiff authorised to do so may, if the law so provides, also serve a writ electronically.' The subsection was introduced in the Act of 30 October 2008, Bulletin of Acts and Decrees 435. Section 45 subsection 2 of the Netherlands Code of Civil Procedure is formulated generally and makes electronic service of a writ possible in cases where the law allows this. At present, electronic service is possible only in relation to garnishment pursuant to Section 475 of the Netherlands Code of Civil Procedure, but electronic service will undoubtedly be made possible in other situations as well, because the Dutch legislator is striving to digitise the procedure.

Section 475 subsections 3 and 4 of the Netherlands Code of Civil Procedure read as follows:
`3. The copy of the writ of attachment, the copy of the enforcement order and the form referred to in the second subsection can also be served to the electronic address of the garnishee, provided this garnishee has given an electronic address to an organisation designated by Our Minister of Justice to which it can be served. For the garnishee, the electronic copy will count as the original writ.
4. Rules shall be given by order in council on registration of the electronic addresses referred to in the third subsection.[14] These rules can relate to the manner of giving, changing, deregistration and cancellation of an electronic address and the consequences thereof. Rules shall also be given by order in council relating to the reliability and confidentiality of, conditions under which and the way in which a writ of attachment can be served electronically. The decision designating an organisation as referred to in the third subsection shall be published in the Government Gazette.'

If a writ of garnishment is to be served lawfully on a party electronically, the electronic address of that garnishee must be known to the bailiff. 'Potential' garnishees can give their electronic addresses to the Royal Dutch Organisation of Bailiffs. In this regard, one can think first of all of the Employee Insurance Agency (UWV) which has been designated by the legislature as the body implementing social security laws,[15] but also of the banks[16] and the Collector of Taxes in case of a tax refund.

With that, an important step forward has been taken and an end has come to the situation in which the bailiff received documents by e-mail which were then included in a writ and printed, after which the bailiff served the writ and information was subsequently filled in at the third party's office and then entered again in the computer (with every chance of errors). An additional advantage is that time is saved and it quickly becomes clear whether the action has been successful. If we take seizure of bank accounts as a starting point, in the past the bailiff had to go for example to five different banks to impose garnishment. There was often an indication that the debtor banked at the bank in question, but sometimes there were only suppositions.[17] In any case, after service the bank immediately had to examine whether any relationship with the attachee existed, because if funds were withdrawn after attachment had been imposed, the bank would be liable for damages. This

[14] This is the Decree of 2 June 2009, Bulletin of Acts and Decrees (*Stb.*) 235, containing rules on the registration of electronic address of third parties and electric service in the event of garnishment.
[15] This mainly concerns sickness and unemployment benefits.
[16] Seizure of bank accounts occurs frequently.
[17] I derive the following from an application to impose prejudgment attachment against a third party which I recently saw. Garnishment was imposed at the expense of a Turkish company against HSBC (which is mentioned as the advising bank), ING (which specifically focuses on providing interbank transactions between the Netherlands and Turkey, has a branch in Istanbul and a website in Turkish) and ABN Amro (which specifically focuses on providing bank transaction for the trade in industrial metals in and with the Netherlands and which publishes a monthly monitor for industrial metals).

was all the more cogent in case of an attachment imposed or attempt to impose attachment on a Friday afternoon and the bailiff happened to come up with 30 writs. Now, thanks to modern ICT means, it becomes clear much faster whether the person concerned has an account or not at the bank in question.

In the near future, the starting point in the Netherlands will be digitisation.[18] Following on many other countries[19] where digitisation is already in an advanced stage, it will be possible to conduct legal proceedings digitally.

Possibly the most well-known example is provided by England and Wales with Money Claim Online (https://www.moneyclaim.gov.uk) that was started in February 2002. I derive from the website www.justice.gov.uk/courts/northampton-business-centre/money-claim-online that in this way individuals and organisations can bring claims up to £100,000 and that there is a 'Cyber Court'. More claims are brought in this way than at each court individually. In 2010/2011 there were 133,546 cases. The procedure is explained in Practice Direction 7E and after more than twelve years it can be said that properly running proceedings have resulted in relief of the burden on the courts and a reduction in costs.

In Belgium an electronic identity card (eID) has existed for about ten years. The eID has the size of a bank card and contains a chip on which the address of the holder, his/her photograph and several unreadable security measures are stored. The card (which is used for travel through the EU and for identification) also contains the visual information customary for a means of identification, such as the nationality, name, photo, gender and signature of the holder. With the card tax returns can be filed, information can be requested from the government and an application can be made for a student grant. But it is also possible to use the card to place an electronic signature, to identify oneself on internet, for example for an age check or to log onto a computer with Microsoft Windows.

Portugal is far advanced in the field of e-government. The action plan Ligar Portugal (Connect Portugal) is aimed at implementing the ICT part of that plan to arrive at an e-government so that bureaucracy will be reduced. Although no e-Government legislation in its totality exists, Cabinet Resolution 137/2005 of 17 August 2005 provides for the establishment of a legal system for Public Administration and the public bodies and services. An advanced e-Government infrastructure now exists with two large portals; one for citizens and one for businesses. Both are considered the main access points for interaction with the government. It is also important that an electronic identity card with biometric characteristics and electronic signatures exists: the Portuguese Electronic Passport (PEP).

Important as well is the Portuguese Citius Project that makes it possible to file court documents electronically.[20] This enables a Portuguese lawyer to send all judicial documents to a court by logging

[18] Cf. legislative proposal 30459 Amendment of the Code of Civil Procedure and the General Administrative Law Act (*Awb*) in connection with the simplification and digitisation of procedural law and legislative proposal 34138 Amendment of the Netherlands Code of Civil Procedure (*Rv*) in connection with the simplification and digitisation of procedural law on appeal and in cassation.

[19] I have largely derived the information from J. Wolthuis J. Wolthuis, *Digitaal procederen, de praktische betekenis van het concept-wetsvoorstel vereenvoudiging en digitalisering van het burgerlijk procesrecht*, Celsus Amersfoort 2014, which book I discussed in 'Risico's bij digitaal procederen', *Tijdschrift voor de ProcesPraktijk* 2015, pp. 16-20. I have taken the three paragraphs below from this.

[20] Cf. C. Gomes, D. Fernandes & P. Fernando, Building interoperability for European civil proceedings online, www.irsig.cnr.it, 2012; eGovernment in Portugal, www.epractice.eu/files/eGovernment%20in%20PT-

onto a secured website with an electronic signature. In 2011 this was done in more than 50% of the cases, as by doing so the case is entered on the case list and court fees are reduced. This also enables the lawyer to have insight into the state of affairs of the case and insight into the documents filed. There is, for example an electronic notification that judgment has been passed. With that Portugal is taking the same path that Austria took more than 15 years ago. In August 1999 the World Conference on Procedural Law was held in Vienna and it was already made clear to the attendees that lawyers and the judiciary communicated with each other via an intranet. One of the themes was *Herausforderung Informationsgesellschaft: Die Anwendung moderner Technologien im Zivilprozess und anderen Verfahren*. Lastly, I mention only Germany here where the digitisation of proceedings has been known much longer and is successful if we think of the *Mahnverfahren*.[21]

Increased competition

The bailiffs' profession is a protected profession in the sense that the tasks assigned to bailiffs are often assigned exclusively to them.[22] In this way the government has provided certainty to the litigants: a person authenticated by the government is charged with judicial tasks and setting requirements for that person ensures that those judicial tasks are performed at a high level.[23]

Requirements are set on the professional study programme, prior education in order to be admitted to the professional study programme, requirements for appointment and the refresher training or continuing education. In addition the number of practice locations can be determined to ensure that no unnecessary competition occurs that can put a bailiffs' income under pressure and possibly put pressure on his professionalism. Lastly, one should think of monitoring of the correct performance of

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Sept%2012.0_.pdf; http://www.citius.mj.pt/portal/ A comprehensive description can be found on http://www.irsig.cnr.it/BIEPCO/documents/case_studies/biecpo_final.pdf. See also P. Fernando, C. Gomes and D. Fernandes, Chapter 6 The Piecemeal Development of an e-Justice Platform: The CITIUS Case in Portugal, in F. Contini and G.F. Lanzara (ed.), The Circulation of Agency in E-Justice [electronic resource] : Interoperability and Infrastructures for European Transborder Judicial Proceedings, Springer Dordrecht 2014, pp. 137-159.

[21] See Bartosz Sujecki, Das Elektronische Mahnverfahren, Studien zum ausländischen und internationales Privatrecht 206, Mohr Siebeck Tübingen 2008 (doctoral thesis for Utrecht University).

[22] To give an impression I cite Section 2 of the Netherlands Bailiffs Act (GDW): • The bailiff is a public official charged with tasks that are assigned to or reserved for bailiffs or court bailiffs by or pursuant to the law, to the exclusion of all others or not. Court bailiffs are charged in particular with:
a. serving summonses and other documents belonging to the commencement of proceedings or the instruction of cases;
b. serving judicial notices, announcements, protests and other writs;
c. evictions, attachments, execution sales, committals for failure to comply with a judicial order and other acts belonging to or required for the enforcement of executory titles or for the preservation of rights;
d. serving protests for non-acceptance or non-payment of bills of exchange, promissory notes and suchlike and preparing a motion for intervention on the basis of the protest;
e. official supervision of voluntary public sales of movable corporeal items by Dutch auction.

[23] In addition the possibility is sometimes offered to perform work related to the bailiffs' profession provided this does not impair or impede the good and independent exercise of their office or its reputation. One can think of (the list can be found in Section 20 subsection 3 of the Netherlands Bailiffs Act)
a. acting as a representative ad litem or agent attorney and providing legal assistance in and out of court, in accordance with the relevant provisions laid down by or pursuant to the law;
b. acting as a receiver or administrator;
c. collecting monies for third parties;
d. carrying out assessments and valuations;
e. preparing a written statement of the material facts personally observed by the bailiff;
f. conducting an auctioneer's business.

the work by way of disciplinary procedures and of course the normal judicial procedures because bailiffs are and will remain subject to the rules and regulations that apply to all residents of a country. It means that if a bailiff makes an error, he can also be held liable on the basis of breach of contract (by the client) or wrongful act (by third parties).

In times of economic prosperity the relationships appear to be fixed: a person who performs certain professional work is not or hardly ever a topic for discussion. But in less good economic times nothing is self-evident anymore, and one considers whether the work territory can be extended. This translates into more competition within the professional group whereby work is sometimes done below cost price (in so far as this is known at all) in order to attract a new client because with that the jobs remain inside the firms. But there is sometimes also an adjoining professional group that attempts to take over part of the market. The Dutch legislature, for example, has considered whether civil-law notaries could possibly be given a role in divorce proceedings and lawyers operate ideas to attract more work to themselves or take it away from the bailiffs. Regarding the latter, it is often pointed out that the alternative lowers the costs. A recent example is the attempt in the Netherlands to abolish the summons. One of the arguments was that sending a notice would be cheaper and that parties are sometimes already in negotiations (together with their lawyers) and that the court has to cut the knot. In such a case, both parties have an interest in appearing in court and a summons is superfluous. This is an argument that can hold water. Fortunately the Dutch legislature (after lobbying by the Royal Dutch Organisation of Bailiffs (KBvG)) realised in time that in the light of Art. 6 ECHR, no doubt may exist as to whether the notice has actually reached the other party and in time.

In the Dutch plans to revise the proceedings in the first instance, under Section 139 of the Netherlands Code of Civil Procedure, a judgment in default is given only after the notice has been served by a bailiff. The case is different if for example two Amsterdam law firms assist their clients and appeal is brought. The parties are known and the law firms are sometimes located at walking distance from each other. Is there anything against not having a bailiff serve a notice that appeal will be brought, but having a staff member deliver such a notice from one law firm to the other law firm with proof of receipt? All this fits within the framework of the Service Regulation[24] which states in Art. 14 that 'Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.'

Turnaround in thinking

Law is not static, society is not static and legislation is not static. Developments that have influence are constantly in progress. This was already dealt with above. Just as medical science undergoes developments, legal science does so as well. In the short term little seems to be changing, but anyone who considers the long term is aware of the changes. We can think of the increasing significance of administrative law and European law, the growing significance of the Brussels I Regulation which enables the enforcement of court judgments in the 28 countries of the European Union and makes it possible to provide evidence by using DNA.

A government confronted with a budget deficit seeks possibilities to acquire more revenues or to limit costs. In the Netherlands the court fees have been increased substantially and digitisation

[24] Regulation (EC) No. 1393/2007 of the European Parliament and the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Regulation (EC) No 1348/2000 of the Council, OJ EU 2007, L324, p. 79 ff. In for example England and Wales the Royal Mail is used.

should eventually lead to a reduction of costs at the courts because fewer physical acts have to be performed. In addition, the intention is to arrive at a break-even disciplinary law. In that case, break-even in the sense that the professional organisation in question and not the government will bear the costs of disciplinary proceedings.[25] This is based on the idea that `the polluter pays'. But cutbacks are also made in different ways. Sometimes a bailiff has to enter a home against the will of the occupant. In such cases the presence of an acting public prosecutor (being a somewhat higher ranking police official) is required, but there are calls to transfer that task to municipalities and in practice it appears that such an acting public prosecutor can be relied on less often.[26]

Although a militant attitude was previously taken - `I'll see you in court' – in recent years civil-law mediation and criminal-law restorative mediation have advanced. The willingness to reach a solution together is growing. Moreover, creditors appear to be realising that in many files, no or hardly any recovery is possible from the debtor. This is also expressed in the cooperation of bailiffs and debt counsellors. In the past, for example trials were held in which the bailiff was informed if someone was planning to take the path of amicable or statutory debt adjustment. In that case it was, after all, clear that taking collection measures would have little effect. In the Netherlands, following on, for example Belgium, this will ultimately result in the introduction of a national attachment register.[27] Bailiffs will have access to that register and will be able to judge whether it is desirable to impose attachment once again. Should attachments already prove to have been imposed and on the seventh attachment only a handful of euros a month might be paid, that can be experienced as not very efficient. To save costs it may be better in such a case not to impose a following attachment.[28] It can be said that creditors are assuming more social responsibility and that they are viewing their files in a more critical light. All this will result in fewer proceedings and that means fewer official activities for bailiffs. On the other hand, whereas businesses were more easily willing in the past to write off small debts as 'uncollectible' because the time and effort spent on collection was not `worthwh9999999999999999999999999999999999999999999999999999999999999999999999 99999999999999999999999999999999999999999999999999999999999999999999999999999 99999999999999999999999999999999999999999999999999999999999999999999999999999

[25] It goes without saying that the professional organisations do not appreciate this. The Netherlands bailiffs would be faced with an increased contribution of several thousands of euros, as it is a relatively small professional group. Cf. J.M. Wisseborn, 'Over kostendekkende verhoogde griffierechten ….', *Tijdschrift voor de Procespraktijk* 2012, pp. 5/6 and
http://www.legalintelligence.com/documents/7017932?srcfrm=basic+search&stext=kostendekkend+griffierecht+KBvg

[26] This is also a problem in Belgium. Cf. http://m.nieuwsblad.be/cnt/dmf20150419_01637095 (19 April 2015)
Bailiffs feel abandoned
Bailiffs in our country complain that it is difficult to obtain a police escort in some police zones when they request it. The police request consultation. 'It is sometimes the case nowadays that a bailiff calls us to demand a policeman on the very same day. We are indeed not always able to comply with that', they say.
The local police are required by law to assist bailiffs if they so request. 'That certainly does not happen during each visit to a location', says Marc Brackeva, chairman of the National Association of Bailiffs 'Only if the bailiff has to make an inventory or remove property in certain risky neighbourhoods, for example. Or when he has to enter a home with a locksmith because all previous attempts failed.'

[27] Commission for Evaluation of the Royal Dutch Organisation of Bailiffs (Van der Winkel Commission), Noblesse Oblige, The Hague 2009, pp. 28 and 43/44. See also A.J. Moerman, and I. van den Berg, 'Paritas passé', *De Gerechtsdeurwaarder* 2012, no. 3, pp. 20-25.

[28] One should also bear in mind that with so many attachments the costs first have to be paid before there can be any repayment of the debt. If seven garnishments are concerned, the total costs would then be approximately €800.

101010101010101010101010101010101010101010se fewer proceedings are being conducted on other fronts, there is capacity to re-examine old cases.

Things are shifting as well in relation to legal protection. In the past the criminal court had to settle many cases of which the result had actually been already established beforehand: the offence was established, there were no special circumstances and the sentence could be determined on the basis of established case law that was also supported by guidelines. The disadvantage was that fines could be collected only after a conviction and that through the passage of time, some were able to evade detection by the judicial authorities and others had ended up in financial trouble. Now the situation is often reversed owing to the introduction of the administrative fine: this has to be paid first, and then objection can be made and the way to the court is open only afterwards.

What should be done?

Attack is often the best defence. Bailiffs do not have to attack physically, do not have to occupy bridges or buildings, but need to have an eye for new developments: they have to be innovative. They must for instance see if their work territory can be extended. Dutch bailiffs can prepare an inspection report, but this has only free evidentiary force. The legislature would do well to attach conclusive evidentiary value to it.[29] Another option is that fines are collected. According to a notice of 20 April, Belgian bailiffs might do so in the future.[30] In the Netherlands that is already the case for traffic fines, although only a limited number of bailiff's firms have been engaged for this and according to reports at knock-down rates.

Dutch bailiff's firms have traditionally been automated to a great extent. Automation should be prevented from advancing to such an extent that bailiffs become redundant because the government itself will send calls to proceedings itself via secured e-mail connections and will impose attachment itself. By way of such secured e-mail connections the identity of the debtor will be established, but because the government is often a party to the proceedings, precisely an independent third party (the bailiff) should have the possibility to assess the interests of both sides. The government often behaves as a very hungry caterpillar to the disadvantage of the powerless citizen. We need only think of the so-called government or bank claim. After the Netherlands Supreme Court (Hoge Raad) had decided on 29 October 2004, NJ 2006/203 (Van den Bergh/Van der Walle and ABN Amro) that attachment of credit margins was not possible, Section 19 of the Netherlands Collection of State

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Cf. A.C.J.J.M. Seuren and A.W. Jongbloed, 'Het proces-verbaal van constatering', *Advocatenblad 1994*, pp. 224-228.

http://deredactie.be/cm/vrtnieuws/ookdatnog/1.2315399: After a successful project in Ghent, Federal Minister of Finance Johan Van Overtveldt (N-VA) wants to send bailiffs everywhere to collect judicial fines. This is written in *Het Laatste Nieuws*. At present, hundreds of millions of euros in unpaid fines are piled up at the office of the tax authorities.
For 2013 and 2014 together, an amount of 293,693,351 euros in fines has not yet been collected. To allow the collection of fines to run more smoothly, during a trial project in Ghent, the tax authorities sent bailiffs for the first time to defaulters who simply have not settled their judicial fines.
In the meantime, 12,704 files have effectively been transferred to a bailiff, as is evident from an answer by Van Overtveldt to a written question from Sophie De Wit (N-VA). Since January bailiffs have also proceeded to carry out forced execution. Meanwhile, they have already collected 963,000 euros, approximately 11 per cent of the total of arrears of fines in Ghent.
As the method has been successful, it will be followed throughout the country. "The system will be implemented in the course of the third quarter of 2015", says Van Overtveldt.

Taxes Act (*IW*) was amended in order to give the tax authorities that possibility nevertheless.[31] It is exceptional that in such a case the attachment-free allowance that is already 10% lower than the minimum wage is lowered by another 10%.

A good university of applied sciences education is an advantage on the labour market, but a broader education possibly at academic university level is probably better. The Dutch study programme for junior bailiffs is a separate specialisation within law at universities of applied sciences. That is good progress compared to the past. But there is still a lot to be improved. It is now essential that someone works at a bailiff's firm. Anyone who does not do so will not be able to complete training as a junior bailiff because they will not be able to undergo the compulsory work placement year and will not obtain a university of applied sciences diploma. It is now the order of the day for various staff members of bailiff's firms who started their training a few years ago and now (with their destination in sight) are threatened with dismissal.[32] The specialisation for bailiff should perhaps come only after three more general years and work placement should be part of the professional training as is now the case for lawyers and civil-law notaries. In addition it should be examined whether it is possible to complete some units at university level. In secondary education it is being discussed at present whether a student may take examinations in certain subjects on a higher level. When the junior bailiff's programme was started at Utrecht University, tenancy law was taught and tested on the same level. The underlying idea was that the two professional groups would meet each other in the courtroom and that if a bailiff possessed only part of the knowledge of the lawyer, this would be an unequal legal battle and the bailiff's client would be in a disadvantageous position. And, extending the line, the subject of academisation should be placed on the agenda again.[33] Most appointed bailiffs in Europe now have a Master of Laws title. Besides Belgium, think also of the Scandinavian and East European countries. That is not surprising if one considers that bailiffs perform their work on the same level as lawyers and civil-law notaries perform theirs. In this way, added value can be displayed: on the one hand the same legal level, but on the other specialised in the field of procedural law. An additional advantage will be that the solving of problems can have better legal substantiation and this can increase the interest in execution and attachment law. Dutch bailiffs already operate on a high level now, but the Netherlands is a trading nation and that means that the Netherlands also has to be a leader on the level of knowledge. It will then be possible for lawyers, civil-law notaries and judges to study the materials intensely (for example by taking post-doctoral courses) and that will be expressed because more consistent judgments will be made in the case law. Why should a university graduation specialisation exist in employment law and not procedural law? It would in any case mean a quality impetus.[34]

It would also pave the way for settling insolvencies, which is now done almost exclusively by lawyers. Bailiffs should also be relied upon more often in debt adjustment. The special fact occurs that bailiffs impose attachments and attempt to reach a solution with the debtor, but if debt adjustment is pronounced by the court, there will be no task at all left for the bailiff. Whereas the bailiff is precisely

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Cf. J. Tulfer, 'Overheidsvordering maakt beslag op kredietruimte door Ontvanger mogelijk', *Tijdschrift voor Insolventie 2009,* pp. 25-27.

And the intake of new students is also falling to a level that threatens the continued existence of the programme. This is causing the bailiff's office to age and necessary innovation is impeded.

Cf. Commission for Evaluation of the Royal Dutch Organisation of Bailiffs (Van der Winkel Commission), Noblesse Oblige, The Hague 2009, pp. 37/38. I observe that opinion also in Council of Europe Recommendation Rec(2003)17 of the Committee of Ministers to the Member States on Enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies).

It would also foster mobility between the professions. When the bailiff's profession was privatised about 10 years ago in Macedonia, there were judges and civil-law notaries who wanted to be appointed.

the person with much knowledge and experience. It is right that some bailiffs have recently left that profession to establish themselves as administrators in debt adjustment cases.

In addition, collaborations could be created in which referrals are made to collaborating organisations in administrative and criminal proceedings as well as mediation, so there will be first line legal assistance. In healthcare this has meanwhile become very customary: general practitioners, physical therapists and chemists are part of a health centre.

On a higher level, the professional group should make clear that it is socially involved. The Royal Dutch Organisation of Bailiffs has been issuing preliminary advice since 2011 which shows that the professional group thinks about bottlenecks and solutions. J. Nijenhuis et al*., Openbare exploten en ambtelijke publicaties: artikel 54 en enkele ander artikelen van het Wetboek van Burgerlijke Rechtsvordering opnieuw bezien,* KBvG/SDU The Hague 2011; J. Rijsdijk and J. Nijenhuis (ed.), *Herziening van het beslagverbod roerende zaken; een achterhaalde regeling bij de tijd gebracht*, KBvG/SDU The Hague 2012 and J. Rijsdijk, O.M. Jans en J. Feikema (ed.), *Naar een nieuwe beslagvrije voet; vereenvoudiging in een tweetrapsraket,* KBvG/SDU The Hague 2014 were published consecutively. The first preliminary advice was followed by legislative proposal 33956 (serving writs on persons with no known temporary or permanent address) which will enter into effect on 1 July 2015. The second preliminary advice led to a draft proposal that has gone into consultation. Officials at the Ministry are now studying the third preliminary advice, but they have promised that this will also lead to a legislative proposal.

In conclusion

It was stated above that one should think 'outside the box' and take new paths. It was also stated that the court fee for collection cases often amounts to €466. Under Section 430 of the Netherlands Code of Civil Procedure, notarial deeds are enforceable documents, just as court decisions. In cases eligible for this, the bailiff could see whether an amicable settlement is among the possibilities. He could then get into the car with the civil-law notary and induce the debtor to enter into a payment arrangement which will subsequently be set out in a notarial deed. And if a natural person and not a legal entity acts as claimant, the court fee will be €115, so that assignment of the claim could be considered. More generally speaking, advice could be given to take a marketing course. In the past, bailiffs were open to changes and were leaders in automation. Why should they not be as open now?