

Part 2

An independent professional status

Since the Middle Ages, the bailiffs' profession has been independent.

Under the Monarchy, during the revolutionary period in 1792 and even under the First Empire, the profession always benefited from an independent status, undoubtedly because the bailiff's activities usually required the payment of taxes, which have always been an important source of revenue for the Treasury.

The status of bailiffs is highly complex for those unaware of the administrative organization of France.

The bailiff, as a self employed member of a 'liberal profession', is also a public and ministerial officer while at the same time being a legal officer.

2.1/ The Bailiff as a member of a 'liberal profession'

In France and in many other civil law jurisdictions, the civil service does not, as is the case in some countries, have all the prerogative powers generally attributed to the State. This feature can be particularly illustrated by the power transferred to bailiffs to enforce orders made in civil cases by the courts.

Enforcement, which in many countries is a role traditionally belonging to the civil service, is, in France, given to bailiffs, although this role is shared with a category of civil servant entrusted with the task of recovering unpaid tax.

Nevertheless, the principle remains that court orders are enforced by bailiffs, who, in this capacity have a monopoly on their enforcement, except for the recovery of unpaid taxes where the bailiff works in tandem with certain Treasury civil servants.

The 'liberal' aspect of the profession gives the bailiff total independence in the enforcement of judgments. The bailiff is not subject to any hierarchy or higher authority, other than potential sanctions professional misconduct.

Bailiffs, who are nominated by the Ministry of Justice, are self employed professionals in the strictest sense of the word. They manage and run their own business in the same way that a director runs a company, employing a large number of qualified staff and using up to date office, computer and communication equipment.

2.2/ The Bailiff as a legal officer

The bailiff is a legal officer holding an "office".

To get a better understanding of the notion of "office", we need to go back to the 15th century.

At that time monarchs, who were involved in interminable wars, found themselves forced into spending in excess of the budget of the kingdom. As a result, and in order to finance these ruinous campaigns, the king granted offices, in exchange for large sums of money.

Other offices which were created by the King at that time included regimental captain and magistrate. Both of these offices have since disappeared.

Throughout the centuries, the ownership of the offices has survived in different forms to such an extent that it is now considered as a part of the property of its holder.

As such it is a possession which can be transferred and sold in the same way as a business.

This right to sell the office, which is given to the bailiff, has led to the expression "the venality of office".

The bailiff as a legal officer has the right to choose, in exchange for the payment of a fee, a successor. The successor must have the qualifications and other conditions necessary to carry out the office of bailiff.

2.3/ The Bailiff as a public officer

When bailiffs are acting as enforcement agents while carrying out seizures or evictions, by representation they are performing an act on behalf of the State.



Because the bailiff is acting as a public officer, s/he may request the assistance of the police should the circumstances demand it. Force may be required in some cases to overcome either the obstruction or the resistance of a debtor.

Only a limited number of “liberal” professionals are public officers: bailiffs, *notaires*, auctioneers and Clerks of the Commercial Court.

2.4/ The Bailiff as a legal representative

The bailiffs’ duties are not limited to the power of enforcement of civil judgments.

- ▶ Bailiffs have a monopoly on the service of legal documents.
- ▶ Bailiffs and auctioneers have a monopoly on sales of movable property at public auction.

- ▶ Bailiffs recover private debts.
- ▶ Bailiffs draw up reports or statements of facts at the request of the court or private individuals.
- ▶ Bailiffs can also represent the parties in some courts.

In addition, bailiffs are responsible for the organization and running of hearings in court and, under the authority of the judge, ensure good order in the courtroom.

During a hearing the judge may appoint a bailiff for consultative duties or to prepare a statement of facts in order to clarify the judge’s understanding on a particular point.

In both cases above, the bailiff is acting as a legal representative which is another duty performed by bailiffs in their role as public and legal officers.