

The Netherlands

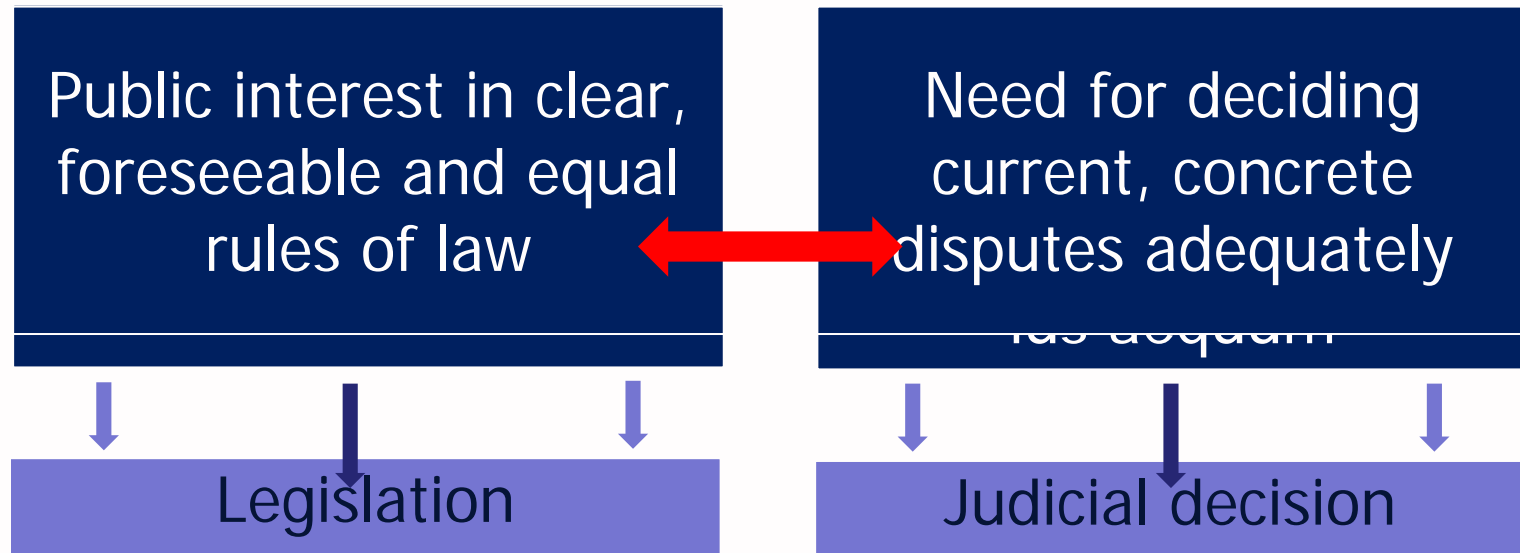
Prof. Dr. Anne Keirse



This Year's story from the Netherlands:

the STRUGGLE

AS OLD AS THE LAW ITSELF



The Dutch Theme:
Legal Certainty & Justice (in individual cases)

Losing a right through no fault of your own?

- ✓ Not able to file a claim
- ✓ Prolonging the prescription period
- ✓ Land grabbing as a tort

Land Grabbing as a Tort

- Dutch Supreme Court 24 February 2017, RvdW 2017, 298

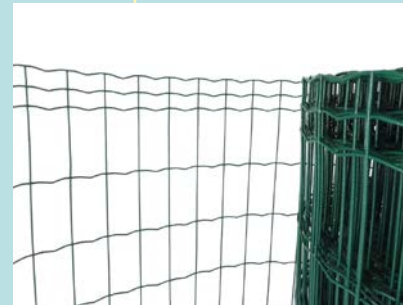
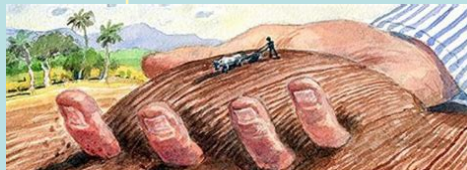


Dutch Supreme Court 24 February 2017, RvdW 2017, 298

1973



1974, 1980



2003



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Acquisitive Prescription

Art. 3:105 (1) Dutch Civil Code

A person who possesses property at the time when prescription of the right of action to terminate possession is complete acquires the property even if his possession was not in good faith.

- At some point the legal situation must be in line with the factual situation.

Translation: Warendorf Legislation

New owner, but:

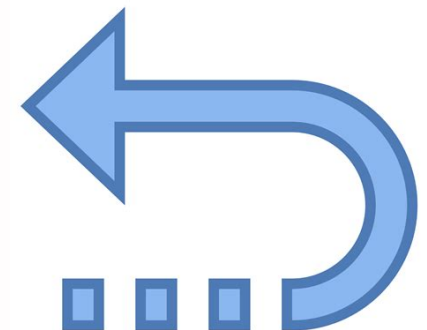
- Taking a thing into possession while knowing that someone else actually owns it = a tort.
- The fact that the former owner could have checked whether his property was taken into possession by somebody else ≠ contributory negligence.
- (New) 5 year prescription period of the tort claim commences the moment the owner is aware of the loss of his ownership, and the claim prescribes in any case 20 years after the possessor acquired the ownership through acquisitive prescription (art. 3:310 DCC).

Compensation in Kind

Art. 6:103 Dutch Civil Code

Damages shall be paid in money. Nevertheless, upon the demand of the person suffering the loss, the court may award compensation in a form other than payment of a sum of money. Where such judgment is not complied with within a reasonable period, the person suffering the loss shall recover the right to claim damages in money.

Translation: Warendorf Legislation



Noteworthy

- Obiter dictum
- Never done before
- Legal policy
- Has caused many to reach for their pens

Dutch Supreme Court 24 March 2017, NJ 2017, 313

- Prescription of asbestos-claim
- *Howald Moor c.s. v. Switzerland* (ECHR 11 March 2014, NJ 2016, 88)
- Art. 6 ECHR
- Dutch Prescription Law (*ex aequo et bono*) does not impair the very essence of the right of access to a court, it pursues a legitimate aim and it is proportionate

This Year's story from the Netherlands:

the STRUGGLE

AS OLD AS THE LAW ITSELF

The sole purpose of justice is to guarantee
the CERTAINTY of the law

Legal Certainty & Justice (in individual cases)

Balancing act

Endeavors to strengthen
the trust and credibility
of the legal system and
its fairness.

