

NATIONAL REPORT

- NETHERLANDS -



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GENERAL OVERVIEW

National Legal system	<p>The Netherlands came into being as a national state in 1814 after approximately 15 years of French occupation. During that occupation, the French imposed their Napoleonic law on the Netherlands and it was decided to keep those codes until they would have been replaced by new national codes. The codes and institutions that followed were heavily influenced by their French predecessors and were based on the principle of codification. In 1827, the judicial structure was set up, which with respect to civil procedure remained basically unaltered until to date. It is a three layered structure with at the basis first instance and appeal courts with a territorial jurisdiction. The appeal courts have full powers to decide the case (novum iudicium). On top, a cassation court (the Supreme Court) has to guarantee the uniform application and interpretation of the law. The Code on Civil Procedure came into force in 1838. It has been modified and modernized, but not replaced. Recent important changes took place in 1988 (evidence law) and 2002 (introducing a mandatory post defense hearing). Nowadays, civil procedure is a mix of party initiative and case management powers of the courts aiming at striking a balance between party autonomy and an efficient and swift procedure.</p>
Court jurisdiction and different types of litigation for debt collection	<p>The courts of first instance have general jurisdiction on all civil matters. Within these courts, a specialized unit (the cantonal judge, kantonrechter) has exclusive jurisdiction regarding labor cases, rent and tenancy cases, consumer cases and small claims (any claim with a value up to € 25.000). Litigating before the cantonal judge is less formal than before the full court. There are two important differences. Except for the document commencing the procedure (the writ of summons), all statements can be made orally instead of in writing, being registered by the court clerk into the records of the hearing. In the second place, legal representation is not mandatory and proxies need not be qualified in any way. The procedure before the summary proceedings judge can also be used for debt collection. The procedure is faster, but special requirements have to be met. All cases with a value of more than € 1750 can be submitted to the appeal court.</p>

<p>National summary procedures for recovery of money claims</p>	<p>There are no special procedures exclusively for the recovery of money claims. There has been one until 1991 (betalingsbevelprocedure, order for payment procedure), but that procedure has been repealed when the new Civil Code entered into force. The recovery of money claims follow the rules for all other claims, although these claims in most cases have to be brought before the cantonal judge. The existing summary procedure for interim orders before the summary proceedings judge is also used for debt collection. This procedure is much faster than the standard procedure, since a date for an oral hearing within two or three weeks will be fixed before the writs of summons are served. The judgment will be given with two weeks. The drawbacks are that a) legal representation is mandatory for the plaintiff, b) the order for payment will only be issued in case of a pressing need for liquid assets of the plaintiff; c) the order will be denied in case of any non-frivolous defense.</p>
<p>State of IT operational options in judicial procedures for recovery of money claims</p>	<p>Electronic litigation is not possible yet, although some preparatory work has already been done. The basis for (partial) electronic litigation has been laid down in the Code of Civil Procedure (artt. 33, 46, 475), but the ICT-projects to implement this are still on the way. Implementation is foreseen for 2013/2014. However, submitting of pleadings by fax is allowed, if the fax is followed by the signed paper version of the document. The enforcement of garnishment orders can be done electronically (art. 475 CCP) since 2009, but the third party has to supply an electronic address for this purpose. To supply this address, new software has to be implemented, which appears to be rather costly. Despite the possible profits of electronic service of garnishment orders, until now only two organizations (a bank and a township) submitted an electronic address. Therefore electronic enforcement of these orders is virtually inexistent.</p>

SCOPE OF THE PROCEDURE

Eligible claims	Civil procedure is general with respect to all monetary claims, regardless of their legal underpinning. The value at stake (in case of a monetary claim: the amount at stake) determines whether the informal procedure before the cantonal judge has to be followed (in the UK one would call this the small claims track) or the more formal procedure before the full court (the multi-track).
Limit regarding value of claim	Since there is no order for payment procedure, there is no limit regarding the value of the claim. The informal procedure before the cantonal judge applies to all claims with a value up to € 25.000, including interests due before the date of service of the writ of summons and including non-procedural costs.
Rules on using the procedure	The distinction between the two procedures (cantonal judge or full court) is not optional. Ex officio remittal to the other section of the court (and thus the other procedure) is mandatory for both sections. However, a special provision (art. 96 CCP) allows the parties in cases without any public policy issues to opt for the procedure before the cantonal court. In practice, this provision is seldom used and certainly not in debt collection cases.
Possibility of using national procedure in cross border cases	Jurisdiction of the Dutch national courts in cross border cases involving EU parties is primarily regulated by Brussels I (44/2001). In procedures before the Dutch courts, Dutch procedural law applies (lex fori). In cases in which the Order for Payment Regulation Regulation (1896/2006) or the Small Claims Regulation (861/2007) applies, the choice for one of the procedures is entirely left to the plaintiff.
Number of steps	The informal procedure before the cantonal judge is a 3-step procedure (summons, defense, and hearing).
Rules on representation by a lawyer	Not mandatory before the cantonal judge; mandatory before the full court.

COMPETENT COURTS

According to matter	There are no specialized courts for money claims or debt collection. All first instance courts deal with all money claims (and all other civil matters).
According to territory	At present, the Netherlands is divided into 19 judicial districts with one first instance court in each of those districts. Each district is divided into cantonal sub districts. The district of residence of the defendant determines the competent court. In cases before the cantonal judge, the sub district of residence of the defendant is decisive. There are some exceptions, but they will not affect debt collection cases. In 2013, the number of districts and hence the number of first instance courts will be reduced to 10.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	All civil claims (including debt collection cases and monetary claims in general) start with a writ of summons, drafted by the plaintiff himself (which is only theoretically possible) or on his behalf by his legal representative (lawyer admitted to the bar or proxy). The writ of summons is served by a bailiff on the defendant. There is no standard form, although in practice most lawyers use the same structure, lay-out and phrasings (which are incomprehensible for laymen, by the way). The Council for the Judiciary provides examples with guidelines on its website (ww.rechtspraak.nl). The CCP only lays down the requirements for the writs of summons (artt. 45-62, 111 CCP), but does not prescribe any form or wording.
Rules on representation by a lawyer	Cases concerning a value of more than € 25.000 have to be brought before the full courts, where legal representation by a lawyer admitted to the bar (advocaat) is mandatory.
Description of the reasons for the claim	All writs of summons have to specify the factual and legal grounds of the claim (art. 111 s 2(2) CCP). In addition, if any pretrial defenses of the defendant are known, they have to be mentioned and discussed (art. 111 s 3 CCP).

Need for written evidence and documents admissible as proof	Written evidence and all other means of evidence have to be described in the writ of summons. In practice, copies of all documents supporting the claim are served on the defendant with the writ of summons. The writ is then submitted to the court together with those copies. There is no rule for money claims prescribing specific means of evidence.
Option of electronically filing the form	The writ of summons has to be filed in original and it cannot be submitted electronically.

ISSUE OF THE ORDER OF PAYMENT

Specific rules for dealing with submitted apps for order of payment and court decision	Since there is no order for payment procedure, there are no special requirements for these applications. Every writ of summons should mention a) the names and (chosen) residences of the parties; b) the name and address of the legal representative of the plaintiff; c) the claim and the grounds for it; d) name and address of the court and the address where documents can be submitted; e) the date of the first cause list hearing; f) the way defendant can defend himself; g) what happens when no defense is filed; h) if applicable, what happens if one of the defendants does not appear in court and the others do; i) if applicable, the court fee that has to be paid; j) the known pretrial defenses of the defendant; k) the means of evidence that can be submitted to justify the claim. In all cases, the plaintiff has to be a court fee. The case is stayed for 4 weeks if the court fee has not been paid at the day of the first cause list hearing. If after this period no payment has been received, the case is struck out.
Decision of the court on the payment order	There are no special rules for debt collection or money claims. As in all civil cases, the judgment in favor of the defendant will have the heading "In name of the Queen!" and will be given to the (representative of the) plaintiff. It is an enforceable title (art. 430 CCP) and can be enforced by a bailiff on the initiative of the plaintiff without leave from the court or any other government institution.
Existence of guidelines for submitting application	The requirements for a writ of summons have already been mentioned above.
Defendant's service of the order of payment	The judgment (which holds for every civil case) will only be enforceable when it has been served on the defendant by the plaintiff's bailiff (art. 420 s 3 CCP). In the writ of service, a period of at least two days has to be granted to the defendant to comply with the judgment (art. 439 CCP). When the defendant does not comply within this period, the judgment can be enforced by all means supplied by the law.

REJECTION OF THE APPLICATION

Grounds for rejecting application	Like any other civil claim, the claim will be rejected if it is manifestly ill-founded (art. 139 CCP) or when the defense is conclusive.
Existence of prima facie of claim	There is no rule requiring some prima facie plausibility of a claim. All uncontested claims will be granted, unless they are manifestly ill-founded (art. 139 CCP).
Appeal availability (creditor)	All judgments can be appealed when the amount at stake was at least € 1.750. When calculating this amount, the counterclaim (if applicable) has to be taken into account (art. 332 CCP).

OPPOSITION BY THE DEFENDANT

Procedural rules	As in any civil case, the defense has to be filed in written form, unless it is a case before the cantonal judge. There are no restrictions on the length or contents of the defense. The statement of defense should contain all exceptions and at least one substantive ground for disputing the claim. Usually the period for filing the defense is 4 weeks before the cantonal judge and 6 weeks before the full court. It is possible to ask for an extra delay. Rules concerning delays are not part of the law, but have been laid down in an agreement of all first instance courts together (Procesreglement). After the statement of defense, a date for a post defense hearing is determined. After this hearing, an interim or final judgment will be given.
Substantiated order of payment requirement	The judgment should contain the grounds for the decision, unless the claim is uncontested and the defendant did not appear (art. 230 s 2 CCP).
Effects of notice of opposition	In case of a default judgment, opposition is possible. The writ of opposition should contain the defense of the defendant (art. 146 CCP). After the service and submission of this writ, the normal procedure will apply.
Nature of the structure of the procedure	Normal procedure.

EFFECTS OF ABSENCE OF TIMELY OPPOSITION

Consequences on not filing opposition	If the defendant does not appear in court, a default judgment will be given granting the claim, unless it is manifestly ill-founded (art. 139 CCP). If no defense is filed, the court will give judgment in favor of the plaintiff, unless the claim is manifestly ill-founded.
How to obtain an enforcement judgement	All judgments in civil cases are issued as an enforceable title and can be enforced without leave from the court or any other government institution.
Effects for the order of payment	There is no special order for payments, which means that the general rules apply.

COURT FEES

Plaintiff legal person: claim -500: € 109; claim 500-12500: € 437; claim 12500-25000: € 873; claim 25000-100000: € 1789; claim 100000 and more: € 3621; *Plaintiff natural person*: claim -500: € 73; claim 500-12500: € 207; claim 12500-25000: € 437; claim 25000-100000: € 821; claim 100000 and more: € 1436; *Defendant legal person*: claim -25000: 0; claim 25000-100000: € 1789; claim 100000 and more: € 3621; *Plaintiff natural person*: claim -25000: 0; claim 25000-100000: € 821; claim 100000 and more: € 1436.

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically	The general rules for enforcement apply.
Abroad	The general rules for enforcement apply.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

Since the Netherlands does not have a special order for payment procedure, the comparison cannot be made.