

Small claims - Netherlands

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1 Existence of a specific small claims procedure

The usual procedure for small claims is the summons procedure at the sub-district sector of the court (*sector kanton van de rechtbank*). This is an ordinary summons procedure, with procedural simplifications. The Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) contains no separate regulations for bringing proceedings before the sub-district court.

In cross-border cases within the EU, the European small claims procedure may also be used.

In Dutch law, there is an Act implementing the European Small Claims Procedure Regulation (Act of 29 May 2009 implementing Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure) (*Wet van 29 mei 2009 tot uitvoering van Verordening (EG) nr. 861/2007 van het Europees Parlement en de Raad van de Europese Unie van 11 juli 2007 tot vaststelling van een Europese procedure voor geringe vorderingen*).

1.1 Scope of procedure, threshold

The sub-district court is seised of:

- cases in relation to claims for up to a maximum of € 25 000;
- cases in relation to claims of undetermined value, if the value is unlikely to exceed € 25 000.

In addition, the sub-district court judge rules in cases involving employment law, leases, agencies, hire purchase and consumer sales contracts, appeals against traffic fines and minor offences.

Cases concerning European small claims are also handled by the sub-district court. The threshold value for the European small claims procedure is set by the Regulation at a maximum of € 2 000.

1.2 Application of procedure

There is no special sub-district court procedure. In principle, the rules for the summons procedure apply for both the district court and the sub-district sector. An important difference is that in cases before the sub-district court, the parties have the right to argue their own case, whereas in other cases (before the district court), the parties must be represented by a lawyer. See reply to question 1.4 below. In addition, in the sub-district sector, the cases are handled by a single-judge formation, i.e. by a judge sitting alone.

The rules on the petition procedure are applicable to European small claims.

1.3 Forms

The proceedings before the sub-district court are usually initiated by a summons. The proceedings starting with a summons are the same for all courts (the district court and the sub-district court). The most important statements in the summons are the statement of claim (the claim itself) and its reasons (facts and rights on which the statement of claim is based).

A few particularities of the sub-district court proceedings are:

1. the defendant is summoned before district court A, but to appear before the sub-district court judge sitting in the main venue of court A or in a specified sub-district venue of court A.
2. if the claimant is represented by an authorised representative for the proceedings, the name and address of the authorised representative must be stated in the summons.

A claim under the European small claims procedure is brought using form A. This form can be downloaded from the European e-justice portal.

The application must be made to the court with jurisdiction. The court must have jurisdiction in accordance with the provisions of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

1.4 Assistance

In cases before the sub-district court, the parties can argue their own case. This means that there is no compulsory legal representation by a lawyer. Assistance provided by an authorised representative, who does not need to be a lawyer, is also permitted. Concerning reimbursement of costs of legal assistance for a lawyer, see also reply to question 1.8 below.

In the European procedure, likewise, the parties are not required to be represented by a lawyer or other legal advisor.

1.5 Rules concerning the taking of evidence

The usual rules of the law on evidence are applicable. According to Dutch law on evidence, the judge is in principle free to assess the evidence adduced. See also 'taking of evidence'. Article 9 of the aforementioned Regulation (EC) No 861/2007 regulates the taking of evidence in the European procedure.

1.6 Written procedure

There are national rules of procedure for the civil role of the sub-district sectors. Written documents may be lodged with the registry of the district court (in person or by post or fax) before the cause list date, but also at the hearing. Statements and reactions may be submitted orally in the proceedings before the sub-district court. The European procedure is a written procedure, although a hearing can be held if the judge considers it necessary or if a party so requests.

1.7 Content of judgment

The judgment must contain:

- names and addresses of the parties and of their authorised representatives or lawyers;
- the conduct of the procedure;
- the conclusion of the summons and the statements of the parties;
- the reasons for the decision, stating the facts and considerations of the judge;
- the final decision of the judge;
- the name of the judge and
- the date of delivery of the judgment.

The judgment is signed by the judge.

1.8 Reimbursement of costs

If a case is brought before the sub-district court, the following costs may be incurred: court registration fee, apportionment of the costs awarded by the court and costs for legal assistance.

The court registration fee is payable when the court is seised of the case. The amount depends on the nature of the case. In practice, your lawyer will advance this amount and charge it to you subsequently. The judge may order the unsuccessful party to pay the costs of the other party. If neither of the parties has been totally successful, each pays his or her own costs. Apportionment of the costs awarded by the court may also include costs for legal assistance, but also the costs of witnesses, experts, travel and subsistence expenses, costs of extracts and other out-of-court expenses (<http://www.rechtspraak.nl/>).

Under Dutch legislation, the less well-off sometimes have the possibility of obtaining a contribution to the costs of legal assistance. Subsidised legal assistance is not possible for all cases before the sub-district courts. If subsidised legal assistance is possible, the litigant also pays an own contribution to the costs of legal assistance, depending on his or her financial situation. An application for a contribution towards the costs of legal assistance is made by the lawyer to the Legal Aid Board (*Raad voor rechtsbijstand*). This is regulated in the Legal Aid Act (*Wet op de Rechtsbijstand*). Chapter III A of this Act sets out the rules regarding the granting of legal aid in cross-border litigation within the EU. This Act implements the European Council Directive of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (<http://www.rvr.org/>).

1.9 Possibility to appeal

An appeal against judgments of the sub-district sector of the court can be lodged with the court of appeal. An appeal is possible only if the claim exceeds € 1 750. An appeal may be made within 3 months of the date of delivery of the judgment. In the European small claims procedure, appeal against a decision by the sub-district court is not permitted.

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Last update: 28/01/2019