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Which country's court is responsible?

Netherlands

### 1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

There are no specialised courts, such as a commercial court or labour tribunal, under Dutch civil procedural law. The district court in principle has jurisdiction in all civil proceedings.

### 2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

The courts at first instance examine all civil matters, with the exception of cases specified by law. The civil court deals with cases between two parties (individuals or legal entities). The civil court does not have jurisdiction in disputes for which the administrative court has been designated as having jurisdiction. This refers to disputes with the administration (the public authorities). The Dutch judicial system provides for three types of courts of law in the field of private law: district courts (*rechtbanken*), courts of appeal (*gerechtshoven*) and the Supreme Court of the Netherlands (*Hoge Raad Nederlanden*). Since 1 April 2013, the Netherlands has been divided into ten judicial districts, each with its own court: eleven courts with jurisdiction in four areas. In addition, there are four courts of appeal and one Supreme Court of the Netherlands.

Organisational units, known as 'sectors', have been established within the district courts. These are the sub-district, administrative law, civil law and criminal law sectors. The court has single judge and full bench divisions. A single judge division consists of one judge; a full bench division consists of three judges. The basic principle is that sub-district court cases, straightforward cases and urgent cases are heard by a single judge. Many family cases too are dealt with by a single judge. An example of a single judge division is the juvenile court for certain matters concerning children. Legally complex cases are heard by a full bench division.

#### 2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

A court case usually starts at the district court. There are four types of district courts:

Civil law (citizen versus citizen)

Administrative law (citizen versus public authority)

Criminal law (violations and criminal offences)

Sub-district sector

#### Appeal courts

Anyone who does not agree with a court judgment can appeal. Criminal cases and civil cases are brought before one of the four courts of appeal. In administrative cases, the appeal, depending on the subject, may be heard by:

Courts of appeal (*gerechtshoven*)

Court of last instance in social security matters (*Centrale Raad van Beroep*)

Administrative court of last instance in matters of trade and industry (*College van Beroep voor het Bedrijfsleven*)

Council of State (Administrative Jurisdiction Division) (*Raad van State (afdeling bestuursrechtspraak)*)

#### Supreme Court

The Supreme Court of the Netherlands is the supreme judicial body in the Netherlands in the fields of civil, criminal and tax law. The Supreme Court can set aside judgments notably of courts of appeal (this is known as cassation). The Supreme Court is also responsible for preserving legal unity and for steering the development of Dutch law.

#### 2.2 Territorial jurisdiction (Is the court of city/town A or of city/town B competent for my case?)

In the Netherlands, there are district courts (*arrondissementsrechtbanken*) at first instance. An appeal can be lodged with the court of appeal against the ruling of the court at first instance. In addition, 'relative jurisdiction' is important as regards the question of which of the ten district courts has jurisdiction: for example, the District Court of Amsterdam or the District Court of Leeuwarden - the geographical jurisdiction of the court where your case is heard.

For international cases, i.e. cases of a cross-border nature, once it has been established that the Dutch court has jurisdiction, the local jurisdiction is determined by Dutch law, unless the rule establishing the international jurisdiction also designates the court with local jurisdiction, as laid down in Article 5(1) or (3) of Brussels I (Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

##### 2.2.1 The basic rule of territorial jurisdiction

The basic rule in proceedings initiated by writ of summons at first instance is that the court of the place of residence of the defendant has jurisdiction (Article 99 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*)). If no place of residence is known in the Netherlands, the court of the place where the defendant is actually staying (in the Netherlands) has jurisdiction.

The courthouse within a judicial district where a sub-district case is to be heard can be determined on the basis of the Annex to the Subsidiary Places of Session (Courts) Decree (*Besluit nevenvestigings- en nevenzittingsplaatsen*) of 10 December 2001 ( <http://www.overheid.nl>).

The rules for local jurisdiction of the district courts apply *mutatis mutandis*.

The basic rule in proceedings initiated by application at first instance is that the court for the place of residence of the applicant (or of one of the applicants or of one of the interested parties named in the application) has jurisdiction (Article 262 of the Code of Civil Procedure). If no place of residence is known in the Netherlands, the court for the place where the applicant is actually staying (in the Netherlands) has jurisdiction. If the application is combined with proceedings initiated by writ of summons, the court examining the latter also has jurisdiction.

##### 2.2.2 Exceptions to the basic rule

The rules set out in points 2.2.2.1, 2.2.2.2 and 2.2.2.3 below refer primarily to proceedings initiated by writ of summons.

In proceedings initiated by application, where in general the court of the applicant has jurisdiction, different rules apply for applications for the modification of maintenance.

An application for the modification of partner maintenance must be made by the claimant to the court for the place of residence of the maintenance debtor. A maintenance debtor wishing to file an application for modification must apply to the district court for the place of residence of the maintenance creditor.

### **2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?**

With respect to proceedings initiated by writ of summons, Dutch procedural law includes a number of provisions in which a court is designated as having jurisdiction alongside the competent court designated under the basic rule (court for the place of residence or of actual stay of the defendant). It is an alternative jurisdiction. The claimant has a choice between the court of the basic rule and that of the alternative rule. The alternative is expressed below by the use of the word 'also'.

In cases initiated by a writ of summons, the following rules are relevant:

#### Employment/agency cases

In employment/agency cases, the court for the place where the work is usually carried out also has jurisdiction (Article 100 of the Code of Civil Procedure).

#### Consumer cases

In consumer cases, the court for the place of residence, or, in its absence, the court for the place where the consumer is actually staying, also has jurisdiction (Article 101 of the Code of Civil Procedure).

#### Tort, delict or quasi-delict

In matters relating to tort, delict or quasi-delict, the court for the place where the harmful event occurred also has jurisdiction (Article 102 of the Code of Civil Procedure).

#### Immovable property

In matters relating to immovable property, the court within the jurisdiction of which the property, or most of it, is situated also has jurisdiction (Article 103 of the Code of Civil Procedure). In matters relating to renting of housing or renting of business premises, the sub-district court within the jurisdiction of which the rented property, or most of it, is situated has exclusive jurisdiction.

#### Inheritances

In matters relating to inheritances, the court for the last place of residence of the deceased also has jurisdiction (Article 104 of the Code of Civil Procedure).

#### Legal entities

In matters relating to legal entities (for example, matters relating to the dissolution of legal entities, the nullity or validity of decisions of legal entities, the rights and obligations of members or partners), the court for the place of residence or the place of establishment of the legal entity or company also has jurisdiction.

#### Bankruptcy, suspension of payment and debt rescheduling

In matters relating to the application of the legal provisions concerning bankruptcy, suspension of payment and debt rescheduling of natural persons, the court to which the supervisory judge is attached, or if no supervisory judge has been appointed, the court which has pronounced the suspension of payment, also has jurisdiction (Article 106 of the Code of Civil Procedure). The Bankruptcy Act (*Faillissementswet*) also contains special rules concerning jurisdiction and these take precedence over the jurisdiction rules based on the Code of Civil Procedure.

#### Choice of court

In the contract between them, parties sometimes designate a different court than the court which has jurisdiction according to the statutory provisions (Article 108(1) of the Code of Civil Procedure). There are exceptions to this freedom of choice (Article 108(2) of the Code of Civil Procedure), in relation to consumer matters, rental matters and employment contracts. In such cases, the court examines whether there is a valid choice of court clause (Article 110 of the Code of Civil Procedure).

#### Residence of the claimant

If, under the aforementioned provisions concerning local jurisdiction, no court with jurisdiction can be designated in the Netherlands, Article 109 of the Code of Civil Procedure provides that, by way of exception, the court of the residence of the claimant can have jurisdiction. This situation may arise if an employee wishes to summon the foreign employer before the court in the Netherlands, whereas the work is not confined to a specific place but is carried out all over the country. If a court with jurisdiction cannot be found in this manner either, the case is brought before the District Court of The Hague.

The following is also pointed out with regard to divorce:

The local jurisdiction of the divorce court is regulated in Article 262 of the Code of Civil Procedure. The basic rule is: the court for the place of residence of the applicant (or of one of the applicants or of one of the interested parties named in the application) has jurisdiction, and if this person has no known place of residence in the Netherlands, the court for the place where this person is actually staying (in the Netherlands).

### **2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?**

Dutch procedural law contains a few special rules concerning local jurisdiction which depart from the basic rule. The special rule must be applied. In the special cases described below, a court other than that for the place of residence of the defendant must be chosen.

#### Minors

In matters relating to minors, the court for the place of residence, or in the absence of a place of residence in the Netherlands, for the place where the minor is actually staying, has jurisdiction (Article 265 of the Code of Civil Procedure).

This is not an alternative, but a special rule which replaces the basic rule. It is not the court for the place of residence or stay of the applicant which has jurisdiction (basic rule for proceedings initiated by application), but the court for the place of residence, or in the absence of a place of residence in the Netherlands, for the place where the minor is actually staying. If this rule does not lead to a specific court, the District Court of The Hague has jurisdiction.

#### Civil status

In matters relating to supplementation, registration, cancellation or modification of civil status registers or of certificates to be registered or already registered in them, the court within the jurisdiction of which the certificate has been or is to be registered has jurisdiction (Article 263 of the Code of Civil Procedure). In such matters relating to certificates to be registered or already registered in the civil status registers of the municipality of The Hague, in accordance with Book 1 of the Civil Code (*Burgerlijk Wetboek*), the District Court of The Hague has jurisdiction.

#### Renting of built immovable property

In matters relating to the renting of built immovable property or part thereof, the court within the jurisdiction of which the rented property is situated has jurisdiction (Article 264 of the Code of Civil Procedure).

#### Guardianship of an adult, fiduciary administration of property, mentorship

In matters relating to guardianship of an adult, fiduciary administration of property *on behalf of adults* and mentorship, the court for the place of residence, or in the absence of a place of residence in the Netherlands, for the place where the person whose guardianship or property or mentorship is concerned is actually staying, has jurisdiction (Article 266 of the Code of Civil Procedure).

#### Absent or missing persons; confirmation of death (Article 267 of the Code of Civil Procedure)

In matters relating to inheritances, the court for the last place of residence of the deceased has jurisdiction (Article 268(1) of the Code of Civil Procedure).

In matters relating to absent or missing persons, the court for the place of residence left by the absent or missing person has jurisdiction. With regard to confirmation of death, the District Court of The Hague has jurisdiction (Article 269 of the Code of Civil Procedure). Article 269 of the Code of Civil Procedure therefore serves as a safety net.

### **2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?**

Under Article 108 of the Code of Civil Procedure, the parties may make a choice of court in writing. A choice of court is possible only in relation to legal relationships which can be freely determined by the parties. Therefore in cases involving public order, the choice of court is not possible. Examples include certain matters of family law and cases of bankruptcy and suspension of payment. In sub-district court cases, the choice of court is limited. For instance, choice of court is not possible for claims up to EUR 25 000 (irrespective of the nature of the claim).

In principle, the court with jurisdiction on the basis of a choice of court has exclusive jurisdiction. The parties can expressly agree to preclude exclusive jurisdiction.

In matters of divorce (divorce, legal separation, dissolution of registered partnership, dissolution of marriage following legal separation), the special rule provided for in Article 270(2) of the Code of Civil Procedure applies. According to this article, the court without local jurisdiction refers the case in general to the court which does have local jurisdiction. According to Article 270(2) of the Code of Civil Procedure, this occurs in divorce cases only if the defendant (the spouse against whom the proceedings are brought) contests the jurisdiction of the court. Tacit choice of court is possible if all interested parties summoned appear and do not invoke lack of jurisdiction, or if the other spouse fails to appear.

### **3 Where specialised courts have jurisdiction how can I find out which one I have to address?**

There are no specialised courts under Dutch procedural law.

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