How to bring a case to court

Países Bajos

1 Do I have to go to court or is there another alternative?

No, you do not always have to go to court to resolve your dispute. In some cases, it is perfectly possible to make use of alternative forms of dispute resolution, such as mediation and arbitration.

2 Is there any time limit to bring a court action?

Yes, very often there is, but the time limits for bringing a court action vary from case to case and it is not possible to answer in general terms. For questions, it is best to contact a lawyer or the Legal Help Desk (*Juridisch loket*).

3 Should I go to a court in this Member State?

As a basic rule, the defendant is summoned by the court of the Member State of his/her residence.

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

Unless otherwise provided by law, your case must be brought before the district court in the place of residence of the defendant. In the absence of a known place of residence of the defendant in the Netherlands, the court in the place where this person is actually staying also has jurisdiction. You will therefore have to find out at which address and in which Dutch municipality the defendant is living. Once you know that, you can consult the Judicial Classification Act (*Wet op de rechterlijke indeling*) to find out which judicial district the place of residence or stay is situated in. On this basis, it is possible to determine the district court to which the case must be submitted.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

For the reply to this question, see the previous question. For further information to determine which court to bring your case before, we refer you to the website De Rechtspraak, which explains the Dutch judicial system.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

In the Netherlands, the legal principle is that the parties must be represented by a lawyer in civil and commercial cases. It makes no difference in this respect whether the matter involves proceedings initiated by writ of summons, proceedings initiated by application or summary proceedings, a procedure for an interim injunction or, for example, proceedings in default for failure to appear.

An exception applies only for claims up to a maximum of €25,000 or for claims of indeterminate value, but where there is a clear indication that the value they represent does not exceed €25,000. In these cases, the sub-district court (*kantonrechter*) has jurisdiction and the parties can opt to represent themselves in the proceedings. You are not then required to engage a lawyer. The sub-district court also deals with cases relating to employment law, leases, consumer sales and consumer credit. In these cases the monetary value of the claim is irrelevant. Other matters dealt with by the sub-district court include administration, guardianship, curatorship and the renunciation or acceptance of an inheritance.

For more information about whether or not you are required to engage a lawyer, click here.

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

The written documents with which proceedings can be initiated must be addressed to the clerk's office of the competent court. It is necessary to bear in mind here the difference between proceedings initiated by writ of summons and proceedings initiated by application. In proceedings initiated by writ of summons, the writ of summons is first served on the defendant and then registered at the clerk's office. Both actions must be carried out by a bailiff. After this, the proceedings are conducted via the cause list (list of cases heard during the session). In proceedings initiated by application, an application is submitted directly to the clerk's office and the rest of the proceedings are also conducted via the clerk's office of the competent court. See also 'Service of documents'.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

In the Netherlands, Dutch is the official language of court proceedings. This means that the writ of summons or the (written) application initiating proceedings must be drawn up in Dutch. As an exception, procedural documents in a case pending before a court established in the province of Friesland may be drawn up in Frisian.

Documents may also be lodged with the clerk's office of a court by fax. Faxed documents received by the clerk's office before 24.00 on the final day are considered to have been submitted within the deadline. There is an exception to this: applications in family cases are not accepted if they have been sent by fax. Documents cannot be submitted by e-mail.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

Proceedings initiated by writ of summons

In proceedings initiated by writ of summons, the writ of summons is first served on the defendant and then registered at the clerk's office. The summons must include: the name of the claimant, what the claim is, the name of the defendant, the grounds for the claim and the substantiating documents submitted by the claimant in support of the claim. The summons also states the date of the hearing and the court at which the case will be heard.

The file must contain the following documents:

The original writ of summons - if necessary: an amended writ and authorisation under Article 117 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*);

If the writ of summons has to be served abroad, the original documents showing that this has been done correctly;

Evidence of publicly funded legal aid or income statement or a copy of the application for publicly funded legal aid or income statement;

Evidence of the choice of domicile of the defendant;

The exhibits (documents) to be invoked in the proceedings;

The notification of whether mediation has taken place before the proceedings and, in the cases listed below, copies of the following documents are also submitted:

if a claim is made for reimbursement of attachment costs, a copy of the attachment documents;

in cases of referral, the referral decision and the documents included up to the referral;

if the writ of summons has to be published or translated into a foreign language, the documents showing that this has occurred.

Proceedings initiated by application

In proceedings initiated by application, an application is submitted directly to the clerk's office and the rest of the proceedings are also conducted via the clerk's office of the competent court.
The file must contain the following documents:
The first names, surname and place of residence or, in the absence of a place of residence in the Netherlands, the place where the applicant is actually staying, as well as
The name, address, place of residence or, in the absence of a place of residence in the Netherlands, the place where each defendant and each interested party is actually staying, as far as the applicant knows, as well as
A clear description of the application and the grounds on which it is based, including the grounds for the local jurisdiction of the court, as well as
The name and telephone number of the lawyer assigned to the case;
In cases concerning an inheritance, the application must also state the last place of residence of the deceased or the reason why it is not possible to provide this information.
Any party invoking any document in the writ of summons, written statement or brief is required to enclose a copy of that document.

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

Court fees must be paid on bringing a court action. Their amount depends on the type of dispute and the amount involved. In practice, your lawyer will often advance this amount and charge it to you afterwards. If it is necessary during the course of the proceedings to call in an expert (for example, an auditor, medical expert or technical expert), the court will ultimately charge the costs to the losing party unless it decides otherwise (for example, in family cases, where the costs are usually borne by the party that has incurred them). The same also applies for the costs of witnesses or of other forms of evidence.
Lawyers charge a fee for their work which is based on an hourly rate, unless there is entitlement to subsidised legal aid (also see question 11). In principle, lawyers' fees in the Netherlands are not fixed. It is advisable to obtain information on the subject in good time from the lawyer representing you or from the Dutch Bar Association (*Nederlandse Orde van Advocaten*). Most lawyers ask for an advance, then charge for their services in the course of the proceedings and submit a final invoice at the end.

11 Can I claim legal aid?

The possibility of subsidised legal aid exists in the Netherlands. In some cases you can obtain a contribution towards the costs of legal advice and assistance in proceedings. If you cannot afford all of the costs of a lawyer you may, under certain circumstances, be eligible for a contribution to the costs of legal aid. The Legal Aid Board (*Raad voor Rechtsbijstand*) then pays part of the costs of a lawyer and you will just pay a means-tested contribution. The application is submitted by the lawyer to the Legal Aid Board. Further information about subsidised legal aid can be found on the website of the Legal Aid Board.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

Under the proceedings initiated by writ of summons, the lawsuit is pending from the moment the summons is served on the defendant by the bailiff. The writ of summons must be submitted by the claimant to the clerk's office by the last day on which the clerk's office is open prior to the cause list date stipulated in the summons (scheduled date for the hearing). If the writ is not submitted to the clerk's office by that deadline, the case is deleted from the list, unless a valid replacement writ is issued within two weeks of the cause list date indicated in the summons.
Under the proceedings initiated by application, the lawsuit is pending when the application has been submitted to the clerk's office.
In general, no confirmation is sent that a case has been validly presented. In cases initiated by writ of summons, if this writ is deficient, the claimant will in some cases be given the opportunity to remedy the deficiency. The same applies in the case of proceedings initiated by application. However, the clerk's office is not obliged to offer this opportunity.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

Precise information concerning the timetable for proceedings cannot be given immediately by the office of the clerk of the court or when the action is initiated. Obviously, you will be notified of when your case is finally to be heard. Both parties will receive an invitation to attend the hearing at a given time and place.

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