

CIVIL PROCEEDINGS IN THE NETHERLANDS

(A) What is the applicable law in domestic claims?

For domestic civil claims in the Netherlands, the applicable law is primarily the Dutch Civil Code (*Burgerlijk Wetboek*). This includes rules regarding civil procedure, substantive law, and the enforcement of judgments.

(B) What is the applicable law in international claims?

For international claims involving parties from different countries, Dutch private international law governs the applicable law. The primary sources include:

- The Dutch Civil Code (for general rules on conflict of laws).
- European Union regulations, such as the Brussels I Regulation (recast) for jurisdiction, the Rome I Regulation for applicable law in contractual matters and Rome II Regulation for applicable law in non-contractual matters (e.g., torts and delicts).
- International treaties and conventions to which the Netherlands is a party, such as the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (1986) provides rules on the applicable law for cross-border sales transactions.

(C) How can the defendant be summoned?

The defendant in a civil case must be summoned according to the Dutch Civil Procedure Code. Summons can be issued by a Bailiff (*deurwaarder*) who will deliver the summons directly to the defendant.

(D) Regarding individuals

The most preferred and effective method is to serve the documents directly to the person involved. This means the bailiff (*deurwaarder*) personally delivers the summons (*dagvaarding*) to the defendant.

If personal service cannot be accomplished because the defendant is not present, the bailiff will attempt to deliver the documents at the defendant's residence.

If the defendant's whereabouts are completely unknown and all other methods have failed, the bailiff may serve the documents to the Public Prosecutor's Office (*Openbaar Ministerie*) at the court where the case is being heard. Following this, a public notice (edict) is usually published in a national or regional newspaper to ensure that the defendant has a chance to be informed about the proceedings.

(E) Regarding a company

For companies, the summons is typically delivered to the company's registered office or place of business.

(F) What happens if the defendant is not found?

If the defendant in a civil case cannot be found, the Dutch legal system provides mechanisms to ensure that the legal proceedings can still move forward.

If the defendant's residence and current whereabouts are unknown despite reasonable efforts to locate them, the law allows for an alternative method of service known as "public notification" or "*openbaar betekenen*." In this case, the summons (*dagvaarding*) is served to the Public Prosecutor's Office (*Openbaar Ministerie*) at the court where the case is being heard. Following this, a notice of the proceedings must be published in a national newspaper or in a newspaper circulating in the area where the court is located. This method ensures that the information about the legal action is publicly available, fulfilling the requirement for notifying the defendant in cases where personal service is not possible. Public notification serves as a substitute for direct delivery and is considered a last resort after all other methods have failed.

If the defendant does not appear in court despite proper service of the summons, the court may issue a "*verstekvonnis*" or default judgment. This occurs when the defendant fails to respond or participate in the proceedings. Before issuing a default judgment, the court will verify whether the summons was correctly served, including any public notifications. The court will then assess whether the claim is valid and whether the legal basis for the claim is sound, given that there is no opposing party present to contest it. If the court finds the claim to be justified, it may grant the relief sought in the default judgment.

(G) Is it possible to notify by edicts?

Notification by edict (public notice) is permissible but typically considered a last resort. This method involves publishing a notice in a public forum, such as a newspaper or court bulletin, to inform the defendant about the legal action.

(H) Is it always valid?

Notification by edicts is valid under Dutch law, but it is less direct and may be subject to stricter scrutiny. It's usually employed when other methods have failed or are impractical.

(I) Is there a risk or prison?

In the Netherlands, civil procedures, including those involving claims and summonses, generally do not involve imprisonment. Imprisonment is not a sanction in civil cases. However, there are certain situations where non-compliance with court orders or failure to fulfil obligations could lead to other legal consequences, such as fines or enforcement measures, but not imprisonment. For criminal matters, different rules and procedures apply.

Practical issues:

(J) Should the claim be translated or not?

No. The claim should be in Dutch. If the defendant wishes to have the document translated, they must arrange for the translation themselves.

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