

Rules of Evidence (Civil Proceedings): Overview (the Netherlands)

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Status: Law stated as at 01-May-2024 | Jurisdiction: The Netherlands

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A Practice Note providing an overview of the rules governing disclosure and the admissibility of evidence in civil proceedings. In particular, it looks at the rules on the disclosure obligations of the parties, admissibility of evidence, witness evidence, the burden and standard of proof, as well as issues that arise in gathering cross-border evidence.

Evidence is fundamental to the outcome of any civil litigation case. Usually, the facts in issue in a case must be proved by evidence, and the court will decide the case on the evidence adduced by the parties.

One of the most challenging aspects for any cross-border practitioner is to adapt to the differences in the rules of evidence taking in various jurisdictions. These differences are evident in how evidence is produced, the issues surrounding relevance and admissibility, the probative value attached by the courts to the various types of evidence and the principles of burden and standard of proof across jurisdictions. Further, these disputes often give rise to situations where one of the parties to the litigation is required to produce evidence located in a jurisdiction foreign to the forum of proceedings. These are important legal issues that a practitioner should be aware of since they largely determine the way litigation is conducted in all the major civil law and common law systems around the world and ultimately influence its result.

This Note provides an overview of the rules of disclosure and evidence in civil proceedings in the Netherlands. In particular, it looks at:

- The rules regarding the disclosure obligations of the parties.
- Admissibility of evidence.
- Witness evidence.
- Expert evidence and the role of experts (court hired independent experts and party hired experts) in civil proceedings.
- The rules regarding the burden of proof and standard of proof in civil proceedings.
- The rules regarding cross-examination.
- Issues that arise in gathering cross-border evidence, including:

- the applicable international treaties, agreements, and regulations governing cross-border evidence;
- how to obtain foreign evidence for use in Dutch civil proceedings; and
- how to obtain evidence located in the Netherlands for use in foreign civil proceedings.

Note that the [Simplification and Modernisation of Rules of Evidence Act](#), entering into force on 1 January 2025, affects the rules of evidence applicable to procedures initiated on or after that date. Some Articles referred to below will be extended, whereas others will be replaced. For example, Article 843a of the [Dutch Code of Civil Procedure](#) (*Wetboek van Burgerlijke Rechtsvordering - DCCP* (in Dutch)) (governing a request for disclosure of evidence) will be replaced by Articles 194, 195, and 195a, and Article 21 of the DCCP will be extended.

Rules of Evidence and Evidence in Domestic Proceedings

The statutory rules of evidence in Dutch law are found in Book 1.2, section 9 of the DCCP.

As well as the statutory rules of evidence, procedural law is, to an increasing extent, regulated by court regulations, such as the rules of procedure of district courts, courts of appeal, and other national regulations, drawn up by consultative bodies of judges from district courts and courts of appeal (*Landelijke rolreglementen*). These regulations also contain rules that relate to the taking of evidence, such as the submission of documentary evidence (exhibits). Also worth mentioning are the guidelines and manuals

drawn up by those bodies, such as the Attachment Syllabus (*Beslagsyllabus*, in Dutch) which includes the attachment of evidence, the [Code of Conduct for Judicial Experts in Civil and Administrative Law Cases](#), and the [Guideline on Experts in Civil Cases](#), (both in Dutch) published by the [Council for the Judiciary](#) (*de Rechtspraak*). These regulations, manuals, and guidance documents do not rely on delegation of legislation but result from the discretionary powers, or rather decision-making and consequent policy space, that the courts have been given to a large extent by the legislator regarding the practicalities of process. Judicial bodies lay down their policies in these regulations.

Obtaining Evidence

Disclosure or Discovery Obligations

The DCCP contains provisions that generally regulate the parties' duties to provide information, specifically Articles 21, 22-22b, 30a, and 30i. The most pivotal disclosure obligation is set out in Article 21.

Article 21 of the DCCP imposes a general obligation on the parties to present the facts relevant to the decision fully and truthfully. It is a general standard that expresses the division of tasks between the court and the parties regarding the scope of the dispute and fact-finding. The parties must, of their own accord, present correct and complete facts. If a party fails to do so, Article 22 (1) of the DCCP empowers the court to order that party to introduce information in its possession in the proceedings, either by explaining its earlier assertions or by producing documents.

Parties in civil proceedings do not have a right to remain silent, as in criminal proceedings. The duty to disclose the truth under Article 21 of the DCCP includes a duty on each of the parties individually to proactively produce all evidence relevant and important to enable the court to decide on the matter, even if the evidence is unfavourable to their own position (see the judgment of the *Supreme Court*, 28 September 2001, *ECLI:NL:HR:2001:ZC3656*).

This duty, however, does not extend to a party being required to proactively disclose any of the weak points in its line of arguments. Article 21 of the DCCP does not prevent parties from selecting what they believe to be relevant facts and interpreting them from their own perspectives. In other words, this duty does not go as far as to oblige parties to uncover the absolute truth.

Article 21 of the DCCP essentially serves to prevent deceitful action by either of the parties.

Role of the Courts in the Evidence-Taking Process

It is at the discretion of the court to order a party to produce information it deems relevant for the case at any stage over the course of the proceedings (Article 22, DCCP). Additionally, there are various procedures available to parties to request disclosure and production of specific evidence.

The DCCP includes several avenues to obtain evidence through proceedings:

- Preliminary witness examination (Article 186, DCCP ff.).
- The preliminary expert report, preliminary (site) inspection, and viewing (Article 202, DCCP ff.).
- Request for disclosure of evidence (Article 843a, DCCP, and its adaptations for competition law in Articles 844-850, DCCP, and for intellectual property rights in Article 1019a, DCCP).
- Attachment of evidence, acknowledged in case law (regulated for intellectual property rights in Article 1019b and 1019c, DCCP based on the European IP Enforcement Directive, [Directive 2004/48/EC](#)).

The evidentiary legal actions set out above may be issued prior, parallel, or ancillary to the proceedings on the merits.

Other Mechanisms to Obtain Disclosure from an Adverse Party and Third Parties

A request for disclosure of evidence (Article 843a, DCCP) is available to the claimant for evidence to which it has a legal connection (for example, through contract or tort). This evidence may be requested both from the opposing party in the litigation or from third parties which have the evidence in their possession. The disclosure claim must be sufficiently plausible and the plaintiff must have legitimate interest, as the court must observe an equilibrium between establishing the truth and unwarranted or excessive disclosure of confidential information (to prevent a fishing expedition). A disclosure claim may be successfully averted by the defendant on the grounds of, for instance, legal privilege or the fact that absence of the evidence is not an impediment to rule on the matter. Eventually, any request for disclosure or production of evidence will be subject to the court's evaluation of the individual interests involved.

Standard of Proof and Burden of Proof in Civil Proceedings

The general provision regarding the standard or burden of proof in civil proceedings is provided in Article 150 of the DCCP, which states:

“The party invoking legal consequences of facts or rights asserted by it shall bear the burden of proving those facts or rights, unless any special rule or the requirements of reasonableness and fairness dictate a different allocation of the burden of proof.”

Article 150 of the DCCP ultimately concerns the risk of proof. The fate of a claim or autonomous defence depends on the fulfilment of the burden of proof and establishment of facts for which the party carries the burden of proof.

The distribution of the evidentiary burden under Dutch law for a claim or autonomous defence can be summarised as follows:

- The claimant (or defendant in the case of an autonomous defence) must substantiate its claims by stating ample facts in support (*stel- en motiveplicht*). Failure to present ample facts (*blote stelling*) enables the opposing party to simply deny the claim or autonomous defence (*blote ontkenning*).
- If the claimant (or defendant in the case of an autonomous defence) has presented ample facts, the opposing party is required to substantiate its defence by presenting facts in support (*gemotiveerd verweer*).
- If the defendant has produced ample facts in support of its defence, the claimant must counter by producing evidence in support of its claim (and defendant in support of its autonomous defence respectively) (*bewijsplicht*).
- Once the claimant (or defendant in its autonomous defence) has produced convincing evidence of its claim (or autonomous defence respectively), only then will the opposing party be required to produce counter evidence (*plicht tot het leveren van tegenbewijs*).

Failure to Give Evidence at Trial: Consequences

Failure to Produce Evidence

If a party fails to produce evidence that it was ordered by the court to produce, it typically will not be granted another opportunity to produce the evidence later (at least not before that particular instance). The court may take action in response as it deems fit, considering the nature and relevance of the omission on evidence production.

Non-Appearance of Witnesses

Courts and claimants have several possibilities to exert pressure on witnesses. A person refusing to testify or even appear in court may be subject to a penalty (opposing party witnesses are exempted from this rule).

Another coercive measure to urge a witness to testify is by requesting the court to have the witness taken into custody (*gijzeling*) in a detention centre (*huis van bewaring*), at the expense of the claimant, until the witness is willing to cooperate and render testimony, for a maximum duration of one year (Article 173, DCCP). The custody measure may be terminated by the court if it is no longer justified by the interest it is supposed to serve (Article 173(3), DCCP). This is obviously one of the most invasive instruments available in civil litigation. Comparable custody instruments can be found with respect to enforcement of writs of execution (Articles 585-600, DCCP). Invasive coercive measures like these are rarely granted (or even invoked). The costs incurred by the witnesses' custody are borne by the party requesting custody (Article 173 (1), DCCP), and custody is likely to have an emotional impact on the witness (and their relatives). A request for custody-taking of a witness is only granted if the court deems the request proportionate and essential for the purposes of truth finding (Article 173(2), DCCP), a criterion that should inspire the greatest possible restraint given the severity of the remedy.

As archaic as this measure may appear, it is imposed every now and then, for instance at the request of a liquidator (curator) against a bankrupt debtor refusing to disclose the whereabouts of their assets.

Admissibility of Evidence

Evidence in civil proceedings may be submitted through all means, unless the law stipulates otherwise (Article 152(1), DCCP). There are limited examples in the DCCP which stipulate how evidence must be submitted. An example can be found in Article 1021 of the DCCP, which provides that an arbitration agreement may only be demonstrated by a written document.

Even though evidence may be submitted through all means, challenges may be made to the admissibility of a piece of evidence if, for instance:

- It is submitted untimely (essentially preventing the opposing party from rendering effective counter evidence or a defence).
- It is illegally obtained.
- A challenge to admissibility of evidence in civil proceedings is unlikely to succeed. The Supreme Court has ruled that even if evidence is obtained illegally, that, in and of itself, does not necessarily mean that

the evidence must be disregarded by the court (see *Supreme Court, 18 April 2014, ECLI:EN:HR:2014:942* (in Dutch)). Therefore, it is at the discretion of the court to determine what value it attributes to any certain piece of evidence (Article 152(2), DCCP).

Fair Hearing

Article 19(1) of the DCCP essentially provides a fair-hearing principle, requiring that in adversarial proceedings, both parties must be heard on their arguments and counter arguments. Evidence detrimental to a party's position may only be included in a court ruling if the party was granted ample opportunity to comment on that particular evidence.

Illegally Obtained Evidence

In civil cases whether illegally obtained evidence should be declared inadmissible heavily depends on how the evidence was obtained. The fact that certain evidence was obtained illegally does not preclude it from being considered (let alone declared inadmissible). Evidence having been obtained illegally only opens the way to inadmissibility, and requires "additional (aggravating) circumstances" (see *Supreme Court, 11 July 2014, ECLI:NL:HR:2014:1632* (in Dutch)). In any event, exclusion or inadmissibility of evidence will remain at the discretion of the court.

When to Apply

Evidence must be submitted by subpoena, statement, or motion, and in any event ten days prior to the court hearing (Article 87(6), DCCP).

The opposing party typically challenges inadmissibility of certain pieces of evidence by immediate (written) notification to the court. If this occurs shortly before the hearing, this will typically trigger a debate headed by the court, which will then and there decide on admissibility. If the evidence at hand is extensive, yet deemed essential by the court, the court usually allows for the submission of a reply on the evidence (and related statements it serves to support).

The opposing party has until final judgment to raise inadmissibility of certain evidence (see for example, Article 85(4), DCCP).

Exclusionary Rules of Evidence

Certain (potential) witnesses are covered by privilege and therefore exempted from their statutory obligation to testify, namely:

- The spouse, former spouse, registered partner, or former registered partner of a party, relatives by

blood or by marriage of a party, or of the spouse, or registered partner of a party, included up to the second degree, unless the party is representing themselves.

- Those who are sworn to secrecy by virtue of their profession, office, or employment in respect of anything entrusted to them in that capacity.

(Article 165, DCCP.)

Therefore, certain family members as well as professionals (such as, lawyers, notaries, or doctors) are excluded from the statutory obligation to testify.

For those sworn to secrecy because of their profession, this exemption also applies to:

- The exercise of the right to privilege in the event of a request for the disclosure of documents (such as pursuant to Article 843a(3), DCCP).
- Other claims made to persons entitled to privilege for the disclosure of or inspection of documents.

The right to privilege relates to documents that are available to these persons, or in their custody solely by virtue of their office, profession, or employment. In the event of a dispute, it will be at the privilege holders' discretion, in principle, to decide whether certain information or documents meet the criteria for protection under the privilege.

Discretion of Court to Exclude Evidence

In general, it is at the court's discretion to exclude evidence on the ground of due process.

In addition to these (discretionary) powers of the court, the court may also disregard documents due to lack of relevance without having to formally exclude them. Aside from certain exceptions (such as a notarial deed), documentary evidence has discretionary probative force (*vrije bewijskracht*).

Witness Evidence: Oral and Written

Only oral testimony rendered by the relevant witness, before the court, and under oath can be considered witness evidence in a statutory sense. Witness evidence in the legal sense is limited to the oral statements rendered before a judge under oath.

Witnesses may also render a statement under oath out-of-court. For example, before a notary public. This statement is typically recorded by the notary public in an official record. Dutch law stipulates that an oath may be taken before a notary and requires the notary to draw up a record of the oath if it is not already part of their notarial deed. By so doing, the witness goes "on

the record,” thereby giving binding evidence in their own words. This type of evidence recording may be relevant to collect evidence from, for instance, a terminally ill patient. The probative value merely relates to evidencing the fact that a certain witness has issued a certain statement. Obviously, recording a witness statement in a notarial deed does not give any information (or have any influence) on the relevance or significance of that statement.

The DCCP recognises the right to take or gather evidence for the examination of witnesses (Article 166, DCCP), and for the preliminary examination of witnesses (Article 186, DCCP). Requests to that effect are typically granted.

Requirements for the Content of Written Evidence (Witness Statement or Affidavit)

Only oral statements made by a witness before a court under oath are considered “witness evidence” in the statutory sense (see Witness Evidence: Oral and Written). However, written, informal (third-party) statements about what they have observed, or experienced “as a witness” may be submitted by subpoena, statement, or motion as an exhibit. This statement has discretionary probative force.

Oral Evidence in Support of Written Evidence

Although written third-party statements are not formally considered “witness evidence,” in practice, they are not treated differently. Written statements tend to be no more or less relevant than oral witness testimony.

Oral evidence or written evidence is not a requirement under Dutch law. Although the court is permitted to require additional oral evidence, this rarely occurs.

In practice, party (expert) witnesses having given (informal) written or oral evidence are often brought along to the court hearing by the party to whom they are connected. As court hearings in the Netherlands tend to be conducted in a rather informal setting, there is typically no restriction on inviting company to the court hearing, regardless of an invitation or instruction from the court. In fact, courts tend to be flexible and permit uninvited party (expert) witnesses to give oral explanations or statements.

Timing for Filing Written Witness Evidence

In litigation, parties are entitled to submit written evidence at their discretion with little restriction.

Besides respecting principles of due process, parties must present any written evidence without delay, and at least ten days prior to the court hearing (Article 87(6), DCCP).

Evidentiary Value of Witness Evidence

The evaluation of evidence is at the court’s discretion, unless stipulated otherwise (Article 152(2), DCCP). Most notable exceptions include certain types of documents rendering imperative probative value (*dwingende bewijskracht*, such as a notarial deed).

In some cases, the content of an item of evidence is attributed imperative probative value by nature, meaning that the judge is required to accept the **nature or content** of that item of evidence as conclusive (Article 151(1), DCCP), or accord it the evidential value attributed to this information by law. “Evidential value the law attributes to certain information” in this context entails a statutory presumption. Article 157 of the DCCP, for example, attributes imperative probative value to certain parts of a notarial deed. However, imperative probative value in this sense does not preclude the opposing party from submitting counter-evidence (Article 151(2), DCCP).

To the contrary, the law may even prevent the court from attributing imperative probative value to certain evidence. Party (witness) statements regarding facts for which they carry the burden of evidence cannot constitute evidence in favour of that party (Article 179(4), DCCP). A party disputing the signature on a private contract cannot be said to have provided any evidence regarding their claims if they are unable to provide evidence to establish whose signature it is (a next step in this particular example will probably be an authenticity check on the signature(s)) (Article 159(2), DCCP). The content of the statement of a party witness has limited probative value (*bepaalde bewijskracht*) insofar as it relates to the facts to be proven by that party (Article 164(2), DCCP).

Cross-Examination and Re-Examination

In principle, a supervisory judge of the court will conduct witness examination. The court’s examination will be followed by examination and cross-examination by the parties (their counsel). Meanwhile, the witness statement (including a cross-examination Q&A) is recorded in writing, in a transcript, which is more of a summary than a verbatim transcript. This summary reads as a statement (and not as a Q&A). Following cross-examination, the summarised witness statement is read to the witness, enabling them to revise their statement. If the witness agrees with the contents of the record, they will be requested by the judge to sign the statement, after which the witness examination ends.

Witness Unwilling or Unable to Provide Evidence or Attend Court

Courts have instruments available to coerce attendance from witnesses at their (cross) examination (see Failure to Give Evidence at Trial: Consequences).

Witness Immunity

Witnesses are not immune from being sued for anything they say or do in their capacity as a witness. However, witnesses may refrain from answering certain questions to avoid this situation (Article 165(3), DCCP). More specifically, a witness may refrain from answering a question put to them if they would expose themselves or any of their relatives by blood or marriage (direct, or second or third degree), or their spouse or former spouse, or their registered partner or former registered partner, respectively, to the risk of criminal conviction for a criminal offence.

Expenses

The witness is entitled to compensation for their attendance. This compensation usually consists of travel and residential expenses and loss of income, and must be paid to the witness by the litigating party that had them heard as a witness (Article 182, DCCP).

Expert Witnesses

Court-Appointed Experts

The appointment of an expert (witness) is provided for in Article 194, DCCP. The court may order an expert (witness) appointment at its discretion or at the (joint) request of (either of) the parties. Parties often have already sought expert opinions themselves and submitted the relevant reports. Contradicting party expert reports may trigger the court to appoint an independent expert.

It is consistent case law that the court may deny a request for an expert appointment or site-inspection (*descente*).

Party-Hired Experts

A party-hired expert can be engaged by either party prior to or during the proceedings and submit the expert's report as written evidence. The court may instruct the party-hired expert to render (additional) testimony on its examination (Article 200(1), DCCP). The opposing party may also issue a request for party-hired experts to render (additional) testimony.

Fees of Expert Witnesses

The costs of a party-hired expert are initially borne by the party that hired the expert. Who ultimately must bear the costs will depend on the award of costs.

To cover the costs of a court-appointed expert report or the examination of a (court-appointed) expert, it is at the discretion of the court to decide whether the claimant, the respondent, or both must deposit an advance. The party ultimately bearing the expert costs is ruled upon in the award.

Role of Party-Appointed and Court-Appointed Experts

Experts are (particularly) relevant if the assessment of certain facts or circumstances requires specific expert knowledge that the court does not have. Although the court will not likely disregard the court-appointed expert's opinion, in principle it is not bound by it. As for party-hired experts, it is at the court's discretion to assess the relevance and value of their evidence.

Presentation of Expert Evidence

Expert evidence from a court-appointed expert must be substantiated. In addition, each of the parties should have been able to respond to and comment on the expert (draft) report prior to its submission to the court.

Following the submission of the report by the expert to the court, the parties are granted the opportunity to submit an (inquiry) statement sharing their comments or objections on the report with the court. An expert can be summoned by the court to provide an explanation on certain aspects of their report. This explanation may be verbal or in writing.

Documentary Evidence: Certification of Documents

The DCCP makes a distinction between authentic documents and private documents. An authentic document is drafted by authorised persons and presented in a requisite form. A private document is a signed document that is drafted between parties. Authentic documents and private documents differ in their evidentiary force (*bewijskracht*):

- An authentic document has absolute imperative probative value.
- A private document (such as an agreement) only enjoys relative evidentiary force among the parties.

If a claim is based on one or more documents, the disclosure and submission of the documents is required (Article 85, DCCP). If the authenticity of the relevant document(s) (such as the signature) is disputed, the party invoking the relevant document carries the burden of evidence to demonstrate its authenticity.

Legal Framework Governing Cross-Border Evidence

The Netherlands is party to:

- Council Regulation (EC) No 1783/2020 of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ([Taking of Evidence Regulation](#)).
- The Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ([Hague Evidence Convention](#)).
- The [Hague Civil Procedure Convention of 1954](#).

The Hague Evidence Convention

Central Authority

For contact details of the designated Central Authority and additional authorities, see [Authorities, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters](#).

Reservations, Declarations, and Notifications

See [Status table, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters](#), for a complete list of reservations, declarations, and notifications made by the Netherlands in relation to:

- The language of the letter of request (Article 4, Hague Evidence Convention).
- The execution of the letter of request in the presence of judicial personnel (Article 8, Hague Evidence Convention).
- Evidence by diplomatic officers, consular agents, and commissioners (Articles 15-17, Hague Evidence Convention).
- Pre-trial discovery (Article 23, Hague Evidence Convention).

Request from Foreign Litigants

Although a general time frame cannot be provided, the court must promptly execute a letter of request.

To be present at the execution of the letters of request, a judicial officer needs to have authorisation which is given by the Central Authority. The authorisation must be granted for every single case.

In the [Hague Evidence Convention's Implementation Act, 2017 \(Implementation Act\)](#) little is regulated regarding the procedure for evidence taken through diplomatic or consular agents or commissioners. The Implementation Act (at Articles 22.(1) and 22.(2)) only provides that authority to grant leave to take evidence is given to the court in preliminary relief proceedings, which may attach to the leave these conditions as it considers useful or necessary for due process of law. The preliminary relief judge may also decide that the examination or hearing will take place in the court under the supervision of a judge appointed by them.

There are no specific rules relating to taking depositions by videos. Therefore, the general procedures which apply to depositions must be followed.

Domestic Requests

See [Obtaining Evidence from Another Jurisdiction](#).

The Taking of Evidence Regulation

Competent Bodies, Courts, and Authorities

For a complete list of Central bodies, requested court(s), and competent authority(ies) under the Taking of Evidence Regulation, see [Germany, Spain, France, Italy, and UK \(England and Wales\)](#).

Request from Foreign Litigants

Article 10 states that the requested court "shall execute the request without delay and, at the latest, within 90 days of receipt of the request." In practice, this time frame is typically complied with.

The requested court may, at the request of a party, grant permission to be present at, or to participate in, the execution of the taking of evidence (Article 8, Implementation Act).

The requested court may appoint representatives of the requesting court to be present at, or to participate in, the performance of the taking of evidence (Article 12, Implementation Act).

Under Dutch law, the Central Body (the district court of The Hague) is competent to impose the (pre)conditions under which evidence can be taken directly (see Article 19 of the Taking of Evidence Regulation). The Central Body must consider what is necessary in the light of due process (Article 8.(2), [Implementation Act EU Evidence Regulation](#)).

In principle, the requested court is responsible for the cost of the execution of the request. However, the requested court may demand reimbursement of the fee paid to the experts and interpreters, or the costs

of the use of a special procedure or communications technology (Article 10, Implementation Act).

The rules for taking depositions by videos.

There are no specific rules relating to the taking of depositions by videos. Therefore, the general procedures which apply to depositions must be followed.

Domestic Requests

See Obtaining Evidence from Another Jurisdiction.

Obtaining Evidence from Another Jurisdiction

General Requirements

Article 176 of the DCCP regulates the possibility to obtain evidence abroad for use in Dutch proceedings. The court must first consider if a convention or regulation is applicable (see Legal Framework Governing Cross-Border Evidence). If any international convention or regulation is applicable, then the procedures of that specific regulation or convention to obtain evidence must be followed.

In other cases, based on Article 176, the court may request an authority (designated by the requesting court) of the jurisdiction where the witness is domiciled, to obtain evidence. The court should request that the hearing should take place under oath, if possible.

The Dutch court may also appoint a Dutch consular officer abroad, instead of a foreign authority, to obtain evidence (Article 176, DCCP).

Form or Application Along with the Documents

A party may submit a request to obtain evidence abroad (Article 176 (1), DCCP). A request is typically made by registered letter, mail, or subpoena.

Notice Requirements

The court must ensure that the opposing party is informed about the place, day, and time at which the evidence will be obtained (Article 176 (2), DCCP). The requesting party has a duty to share this information with the opposing party by bailiff's notification. If the requesting party fails to fulfill this duty, the opposing party can challenge the evidence.

Grounds

The applicant must explain why the evidence needs to be obtained and how it would support their claim.

Costs and Expenses

There are no specific rules regarding costs and expenses in the case of obtaining evidence abroad under Article 176, DCCP. Therefore, the general rules regarding costs and expenses with respect to obtaining evidence will apply. This means that the party which requested to obtain evidence, must pay the expenses in advance. Eventually, the award will rule on which party must carry the costs.

Application and Procedure Irrespective of the Applicable International Instruments

If there is an applicable convention, the rules (regarding obtaining of evidence from another jurisdiction) will apply. Otherwise, see General Requirements.

The procedures to be followed will vary in each dispute depending on which international convention applies.

Admissibility of Overseas Evidence

Regulations applicable to the admissibility of evidence in the Netherlands equally apply to evidence obtained outside the Dutch jurisdiction. For instance, under Dutch law a witness may testify on their own observations exclusively, regardless of where in the world the statement has been given or recorded. At the same time, any type of evidence (witness statement or otherwise), regardless of where in the world it was generated, recorded, or obtained should, in principle, be admissible for the purposes of submission in support of claims or defences in civil proceedings.

Willing Witness (Unable to Travel)

In general, any witness can provide a written witness statement, which can be submitted to the court as an exhibit. In addition, witnesses unable to physically attend trial may be allowed to participate in the trial and be examined by telephone or videocall.

Video-Link, Teleconference, or Depositions

At the discretion of the court, parties, their counsel, and (expert) witnesses may all attend and be heard through video conference or teleconference.

Dutch law is not familiar with the concept of depositions, although they are conducted on Dutch soil for the purposes of civil proceedings abroad.

Obtaining Evidence in Support of Foreign Litigation

National Rules

In the event that a foreign litigant wishes to obtain evidence in the Netherlands through hearing witnesses, it must submit a request to a competent court (Article 176, DCCP).

Direct Application

A foreign litigant can obtain evidence from a witness directly. This witness will be heard by the local court and the evidence obtained.

Procedure to Enforce Request for Witness Evidence

If a foreign litigant wishes to obtain evidence in the Netherlands, they must submit a request to a

competent court in the Netherlands, which will only be obliged to accept the request if there is an applicable international convention. This may be different, if the foreign litigant can demonstrate that the evidence they wish to take may serve to initiate court proceedings in the Netherlands (for example, in the case of obtaining a witness statement from a Dutch resident).

In the case of a request to hear a witness, the court considers matters of burden and practicality, such as logistics and alternatives for hearing the witness abroad when determining whether to execute the request.

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