Netherlands

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I. Introduction - main features of the national summary procedures for recovery of monetary claims (general overview)

1. The rules of civil procedure in the Netherlands are mainly to be found in the *Wetboek van Burgerlijke Rechtsvordering* (Code of Civil Procedure (henceforth: CCP) and apart from that in some specific statutes. The latter are almost all the result of EU directives, which have not been integrated fully in the code just mentioned, mainly because their range of applicability is limited to cross-border litigation.

2. There is no distinction between civil and commercial cases. All civil cases are decided in first instance by District Courts (henceforth also: Rb), of which the competence is ultimately determined on the basis of geographical criteria (Art. 99-109 CCP).[1] In general, for civil cases one of two procedures has to be followed.[2] The first one is the procedure introduced with a writ of summons, served by a bailiff on the defending party. This procedure is the default procedure (Art. 78 CCP). The second one is the procedure introduced with a petition, filed at the registry of the competent court. This procedure only applies when this is stipulated by a specific provision (Art. 261 CCP). It should be remarked, that procedural law does not leave any choice to the parties. The procedural regime is not optional, but mandatory and has to be enforced by the court. When the wrong procedure has been chosen, the court must remit the case to the other procedure (Art. 69 CCP). Debt collection that is not covered by supranational legislation must follow the default procedure.[3]

[1] Jurisdiction agreements are allowed to a limited extent (Art. 108 CCP), but not in most cases allocated to the single judge track (see infra nr. 3).
[2] There are some very specific exceptions, related to the enforcement of titles of execution (Art. 438 (4) and 486 CCP) and bankruptcy (Art. 122 Dutch Bankruptcy Act), but these exceptions are not relevant for this report.
[3] Maintenance claims are supposed to fall outside the scope of this report. They follow in all aspects their own rules, which all have the objective to guarantee the proper assessment and payment of the right amounts in procedures that are simple, cheap, fast and efficient,but nevertheless fair.

3. Within the default procedure, some claims are allocated to a single judge track (*kantonrechter* [cantonal judge]).[4] These claims are specified in Art. 93 CCP as follows:

- money claims up to € 25.000 including interests and costs due before the day the writ of summons has been served;
- claims of which the value is clearly not higher than € 25.000;
- all claims related to rent contracts, (collective) labour contracts, consumer purchase agreements, agency contracts, some retirement agreements and consumer agreements, regardless of the amount claimed.[5]

Procedural rules for the single judge track are the same as the rules for the normal track, except that:

- the writ of summons should contain some extra warnings for the defendant (Art. 111 CCP);
- the defendant does not have to pay court fees (Art. 4(1)(b) *Wet griffierechten burgerlijke zaken* [Civil Court Fee Act];
- legal representation by a lawyer admitted to the bar (*advocaat* [solicitor/barrister]) is not mandatory (Art. 79 CCP);
- the statement of defence and later pleadings do not have to be submitted in writing (Art. 82 (2) CCP), while written pleadings will be sent to the parties by the registry (Art. 84 (2) CCP);
- minutes of the hearing of witnesses in court are not mandatory in cases in which appeal is excluded (Art. 181 CCP);
- costs orders may extend to travelling costs of the winning party and income he missed because he was present at the court hearings (art. 238 CCP);
- appeal is excluded when the claim that had to be decided (together with a possible counterclaim) does not exceed € 1.750, including interests and costs due before the day the writ of summons has been served (Art. 332(1) and (3) CCP);
- cassation is limited to some very specific grounds (Art. 80 *Wet op de rechterlijke organisatie* (Act on the Organisation of the Judiciary), not including the merits of the decision, except when Art. 6 of the ECHR has been violated.[6]

4. Civil proceedings in the default procedure start with a writ of summons, served an the defendant by a bailiff. The writ has to be submitted to the registry by (or on behalf of) the claimant (Art. 125 CCP). The case is struck out in an early stage if the claimant does not pay the court fee (Art. 127a CCP). If the defendant does not appear, he is sentenced by default on the facts as stated by claimant (Art. 139 CCP). If the defendant appears he is only allowed to file a statement of defence after paying the court fee (Art. 128 CCP), unless no court fee is due.[7] When the court fee is not paid in time, the defendant is sentenced by default on the facts as stated by the claimant (Art. 128 CCP). Exchange of pleadings takes place in a cause-list sitting. In almost all cases, the statement of defence is followed by a post-defence hearing. An interim judgment sets a date for this post-defence hearing. During this hearing, which on average takes about forty-five minutes, parties are usually given some time to present their opinions, information is gathered and attempts are made to reach a settlement. After the hearing, the court is supposed to give a judgment. Several options are open, such as ordering a witness hearing (*enquête* or *getuigenverhoor*) or a site inspection (*descente* or *plaatsopneming*), but more often than not a final judgment can be given. Accordingly, at the end of the hearing a date is set for the pronouncement of this judgment.

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[4] As of 1 January 2013, some changes are foreseen. The text is based on the new rules as specified by the *Wet op de gerechtelijke kaart* (Act on the Judicial Map) of 12 Juli 2012 (Dutch Bulletin of Acts Orders and Decrees 2012, 313). Niceties, like those allowing the cantonal judge to remit the case to a chamber of three judges, are left out.

[5] As of 1 January 2013, only the latter category will be limited to € 40.000.

[6] Hoge Raad (*Supreme Court*, henceforth also: HR) 16 March 2007, NJ 2007, 637.

[7] See supra nr. 3.

5. There are no special procedures for debt collection and there is no fast track for cases in which no defence is expected (in fact, there is no fast track at all). These procedures are not missed either, since most debt collection cases fall under the provisions of the single judge track, which produces default judgments within two weeks after the date for appearance mentioned in the writ of summons. However, especially in regular track cases, debt collection may profit from the possibility to obtain an interim order from a summary proceedings judge (Art. 254 CCP). These summary proceedings are definitely faster than the regular procedure, since there are no written pleadings, the writ of summons is immediately followed by a court hearing that has been schedules in advance and judgment follows within two weeks, also when a defence has been filed (against 6-12 months when the regular procedure is followed). To obtain an interim order for a money claim, on the whole three requirements have to be met[8]:

- the claim must be uncontested or only be contested by defences that are clearly ill-founded;
- the claimant must show to be in real need of the money (imminent problems of liquidity);
- the restitution risk (i.e. the risk that the claimant will not be able to pay the money back in case the final judgment proves that he is wrong) must be limited.

6. Electronic litigation is not possible yet, although some preparatory work has already been done. The basis for (partial) electronic litigation has been laid down in the Code of Civil Procedure (Artt. 33, 46, 475) , but the ICT-projects to implement this are still on the way. Implementation is foreseen for 2013/2014, but this might be a bit optimistic. As of 1 July 2012, the Code of Civil Procedure provides for the electronic submission of the writ of summons (Art. 125 (3) CCP), but subsequent regulation has not been finalized yet.[9] However, submitting of pleadings by fax is allowed, if the fax is followed by the signed paper version of the document. The enforcement of garnishment orders can be done electronically (art. 475 CCP) since 2009, but the third party has to supply an electronic address for this purpose. To supply this address, new software has to be implemented, which appears to be rather costly. Despite the possible profits of electronic service of garnishment orders, until now only two organisations (a bank and a township) submitted an electronic address. Therefore electronic enforcement of these orders is virtually inexistent.[10]

7. All judgments (like all other titles of execution) containing orders against one of the parties are enforceable by all means provided by the law as of right. No leave or court permission is needed; the choice of the method of enforcement is entirely left to the creditor. However, enforcement measures can only be taken by bailiffs, who will have to check whether the means of enforcement chosen are in accordance with the law and reasonable in the given circumstances.

8. Enforcement is stayed in case the debtor filed an ordinary remedy (opposition, appeal, cassation) against the judgment. This can be prevented when the judgment has been declared provisionally enforceable by the court. The order of provisional enforceability is left to the discretion of the courts[11], but in practice an application for such an order (usually combined with the claim itself in the writ of summons) is always granted, even when contested. Enforcement of a provisionally enforceable judgment is at the risk of the creditor. If later the judgment is quashed, the creditor will be liable for all the damages caused for the enforcement according to tort law.

9. There are no special procedures for creditors to obtain information about their debtor's assets apart from that which is foreseen in case of enforcement of a title of execution. It is just a matter of fact finding,

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[8] HR 22 January 1982, NJ 1982, 505; HR 19 February 1993, NJ 1995, 704; HR 14 April 2000, NJ 2000, 489.
[9] The Decree on the Elctronic Submission of a Writ of Summons (Dutch Bulletin of Acts Orders and Decrees 2012, 291) has been enacted, but the courts did not install the necessary IT facilities yet.
[10] This information was obtained by telephone from the *Koninklijke Vereniging voor Gerechtsdeurwaarders* (*Royal Bailiff Association).*
[11] Art. 223 and 234 CCP.

for which specialized agencies offer their services. Once enforcement is possible, the debtor has a general obligation to specify his sources of income to the creditor's bailiff (Art. 475g(1) CCP). Earlier case law already extended this obligation to the assets of the debtor that are liable for recovery of the creditor's claim.[12]From this case law it also became clear that this obligation is limited in character in the sense that the debtor does not have to submit his complete administration. Later court decisions have been in line with these starting points as set out by the Dutch Supreme Court.[13] When the bailiff has good reasons to assume that the debtor is entitled to periodic payments from a third party, this third party is obliged to answer the bailiff's questions regarding these payments (Art. 475g (3) CCP). The bailiff can also lodge requests with administrative authorities to obtain information about the debtor and the third party (Art. 475g (4) and (5) CCP). However, these obligations to give information are not reinforced by specific sanctions.

10. In case of (third party) garnishment, the Code of Civil Procedure provides for a specific procedure (Art. 476a, 476b, 477 and 477a CCP). To start with, the garnishee is required to fill out a form stating the assets and claims that he is due to the debtor. This has to be done four weeks after the attachment. If the garnishee does not comply with this obligation, he will be ordered by the court to pay the amount due by the debtor to the creditor. What is in the statement has to be handed over or paid to the creditor's bailiff up to the amount for which the attachment took place. If the creditor has reasons to believe that the garnishee's declaration of assets and claims is false, the creditor has the possibility to contest the garnishee's declaration in a special procedure, in which the truthfulness of this declaration is at stake. The garnishee can be ordered to issue a new declaration and to pay the right sums viz. hand over the right assets to the bailiff.

II. National order for payment procedure

11. There are no special procedures exclusively for the recovery of money claims. There has been one until 1991 (*betalingsbevelprocedure* [order for payment procedure]) , but that procedure has been repealed when the new Civil Code entered into force. The recovery of money claims follows the rules for all other claims, although these claims in most cases have to be brought before the cantonal judge (see supra nr. 3). The existing summary procedure for interim orders before the summary proceedings judge is also used for debt collection (see supra nr. 5). This procedure is much faster than the standard procedure, since a date for an oral hearing within two or three weeks will be fixed before the writs of summons is served. The judgment will be given within two weeks. The drawbacks are that a) legal representation is in most cases mandatory for the plaintiff, b) the order for payment will only be issued in case of a pressing need for liquid assets of the plaintiff; c) the order will be denied in case of any non-frivolous defence.

12. Since debt collection follow the general rules, there are no special facilities at all. The general procedure is available in all cases in which the Dutch courts are competent, which is mainly governed by Council Regulation (EC) No 44/2011. The procedure starts with a writ of summons, that has to state all facts that support the claim, the defences that are already known and the means of evidence available to the claimant, like witnesses (Art. 111 CCP). From recent case law it can be derived, that documentary evidence has to be filed immediately.[14] All first instance cases belong to the competence of the District Court only. Legal representation is mandatory when the (value of the) claim is over € 25.000 or € 40.000 in case of consumer credit agreements.

[12] HR 20 September 1991, NJ 1992, 552.
[13] A.W. Jongbloed, Hoever reikt de schuldenaarsverplichting inkomensbronnen op te geven? [To what extent the debtor is under an obligation to specify his sources of income?], TvPP 2011, p. 106 at p. 115.
[14] HR 9 March 2012, LJN BU9204.

13. When the claim goes uncontested, the judgment will be based on the facts stated by the claimant, even if the necessary proof (documents) is not submitted (Art. 139 CCP). When facts and claim do not correspond, the claim is adjusted accordingly, but only in downward direction.[15] If the facts stated do not justify the claim at all, the claim is rejected. In that case, the claimant has the right to appeal subject to the general rules for appeal (see supra nr. 3). Enforcement of the judgment is only possible when it has been served on the defendant (Art. 430 (3) CCP) and when the defendant has been summoned by writ to comply with the judgment (Art. 439 (2) CCP). All judgments are enforceable as of right, without leave or permission of the court (see supra nr. 7).

14. When the claim is awarded in a default judgment (which will be the case in many debt collection cases), opposition is open to the defendant. This procedure is started by a writ of opposition and belongs to the competence of the same court that issued the judgment (Art. 141 and 147 CCP). The opposition in fact reopens the original procedure, which also means that the writ of opposition is the statement of defence of the ordinary procedure (see supra nr. 4). The normal rules apply.

15. Art. 237 CCP obliges the courts to issue a costs order in the judgment against the losing party. Costs orders cannot be issued separately.[16] When part of the claim has been rejected, the costs can be divided over the parties in the way the court deems fit. Costs can only include court fees, bailiff costs, the costs of legal representation, the costs of court appointed experts and the costs of court awarded compensation of witnesses (Art. 239 CCP). Except for lawyer's costs, all costs are awarded for the full amount. Lawyer's costs are calculated according to a fixed rate, that is based on the interest at stake and the work that has been done.[17] This tariff has been determined by a commission of court judges and lawyers admitted to the bar, but in practice it does not cover the real costs of the winning party. Courts are allowed to award the full costs,[18] but they are extremely hesitant to do so. Pre-trial costs of debt collection are treated as damages resulting from default or tort. When these costs were necessary and reasonable, the full amount will be awarded. In practice, quite often the amount is reduced to a fixed amount dependent on the claim that has been awarded. For the lower claims, these pre-trial costs are fixed at an amount of approximately 10-15 % of the awarded claim.[19]

16. Compared to the EU order for payment procedure, the Dutch system is in fact quite efficient, since it does not involve a double procedure. Moreover, the fact that the normal rules apply, makes debt collection part of business-as-usual. Obviously, the drawback of the Dutch system is the writ of summons, that has to be served by a bailiff. The expenses for the service of a writ are now around € 80 [20] and in the case of debt collection it is quite uncertain if these expenses can be recovered. Just sending a statement of claim to the defendant and the court by ordinary letter (as is done when a petition has to be filed) would be much easier.

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[15] *Nec ultra petitum* is a principle of Dutch civil procedure, but not explicitly stated in the Code of Civil Procecure.
[16] However, omissions can be repaired at the request of the interested party (Art. 32 CCP).
[17] *Liquidatietarief* [Tariff for Court Costs], which can be found on the website of the Dutch courts (<www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-civiel-recht/Pages/Liquidatietarief-rechtbanken-en-gerechtshoven.aspx>, visited 12 December 2012).
[18] HR 3 April 1998, NJ 1998, 571.
[19] The tariff is publisehd at the website of the Duitch courts (<www..rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-kantonrecht/Pages/Staffel-incasso-kosten-en-salarissen-in-rolzaken-sector-kanton.aspx>, visited 12 December 2012).
[20] Art. 2 *Besluit tarieven ambtshandelingen gerechtsdeurwaarders* [Decree on the Tariffs for Official Acts of Court Bailiffs].

III. Implementation of Order for Payment Procedure Regulation (1896/2006) in the Netherlands

17. The Order for Payment Procedure Regulation (1896/2006) has been implemented by means of a separate statute, the *Uitvoeringswet verordening Europese betalingsbevelprocedure* ([Implementation Act of the European Order for Payment Procedure Regulation], henceforth: OPA). The statute entered into force on 6 June 2009.[21] It has been modified in 2010 to comply with the new Dutch Court Fee Act.[22] Its scope is identical with the scope of the Regulation 1896/2006.

18. Art. 2 OPA designates the ordinary court (District Court) as the competent court and makes the same distinction as regards cases allocated to the single judge track (see supra nr. 3). The relative competence of the District Courts is not affected, but currently a new bill is under review that will concentrate all OPA cases at the District Court of Den Haag.[23] This is a confirmation of the existing practice to let the District Court in 's-Gravenhage examine all OPA cases as an ancillary court of all other Dutch courts.[24]

19. Applications under the OPA can only be submitted in written form. The OPA refers to the Regulation, which means that the form prescribed by the Regulation has to be used. The case is pending from the day of submission at the court registry.[25] There are no provisions concerning the language to be used,[26] which means that the application has to be written in Dutch[27] or Frisian.[28] Since the defendant may not speak these languages, when a decision of other documents has to be notified, translation may be required.[29] The OPA does not specify the number of copies, which means that the general rules of the petition procedure apply (Art. 12 OPA), which require not more than one copy (Art. 278 CCP). Deliberate incorrect statements in the form would amount to forgery as meant in Art. 7(3) of Regulation 1896/2006 is a criminal offence foreseen in Art. 225 of the Dutch Criminal Code and can be punished with six years of imprisonment or a fine up to € 78.000 (€ 780.000 for legal persons).

20. The order for payment application is examined by the court. This means in practice that the check is done by a court clerk without legal schooling under the responsibility of a judge. The judge will only be asked to take a decision himself if the court clerk has the feeling that there is something out of the ordinary in a given application.[30] Obviously, the order for payment is issued by the court and in name of the court and duly signed by the responsible judge. As every title of execution, the order for payment has to be served on the defendant by a bailiff (see supra nr. 13). The rules for service of documents (Art. 45 ff CCP) allow for many possibilities, varying from service on the defendant in person, service on a

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[21] Dutch Bulletin of Acts Orders and Decrees 2009, 232.
[22] Dutch Bulletin of Acts Orders and Decrees 2010, 715.
[23] Kamerstukken [*Parliamentary Proceedings*] II 2010-2011, 32834, no. 2. The new indication for this District Court has been used here, which will change its name on 1 Januari 2013 from ' 's-Gravenhage' to 'Den Haag'.
[24] Based on the *Aanwijzingsbesluit 's-Gravenhage als nevenzittingsplaats Europees betalingsbevel* [Decree Designating the District Court of 's-Gravenhage as Ancillary Court for European Order of Payment Procedures] of 8 December 2008, *Stcrt.* [Government Gazette] 11 december 2008, 241.
[25] Rb 's-Hertogenbosch 16 May 2012, LJN BW5305.
[26] This was criticized by M. Freudenthal, Uitvoering van de Verordening Europese betalingsbevelprocedure, Hoe Europees is Nederland [Implementation of the Order for Payment Regulation, How European are the Netherlands], NJB 2008 p. 1858 at 1860, who urged to acccept English as language, but this did not help.
[27] *Parliamentary Proceedings I* 2007-2008, 31513, C, p. 2.
[28] Art. 7 Wet gebruik Friese taal in het rechtsverkeer (*Act on the Use of Frisian in Court Matters*).
[29] As was ordered in Rb Almelo 28 February 2010, LJN BL9357, after the submission of a statement of opposition.
[30] The way the cantonal judges work and are supported by their staff is described in detail in R. Bloemink et al., 'Immediate Judgments in Civil Proceedings - An Experiment', in R. van Rhee & A. Uzelac (eds.), Truth and Efficiency in Civil Litigation: Fundamental Aspects of Fact-Finding and Evidence-taking in a Comparative Context (Intersentia 2012) p. 391-400.

housemate, service on his address and 'public service' by means of an announcement in the newspaper in case no place of residence could be established. In every instance, service can only be executed by a court bailiff. As alternative to service by a bailiff, Art. 5 (a) OPA stipulates that the order for payment can be notified by registered letter with acknowledgement of receipt. Since this is cheaper than service of the decision, the courts seem to opt for this possibility.[31]

21. The OPA does not contain special rules for the statement of opposition. By referring to Art. 17 of Regulation 1896/2006 in Art. 6 (1) OPA, the Dutch law expresses that the paper version of the form foreseen in the Regulation should be used. When the form has been lodged, Art. 69 CCP applies (see supra nr. 2) and the case is remitted by the court to the default procedure, allocating it if necessary to the single judge track (depending on the amount claimed). Nothing is foreseen regarding the status of the order for payment after the statement of opposition. However, from Art. 5 (2) OPA it can be derived that the statement of opposition will always be followed by an ordinary court judgment, which means that the order for payment has to be considered as non-existent.

22. It cannot be said that the court will decide on the statement of opposition, since the statement of opposition will in most cases be devoid of grounds (Art. 16 (3) Regulation 1896/2006). The parliamentary proceedings do not discuss this problem.[32] Published case law (a bit more than 10 cases in total) does not make clear how this problem is dealt with. Probably the defendant is asked to submit a statement of defence containing the grounds for his opposition when the case is remitted to the ordinary procedure.[33] On the other hand, if grounds are mentioned in the statement of opposition, they will be examined in the procedure following the lodging of this statement.[34] Art. 6 (2) OPA makes clear that whether or not the defendant appears in the procedure after remittal, the judgment resulting from it is still considered to be a judgment in a defended action (in Dutch: *vonnis op tegenspraak*). That means that opposition as foreseen in the Code of Civil Procedure is not possible. The possibility of appeal and cassation are regulated by ordinary civil procedure rules (see supra nr. 3).

23. In absence of timely opposition, the certificate procedure of Art. 18 Regulation 1896/2006 is executed. No special rules for this procedure have been enacted. Art. 7 OPA stipulates that the order for payment and the enforceability certificate are deemed to be a title of execution as described in Art. 430 CCP, which means that this set of documents is enforceable throughout the Kingdom without further requirements other than that the court registry should not forget to add the words '*In naam der koningin*' [In name of the Queen] to the head of these documents.[35] Orders for payment accompanied by a certificate of enforceability issued in another member state are directly enforceable, provided that the order for payment is translated into Dutch (Art. 8 (1) and (2) OPA). The previous remarks on enforceability apply (see supra nr. 13). If no statement of opposition is filed in time, the order for payment will become final except for the possibility of review as foreseen in Art. 20 Regulation 1896/2006. An untimely statement of opposition is − if all applicable requirements are met − treated as an application for review.[36]

24. There are no specific procedures for rectification or withdrawal of the declaration of enforceability. The defendant will have to fall back on the possibility of review, whereas both the claimant and the

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[31] In Rb 's-Gravenhage 9 August 2012, LJN BX6428, the defendant complained about this way of notifying, but the objection was dismissed since the acknowledgement of receipt had been signed by the defendant.
[32] *Parliamentary Proceedings II* 2007-2008, 31513.
[33] As must have been the case in Rb Amsterdam 17 March 2010, LJN BN3631.
[34] As appears from Rb Rotterdam 6 April 2011, LJN BQ1170.
[35] The OPA does not specify that both documents should bare this header, which should be better be done for safety reasons.
[36] Rb 's-Gravenhage 10 August 2012, LJN BX6433.

defendant may apply for rectification of the certificate under the general procedure of Art. 31 CCP, which gives parties the opportunity to demand rectification of any court decision in the case of apparent mistakes that are suitable to be rectified. There is no published case law about alleged mistakes in the enforceability certificate.

25. The review procedure is regulated by Art. 9 OPA. The general rules for the petition procedure apply, but legal representation is not mandatory (Art. 9 (3) OPA). The time limit for review is set at four weeks

- from the day the defendant got to know the order for payment in the case of Art. 20 (1) (a) Regulation 1896/2006;
- from the day the defendant was no longer prevented from objecting to the claim in the case of Art. 20 (1) (b) Regulation 1896/2006;
- from the day the defendant got to know the circumstances that can be invoked under Art. 20 (2) Regulation 1896/2006.

In a case in which a statement of opposition was lodged after expiry of the time limit of 30 days after notification, this statement was examined as a request for review. The starting date of the time limit was in that judgment not related to the day of notification, but to the day the defendant stated that she got to know of the order for payment. Nevertheless, the application was not filed within said period of four weeks and it was declared inadmissible.[37] However, being in time does not help as such, since the requirement that service was not effected in sufficient time to enable the defendant to arrange for his defence, without any fault on his part, is not fulfilled when an employee of the defendant signed for receipt of the order for payment.[38] The same decision was taken in a case in which the order for payment was served on a caretaker working in the building of defendant's company.[39]

It can hardly be said that the review procedure guarantees the right of the defendant to put forward defences to the claim. After all, the review procedure is meant for exceptional circumstances and defences that are related to those circumstances.[40] Accordingly, an application for review on the ground that the claim was time-barred, was rejected.[41] The same happened when the jurisdiction of the court was challenged.[42]

26. The costs of the application for an order for payment must be very low, even when the applicant is represented by a lawyer.[43] After all, filling out a form is less cumbersome than drafting an elaborate statement of claim and there is no need to do more than superficial research into procedural law of another member state. The court fees are subject to the ordinary provisions of the Civil Court Fee Act (Art. 11 OPA) and will be due only once, even if a statement of opposition or an application for review has been lodged.[44] On the side of the defendant, no court fees have to be paid, unless the case is remitted to the normal procedure.

The applicable rules in the first phase provide for the possibility of a full costs order against the losing party, which left to the discretion of the court (Art. 289 CCP). In Dutch practice, these costs orders are rare. In Parliament this possibility was mentioned as a remedy against abuse of the order for payment

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[37] Rb 's-Gravenhage 10 August 2012, LJN BX6433. The same approach is found in Rb Amsterdam 3 November 2010, LJN BO3259.
[38] Rb 's-Gravenhage 9 August 2012, LJN BX6428.
[39] Rb Amsterdan 24 January 2012, LJN BV2920. For service on an employee see Rb 's-Gravenhage 30 September 2010, LJN BN9635.
[40] Recital 25 to Regulation 1896/2006.
[41] Rb 's-Gravenhage 24 September 2010, LJN BN9631.
[42] Rb 's-Gravenhage 30 September 2010, LJN BN9638.
[43] Note that after remittal to the ordinary procedure representation by a lawyer admitted to the bar can be mandatory. Until then, this is excluded by Art. 24 Regulation 1896/2006.
[44] *Parliamentary Proceedings II* 2007-2008, 31513, 3, p. 8.

procedure,[45] but such cases did not occur until now. In fact, in all review cases until now, no costs orders were issued at all. Apparently, the Dutch courts are reluctant to use their discretionary power.

27. Enforcement of European enforcement orders is subject to no other rules than the enforcement of Dutch titles of execution. As was explained before (see supra nr. 7 and 13), all titles of execution are enforceable as of right, without need for leave or permission of a court. The title should be translated in Dutch (see supra nr. 23). Enforcement measures are taken by court bailiffs, acting at the instruction of the creditor of the title, but with his own responsibility under the Court Bailiff Act.

For opposition against enforcement measures the general procedure of Art. 438 of the Code of Civil Procedure applies (Art. 10 OPA). The District Court or its summary proceedings judge is competent to examine applications for orders against enforcement. These demands cannot be based on defences against the debt expressed in the title, but only on facts and circumstances related to the enforcement itself, including the statement that the debt has already been paid. The rules for the default procedure (starting with a writ of summons) apply (see supra nr. 4).

28. No statistics regarding the application if this order for payment procedure have been published.

IV. National small claims procedure

29. There are no special procedures exclusively for the recovery of money claims and there are no special procedures for the recovery of small claims. The distinctions made have been described in the previous paragraphs (see supra nr. 3). All that has been said regarding the non-existing national order for payment procedure applies in this case as well (see supra nr. 11-16).

V. Implementation of Small Claims Regulation (861/2007) in the Netherlands

30. The Small Claims Regulation (861/2007) has been implemented by means of a separate statute, the Uitvoeringswet verordening Europese procedure voor geringe vorderingen ([Implementation Act of the European Small Claims Procedure Regulation] henceforth: SCA). The statute entered into force on 10 June 2009.[46] It has been modified in 2010 to comply with the new Dutch Court Fee Act.[47] Its scope is identical with the scope of the Regulation 861/2007 (Art. 1 (b) SCA, referring to Art. 2(1) Regulation 861/2007).

31. The provisions of the SCA have to be understood as such that the District Court is the competent court for claims falling under its scope. These claims are allocated to the single judge track (Art. 2(1) SCA, see supra nr. 3). The rules of the petition procedure apply, unless the SCA or Regulation 861/2007 provide otherwise (Art. 9 SCA). This implies that local jurisdiction is determined by Art. 262-269 CCP. According to Art. 262 CCP, jurisdiction is assigned to the court of the place of residence of the applicant, unless one of the special provisions applies (which will be exceptional). If the applicant does not have his place of residence in the Netherlands, the case belongs to the jurisdiction of the District Court of 's-Gravenhage (Art. 269 CCP). The courts are bound to remit the case if it does not belong to the jurisdiction of the court (Art. 270 CCP).[48]

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[45] *Parliamentary Proceedings II* 2007-2008, 31513, 3, p. 8.
[46] Dutch Bulletin of Acts Orders and Decrees 2009, 234.
[47] Dutch Bulletin of Acts Orders and Decrees 2010, 715.
[48] As expressly stated in *Parliamentary Proceedings II* 2007-2008, 31596, 3, p. 4. These rules are usually overlooked, since courts do not expect at all that civil commercial cases follow the local jurisdiction rules of petition

32. The rules regarding formal and language requirements are the same as those applying to the order for payment procedure (see supra nr. 19).

33. The judgment is issued in written form. No special rules apply other than those in Regulation 861/2007. The judgment is sent to the parties by ordinary letter, unless the court decrees otherwise (Art. 290 (3), 291 and 271 CCP). There are no specific rules regarding the certificate procedure.

34. Appeal from the judgment in a SCA small claims case, is excluded (Art. 2(2) SCA). Cassation is possible, but only on limited, formal grounds (Art. 2(3) SCA, see supra nr. 3). Cassation can only be lodged with the Supreme Court. Since the rules of the petition procedure apply, the time limit for this appeal in cassation will be three months, starting the day the judgment was pronounced in public (Art. 426 CCP).[49] Some complications are foreseeable, especially in case the defendant did not appear, but there is no case law yet to say more about this. Anyway, opposition after a judgment by default is not possible.

35. There are no specific procedures for rectification or withdrawal of the declaration of enforceability. The defendant will have to fall back on the possibility of review, whereas both the claimant and the defendant may apply for rectification of the certificate or the judgment under the general procedure of Art. 31 CCP, which gives parties the opportunity to demand rectification of any court decision in the case of apparent mistakes that are suitable to be rectified. There is no published case law about alleged mistakes in the enforceability certificate.

36. The review procedure is regulated by Art. 6 SCA. The general rules for the petition procedure apply, so legal representation is not mandatory, since the case has been allocated to the single judge track (Art. 278 (3) CCP). The time limit for review is set at four weeks

- from the day the defendant got to know the judgment in the case of Art. 18 (1) (a) Regulation 861/2007;
- from the day the defendant was no longer prevented from objecting to the claim in the case of Art. 18 (1) (b) Regulation 861/2007.

37. Costs of the SCA procedures will be low. The court fees are the same (Art. 3 SCA), but the fact that the procedure has been pre-structured by means of a form will imply that drafting the document to start the procedure is less time consuming. Moreover, there will be no need to do more than superficial research into procedural law of another member state. On the side of the defendant, no court fees have to be paid.

Costs orders are governed by the "loser pays all" provision of Art. 16 Regulation 861/2007. In Parliament it was assumed that this rule has to be explained in the light of Dutch law.[50] Art. 5 SCA refers to Art. 238 CCP and thus makes clear that travelling expenses of the winning party can be included in a costs order if this party was not represented by a lawyer or other proxy.

38. The remarks made on enforcement before apply to these procedures *mutatis mutandis* (see supra nr. 27), since both implementation laws (OPA and SCA) are identical where possible.

39. No statistics regarding the application if this order for payment procedure have been published.

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cases. For instance, in Rb 's-Hertogenbosch 13 December 2010, LJN BO7878, the Court explicitly bases its jurisdiction on Art. 99 CCP, but that provision does not apply at all.

[49] Pronouncement in public does not exist and is deemed to have taken place on the day mentioned in the judgment or the minutes.

[50] *Parliamentary Proceedings II* 2007-2008, 31596, 3, p. 3.

VI. Final critical evaluation of EU Regulations on Simplifying Cross-Border Debt Collection

40. When assessing both regulations from the point of view of legal practice, a distinction has to be made. A Dutch lawyer who will have to litigate in another country on behalf of a client, will benefit enormously from these regulations. It will cost him little time to find out which procedure to follow, where to submit documents and how to proceed, whereas in addition the overall costs promise to be quite low. On the other hand, when looking at litigation in his own country, the fact that in some cases three procedures are available to start proceedings against a defendant is not necessarily an advantage and could lead to misunderstandings and confusion.

41. Working with forms also has its drawbacks. The forms tend to simplify matters, as a result of which the basis of a claim will not be as solid as when a writ of summons has to be drafted. Where usually default judgments do not more than copy the claim from the writ of summons, we see quite often in order for payment and small claims procedures that the claim is not fully supported by the facts in the form.[51]

42. Dutch civil procedure on the whole is quite efficient, fast and fair, especially when talking about cases allocated to the single judge track. It is a pity that a writ of summons served by a bailiff is needed, but on the other hand this sometimes helps to avoid later complications when the defendant claims not to have been notified of the proceedings or decisions. On the whole, it would be better if the petition format would apply in all cases and this is a development that is probably fuelled by these EU procedures. Apart from bailiff costs and the difficulties of serving documents in other countries, Dutch proceedings are quite adequate, which explains why the European procedures did not become very popular until now. When they are chosen, this will probably be not because of the procedures themselves, but because of additional benefits like the exclusion of remedies and the enforceability without further ado. Therefore, caution is needed when assessing the advantages of these procedures to avoid to draw inferences based on facts that are not related to the procedures themselves.

[51] As in Rb Maastricht 5 February 2010, LJN BL4324, where the claimed interests were not covered by the stated facts. In Rb 's-Hertogenbosch 19 January 2012, LJN BV1931, the form did not mention one of the parties on whose behalf the claim was submitted.