

## **18. NETHERLANDS**

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### **Other administrative order**

YES

## **I. Procedural rules in calling for an expert examination**

### ***I. 1) On the initiative of***

The judge or the parties

### ***I.2) Mandatory expert examinations***

Not generally, but in certain very specific cases such as expropriations, the court must appoint one or several experts to estimate the amount of the compensation.

### ***I. 3) Decision-maker***

The judge

### ***I.4) Is a pre-trial expert examination possible?***

YES

## **II. Choice and appointment of the expert(s)**

### ***II. 1) Register***

There is no register of experts yet.

A list of “trained experts” is currently being drawn up, however the details have not yet been finalised.

The Netherlands Register of Court Experts (NRGD), a public administration, evaluates legal experts, but for the moment this only applies in criminal procedures.

In civil law, judges use a list of often-appointed experts, the DIX. It is only internally accessible and does not involve any kind of assessment of the quality of experts’ work.

There is also a “private” register, the LRGD, for legal experts. In order to be listed on this register, experts must have received legal training and belong to a training centre.

In the near future, the NRGD hopes to expand its field of action to include experts working in civil or administrative cases by merging with the LRGD.

## ***II. 2) Oath***

UNSPECIFIED

## ***II. 3) Choice of the Expert***

The judge

## ***II. 4) Participation by the parties in the appointment process***

YES

The judge gives the parties the possibility to suggest experts.

## ***II. 5) Nationality***

Irrelevant

## ***II. 6) Recusal by the litigant parties***

Yes, namely for bias

## ***II. 7) Expert's withdrawal (refusal of a mission)***

YES

## ***II. 8) Possibility of adding another expert***

The court can appoint several experts if it deems it necessary. This remains possible at all stages of the proceedings.

## ***II. 9) Possibility of being assisted by a colleague***

If to carry out his mission the expert is being assisted by other experts, he must do so in compliance with the agreement he made with the party that appointed him. The expert must inform the parties in advance and they can oppose such a move. The expert must ensure that the names of those who helped him carry out his assignment appear in his final report.

## **III. Definition of the expert's mission**

### ***III. 1) Who determines the mission?***

The judge

### ***III. 2) Type of mission***

All

## **IV. Progress of the expert's mission**

### ***IV. 1) Judge supervision***

The judge determines the deadline within which the expert must present his report.

The investigative measures are supervised by the judge (Article 198, section 2 of the Code of Civil Procedure).

Generally the court asks the expert to carry out his task independently.

#### ***IV. 2) Form of contradictory procedure***

Deferred

The expert must give the parties the possibility to ask questions and make observations.

#### ***IV. 3) Participation in the hearing***

The expert can be summoned to complete his report and reply to the parties' and the judge's questions.

### **V. Close of the expert examination**

#### ***V. 1) Does conciliation put an end to the expert's mission?***

If the case is solved, and if the parties ask the court to close the procedure, this also puts an end to the expert's mission.

#### ***V. 2) Form imposed on the report***

NO

Written or oral. However Article 198 section 5 of the Code of Civil Procedure specifies that an oral report must be formalised by a statement before the court.

#### ***V. 3) Does the report put an end to the expert's mission?***

Generally, the submission of the report marks the end of the expert's mission. However, naturally, if the Court has questions on the content of the report or on the procedural aspects of the investigative measures, the expert must present himself to the Court in order to answer them.

#### ***V. 4) Is there an imposed structure for the report?***

The report must describe the investigation that has been carried out and support its findings.

There are guidelines but no imposed structure. The code of conduct provides that the expert will supply substantial information in an intelligible manner.

The report must be understandable by the parties, which means, namely, that very specific terminology should be avoided insofar as is possible.

#### ***V. 5) Is a preliminary report mandatory?***

Yes, the expert must allow the parties to comment on the preliminary report.

Indeed, the comments should be reproduced in the final report, and the replies to these comments should also be duly reasoned in the expert's final report.

#### ***V. 6) Is the judge bound by the expert's conclusions?***

The judge is not bound by the expert's conclusions but their rejection must be duly reasoned.

#### ***V. 7) Possibility of a second opinion***

YES

### **VI. Funding for the expert examination**

#### ***VI. 1) Security-Payment***

The claimant(s)

The Court decides what party must pay. It is generally the party who bears the burden of proof.

#### ***VI. 2) Determining the amount of payment due***

UNSPECIFIED

#### ***VI. 3) Possibility of additional payment***

YES

#### ***VI. 4) Determining fees and costs***

The judge

The cost of the expert opinion is borne by the unsuccessful party and the deposit restored to the party who made the advance payment.

After having heard the parties, the court estimates the amount. On his invoice, the expert must specifically detail his fees, expenses, and VAT. Costs must be specified for all the actions involved. When detailing his fees, the expert must specify his hourly rate as well as the number of hours needed for the investigation and for writing the report.

#### ***VI. 5) Possibility of contesting the fees***

UNSPECIFIED

### **VII. Expert liability within proceedings**

#### ***VII. 1) Are there any laws governing expert examinations?***

Code of Civil Procedure, Art. 194-199 and 202

#### ***VII. 2) Expert liability***

There is no legal text providing for the expert's particular liability. Thus, according to common law, he must carry out his work to the best of his knowledge and competence and is civilly liable.

#### ***VII. 3) Mandatory insurance for the expert***

NO

The decision is up to the expert.

## VIII. The expert's status

There is no legal provision for the status of experts.

### *VIII. 1) Existence of selection criteria (accreditation)*

NO

### *VIII. 2) Classification of skills*

NO

### *VIII. 3) Required qualifications*

NO

### *VIII. 4) Grant of accreditation*

Not applicable as there are no accreditations.

Any competent person may be appointed.

### *VIII. 5) Possibility of accrediting a legal person*

NO.

However, it is possible to appoint a legal person.

### *VIII. 6) f) Validity period for the accreditation*

Not applicable as there is no accreditation.

### *VIII. 7) Regular assessment tests*

NO

### *VIII. 8) Supervision of the expert's mission*

NO

### *VIII. 9) Expert's activity report*

NO

### *VIII. 10) Code of ethics*

The expert must undertake to make all his investigations with impartiality and to the best of his competences.

### *VIII. 11) Good practice*

There are written, published rules that are not mandatory, such as the Code of Conduct and Guidelines for experts before civil jurisdictions.

### *VIII. 12) Possibility of penalties*

An expert can be replaced by another expert or his rates decreased at the end of his mission.

### **VIII. 13) Laws governing the expert's status**

NO

### **IX. Bibliography**

- Gerdineke de Groot, *Het deskundigenadvies in de civiele procedure*, Deventer: Kluwer, 2008.