

CIVIL LEGAL EXPERT EXAMINATION IN NETHERLANDS



(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)

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Questions	Answers	Observations
o. Other administrative order	Yes	
1. Procedural rules regarding the decision to require an expertise.	The judge or the parties	In certain very specific cases such as expropriations, the court must appoint one or several experts to estimate the amount of the compensation.
1.1. On the initiative of :		
1.2. Existence of compulsory expertise	Not generally	
1.3. Decision-maker	The judge	
1.4. Is a pre-trial expertise possible ?	Yes	
2. Appointing an expert (or experts)	Yes	<p>The Netherlands Register of Court Experts (NRGD), a public administration, evaluates and registers legal experts, in criminal procedures. In civil law, judges use a list of often-appointed experts, the DIX. It is only internally accessible for judges and clerks and does not involve any kind of assessment of the quality of experts' work.</p> <p>The National Register of judicial experts LRGD, a private organization, which evaluates and registers experts in various professions. These experts can be involved in civil, criminal and administrative procedures. All experts are also member of a professional organization. Experts don't take an oath. They are bound by 'The guideline experts in civil procedures'.</p> <p>The judge gives the parties the possibility to suggest experts or comment on proposed experts. The court can appoint several experts if it deems it necessary. This remains possible at all stages of the proceedings.</p> <p>If it is necessary to carry out his mission, the expert can be assisted by another expert. To do so he needs the agreement of 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 assist him in carrying out his mission, are mentioned in his final report.</p>
2.1. List In case of a list : Identification, address, Internet address (URL)		
2.2 Oath	Unspecified	
2.3. Choice of the expert	The judge	
2.4. Parties associated to the appointment ?	Yes	
2.5. Nationality	Irrelevant	
2.6. Recusal by the parties	Yes, namely for bias.	
2.7. Expert's withdrawal (Refusal of a mission)	Yes	
2.8. Possibility of adding another expert	Yes	
2.9. Possibility of being assisted by an employee	Yes	
3. Expert's mission definition		
3.1. Who determines the mission ?	The judge	<p>The judge determines the deadline within which the expert must present his report. The expert can, due to circumstances during his/her investigation, report any motivated delay to the judge and parties.</p> <p>An expert's mission is supervised by the judge or is executed by the expert on his own responsibility (Article 198, section 2 of the Code of Civil Procedure). Generally, the court asks the expert to carry out his task independently.</p> <p>The expert must give the parties the possibility to ask questions and make observations, both during his/her work as well on the preliminary report. They are obliged to state in their final report the questions and observations.</p> <p>The expert can be summoned to complete his report and reply to the parties' and the judge's questions at a post report hearing.</p>
3.2. Type of missions	All	
4. Expert's mission progress		
4.1. Supervision by a judge	Possible	<p>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. The report may be written or oral. In most cases it will be written. Article 198 section 5 of the Code of Civil Procedure specifies that the outcome of an oral report must be laid down in the official record of the court hearing. For the written report in civil cases there is a Model Expert Opinion, that is advised to be used, but does not fit all types of report.</p>
4.2. Form of contradictory proceedings	Deferred	
4.3. Participation in the hearing	Possible	
5. Closing an expertise :		
5.1. Does conciliation end the expert's mission ?	Yes	
5.2. Compulsory form for the report	Written or oral	

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5.3. Does the report end the expert's mission ?	Yes, usually.	<p>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.</p> <p>The report must describe the investigation that has been carried out and support its findings.</p> <p>'The guideline experts in civil procedures' requires 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. the expert must allow the parties to comment on a preliminary report.</p> <p>The comments need to be repeated in the final report, as well as the replies to these comments by the expert. Any changes that are made in the final report in comparison with the preliminary report have to be mentioned.</p> <p>The judge is not bound by the expert's conclusions but their rejection must be duly reasoned.</p>
5.4. Is there a compulsory structure for the report ?	Yes	
5.5. Is a preliminary report compulsory ?	Yes	
5.6. Do the expert's conclusions tie the judge ?	No, but their rejection must be duly reasoned.	
5.7. Possibility of a second opinion	Yes	
6. Paying for the expertise :		<p>The Court decides which party has to pay or in case of many parties in which ratio. In general, the party who bears the burden of proof has to pay. Before or after his appointment, the expert is instructed to supply the judge and the parties with a motivated estimate.</p> <p>During his investigation the expert may ask the judge in a motivated request for additional payment.</p> <p>The cost of the expert opinion is borne by the unsuccessful party and the deposit paid by the other party will be restored to that party.</p> <p>After having seen the experts bill and heard the parties, the court rules on the amount to be paid. On his invoice, the expert must specifically in detail his fees, expenses, and VAT. Costs must be specified for all the actions involved. The expert must specify his hourly rate as well as the number of hours needed for the investigation and for writing the report.</p> <p>As in most cases the estimate of the expert is known beforehand, contesting the fees is not regular. However, in known cases, where experts go beyond the estimate, total fees are successfully contested.</p>
6.1. Security-Payment	The claimant(s)	
6.2. Determining the amount of financial provision.	The expert	
6.3. Possibility of additional payment	Yes	
6.4. Determining fees and costs	The judge	
6.5. Possibility of contesting the fees	Not generally	
7. Expert's liability		<p>Expert examinations are governing by Code of Civil Procedure, Art. 194-199 and 202.</p> <p>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.</p> <p>The decision to have a liability assurance is up to the expert.</p>
7.1. Are there any rules regulating expertise ?	Yes	
7.2. Expert liability	Civil	
7.3. Mandatory insurance for the expert	No	
8. Statutes of the expert	No	<p>The registers set the qualifications for registration.</p> <p>If a legal person is appointed, the expert(s) involved must take responsibility for the content of the report by signing it.</p> <p>Accreditation is performed within the registers. The standard period is 5 years.</p> <p>There are assesment tests every 5 years, following the re-registration procedure.</p> <p>According to the law and the 'The guideline experts in civil procedures' the expert has to fulfill his mission with impartiality and to the best of his competences.</p> <p>There are written, published rules, such as the Code of Conduct and 'The guideline experts in civil procedures'.</p> <p>An expert can be replaced by another expert or his rates decreased at the end of his mission.</p> <p>After disciplinary actions experts may be withdrawn from their register. However, as the use of a registered expert is not mandatory in civil cases, an expert may still be appointed in new cases.</p>
8.1. Selection criteria (accreditation)	No	
8.2. Classification of skills	In general judges tend to appoint experts, registered in any one of the existing registers.	
8.3. Required qualifications	Yes	
8.4. Delivery of accreditation	Unspecified	
8.5. Possibility of accrediting a legal person	Yes	
8.6. Validity period for the accreditation	Standard period : 5 years	
8.7. Regular assessment tests	Every 5 years	
8.8. Supervision of the expert's	No	
8.9. Expert's activity report	No	
8.10. Code of ethics	Yes	
8.11. Good practices	Yes	
8.12. Possibility of penalties	Yes	
8.13. Laws governing the expert's status	None	