

RECENT DEVELOPMENTS IN THE NETHERLANDS

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A short report about recent developments in the Netherlands.

1. **Political attention for personal injury cases**

The last two years I reported about a certain pressure from the government towards the insurance companies to pay more attention to the old cases (id est cases where the date of the accident was more than 10 years ago). This is still the case. In daily practice these old cases can still be settled more easier than before.

Furthermore, the height of non-pecuniary damages has the political attention. It is commonly acknowledged that the amounts awarded by judges are relatively low. Certainly compared to other European countries.

Finally, the right to claim non-pecuniary damages after a fatal accident has the political attention. Despite the EU resolution (75) 7, Dutch law does not provide in a claim for non-pecuniary damages in death cases. A proposal to introduce such a claim has been rejected by our so-called First Chamber in 2010. Rumour has it that – in the near future ? – this proposal will be renewed.

2. **Events**

As every year, a lot of conferences have been organised by different organisations. Some of the topics were:

- No trouble at all (WAA: an organisation of lawyers and doctors)
- Enquiries in personal injury legislation (LSA: the Dutch personal injury organisation)
- A different approach in personal injury (PIV: organisation of insurers)

3. **Update code of conduct for insurers**

On 1 July 2012 the code of conduct No. 15 providing information on personal injury cases has been updated. This code aims to empower the position of victims/patients, no matter what injuries/disabilities they suffer from. The new code enables liability insurers to inform victims directly about the progress of the claim settlement. Furthermore victims can be updated regarding the total amount of (legal) cost which were paid, to avoid possible double charging.

4. **Code of conduct in medical liability: a new medical paragraph**

In the annual report 2011 I already mentioned the code of conduct for insurers. On 15 December 2011 a new medical paragraph, has been incorporated in the code of conduct and comprises of a list of "best practises". Several protocols have been developed. Time will tell if this medical paragraph will improve the medical assessment, in terms of speed, flexibility and pressure on the victims.

5. **Part dispute**

As from 1 July 2010 a new law is applicable, according to which you can start legal proceedings for only a part of the dispute. The advantage of this new law is that the legal costs are still regarded as out of court expenses. That means that the costs can still be claimed. After a decision on this part dispute, parties can continue the out of court negotiations. This new law has been evaluated at several congresses and in several publications.

In general the reactions are positive. Generally the new law is amply applied by the judges. However, laborious proceedings, such as witness examinations, expert opinions and/or other burden of proof questions, are not included in this new law. Several part disputes in each case are allowed.

6. **Increased right to speak in trial**

The right for victims of serious crimes to speak during trials has been increased as from 1 September 2012. From that date, also parents and guardians of minors are allowed to speak. Furthermore, parents, children and/or other family members have the right to speak in cases where the victim is not capable to speak as a consequence of the crime.

Until now, only partners of the deceased were allowed to speak. Now – besides the partner – also three relatives may speak. This may be children, parents and/or other next of kin.

This right to speak only applies for serious crimes, among which traffic accidents, causing injuries or death.

7. **What if**

In the Dutch legal magazine "Mr." several influential lawyers were asked what they would change if they were the Minister of Justice for a day. Both Peopil's Chairwoman Antoinette Collignon and our academic member Siewert Lindenbergh were interviewed on this matter.

Siewert Lindenbergh wanted to enable non-pecuniary damages for next of kin of seriously injured victims. Furthermore he wishes more clarity regarding the compensation of the loss of income for family members who take care of seriously injured victims. Thirdly he would like to simplify the claims settlement of fatal accidents. Determination of this amount has become too complex and therefore very time-consuming.

Antoinette Collignon wishes to seek alliance with other European countries and the ECHR. Also she proposes to pass the right on material and emotional compensation on the heirs, just as everywhere else in Europe. Now the non-pecuniary damages can only be transmitted if claimed during life.

Otherwise she supports Siewert Lindenberg's ideas. Additionally she wishes to draw the attention to the position of the recourse taking employers. They are often left with a considerable damage.

8. **New case law: the position of freelancers**

Until recently, freelancers were not protected against industrial accidents to the same extent as employees. Our highest court however, ruled that under certain circumstances they should be protected in the same way. The more freelancers resemble an employee, the more reason for the same protection. This will, for example, be the case if the freelancer's activities belong to the company's core business. The same protection should also apply when the company's employees execute the same daily work as the freelancer.

9. **Public relations / members**

A special thanks for Ellen Adank, the secretary of the LSA. She informed the LSA-members several times about Peopil events. Highly appreciated!

After the UK, the Netherlands has the highest number Peopil members. It still is difficult to bring in new members. This might be easier if not only lawyers are allowed to subscribe.

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