JUDICIAL RESOLUTION OF EMPLOYMENT DISPUTES IN THE NETHERLANDS

the Court system

In The Netherlands the jurisdiction in labour law is totally integrated in the civil court system. There is no special labour court.
Civil jurisdiction takes place in three instances: first instance before the nineteen District Courts (*Rechtbank)*, appeal before the five Courts of Appeal *(Gerechtshof,* also called: *Hof)*, and cassation before the Supreme Court *(Hoge Raad)*. The Supreme Court deals with matters of law only, not with matters of fact. Although the binding force of precedents (stare dicisis) is not recognised in the Dutch system, it is commonly accepted that the Supreme Court plays a predominant role in the uniform interpretation of statutes. In addition the case-law of the European Court of Justice (EU) has become an important factor, also in the resolution of employment disputes at national level.
The Courts have separate chambers *(sectoren)* for civil, administrative, and criminal cases. Employment cases are handled within the District Courts by the chamber of the so-called *Kantonrechters*. The name of this chamber refers to former days, when the *Kantonrechters* used to operate as separate courts in subdistricts or *Kantons*. In practice many of the *Kantonrechters* of the District Courts have their office in a subdistrict, to allow for easy accessibility for the parties.
The Enterprise Chamber *(ondernemingskamer)* of the Court of Appeals in Amsterdam is competent in certain conflicts between a works council and an employer concerning important decisions such as an important restructuring decision.
Arbitration is not so much used in employment conflicts, except in a few sectors of the economy such as teaching and professional sports. Mediation is upcoming, also in the judiciary.

competence of the Court (*Kantonrechter)*

The *Kantonrechters* handle small claims (up to € 5000,-), certain cases in the field of family law, cases concerning the rent of houses, and all cases concerning employment contracts and collective agreements. In addition they deal with petty offences. The employment cases form a relatively small part of the workload (approximately fifteen percent of the civil cases).

procedure

The procedure before the *Kantonrechter* starts with a writ or a request, submitted by the plaintiff and an answer, submitted by the defender. Usually there will be no further exchange of documents. A hearing will follow. Representation of the parties by a lawyer is not required. Usually, the employee will opt for representation by a lawyer, a union official, or an other legal expert. The state offers financial support to those who need legal aid but cannot pay for it.

The judge tries to settle the case in court (which often succeeds) or gives a written decision. The judge can also give a summary decision if needed, for example to continue payment during the procedure.

dissolution of the employment contract

Under Dutch employment law a distinction is made between termination through a notice of termination of one of the parties, which is called dismissal *(ontslag)*, and termination through a decision of the *Kantonrechter*, which is called dissolution *(ontbinding)*.

Nearly one tenth of the employment cases handled by the *Kantonrechters* are dissolution cases.

Dissolution of the employment contract by the *Kantonrechter* is often attractive for the employer because of the quick and final procedure. Appeal is excluded (with only very rare exceptions). The main test is whether there are serious reasons to dissolve the employment contract. The *Kantonrechter* may award a financial compensation to one of the parties. Usually it will be the employer who has to pay compensation to the employee. The *Kantonrechters* have made up a formula for the amount of compensation, which is roughly one month's pay for each year of service, but may vary according to the age of the employee and the role of both parties in the conflict.

other dismissal cases

The *Kantonrechter* can award financial compensation if a dismissal is obviously unreasonable or if the employer has violated certain rules such as failure to observe a notification period.

In some cases the dismissal can be declared null and void. This for example happens if the employer has failed to obtain the required prior consent for dismissal from the Employment Service. The employer usually needs that consent, but not if he has an urgent reason for a summary dismissal or if the employee is in his trial period.

If the dismissal is null and void, the employer will have to continue the payment of wages. The employee can apply for reinstatement. The *Kantonrechter* can restrict the duration of the wage-obligation for the employer if continuation would lead to "unacceptable consequences".