

Summary

Court fees – A comparative description of court fee systems in some member states of the European Union

This report is the result of a comparative study of court fee systems in member states of the European Union. The research was conducted by a professor and assistant-professor of the Faculty of Law of the University of Maastricht in collaboration with several members of their staff. The report was commissioned by the Research and Documentation Centre (*WODC*) of the Ministry of Justice.

Purpose of this survey was gathering information about the height of court fees outside of the Netherlands and the way these fees are imposed and collected (court fee system). In this context court fees are defined as any contribution asked by government in exchange for services in the realm of civil or administrative procedure. Criminal cases were not taken into consideration.

Limitations in time and money restricted the study of court fee systems to four states, whereas the height of the court fees could be studied in 18 countries, including the Netherlands, by means of a quick scan.

The height of court fees

Comparing the height of court fees by taking absolute figures carries a certain risk with it, since the real price to be paid for court services can only be obtained by relating it to the real value of money in a given country. Converting foreign currency to euros or even the euro itself therefore cannot be taken as being as exact as one would wish. In other words, court fees should be related to the buying power of the currency. Since no such correction could be made within the scope of this research, this should be borne in mind in assessing the following table.

Civil and administrative procedure differs highly in any two given countries. Consequently, the actual work involved in dealing with a case and even the concept of a case itself is likely to vary. What could be taken as a fair price for filing a certain demand in one country could therefore possibly amount to extortion elsewhere. Accordingly, comparing the average court fee – if such a thing is possible, since it presupposes a very precise definition of what a case is – will not give much of an idea of the way in which court services are taxed.

This report took a different approach by taking the perception of the average citizen as a starting point. Some procedures are more likely to occur than others or are commonly seen as something that could happen to anybody. By focusing on these procedures, some insight can be gained in the way court fees in the selected countries are experienced. This gives an instrument to make a comparison on a less arbitrary basis. It is like the technique of defining a 'shopping basket' to compare prices.

The procedures selected for this 'legal shopping basket' are a personal injury case with a € 50.000,- claim, a divorce case, a labour case (involving

dismissal and a claim for payment of wages) and an administrative procedure concerning a complaint about a building licence. The selection was based on the legal experience of the researchers that these procedures are the most likely to occur and to be seen as something that could happen to anybody at any time.

The results of the quick scan are summarized in table s1.

Table s1 Court fee table in euros (2005)

Country	Claim				
	€ 50.000	DIV	DISM+ € 3000 pm	Building licence	Exchange rate
Netherlands	1,100+1,100	192	192	141	
Belgium	82+5	82	35		
Denmark	620	0	101 + 1,2% of the claim	0	0.1334
Germany	1,368	242	543	121	
England & Wales	574+292	190		73+263	1.4721
Estonia	2,428	19	0	1	0.0639
Finland	130	65	130	80	
France	0	0	0	0	
Greece				50	
Italy	340	0	340	340	
Latvia	422	14	0	3	0.2896
Luxemburg	0	0	0	0	
Northern Ireland	204	226	204	172	1.4721
Austria	1,082	79		79	
Portugal	624	<200		0	
Scotland	<1,000	<500	<1000	<500	1.4721
Spain	0	0	0	0	
Sweden	53	40	53	0	0.1054

The table shows that from this point of view the highest rates are charged in Estonia, the Netherlands (partly because of the fact that the defendant has to pay as well) and Germany, whereas in Spain, France and Luxemburg no court fees are due, since those countries hold the view that access to justice should be free of charge. However, it should be stressed that this outcome is largely determined by the selection of the procedures in the 'legal shopping basket'; a different selection could yield a different outcome.

The court fee systems

The report contains an in-depth study of the court fee system of Denmark, Germany, England & Wales and Scotland. These countries were selected because according to their rules a) court fees are charged to a substantial level; b) their court fee systems have been changed recently; and c) they

represent distinctive features of court fee systems like the objective of full cost recovery (England and Scotland to a lesser extent), charging on the basis of 'pay as you go' (Scotland and England to a lesser extent), taxation as sole justification (Denmark) and charging on the basis of an intricate system of assigning values to claims (Germany).

In the report each of these systems is described, starting with a general description of civil and administrative procedure as a whole. The court fee system is reported in detail. For each country, court fees are related to the overall costs of procedures for the litigant parties and the cost of the judicial system. In this part of the report reference is made frequently to the interviews that have been held with representatives of the local Ministry of Justice, Council for the Judiciary, court registraries and Law Society.

In none of the countries court fee rates jeopardize the right to access to justice in such a way that an infringement of art. 6 ECHR should be feared. Nevertheless, especially in Denmark the court fee rates recently have been limited in order to avoid excessive rates of over 1 million euros. All systems provide for exemptions or reductions in order to guarantee the access to justice for people with limited benefits. Although in all systems recent fee changes have taken place, in none of the countries a positive or negative influence on the number of cases could be established.

To compare the court fee systems between themselves and the Dutch system, an inventory was made of choices one has to make to set up a court fee system. Court fee systems can thus be characterized as a function of a set of features. These features are:

- the general basis of the system (full cost recovery, reallocation of means);
- the way court fees are used as an instrument of judicial policy by promoting or discouraging procedural choices;
- the basis on which court fee rates are fixed (kind of case, quality of the litigating parties, value of the claim, cost of the judicial service);
- uniformity or pluriformity in respect of the different kinds of procedures;
- the moment the court fee is imposed (e.g. at the filing of a form, the commencement of a procedure, after the outcome of the case);
- the moment the court fee is due;
- the existence of procedural sanctions related to non-payment of court fees;
- the existence of layered charging (building up the fee as the case evolves);
- the party that is charged;
- the way counterclaims are treated;
- the way rates are fixed in the case of appeal and interim judgments;
- the relation between court fees and the financial situation of the parties;
- the way increase and reduction of the claim are treated;
- the way undue hardship is dealt with.

These features allow for a more specific and systematic comparison of the court fee systems in the Netherlands and the countries that were the object of this part of the survey. The results have been grouped together in table s2.

Table s2 Features of court fee systems

Feature	DNK	GER	ENG	SCL	NL
Basis reallocation of means	+	+	-	-	+
Basis (<i>full</i>) cost recovery	-	-	+	+	-
Court fees as instrument of judicial policy	+	+	+	+	-
Rates on basis of the value of the claim	+	+	+	-	+
Existence of rule to determines the value of a claim	+	+	+	-	-
Rates on basis of the service rendered	+	+	+	+	-
Rates related to quality of parties	-	-	-	-	+
Layered charging	+	-	+	+	-
Payment in advance	+	+	+	+	-
Procedural sanctions in case of non-payment	+	+	+	+	-/+
Charging the defendant party	-	-	-	+	+
Charging counterclaims	+	+	+	-	-
Refund in case of reduced claims	-	-	-	-	-
Additional payment in case of increased claims	+	+	+	-	+
Increased rates in (second) appeal	+	+	-	-	+
Different rate for interim judgments	-	+	+	-	+
Different rate for administrative cases	+	+	+	+	+
Exemption in case of low benefits	+	+	+	+	-
Exception for undue hardship	-	-*	+	-	-
Uniform system for civil and procedural cases	+	+	+	+	-

* Although s. 14 GKG seems to give a procedure in the case of undue hardship, in Germany this provision appears to be interpreted in another way according to the interviewees.

It appears from this table that the actual Dutch court fee system at some points is not in line with what can be considered as common practice in other countries. Anomalous is the rule that moral persons should pay more and the fact that even for people with the lowest means no complete exemption of court fees is granted. The Netherlands is also the only country that doesn't use court fees to influence procedural choices made by the litigant parties.

Some features are interrelated, thus providing for instance for the Scottish system a good reason (the 'pay as you go'-system) to charge the defending party for making use of the court system. This makes Scotland a bit less of an ally in this respect, since the Netherlands cannot justify its system in this way. In the interviews held in Germany, England and Denmark, the interviewees invariably considered the charging of the defendant as something coming into conflict with the right of access to justice.

It is also remarkable that the Netherlands takes the value of a claim as a basis for setting court fee rates, but doesn't give specific rules for calculating this value by restricting its system to money claims only. Finally it should be remarked, that the Netherlands is the only country that doesn't come up with a unified system for court fees in civil and administrative cases.