

The Netherlands Commercial Court



Presentation

What is NCC?

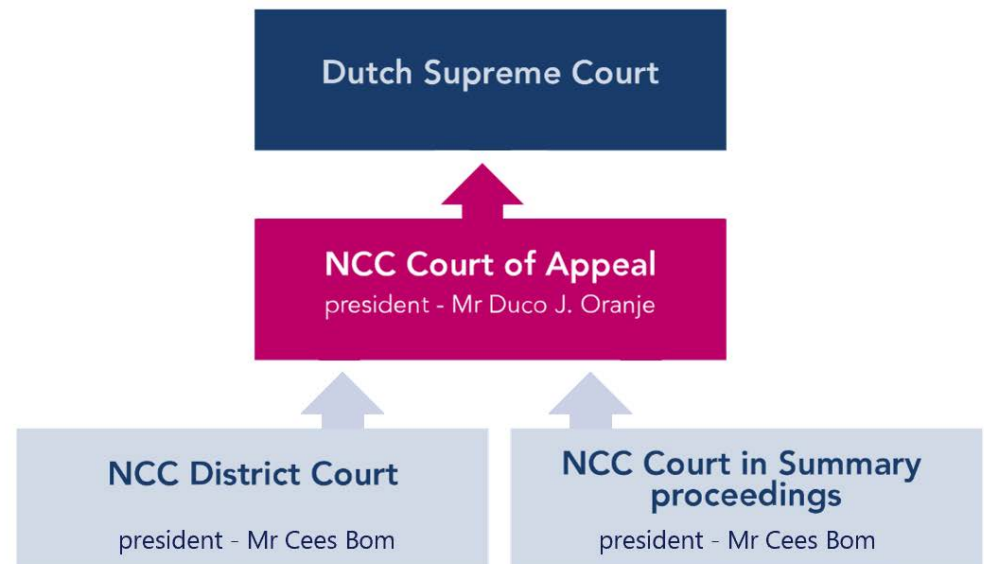
NCC DISTRICT COURT

international commercial chamber
Amsterdam District Court
(incl. CSP - Court in Summary Proceeding)

+

NCC COURT OF APPEAL

international commercial chamber
Amsterdam Court of Appeal



Why choose NCC?

- In English
- Independent judges with experience in complex international business cases
- Efficient
- Focus on global best practices
- Electronic filing and communication
- Judgment easy to enforce in the European Union

In English


- Proceedings in English: documents, hearing and judgment
- No need for translation of exhibits in Dutch, German or French, unless the court directs otherwise

Frankfurt/Paris commercial courts:

- hearings and exhibits in English
- documents and judgment are in German/French

Independent and experienced judges

- NCC judges are state judges: impartial and independent (top 3 worldwide)

Judicial independence - Netherlands		(source: World Economic Forum Global Competitiveness Report 2019*)			3rd/141
Index Component	Value	Score *	Rank/141	Best Performer	
 1st pillar: Institutions 0–100	-	78.6 ↑	4	Finland	
Security 0–100	-	90.1 ↑	17	Finland	
1.01 Organized crime 1–7 (best)	5.7	78.3 ↑	22	Finland	
1.02 Homicide rate per 100,000 pop.	0.8	99.0 ↓	26		
1.03 Terrorism incidence 0 (very high) -100 (no incidence)	99.8	99.8 =	73		
1.04 Reliability of police services 1–7 (best)	6.0	83.2 ↓	16		
Social capital 0–100	-	64.1 ↑	9		
1.05 Social capital 0–100 (best)	64.1	64.1 ↑	9		
Checks and balances 0–100	-	81.1 ↑	3		
1.06 Budget transparency 0–100 (best)	n/a	77.4	n/a		
1.07 Judicial independence 1–7 (best)	6.2	87.3 ↓	3		
1.08 Efficiency of legal framework in challenging regulations 1–7 (best)	5.1	68.1 ↑	6		
1.09 Freedom of the press 0–100 (worst)	8.6	91.4 ↑	4	Norway	

Judicial independence

1	Finland
2	New Zealand
3	Netherlands
25	US
26	UK
31	Germany
36	France

- Selected from all Dutch courts for their experience in complex international business matters

Rule of law









Dutch legal system = top 3 in just and efficient disposition of civil cases

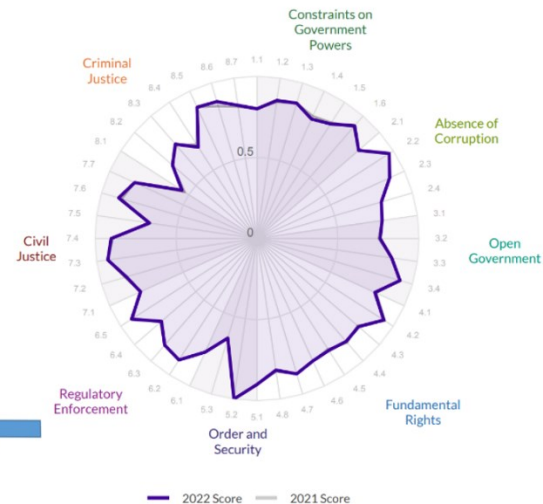
Rule of Law - Netherlands

(source: World Justice Project report 2022)

3rd/140

The scores range from 0 to 1, where 1 signifies the highest possible score and 0 signifies the lowest possible score.

Overall Score		Regional Rank		Income Rank		Global Rank		
0.83		5/31		5/43		5/140		
Score Change		Rank Change						
0.00		1▲						
				Factor Score	Score Change	Regional Rank	Income Rank	Global Rank
	Constraints on Government Powers			0.85	0.00	6/31	7/43	7/140
	Absence of Corruption			0.88	0.00	5/31	7/43	7/140
	Open Government			0.83	0.00	5/31	5/43	5/140
	Fundamental Rights			0.84	0.00	9/31	9/43	9/140
	Order and Security			0.85	0.00	18/31	24/43	25/140
	Regulatory Enforcement			0.85	0.00	6/31	8/43	8/140
	Civil Justice			0.84	0.00	3/31	3/43	3/140
	Criminal Justice			0.75	0.01	7/31	9/43	9/140



Civil Justice

- 1 Denmark
- 2 Norway
- 3 Netherlands
- 20 UK
- 21 France
- 41 US

Efficiency

Dutch courts = top 6 worldwide in efficient disposition of civil cases



Efficiency of legal framework in settling disputes

(source: World Economic Forum Global Competitiveness Report 2019*)

6th/141

"In your country, how efficient are the legal and judicial systems for companies in settling disputes?" [1 = extremely inefficient; 7 = extremely efficient]

Show: All Economies

Info	▲ Rank / 140	Country / Economy	Value (1–7 (best))	Dist. from highest
	1	Singapore	6.2	<div><div></div></div>
	2	Finland	5.9	<div><div></div></div>
	3	United States	5.9	<div><div></div></div>
	4	Hong Kong SAR	5.9	<div><div></div></div>
	5	Switzerland	5.9	<div><div></div></div>
	6	Netherlands	5.4	<div><div></div></div>

Efficiency

- 1 Singapore
- 2 Finland
- 3 US
- 6 Netherlands
- 19 UK
- 22 Germany
- 26 France

* The 2019 report is the most recent one. In 2020, the long-standing Global Competitiveness Index rankings were paused.

Focus on global best practices

- Examination and cross-examination by counsel
- Parties can hire court reporters to prepare verbatim reports
- Special chamber to rule on disclosure of confidential documents
- Evidentiary agreements: parties may decide to apply special rules on matters within their autonomy to agree

NCC is a member of the Standing International Forum of Commercial Courts (www.sifocc.org) since 2018

Role of foreign lawyers




- **members of the Bar in an EU or EEA Member State or Switzerland:** perform the same duties as a Dutch lawyer, provided they work in conjunction with a member of the Dutch Bar
- **other jurisdictions:** will be allowed to speak at any hearing; no legal impediment to be involved in drafting submissions to the court
- **all other work:** only Dutch lawyers
- all **NCC cases** so far were litigated by Dutch lawyers
 - However: in *Subsea/South Stream* (NCC 19/012) the NCC heard an English KC and a barrister as experts in English law

Communication – eNCC and more

- Electronic filing and communication in eNCC
- 24/7 up-to-date view of what's going on
- Electronic courtroom facilities
- Video-conferencing solutions for case management or other hearings; remote off-site participation



eNCC

My cases <hr/> Go to My cases	Inbox (Messages) <hr/> Go to Inbox (Messages)	Sent (Messages) <hr/> Go to Sent (Messages)
 Submit a new case <hr/> Submit a new case	 Create a message in a pending case <hr/> Create message	 Submit a notice of representation in a pending case <hr/> Submit a notice of representation in a pending case

Easy enforcement in the EU

- No judicial permission needed
- UK judgments after Brexit ...

Requirements for NCC jurisdiction

- Amsterdam District Court has jurisdiction over the case
- Civil or commercial case within the parties' autonomy
- International dispute
- Election of proceedings in English before the NCC (NCC clause)

Amsterdam District Court has jurisdiction

- Ordinary private international law rules apply
- Choice-of-court clause: Hague Choice of Court Convention + Brussels 1bis Regulation do not require connection to the Netherlands
- Excluded: Subdistrict Court jurisdiction + cases allocated to specialist court/chamber (f.e. patent disputes)

“Civil or commercial matter”

- Dispute is related to civil law in a broad sense, as opposed to criminal charges or administrative proceedings
- For example: contractual disputes, claims in tort, (intellectual) property disputes, anti-trust/competition, technology, construction or corporate matters
- Special types of cases: collective actions, pre-insolvency restructuring procedures, arbitration-related issues

“International dispute”

NCC Rules (explanatory note on Art. 1.3.1 (b)):

- A party is established in another jurisdiction
- A party is incorporated under foreign law
- A convention or foreign law applies to the dispute
- The dispute arises from an agreement in a language other than Dutch
- Majority of worldwide employees are based somewhere other than NL
- Over half of consolidated turnover is realised somewhere other than NL
- Securities are traded on a regulated market not in NL
- The dispute concerns legal facts or legal acts not in NL
- The dispute otherwise involves a relevant cross-border interest

NCC clause

Art. 32a DCCP

- “In writing”
- “Express”: tacit consent in general terms and conditions is not enough (MvT)
- Before or after a dispute arises
- Includes summary proceedings
- May include NCC Court of Appeal for setting aside procedures against an arbitral award, provided Amsterdam is the formal “seat of arbitration”

NCC clause (2)

NCC model clause

(see www.ncc.gov.nl)

All disputes arising out of or in connection with this agreement will be resolved by the Amsterdam District Court following proceedings in English before the Chamber for International Commercial Matters (“Netherlands Commercial Court” or “NCC District Court”), to the exclusion of the jurisdiction of any other courts. An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC’s Court in Summary Proceedings (CSP) in proceedings in English.

Any appeals against NCC or CSP judgments will be submitted to the Amsterdam Court of Appeal’s Chamber for International Commercial Matters (“Netherlands Commercial Court of Appeal” or “NCCA”).

The NCC Rules of Procedure apply.

Applicable law

- Dutch law governs the procedure before the NCC: see NCC Rules of Procedure on www.ncc.gov.nl (“Rules” Section)
- Parties need not choose Dutch law as the substantive law applicable to their dispute
- the NCC is able to apply any foreign law:
 - judges with special expertise
 - legal opinions
 - Asser Institute: NCC bears the costs of this expert opinion

Applicable law (2)

The NCC applied English law in *Subsea/South Stream* (NCC 19/012; see Judgments List)

The NCC (...) demonstrates that it can provide efficient proceedings in the English language for international commercial disputes, even when governed under laws other than Dutch law.

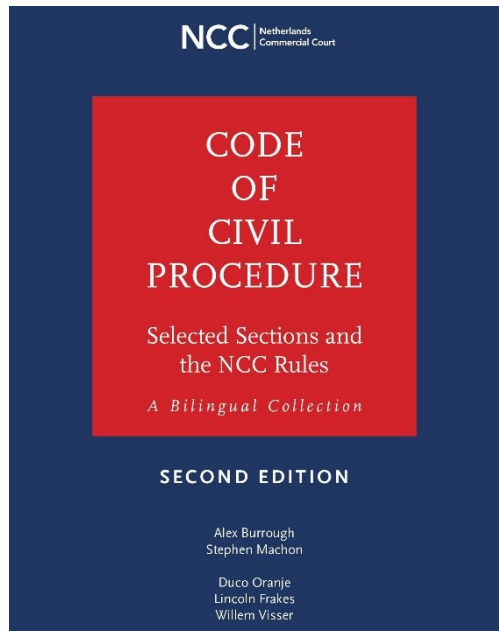
(professor McKendrick (Oxford en Leiden), januari 2021)

Applicable law (3)

Civil law versus common law

- Disclosure/discovery: limited vs full disclosure
- Contract interpretation: flexibility vs certainty?
 - Both English and Dutch commercial contract law offer business actors flexibility and legal certainty
 - See article to be published on our website: *"The Netherlands Commercial Court and business certainty in Dutch and English commercial contract law"* (R.A. Dudok van Heel and R.P.J.L. Tjittes)

NCC Rules



- English and Dutch versions (see www.ncc.gov.nl)
- Incorporates key Dutch Code of Civil Procedure rules, creating a common baseline that everyone understands
- Glossary of legal terms in English and Dutch

Now available: 2nd edition of the translation of the Dutch Code of Civil Procedure

Costs

- Court fees (subject to annual indexation: for the current fees see www.ncc.gov.nl)
 - NCC Court in Summary Proceedings: € 7.500
 - NCC District Court: € 15,000
 - NCC Court of Appeal: € 20,000 (summary proceedings: € 10,000)
- Allocation of costs
 - Agreement by the parties will be enforced, as a rule (Art. 10.2 NCC Rules)
 - Absent agreement: NCC rates apply (€ 1,000 - € 12,000 for each act of process; see Annex III to the NCC Rules)

Comparison with other English-speaking courts in Europe

	London	Paris	Frankfurt	Netherlands
World Ranking (Civil Justice)	17	18	4	3
Efficiency	-	-	±	+
Proceedings in English	+	±	±	+
Costs	-	+	±	+
Digital	+	-	-	+
Appeal	±	±	-	+
Enforcement	-	+	+	+

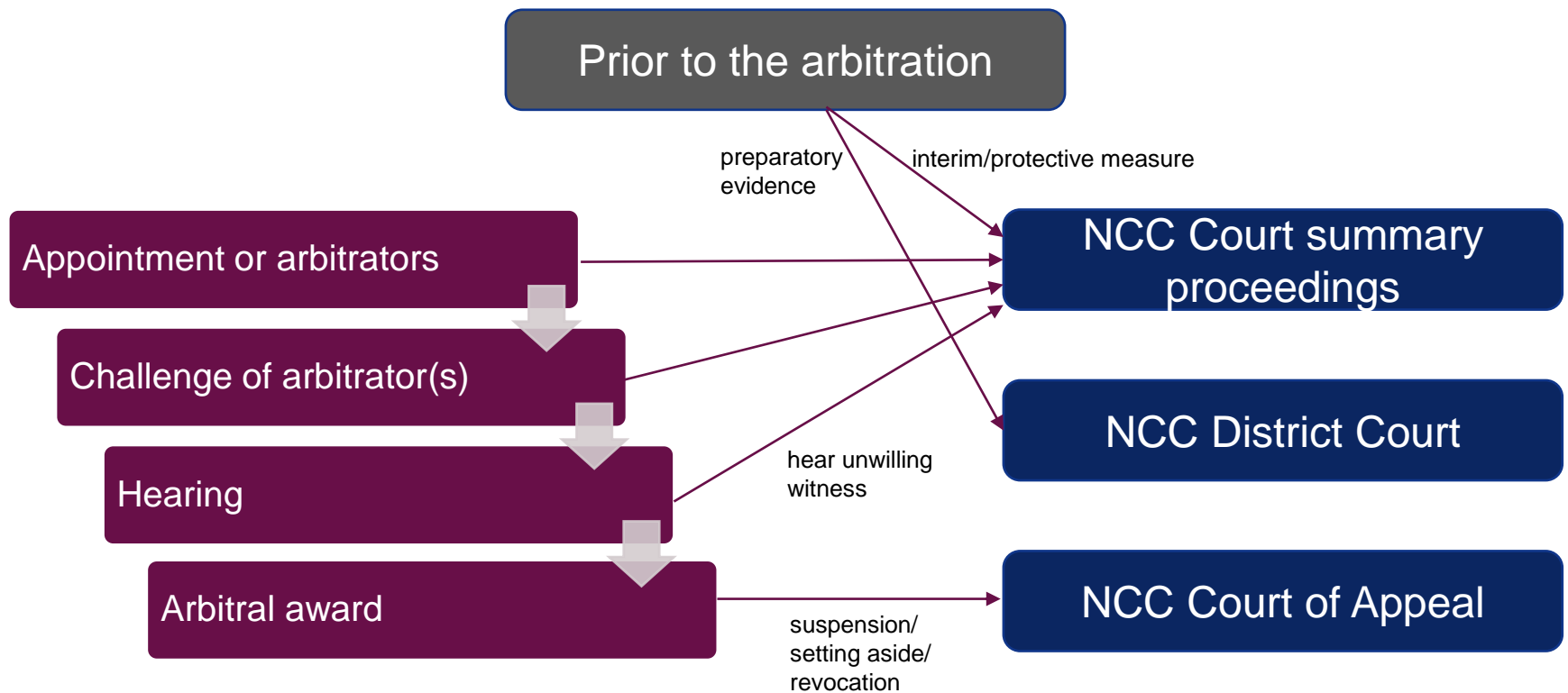
+ Indicates a positive outcome
 - indicates a negative outcome
 ± indicates a mixed result

Comparison with arbitration

	Arbitration	NCC
Efficiency	-	+
Proceedings in English	+	+
Confidentiality	+	±
Costs	--	+
Digital	-	+
Appeal	-	+
Enforcement	+	+

- + Indicates a positive outcome
- indicates a negative outcome
- ± indicates a mixed result

Arbitration + NCC litigation



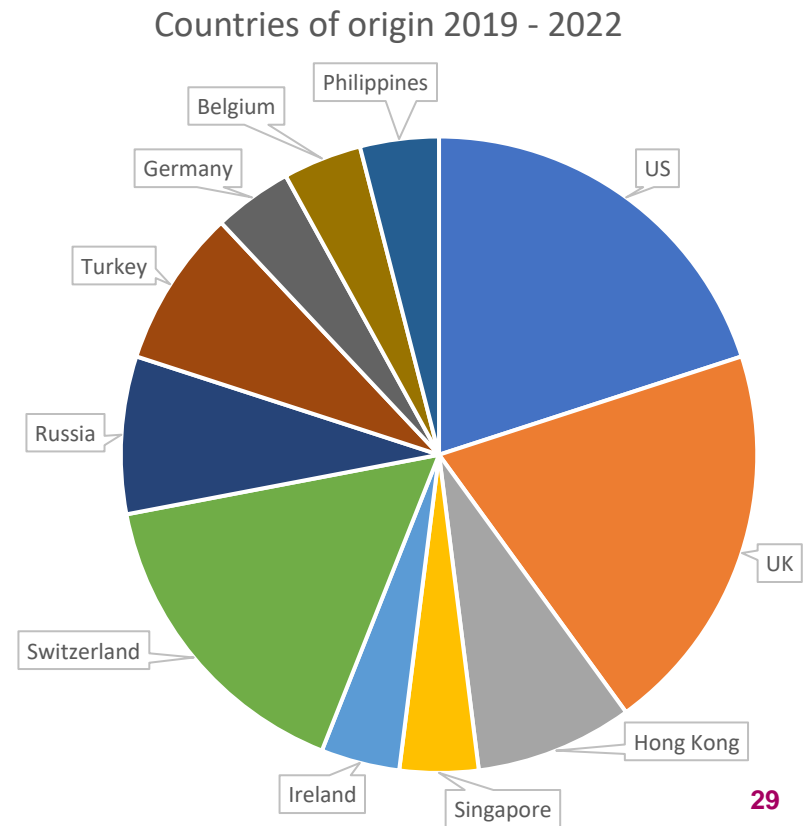
What others say about the NCC

- London's business courts face growing competition: English judges face Brexit, and slick new rivals
- *The Economist*, april 2021

- Partners in the Netherlands are confident about it becoming a real force in Europe and a good number of their colleagues in London are wary of it taking cases away from their backyard
- *The Lawyer Signal, March 2022*

NCC cases so far

- Number of cases: 16 (2019-2022)
- Type of proceedings:
mostly summary proceedings
- Type of dispute:
mainly contractual disputes; only 1 claim in tort
- Parties:
majority from common law countries
- Length of proceedings:
majority within 8 weeks



Questions?

Website	http://www.ncc.gov.nl
E-mail	NCC@rechtspraak.nl
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