NETHERLANDS COMMERCIAL COURT - SEMINAR

Interim Remedies – Commonalities and Differences in Common Law and Civil Law

Interim Remedies under Dutch Law and at the NCC



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International Jurisdiction for Interim Measures

NCC competence

- International commercial claim
- Value threshold: €25,000
- Not subject to exclusive jurisdiction of another court (e.g. maritime cases)

- Written NCC clause including English-language agreement

(Art. 32a DCCP, 1.3 NCC Rules)

International jurisdiction

A valid choice-of-court agreement

- ✓ Article 25 Brussels I-bis
- ✓ Non-EU, the Hague Choice of Court Convention (e.g. England)
  - BUT: provisional and protective measures excluded

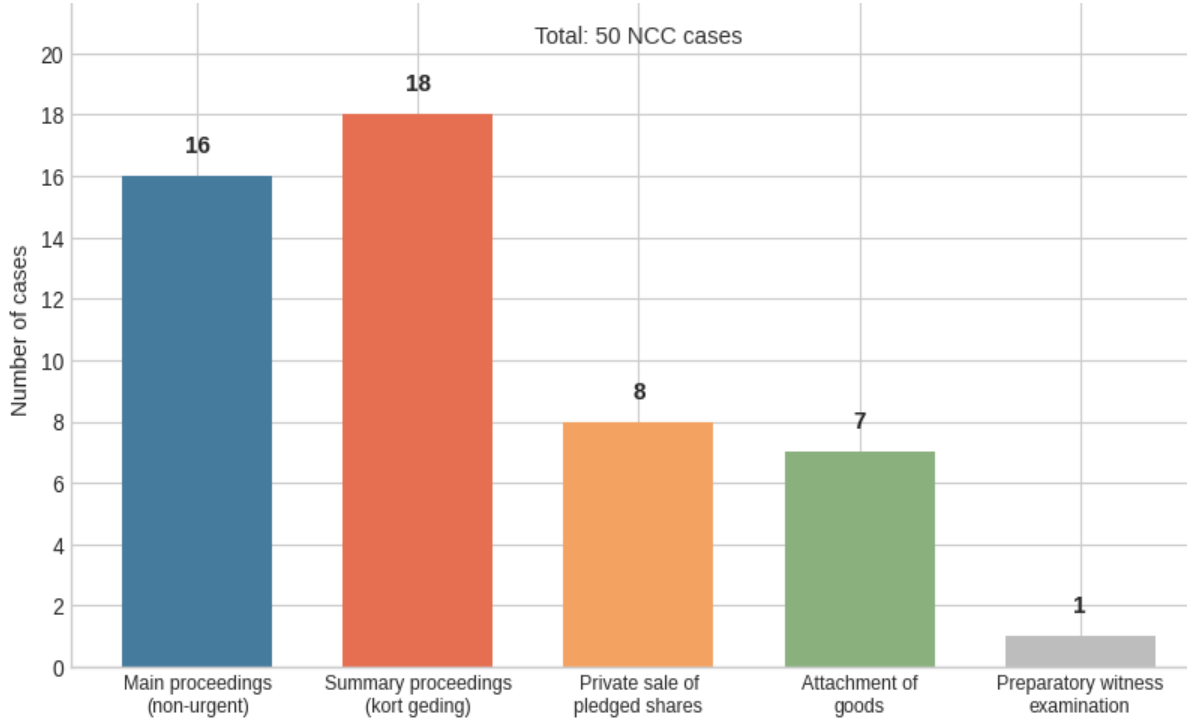
Interim measures

- Court having jurisdiction in main proceedings
- Provisional and protective measures: Art. 35 Brussels I-bis
  - ✓ Real connecting link with Netherlands (Van Uden v Deco-Line)

Interim remedies at the NCC

- Crucial in commercial litigation
- Swift and effective measures to protect assets, prohibit infringements and enforce contractual rights
- Interim remedies before, during and independent from main proceedings

- Court of Summary Proceedings (CSP) (voorzieningenrechter)
  - ✓Usually a single judge, instead of panel of three
  - ✓Accelerated procedure, oral (online) hearing
  - ✓Judgment on average within 5 weeks



(NCC Rules, section 6)

Typology interim remedies under Dutch law

(1)

Pending main proceedings

A party may request a provisional or protective measure for the duration of the proceedings

(Article 223 DCCP)

(2)

Assets and evidence

- Pre-trail attachment of goods order

(Article 700 DCCP)

- Preliminary evidentiary measures &attachment

(Article 196, 205 DCCP)

(3)

Summary proceedings
(kort geding)

- Party may request provisional relief in urgent matters in an expedited procedure

(Article 254 DCCP)

1. Interim remedy during proceedings

- Classical provisional or protective measures
- Interim measures within an ongoing main action

- Requirements: sufficient connection and immediate relief required
- Effect: seizes to have effect once final judgment is given
- Examples: restraining conduct; provisional payment; safeguard documents or information

(Article 223 DCCP)

NCC

- ✓ CSP can grant interim measure when main proceedings at NCC are pending
- ✓ Important: NCC needs to have (international) jurisdiction (Article 1.3.2 NCC rules)
- ✓ So far hardly relevant in NCC practice

Claimant v Debx Medical Holding B.V. (requested, withdrawn)

DiaMedica Therapeutics Inc v Pharmaceutical Research Associates Group B.V., ECLI:NL:RBAMS:2023:2540

2. Asset attachment and evidentiary measures

Asset attachment

- Prior to proceedings
- Ex parte, main proceedings within 14 days
- Attaches the asset
- Requirements: prima facie claim, proportionality and subsidiarity
- Effect: seizes to have effect if main proceedings not started
- Examples: movable and immovable goods, bank accounts and under third parties (e.g customers)

(Article 700 DCCP)

Evidentiary measures

- Preliminary gathering of evidence (witnesses, experts)

(Art. 196 DCCP)

-note: not a provisional measures under Art.35 Brussels I-bis (St. Paul Dairy)

- Pre-judgment attachment of evidence
- Requirements: sufficient interest, no abuse of power, due process

(Article 205 DCCP)

NCC

- CSP can order pre-judgment attachment of goods by way of interim relief, or order evidentiary measures
- Again: NCC needs to have (international) jurisdiction (Article 1.3.2 NCC rules)

Case C/13/753927, ECLI:NL:RBAMS:2024:8779 (attachment order)

3. Summary proceedings – provisional relief

- Main route to obtain interim measures
- Main proceedings need not be pending or later commenced
- Requirements: urgent interest, plausible underlying right, balance of interests
- Effect: immediately enforceable; in effect till judgment in main proceedings (not final)
- Examples: prohibiting conduct, contract enforcement, transfer of shares, interim payment, order to appoint director

  (Article 254 DCCP)

NCC

- ✓ CSP frequently orders these interim measures
- ✓ Again: NCC needs to have (international) jurisdiction (Article 1.3.2 NCC rules)
- ✓ Accelerated procedure

Triple Bells B.V. v Sega Sammy Creation Inc., ECLI:NL:RBAMS:2025:2351

Duomed The Netherlands B.V. v FUJIFILM Europe B.V., ECLI:NL:RBAMS:2023:4109

Batavia Biopharma B.V. v Batavia Biosciences B.V. et alii, ECLI:NL:RBAMS:2025:8836

Coöperatieve Federatie van Edelpelsdierenhouders Nederasselt U.A. v Ceva Santé Animale S.A, ECLI:NL:RBAMS:2023:6473