

Netherlands delegation

Answers to the questionnaire relating to the Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters.

1. An important decision was taken by the Netherlands Supreme Court, de Hoge Raad, in its decision of 18 February 2000. According to the Hoge Raad the Evidence Convention had as its tenor to facilitate as much as possible the taking of evidence abroad, which involves a extensive interpretation of its dispositions. This goes also for the specifications of the letter of request mentioned in article 3. If the letter of request specifies a person to be examined by function and name, the examining court is entitled to examine that person's deputy if the function is the relevant factor. (NJ 2001-259, Nt. PV).

2. No.

As to the requests to obtain evidence abroad made in Dutch courts, generally speaking the ways offered by the Hague Evidence Convention are seldomly used. Attorneys prefer to examen witnesses in the courts where the proceedings in the Netherlands are held. Reasons for this preference are that these witnesses are examened by a member of the court dealing with the case, who is delegated to hearing the witnesses, and that in such case these attorneys have the opportunity to instantaniously add questions to the original ones, which allows them to disclose more information than through a letter of requests (commission rogatoire) which has to specify in advance the evidence to be obtaines or the questions to be put to the persons to be examined. Court decisions show that even if attorneys agree in the examining of witnesses abroad, courts are often not willing to send letters of request and insist on the hearing of witnesses in their court room.

3. The reduced use of the Hague Evidence Convention is caused also by the fact that the letters of request are differently dealt with by the different courts abroad. An additional negative impact is due to the experience that this way of examining witnesses is time-taking; it lasts relatively long between the sending of the letter of request and the reception of the answers. An impeding factor, too, is created by the many formal hurdles which may often result in a refusal of the requested court after opposition of the witness to be heard.

4. No decisions available.

5. The Netherlands will not accept letters of request which are part of a pre-trial discovery.

6. Reservation is undiscussed.

7. We agree with the proposal of the Permanent Bureau. The Dutch legal provisions on arbitration (Art. 1044 Code of civil procedure) have comparable rules.

8. Unknown.

9. Dutch law allows such participation under the condition that the court explicitly has given permission and the representatives fulfil the conditions set by the court.

10/11. Unknown. In the light of the restricted use of electronic means in Dutch civil procedure today, it is unlikely that such request will be accepted. The Netherlands is actually discussing the introduction in domestic cases of interviewing witnesses at distance using modern devices like teleconferencing.

12. International civil procedure needs speedy actions. The use of modern communication technology might be of great help.