

# The cost of legal proceedings

**This memorandum gives a general overview of the costs of legal proceedings before the courts in Belgium.**

## 1. SUMMONS COSTS

In general, legal proceedings are initiated with a writ of summons that has to be served by a bailiff. The rates for this are established by law, and it usually costs between 200 EUR and 500 EUR per party to be summoned. In a number of cases proceedings may also be initiated by petition (for example, on appeal). In that case, only a register fee must be paid. The cost of the writ of summons and the register fee will ultimately be borne by the losing party at the end of the proceedings. However, they must be advanced by the plaintiff when the latter receives the invoice from the bailiff. The plaintiff can later recover these costs, on the basis of the judgement, from the losing party. In the event of insolvency of the defendant, these costs will remain at the expense of the plaintiff.

## 2. REGISTER FEES

This is a tax for putting the case on the court's agenda. The rates depend on the particular court in question. Introducing a case before the Cantonal court / Justice of the Peace costs 50 EUR; for the Court of First Instance and the Commercial Court this fee is 165 EUR. Introducing a case before a Court of Appeal costs 400 EUR, and before the Supreme Court it is 650 EUR. The register fees are due on the date the decision is pronounced, and they are imposed on the losing party. At some point in time, the party that was ordered by the judge to pay the register fees will receive a request for payment from the Federal Public Service Finance.

If the case is removed from the register, the register fee is due as of the date of removal and will be claimed from the party who initially requested that the case be put on the register. For the other court expenses, there are no statutory provisions that regulate what will happen to them in case of removal

### 3. PROCEDURAL INDEMNITY – RECOVERY OF LAWYERS' FEES

In Belgium, one cannot (fully) recover lawyers' fees. One is only entitled to a «procedural indemnity». The procedural indemnity is a lump-sum compensation in the expenses and fees of the winning party's lawyer.

The amount of the procedural indemnity is defined according to the value of the claim: the greater the value of the claim, the higher the procedural indemnity. For a claim that cannot be valued in money, a fixed amount is provided for.

However, in certain cases the judge can – at the request of one of the parties – raise or lower the procedural indemnity. There are four criteria that the judge can take into account:

- the complexity of the case;
- the financial capacity of the losing party;
- contractually agreed compensation for the winning party;
- the manifestly unreasonable nature of the situation

However, the judge cannot impose a procedural indemnity that is lower than the legally-provided minimum amount or higher than the maximum amount.

The legally-provided lump-sum amounts of the procedural indemnity are established by Royal Decree. The base, minimum and maximum amounts are subject to indexation whenever the index figure rises or falls by 10 points. At the moment it is unclear whether the amounts of the procedural indemnity have decreased by 10% since 1 March 2023. Therefore, for the time being, the amounts of the procedural indemnity that have applied since 1 November 2022 remain in force. You will find an overview below:

Amounts in EUR	Basic amount	Minimum amount	Maximum amount
< 250.01	225.00	112.50	450.00
< 750.01	300.00	187.50	750.00
< 2500.01	600.00	300.00	1,500.00
< 5000.01	975.00	562.50	2,250.00
< 10,000.01	1,350.00	750.00	3,000.00
< 20,000.01	1,650.00	937.50	3,750.00
< 40,000.01	3,000.00	1,500.00	6,000.00
< 60,000.01	3,750.00	1,500.00	7,500.00
< 100,000.01	4,500.00	1,500.00	9,000.00
< 250,000.01	7,500.00	1,500.00	15,000.00
< 500,000.01	10,500.00	1,500.00	21,000.00
< 1,000,000.01	15,000.00	1,500.00	30,000.00
> 1,000,000.01	22,500.00	1,500.00	45,000.00
Cannot be valued in money	1,800.00	112.50	15,000.00

Any lawyers' fees incurred above these lump-sum amounts cannot be recovered from the opposing party.



#### 4. REGISTRATION FEES

Registration fees are to be qualified as taxes and are intended as general compensation for services provided by the court. Only in the event of judgments ordering payment of more than 12,500 EUR a registration fee of 3% is to be paid by the losing party on the amount to which it was condemned.

The tax authority will collect these registration fees. After the judgement has been pronounced, the authority will send a payment notice stating that the registration fees must be paid within a month.

The following condemnations are exempted from registration fees: decisions in summary proceedings; judgements in so far as they impose criminal fines, civil fines or disciplinary fines; judgements in so far as they entail an order to pay a maintenance allowance.

If no payment order is pronounced by the judge, no registration fees will be owed either. Consequently, an agreement judgement or removal of the case from the register (for example, if a settlement agreement has been reached) will not lead to registration fees being owed. After all, in such cases the judge does not impose any payment obligation.

#### 5. AUTHENTICATED COPY OF THE JUDGEMENT

An authenticated copy of a judgement is necessary whenever one wishes to proceed with forced execution of said judgement. A single enforceable authenticated copy of a judgement per party is exempted from the authenticated copy fee, as a result of which no cost must be incurred.

#### 6. SERVICE BY BAILIFF OF THE JUDGEMENT

Costs of enforcement such as the service by bailiff of a judgement are not court costs, but they shall be borne by the party against whom the enforcement is demanded. Such service is performed at statutory rates which will usually be between 200 and 500 EUR. The bailiff will send his invoice to the plaintiff who can then recover these costs from the party against whom the enforcement is demanded.

#### 7. PROCEDURAL COSTS AT THE SUPREME COURT (COURT OF CASSATION)

Appeal at the Supreme Court is only possible against final decisions that were rendered in the last instance and on the grounds of a violation of the law. Prior to initiating proceedings before the Supreme Court, an opinion will be sought from a lawyer who is qualified to plead before the Supreme Court, who will verify whether appeal at the Supreme Court could be useful.

The cost price of Supreme Court proceedings depends on the fees of the Supreme Court lawyer and the complexity of the case. Other than in 'ordinary' proceedings, the winning party cannot claim a procedural indemnity in order to recover these costs (lump-sum). However, the Supreme Court will generally order the losing party to pay the costs of the proceedings. The main costs include:

- The costs for serving the petition to appeal to the Court of Cassation on the opposing party, which amounts to approximately 275 EUR per party.
- The register fees.

The bailiff will send his invoice for the service costs to the plaintiff who, when applicable, will be able to recover these costs from the opposing party.

At some point in time, the party that was ordered by the judge to pay the register fees will receive a request for payment from the Federal Public Service Finance.

## 8. COSTS OF THE COURT EXPERT INVESTIGATION

The most diligent party must advance the costs of the court expert. Generally this will be the party that is demanding the expert investigation. When the expert is appointed by the court, an advance must be consigned to the clerk of court's office. When the expert has completed his investigation, he determines the full cost thereof. If the original advance is not enough to cover this amount, the remainder will have to be paid by the same party that paid the advance. However, the judge rules in his final judgement that the costs of the court expert's investigation are to be borne by the losing party. The party that had advanced the costs for the expert investigation will be able to recover the costs from the losing party on the basis of the judgement.

Unlike the costs of the court expert investigation, the costs of one's own technical advisor are not regarded as court costs.

Nevertheless the costs of such technical assistance can be eligible for full compensation, in so far they were deemed necessary for assessing the damage. This will be the object of debate between the parties.

## 9. MOTION FOR GUARANTEE FROM A FOREIGN PLAINTIFF

Please also note that there have been recent developments concerning the «guarantee from a foreign plaintiff».

Certain risks arise when you are summoned by a foreign party before a Belgian judge. If the judge dismisses the claim, the foreign plaintiff will be ordered to pay the costs, but it will not necessarily be an easy matter for you to actually collect these costs.

You can therefore ask the judge to impose a guarantee on the foreign plaintiff, intended to assure the payment of any costs and damages deriving from the legal proceedings. Such a guarantee cannot be demanded when the plaintiff has the nationality of another EU member state, because this conflicts with EU law. In addition, the guarantee is excluded when the foreign plaintiff is exempted by an international treaty. The Hague Convention of 1 March 1954 provides such an exemption for all foreign plaintiffs that have their domicile in one of the signatory states.



The Belgian Constitutional Court ruled that the motion for guarantee from a foreign plaintiff violates the principle of equality. This because it makes an unjustified distinction in treatment between defendants depending on whether the plaintiff has foreign nationality or has Belgian nationality but is established abroad and has no assets in Belgium, even though in neither of these two cases the defendant has any guarantee that the plaintiff will be able to pay the costs. For some time after this decision, it was unclear how the rule should be applied.

The Supreme Court of Belgium has now given a conclusive answer and ruled that the motion in question can be raised against any plaintiff (regardless of his or her nationality) who lives or resides abroad and who does not possess sufficient assets in Belgium to bear the financial consequences of a possible condemnation.

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