

TASK OF THE JUDGE IN CIVIL CASES

written by Eva Willems | January 25, 2024



What exactly is the task of the judge in civil cases? To what does the court's jurisdiction extend and what is left to the parties? This article covers the following issues: party autonomy, rights of defence, factual presumptions and court costs.

Everything starts with [party autonomy](#), also known as the dispositive principle. The parties determine the boundaries of the case they bring before the court. It is the parties who set out their claims, draft arguments for them and present evidence. In turn, the judge rules on what the parties claim, nothing more and nothing less. Thus, the judge may not award more than what was claimed (*ultra petita*). Nor may the court fail to rule on any point of the claim (*infra petita*).[\[1\]](#)

1. Application of the law to the facts

The court must rule on the case in accordance with the applicable rules of law. Regardless of the legal grounds on which the parties base their claims, the judge may [supplement, amend or replace those legal grounds](#).

In doing so, the court must comply with the following conditions:

- Do not raise a ground that the parties have excluded in a written claim;
- Do not change the subject matter of the claim (i.e. the result that the parties hope to obtain);
- Do not disregard the parties' rights of defence;
- Do not solely rely on elements that have been regularly submitted to him.

The question arises as to whether the court does not thereby infringe the parties' [rights of defence](#) (Article 6 ECHR). The Court of Cassation has ruled on several occasions that this does not violate the rights of defence if the parties could expect - in view of the course of the debate - that the judge would include the legal grounds in question in his judgment and could thus argue about them.[\[2\]](#) It is appropriate for the court to always give parties the opportunity to take position on new or additional legal grounds.

2. Proof

It is up to the plaintiff to prove the facts or legal acts on which it bases its claim (art. 8.4, first paragraph Civil Code). In turn, the defending party that believes

that the claim is without foundation, must prove the facts or legal acts that support this (art. 8.4, second paragraph Civil Code).

Unless otherwise provided by law, all means of proof are eligible, notably a signed writing, witnesses, factual presumptions, confessions and the oath (art. 8.8 Civil Code).

The **factual presumption** is an evidence by which the judge deduces the existence of one or more unknown facts from one or more known facts (art. 8.1, 9° Civil Code).

The judge may adopt factual presumptions only if they are based on one or more serious and precise indications (art. 8.29, second paragraph Civil Code). By extension, the judge may not attach to the established facts any consequence unrelated to them or unjustifiable on the basis of those facts.[3]

Furthermore, the evidence must, of course, be lawfully obtained. However, **illegally obtained evidence** will only be excluded if it affected the reliability of the evidence or if the right to a fair trial would be violated. In all other cases, illegally obtained evidence is therefore allowed.[4] In doing so, the court does take into account, among other things, the method of acquisition, the seriousness of the unlawfulness, its impact on the other party and the attitude of the other party.[5]

3. Court costs

In accordance with Article 1017, first paragraph of the Judicial Code, the court shall order **the unsuccessful party** to pay the costs, including the counterparty's legal costs.

The **counterparty's legal costs are** a lump-sum allowance for the costs and fees of the successful party's lawyer, in principle set at the amount claimed (art. 1022, first paragraph Judicial Code). Basic, minimum and maximum amounts were set by Royal Decree.[6] On the date of the judgment, the court determines the correct (indexed) basic amount and *ex officio* corrects the claimed costs.[7] This power of correction does not affect the party autonomy and rights of defence.[8]

Deviation from the basic amount is possible provided there is a ground or request to do so (art. 1022 Judicial Code). The parties can also come to an agreement on their legal costs (art. 1017, first paragraph Judicial Code).

If a party is entitled to a pro bono lawyer, the judge is in principle obliged to pronounce the minimum or, subject to special justification, to reduce the amount below the minimum (art. 1022, fourth paragraph Judicial Code).

An update with recent case law of the Court of Cassation on the counterparty's legal costs will follow soon.

Conclusion

You just read the basic principles a judge should adhere to in his (very important) task. In a subsequent post, we will deal specifically with the judge's task in case the other party doesn't show up in court.

If you have any questions after reading this article, please do not hesitate to contact us at joost.peeters@studio-legale.be or 03/216.70.70.

[1] C. VAN SEVEREN, "Beschikkingsbeginsel vs. taak van de rechter", (noot onder Antwerpen 1^e k. 20 januari 2014), *NJW* 2015, nr. 314, 20; S. MOSSELMANS, *Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer*, I, deel I, hoofdstuk I, Ger.W. art. 12-13, (5) 9.

[2] Cass. 5 september 2013, C.12.0599.N; Cass. 25 januari 2021, AR C.19.0401.N, *RDJP* 2021/2, 72; Cass. 25 januari 2021, AR C.20.0147.N, *RW* 2021-22, nr. 21, 1; Cass. 2 september 2022, *RW* 2022-23, nr. 9, 334; Cass. 19 oktober 2023, C.23.0094.N, *RW* 2023-24, nr. 16, 630.

[3] Cass. 16 september 2022, *RW* 2022-23, nr. 24, 947; Cass. 28 oktober 2022, *RW* 2022-23, nr. 24, 947.

[4] Cass. 9 november 2018, C.17.0220.N-C.17.0318.N.

[5] Cass. 14 juni 2021, AR C.20.0418.N.

[6] Koninklijk Besluit van 26 oktober 2007 tot vaststelling van het tarief van de rechtsplegingsvergoeding bedoeld in artikel 1022 *Gerechtelijk Wetboek* en tot vaststelling van de datum van inwerkingtreding van de artikelen 1 tot 13 van de wet van 21 april 2007 betreffende de verhaalbaarheid van de erelonen en de kosten verbonden aan de bijstand van de advocaat, *BS* 9 november 2007, 56.834.

[7] Cass. 13 januari 2023, *RW* 2022-23, nr. 30, 1180.

[8] Cass. 3 maart 2023, *RW* 2022-23, nr. 37, 1; Cass. 21 april 2023, *RW* 2023-24, nr. 3, 109.