

THE WINNER TAKES IT ALL !

Door Herman Naeyaert, NAEYAERT, CARSAU & DE ROECK

The Belgian Act of 21st April 2007, which came into force on 1st January 2008, has drastically changed conditions regarding the awarding of legal costs in cases brought to court in Belgium.

According to the new legislation, lawyers fees have become, at least in part, recoverable from the losing party.

Before this act, each party bore its own lawyers fees, which the Belgian Supreme Court has, since a few years, considered an inequitable situation.

The new act concerns lawyers fees and not legal expenses as these costs have always been recoverable from the losing party.

Above all, I want to emphasize that lawyers always remain free to agree specific conditions with their clients.

As such the new act does not prohibit lawyers to make fee conditions, based on a percentage of the recovered amount, based on an hourly rate, on a success fee, etc ..

The new act is therefore to be considered as an instrument that allows the winning party to recover a part of his/her lawyers fees from the counterparty.

The amounts are awarded by the Court in the judgment itself and are called rechtsplegingsvergoedingen (Dutch) or indemnité de procédure (French).

The Royal Decree of 26th October 2007 sets out the tariffs that judges and courts may award to the winning party depending on the amounts of the compensation awarded in the judgment.

I quote following examples:

- up to 2.500,- € 400,- €
- up to 10.000,- € 900,- €
- up to 40.000,- € 2.000,- €
- up to 250.000,- € 5.000,- €
- more then 1.000.000,- € 15.000,- €

These amounts can however be increased by the court in case the claimant establishes particular circumstances: complexity of the discussion, the behaviour of the defendant, the financial capacity of the defendant (whether he/she is covered by a legal protection insurance policy) , etc ...



In these circumstances the court can double the standard amounts.

On the other hand, the court may also award only 50% of the standard amounts in case the solvency of the defendant is poor.

Minimum awards (50 % of the above mentioned standard amounts) are granted in case the defendant is convicted by default.

These amounts are awarded to claimants (victims) in civil and criminal procedures.

It may occur that in case of shared liability the amounts are shared.

Although it will not go unnoticed that the amounts, contained in the Royal Decree of 26th October 2007 will never cover the full lawyers fee, the new act may be considered as taking a first step in the right direction.

The risk of eventually being obliged to pay the lawyers fees of the counterparty will certainly be an extra incentive to consider very carefully whether it is worthwhile to commence proceedings in the first place.