

Contributory negligence in personal injury cases in France and in the Netherlands

In both Dutch and French law, the right to compensation for personal injury caused by another may be based on, inter alia, tort (Article 6:162 of the Dutch Civil Code, hereinafter 'DCC' or Article 1240 of the French Civil Code, hereinafter 'FCC') or a breach of contract (Article 6:74 of the DCC – Article 1231-1 of the FCC). Once liability has been established, this does not automatically mean that the liable party must bear the full amount of the damages. Circumstances on the part of the injured party may also have contributed to the damages.

Article 6:101 of the DCC contains the general rule on 'contributory negligence' for such situations. In France, this rule has not been codified but mainly stems from case law and from the causal apportionment principle.

When does contributory negligence come into play?

Under Dutch law, contributory negligence may relate either to the occurrence of the damage or to its extent. In the first situation, a circumstance on the part of the injured party contributed to the harmful event itself. In the second, the harmful event has already occurred, but a circumstance on the part of the injured party has caused the resulting damages to be greater.

Under French law, contributory negligence relates only to the occurrence of the damage – it usually requires that (i) the victim was negligent, i.e. committed a *faute*, and (ii) this negligence contributed to their damage. The Court of Cassation recently handed down an eagerly awaited judgment as it was expected to establish a higher threshold for the victim's behaviour to be considered a *faute* in every

situation. The Court's ruling was not as ambitious and impactful as anticipated; according to this ruling, from now on, there can be no *faute* from the victim (and thus no contributory negligence) when an accident occurs (i) during a sporting event and (ii) the event organizer did not issue safety warnings, regardless of the victim's actual behaviour.¹

The causal apportionment and the so-called 'fairness correction'

Both under French and Dutch law, where contributory negligence is established, the compensation payable is in principle apportioned according to the extent to which the circumstances (NL) or torts (FR) on each side contributed to the damage. Therefore, it needs to be assessed which circumstances or tort attributable to the liable party and which attributable to the injured party contributed to the damage. The loss is then apportioned

¹ Cour de cassation, general assembly, 29 May 2026, no. 23-20.005

between the parties on that basis. In the Netherlands, the concept 'contributory negligence' is broader than the term might suggest. It is not necessary for the injured party to be personally at fault: also other circumstances attributable to the injured party may be taken into account.

Under Dutch law however, the causal apportionment does not necessarily determine the final percentage of compensation awarded to the injured party. It serves as a starting point. Article 6:101 of the DCC also provides for a so-called fairness correction. If the causal apportionment would lead to an inequitable outcome, taking into account factors such as the degree of fault of the parties' conduct, the nature and severity of the injuries, the age of the injured party and other circumstances of the case, a court may adjust the apportionment on grounds of fairness. The amount of compensation may therefore be higher than would follow from the causal apportionment alone.

In 2020, for example, the Court of Appeal of 's-Hertogenbosch held that a volunteer who had climbed a tall Christmas tree without safety equipment was 50% responsible for his own damages. In view of the very serious consequences of the fall, however, the court considered it fair to correct the percentage of compensation awarded to him to 75%.²

Exceptions

The Dutch would not be the Dutch – ask every student of the Dutch language – if the general rule would not come with its fair share of exceptions. The same holds true for the principles of causal apportionment and fairness correction as discussed above. Two of the most notable examples are outlined below.

Dutch traffic (case)law provides specific protection for pedestrians and cyclists involved

in accidents with motor vehicles. Under the so-called 50% and 100%-rule, contributory negligence defenses are limited. A pedestrian or cyclist is generally entitled to recover at least 50% of its damages, even if they contributed more than 50% to the occurrence of the accident. Exceptions apply only in cases of force majeure, willful conduct or conscious recklessness. Children under the age of fourteen are, in principle, entitled to full (100%) compensation, even if they were fully at fault.

Dutch employment law also contains a special protective regime. In cases of employer liability under Article 7:658 of the DCC, ordinary contributory negligence on the part of the employee does not reduce the extent of the employer's obligation to compensate the employee's damages. Ordinary carelessness is insufficient. Only willful conduct or conscious recklessness can limit the employer's liability.

French law also contains a lot of exceptions, depending on the liability regime. Under the strict liability regime for damage caused by objects, for example, the victim's conduct can only exonerate the liable party if it constitutes a case of force majeure.³

French traffic law also provides a protection under Article 3 of the law no. 85-677 of 5 July 1985, for non-driving accident victims (i.e. anyone other than the driver of a motorized land vehicle); there can be no contributory negligence unless such victim was involved in an intentional or inexcusable act of negligence.

The duty to mitigate

In France, the Cour de cassation has been quite clear for a long time on the fact that the victim has no duty to mitigate their damage.⁴ The liable party remains responsible for the whole damage, even if the victim did not take reasonable steps to mitigate it.

² Court of Appeal of 's-Hertogenbosch, 2 June 2020, ECLI:NL:GHSHE:2020:1701 (confirmed by the Dutch Supreme Court in 2021).

³ Cour de cassation, 2nd civil chamber, 21 July 1982, no. 81-12850

⁴ Cour de cassation, 2nd civil chamber, 19 June 2003, no. 01-13.289

Under Dutch law, as said, Article 6:101 of the DCC may also relate to the extent of the damages. The injured party is expected to take reasonable steps to prevent or limit further damages, but is not required to mitigate the loss at any cost. What matters is what could reasonably have been required of the injured party in the circumstances. Where the injured party has failed to take such reasonable steps to mitigate his or her loss, the liable party may rely on Article 6:101 DCC to reduce its liability in respect of the damage that could have been mitigated.

However, in personal injury law, the Dutch courts apply this principle with considerable restraint. After all, it is the liable party who has placed the injured party in the situation in which he or she finds themselves as a result of the harmful event.

For example, very recently, the District Court of Limburg held that the fact that an injured party had gone without treatment for his whiplash-related complaints for several years was insufficient to establish a breach of the duty to mitigate. It had not been sufficiently specified which treatment could have reduced the damage.⁵ Similarly, a year before, the District Court of Oost-Brabant held that an injured party could not be required to take a different job solely in order to reduce his loss of income.⁶

However, there are cases in which the duty to mitigate has significant consequences for the injured party. This can be seen in a judgment in

2023 of the District Court of Limburg.⁷ The case concerned the question of which living arrangement should be taken into account when calculating the injured party's future care costs. The choice was between accommodation in an institution under the Dutch statutory long-

term care system (Wlz) and a considerably more expensive private residential care arrangement. The court considered the Wlz institution to be a suitable living arrangement. In the court's view, the claimants' duty to mitigate its loss required him to opt for the less expensive alternative, namely residence in a Wlz-institution. If the injured party would nevertheless choose the private residential initiative, which he is free to do, the court considers that the liable party cannot be required to compensate the associated costs. The judgment illustrates that Dutch courts generally give injured parties considerable freedom in shaping their post-accident lives, but that this freedom is not unlimited where significantly more expensive alternatives are chosen.

Conclusion

Although French and Dutch law differ in their approach, we can see that in both legal systems, the victim's right to compensation may, in principle, be limited on the grounds of contributory negligence; however, in both legal systems, exceptions exist which limit the scope of such circumstances and facilitate compensation for the victims.

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⁵ District Court of Limburg 15 April 2026, ECLI:NL:RBLIM:2026:3406.

⁶ District Court of Oost-Brabant 18 December 2025, ECLI:NL:RBOBR:2025:8339.

⁷ District Court of Limburg 28 June 2023, ECLI:NL:RBLIM:2023:4336.