



## **Second Study Commission**

### **Civil Law and Procedure**

## **66th Annual Meeting of the IAJ – Cape Town (South Africa)**

### **Questionnaire 2024**

Written submissions – when do they turn from a help to a hindrance?

In Taipei, Taiwan, we decided that in 2024, our Second Study Commission will focus on how written submissions in civil litigations can turn from a help to a hindrance and whether there are limits on written submissions in our various jurisdictions. If so, what these limits include.

We have limited the questionnaire to six questions and expect to receive short but concise answers.

The questions are as follows:

1. Are there limits for written submissions in civil litigations in your jurisdiction in terms of the maximum length?

**No, but as civil proceedings are exclusively electronic in nature and are processed, including the performance of written acts, on the information system that supports the activity of the courts, namely “CITIUS”, the procedural document, each document, or the set of procedural documents and documents, cannot exceed the size of 20 MB.**



**In cases where the 20 MB limit is exceeded due to the size of the documents, the procedural document must be submitted via Citius, and the documents must be submitted on the same day via a single application or, when this is not possible because it does not respect the aforementioned limit, via as few applications as possible.**

**(articles 132 and 144 of the Code of Civil Procedure and article 10 of Ministerial Order no. 280/2013, of 26/08)**

**2. Are there time limits for filing written submissions?**

**Yes, there are.**

**Under the terms of article 138 of the Code of Civil Procedure, the procedural time limit, established by law or set by order of the judge, is continuous, but is suspended during judicial vacations, unless its duration is equal to or greater than six months or it concerns acts to be performed in proceedings that the law considers urgent. When the deadline for carrying out a procedural act falls on a day when the courts are closed, the deadline is transferred to the next working day.**

**Courts are considered closed when time off is granted. And the time limits for bringing actions provided for in this Code follow the regime of the previous paragraphs.**

**According to Article 141 of the Code of Civil Procedure, the procedural time limit set by law may be extended in the cases provided for therein, such as that provided for in Article 569(6) of the Code of Civil Procedure. If the parties agree, the deadline can be extended once for the same period.**



3. Are there limits in terms of a maximum number of additional submissions in a case?

**Yes, there are. After the Plaintiff files the initial civil claim, the Defendant has 30 (thirty) days to file a defence. The Defendant can defend by objection and by exception. The Defendant may also file a counterclaim within the same 30-day period, which must be expressly identified and filed separately from the rest of the defence.**

**The defence is served on the Plaintiff, who can still file a reply within 30 days, but this is only admissible in relation to the subject matter of the counterclaim, and cannot oppose a new counterclaim.**

**Supervening pleadings may also be filed by the parties in certain circumstances set out in articles 588 and 589 of the Code of Civil Procedure. (see articles 552, 569, 571, 583, 584, 585, 588 and 589 of the Code of Civil Procedure)**

4. Are there rules, including penalties or cost implications, for breaches of these requirements?

**Yes. For the procedural documents referred to above: defence, reply and subsequent pleadings, the expiry of the peremptory period extinguishes the right to perform the act.**

**However, regardless of justifiable impediment, the act may be carried out within the first three working days following the expiry of the time limit, its validity being dependent on the immediate payment of a fine, set in the following terms: a) If the act is carried out on the 1st day, the fine is set for the 1st day. a) If the act is carried out on the 1st day, the fine is set at 10 % of**



the court fee corresponding to the case or act, with a maximum limit of 1/2 UC; b) If the act is carried out on the 2nd day, the fine is set at 25 % of the court fee corresponding to the case or act, with a maximum limit of 3 UC; c) If the act is carried out on the 3rd day, the fine is set at 40 % of the court fee corresponding to the case or act, with a maximum limit of 7 UC.

If the act is carried out on any of the following three working days without the fine due having been paid immediately, as soon as the fault is established, the registry, regardless of any order, notifies the interested party to pay the fine, plus a penalty of 25 per cent of the amount of the fine, provided that the act is carried out by a representative. If the act is carried out directly by the party, in an action that does not involve the appointment of a representative, payment of the fine is only due after notification by the registry, which provides for a period of 10 days for payment.

The act can also be carried out after the deadline in the event of a fair impediment.

A 'just impediment' is considered to be an event not attributable to the party or their representatives or agents that prevents the act from being carried out on time.

The party who alleges the justifiable impediment immediately provides proof of it; the judge, after hearing the opposing party, allows the applicant to perform the act after the deadline if he or she considers the impediment to have been verified and recognises that the party applied for it as soon as it ceased.

Finally, the act can be carried out after the deadline if the parties agree, in which case the deadline can be extended once for the same period.

And when the judge considers that there is a weighty reason that prevents or makes it abnormally difficult for the defendant or his legal representative to



**organise the defence, he may, at the request of the defendant and without prior hearing of the opposing party, extend the time limit for the defence, up to a maximum of 30 days.**

**(see Articles 139, 140, 141 and 569(5) and 586 of the Code of Civil Procedure)**

5. Are these limits or requirements effective in terms of reducing the number and length of written submission and the time spent preparing for and determining a case?

**It is only effective in situations where the party carries out the act after the deadline and within the following three working days, without paying the fine and penalty, OR without having claimed the 'just impediment' under the terms of article 140 of the Code of Civil Procedure, OR without having requested an extension of the deadline and been granted it by the courts, OR having requested the extension with the agreement of the opposing party.**

**In these situations, the party's right to carry out the act is extinguished, which makes the situation simpler and quicker to analyse in terms of the procedural process and eventual judgement.**

**In other situations, if the party is able to carry out the act, there is no restriction on the length of their procedural document, nor does it prevent them from filing subsequent pleadings.**

6. What is the effect of written submissions on any hearing which subsequently takes place?



**In Portugal, in civil cases, the final hearing is an oral and immediate phase. Firstly, the judge tries to conciliate the parties, if the case is within the judge's power to decide. Then the following acts can take place: a) The taking of statements by the parties; b) The showing of film reproductions or phonographic recordings, where the judge may order that this be done only with the assistance of the parties, their lawyers and persons whose presence is deemed appropriate; c) Verbal explanations by experts whose attendance has been ordered of the judge's own motion or at the request of the parties; d) The examination of witnesses; and e) Oral arguments, in which the lawyers set out the conclusions of fact and law that they have drawn from the evidence produced, with each lawyer being able to reply once.**

**The final hearing is always recorded on a sound system from its start until the oral arguments. This recording is then made available to the parties for the purposes of any appeal that may be lodged on the matter of fact included in the judgement.**

**(Articles 604 and 155 of the Code of Civil Procedure).**

7. Comments or suggestions as to what could otherwise prove to be effective

**I think there should be a limit on the size of each procedural document, which should not exceed a certain number of pages and a certain number of words.**

**In many and varied dimensions of the Portuguese state, this kind of limit already exists, such as when submitting work or CVs, with well-defined limits in terms of the form to be used, the font, the number of words and/or the number of pages.**