Responses to the **Second Study Commission Questionnaire 2024** (Civil Law and Procedure)

To: The International Association of Judges (IAJ)

AMB
Associação dos Magistrados Brasileiros

International Association of Judges

FROM: Brazilian Magistrates Association (AMB)

TO: The International Association of Judges (IAJ)

RESPONSES TO THE SECOND STUDY COMMISSION QUESTIONNAIRE 2024 (CIVIL LAW AND PROCEDURE)

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

No.

According to Law No. 13.105/2015 (Code of Civil Procedure), once the instruction hearing is concluded, it is up to the judge to give the floor to the plaintiff's lawyer and then to the defendant's lawyer for 20 (twenty) minutes each, extendable for 10 (ten) minutes at the judge's discretion (Art. 364). After the oral arguments are presented, the judge delivers the sentence at the hearing (Art. 366).

This is the rule. However, under the terms of Art. 364, § 2, of the Code of Civil Procedure, when the case presents complex factual or legal issues, oral debate can be replaced by written final arguments (*written submission*), which are first presented by the plaintiff and then by the defendant.

Although oral debate is the rule, judges have preferred to replace it with written final arguments. In the Brazilian jurisdiction model, with high litigation, magistrates can better organize their duties by postponing the sentence until after the written final arguments are presented.

In Brazil, there is no limit, in terms of length, for procedural documents in general, nor written final arguments. What is expected of lawyers and other legal practitioners is reasonableness and that they present documents containing only what is strictly necessary for a fair judgment of the case.

2. Are there time limits for filing written submissions?

Yes.

As provided in Art. 364, § 2, of the Code of Civil Procedure, the plaintiff and the defendant must submit their written final arguments within successive periods of 15 business days, meaning the plaintiff has 15 business days to submit their written final arguments and, after the

plaintiff's arguments are submitted, the defendant will also have 15 business days to submit their written final arguments.

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

In Brazil, as a rule, there are no additional written final argument submissions. The parties must bring all factual and legal reasons, as well as their claims regarding the judicial provision. Once the written final arguments are presented, the judge will render the sentence based on the evidence and allegations presented by the parties, with no further opportunities for new submissions.

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

As mentioned in the response to the first question, in Brazil, there is no written rule defining the limit, in terms of length, for procedural documents, not even for written final arguments. What is expected of lawyers and other legal practitioners is reasonableness, meaning that the procedural documents presented should be compatible in length with the complexity of the case being discussed.

However, when this reasonableness is not observed, there is no sanction or fine for the lawyer who exceeds these limits. Occasionally — very rarely — the judge may instruct the lawyer to reduce the length of the procedural document so that its length matches the complexity of the case.

However, due to the lack of explicit legal provision allowing this conduct, any such instructions by the judge, when challenged on appeal, are usually overturned by higher courts on the grounds of violation of the lawyer's autonomy and fundamental rights to petition, adversarial proceedings, and full defense.

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?

As already highlighted in the responses to questions 1 and 4, in Brazil, there are no limits, in terms of length, for procedural documents, not even for written final arguments.

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

As highlighted in the response to question 1, once the instruction hearing is concluded, if the case presents complex factual or legal issues, oral debate can be replaced by written final arguments, which are first presented by the plaintiff and then by the defendant. The purpose of the final arguments is precisely to allow the parties to revisit the process, bringing out the strengths of their cases and, of course, to try to convince the judge of their requests. Considering that the final arguments are the last statements by the parties before the judgment, it is not possible to indicate the effects of written submissions on any subsequent hearing because the final arguments precede the decision phase of the process when the judge then presents their judgment.

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

As already highlighted in the responses to questions 1 and 4, in Brazil, there are no limits, in terms of length, for procedural documents, not even for written final arguments. For this reason, it is expected from lawyers and other legal practitioners to exercise reasonableness, meaning that the procedural documents should be compatible in length with the complexity of the case being discussed.

However, this reasonableness is not always observed, as mentioned. Therefore, one suggestion that can be pointed out is a legislative amendment to allow the judge to instruct the lawyer to reduce the length of the procedural document so that its length matches the complexity of the case, a measure that does not currently exist. This measure takes seriously the fact that there may be difficulty in establishing an ideal limit in legislation due to the varying complexity of cases.

Thus, it is understood that this is a relevant amendment because, in the absence of explicit legal provision allowing this conduct, any such instructions by the judge are commonly challenged on appeal and usually overturned by higher courts on the grounds of violation of the lawyer's autonomy and fundamental rights to petition, adversarial proceedings, and full defense.

Judge Geraldo Dutra de Andrade Neto

Secretary of International Relations of the Brazilian Magistrates Association - AMB

AMB
Associação dos
Magistrados
Brasileiros

International Association of Judges