

Second Study Commission

Civil Law and Procedure

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

Answers to the Questionnaire from Switzerland

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

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

There are written or oral proceedings (depending on the subject matter of the proceedings / amount in dispute). It may also be possible to switch to written form in oral proceedings. The following applies to all proceedings: there is no maximum length for written pleadings in civil proceedings.

2. Are there time limits for filing written submissions?

Yes.

After an unsuccessful conciliation procedure, the authorization to sue and the claim must be submitted to the court of first instance within three months.

The court of first instance will then set deadlines for further written pleadings. These can (and regularly are) extended, depending on the scope of the case. In many cases, 2x 30 days are granted.

In appeal proceedings there is normally only one exchange of written pleadings. The pleadings must be submitted within a period of 10 or 30 days. This period is fixed in the code of civil procedure. An extension of the deadline is excluded.

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

In ordinary written proceedings, the parties are entitled to two written submissions or presentations in which they can present new facts.

However, each party also has the right to reply to any further written statement made by the other party (so-called unconditional right of reply). This can lead to a “perpetual” right of reply.

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

No. Unsolicited legal documents cannot be considered; late legal documents will not be considered. If they are not considered, there is no entitlement to compensation.

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?

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

If the hearing has already been preceded by two legal submissions from each of the parties, the consequence is that nothing new can be submitted (in effect, a reduction to legal submissions).

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

The “unconditional right to reply” (see section 3 above) can lead to the proceedings being unreasonably delayed. The court can shorten this by summoning the parties and hearing everything the parties want to say orally at a hearing.