Second Study Commission
Civil Law and Procedure

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

Answers to the Questionnaire from The Netherlands

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?

In appeal: Since a few years there are limits. It was accepted by the Supreme Court.
The statement of objections to the first instance decision and the response each cover no more than 25 pages. If a cross-appeal is lodged in the reply, the statement of objections in the cross-appeal and the response in the cross-appeal, no more than 15 pages each. Other memories, e.g. after hearing witnesses or expert reports, shall not exceed 15 Pages.
All these memories are subject to a minimum font size in a common font (such as Times New Roman, Courier or Arial) of 11 points (footnotes 9 points) and a minimum line spacing of 1, with margins above, below, to the left and to the right of at least at least 2.5 cm in A4 format.
Lawyers are now used to it and it works very well.
There is one exception for the 25-pages. A party may submit because of, for example, the legal or factual the complexity of the case, with reasons for requesting a statement of a larger to be able to submit the application. The trial judge shall decide as soon as possible on the request. If the submission exceeds the maximum number of pages without permission has been given, the submission shall be refused and the party may within two weeks at the latest, a statement respecting the maximum number of pages. From an examination is shown it is rarely asked, and if so, it is granted.

In first instance: no, work in progress.

2. Are there time limits for filing written submissions?

Yes, there are. In ordinary written proceedings, the parties are generally entitled to one written submission or presentation in which they can present new facts and arguments. There are some slight differences between a procedure that started with a writ of summons or a request. The general rules are as follows.

In first instance: After the Plaintiff files the initial civil claim, the Defendant has 6 weeks to file a defence. The Defendant can defend by objection and by exception.
The Defendant may also file a counterclaim within the same 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 6 weeks, but this is only admissible in relation to the subject matter of the counterclaim, and cannot oppose a new counterclaim. After that a short submission is only possible if the court allows this. The 6 weeks period is after an interim decision shorter: 4 weeks. In exceptional circumstances the term of 6 weeks can be prolonged or when both parties agree.
In appeal: After the appellant files the grounds for the appeal, the defendant has in normal cases 6 weeks to file a defence. This can be postponed for 4 weeks. After that a new postponement can be granted for exceptional circumstances or when both parties agree. In the last case de court will accept unless there is unreasonable delay in the procedure.

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

Yes. It is only allowed for a short reaction or new evidence. In that case the document ("akte"): a procedural document containing a brief communication, such as a single acknowledgement or denial, an offer of evidence, the announcement of a production or a reaction it contains. And as the court gives permission.

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

Yes. Unsolicited legal documents cannot be considered; late legal documents will not be considered. If they are not considered, there is no entitlement to compensation.
The Court will find that failure to comply with a rule laid down in the Rules of Procedure, having regard to the nature of the prescription and the seriousness of the of the omission.

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?

Yes. Especially in the preparation. Because there are also time limits for the plea in the oral hearing, it spares a lot of time.
In fact, such requirements of the procedural law should not allow the parties from abusing their procedural rights, properly fulfill procedural obligations, the court to conduct preparation for the trial in full, exclude the delay in the consideration of the case.

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

<u>In first instance</u>: The hearing is used as an opportunity to react on the last written submission of the other party. It is allowed to use new facts and arguments.

<u>In appeal:</u> It is used as an opportunity to react on the last written submission of the other party. If the hearing has already been preceded by one legal submission from each of the parties, the consequence is that nothing new can be submitted (in effect, a reduction to legal submissions). This issue is more related to the quality of legal services provided by lawyers in court.

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

No.

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