

Austria

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

There is no maximum length for written submissions in Austrian civil litigations.

However, it must be noted that the Austrian **law on costs** provides for the reimbursement of costs for written pleadings depending on the category of the submission (e.g. statement of claim, request for evidence, appeal), **irrespective of their length**. Therefore, if a party wins the case, the opponent must reimburse the costs of the winner's written pleadings in a lump sum, regardless of their specific length.

2. Are there time limits for filing written submissions?

To some extent. The statement of defence, for example, must be filed as the **defendant's first procedural act** within **four weeks** after service of process.¹ This time limit cannot be extended, belated submissions will be rejected.

Austrian civil proceedings are strongly based on the **principle of orality**. Hence, there are quite some restrictions on submitting written arguments after the initial change of arguments (statement of claim, statement of defence).

According to Section 257 para 3 Austrian Code of Civil Procedure (CCP) parties may submit further written arguments and present pieces of evidence that have not yet been contained in their statement of claim/statement of defence (only) before the first hearing day („preparatory hearing“). These **preparatory pleadings** must be received by the court and the opposing party no later than one week before the preparatory hearing. Belated written submissions can be rejected by the court. In that case, however, the party may still present the arguments orally at the hearing.

After the preparatory hearing, the submission of written pleadings is **only admissible** in

¹ For the procedure after issuing a court order for payment, see Question 5 below.

limited, legally provided cases (e.g. for extensions of the claim) or if the submission has been specifically **ordered/granted by the court** in advance. Written arguments submitted without previous order/permission of the court, may be **rejected** without further ado.

When ordering the parties to submit further written arguments, the court will set a certain period of time. These – court ordered – **time limits** may also be extended upon request of one party. If the party fails to comply with the order within the time limit without sufficient excuse, the submission may be rejected (this lies within the court's discretion).

Generally, the court will **reject** (oral and written) pleadings **if they could have been submitted earlier** (gross negligence) and if their admission **would** significantly **delay** the conclusion of the case (Section 179 Austrian CCP).

The **notes of fees** of the parties' representatives must be submitted by the end of the oral hearing (last day of hearings), otherwise they will not be entitled to reimbursement of their costs (to be paid by the losing party). No exceptions can be granted for a belated submission of the note of fees. Objections to the note of fees must be submitted by the other party's representative within 14 days after the end of the hearing.

Last but not least, there are strict time limits for appeals against a judgment. The appeal against a judgment must be lodged within four weeks, against a procedural order within two (or in rare cases four) weeks. These time limits may not be extended.

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

In principle, there is no limit to the number of additional submissions.

However, as mentioned above, the general rule with regard to written submissions is that they may only be submitted up to the preparatory hearing, which is the first oral hearing. Thereafter, they may be submitted if they contain pleas which could not have been submitted earlier (or else they would possibly be rejected by the court), if they have been requested by the court, or if they are a so-called "determining pleadings", e.g. an extension or limitation of the claim.

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

As mentioned above, the court may **reject** pleadings which have not been requested by the court or which are filed late. If the court nevertheless accepts them, e.g. for reasons of

procedural economy, the **costs** of the submission will generally **not be reimbursed** (by the losing party), as the arguments could have been submitted earlier and were therefore not necessary in this form for the proper prosecution of the case (Section 40 para 1 Austrian CCP).

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?

Generally, yes. The duration of civil proceedings in Austria is comparatively short.²

In legal disputes concerning actions, in which only the payment of a sum of money not exceeding EUR 75,000 is sought, the court issues an **order for payment** without a prior hearing and without hearing the defendant (Section 244 Austrian CCP). The defendant may oppose the order by lodging a statement of opposition, to be sent within **four weeks** upon service of the order on him. If no objection is filed within this time limit, the payment order becomes legally binding. In practice, the vast majority of payment orders is not objected. Hence, around 75 % of all civil law cases can be resolved and closed within five to six weeks.

Overall, the average duration of contentious civil proceedings is about 9.4 months at the district courts and 17.3 months at the regional courts. About half of the approximately 36,387 contentious civil cases before the district courts lasted less than seven months. Only 2.2% of civil cases take more than three years (status: 2021).³

One of the most effective tools for shortening the duration of proceedings is the **strict prohibition of bringing forward new factual arguments and evidence at the appeal stage („Neuerungsverbot“)**. The appellate decision can only be based on the content of the first instance proceedings. The court of appeal is required to proceed solely on the basis of the facts as they exist at the conclusion of the oral proceedings at first instance - the parties are therefore barred from submitting new facts and evidence after the conclusion of the first instance proceedings.

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

2 Cf. The 2023 EU justice scoreboard, https://commission.europa.eu/document/download/db44e228-db4e-43f5-99ce-17ca3f2f2933_en?filename=Justice%20Scoreboard%202023_0.pdf (last accessed 14 July 2024).

3 Cf. Website of the Austrian Judiciary; <https://www.justiz.gv.at/justiz/daten-und-fakten/verfahrensdauer.1e7.de.html;jsessionid=C906CFB9BFC72B0256CB198490F1CF85.s1> (last accessed 14 July 2024)

Every written pleading must be read out verbatim at the oral hearing (in practice, however, it is only referred to), for it to be incorporated into the proceedings and later used in the judgment. This also follows from the strongly incorporated principle of orality in Austrian civil proceedings.

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

As mentioned above, there are quite effective rules on the timing and number of written submissions to be admitted. Additionally, taking into account the growing complexity of legal disputes, it would be desirable to be able to „educate“ the attorneys in a way to shape and limit the scope of their pleadings to the essential arguments instead of „producing pages“.

Hence, it would be **beneficial** to have a **procedural mechanism against multiple repetitions of content** in different pleadings (and the length of the written submissions to be reduced by avoiding arguments with identical wording or content).

Further information on the subject can be found:

Wolfgang Jelinek, Prozessbeschleunigung, AnwBl 2004, 602

Georg Kodek, Justizgewährungsanspruch heute - was hat die ordentliche Gerichtsbarkeit zu leisten? RZ 2023, 7

Mary-Rose McGuire, Prozessförderungspflicht und Präklusion, ecolex 2010, 1153

Roland Parzmayr, Großverfahren - Herausforderung für die Praxis, ÖJZ 2015/133

Paul Oberhammer, Speeding Up Civil Litigation in Austria: Past and Present Instruments, in van Rhee (Hrsg), *The Law's Delay* (2004) 217

Jürgen C. T. Rassi, Verschleppung und Obstruktion im österreichischen Zivilverfahren, RZ 2019, 207

Norbert A. Schoibl, Die überlange Dauer von Zivilverfahren im Lichte des Art 6 Abs 1 EMRK (Teil I und Teil II), RZ 1993, 58; RZ 1993, 82

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