Time limits on procedures

Βέλγιο

1 What are the types of deadlines relevant for civil procedures?

The Judicial Code (*Code judiciaire/Gerechtelijk Wetboek*) refers to a number of different time limits.

These can be split into two categories: waiting periods and extinctive time limits.

Waiting periods (délais d'attente/wachttermijnen) are periods that have to expire. In other words, these periods must expire before legal action can validly be taken.

An example of a waiting period is the summons period (*délai de citation/dagvaardingstermijn*). There must be a 'summons period' between the date on which the summons is served and the preliminary hearing: this is eight days in main proceedings (civil cases) and two days in interim proceedings.

Extinctive time limits (délais de forclusion/vervaltermijnen) are time limits within which a particular legal action has to be taken, at the latest on the last day of the time limit or the *dies ad quem*, failing which the right to take this legal action lapses.

Time limits within which legal proceedings must be started are examples of extinctive time limits, namely:

the time limit of one month to appeal against a judgment after trial (Article 1051 of the Judicial Code), from the date on which the judgment is served;

the time limit of one month to object to a default judgment (in absentia) (Article 1048 of the Judicial Code), from the date on which the judgment is served;

the time limit of three months to appeal on points of law to the Court of Cassation (*Cour de cassation/ Hof van Cassatie) (*Article 1073 of the Judicial Code);

the time limit of three months to bring third-party proceedings (Article 1129 of the Judicial Code);

the time limit of 30 days for lodging a claim for damages against a judge for miscarriage of justice (Article 1142 of the Judicial Code);

the time limit of six months for the reopening of civil proceedings (Article 1136 of the Judicial Code).

The **summons period** is therefore a waiting period.

Article 707 of the Judicial Code stipulates that the ordinary summons period in main proceedings is eight days for persons having their domicile or place of residence in Belgium.

The same applies when:

1. the summons is served in Belgium at the address for service;
2. the person upon whom the summons is served does not have a known domicile or place of residence in Belgium or abroad;
3. when a summons for a party domiciled abroad is served in person in Belgium.

The summons period in interim proceedings is reduced to two days (Article 1035 of the Judicial Code). The summons period for proceedings before the attachment judge (*juge des saisies/beslagrechter*) is also two days where the latter sits as in interim proceedings.

When the respondent does not have a domicile, place of residence or address for service in Belgium, the 'ordinary periods' of eight and two days indicated above are extended in accordance with Article 55 of the Judicial Code.

The period is therefore (eight or two days + ...):

1. 15 days when the party lives in a neighbouring country or in the United Kingdom;
2. 30 days when the party lives in another European country;
3. 80 days when the party lives in another part of the world.

This extension must, however, be provided for by law. For the summons in main proceedings, it is laid down in Article 709 of the Judicial Code, while for the summons in interim proceedings, it is laid down in Article 1035 of the Judicial Code.

It may be necessary in specific cases to proceed very quickly following the summons. In such situations, a request to shorten these periods may be submitted to the competent court by a lawyer or court officer (Article 708 of the Judicial Code in main proceedings, Article 1036 of the Judicial Code in interim proceedings).

When the summons is served, the court officer also delivers a copy of the decision to shorten the summons period in order to inform the respondent that this has been authorised.

One of the most important aspects of a time limit is its **calculation**. The procedure for the calculation is set out in Articles 48 to 57 of the Judicial Code (i.e. Chapter VIII of Part One of the Judicial Code) (see below).

These articles cover general points (Articles 48 and 49), extinctive time limits (Article 50, first paragraph), calculation of time limits (Articles 52 and 53, first paragraph, and Articles 53 *bis*, 54 and 57), *force majeure* situations,

extension of the time limit (Article 50, second paragraph, Articles 51 and 53, second paragraph, and Article 55) and the case of suspension due to the death of one of the parties (Article 56).

2 List of the various days envisaged as non-working days pursuant to the Regulation (EEC, Euratom) n° 1182/71 of 3 June 1971.

1 January (New Year's Day)

Easter Sunday and Easter Monday (variable dates)

1 May (Labour Day)

Ascension Day (sixth Thursday after Easter Sunday)

Whitsun and Whit Monday (seventh Sunday and Monday after Easter Sunday)

National holiday: 21 July

15 August (Assumption)

1 November (All Saints' Day)

11 November (Armistice of 1918)

25 December (Christmas Day)

This list does **not** appear in the Judicial Code.

3 What are the applicable general rules on time limits for the various civil procedures?

See question 1 (above).

4 When an act or a formality has to be carried out within a given period, what is the starting time?

The rule is that the *dies a quo* (day of the act or event triggering the time limit) is NOT included in the time limit, but that the *dies ad quem* (last day of the time limit) IS included ('*dies a quo non computatur in termino*').

Article 52 of the Judicial Code: 'A time limit is calculated from midnight to midnight. It is calculated from the day after the day of the act or event triggering the time limit and includes all days, even Saturdays, Sundays and public holidays.'

Consequently, the calculation of a time limit does not begin on the day of service of a summons or judgment (*dies a quo*), but on the following day (more precisely, at 00.00 on the following day).

For example, if a summons is served on Monday 4 May (*dies a quo*), the summons period begins on Tuesday 5 May. In other words, the first day of the eight-day time limit is Tuesday 5 May.

If 4 May falls on a Friday, then the summons period begins on Saturday 5 May. The first day of a summons period can therefore fall on a Saturday, Sunday or public holiday.

5 Can the starting time be affected or modified by the method of transmission or service of documents (personal service by a huissier or postal service)?

A/ Service by a court officer:

Under Article 57 of the Judicial Code, unless otherwise stipulated by law, the time limit for an objection, appeal to a higher court or appeal on points of law to the Court of Cassation begins when the judgment is served on the person or at their domicile or, where applicable, when a copy of it is handed over or deposited, as set out in Articles 38 and 40.

For persons who do not have their domicile, place of residence or address for service in Belgium and who cannot be served in person, the time limit begins when a copy of the judgment to be served is handed over to the postal service or, where applicable, to the public prosecutor.

In the case of persons with no legal capacity, the time limit does not begin until the judgment has been served on their legal representative.

B/ Paper-based service (letter):

Unless otherwise stipulated by law, under Article 53 *bis* of the Judicial Code, time limits that begin when the paper document is served on the addressee are calculated:

where the document is served by judicial recorded delivery or by registered letter with acknowledgement of receipt, from the first day after the day when the letter was presented at the domicile of the addressee or, where applicable, at the addressee's place of residence or address for service;

where the document is served by registered letter or by ordinary letter, from the third working day after the day when the letter was handed over to the postal services, unless otherwise proven by the addressee;

where the document is served in return for a dated acknowledgement of receipt, from the first day thereafter.

6 If the occurrence of an event sets the time running, is the day when the event occurred taken into account in the calculation of the time period?

The rule is that the *dies a quo* (day of the act or event triggering the time limit) is NOT included in the time limit, but that the *dies ad quem* (last day of the time limit) IS included.

DIES A QUO:

Article 52 of the Judicial Code: 'A time limit is calculated from midnight to midnight. It is calculated from the day after the day of the act or event triggering the time limit and includes all days, even Saturdays, Sundays and public holidays.'

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If 4 May falls on a Friday, then the summons period begins on Saturday 5 May. The first day of a summons period can therefore fall on a Saturday, Sunday or public holiday.

DIES AD QUEM:

Article 53 of the Judicial Code: 'The day of expiry is included in the time limit. However, where this day falls on a Saturday, Sunday or public holiday, the day of expiry is moved to the first working day thereafter.'

The *dies ad quem* is the day when a time limit expires. It is included in the time limit and is therefore the last day of the time limit.

However, if this *dies ad quem* falls on a Saturday, Sunday or public holiday, the day of expiry is moved to the next working day.

7 When a time limit is expressed in days, does the indicated number of days include calendar days or working days?

Under Article 52 of the Judicial Code, a time limit is calculated from midnight to midnight. It is calculated from the day after the day of the act or event triggering the time limit and includes all days, even Saturdays, Sundays and public holidays.

However, an act can be validly carried out at the court registry only on the days and during the times that this court registry is open to the public, unless it is carried out electronically.

Calendar days must therefore be used.

8 When such a period is expressed in weeks, in months or in years?

Under Article 54 of the Judicial Code, a time limit in months or in years is calculated from a calendar date in one month to the day prior to the corresponding calendar date in another month.

This article applies only to time limits in months or in years (for example, the time limit for an objection or appeal: one month); this means – when it is taken together with Article 53 of the Judicial Code – that a time limit of one month, for example, is not always 30 or 31 days, but can also be longer or shorter.

'Calendar date' means the first day of the time limit, namely the day after service.

9 When does the deadline expire if expressed in weeks, in months or in years?

Under the first paragraph of Article 53 of the Judicial Code, the day of expiry (i.e. the *dies ad quem*) is included in the time limit.

10 If the deadline expires on a Saturday, Sunday or a public holiday or non-working day, is it extended until the first following working day?

Under the second paragraph of Article 53 of the Judicial Code, it is, however, stipulated that, where this day falls on a Saturday, Sunday or public holiday, the day of expiry is moved to the first working day thereafter.

11 Are there certain circumstances under which deadlines are extended? What are the conditions for benefiting from such extensions?

a/ Time limits that do not cause an entitlement to lapse:

Article 49 of the Judicial Code states that time limits are laid down by law and that the courts can set time limits only where permitted by law.

Under Article 51 of the Judicial Code, before these expire, the courts can shorten or extend time limits that do not cause an entitlement to lapse. Unless otherwise stipulated by law, an extension cannot be longer than the original time limit and no further extension can be granted, unless this is done through a reasoned decision and on serious grounds.

b/ A party that has no domicile, place of residence or address for service in Belgium:

Under Article 55 of the Judicial Code, where the law provides that the time limits imposed on a party that has no domicile, place of residence or address for service in Belgium must be extended, this extension is:
15 days when the party lives in a neighbouring country or in the United Kingdom;
30 days when the party lives in another European country;
80 days when the party lives in another part of the world.

c/ During the court vacation:

Under the second paragraph of Article 50 of the Judicial Code, any time limit for an objection or appeal provided for in Articles 1048, 1051 and 1253 quater, paragraphs (c) and (d), that begins and ends during the court vacation is extended to the fifteenth day of the new judicial year.
The court vacation runs from 1 July to 31 August of each year.
If the time limit for an objection or appeal begins and ends during this period, then the *dies ad quem* of this time limit is extended to 15 September.
Example 1: a judgment is served on 30 June (*dies a quo*). The time limit begins on 1 July and ends (*dies ad quem*) on 31 July.
Example 2: a judgment is served on 31 July (*dies a quo*). The time limit begins on 1 August and ends (*dies ad quem*) on 31 August.
In both these examples, both the first day of the time limit and the *dies ad quem* fall within the court vacation, and the time limit is therefore extended to 15 September, which is the last working day for serving an objection or appeal.
Example 3: a judgment is served on 29 June. The time limit begins on 30 June. The *dies ad quem* falls on 29 July.
Example 4: a judgment is served on 1 August. The time limit beings on 2 August. The *dies ad quem* falls on 1 September.
In both these examples, either the first day of the time limit or the *dies ad quem* falls outside the court vacation, and the time limit is not therefore extended to 15 September.
It should be noted that both the second paragraph of Article 50 of the Judicial Code (extension due to the court vacation) and the second paragraph of Article 53 of the Judicial Code (movement of the expiry date to the next working day when it falls on a Saturday, Sunday or public holiday) may apply when the last day of the court vacation (31 August) falls on a Saturday or Sunday and the last day of the time limit (*dies ad quem*) falls on 31 August.
The second paragraph of Article 50 of the Judicial Code should be applied first, before the second paragraph of Article 53 of the Judicial Code is applied.
Example:
A judgment is served on 31 July. The time limit to an objection or appeal runs from 1 August to 31 August, which falls on a Saturday or Sunday.
Under the second paragraph of Article 50 of the Judicial Code, the first and last days of the time limit fall within the court vacation, which means that the time limit is extended to 15 September.
Only where 15 September falls on a Saturday or Sunday may the second paragraph of Article 53 of the Judicial Code be applied, with the last day of the time limit being moved to the Monday.

d/ Death of the party permitted to lodge an objection, appeal to a higher court or appeal on points of law to the Court of Cassation:

Under Article 56 of the Judicial Code, the death of the party suspends the time limit imposed on that party to lodge an objection, appeal to a higher court or appeal on points of law to the Court of Cassation.
This time limit resumes only after the judgment has been served again at the domicile of the deceased and will run only from the expiry of the time limits to draw up and consider an inventory, if the judgment is served before the expiry of those time limits.
The judgment can be served jointly on the heirs, without stating their names and capacities. However, any interested party can be exempted from the lapse of entitlement resulting from the expiry of the appeal time limits where it appears that said party was not aware of the service.

12 What are the time limits for appeals?

As a general rule, under Article 1050 of the Judicial Code, an appeal can be lodged in all cases as soon as the judgment has been given, even if it has been given by default. With regard to a judgment given on jurisdiction or, unless otherwise decided by the court, a provisional judgment, an appeal can be lodged only with the appeal against the final judgment.
Under Article 1051 of the Judicial Code, the time limit to lodge an appeal is one month from service of the judgment in accordance with the second and third paragraphs of Article 792. However, in accordance with Article 1054 of the Judicial Code, the respondent can lodge a cross-appeal against any parties in the proceedings before the appeal court at any time, even if the judgment was served without reservation or was accepted before its service.

13 Can courts modify time limits, in particular the appearance time limits or fix a special date for appearance?

Under Article 51 of the Judicial Code, before these expire, the courts can shorten or extend time limits that do not cause an entitlement to lapse. Unless otherwise stipulated by law, an extension cannot be longer than the original time limit and no further extension can be granted, unless this is done through a reasoned decision and on serious grounds.

14 When an act intended for a party resident in a place where he/she would benefit from an extension of a time limit is notified in a place where those who reside there do not benefit from such an extension, does this person lose the benefit of such a time limit?

Article 55 of the Judicial Code was introduced specifically for such a party. Where the conditions of that article are satisfied, said party may take advantage of this provision.

15 What are the consequences of non-observance of the deadlines?

Under the first paragraph of Article 50 of the Judicial Code, time limits that cause an entitlement to lapse cannot be shortened or extended, even with the agreement of the parties, unless this lapse is covered by the conditions laid down by law.
In other words, the legal act must be performed before the time limit expires, otherwise it risks falling outside the time limit and not being admissible.

16 If the deadline expires, what remedies are available to those who have missed the deadlines, i.e. the defaulting parties?

Allowing an extinctive time limit to expire is definitive. In other words, it is no longer possible to lodge an appeal, unless the law has been infringed.

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