Time limits on procedures

Ġermanja

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

Sections 214-229 of the Code of Civil Procedure (*Zivilprozessordnung*) lay down general rules on procedural time limits, and other sections of the Code contain specific provisions governing particular time limits.

A distinction is drawn between 'real' time limits (*eigentliche Fristen*), i.e. periods within which those involved in proceedings can or – to avoid forfeiting rights – must perform procedural acts or formalities, and 'unreal' time limits (*uneigentliche Fristen*), within which the law requires the court to perform certain official acts.

'Real' time limits are further divided into statutory time limits, which are prescribed by statute, and judicial time limits, which are set at the court's discretion. Statutory time limits include the 'mandatory periods' (*Notfristen*) provided for by Section 224(1), second sentence, of the Code of Civil Procedure, which are always designated as such in the Code and may not be shortened or extended.

However, the parties may by agreement shorten judicial and statutory time limits other than mandatory periods and unreal time limits, though they cannot extend them. The court may extend or shorten a time limit it has set, but it may change a statutory time limit only as provided for in the statute. In either case, the Court will make a change only where a party can provide convincing grounds for such action.

The following time limits are also important for parties involved in civil proceedings:

(a) In an order for payment procedure

In the order for payment procedure (*Mahnverfahren*), objections to the order for payment under Section 692(1) No 3 of the Code of Civil Procedure and appeals against an order for enforcement under Sections 700(1) and 339(1) must be lodged within two weeks. If no objection is raised and the applicant does not apply for the issue of an enforcement order within a period of six months, the order for payment ceases to have effect pursuant to Section 701.

(b) In contentious proceedings

Section 132 of the Code of Civil Procedure lays down the general rule that the preparatory pleadings must be submitted to the court in time for them to be served on the other party at least one week before the hearing, in order to ensure that preparations can be made for hearings in good time and to ensure proper access to justice. Preparatory pleadings containing a statement of opposition to new submissions must be submitted in time for them to be served at least three days before the hearing.

When setting a date for a preliminary hearing, the judge must allow the defendant at least two weeks to reply (Sections 275(1), first sentence, 275(3) and 277 (3) of the Code). If the judge orders written preliminary proceedings, the defendant has a two-week mandatory period in which to indicate whether he or she intends to defend the action (Section 276(1), first sentence); the court will allow him or her at least a further two weeks to submit a statement of defence in writing (Section 276(1), second sentence). The presiding judge may, in turn, set the plaintiff a time limit within which to submit written observations on the statement of defence (Section 276(3)).

If the defendant fails to indicate an intention to defend the action within the time allowed, the court will, on application by the claimant and without a hearing, issue a judgment upholding the (conclusive) claim under Section 331(3) of the Code of Civil Procedure (a 'default judgment' (*Versäumnisurteil*)). The court will also issue a default judgment if the claimant or defendant fails to attend the hearing or to plead his or her case. The party against whom a default judgment has been issued has a mandatory period of two weeks from the service of the default judgment to lodge an objection (Sections 338 and 339(1)). Where the objection is admissible (and, most importantly, submitted within the time allowed), the proceedings return to the stage they were at prior to the default.

The mandatory period for lodging an appeal (*Berufung*) is one month (Section 517 of the Code of Civil Procedure), while the grounds for the appeal can be submitted within two months (Section 520(2)). Both time limits commence on service of the full judgment or, at the latest, five months after it has been pronounced. There is a judicial deadline of at least two weeks to reply to the appeal (Section 521(2) and Section 277(3) of the Code of Civil Procedure).

Where the appeal court (*Berufungsgericht*) in its judgment refuses leave for a further appeal on points of law (*Revision*), a renewed application for leave to appeal may be lodged within a mandatory period of one month from service of the full judgment (Section 544(1) and (3), first sentence, of the Code). The grounds for the appeal must be submitted within two months of the date on which the full judgment is served, but no later than seven months after the judgment has been delivered.

The time limit for lodging an appeal on points of law is also a mandatory period, and is set at one month (Section 548 of the Code), while the grounds for the appeal can be submitted within two months (Section 551(2), second sentence). Both time limits commence on service of the full judgment or, at the latest, five months after it has been pronounced.

An immediate objection (*sofortige Beschwerde*) against a ruling made by order (*Beschluss*) must be lodged within a mandatory period of two weeks from service of the ruling, or not later than five months and two weeks after it has been pronounced (Section 569(1)). An objection on points of law (*Rechtsbeschwerde*), which must be based on an infringement of the law, has to be lodged within a mandatory period of one month after the order was served (Section 575(1), first sentence), while the grounds for the objection must be submitted within a further month (Section 575(2)).

Where a party fails to comply with a procedural requirement listed in Section 233 of the Code of Civil Procedure (e.g. a mandatory period or time limit for the submission of grounds of appeal) through no fault of his or her own, that party may apply for the position before the default to be restored. The application must be made within two weeks of the removal of the obstacle (Section 234(1) and (2)).

If the start date for a time limit depends on the time of service (see the answer to question 4), it is necessary to check whether service was effective. In the case of substituted service, the effectiveness of service does not depend on whether the addressee actually receives the document. It is, however, always necessary for the addressee's home or business premises at the time of service to be located at the address where the document is served.

An addressee who had no knowledge of the proceedings, and was consequently unable to challenge the ruling made, may in certain circumstances be able to apply for restoration of the position before the default: see the answer to question 4. For the date at which the time limit begins to run please refer to the answer to question 16.

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

New Year's Day: 1 January

Epiphany: 6 January (only in Baden-Württemberg, Bavaria and Saxony-Anhalt)
International Women's Day: 8 March (only in Berlin)
Good Friday: the date varies, but is some time around the end of March or beginning of April
Easter Sunday: the date varies, but is some time around the end of March or beginning of April
Easter Monday: the date varies, but is some time around the end of March or beginning of April
1. Mayday/Labour Day: 1 May
Ascension Day: in May, the date varies
Whit Sunday: the date varies, in May or June
Whit Monday: the date varies, in May or June
Corpus Christi: the date varies, but is some time between the end of May and the middle of June (only in Baden-Württemberg, Bavaria, Hessen, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony (regional) and Thuringia (regional))
Assumption: 15 August (only in Bavaria (regional) and Saarland)
Day of German Unity: 3 October
Reformation Day: 31 October (only in Brandenburg, Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia)
All Saints' Day: 1 November (only in Baden-Württemberg, Bavaria, North Rhine- Westphalia, Rhineland-Palatinate and Saarland)
Repentance Day (Buß- und Bettag): the date is variable, but is some time between the middle and end of November (only in Saxony)
Christmas Day: 25 December
Boxing Day/St Stephen's Day: 26 December.

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

Section 222(1) of the Code of Civil Procedure states that all procedural time limits must be calculated in accordance with the rules laid down in Sections 187-193 of the Civil Code (*Bürgerliches Gesetzbuch*).
Details of how time limits are calculated can be found in the answers to questions 7 to 9.

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

Generally, the commencement date for a time limit is tied to service of the document to which a reply is to be given, or the ruling against which an appeal is to be made (see, for example, Sections 276(1) first sentence, 329(2), second sentence, and 339(1) of the Code of Civil Procedure). The time allowed for lodging an appeal starts to run on service of the ruling (Sections 517, 548 and 569(1), second sentence, of the Code); however, if the ruling is not served, or not effectively served, and this is not remedied under Section 189 of the Code, time starts to run at the end of the fifth month after the ruling is pronounced. The time limit of five months then replaces service. There is a similar rule for a renewed application for leave to appeal, but in this case a period of six months operates to replace service (Section 544(3), first sentence, of the Code).
There is a different commencement date for time limits for those appeals which can, in exceptional cases, overcome the finality of a judgment:
the time limit for applying for restoration of the former position (*Wiedereinsetzung in den vorigen Stand*) commences on the day the obstacle is removed (Section 234(2) of the Code of Civil Procedure);
the time limit for an objection against refusal of the right to a fair hearing under Section 321a of the Code of Civil Procedure (*Anhörungsrüge*) commences when the person becomes aware of the breach of their right to a proper hearing (Section 321a(2), first sentence);
the time limit for an application for annulment (*Nichtigkeitsklage*) or an application for revocation (*Restitutionsklage*, reopening of the proceedings, Sections 578 et seq. of the Code) commences on the day on which the party in question became aware of the grounds on which the challenge is based, although not before the judgment has become final (Section 586(2), first sentence).
If the question refers to the time when an act that has to be carried out within a time limit becomes effective, so that the time limit is met, the answer is as follows:
A procedural time limit is met if the procedural step is performed by the end of the final day allowed, i.e., as a rule, the relevant document is forwarded to the court within the allotted time. The crucial factor is when the document is received by the court, not when it was dispatched. The time allowed may, however, be used to the full, i.e. until 24.00 at the end of the final day, even if it is unlikely that anyone at the court will actually see the document then.
If the question is intended to establish how the start of the time limit is arrived at, the answer is as follows:
Under Section 187(1) of the Civil Code, where an event or a specific time in the course of a day determines the start of a time limit, the day in question is not included in any calculation of the time limit.

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)?

No. Where a time limit starts from the time of service (see answer to question 4), the method of service is irrelevant. Documents are deemed to be served either at the moment they are handed to the recipient (Section 177 of the Code of Civil Procedure), or on completion of one of the methods of substituted service (listed in Sections 178, 180 and 181 of the Code, e.g. given to an adult member of the family or placed in the letterbox).

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?

Under Section 187(1) of the Civil Code, where an event or a specific time in the course of a day determines the start of a time limit, the day in question is not included in any calculation of the time limit.

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

The days indicated are calendar days, not working days. However, if the time limit ends on a Sunday, Saturday or generally recognised public holiday, the limit is extended to the next working day (Section 222(1) of the Code of Civil Procedure and Section 193 of the Civil Code).

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

If an event or specific time in the course of a day is relevant to trigger the commencement of a time limit expressed in weeks, months or period of several months – a year, half-year, quarter – i.e. this day is not included in the calculation of the time limit –, then the time limit will end at the end of the day of the last week or last month, corresponding through its designation or number to the day in which the event or specific time occurs. On the other hand, if the beginning of a day is the relevant time to trigger the commencement of a time limit – i.e. this day is included in the calculation of the time limit –, then the time limit will end at the end of the day in the last week or the last month before the day corresponding through its designation or number to the commencement date of the time limit (Section 222(1) of the Code of Civil Procedure and Section 188(2) of the Civil Code).
Where the last day of a time limit expressed in months does not have an equivalent day in the month, the time limit ends on the last day of the month (e.g. a one-month time limit that started on 30 January would end on 28 February) (Section 188(3) of the Civil Code).

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

See question 8.

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?

Where the time limit expires on a Saturday, Sunday or public holiday, this day does not count, and the period expires on the following working day, in accordance with Section 222(1) of the Code of Civil Procedure and Section 193 of the Civil Code.

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

Any extension of time limits set is generally at the discretion of the court. However, mandatory periods may not be extended. In some cases, the consent of the other party is required.

12 What are the time limits for appeals?

The mandatory period for lodging an appeal (*Berufung*) is one month (Section 517 of the Code of Civil Procedure), while the grounds for the appeal can be submitted within two months (Section 520(2)). Both time limits commence on service of the full judgment or, at the latest, five months after it has been pronounced. There is a judicial deadline of at least two weeks to reply to the appeal (Section 521(2) and Section 277(3) of the Code of Civil Procedure).

Where the appeal court (*Berufungsgericht*) in its judgment refuses leave for a further appeal on points of law (*Revision*), a renewed application for leave to appeal may be lodged within a mandatory period of one month from service of the full judgment (Section 544(1) and (3), first sentence, of the Code). In accordance with Section 544 of the Code of Civil Procedure, the grounds for the appeal must be submitted within two months of the date on which the full judgment is served, but no later than seven months after the judgment has been delivered.

The time limit for lodging an appeal on points of law is also a mandatory period, and is set at one month (Section 548 of the Code), while the grounds for the appeal can be submitted within two months (Section 551(2), second sentence). Both time limits commence on service of the full judgment or, at the latest, five months after it has been pronounced.

An immediate objection (*sofortige Beschwerde*) against a ruling made by order (*Beschluss*) must be lodged within a mandatory period of two weeks (Section 569(1) of the Code of Civil Procedure). The mandatory period starts to run from the date of service, or not later than five months after it has been pronounced. An objection on points of law (*Rechtsbeschwerde*), which must be based on an infringement of the law, has to be lodged within a mandatory period of one month after the order was served (Section 575(1), first sentence), while the grounds for the objection must be submitted within a further month (Section 575(2)).

Where a party fails to comply with any of the procedural requirements listed in Section 233 of the Code of Civil Procedure (e.g. a mandatory period or time limit for the submission of grounds of appeal) through no fault of his or her own, that party may apply for the position before the default to be restored. The application must be made within two weeks of the removal of the obstacle (Section 234(1) and (2)).

German civil law and law of civil procedure also set other time limits, for example:

Unless the parties have agreed otherwise, arbitration awards may be contested by an application for annulment lodged with the court within three months of receipt of the award (Section 1059(3), first and second sentences).

Proceedings that have ended in a final judgment can be reopened by an application for annulment (*Nichtigkeitsklage*) or an application for revocation (*Restitutionsklage*) (Section 586(1) and (2) of the Code of Civil Procedure) within a mandatory period of one month from the day on which the party becomes aware of the grounds for setting aside the judgment.

The court may also fix a time within which a party must commence an action in cases involving the independent procedure for taking evidence (*selbständiges Beweisverfahren*) (Sections 494a(1) of the Code of Civil Procedure) or attachment (*Arrest*) (Section 926(1)).

Where a tenant has not consented to the landlord's wish to increase the rent up to the rent customary in the locality by the end of the second calendar month after receipt of the demand, the landlord may sue for grant of approval within a further three months (Section 558b(2)).

Where an employee argues that his or her dismissal was ineffective, he or she must bring an action before the Labour Court within three weeks after the written notice is given (Section 4, first sentence, of the Protection against Dismissal Act (*Kündigungsschutzgesetz*)). Should the employee fail to meet this deadline, the dismissal is deemed effective.

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

The principle is that it is up to the court to set times and dates for appearances, although its discretion is circumscribed by its duty to expedite proceedings and to fix hearings for Saturdays, Sundays or public holidays only in emergencies.

When issuing a summons to appear before the court in cases where legal representation is compulsory, at least one week's notice must be given; the period of notice in other cases is three days. These periods may be shortened only if the parties agree following an application by one party.

Under Section 141(1) of the Code of Civil Procedure, the court requires both parties to attend a hearing where this is necessary to establish the facts of the case. However, where long distances are involved, the court may waive the requirement for a person to attend if it is unreasonable to expect the party to travel a great distance (see question 8) or for any other pressing reason. 'Any other pressing reason' (*sonstiger wichtiger Grund*) within the meaning of Section 141(1), second sentence, means any reason that is important to the party, including, for example, illness, planned holidays, overwork or the likelihood of psychological problems arising from an encounter with the other party.

Furthermore, Section 227(1), first sentence, of the Code of Civil Procedure allows the court to cancel or defer a hearing on the application of a party citing 'substantial grounds' (*erhebliche Gründe*) or to postpone a hearing for oral argument. For the purposes of this provision, failure to appear due to a party's own fault or an unexcused failure to prepare are not regarded as proper grounds. Proper grounds include a failure to observe notice periods when issuing summonses, a necessary change of legal counsel, the illness of a witness, of the legal representative or of the party, or the inability of any of these to attend owing to the death of a close relative. The court may require evidence of the grounds for an application for postponement, and these grounds are to be examined all the more critically the closer the application is to the date set. Even though the old court vacation has been abolished, Section 227(3) of the Code of Civil Procedure still allows greater flexibility where a party applies for a postponement of a hearing set for a date between 1 July and 31 August.

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?

The territory of Germany has no special geographical characteristics that would justify special rules. Consequently the rules of civil procedure in Germany do not provide for a general extension of time limits for people who live at a great distance from the relevant court. However, under Section 141(1), second sentence, of the Code of Civil Procedure, the court may decide not to require a party to attend in person where a 'great distance' (*große Entfernung*) from the place of residence to the court makes it unreasonable to do so. Given today's generally good transport facilities, a distance of several hundred kilometres is not regarded as 'great'. However, each case must be assessed on the basis of all the circumstances, including the party's health.

As the rules do not extend time limits for the benefit of parties living in remote areas, the German legal system does not have the problem of longer time limits being recognised elsewhere.

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

The non-observance of a time limit can have a variety of legal consequences, for example:

Under Section 296(1) of the Code of Civil Procedure, pleas in law and arguments not submitted until after a relevant time limit has expired are admissible only if the court is satisfied that admitting them will not delay the resolution of the dispute, or if the party provides adequate justification for the delay in presenting them. Pleas in law and arguments properly dismissed under these provisions may not be submitted on appeal (Section 531(1) of the Code).

If during preliminary written proceedings under Section 276 of the Code of Civil Procedure the defendant fails to indicate within two weeks of service of the application that he or she is prepared to defend the action, a default judgment may be issued against the defendant on application by the claimant (Sections 276(1), first sentence, 276(2) and 331(3) of the Code).

Where the debtor allows the time limit for opposing an order for payment to expire during the order for payment procedure (Sections 692(1) No 3 and 694 of the Code of Civil Procedure), an order for enforcement is issued on application by the creditor (Section 699(1), first sentence, of the Code of Civil Procedure).

If the period for lodging an appeal is not observed, the decision becomes final (Section 705 of the Code of Civil Procedure). This also applies where the period for lodging an objection against a default judgment or enforcement order is not complied with. (An objection of this kind (*Einspruch*) is not an 'appeal' in the technical sense, as it is examined by the same court, and not by a higher court.) Failure to observe the time limit for stating the grounds for an appeal or objection results in the appeal or objection being dismissed as inadmissible (Sections 522(1), 552(1) and 577(1) of the Code).

The same applies to the time limit for stating the grounds for a renewed application for leave to appeal (Section 544(4)).

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

Where deadlines are missed, the party has the following remedies against the consequences set out in point 15:

In cases covered by Section 296(1) of the Code of Civil Procedure, the party may submit an explanation for the delay (see above). In such a case, the party has to plead and, if so required by the court, satisfy the court that he or she is not to blame for missing the deadline. If the party is able to show this, the court must also allow the late submission.

A party against whom a default judgment has been issued may object to it (Section 338 of the Code of Civil Procedure). If the objection is admissible, i.e. in particular, if it is in the required form and within the time allowed (Sections 339 and 340 of the Code), and is well-founded, the proceedings are returned to the stage before the deadline was missed (Section 342).

An objection can also be filed against an order for enforcement issued in an order for payment procedure, because under Section 700 of the Code of Civil Procedure this is equivalent to a default judgment.

The time limits for appeals and objections are mandatory periods. A party who is prevented from observing a mandatory period through no fault of his or her own may apply for restoration of the position before the default (Sections 233 et seq. of the Code of Civil Procedure). This must be done within the statutory time limit and in the required form (Sections 234 and 236(1) of the Code). The facts intended to excuse missing the deadline must be pleaded and evidenced (Section 236(2)). Any procedural steps a party has missed, e.g. filing an appeal, must be performed within the time limit for the application.

It is also possible to apply for restoration of the position before the default where the deadline missed was the time limit for submitting grounds for an appeal or objection.

Last update: 18/01/2024

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