# Time limits on procedures

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

There are various types of time limit under Austrian law.

A distinction is made between procedural time limits, i.e. deadlines by which a party or other person involved in the proceedings can or must take specific action for the purpose of the proceedings, and substantive time limits, i.e. deadlines by which a particular event must have taken place in order to produce certain substantive effects under the legal system (e.g. the deadline for filing a trespass claim under Section 454 of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) or for giving tenants notice under Section 560 ZPO). An important point is that the time required for delivery by the postal service is not included for procedural time limits, but it is for substantive time limits. This means, for example, that an appeal is considered to have been filed on time if it was posted by the last day of the procedural time limit for appeal (date of postmark), even if the court receives it after the deadline.

A distinction is also made depending on whether the time limit is set directly by the law (e.g. deadlines for appeals) or by the judge depending on the requirements of the individual case (e.g. deadline for lodging security to cover costs). Investigation deadlines, for which the law merely stipulates a particular timeframe (minimum or maximum duration or approximate duration, as in Section 257(1) ZPO for the date for a preliminary hearing) represent a combination of the two.

Absolute time limits are determined by the date on which they end (usually one calendar day), whereas relative time limits are defined by the duration. Start dates are determined on the basis of the event which triggers the time limit.

Generally speaking, judges may extend time limits (extendable time limits). Exceptional cases in which the law prohibits an extension are known as non-extendable or mandatory time limits.

A distinction is made between reversible and non-reversible time limits, depending on whether restoration of the previous position is possible if a deadline is missed. Reversibility is the general rule. In the exceptional cases in which restoration of the previous position is prohibited, the deadline is referred to as a preclusive or fixed time limit (*Fallfrist*). Examples of preclusive procedural time limits are the absolute deadlines for filing an application for annulment or an application for a retrial (Section 534(3) ZPO).

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

Saturdays, Sundays, Good Friday and public holidays are non-working days in Austria. 1 January (New Year's Day), 6 January (Epiphany), Easter Monday, 1 May (May Day), Ascension Day, Whit Monday, Corpus Christi, 15 August (Assumption Day), 26 October (Austrian National Day), 1 November (All Saints' Day), the 8 December (Feast of the Immaculate Conception), 25 December (Christmas Day) and 26 December (Boxing Day) are all public holidays in Austria

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

Most provisions on time limits can be found in Sections 123 to 129 and 140 to 143 of the Code of Civil Procedure (ZPO), Section 222 ZPO and in Section 89 of the Court Organisation Act (*Gerichtsorganisationsgesetzes*, GOG).

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

In most cases, a time limit starts on the service date of the decision ordering or triggering the time limit; otherwise it starts when that decision is delivered (Section 124 ZPO).

**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)?**

Yes; contrary to the general rule, according to which the service date is the service or delivery of the decision triggering or ordering the time limit, electronically transmitted judicial resolutions and legal petitions (Section 89a(2) GOG) are deemed to have been served on the working day immediately following their arrival in the electronic domain of the addressee (Saturday is not classed as a working day for this purpose) (Section 89a(2) GOG).

**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?**

When a time limit is expressed in days, the date, or the date of the event, used for calculating the starting date is not included for the purpose of calculating the deadline.

On the other hand, time limits expressed in weeks, months or years expire at midnight on the day of the last week or the last month which corresponds in name or number to the starting date. If there is no such date in the last month, the time limit will expire on the last day of that month.

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

Time limits expressed in days are calculated in calendar days.

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

Due to the nature of the calculation applied for time limits expressed in weeks, months or years (see questions 6 and 9), this is not an issue in the case of such time limits.

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

Time limits expressed in weeks, months or years expire at midnight on the day of the last week or the last month that corresponds in name or number to the starting date. If there is no such date in the last month of the time limit (if, for example, a one-month time limit starts on 31 January), the time limit will expire on the last day of that month (in this case, on 28 or 29 February). Saturdays, Sundays, public holidays and Good Friday do not affect the starting date or duration of time limits.

**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?**

Yes, time limits that end on a Saturday, Sunday, public holiday or Good Friday expire on the next working day (as long as it is not one of the aforementioned days).

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

Mandatory time limits in appeal proceedings are stayed from 15 July to 17 August and from 24 December to 6 January. If one of these periods starts during a mandatory time limit or the start of the mandatory time limit falls in one of these periods, the time limit is extended by the entire period or by the period remaining when it starts.

This does not apply in certain special proceedings, especially not in disputes involving trespassing, maintenance, enforcement claims and interim injunctions, and not to deadlines for appeals against default acknowledgement judgments.

**12 What are the time limits for appeals?**

As a rule, time limits for appeal depend on the type of decision (judgment or order) and the subject matter. In contentious civil cases, the time limit for appeal against an order (*Rekurs*) is generally 14 days, while the time limit for appeal against a judgment (*Berufung*) is four weeks.

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

Generally speaking, judges may extend time limits (extendable time limits). Exceptional cases in which the law prohibits an extension are known as non-extendable or mandatory time limits (e.g. deadlines for filing appeals).

All time limits can be shortened subject to documented agreement between the parties. The court may shorten a time limit at the request of one party, provided that they can demonstrate that a shorter time limit is required in order to avoid the risk of considerable losses and the other party is easily able to take the procedural action required by the shorter deadline (Section 129 ZPO).

A time limit may be extended on request, if the party which benefits from the extension has unavoidable or very serious reasons for being unable to take the procedural action on time and, in particular, if it would sustain irreparable damage without an extension (Section 128(2) ZPO). Time limits cannot be extended by agreement between the parties (Section 128(1) ZPO).

However, summons are generally linked to a certain date. Therefore, the modification of "summons time limits" or "special dates" does not apply to summons.

**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?**

No, because what is important here is that procedural steps in relation to an Austrian court are taken on time.

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

As a general rule, a party which fails to take a procedural step in time is prevented from taking that step (preclusive effect, Section 144 ZPO). There are exceptions, such as Section 289(2) ZPO (which regulates failure to appear for the taking of evidence) and Section 491 ZPO (which regulates the consequences of failure to appear at an appeal hearing).

Procedural steps taken late are generally dismissed by operation of law, but in some cases an application (by the opposing party) is required.

Sometimes failure to act has specific consequences in addition to the usual results. These vary considerably. The most important specific consequence of failure to act is that, where, in civil proceedings, one party fails to act, the other party can, under certain circumstances, apply for judgment in default (Sections 396 and 442 ZPO). Other examples are: if both parties fail to appear in court, proceedings are stayed for at least three months (Section 170 ZPO) and, if the petitioner fails to appear in matrimonial proceedings, the petition may be held to be withdrawn, but not abandoned, at the respondent’s request (Section 460 no 5 ZPO).

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

The following remedies are available for reversing the specific consequences of missing a deadline or a fixed date:

Restoration of the previous position (Sections 146 et seq. ZPO):

Restoration of the previous position can be used to reverse the consequences of failure to appear in court or failure to comply with a time limit for a procedural act where the failure by the party or their representative was due to an unforeseen or unavoidable event and the party or their representative was not to blame or was only slightly to blame (slight negligence). An application for this remedy must be filed within 14 days of removal of the obstacle.

Objection (Sections 397a and 442a ZPO):

Objection is a legal remedy aimed at reversing a default judgment under Section 396 or Section 442 ZPO. As a rule, objections must be filed with the adjudicating court, in the form of preparatory pleadings, within 14 days of service of the default judgment (non-extendable time limit).

Appeal (Sections 461 et seq. ZPO):

An appeal may be filed against a default judgment mainly on the grounds that there was no failure to comply, as one of the grounds for invalidity listed in Section 477(1) No 4 and No 5 ZPO applies (incorrect service or lack of representation of the party in the proceedings). However, the appeal for invalidity cannot be based on an actual failure of a party to comply; like all legal remedies, it must be based on an error of the court, due to which the party seems to have failed to comply.

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