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OF CONSTITUTIONAL COURTS
OR COURTS WITH EQUIVALENT JURISDICTION**

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PROCEDURAL TIME-LIMITS
(Austria)

REPORT

by
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A. Introduction

The Austrian Constitutional Court is in charge of various completely different powers, each of them being governed by specific procedural conditions. For the purposes of this report, the focus is on the Court's most important powers, which are

- to decide on financial claims based on public law against public bodies, that cannot be settled by the ruling of any other judicial or administrative authority;¹
- to judge whether a Federal or *Land* law is unconstitutional² and whether an ordinance issued by an administrative authority is contrary to the law,³ either upon application by another court, or upon application by the Federal Government or a *Land* Government, or upon application by an individual, or – *ex officio* – upon a constitutional complaint lodged against the ruling of an administrative authority;
- to decide on challenges of the election of the Federal President and of elections to the parliamentary bodies (National Council, Federal Council, regional parliaments [*Landtag*]) as well as to the European Parliament;⁴
- to rule on constitutional complaints against decisions of administrative authorities.⁵

B. Time-Limits for Applicants

As the European Court of Justice held many years ago, the laying down of reasonable time-limits for initiating proceedings is "an application of the fundamental principle of legal certainty", protecting both parties to the proceeding, the applicant as well as the state authority concerned.⁶ This finding certainly applies to any kind of judicial proceeding including proceedings before a Constitutional Court.

As regards actions for **financial claims** against public bodies, there is no specific time-limit; i. e., such proceedings can be brought before the Constitutional Court at any time. Even if the claim is already time-barred, this does not affect the admissibility of the action. In this case, however, the action may be dismissed as unfounded if the claim is objected to on grounds of the statute of limitations.⁷

Proceedings relating to the **constitutionality of a law** or to the lawfulness of an ordinance are not subject to any statutory time-limits, either; in particular, they may be brought before the Constitutional Court regardless of when the law or ordinance at issue have been enacted.

The time-limit for lodging an **election challenge** in principle is four weeks as of the announcement of the election results.⁸ As for the election of the Federal President and the elections to the European Parliament, however, election contestations are subject to a fairly short deadline of **one week** only.⁹

¹ See Article 137 of the Federal Constitution.

² See Article 140 of the Federal Constitution.

³ See Article 139 of the Federal Constitution.

⁴ See Article 141 of the Federal Constitution.

⁵ See Article 144 of the Federal Constitution.

⁶ *Rewe*, no. 33/76, European Court Reports 1976, p. 1989, 1998.

⁷ See, e. g., no. A 3/09, Reports of the Judgments and Decisions of the Constitutional Court (VfSlg.) 2009/18.889.

⁸ See section 68 § 1 of the Constitutional Court Act.

⁹ See section 21 § 2 of the Federal Act on the Election of the Federal President, and section 80 of the Federal Act on Elections to the European Parliament, respectively.

Time-limits for challenges of elections are in some respects different from other procedural time-limits.

To begin with, in contrast to any other procedural time-limit, the time of postal delivery is included in the count for the deadline.¹⁰ As a consequence, in order to be admissible, such a contestation has not only to be sent off within the time-limit, but it must also be received by the Court on the last day of the term at the latest.

Secondly, if the time-limit for an election challenge ends on a Saturday, on a Sunday or on an official holiday, this does not affect the count for the deadline. Consequently, the Court has to make arrangements in order to ensure that such challenges can, if necessary, be received by the Court on these days too.¹¹

Finally, once the time-limit has expired, there is no possibility of obtaining *restitutio in integrum*, i. e. requests for reinstatement into the time-limit are not admissible.¹²

Another important power of the Constitutional Court, accounting for a major part of its workload, is to rule on **constitutional complaints against decisions** issued by administrative authorities. Such a complaint may be lodged within a period of six weeks after service of the decision rendered by the last instance of appeal.¹³

Contrary to the time-limit for filing an election challenge, this deadline is perfectly in line with the general principles of procedural time-limits:

Firstly, the time of postal delivery is not included in the count for this deadline.¹⁴ Thus, the six-week requirement is satisfied if the complaint is sent off on the last day of the time-limit, regardless of when it is received by the Constitutional Court.

Secondly, if the *dies ad quem* of this deadline is a Saturday, a Sunday or an official holiday, the six-week time-limit shall *eo ipso* be extended to include the first working day thereafter.¹⁵

Finally, if the applicant fails to observe the six-week deadline, the Court may, upon request by the applicant and under certain conditions, grant reinstatement into this time-limit.¹⁶

Like most other statutory time-limits, the period of time for lodging such an appeal cannot be extended.¹⁷ However, if the complainant makes a request for legal aid, the six-week time-limit is interrupted. Depending on whether or not the request for legal aid is granted, the time-limit starts to run anew from the day on which the lawyer acting as procedure aid is notified of the decision to be contested, or from the day on which the complainant is notified of the Court's refusal of his request, respectively.¹⁸

¹⁰ See, e. g., section 123 § 2 of the Federal Act on Elections to the National Council.

¹¹ See, e. g., section 123 § 1 of the Federal Act on Elections to the National Council.

¹² Cf. section 33 of the Constitutional Court Act. See, e. g., no. W I-4/00, Reports of the Judgments and Decisions of the Constitutional Court (VfSlg.) 2001/16.309.

¹³ See section 82 § 1 of the Constitutional Court Act.

¹⁴ See section 35 § 2 of the Constitutional Court Act.

¹⁵ See section 35 § 1 of the Constitutional Court Act in conjunction with Article 126 § 1 of the Code of Civil Procedure; cf. Article 5 of the European Convention on the Calculation of Time-Limits (ECT 76).

¹⁶ See section 33 of the Constitutional Court Act.

¹⁷ See section 35 § 1 of the Constitutional Court Act in conjunction with Article 464 § 1 of the Code of Civil Procedure.

¹⁸ See section 35 § 1 of the Constitutional Court Act in conjunction with Article 464 § 3 of the Code of Civil Procedure.

C. Time-Limits for the Court

Not only applicants, but also the Court itself has to observe certain time-limits relating to its rulings.

Firstly, rulings on the constitutionality of laws and on the lawfulness of ordinances shall, if possible, be rendered within **one month** after receipt of the application.¹⁹ As can be seen from the words "if possible", however, this is not a strict deadline, but only a kind of guideline, which has its origin in the very first Constitutional Court Act of 1921. In fact, the average length of proceedings with regard to constitutional appeals against laws and ordinances is about eight months.

A **one-month** time-limit also applies to proceedings relating to challenges of the election of the Federal President as well as of elections to the European Parliament.²⁰ However, in contrast to the time-limit mentioned before, this deadline is mandatory.

With regard to the election of the Federal President, the one-month time-limit is very important since the President elected cannot take up his duties before the Constitutional Court has dismissed any challenge of this election.²¹ Therefore, the reason for this time-limit is to ensure that the President elected may take office without any delay at the end of his predecessor's term of office, i. e., to avoid an *interregnum* in this respect.

If the Constitutional Court failed to comply with the one-month requirement, this would not affect the validity of its ruling. In fact, however, election challenges filed with the Court are always given highest priority so as to ensure that this statutory time-limit is observed.

Finally, time-limits for Constitutional Court proceedings may, in some respects, arise from Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Pursuant to Article 6 § 1 of the Convention, in the determination of his civil rights and obligations or of any criminal charge, everyone is entitled to a fair and public hearing **within a reasonable time**. In so providing, the Convention underlines the importance of rendering justice without delays that might pose a threat to its effectiveness and credibility.²²

According to the well-established case-law of the European Court of Human Rights, Constitutional Court proceedings come within the scope of Article 6 § 1 of the Convention if their outcome is decisive for the determination of civil rights and obligations²³ or of criminal charges.²⁴ As for the Austrian Constitutional Court, that may be true for actions for financial claims²⁵ as well as for proceedings for the review of the lawfulness of ordinances²⁶ and for constitutional appeals against decisions.

¹⁹ See section 21 § 2 of the Federal Act on the Election of the Federal President, and section 80 of the Federal Act on Elections to the European Parliament, respectively.

¹⁹ See section 63 § 3 and section 59 § 1 of the Constitutional Court Act, respectively.

²⁰ See section 21 § 2 of the Federal Act on the Election of the Federal President and section 80 of the Federal Act on Elections to the European Parliament, respectively.

²¹ Cf. section 22 of the Federal Act on the Election of the Federal President.

²² See, e. g., *Niederböster v. Germany*, no. 39547/98, Reports 2003-IV, § 44.

²³ See, e. g., *Süßmann v. Germany* (Grand Chamber), no. 20024/92, Reports 1996-IV, § 41; *Pammel v. Germany*, no. 17820/91, Reports 1997-IV, § 53; *Klein v. Germany*, no. 33379/96, § 29; *Tričković v. Slovenia*, no. 39914/98, § 39.

²⁴ See, e. g., *Gast and Popp v. Germany*, no. 29357/95, Reports 2000-II, §§ 66.

²⁵ See, e. g., no. A 10/08, Reports of the Judgments and Decisions of the Constitutional Court (VfSlg.) 2009/18.824, and no. A 12/09, Reports of the Judgments and Decisions of the Constitutional Court (VfSlg.) 2009/18.911.

²⁶ See, e. g., no. V 32/09 (2012).

In principle, the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of each individual case with particular attention being paid to the complexity of the case, the conduct of the parties and the authorities involved, and the importance of what is at stake for the applicant.²⁷

With a view to Constitutional Court proceedings, however, the obligation to hear cases within a reasonable time cannot be construed in the same way as for ordinary courts. As the European Court of Human Rights has pointed out, the role as guardian of the Constitution sometimes makes it necessary for a Constitutional Court to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms.²⁸ Moreover, Article 6 § 1 of the Convention not only requires that judicial proceedings be expeditious, but also lays emphasis on the general principle of the proper administration of justice.²⁹

In sum, only serious delays in proceedings before the Constitutional Court may lead to a violation of Article 6 § 1 of the Convention.³⁰ As for the Austrian Constitutional Court, when dealing with an application, it carefully considers whether civil rights and obligations within the meaning of Article 6 § 1 of the Convention are at stake, and, if necessary, sees to it that proceedings are conducted with the requisite promptness.

²⁷ See, e. g., *Süßmann v. Germany* (Grand Chamber), no. 20024/92, Reports 1996-IV, § 48; *Pammel v. Germany*, no. 17820/91, Reports 1997-IV, § 60; *Gast and Popp v. Germany*, no. 29357/95, Reports 2000-II, § 70; *Klein v. Germany*, no. 33379/96, § 36; *Tričković v. Slovenia*, no. 39914/98, § 44; *Niederböster v. Germany*, no. 39547/98, Reports 2003-IV, § 39; *Trippel v. Germany*, no. 68103/01, § 20; *Oršuš et al. v. Croatia* (Grand Chamber), no. 15766/03, Reports 2010, § 108.

²⁸ See, e. g., *Süßmann v. Germany* (Grand Chamber), no. 20024/92, Reports 1996-IV, § 56; *Gast and Popp v. Germany*, no. 29357/95, Reports 2000-II, § 75; *Tričković v. Slovenia*, no. 39914/98, § 63; *Trippel v. Germany*, no. 68103/01, § 28; *Oršuš et al. v. Croatia* (Grand Chamber), no. 15766/03, Reports 2010, § 109.

²⁹ See, e. g., *Süßmann v. Germany* (Grand Chamber), no. 20024/92, Reports 1996-IV, § 57; *Gast and Popp v. Germany*, no. 29357/95, Reports 2000-II, § 75; *Tričković v. Slovenia*, no. 39914/98, § 64.

³⁰ See, e. g., *Trippel v. Germany*, no. 68103/01, § 36.