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COMMENTARY ON
Art. 143 CPC

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Art. 143 Compliance

¹ Submissions must be filed no later than the last day of the limitation period, either by filing with the court or by handing over to Swiss Post or a diplomatic mission or consular office of Switzerland for forwarding on to the court.

^{1bis} Submissions that are mistakenly filed within the time limit with a Swiss court that does not have jurisdiction are deemed to have been filed on time. If another court in Switzerland has jurisdiction, the court without jurisdiction shall forward the submission *ex officio*.

² In case of electronic submission, the relevant time for compliance with a deadline is that at which the receipt is issued that confirms that all the steps have been completed that the party must carry out for transmission.

³ Payment to the court is made within the deadline if the funds are handed over to Swiss Post in favour of the court or debited from a postal or bank account in Switzerland no later than on the last day of the limitation period.

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I. GENERAL INFORMATION ON COMPLIANCE WITH DEADLINES

- 1 Deadlines always end on a working day at the place of jurisdiction **at midnight**, subject to the rare judicial setting of hourly deadlines or another time of expiry, such as “until the start of the hearing.” The deadline may be used in full until the end, i.e., procedural actions may be supplemented, extended, or corrected until the deadline expires.
- 2 Failure to comply with deadlines must be taken into account ex officio, whereby the party invoking the timeliness of the procedural action bears (in case of doubt) the **burden of proof** for the timely performance of the procedural action. However, if the court is responsible for the lack of evidence of the timeliness of a party's action, for example because it did not send the notification triggering the deadline by registered mail or did not keep the envelopes (with the postmark) of a party, the burden of proof is reversed.

II. COMPLIANCE WITH DEADLINES FOR SUBMISSIONS IN PAPER FORM (ART. 143 PARA. 1 CPC)

A. Expedition principle

- 3 The deadline is met if the submission is filed with the court on the last day of the deadline or is **handed over** to the Swiss postal service or a Swiss diplomatic or consular representation for delivery to the court. For submissions in paper form, the so-called dispatch principle applies: a submission must be sent or handed over to the aforementioned authorities within the deadline. However, it is not necessary for the submission to arrive at the court within the deadline.
- 4 Federal court case law provided for an exception to this rule for the exercise of the **constitutional right of reply** based on Art. 29 para. 2 of the FC and Art. 6 no. 1 of the ECHR, according to which any (unsolicited) comments on the submissions and pleadings of the opposing party had to be received by the court within ten days at the latest in order to be taken into account in the proceedings. Since January 1, 2025, however, the courts have been obliged to always set a deadline of at least ten days for a party to comment on all submissions by the opposing party. This means that the provisions of Art. 142 ff. CPC must now also be observed when exercising the constitutional right of reply.

B. Direct delivery

- 5 The parties are free to submit submissions directly to the court. They can hand in their submissions at the court's **reception desk** – during the relevant opening hours – in exchange for a receipt as proof of delivery. There is no entitlement to have the court accept submissions from the parties outside its regular opening hours.
- 6 The parties may also post their submissions directly in the court's **mailbox**, if available. The submission is presumed to have been filed on the date on which it was stamped by the court. However, the parties are free to provide evidence to the contrary of an earlier date of posting by means of witnesses or similar. If the submission is made outside of counter opening hours and it is obvious that the date stamp will be a later date, the party invoking the timeliness of the submission – especially if it is represented by a lawyer – must offer the court evidence of the timeliness of the submission without being asked and before the deadline expires. Depositing the submission at the entrance gate of the court or placing it in the private mailbox of the responsible court member does not meet the deadline.

C. Postal delivery

- 7 Submissions in paper form are most commonly sent by post. The deadline is met if the submission is handed over to **Swiss Post** for delivery to the court by midnight on the last day at the latest. However, posting with a foreign postal service – except in Liechtenstein – or with a private delivery service does not meet the deadline. If sent by a delivery service other than Swiss Post, the submission must either be received by the court on the last day of the deadline or be accepted by Swiss Post for further processing. A private or foreign delivery service – whether private or state-owned – thus acts as a representative of the sender or the party bound by the deadline.
- 8 The **type of** postal service used is irrelevant for the purposes of meeting the deadline. The submission must be posted no later than the last day of the deadline at a Swiss Post counter (even after closing time), at a postal agency (e.g., in a shopping center, a neighborhood store, or a pharmacy, etc.) or at a “MyPost24” machine, handed over to a mail carrier or a courier service commissioned by Swiss Post, or dropped into a Swiss Post mailbox. The latter can even be done after the last collection.
- 9 Swiss Post outsourced its courier service to swissconnect ag on July 1, 2016, or commissioned a courier service. It therefore no longer has its own courier service. If a party therefore commissions a courier via Swiss Post, it must ascertain whether this is a private delivery service such as swissconnect ag or whether Swiss Post itself is providing the courier service or has commissioned a courier service. Delivery to swissconnect ag (even via Swiss Post, but not commissioned by Swiss Post itself) does not meet the deadline.
- 10 In accordance with the general rule on the burden of proof, the party invoking the timeliness of the submission must prove that it handed over the submission in paper form (with the required content) to Swiss Post for delivery to the court in good time. As a rule, the **postmark** on the envelope of a submission, the dated postage label, the “MyPost24” receipt, or the Track&Trace number code provide evidence of the date of delivery to Swiss Post in the sense of a natural presumption. It is not sufficient to date the item yourself with a franking machine. Sending by registered mail is not necessary to meet the deadline, but it does make it much easier to provide evidence. It is therefore advisable – especially for lawyers – to send court submissions by registered mail so that the postmark is definitely dated on the date of delivery and the party bearing the burden of proof receives a confirmation of receipt. Posting under a collection agreement involves a considerable risk with regard to proving the timeliness of a shipment, as the initial recording of the shipment by Swiss Post in its system does not necessarily correspond to the date of delivery.
- 11 However, the party bearing the burden of proof is free to prove that the item was delivered to Swiss Post within the deadline – even if this differs from the date certified by the postmark or similar – by **other suitable means**. For example, a reference to an independent witness can be made on the back of the envelope, or the witness can confirm in writing (stating the date, time, and place of posting) that the letter was posted before midnight. A video recording of the letter being posted is also conceivable. A photograph of the envelope showing how it was posted in the mailbox or post office box is not sufficient. However, it should be noted that the party bearing the burden of proof – especially if represented by a lawyer – must, as a rule, offer the court the relevant evidence in good faith, without being asked to do so and as a precautionary measure before the deadline expires, if it has created uncertainty regarding compliance with the deadline (e.g., by posting the letter after the counter has closed and emptying the mailbox shortly before the deadline expires) or has reasonable doubts about the timeliness of the postal delivery. The same applies in the event of a recognizable malfunction of the selected “MyPost24” machine.

- 12 If the party was not required in good faith to provide unsolicited evidence of compliance with the deadline (because it did not itself create any uncertainty regarding compliance with the deadline and did not have to doubt the timeliness of the postal delivery, e.g., when posting a shipment with “A-Post Plus” before the deadline), but the court nevertheless has doubts about the timeliness of the submission, the sender must be granted the **right to be heard** within the meaning of Art. 29 para. 2 of the FC and given the opportunity to name all evidence to prove that the deadline was met. Only if it is clear from the files that a deadline has not been met and the presiding judge has no doubts about this can the party involved be denied a legal hearing and a default judgment be issued directly or, if necessary, a decision not to hear the case be made.
- 13 If the party has submitted its submission to the court in good time via Swiss Post, but has used an **incorrect address** or **insufficient postage**, this postal submission may still have been made in time under certain circumstances, according to Federal Supreme Court case law. The defect must be remedied and the returned, undeliverable submission must be re-submitted to Swiss Post immediately, unopened and correctly addressed and stamped (in a new envelope with an explanation and a request for reinstatement of the deadline). A change in the method of delivery—e.g., by direct delivery to the court or by using a private courier service—is not permitted in the case of the aforementioned defects (incorrect addressing and postage).

D. Delivery to a Swiss diplomatic or consular representation

- 14 Another way to meet the deadline is to **hand over** the submission in writing to a Swiss diplomatic or consular representation abroad no later than the last day of the deadline. This option is available not only to persons domiciled or habitually resident abroad, but also to any party to the proceedings who is abroad on business or vacation. It is sufficient to place the submission in the mailbox of the relevant institution. However, simply posting the submission to the institution does not meet the deadline.
- 15 The above information applies to **proof of** delivery or placement in the mailbox of the representation. In this context, the direct delivery of a submission to a Swiss diplomatic or consular representation is treated in the same way as direct delivery to a Swiss court, and the posting of the submission in the mailbox of a Swiss representation is treated in the same way as posting in a Swiss Post mailbox.

III. EFFECT OF MEETING DEADLINES AND FORWARDING SUBMISSIONS MISTAKENLY FILED WITH AN INCOMPETENT COURT (ART. 143 PARA. 1^{BIS} CPC)

A. Previous legal situation

- 16 Until now, the Code of Civil Procedure did not contain **any provisions** on the extent to which procedural acts submitted to a court or authority that is not competent (in terms of jurisdiction or subject matter) are deemed to have been submitted within the time limit. Art. 63 CPC concerns the preservation of *lis pendens* established by a submission when filed with an incompetent authority or in the wrong proceedings, and not the question of compliance with time limits. The Federal Supreme Court considered the time limit for appeal to have been met in the case of a timely but inadvertently addressed appeal to the deciding court of first instance (*iudex a quo*) or the deciding authority of first instance, and affirmed an obligation to forward the appeal to the competent appellate court (*iudex ad quem*). Furthermore, it rejected a general obligation to forward the appeal – and, associated with this,

the effect of filing with the incompetent court or authority on the observance of the deadline. There was disagreement on this point in legal doctrine and cantonal case law.

- 17 Since January 1, 2025, **Art. 143 para. 1^{bis} CPC** has regulated the observance of deadlines for submissions that are mistakenly made to an incompetent Swiss court and their forwarding on the basis of jurisdiction. Submissions that are mistakenly filed with an incompetent Swiss court within the deadline are considered to have been filed in a timely manner. In such cases, the court that does not have jurisdiction now has a general obligation to forward the submission under certain conditions: if another court in Switzerland has jurisdiction, the court that does not have jurisdiction shall forward the submission ex officio.

B. Scope of application of Art. 143 para. 1^{bis} CPC

1. Subjective scope of application

- 18 First and foremost, Swiss **courts whose proceedings are governed by the CPC must** apply Art. 143 para. 1^{bis} CPC. In addition, according to the dispatch, this general procedural provision also applies to **conciliation authorities**.
- 19 Whether the **child and adult protection authorities** are also required under Art. 143 para. 1^{bis} CPC to consider submissions erroneously filed with an incompetent authority as timely and to forward them under certain conditions is generally determined by cantonal law. Insofar as the cantons do not regulate this matter, the CPC – including Art. 143 para. 1^{bis} CPC – applies as supplementary (cantonal) law.
- 20 The Federal Supreme Court, administrative and criminal courts, arbitration tribunals (including in the area of domestic arbitration), debt enforcement and bankruptcy offices, supervisory authorities, commercial register authorities, inheritance offices, notaries, civil registry offices, land registry offices, tax authorities, criminal authorities, foundation supervisory authorities, or data protection officers.

2. Objective scope of application

- 21 Art. 143 para. 1^{bis} CPC applies to “**submissions that are mistakenly filed with an incompetent Swiss court within the time limit.**”
- a. “Submissions” (by a party)...
- 22 The wording of Art. 143 para. 1^{bis} CPC covers not only documents initiating proceedings, such as a complaint or a petition, but **all civil procedural submissions** to an incompetent court, regardless of the type of proceedings or the stage of the proceedings. It is also irrelevant whether the submission is in paper or electronic form.
- 23 **Examples:** complaint/petition, response to complaint/petition, reply, rejoinder, request for extension of time, application for legal aid, new submission, statement on the exercise of the constitutional right of reply based on Art. 29 para. 2 of the FC and Art. 6 no. 1 of the ECHR, etc.
- b. ...“within the time limit”...
- 24 The submission to an incompetent court must be made **within the time limit**, otherwise Art. 143 para. 1^{bis} CPC does not apply anyway. In this regard, reference can be made to the general comments on Art. 142 ff. CPC.

c. ...“erroneously”...

- 25 Only submissions filed ‘erroneously’ with an incompetent court can be considered to have been filed in time and forwarded under certain conditions. What is meant by the term “erroneously” in the context of Art. 143 para. 1^{bis} CPC is a **question of interpretation**.
- 26 **Benn** argues that, in principle, any submission filed with an incompetent authority should be considered “erroneous.”
- 27 According to **Tanner**, a submission is presumed to have been submitted in error if a party does not gain any tactical advantage in the proceedings as a result. In the case of lay persons, the requirements for error should be low. It is not necessary for there to be no fault in the error. In case of doubt, the application of Art. 143 para. 1^{bis} CPC should always be assumed.
- 28 For **Lötscher/Plattner**, the decisive factor is whether or not the party “consciously,” i.e., knowingly and willingly, brought the case before the incompetent court. They affirm the application of Art. 143 para. 1^{bis} CPC only in the case of an unconscious submission to the incompetent court. If there is a mandatory place of jurisdiction or if the court seized is not competent in the matter, it must generally be concluded that the submission to the incompetent court was erroneous (unintentional). In the case of non-mandatory places of jurisdiction, Lötscher/Plattner conclude that the submission was erroneous in the following cases: (1) in the case of submissions by lay persons, (2) submissions by persons represented by a lawyer in which the jurisdiction was explained in detail but incorrectly, (3) submissions in which the incorrect filing was based on a factual or legal circumstance that was unforeseeable or was recognizably overlooked (e.g., recent change of residence, latest case law). They conclude that a submission was “deliberate” or that there was no error in the following cases: (1) recognizable abuse of rights, (2) submission despite information to the contrary about the competent court, (3) vexatious or unclear submission whose jurisdiction cannot be determined, and further in cases of non-mandatory jurisdiction (4) submissions made with the aim of provoking a response from the opposing party in a court that does not have jurisdiction, and (5) submissions that were deliberately made in a specific type of procedure that subsequently turned out to be unavailable (e.g., legal protection in clear cases under Art. 257 CPC).
- 29 **Fuchs** takes a similar view, rejecting the notion of erroneous submission in any case where the party deliberately chooses the incompetent court (e.g., in the formal part of a lawsuit) or even insists on jurisdiction by, for example, continuing to submit further submissions to the incompetent court despite being advised otherwise. Fault does not preclude error, unless the party's conduct is downright abusive or vexatious.
- 30 **Hurni/Hofmann** and **Balmer** argue that there must be an obvious error. This is despite the fact that the requirement of obviousness, which was originally included in the draft, was dropped during the parliamentary deliberations. According to Balmer, an error is more likely to be affirmed in the case of a party without legal expertise than in the case of a party represented by a lawyer.
- 31 In their commentary on Art. 48 para. 3 BGG, **Amstutz/Arnold** argue that anyone who deliberately or maliciously addresses their submission to an incompetent authority cannot invoke the relevant provision. Furthermore, it would be almost impossible to prove that a submission was filed in error if proceedings were pending before a court and the party had already been instructed (e.g., by means of a confirmation of receipt, an order for advance payment of costs, a request for comments, etc.). In this case, the party would in any event be aware of the jurisdiction of the instructing court. Jenny/Abegg also deny that there is an error if the incompetent court is called upon against better knowledge.

32 **According to the opinion expressed here**, the differentiated discussion by Löttscher/Plattner is a good guideline and starting point for assessing the question of error. In my opinion, however, in the case of lay submissions, it must always be assumed (and thus in deviation from Löttscher/Plattner, Fuchs, and probably also Amstutz/Arnold) that the submission to an incompetent court was erroneous, especially if the party was informed of the jurisdiction and this information was misunderstood. An example of this is the frequent case in which a party submits an application for free legal aid to the appellate court because the order for advance payment of costs contains information on the possibility of free legal aid. However, this does not apply to abusive conduct or clear, albeit extremely rare, cases of deliberate submissions to an incompetent court for the purpose of provoking a response or a certain type of procedure by lay persons. Querulous submissions must then be returned in any case pursuant to Art. 132 para. 3 CPC, which is why the question of error does not arise here in my opinion. The same applies to unclear submissions where jurisdiction cannot be determined at all. In this case, the court seized must first grant the party a grace period within the meaning of Art. 132 para. 1 in conjunction with 2 CPC to correct its submission so that it can be determined whether the submission was actually made in error. If the party does not comply with this request, the submission is deemed not to have been made. Tanner's comments on error are fundamentally to be endorsed in light of the above. In my opinion, the views of Benn, Hurni/Hoffmann, and Balmer are not compatible with the wording of Art. 143 para. 1^{bis} CPC and must therefore be rejected.

33 In principle, it can be stated that an erroneous submission is to be assumed where a party, due to a lack of judgment, concentration, or similar, mistakenly assumes the jurisdiction of the court seized or does not act in accordance with its correct understanding. Their intention is fundamentally to submit the application to a competent court, but they have a false idea of jurisdiction or their action or application does not correspond to their correct understanding of jurisdiction. The reasons for this (ignorance of the law, oversight, misunderstanding, etc.) are irrelevant. The assumption of an error in the case of a mandatory place of jurisdiction or the lack of subject-matter or functional jurisdiction of the court seized may be more obvious than in the case of a non-mandatory place of jurisdiction. In order not to frustrate the purpose of Art. 143 para. 1^{bis} CPC – the protection of the parties against missing deadlines due to errors of jurisdiction or incorrect addresses – or to avoid unnecessarily complicating its pursuit, a generous interpretation of this provision is required in all cases, taking into account all the specific circumstances and without insisting on rigid testing schemes.

d. ...“before a Swiss court that does not have jurisdiction”...

34 Art. 143 para. 1^{bis} CPC applies to submissions that have been mistakenly filed with a court that does not have local, subject-matter, or functional jurisdiction. The court seized must examine its own jurisdiction **ex officio** as usual and determine its own lack of jurisdiction.

35 If the court seized is a conciliation authority, according to Federal Supreme Court case law, it is not authorized to make a final ruling on questions of jurisdiction, such as local or subject-matter jurisdiction, in view of its primary task (“conciliation rather than adjudication”), unless it acts as a decision-making authority under Art. 210–212 CPC. In pure conciliation proceedings, the conciliation authority may therefore, according to the Federal Supreme Court, declare itself incompetent only under the following conditions: The conciliation authority's lack of jurisdiction is obvious and cumulative in relation to local jurisdiction (2a) there is a (partially) mandatory place of jurisdiction in another location, which is why a statement of defense pursuant to Art. 18 CPC is excluded, or (2b) the defendant invokes local lack of jurisdiction. The examination of its own jurisdiction is thus mainly limited to the question of obvious lack of jurisdiction. Among other things, it must be clarified whether a conciliation procedure is to be conducted for a dispute at all. Accordingly, with regard to

Art. 143 para. 1^{bis} CPC, only the conciliation authority that is obviously incompetent is obliged to forward submissions erroneously filed with it.

e. ...“submitted”

- 36 Art. 143 para. 1bis CPC logically presupposes that the submission is **actually submitted** to an incompetent court. Reference can be made to the general comments on Art. 143 CPC.

C. Effects of Art. 143 para. 1bis CPC

1. Compliance with deadlines despite erroneous submission to an incompetent court

- 37 Submissions that are erroneously submitted to an incompetent Swiss court within the deadline are deemed to have been submitted in time. Analogous to Art. 63 para. 1 CPC, the date of the first (erroneous) submission to the incompetent court must be considered the date of compliance with the deadline. Submissions that are not mistakenly filed with an incompetent court are still not considered to be within the deadline.
- 38 According to Abbet, Art. 143 para. 1^{bis} CPC also applies to the observance of **substantive legal deadlines for bringing an action**.

2. Forwarding to another court in Switzerland

a. Prerequisite: Jurisdiction of “another court” in Switzerland

- 39 The forwarding of a submission erroneously filed with an incompetent court requires that “another court in Switzerland” has jurisdiction. This mainly concerns **other Swiss civil courts and conciliation authorities**.
- 40 It is still **unclear** whether submissions must also be forwarded to an administrative or criminal court, an administrative authority—in particular a child and adult protection authority, a debt enforcement or bankruptcy office, a supervisory authority, a tax authority, or a criminal authority—or to a federal court or administrative authority. Löttscher/Plattner tend toward a restrictive interpretation of Art. 143 para. 1^{bis} CPC and affirm a forwarding obligation only if the other cantonal instance has jurisdiction within the scope of application of Art. 1 ZPO, i.e., if its proceedings are governed by the CPC, or if the matter in dispute is subject to appeal in civil matters pursuant to Art. 72 BGG. Hurni/Hofmann and Abbet also assume a limited scope of application of Art. 143 para. 1bis CPC.
- 41 According to the wording of Art. 143 para. 1^{bis} CPC, referral to (national and international) **arbitration tribunals** in Switzerland would also be possible in principle. However, Löttscher/Plattner reject a referral obligation in this case due to the lack of reference to the rules of Parts 1 and 2 of the CPC and for practical reasons.
- 42 A referral can only take place if it is **possible** for the court first seized to **determine** the correct jurisdiction. According to Löttscher/Plattner, in order to determine jurisdiction, the court that does not have jurisdiction may rely on facts that arise from the parties' submissions or that are considered to be established or notorious. The court is therefore not obliged to establish and supplement the facts of the case ex officio. If jurisdiction is unclear, there is the possibility of an exchange of views between the incompetent court first seized and the court presumed to have jurisdiction (in analogous application of Art. 29 para. 2 BGG), but referral is also conceivable against the will of the court second seized.

- 43 In accordance with its limited powers of review with regard to local and subject-matter jurisdiction, according to Löttscher/Plattner, the **conciliation authority** that is obviously not competent may and must only forward submissions to the authority or instance that is obviously competent. If no other authority or court has obvious jurisdiction, the conciliation authority first called upon is not obliged to forward the case.
- 44 If there are several “other” **alternative places of jurisdiction**, “one” competent court within the meaning of Art. 143 para. 1^{bis} CPC cannot be determined by the court first called upon. The obligation to forward the case does not apply if there are several “other” alternative competent courts in Switzerland – or even abroad. According to Löttscher/Plattner and Balmer, the plaintiff does not have to be heard in such cases. However, the plaintiff may express its wishes by filing a contingent motion requesting that the case be forwarded to a specific court. If this court is one of the alternative competent courts, the incompetent court must, according to Löttscher/Plattner, forward the submission accordingly after checking its jurisdiction.
- 45 **Partial forwarding** must be possible in cases where a single submission contains several claims for which different courts have jurisdiction.

b. Procedure on the part of the court

- 46 The court that does not have jurisdiction must forward the erroneously filed submission **ex officio**. Accordingly, the court is required in all cases – especially in complex questions of jurisdiction – to examine the requirements of Art. 143 para. 1^{bis} CPC. If the plaintiff or applicant wishes to prevent the court seised from forwarding the submission in the event that it lacks jurisdiction, in order to be able to file the submission initiating the proceedings itself with the court that is (in its view) competent pursuant to Art. 63 para. 1 CPC, it may include a corresponding alternative request for non-forwarding in its legal claims. In terms of time, according to the message, the transfer must be carried out “as expeditiously as always, but not immediately.”
- 47 According to **Löttscher/Plattner**, in the event of an erroneously filed procedural application (lawsuit or petition), the court first called upon (locally or materially) that lacks jurisdiction must always issue a contestable decision of non-admissibility, whereby the decision on referral is a secondary consequence of this and forms part of the decision of non-admissibility. According to Löttscher/Plattner, the court that is not competent is also not obliged to inform the parties of the result of the jurisdiction check prior to forwarding and to grant them a legal hearing. However, a document initiating proceedings must in principle be served on the opposing party in advance in order to give them the opportunity to respond, particularly in the case of a non-mandatory place of jurisdiction. Forwarding without a decision not to hear the case, especially in obvious cases, does not correspond to the will of the legislature and can only be done in exceptional cases where a non-procedural submission has been made to an incompetent court.
- 48 According to **Tanner**, the court of first instance that is not competent must, in principle, hear the parties and thus determine whether the party submitted its submission to it deliberately or by mistake. This also allows the opposing party to submit a statement in cases of non-mandatory jurisdiction. The court must then issue a decision not to hear the case (with a transfer order or a statement of waiver of transfer in the operative part of the decision). In clear cases, i.e., if the submission is obviously misdirected, such as in the case of documents that do not initiate proceedings, it is possible to dispense with obtaining statements and initiating separate proceedings and to forward the submission informally by means of a short letter. Ultimately, this also corresponds to the view of **Honegger-Müntener/Rufibach/ Schumann**, who, based on legal considerations, distinguish between official forwarding (without opening proceedings before the relevant authority) and referral of proceedings (as

a result of a decision not to hear the case when proceedings are opened), whereby the former should only be possible in clear-cut cases of obvious lack of jurisdiction. In all other cases, proceedings must be opened and a decision not to hear the case (with transfer of proceedings) must be made. This view is also held by **Fuchs**, who in the majority of cases advocates formal referral combined with a contestable decision not to hear the case (while preserving the parties' right to be heard). An actual informal referral can only take place if the error and the question of jurisdiction are so clear and obvious that formal proceedings would be pointless and would not serve either party. However, this is no longer the case if the place of jurisdiction is not mandatory and a statement of defense is therefore possible.

- 49 It should be noted that, with Art. 143 para. 1^{bis} CPC, the legislature wanted to provide a user-friendly regulation for dealing with submissions to incompetent courts in Switzerland. The party that has mistakenly approached an incompetent court has a significant interest in having its submission forwarded promptly and expeditiously. This is also in the general interest of legal certainty and orderly proceedings. Finally, the court and any opposing party must also be able to ascertain that, subject to cases justifying reinstatement under Art. 148 CPC, no further submissions are to be expected after a certain period of time following the expiry of the deadline. If the court had to issue a decision of non-admissibility (including a decision on forwarding) in every case, this would, **in our opinion**, lead to a significantly higher workload and a comparatively longer response time on the part of the courts, despite the fact that it is now possible to issue decisions without stating reasons. This is because they would have to open new proceedings for every submission erroneously addressed to them in order to be able to terminate them again with a decision not to hear the case, according to Löttscher/Plattner. It should be borne in mind that in most cases the courts are confronted with submissions for which they are clearly not competent (e.g., applications for free legal aid to the appellate court for a first-instance proceeding) and do not involve complex questions of jurisdiction, which means that the effort required on the part of the courts to issue a decision of non-admissibility in such cases appears disproportionate. Furthermore, it should be noted that the party making the erroneous submission does not intend to initiate proceedings before the court that does not have jurisdiction. In particular, it is unacceptable that the plaintiff/ petitioning party, who has mistakenly submitted their submission to a court that does not have jurisdiction, should be held liable for their oversight (and a court that they did not consciously choose) in the case of a non-mandatory place of jurisdiction if the opposing party agrees to the mistakenly invoked place of jurisdiction in accordance with Art. 18 CPC. As regards the advantages of a formal decision, the parties are likely to agree in most cases to the referral to the competent court. The contestability of a decision not to hear the case (including the decision on referral) is therefore likely to be of secondary importance.
- 50 Based on these considerations, it seems inappropriate, in our opinion and contrary to the view of Löttscher/Plattner, to open new proceedings and issue a decision of non-admissibility in every case of an erroneously filed submission. In obvious cases where the jurisdiction of another court is apparent, and in particular in the case of documents that do not initiate proceedings, it must be sufficient to stamp them with a receipt stamp and forward them to the competent court (with a copy to the parties for information) **informally**, enclosing the envelope or electronic receipt of receipt – i.e. without initiating proceedings – or, if another court has jurisdiction, to return it to the party. For evidence purposes, it is advisable to make a copy or scan of the forwarded or returned submission (including attachments) and keep it on file at the court. If a party does not agree with this procedure, it can still request a contestable decision not to hear the case (including a decision on forwarding).
- 51 If the jurisdiction of another court is not apparent from the erroneously filed submission, if complex questions of jurisdiction need to be answered, or if the document is a procedural document that is not forwarded, the initiation of formal proceedings is justified **in individual cases**, whereby, depending

on the initial situation, an exchange of documents must be ordered or the parties must be granted a legal hearing before a decision not to hear the case (including a decision on referral) is issued. The approach outlined by Gasser/Rickli/Josi, according to which forwarding should take place by means of a (contestable) procedural order – and explicitly not by means of a decision not to hear the case – is not comprehensible. On the one hand, this also requires the opening of formal proceedings in advance, which is not justified from the outset in the case of a document that does not initiate proceedings (as it is not intended by any party). On the other hand, the corresponding proceedings would ultimately also have to be formally concluded with a decision terminating the proceedings, in which case the proceedings would probably have to be dismissed as irrelevant pursuant to Art. 242 CPC. In my opinion, issuing a procedural order for referral therefore seems even more costly than a decision not to hear the case (including a decision on referral). Furthermore, a procedural order generally serves to ensure the swift preparation and conduct of the proceedings. It is not clear to what extent referral within the framework of Art. 143 para. 1^{bis} CPC fulfills this purpose.

- 52 In conclusion, however, it should be noted that only time will tell which approach proves itself in **practice** and can be recommended as best practice.

c. Consequences of referral

- 53 Once the referral has become final, the case or submission is **taken over** by the second court or authority. The decision on jurisdiction set out in the referral order does not, in principle, have any prejudicial effect. Only the court or conciliation authority named therein can make a legally binding decision on its own jurisdiction. It is therefore not excluded (and also permissible) that a court, as the recipient of the referral, considers itself to be incompetent and issues a further referral order.
- 54 If a court forwards a submission to a **conciliation authority** within the scope of Art. 143 para. 1^{bis} CPC, it can be assumed that the latter must take over the case, as a conciliation authority may only deny its jurisdiction to a limited extent and the conditions for this are unlikely to be met in the case of a referral by a court. In particular, there should be no case of “obvious lack of jurisdiction.”
- 55 The court takes over the proceedings at the **stage** at which they are at the time of referral. In principle, the parties may again comment twice on the jurisdiction of the court deemed to have jurisdiction. Precautionary measures already ordered by the (erroneously) called court remain in force until they are revoked or amended by the second court called.
- 56 If a document initiating proceedings is transferred, the date of the first (erroneous) submission to the court that lacks jurisdiction is considered the date of **litigation**. The litigation therefore continues and the plaintiff or applicant has no possibility of resubmitting their claim or application to another court themselves.

d. Consequences of rejection

- 57 If no referral is made, the plaintiff or applicant may resubmit their **document instituting proceedings** to the competent court or conciliation authority within one month of the decision not to hear the case, with the date of the first submission being deemed the date of *lis pendens*.
- 58 A **document that does not initiate proceedings** and that has been returned to the party due to the failure to determine another competent court must also be submitted by the party to the competent court without delay in order to comply with the time limit under Art. 143 para. 1^{bis} sentence 1 CPC.

IV. COMPLIANCE WITH TIME LIMITS FOR ELECTRONIC SUBMISSIONS (ART. 143 PARA. 2 CPC)

A. Form

- 59 Electronic submissions must be in a specific form in order to meet the deadline. Art. 130 para. 2 CPC stipulates that electronic submissions (including the attachments mentioned therein and submitted with them) must bear a **qualified electronic signature** in accordance with ZertES. Submissions by simple e-mail or other electronic submissions to the court's address do not generally meet the deadline. If the formal error can be corrected before the deadline expires, the court must, in principle, notify the party concerned. The court cannot grant the party an extension within the meaning of Art. 132 para. 1 CPC in order to repeat a formally correct delivery (qualified electronic signature, permissible file format, etc.). According to established Federal Supreme Court case law, subsequent rectification is also not possible.
- 60 The **modalities** of electronic communication between the parties to the proceedings and the authorities are regulated in the Ordinance of June 18, 2010, on Electronic Transmission in Civil and Criminal Proceedings and Debt Collection and Bankruptcy Proceedings (VeÜ-ZSSV; SR 272.1). However, it does not apply to proceedings before the Federal Supreme Court. Submissions (including attachments) must be sent in PDF format to the address of the authority on the recognized delivery platform used by it. PrivaSphere Secure Messaging from PrivaSphere AG and IncaMail from Swiss Post are currently recognized delivery platforms within the meaning of Art. 2 VeÜ-ZSSV. It should be noted that IncaMail offers the delivery options “Confidential,” “Personal,” and “Registered,” whereby only the latter generates a delivery receipt within the meaning of Art. 143 para. 2 CPC. Furthermore, when using the PrivaSphere AG delivery platform, it is possible to submit an electronic document without providing it with a sufficient digital signature and without obtaining the required delivery receipt. The Federal Chancellery maintains two directories of authority addresses, which are available on the internet.
- 61 An authority may request the **subsequent submission** of submissions and attachments on paper if these cannot be opened due to technical problems or are not legible when displayed on screen or in printed form. It must grant the parties involved in the proceedings a reasonable period of time for subsequent submission.
- 62 Certain authors also consider it conceivable and possible for the acting party to submit some of the documents electronically and the rest in paper form by post or direct delivery to the court. In my opinion, there is no objection to this, provided that the respective **partial submissions** are sufficiently marked as such so that they can be easily assigned. It goes without saying that the respective partial submissions must be submitted separately in order to meet the deadline.

B. Principle of receipt

- 63 Electronic transmission is subject to the principle of receipt: the deadline is deemed to have been met if receipt at the court's delivery address has been confirmed by the relevant IT system by the last day of the deadline (by midnight) at the latest. Specifically, the time at which the delivery platform issues the **receipt of submission** is decisive for compliance with a deadline for electronic submissions. The time of dispatch is not relevant, but the receipt is usually issued automatically immediately afterwards. The acting party can therefore immediately see whether the transmission was successful.
- 64 The **risk** of a transmission failure or technical malfunction is borne by the party until the court's receiving server has received the document – and thus until the delivery platform has issued a receipt.

It is therefore advisable not to make the electronic transmission shortly before the deadline, but to allow sufficient time for this, so that further attempts or submission in paper form are still possible as a precaution.

V. COMPLIANCE WITH DEADLINES FOR PAYMENTS TO THE COURT (ART. 143 PARA. 3 CPC)

A. (Modified) principle of dispatch

- 65 The deadline for payment to the court is met if the amount to be paid is **paid in** or **debited** from the account of the party concerned or its representative by the last day of the deadline at the latest. It is not sufficient for the payment order to be issued within the deadline. On the other hand, it is not necessary for the amount to be received by the court or credited to the court's account within the deadline.
- 66 The **burden of proof** again lies with the party invoking the timeliness of the payment.

B. Cash deposit

- 67 In order to meet the deadline, the party liable for payment may deposit the amount due with Swiss Post at the latest on the last day of the deadline by making a payment at the **post office counter** (or at the counter of one of its postal agencies) in favor of the court. The deposit function at Postomats will no longer be available as of July 31, 2021. It is also possible to pay the amount in cash at a branch of the bank that manages the court account. Payment to a foreign post office or bank does not meet the deadline; the amount must again be handed over to Swiss Post or the bank that manages the court account for further processing or received by the court cashier's office by the last day of the deadline at the latest.
- 68 Although not provided for by law, it is also generally accepted that the cash amount can be handed over directly **at the court** counter in favor of the court cashier's office in exchange for a receipt. However, a party is not entitled to demand that the court accept any amount. In view of the risk of money laundering, an upper limit of CHF 15,000.00 appears reasonable.

C. Bank or postal transfer

- 69 For payments to the court by bank or postal transfer, the date on which the **account is debited** is decisive for meeting the deadline: The party's Swiss account must be debited with the amount to be paid by the last day of the deadline at the latest (known as the value date). For transfers from abroad, it is also necessary for the required amount to be credited to the court cashier's account in good time or at least to reach the sphere of influence of Swiss Post or a Swiss bank; Simply debiting a foreign account is not sufficient to meet the deadline. In this context, it should also be noted that transaction and exchange fees are borne in full by the transferring party so that the entire amount is paid within the deadline.
- 70 The party is therefore required to issue the payment order in **sufficient time** so that the bank or post office can process it within the payment deadline. It must also ensure that there are sufficient funds in the account to be debited. The risk of a delayed debit is borne by the party liable for payment.
- 71 If the credit is only made to the court account one day after the deadline, the court must have doubts about the timeliness of the payment and **check back** with the party liable for payment regarding the date of the debit. If the account of the party liable for payment is debited with the required amount

before the deadline but no credit is then made to the court account, court practice requires consideration of whether the failure of the transfer is attributable to the party liable for payment or to the bank or post office.

D. Erroneous payment to an incompetent court (Art. 143 para. 1^{bis} CPC analogously)

- 72 In accordance with Benn and Tanner, it can be assumed that Art. 143 para. 1^{bis} CPC should also apply *mutatis mutandis* to payments. A payment made in error to an incompetent court within the deadline is considered to have been made in time. The payment must be **forwarded** ex officio if another court in Switzerland is competent.

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