

Appropriate Dispute Resolution (ADR) in the Public Service of Justice (Efficiency Measures) Act and its effects on limitation periods for civil actions

A few thoughts on Articles 7 through 10
of the Public Service of Justice
(Efficiency Measures) Act 1/2025
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1. Description of the rules

I will begin by clarifying some initial rules concerning ‘appropriate dispute resolution’ (ADR) procedures in civil cases that are found in Articles 5 to 19 of the Public Service of Justice (Efficiency Measures) Act 1/2025 and in the amended Article 4 of the Civil and Commercial Mediation Act 5/2012. What follow below are not all the rules, nor all the matters covered by the rules, where the law regulates the interruption of a limitation period (time-barring of a remedy) or suspension of an extinguishment period (time-lapsing of a right) by reason of having

resorted to ADR, but rather a selection that I consider important in this regard:

- The ADR procedures listed in Act 1/2025 are *mediation, conciliation* (with various professional modalities), the *neutral opinion of an independent expert*, and the *preparation of a binding confidential offer*. Particularly, the requirement shall be deemed to have been met *when the negotiating activity is carried out directly by the parties*, or between their lawyers under their guidelines and with their approval, as well as in those cases where the parties

have resorted to a collaborative law process.

- Among ADR procedures there is one class which, however, is not subsequently implemented in a specific manner: *the negotiating activity [that] is carried out directly by the parties, or between lawyers thereof under their guidelines and with their approval, without further protocols.*
- *The request of one of the parties addressed to the other to initiate a negotiation through an ADR procedure where the subject matter of the negotiation is appropriately defined shall interrupt a limitation period or suspend an extinguishment period from the date on which the attempt to communicate said request to the other party is recorded.*
- The interruption or suspension shall run until the date of signature of the agreement or the termination of the negotiation process without agreement. Among other cases, the process is understood to end without agreement if thirty calendar days have elapsed from the date of receipt of the initial request for negotiation by the other party and the first meeting or contact aimed at reaching an agreement is not held or a written response is not obtained.
- The reckoning of periods will be restarted or resumed, respectively, in the event that the first meeting aimed at reaching an agreement is not held or no written response is obtained within thirty calendar days from the date of receipt of the request for negotiation by the party to whom it is addressed, or from the date of the communication

ADR disrupts the statute of limitations, creating further chaos

attempt, if such receipt does not take place.

- In the event that a specific proposal for an agreement is not responded to by the counterparty within thirty calendar days from the date of receipt, the reckoning of periods shall be restarted or resumed respectively.
- In the event of conciliator involvement, the request to initiate the conciliation shall interrupt a limitation period or suspend an extinguishment period from the date on which the conciliator acknowledges receipt of said request, and the reckoning of the periods shall be restarted or resumed, respectively, if within fifteen calendar days from the date of receipt of the request by the conciliator, the latter has not attempted to communicate with the other party, as well as if within fifteen calendar days from receipt of the proposal by the party to whom the request for conciliation is addressed, or from the date of the communication attempt if such receipt does not take place, the first meeting aimed at reaching an agreement is not held or no written response is obtained.
- *In the event of independent expert involvement, the limitation period shall be interrupted or the extinguishment period suspended from the date of appointment by mutual agreement of the expert, and the reckoning of the period shall be restarted or resumed, respectively, from the date of acceptance of the final agreement by*

- all the parties or of the issue of the certificate provided for in Article 18(5).
- In the event that the initial request to negotiate is not responded to, or the negotiation process ends without an agreement being reached, the *parties must file a claim within a period of one year from, respectively, the date of receipt of the request to negotiate by the party to which it was addressed or, where appropriate, from the date of termination of the negotiation process without an agreement*, in order for the prerequisite to proceed in a court of law to be deemed satisfied.
 - For the purposes of proving that prior negotiation activity has been attempted and of satisfying the prerequisite to proceed in a court of law, such negotiation activity - or the attempt thereof - must be documented. If a neutral third party has not been involved, proof “*shall be fulfilled by means of any signed document [...] proving that the other party has received a request or invitation to negotiate or, where appropriate, a proposal, on what date, and that it has been able to access its full content*”.
 - Any person who, with the aim of resolving a dispute, makes a *confidential binding offer* to the other party, is obliged to fulfil the obligation they have assumed once the party to whom it is addressed expressly accepts it. Such acceptance shall be irrevocable. *The form of submission of both the offer and the acceptance must allow for the identity of the offeror*, its effective receipt by the other party and the date of such receipt, as well as its content, to be recorded.
 - The request to initiate *mediation* shall interrupt a limitation period or suspend an extinguishment period from the date on which the mediator receives the request or such is filed with the mediation institution, as the case may be.
- ## 2. Observations
- §1. Note that the person interested in interrupting a limitation period (or in suspending an extinguishment period) is ordinarily the claim holder. The obligor has no interest in interrupting; on the contrary, he has an interest in the limitation period expiring. Until now, only the ‘acknowledgment of the claim’ by the obligor interrupted the limitation period due to conduct on his part. Now it is possible to ‘get trapped’ as soon as an ADR procedure is requested.
- §2. In Act 1/2025, the limitation period is interrupted by any activity of the obligor that involves - with the requirements indicated above - the implementation of an ADR procedure, even if in fact it does not mean that the obligee’s right is being acknowledged. Note the subtle cases in which the obligor makes a ‘binding offer’ to the obligee in the legal sense or simply proposes negotiations to reach an agreement. A future of endless lawsuits for which prior ADR will in turn be required.
- §3. Although this was already done in 2012 with regard to mediation, now all ADR procedures ‘suspend’ an extinguishment period. And this is remarkable, not only because periods are defined or characterised as extinguishment periods precisely so that they cannot be suspended, but, much more shockingly, because the ordinary initiation of ADR procedures, even ones that are not institutionalised or mediated by a

ADR can suspend an extinguishment period, an effect unattainable by an out-of-court claim

professional, suspend the extinguishment period, when neither an out-of-court claim nor an 'acknowledgement' of the right by the obligor would do so, according to the common interpretation that Article 1973 of the Civil Code is not applicable to extinguishment periods. It would be better to put an end to the device of extinguishment in civil proceedings.

§4. Without question, the factual circumstances that mark the *dies a quo* of an interruption is much more complex to prove when ADR has been engaged in in accordance with Article 1973 of the Civil Code. This means that the application of Act 1/2025 will generate more litigation than it avoids.

§5. The limitation period is interrupted, or the extinguishment period is suspended, when the other party is requested ADR or a 'mediator' is requested or an expert is appointed. But what if one starts by requesting ADR which 'precisely' consist of the appointment of an expert? Is ADR already being requested before the appointment? What if I request and you 'counter' with the proposal of an expert?

§6. For the obligee (or supposed obligee), ADR only has advantages in terms of the limitation period, as it can be claimed that said period has been interrupted without

the obligee's behaviour being equivalent to an 'out-of-court claim' in the strict sense.

§7. The rules set out above shall not apply to the civil interruption of adverse possession, even if the action for recovery of ownership has been interrupted as a result of ADR.

§8. Let us imagine that we start with a claim of A against B for 1000. Before going to court, ADR is attempted (left with no other choice). This fails and a discussion follows as to whether or not the limitation period was interrupted. If one goes to court, will a new ADR procedure have to be organised, as done as a preliminary step to litigate the collection of the 1000? 'Meta-litigation' with meta-ADR; and all to make justice more 'efficient'.

§9. Once the ADR procedure has concluded without an agreement, there is a year in which to file a lawsuit. This will ordinarily be an extinguishment period. But this does not mean that the claim time-lapses or the action becomes time-barred in that year. The limitation period continues (begins) its course after the interruption. If a year passes without a lawsuit, it is necessary to resort to another ADR procedure, but the claim will be alive or dead as per civil law.