ANALYSIS

Litigation

Limitation period, extinguishment period, ADR, time window, limitation period, extinguishment period, ADR (*a*)

It all began when I attended a discussion in which the parties' attorneys could not agree on the scope of Article 7(3) of Act 1/2025.

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§ 1. In civil proceedings, as a general rule, for a claim to be admissible, it is a procedural requirement to first engage in an appropriate dispute resolution (ADR) method as provided for in Article 2 of Act 1/2025. This requirement shall be deemed fulfilled if the parties have previously resorted to mediation, conciliation, or the neutral opinion of an independent expert; if a confidential binding offer is made, or if any other form of negotiation provided for in this or other national or regional laws is undertaken, provided that it complies with the provisions of Sections 1 and 2 of Chapter I ("Appropriate non-court dispute resolution methods") of said Act or of a sector-specific law. In particular, the requirement shall be deemed fulfilled when the negotiation is conducted directly by the parties, or between their attorneys under their guidance and with their consent, as well as in cases where the parties have resorted to a collaborative law process. Negotiation prior to court proceedings shall be a prerequisite for admissibility in all declaratory proceedings under Book II and in the special proceedings under Book IV of Civil Procedure Act 1/2000 of 7 January.

§ 2. *A request by one party to the other* to initiate a negotiation process by means of an ADR method, wherein the subject matter of the negotiation is adequately defined, *shall toll the limitation period (time-barring of remedy) or suspend the extinguishment period (time--lapsing of right) from the date on which the attempt to notify the other party of that request is recorded.*

§ 3. Note that what tolls the limitation period or suspends the extinguishment period is not the formalisation of a "claim" under Article 1973 of the Civil Code (CC) nor any kind of "acknowledgment by the other party". The "attempt to notify the request to initiate an ADR method" is sufficient.

§ 4. We present the following scenario: a contract (allegedly) vitiated by fraud entitles the other party to seek a declaration of invalidity within a four-year period, and it has not yet been decided in higher court case law whether that period constitutes a limitation period or a extinguishment period. The four-year period would elapse (*prima facie*, if it is a limitation period) on 1 July 2026, and, in any case, that same day if the period were a extinguishment period. On 1 May 2026, the interested party "requests" (notifies that it is requesting) an ADR method, specifically a confidential binding offer. On 29 June 2026, the other party rejects the offer. According to the law, "[t]he tolling or suspension shall continue until the date of the signing of the agreement or the termination of the negotiation process without an agreement". If the relevant period were one of extinguishment, the initiator of the failed ADR method would have three days left to file a lawsuit.

§ 5. The situation would be different if the period were a limitation period: once the ADR method is initiated, the limitation period is tolled. When the MASC ends without an agreement, the four-year limitation period will begin anew. The claimant will have reset the clock simply by attempting an ADR method. This is not a privilege; in the absence of an ADR method, the claimant would have reset the clock simply by sending a content-certified letter with return receipt demanding payment, even if this demand had already been made a hundred times without success. Of course, in the case of claims for declaration of invalidity under Article 1301 of the Civil Code, the claimant can never be certain in advance whether the applicable period is a extinguishment period or a limitation period.

§ 6. And this is where Article 7(3) of Act 1/2025 comes into play:

> In the event that the initial request for negotiation goes unanswered or the negotiation process ends without an agreement, *the parties must file the claim within one year* from, respectively, the date of receipt of the request for negotiation by the party to whom it was addressed or, where applicable, from the date of conclusion of the negotiation process without an agreement, so that the requirement for admissibility may be deemed fulfilled. [Italics added]

The one-year period is neither a limitation period nor an extinguishment period , nor does it extend the period that would otherwise apply.

§ 7. It is very easy to misinterpret this provision. For those facing the dire situation of extinguishment, this rule could seem a fresh start of an exceptional period that is extinguished the following year. For those who still have a lengthy limitation period remaining, it raises the fear that, in fact, there is now only one year left to file a claim—an absolute deadline following the failed ADR method. None of this is correct: *the one-year period is neither a limitation period nor an extinguishment period , nor does it extend the period that would otherwise apply.* It is a time window during which the (failed) ADR method remains in effect — still as a procedural requirement — after which it will be necessary to pursue a new ADR method if the claim has not been filed within that time window.

§ 8. If, during this time window, the obligee makes a claim in accordance with Article 1973 of the Civil Code, the limitation period would be tolled, but the time window under Article 7(3) would not be affected.

§ 9. There may be a case (where the extinguishment period is already nearing its end) in which there is no longer room for the time window because the extinguishment period is extinguished tomorrow. And there may be a case in which the remedy has not yet become time-barred despite the closure of the time window. An out-of-court claim during this period or a new attempt at an ADR method would again toll the limitation period, but for the final lawsuit, a new ADR method must be attempted if the time window closed during the year.

§ 10. According to Article 5(1), paragraph II, of the Act, "[i]n particular, the [ADR] requirement shall be deemed fulfilled when the negotiation is conducted directly by the parties". This informal form of ADR is not explicitly provided for by law because it does not favour professional corporatism, but it exists nonetheless. This is a positive development. Suppose that on 29 July 2026, the addressee rejects the binding offer. Only two days remain, plus the grace period. The claimant, seeing that time is running out, may initiate another ADR method — specifically, by issuing an invitation to begin private negotiations; pursuant to Article 10(4)*a*, the claimant will have an additional thirty days during which the extinguishment period is again suspended, unless the other party responds peremptorily by rejecting the offer outright.