

RocaJunyent Informs

Litigation, Arbitration and Mediation Department

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Organic Law 1/2025 of 2 January on measures for the efficiency of the Public Justice Service

The recent Organic Law 1/2025 (the "lo 1/25"), establishes a series of modifications that affect the traditional conception of the process and that, according to the explanatory memorandum, are aimed at modernising the judicial system to make it more accessible and efficient. However, these changes require a redefinition of the procedural action of the parties by establishing new requirements for the initiation of legal proceedings.

In the present text we will analyse the most relevant aspects of this new regulation which aims to reform the Spanish judicial system with the objective of improving efficiency, reducing the workload of the courts while promoting the use of Appropriate Methods of Dispute Resolution ("ADR").

This new regulation provides for a modification of the organisation of the judicial system and introduces a series of procedural efficiency measures aimed at reducing litigation.

Although various legislative aspects have been reformed, perhaps the most relevant change, and the one to which we will mainly refer, is the strengthening of ADR, which has gone from being voluntary and optional tools to become genuine procedural requirements in certain civil and commercial matters.

In other words, ADR will continue to be characterised by traditional principles such as good faith, but will no longer be voluntary in the traditional sense.

ADR and its typology

The question arises as to what ADR is. Thus, starting from a broad conception, ADR would include any negotiation activity carried out in good faith by the parties, alone or with the participation of a third party, with a view to reaching an agreement that puts an end to a specific dispute.

Organic Law 1/2025 refers specifically to private conciliation, confidential binding offers, independent expert opinions, collaborative law, direct negotiation or mediation (Articles 14 et seq.).

It should be noted that, in this new scenario, no hierarchy or preferential use of some ADRs over others is established, although we understand that, of all of them, mediation may be the most likely to resolve a conflict. The parties may resort to any of these appropriate means of dispute resolution with the assistance of a lawyer, with legal assistance only being compulsory in the event that a binding offer is made.

In any event, such ADR will serve to resolve disputes arising in civil and commercial matters, including cross-border disputes. However, these must be matters available to the parties, thus excluding those relating to filiation, paternity, civil status and other similar matters. Likewise, disputes in matters such as criminal, labour or bankruptcy or where one of the parties is a public sector entity are excluded and must be resolved according to their specific legislation.

What is the difference between ADR?

Without wishing to exhaustively analyse each of the ADRs provided for in the Law, it is appropriate to mention some of them and to differentiate mainly between negotiation, conciliation and mediation. Although confusion between these institutions is common,

the fact is that they differ considerably both in spirit and in their very nature and configuration. Thus, negotiation is characterised by the direct intervention of the parties or their lawyers without the intervention of a neutral or independent third party. In mediation and conciliation, on the other hand, a third party does intervene and acts in a different way: the conciliator proposes alternatives and solutions directly to the parties, while the mediator uses a series of techniques to encourage communication between the parties, guiding them to a possible solution that they can understand as valid to put an end to the dispute and which materialises in the agreement.



Mediation stands out as an important element in conflict resolution and is thus promoted by law as a step prior to litigation in certain cases.

Compulsory versus voluntary

LO 1/25 establishes that, in certain types of disputes, the parties must necessarily try to resolve them through ADR before going to court. This is a novelty that constitutes a genuine procedural requirement and is intended to encourage the amicable resolution of disputes and reduce the number of cases that go to court. In short, LO 1/25 requires proof that an out-of-court settlement has been attempted. In the particular case of mediation, the parties must present a mediation certificate attesting to the attempt at mediation, making it a compulsory step prior to judicial proceedings in certain cases.

Notwithstanding the above, it should be noted that this procedural requirement shall also be deemed to be met when the negotiating activity is carried out directly by the parties or their lawyers and also when they have resorted to a collaborative law process in the sense indicated in Article 19 of the Law.

 Are there consequences for not complying with this procedural requirement?

Yes, the most obvious one is the inadmissibility of those claims that are not accompanied by the accreditation of the procedural requirements.

Similarly, a request by one of the parties for the initiation of a negotiation process through an ADR shall interrupt the statute of limitations or suspend the expiry of the limitation period from the date on which the communication is recorded as having been attempted.

This interruption or suspension will continue until the date of signature of the potential agreement or the date of termination of the negotiation process without agreement.

On the other hand, the LO also regulates the cases in which the negotiation process is terminated without agreement, such as the passing of thirty calendar days from the date of receipt of the initial request when the first meeting or contact does not take place, or when there is no written response to a potential proposal from the other party or when a letter is sent terminating the negotiations. In any case, special rules are laid down if mediation or conciliation has been attempted before the legal adviser, notary or registrar, as well as in cases in which an independent expert intervenes.

The good faith of the parties - and the abuse of rights - in the negotiation or use of the means of dispute resolution used and how this affects the subsequent procedural action will have to be taken into account, as it is possible to imagine litigation scenarios characterised by procedural exceptions aimed at hindering the initiation of legal proceedings after ADR. It will therefore be necessary to know and act diligently in order to reach an agreement where possible, and otherwise to be able to initiate court proceedings without unwanted obstacles.

Confidentiality

It is important to stand out that the negotiation process through the chosen ADR, as well as the documentation that has been used in it, will be considered confidential except for the basic information that aims to reflect whether the parties initiated an ADR or not. Without prejudice to the exceptions provided for in the LO1/25, information of a confidential nature that is intended to be submitted as evidence at a later stage in potential legal proceedings will not be admissible.

Updated coastal regulation

Closely linked to the promotion of the use of ADR is the adapted regulation on costs, as significant changes are introduced with the aim of promoting the out-of-court settlement of disputes and avoiding, as far as possible, court proceedings that may be considered unnecessary.

Therefore, the costs order is eliminated in the incident of challenging the assessment of costs as excessive, except in cases of abuse of the public service of justice.

In the same way, the party ordered to pay the costs may request exoneration or moderation of the costs if an out-of-court settlement has been attempted and was not accepted by the other party and the court decision coincides with the proposal made.

Also in matters of enforcement, the costs are to be borne by the defendant without the need for them to be expressly imposed by the court, which simplifies the procedure.

Among the novelties introduced by the LO, the aim is to simplify the organisation of the different jurisdictional orders. Thus, collegiate Courts of First Instance have been created, which will replace the unipersonal courts, which will be integrated into a Court of First Instance, based in the capital with a civil and examining magistrate's section.

The oral trial is extensively modified by introducing the possibility of oral judgments - which must be drafted later-, with the parties having the possibility of expressing their will to appeal within five days; the form of submitting evidence in writing is modified within five days from the decision that transfers the reply to the claim and, in the same sense, the parties may challenge documents or opinions within three days from the written submission of evidence.

Similarly, specific rules are introduced in the area of consumers and unfair terms against financial institutions, making the existence of a prior out-of-court complaint by the affected consumer a requirement for admissibility in certain types of claims.

However, it is not only civil proceedings that are updated; the amendments affect, to a greater or lesser extent, contentious-administrative legislation, the law on capital companies, bankruptcy law and the law on criminal prosecution.

In general, entry into force will take place on 15th April 2025 after the three months stipulated in the law have elapsed, although some provisions will enter into force earlier, on 23rd January 2025, and others later, on 3rd October (see FD 38th).

In conclusion, Organic Law 1/2025 introduces relevant changes that tend to modernise the Spanish judicial system and that aim to improve efficiency and the amicable resolution of conflicts. There are some aspects that still require statutory development, such as the opinion of an independent expert third party (art. 18).

In any case, it will be necessary to understand the new regulatory scenario in order to understand the impact on the process and avoid adverse situations in terms of costs. Thus, both companies and individuals should be aware that these changes affect legal strategy and that, in the event of failure to comply with the established requirements, the consequences can be serious, such as the inadmissibility of claims or the imposition of costs.

Whether or not these measures have a real and effective practical impact on the increase of out-of-court settlements that allow for an effective reduction of the judicial burden will only become clear with the passage of time.