



## Which means are appropriate to send an out-of-court complaint: certified mail, certified fax or some other?

*Judgement of the Supreme Court, Civil Chamber, of 5 February 2019*

### Background

Year after year since 2011, a real estate owner had been sending letters to the person in possession of such real estate, complaining about certain damages that the properties had suffered. The letters were sent by certified mail or certified fax, which are both services offered by Correos (Spanish public mailing service). The intention of these letters was to avoid the elapsing of the time-limit of one year for exercising the legal action to claim damages before court. According to the Spanish Civil Code, this time-limit is restarted (among other cases) when there is an out-of-court complaint. Therefore, when there is a complaint letter to the person who is supposedly responsible for the damages, the time-limit to judicially claim such damages is restarted.

The last letter was sent in 2014, after which the real estate owner filed a complaint before the competent Court. The Court dismissed the complaint, considering that the time-limit for exercising the legal action had elapsed due to the fact that the last letter was sent via certified letter but there was no acknowledgement of receipt.

The real estate owner filed an appeal against the judgement of the Court. The Court of Appeal decided to revoke such judgement, considering (i) that sending the letter through Correos were appropriate means for the communication to reach its recipient; (ii) that there was no reason to doubt the regularity of the mailing service of Correos; and (iii) that the fact that there was no acknowledgement of

receipt is not decisive to conclude that the communication was not delivered.

### Position of the Supreme Court

The judgement of the Court of Appeal was challenged before the Supreme Court, which ruled confirming the position of the Court of Appeal.

In this judgment, the Supreme Court goes over the requirements that an out-of-court complaint must meet in order to be valid: (i) the complaint must be made in a suitable manner and through appropriate means; (ii) the right exercised must be clearly identified; and (iii) the communication must come to the recipient's knowledge. Also, the Supreme Court points out that art. 1973 of the Spanish Civil Code does not regulate a specific way in which the out-of-court complaint should be made, so any means can be used for this purpose.

As regards the certified letter without acknowledgement of receipt sent in 2014, the Supreme Court agrees with the position of the Court of Appeal. The Supreme Court concluded that, in this case, the sending, the content and the receipt of the communication were all proven. This conclusion was based on the following facts: (i) there was a proof of submission issued by Correos, (ii) the letter was not returned due to delivery failure and (iii) the content of the communication could be inferred from the previous letters.