

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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**Date:** 02/05/2017

**DH-DD(2017)488**

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Meeting: 1288<sup>th</sup> meeting (June 2017) (DH)

Item reference: Action report (26/04/2017)

Communication from Spain concerning the case of MORENO CARMONA v. Spain (Application No. 26178/04)

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Réunion : 1288<sup>e</sup> réunion (juin 2017) (DH)

Référence du point : Bilan d'action

Communication de l'Espagne concernant l'affaire MORENO CARMONA c. Espagne (Requête n° 26178/04)  
**(anglais uniquement)**

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MINISTERIO  
DE JUSTICIA

DGI

26 AVR. 2017

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

ABOGACÍA GENERAL DEL ESTADO  
DIRECCIÓN DEL SERVICIO JURÍDICO DEL ESTADO

ABOGACÍA DEL ESTADO ANTE EL TRIBUNAL EUROPEO DE DERECHOS  
HUMANOS Y OTROS ORGANISMOS INTERNACIONALES COMPETENTES  
EN MATERIA DE SALVAGUARDA DE LOS DERECHOS HUMANOS

## ACTION REPORT

### APPLICATIONS:

**26178/04 MORENO CARMONA (Leading case);  
28142/04 BENDAYAN AZCANTOT and BENALAL BENDAYAN  
30350/07 ORTUÑO ORTUÑO;  
64204/10 COMUNIDAD PROPIETARIOS CALLE PANDO 20  
7381/11 MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ  
16476/11 RUIZ VILLAR-RUIZ**

**Information submitted by the Kingdom of Spain on the 28th April 2017.**

### I. GROUP OF CASES

Application number	Case	Date of judgment	Final on
26178/04	MORENO CARMONA	09/09/2009	09/03/2010
30350/07	ORTUÑO ORTUÑO	27/12/2011	27/06/2012
73818/11	MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ	15/03/2016	15/09/2016
28142/04	BENDAYAN AZCANTOT and BENALAL BENDAYAN	09/09/2009	09/03/2010
64204/10	COMUNIDAD DE PROPIETARIOS PANDO, 20	20/12/2016	20/06/2017
16476/11	RUIZ-VILLAR RUIZ	20/12/2016	20/06/2017

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## II. SUMMARY OF THE CASES

### A- MORENO CARMONA

The claimant was arrested in 1985, because of assault and violent theft of a Spanish Bank. Denying any participation in this crime, Mr. Moreno Carmona appealed different pronouncements of the Juzgado de Instrucción de Madrid, in order to obtain his freedom or a domiciliary detention while the criminal judgement took place.

In 1986 he was released on bail, but the oral procedures did not start until 1990. It was not until 1998 that the Audiencia Provincial de Madrid filed the case because of the prescription of the crime, in application of the new Criminal Code, which benefited the claimant if retroactively applied. In no moment the Court stated that he was not the author of the crime, but the period of time elapsed between the facts and the judgment prevented the Audiencia Provincial de Madrid from going afar, and eventually filed the case.

It is significant to underline that the claimant did not present any complain to the Juzgado de Instrucción de Madrid that carried on the criminal investigations because of the procedure delay.

After the case was finally filed, the claimant presented an administrative claim before the Ministry of Justice, in order to obtain an economic compensation. This claim was filed, and the later judicial procedures started by the claimant against this file were also dismissed, because the Audiencia Nacional found that the claimant had been benefited of the retroactive application new Criminal Code, which included shorter periods of prescription of the crime. For this reason, no relationship could be found between the abnormal duration of process and the economic damages alleged, as it was only because of time that the crime has prescribed and could not be judged.

Mr. Moreno Carmona lodged an amparo appeal (recurso de amparo) against this judgement within the Constitutional Tribunal, which was dismissed in 2000, on the ground that it had no constitutional basis.

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When analysing the case, the ECtHR observed that, after the opening of the oral procedure in 1990, no action was carried out until the claimant asked for the prescription of the crime. Without any other considerations, that abnormal procedural paralysis is manifestly contrary to the exigence of a “reasonable length” of the procedure. Being responsibility of the Member State to organize their judiciary in order to avoid this situations ( § 55) (v. Pélissier y Sassi, § 74), a violation of article 6 § 1 of the Convention was therefore stated.

Just satisfaction (Article 41).

The Court held that Spain was to pay the applicant 20.000 € (EUR) in respect of pecuniary damage and that the finding of a violation of Article 6 of the Convention was in itself sufficient just satisfaction for any non-pecuniary damage that might have been sustained by Mr Moreno Carmona. No costs were imposed, but a condemn of 2.500 EUR to cover the expenses caused by the procedure with the ECtHR.

## **B- ORTUÑO ORTUÑO**

The applicant’s claim refers to an excessive duration of the judicial procedure started to obtain the execution of the judgement that settled the economic marital regime pf the claimant with her former husband.

The ECtHR remembers the case-law on article 6.1 of the Convention, by which an individual study case by case has to be made, in order to verify whether an unjustified delay has been committed.

In this particular case, the Court considers well proved that the constant appeals made by the applicants contributed to the delay. Also the complexity of the matters regarding the dissolution of the marital community influenced in the long period of time elapsed.

Notwithstanding those factors, the ECtHR states that they were not enough to explain the big delay suffered by the claimant. The lapse of time of 11 years needed to conclude the execution of the judgement cannot be considered in line with the requirement of a “reasonable term” protected by the article 6 § 1 of the Convention.

With regard to the just satisfaction (Article 41), the Court held that Spain was to pay the applicant 21.000 € (EUR) for pecuniary damages and that the finding of a violation of Article 6 of the Convention was in itself sufficient just satisfaction for any non-pecuniary damage that might have been sustained by the claimant.

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No compensation of costs or expenses caused by the procedure started before the ECtHR was imposed.

### **C- MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ**

In this case both claimants were condemned in Spain for fraud and documents forgery. They denounced the excessive length of procedure because of an unjustified delay in the resolution of the case by national judges. The opening of the oral procedure began in 2004, whereas the hearing was not held until 2009. The Audiencia Provincial de Asturias alleged the complexity of the case, mainly because of the difficulties gathering proofs, the big number of parties involved, the difficulty of notifications and de extreme delay of the claimants in presenting their allegations.

Both claims were accumulated in application of article 42.1 (joinder and simultaneous examination of applications) of the Rules of Court.

With regard to the alleged violation of article 6.1 of the Convention (right to have a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.), the European Court of Human Rights declared both claims admissible.

When studying the material aspects of both claims, the ECtHR stated an effective and undue delay, with a breach of the requirement of a reasonable duration of the procedure, and therefore a violation of article 6.1 of the Convention.

The judgment did not include a just satisfaction sentence, as the claimants had not asked for any economic compensation, nor costs or expenses.

### **D- BENDAYAN AZCANTOT AND BENALAL BENDAYAN**

The claimants complain refers to an excessive delay in the execution of a criminal judgement in Spain from the Audiencia Provincial of Santa Cruz de Tenerife, which became firm in 1997. Mr. M.R.L. had been considered author of a crime of fraud against the claimants. This judgement included not only an imprisonment penalty, but also a civil compensation of 2.383.349,57 euros to be paid to the claimants by the author of the fraud.

The claim brought before the ECtHR considers that this delay was not remedied by the multiple appeals made by the claimants before the Supreme Court and the Constitutional Court in Spain. Those appeals had been dismissed, either because of

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the Supreme Court considered correct the way in which the Audiencia provincial of Santa Cruz de Tenerife had dealt with the execution, or because the appeals to the Constitutional Court did not have constitutional relevance.

The ECtHR recalls the case-law on article 6.1 of the Convention, by which an individual study case by case has to be made in order to appreciate whether an unjustified delay has been committed.

In this particular case, the Court considers proved that the constant appeals made by the applicants contributed in some way to the delay, but being at their disposal, this is a legal mean which cannot be criticized.

Notwithstanding those factors, the ECtHR states that the lapse of time of 7 years, 9 months and 27 days needed to conclude the execution of a criminal judgement cannot be considered to convey with the requirement of a “reasonable term” protected by the article 6 § 1 of the Convention.

Regarding the *jus satisfaction* asked by the claimants, the Court does not appreciate a causal link between the violation and any material pain suffered by them (v.Alberto Sánchez, § 54). Nevertheless, a compensation of 8.000 € for each of the claimants for moral damages is included in the judgement.

No compensation of costs or expenses caused by the procedure started before the ECtHR was imposed.

## **E. COMUNIDAD DE PROPIETARIOS PANDO 20**

The Municipality of Madrid payed the reconstruction of a wall owned by the Community of owners Pando 20, in order to avoid the risk of damages caused by its potential fall due to lack of maintenance. Reimbursement of those expenses was claimed by the Local Authorities to the Community of owners afterwards.

Community of owners Pando 20 then started two different procedures, in 1994 and 1996, against the claim made by the Town Hall of Madrid to recover the aforementioned expenses. After having exhausted all domestic remedies, the Constitutional Tribunal denied the *amparo* appeal (*recurso de amparo*) lodged in 2010 by Community of owners Pando 20, because of its absence of constitutional relevance.

In 2010, the Community of owners Pando, 20 lodged its claim before the ECtHR on the basis of the excessive duration of national procedures, which considered to be incompatible with the right protected in article 6.1 of the Convention to obtain a definitive judgment in a reasonable term.

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The ECtHR considered that the effective delay was undue. The case not being specially complex, there was no reason for such a big period of time elapsed, even if the procedure could have been unified in one, instead of starting two separate procedures. That delay had ended in a breach of the right of a reasonable duration of the procedure, and consequently originated a violation of article 6.1 of the Convention.

The ECtHR condemns the Kingdom of Spain to pay the Community of Owners Pando, 20, 16.000 € for moral damages. Nevertheless, the Court denies granting just satisfaction and the legal costs requested by the Community of Owners Pando, 20.

## **F- RUIZ-VILLAR RUIZ**

In 1991 the Spanish State instituted proceedings before the Ciudad Real Judge of first instance No. 1 to obtain an order that the Ruidera Lakes (Lagunas del Ruidera), located on part of the land which belonged, partly, to the applicant's mother (and which he inherited after her death), should be considered the source to the Guadiana River and was therefore in the hydraulic public domain.

It was not until 2002 that the Ciudad Real Judge ruled in favour of the applicant's mother (and several other defendants) and declared that the Ruidera Lakes fell into the private domain. However, on 6 November 2003 the Ciudad Real Audiencia Provincial quashed that judgment and declared that the Ruidera Lakes had to be classified as being in the public domain.

The applicant's mother, along with the other co-defendants, lodged an appeal on points of law (*recurso de casación*) with the Supreme Court. On 2 July 2004 the Ciudad Real Audiencia Provincial sent the complete file, along with the appeals lodged by the parties, to the Supreme Court. In 2009 the Supreme Court issued a judgment ruling against all the appellants and upholding the judgment of the Ciudad Real Audiencia Provincial.

In 2009 the applicant (as his mother's heir with *locus standi*) lodged an amparo appeal with the Constitutional Court complaining, *inter alia*, of the excessive length of the proceedings. By a decision of 28 July 2010, the Constitutional Court dismissed the appeal on the grounds that it had no constitutional relevance.

The applicant complained with the ECtHR that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

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When examining the case the Court reiterated that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The Spanish Government asserted in particular that the proceedings at issue in the present case were, by their very nature, complex. In particular, the complexity of the proceedings had been made even greater by the large number of parties involved (which included several third parties), the fact that several expert opinions had been requested and that the case file was voluminous. The Government was also of the opinion that the length of the proceedings had been partly attributable to the behavior of some of the defendants, who had been over-exploiting the aquifer and thus hindering the work of several expert witnesses in charge of analyzing and issuing their opinion on the matter.

However, the Court observed that the alleged behavior of some of the defendants and their influence on the length of the proceedings has not been sufficiently proved by the Government. Additionally, the Court finds that from April 1994 to January 2000 the proceedings were suspended and that those lengthy periods of inactivity were not attributable to the applicant or any other party. Indeed, the Court finds no justification – nor has any been put forward by the Government – for such delays. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There had accordingly been a breach of Article 6 §

With regard to the just satisfaction (Article 41), the applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. The Court considered that the applicant should award the full sum claimed.

Also, regard being had to the documents in its possession and to its case-law, the Court considered it reasonable to award the applicant the full sum claimed for the costs and expenses of the proceedings before the Court (EUR 2,904).

### III. INDIVIDUAL MEASURES

#### A- Just Satisfaction



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The judgements condemn the Kingdom of Spain to the payment of different sums awarded for just satisfaction and or costs and expenses. The following chart attests the fulfilment of this obligation in due time by the Kingdom of Spain:

The compensations set by the Court were fully paid (see attachment).

Application number	Case	Sum awarded Just Sat. + costs €	Deadline	Date of payment (ADOK)
26178/04	MORENO CARMONA	20.000 € + 2.5000 ex-penses	09/03/2010	15/09/20009
30350/07	ORTUÑO ORTUÑO	21.000 €	27/06/2012	06/02/2012
7381/11	MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ	No Just Satisfaction	-	-
28142/04	BENALAL BENDAYAN & BENDAYAN AZCANTOT	8.000 € for each claimant	09/03/2010	Benalal Bendayan: 02-12-2009 Inheritors Bedayan Azcantot:10-03-2011
64204/10	COMUNIDAD PANDO 20	16.000 €	20/06/2017	23/03/2017
16476/11	RUIZ-VILLAR RUIZ	12.904 €	20/06/2017	23/03/2017

In the case of Benalal Bendayan, the payment was made in due time, but in the case of of Bendayan Azacantot the just satisfaction could not be done in time because of the death of the claimant, so it was necessary to wait for the inheritance to be dis down, and the payment was made to the heirs of Bedayan Azcantot.

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In the case of Ruiz Villar Ruiz, as the claimant had died the global sum was split in three, corresponding 4.301 € for each of the inheritors.

- **Other Individual Measures**

**A-** All of the judgements were immediately communicated to Spanish authorities (Annex 1) including an explanatory report of each judgement:

- To the Constitutional Court.
- To the Ministry of Foreign Affairs.
- To the President of Audiencia Provincial of Murcia.
- To the Family Affairs Judge of Murcia.
- To the Ministry of Health (Social Policy, Family and Childhood).
- To the General Chamber of Judges.
- To all the Child Protection authorities in Spain.
- To the General Prosecutor and Provincial Head prosecutors in Spain.
- To all the Presidents of Superior Courts in Spain.

**B-** All of the judgements were translated into Spanish and are available in the web of the Spanish Ministry of Justice, in the specific site created to grant publicity to the European Court judgements. They have been incorporated to the judicial database, which is consulted by judges of all levels nationwide when adjudicating.

- [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427588271?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia Bendayan Azcantot y Benalal Bendayan c. Espa%C3%B1a.pdf&blobheadervalue2=Docs TEDH](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427588271?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia+Bendayan+Azcantot+y+Benalal+Bendayan+c.+Espa%C3%B1a.pdf&blobheadervalue2=Docs+TEDH)
- <http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427040789?blobheader=application%2Fpdf&blobheadername1=Content->

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- [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427886453?blobheader=application%2Fpdf&blobheadername1=Content-Disposi-  
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## **C- Dissemination of the cases**

All of the judgements have been widely reported in Spanish media<sup>1</sup>

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<sup>1</sup> MORENO CARMONA: <http://www.elmundo.es/elmundo/2009/06/09/espana/1244543503.html>

ORTUÑO ORTUÑO: <http://www.diarioinformacion.com/vega-baja/2011/11/28/condena-espana-justificada/1172903.html>

BENDAYAN BENDALAL & BENDAYAN AZCANTOT: <http://www.elmundo.es/elmundo/2009/06/09/espana/1244543503.html>

COMUNIDAD PANDO, 20: <http://www.lavanguardia.com/vida/20161220/412764119893/el-tedh-condena-a-espana-por-la-duracion-excesiva-de-dos-procesos-judiciales.html>

MENÉNDEZ GARCÍA & ÁLVAREZ GONZÁLEZ [http://www.eldiario.es/politica/Tribunal-Europeo-Espana-extender-judicial\\_0\\_494850992.html](http://www.eldiario.es/politica/Tribunal-Europeo-Espana-extender-judicial_0_494850992.html)

RUIZ-VILLAR RUIZ: <http://www.lavanguardia.com/vida/20161220/412764119893/el-tedh-condena-a-espana-por-la-duracion-excesiva-de-dos-procesos-judiciales.html>

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## **IV. GENERAL MEASURES**

### **I - Mesures de réparation existantes dans le système judiciaire espagnol:**

Par ailleurs, et du point de vue des remèdes et des mesures destinées à la réparation d'éventuels manquements au droit à un procès sans délais indus, le système juridique espagnol prévoit tous les mécanismes de réparation envisagés par la jurisprudence du CEDH. En effet, on combine un remède "in natura" destiné à obtenir une réponse judiciaire immédiate, et une réparation par équivalence lorsque celle-ci n'a pas été possible. Cela a été reconnu par le CEDH dans l'arrêt "Scordino c. Italie (n° 1)", du 29 mars 2006, §186. En ce qui concerne le remède "in integrum o in natura", le Tribunal Constitutionnel, dans sa jurisprudence, a configuré une mesure de recours spécifiquement destinée à d'obtenir une accélération de la procédure. En ce qui concerne le second, la "Ley Orgánica del Poder Judicial" [la loi organique du pouvoir judiciaire] prévoit un régime d'indemnisation du fait d'un fonctionnement inadéquat de la "Administración de Justicia" [Administration de la Justice]. De son côté la Loi 13/2009 du 29 novembre, a intégré un régime équivalent en rapport avec un fonctionnement inadéquat du Tribunal Constitutionnel.

#### **Indemnisation des dommages non patrimoniaux du fait de retards indus**

En ce qui concerne l'indemnisation à laquelle a droit tout citoyen ayant subi des retards indus, il est à noter que sont considérés comme indemnisables non seulement les dommages patrimoniaux subis, mais également ceux à caractère moral ou non patrimonial. En ce qui concerne ces derniers, les tribunaux espagnols ont modifié leur jurisprudence afin de la mettre en adéquation avec le critère suivi par le CEDH en la matière ; à savoir qu'aucune preuve n'est exigée quand à la nature de ces dommages. C'est ce que signale l'Arrêt du Tribunal Suprême du 15 mars 2006 (pourvoi en cassation n° 2710/2002), dans lequel il est affirmé que "ce dommage ne nécessite pas de preuve, puisqu'il se définit précisément par la subjectivité qui le caractérise et, de ce fait, cette Chambre déclare de façon réitérée qu'il n'est pas nécessaire d'un démontrer l'existence, qui est à la libre appréciation du Tribunal".

### **II- New legal measures adopted**

Although the judgements here examined do not contain a criticism on Spanish regulation, but a casuistic approach to the judicial proceedings followed by the claimants, and there is always a casuistic field where national authorities cannot substitute the free appreciation made by judges, some general measures directed to avoid similar situations in the future have been approved.

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The Government has taken a wide range of measures aimed in particular at increasing efficiency of civil, labour, criminal, enforcement, administrative proceedings, strengthening capacity building of the judiciary system, and also other measures aimed at resolving the backlog of cases as well as the training and awareness raising measures.

We can underline the following:

<b>1.</b>	<b>Legislative and regulatory action</b>
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The authorities of the respondent state have in particular taken a number of legislative measures aimed at increasing efficiency of judicial proceedings and introducing an effective remedy in their regard. These measures included the following:

**1.- In 2011, Act 37/2011, of October 10, of Measures of Procedural Speed Up** was specifically issued and approved by the Spanish Parliament to stop the judiciary collapse, as a way to modernize all legal aspects related with Justice Administration.

**2.-** In 2012, the regulatory strategy of the Ministry of Justice was planned for the past legislature. Subsequent initiatives have sought to improve the quality of the legal frame-work, while guaranteeing citizen's rights and strengthening the role of the Justice Administration as a contributor to the competitiveness of the Spanish economy.

Within this regulatory strategy, noteworthy is the regulation and implementation of new measures to resolve conflicts that are faster and cheaper for individuals and companies, thus fostering a new culture on this issue. To this end, **Law 5/2012, of 6 July, on Mediation in Civil and Commercial Cases**, established a general system for mediation in this area through a model based on the free will of the parties and on the participation of a mediator geared towards helping the parties themselves resolve the controversy. Moreover, Royal Decree 980/2013, of 13 December, developing certain aspects of Law 5/2012, of 6 July, on Mediation in Civil and Commercial Cases, regulated the minimum training requirements, set up the Mediators' Register and developed the provisions relating to civil liability insurance and the simplified procedure by electronic means for monetary claims of up to 600 euros. The Mediators' Register and the mediation institutions have been up-and-running since July 2014.

**3.-** Progress is also being made on the necessary streamlining and the guarantee of free legal aid. To this end, following approval of **Law 10/2012, of 20 November, regulating certain charges under the scope of the administration of**

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**justice and the National Toxicology and Forensic Science Institute** and the reforms thereof, and **Law 25/2015, of 28 July, excluding court fees for individuals**, Law 1/1996, of 10 January, on Free Legal Aid, was also amended (through Law 42/2015, of 5 October), with the aim of improving the system and guaranteeing its sustainability, improving its regulation, improving the situation of certain groups and introducing the necessary corrections to the same. National Toxicology and Forensic Science Institute (Ministry of Justice) Progress has also been made towards the necessary streamlining of litigiousness and the safeguarding of free legal aid. Hence, following the adoption of Law/10/2012, of 20 November, regulating certain Justice Administration and National Toxicology and Forensic Science Institute fees, and its reform by way of Royal Decree-Law 3/2013, of 22 February, modifying the fee system in the Justice Administration and the free legal aid system, a draft law to reform Law 1/1996, of 10 January, on Free Legal Aid is due to be approved shortly following its passage through Parliament, with the aim of improving and guaranteeing sustainability, as well as a revision of the current court fees designed to improve their regulation and introduce therein such corrections as are necessary.

**4.-** Work has continued on developing the provisions of the Bankruptcy Act, with a view to obtaining more professional and responsible bankruptcy administrators. To this end, Royal Decree 1333/2012, of 21 September, was approved, regulating civil liability insurance and the equivalent guarantee of bankruptcy administrators, followed by the approval of Royal Decree 892/2013, of 15 November, regulating the Public Insolvency Registry, which enables the outcome and processing of bankruptcy proceedings to be made public to ensure transparency and legal certainty. In 2014, Law 17/2014, of 30 September, adopting urgent measures on re-financing and re-structuring business debt was approved and, in 2015, Law 9/2015, of 25 May, on Urgent Measures in Bankruptcy Cases.

**5.-** In 2015 major reforms of core legislation that currently governs Spanish justice have been passed, such as the reform of the Constitutional Law on the Judiciary, the Civil Procedure Act and the Criminal Procedure Act.

- The amendments to the Constitutional Law on the Judiciary that were pushed through by **Constitutional Law 7/2015, of 21 July**, introduce a series of specific reforms aimed at making the judicial organization more flexible, making it faster and more specialized in resolving certain procedures, making it more user-friendly, making the Spanish judicial system more internationally-orientated, improving the judicial response to gender-based violence, building a better Judicial Office to help serve jurisdictional tasks, introducing specific instruments to improve legal certainty, together with organizational improvements, and extending the rights of litigants, thus ensuring greater democratic quality.

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- This same approach towards professionalizing the justice system was also contained in the various legal amendments already pushed through, such as **Constitutional Law 8/2012, of 27 December, on Efficient Budgetary Measures in the Justice Administration**, which modified Constitutional Law 6/1985, of 1 July, on the Judiciary, resulting in important savings in terms of fully implementing a system of professional replacements for judges and prosecutors, duly remunerated, thus improving the quality of our justice system.

- Also in 2015, **the Law 43/2015, of 5 October, on the reform of the Civil Procedure Act** was approved. In its main aspects, the reform has arisen due to the need to implement a complementary regulation on the tasks of the court attorney as a collaborator in the administration of justice, at the heart of which, but without losing its original function as the procedural representative of litigants, will mean taking on a greater role in the work of administrating and processing judicial procedures, particularly notifications. At the same time, guarantees deriving from the constitutional right to effective legal protection in oral hearings are stepped up, the case law of the Court of Justice of the European Union is complied with in relation to the regulation of small claims in Spain and the examination of abusive clauses in consumer contracts, and special emphasis is placed on speeding up and modernizing formalities in judicial proceedings. Finally, it seeks to boost the use of new information and communication technologies, and to better serve the goal of certainty in legal relations to reduce the volume of litigation, simplifying the legal system on prescription by unifying certain periods and maintaining the necessary balance between the interests of parties involved in the prescription.

- The **Constitutional Law 13/2015, of October 5, amending the Criminal Procedure Act** was approved in order to speed up criminal justice, strengthen procedural guarantees and regulate measures on technological investigation. This law introduces various mechanisms to speed up the criminal process, regulate technological investigation measures and strengthen the system of procedural guarantees in accordance with European Union Law and the consolidated case law of the European Court of Human Rights. It introduces, as well, a second hearing in criminal cases in Spain. Also in relation to criminal law, work continued to complete a major reform of the current Criminal Code in 2015, to carry out a review of the criminal system to provide a response to new criminal offences and very serious crimes along the same lines as our peer countries. Furthermore, Constitutional Law 14/2015, of 14 October, on the Criminal Military Code, was approved.

- Also in relation to criminal issues, 2015 saw the approval of the **Law on the Victims' Statute**, which seeks to establish a general list of procedural and extra-procedural rights of all victims of crime, with the main new feature that all victims will be entitled to invoke these rights whether a party to criminal proceedings or not.

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This right is regardless of the specific systems for victims of terrorism and gender-based violence, which have their own special regulations

- **Law 15/2015, of 2 July, on voluntary jurisdiction**, systematizes the disparate existing legislation on the matter and provides a response to the need for a new adapted, reasonable and realistic legal order for the voluntary jurisdiction, offering our citizens effective and straightforward means which facilitate obtaining certain legal effects swiftly, while respecting all the rights and interests involved.

**6.-** In terms of Spain's membership of the European Union and criminal judicial cooperation with other Member States, 2014 was particularly important in terms of the approval of three significant Acts of Parliament: **Law 23/2014, of 20 November, on the Reciprocal Recognition of Criminal Rulings in the European Union; Constitutional Law 6/2014, of 19 October, complementing the aforesaid law and modifying Constitutional Law 6/1985, of 1 July, on the Judiciary and Constitutional Law 7/2014, of 12 November, on the Exchange of Information on Criminal Records and the Consideration of Criminal Judicial Rulings in the European Union.** These laws incorporate a raft of European laws into the Spanish legal system that generalize the reciprocal recognition of criminal judicial rulings in the European Union, replacing the former system of notifications between central or governmental authorities by direct notifications between the judicial authorities.

- Moreover, work was carried out in 2015 on compliance with European legislation in approving **the Law 16/2015, of 7 July, regulating the Statute on the Spanish National Member of Eurojust, jurisdictional conflicts, judicial networks on international cooperation and the personnel dependent on the Ministry of Justice overseas**, which replaces the previous Law 16/2006, of 26 May, regulating the Statute on the National Member of Eurojust and relations between this body and the European Union.

**7.-** Other important laws passed in 2015 include Law 19/2015, of 13 July, on administrative reform measures within the scope of the administration of justice and civil registry offices, which contains a series of measures that provide public authorities with instruments to enhance efficiency and provide the flexibility demanded by our citizens and the country's economy, including the registration of new-borns at Civil Registry Offices electronically directly from hospitals; Constitutional Law 5/2015, of 27 April, amending the Civil Procedure Act and the Constitutional Law on the Judiciary, which transposes Directive 2010/64/EU, of 20 October, on the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of 22 May, on the right to information in criminal proceedings; the Law 13/2015, of 24 June, on the Reform of the Mortgage Act approved by the Decree of 8 February 1946 and the Recast Text of the Real Estate Cadastre, approved by Royal Legislative Decree 1/2004, of 5 March, which principally seeks to coordinate existing infor-



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mation between the Property Register and the Real Estate Cadastre to better identify properties and offer a more suitable service to citizens and the public authorities; and the Law 15/2015, of 24 June, granting Spanish Nationality to Sephardi Jews originating from Spain who are able to substantiate this status and their special ties to Spain, modifying Article 23 of the Spanish Civil Code.

**8.-** Eventually, some more measures aimed at increasing efficiency of administrative proceedings. In this field, **Act 39/2015, of October 1, on Common Administrative Procedure of the Public Administrations**, sought that in no way an excessively rigid administrative procedure could stop citizens to have a quick access to a judicial analysis and response of their cases.

<b>2.</b>	<b>New technologies</b>
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Spain's Justice Administration is increasingly supported by new technologies for the day to day management of judicial activities and as a way to help resolve specific problems requiring the use of technologies. Recently adopted measures in this field include:

Noteworthy among all these measures are mandatory electronic notifications to and from the administration of justice as from 1 January 2016. This system offers a series of advantages, such as immediacy in the availability of professionals in relation to procedural rulings, access to documentation at all times and from anywhere (security, consultation, archives and availability), presentation of writs and documents 24 hours a day, 365 days a year. Finally, this has led to a significant cost saving. For example, from 2010 to 2015, more than 200 million notifications have been made electronically rather than on paper.

At a regulatory level, the Civil Procedure Act 42/2015 was reformed and Royal Decree 1065/2015 was approved to be implemented throughout the territory covered by the Ministry of Justice. At a technological level, the capacity of the electronic notification system Lexnet - the viewer for electronic files and the system for electronic signatures - was developed and improved, and offered free of charge to all autonomous regions. The new mobile application LexNETAPP was created to receive, in a flexible manner and in real time, information regarding notifications received and writs presented via this system. Furthermore, more than 7,000 screens and 500 scanners were supplied such that all public officials at judicial headquarters throughout the territory managed by the ministerial department work with dual displays. More than 9,000 workers have been trained and support for users has been

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strengthened by supplying additional personnel to man the phones and new web channels and the twitter account.

Similarly, a lot of time and effort has been put into working with the General Council of the Judiciary, the State Attorney's Office and regional governments through the Technical Committee for Electronic Judicial Administration (Spanish acronym: CTEAJE), sector conferences and bilateral meetings with regional councils, and ongoing dialogue with the general councils of the legal associations. Noteworthy is the creation of the Digital Justice Commission, which gathers together each of the high-level institutions in the sector.

The Ministry of Justice implemented a pilot project of SMS alerts to victims of gender-based violence at Court no. 1 for Violence against Women in Albacete, which has been operating since 15 October 2015. Whenever a victim leaves her mobile phone number, the court provides this service automatically and informs victims via SMS alerts of relevant facts regarding whether the detainee is in prison, has been released, is subject to a restraining order or other protection orders, and other court orders.

As of 7 November, a new model of electronic auction has been set up which fosters bidding processes; thus enhancing the economic performance of assets auctioned through a more transparent system. A fast and accessible procedure is established to set up, manage and, as the case may be, electronically return the deposits required to take part in all judicial and notary auctions carried out online, through a single portal run by the Official State Gazette Agency (Spanish acronym: ABOE).

**Law 18/2011, of 5 July, regulating the use of information and communication technologies in the administration of justice**, establishes that those public authorities with competence for justice matters must provide the pertinent resources to electronically process these procedures prior to 7 July 2016. The ministerial department has made major progress in this regard and has already implemented this system in Cuenca, at four courthouses and in the judicial review division of the National high Court. In addition to the material resources necessary and document readers, registration takes place through electronic means, as well as the distribution and processing of these issues, which are performed through the procedural management system known as Minerva.

Since November 2015, a new system has been started up in all the judicial bodies in the Region of Madrid, whereby all warrants, precautionary measures and sentences relating to binding rulings on domestic and gender-based violence rulings are automatically sent from the SIRAJ registry system to the Ministry of Home Affairs. Notifications between judicial offices and State law enforcement agencies will

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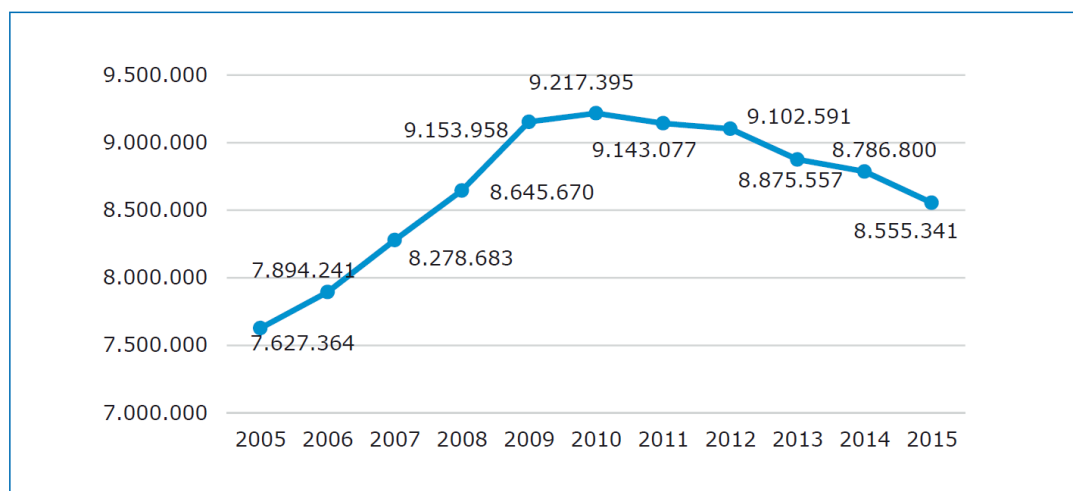
take place automatically through an interoperability platform in which all the parties involved are connected.

### 3. Impact assessment of the measures taken

The last data available are included in the 2016 Memory of the General Council of the Judiciary<sup>2</sup> and more specifically in its *Judicial Panorama*. Both documents can be consulted in full in the link included in the footnote in order to have the complete picture of the evolution described.

#### 3.1.- Cases finished in all jurisdictions

Corresponding to this statistics, the number of finished cases has decreased from 2010 onwards. The global 8.555.341 finished cases in 2015 represent a decrease of 6% in relation to those finished in 2014.



The reason of this diminishment is due to the corresponding decrease of new cases coming to the judiciary. In 2015, only civil jurisdiction had experienced an increase in the number of new cases (6,9 %). On the opposite, all the other jurisdictions received less cases than in previous years: criminal jurisdiction experienced a 6%, decrease of new cases, administrative jurisdiction a 3,7% decrease, and social

<sup>2</sup> <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Memorias/Memoria-anual-2016--correspondiente-al-ejercicio-2015->

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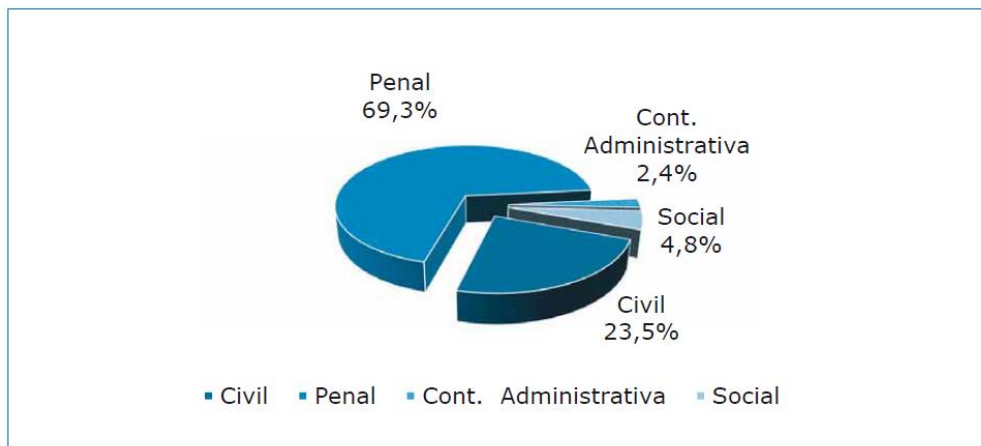
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jurisdiction a 3,2% decrease. This diminishment in caseload is directly related to the diminishment of finished cases.

As the next graph shows, criminal cases represent more than two thirds of the global cases of the judiciary (69,3 %), and this is the jurisdiction that has experienced an important decrease of new cases (6 %). Thus, the global rate of finished cases, notwithstanding the other rates having been ameliorated, suffered a diminishment instead of an increase. This is the reason why the rates that follow help to have a global picture of the favorable evolution of the length of procedures in Spain in the recent years.



### 3.2.- Pending cases

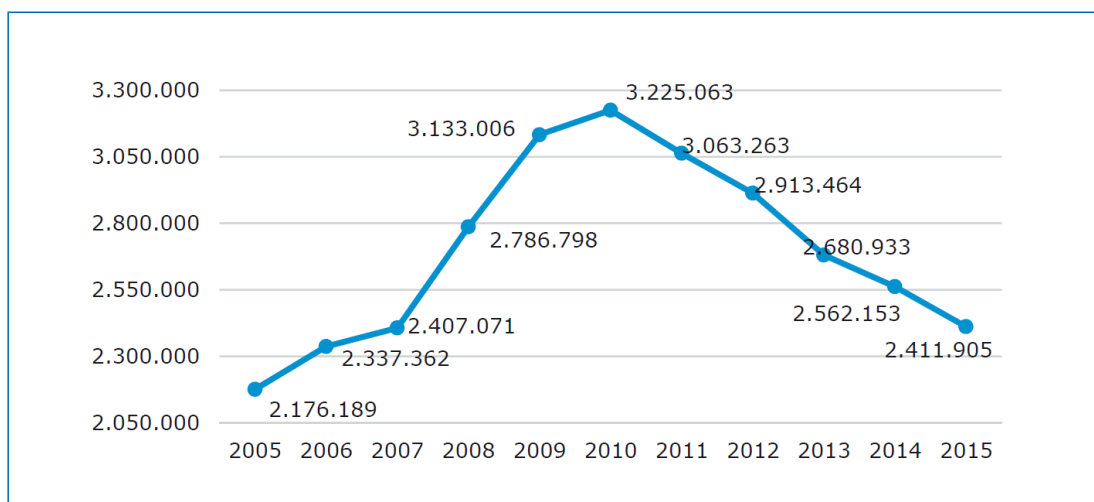
The number of pending cases in december 2015 (2.411.905) was a 5,9% lower of that of December 2014.

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### 3.3.- Significant rates evolution

In order to compare the situation in different periods of time or territories some rates are particularly relevant, such as the **rate of resolution** (number of cases finished in the period vs. number of new cases in the period); the **rate of pendency** (number of cases pending at the end of the period vs. number of cases finished in the period); and, as a global rate that shows the capacity of judges and courts, the **rate of caseload** (which results of comparing the number of cases pending at the beginning of a period as well as those new in the period vs. the number of cases finished in the period).

In 2014 and 2015 the evolution is the following:

	2014	2015	Evolución
Tasa de Resolución	1,02	1,02	0,6%
Tasa de Pendencia	0,29	0,28	-3,3%
Tasa de Congestión	1,29	1,28	-0,9%

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<sup>3</sup> Headlines in Spanish on the chart correspond to the following:

Tasa de resolución = Resolution Rate

Tasa de pendencia = Pendency Rate

Tasa de congestión = Bottleneck Rate

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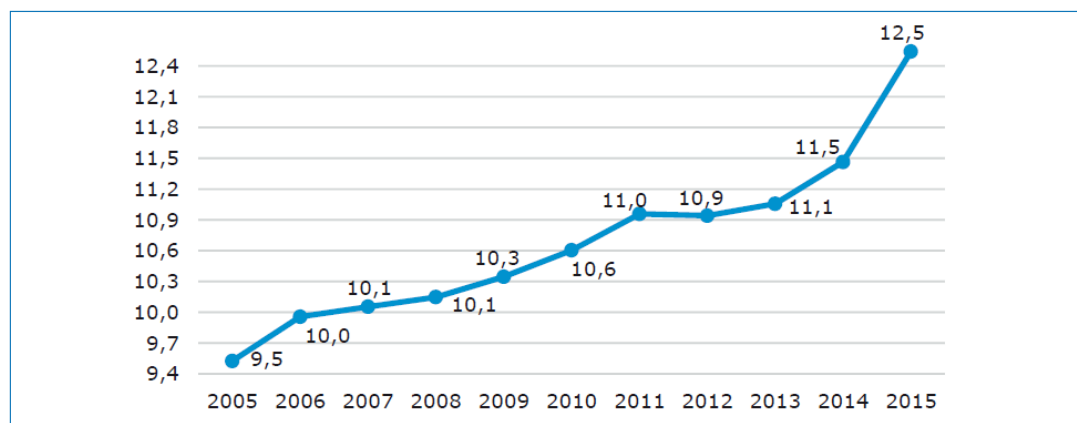
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Therefore, having increased the rate of resolution and decreased the other two rates, we can estimate that a global improvement has been achieved, and the tendency is even better because, as we have shown before, most of the legal reforms have been adopted in 2015, the impact of which will be seen in the following years.

Also the increase of the number of judges is decisive when trying to avoid delays in the resolutions of cases in the judiciary. The following statistic offers a complete view of this evolution in a 10 period years of time:



### 3.4. Length of proceedings: evolution and statistics by jurisdictions

#### I - Civil jurisdiction

The average length of civil proceedings finished in a year has suffered a very important reduction from 2011<sup>4</sup>. This chart shows the evolution:

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<sup>4</sup> The average length is offered in number of months needed to close a case

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	2015	2014	2013	2012	2011
Jdos. 1ª Instancia	5,6	6,2	7,1	7,2	8,0
Jdos. Familia	4,5	4,6	4,5	4,4	4,5
Jdos. 1ª Instª. e Instrucción	7,0	7,6	8,8	9,2	9,9
<b>Total Primera Instancia Civil</b>	<b>6,1</b>	<b>6,6</b>	<b>7,6</b>	<b>8,0</b>	<b>8,6</b>

## II-Criminal jurisdiction

The average length of criminal proceedings finished in a year has also constantly diminished<sup>5</sup>, as can be stated in the information offered in the following chart, also expressed in number of months of average duration in each Judge or Court.

	2015	2014	2013	2012	2011
Jdos. 1ª Instª. e Instr. y Jdos. Instrucción	1,5	1,6	1,7	1,8	1,9
Juzgados de Violencia sobre la Mujer	2,1	2,2	2,4	2,5	2,7
Jdos. de Menores	5,6	5,7	5,7	6,1	6,8
Jdos. Vigilancia Penitenciaria	1,7	1,7	1,2	1,1	1,3
Jdos. de lo Penal	10,8	10,9	10,6	10,4	10,0
Audiencias Provinciales	2,4	2,6	2,7	2,6	2,6
T.S.J. Sala Civil y Penal	0,7	2,4	1,9	0,9	2,1
Jdos Centrales Instrucción	5,3	5,7	5,8	5,8	5,3
Jdos Centrales de lo Penal	11,1	5,8	5,9	8,0	8,1
A.N. Sala Penal	1,2	1,3	1,5	2,3	2,4
Tribunal Supremo: Sala 2ª	5,1	5,1	6,0	6,0	5,3

## III- Administrative jurisdiction

Finally, this third graph offers the information regarding the evolution of the average length of administrative proceedings<sup>6</sup>, expressed in number of months needed to end a case in this jurisdiction:

<sup>5</sup> The average length is offered in number of months needed to close a case

<sup>6</sup> The average length is offered in number of months needed to close a case

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7381/11 MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ  
16476/11 RUIZ VILLAR-RUIZ

	2015	2014	2013	2012	2011
Jdos de lo Contencioso-administrativo	11,0	12,6	14,2	13,6	12,9

### 3.4.- Caseload in Spanish Judges and Tribunals: consulting computer tool

The complete and detailed information of the caseload in Spanish courts is public and can be consulted in a specific tool – PC AXIS- inside the General Judiciary Council webpage.<sup>7</sup>

This tool offers the possibility of consulting annual data of each Spanish judge and tribunal from 1995 on, including details about kind of procedures, executions, appeals, etc. all of them compiled in statistic bulletins. It therefore allows to extract and use very easily the updated data at the different judiciary levels.

## V. STATE OF EXECUTION OF THE JUDGEMENT

The Kingdom of Spain, according to what has just been observed, considers that it has discharged in full its obligation to keep the Committee of Ministers informed of the circumstances deriving from the full execution of the judgement.

Therefore begs the Department for the Execution of Judgements to propose to the Committee of Ministers the closure of the supervision for the execution of this judgement.

Madrid to Strasbourg, on the 26 April 2017

LEON  
CAVERO  
RAFAEL  
ANDRES -  
05202791F

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The Agent of the Kingdom of Spain

Rafael A. León Caveró

**P.S. Please see annexes:**

<sup>7</sup> <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Base-de-datos-de-la-estadistica-judicial--PC-AXIS-/>



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Action Report - Spain

26178/04 MORENO CARMONA;(Leading case)  
28142/04 BENDAYAN AZCANTOT and BENALAL BENDAYAN  
30350/07 ORTUÑO ORTUÑO;  
64204/10 COMUNIDAD PROPIETARIOS CALLE PANDO 20  
7381/11 MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ  
16476/11 RUIZ VILLAR-RUIZ

-Annex 1.- All documents cited in footnotes with hyperlinks

-Annex 2.- Zip file with Documents ADOK, proof of payment of just satisfaction, evidence of the dates in which bank account data has been furnished by the applicant after the initial deadline and, eventually, revision of final national judgments.

-Annex 3 – Administrative notifications of the judgements to Spanish authorities concerned.

**TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS.**

**COMMITTEE OF MINISTERS - COUNCIL OF EUROPE**