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ASOCIACIÓN ANDALUZA PARA LA DEFENSA DE LOS ANIMALES

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Asociación de Ambito andaluz, inscrita con el n° 3494 secc. 1 en R.PSE - C.I.F. G - 41407107

ASANDA es miembro de la Federación Española de Sociedades Protectoras de Animales y Plantas, declarada de Utilidad Pública y Benéfico- Docente. ASANDA es miembro de la Sociedad Mundial para la Protección de los Animales (WSPA). ASANDA es miembro fundador de la Plataforma Animalista Mundial, de la Plataforma Animalista Andaluza y de la Plataforma Antitaurina Europea.

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Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

Denouncement against Aarhus Convention's Compliance Committee

Details of Denunciator:

Luis Gilpérez Fraile, Spanish Identity Number 28.302.803, legal representative and in name of Asociación Andaluza para la Defensa de los Animales (ASANDA). The postal address for notifications is:

Apartado Postal 4365
41080, Sevilla. Spain.

Permission to Reveal Identity of the Denouncer

The denouncers authorize the Committee to reveal their identity during the denouncement process and in their treatment with the authorities of the Member State against who the denouncement is placed.

Collaboration with the Committee:

The denouncers are at the disposition of the Committee to collaborate, giving additional information, documents or specific studies required for clarification, necessary to bring to a successful end this denouncement.

Non-Compliant Member State and Authority:

The Kingdom of Spain and the Consejería de Agricultura, Pesca y Medio Ambiente de la Autonomous Community of Andalusia, for the continued non-compliance with the Aarhus Convention and law 27/2006 of 18th July. This regulates the rights for access to information, public participation and justice, related to the environment (includes Directives 2003/4/CE and 2003/35/CE) that transpose the Aarhus Convention to Spanish law.

**Non-compliance:**

Aarhus Convention

FACTS:**First:**

On 12th March 2008, in accordance with Law 27/2006 that regulated the rights to access to environmental information, ASANDA requested, to Dirección General de Gestión de Medio Natural de la Consejería de Medio Ambiente de la Junta de Andalucía, a copy of the permission to open to the public for Parque Zoológico Prudencio Navarro. ASANDA also requested in February 2008, a **copy of the resolution of the visit to inspect the zoo once it had been complied with.** The request was placed because, due to the judgment of ASANDA, there were insufficient indications that the zoo had solved many very serious issues within the established time period (1).

Second:

On 20th June 2008, 3 months later, the Administration sent a copy of the permission to open to public, but did not include a copy of the resolution of the inspection. On 3rd July 2008 we send another request for this information (2). The request was not attended, so ASANDA recurred to the Andalusian Ombudsman. Due to their intervention we discovered on 19th March 2009 that the inspection had not taken place until 13th March 2009 (3).

Third:

Having requested on 3 separate occasions the documents, on 23rd November 2009 the Administration informed us that they did not have access to this document as it formed part of an unconcluded sanction expedient (4), without informing the estimated date of conclusion of this process.

Fourth:

On 9th December 2009 we presented "Recurso de Alzada" (appeal to a superior court) in relation to the previous communication regarding the request for the copy of the resolution of the inspection. ASANDA alleges that this document, due to its nature, is separable from the sanction expedient and does not contain personal information (5).

Fifth:

The cited Recurso de Alzada was resolved on 17th February 2011 (6), more than one year after it was presented. The resolution again denied access to the requested copy of the resolution of the inspection, being part of the sanction expedient and non-separable from this still unconcluded expedient. The Administration ended by informing us of our right to recur to the Jurisdicción Contencioso-administrativa should we not be in agreement with the resolution.



Sixth:

In effect, ASANDA is not in agreement with this resolution, considering that it does not comply with the Aarhus Convention. However, it appears that litigation must be carried out against the Administration in a Province different to that of residence, with solicitor and lawyer, a process that would require a level of economic resources that ASANDA does not have. Therefore, adhering to the rights that Law 27/2003 gives us, on 17th March 2011 we requested our rights to ~~Asistencia Jurídica Gratuita~~ (Free Justice Assistance) for this contest against the Administration (7).

Seventh:

On 17th June 2011, the Comisión Provincial de Asistencia Jurídica Gratuita denied us the right to free assistance, **the only reason** being that ASANDA is not a Society for Public Use, according to the normative in the Regulation of Associations it does not comply with the requirements established in Art.2 of the Law 1/1996 (8).

Eight:

On 24th June 2011 ASANDA presented, before the Comisión Provincial de Asistencia Jurídica Gratuita en Huelva a case against this denial (9), a case that on 5th June 2012 was again denied by the Juzgado de lo Contencioso Administrativo Nº3 de Huelva again citing **the only reason** being that ASANDA is not a Society for Public Use, according to the normative in the Regulation of Associations it does not comply with the requirements established in Art.2 of the Law 1/1996 (8)

Ninth:

The conditions that Spanish and Andalusian Law impose (Real Decreto 1740/2003 19th December) for an Association to be considered as Public Use are, in practice, impossible for small associations such as ASANDA, that do not receive public funding, to comply with. **The imposition of such a condition is a unmovable barrier to have access to Justice.** In fact Associations considered Public Use have the right to access to the free justice system recognised since 1996, without the need to invoke the Aarhus Convention.

Tenth:

In light of all the aforementioned, ASANDA cannot come to any other conclusion other than that the denounced are not complying with the following Articles of the Aarhus Convention:

3.4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.



4.1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or (ii) The information is already publicly available in another form.

9.5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

For all the Aforementioned:

We request that the Committee for the Compliance of the Aarhus Convention admits this denouncement against the Kingdom of Spain and the Consejería de Agricultura, Pesca y Medio Ambiente de la Comunidad Autónoma de Andalucía for the continued non-compliance with the Aarhus Convention, (Articles 3.4, 4.1 and 9.5) and the Committee begins a procedure against the denounced parties in order that these parties comply with the Aarhus Convention.

This was requested in Seville to August 8, 2012




Luis Gilpérez Fraile
 Legal Representative of Asociación Andaluza para la Defensa de los Animales
 (ASANDA)