MINISTERIO
DE AGRICULTURA,
ALIMENTACIÓN Y MEDIO AMBIENTE

SECRETARÍA GENERAL TÉCNICA
VICESECRETARÍA GENERAL TÉCNICA
PUNTO FOCAL NACIONAL DEL CONVENIO DE AARHUS

25 April 2013

Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
Economic Commission for Europe
Environment, Housing and Land
Management Division
Bureau 348
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms. Smagadi,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Spain with provisions to the Convention in relation to the opening and inspection of a zoo (Ref. ACCC/C/2012/78)

Thank you for your letter of 24 January 2013, inviting Spain to submit any written explanations or statements clarifying the matter referred to in the Communication ACCC/C/2012/78 and describing any response.

Regarding the two substantial issues raised by the communicant (ASANDA), we would like to make the following observations:

1. – Compliance by Spain with the provisions of the Convention on access to information (article 4.1)

Spain is still considering these allegations. The Ministry of Agriculture, Food and Environment, through its National Focal Point, in close cooperation with the regional government of Andalusia (Junta de Andalucía), is currently collecting and analyzing all relevant documentation concerning the opening and inspection of the zoo. We will provide further explanations in the coming weeks.

2. - Preliminary determination of admissibility of the Communication concerning compliance by Spain with article 9.5 of the Aarhus Convention.

Spain considers that the legal issues raised by the communicant, concerning assistance mechanisms to remove or reduce financial barriers to access to justice, have been deeply discussed in the past, in the context of Communication ACCC/C/2009/36.

The communicant in case ACCC/C/2009/36 alleged that "*In all the cases that we have requested the Free Justice to which alludes in the article 23.2, it has been denied to us they based it in that we do not fulfil the requisite of being a declared*

association of public utility (...) The conditions so that an association is declared of public utility are such that does impossibly the small associations that they could dream at least that is granted to them."

Now, ASANDA claims that its right to free assistance *"was again denied by the Juzgado de lo Contencioso Administrativo Nº 3 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. The conditions that Spanish and Andalucian Law impose for an Association to be considered as Public Use are, in practice, impossible for small associations such as ASANDA."*

As we can see, both communicants denounced exactly the same systemic legal issues: that legal persons, such as environmental NGOs, must be recognized as public utility entities in order to have access to free legal assistance and that this particular requirement constitutes a significant obstacle for small organizations.

In case ACCC/C/2009/36, the Compliance Committee considered that by setting high financial requirements for an entity to qualify as a public utility entity and thus enabling it to receive free legal aid, the current Spanish system was contradictory. The Committee found that by failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small NGO, the Party concerned failed to comply with article 9, paragraph 5, of the Convention.

Later on, Decision IV/9(f) on compliance by Spain with its obligations under the Convention, as adopted at the fourth session of the Meeting of the Parties (Chisinau June–July 2011), endorsed the findings of the Committee in case ACCC/C/2009/36 and invited the Party concerned to thoroughly examine the relevant legislation and in particular the court practice with regard to the award of legal aid to environmental NGOs, among other issues, and to report to the MOP on the progress with this examination, six months before the fifth session of the Meeting of the Parties.

Spain accepted the invitation to undertake this examination and it is currently working on a study on the matter. The outcomes of this study will be presented to the MOP through the Compliance Committee in due time.

For these reasons, we respectfully request that **the allegations concerning legal aid be not accepted as admissible on the ground of not meeting the *de minimis* requirement**, as adopted by the Compliance Committee at its 28th meeting (Geneva 15-18 June 2010):

From the Report of the Compliance Committee on its Twenty-eighth meeting (see ECE/MP.PP/C.1/2010/4)

> 43. In light of its significant workload and its concerns with regard to the completeness, clarity and/or relevance of the information in several communications it had received, the Committee discussed the introduction of a de minimis principle and of summary proceedings in its modus operandi, as explained in the following paragraphs.

44. The Committee had from time to time received communications that, while they broadly appeared to fulfil the admissibility requirements of paragraph 20 of the annex to decision I/7, after careful consideration had been revealed to be inadmissible by interpretation and analogy regarding the criteria for admissibility set out in subparagraphs (b) on "abuse of the right to make such communications" and (c) regarding communications that were "manifestly unreasonable". With the purpose of focusing on communications that raised important aspects of non-compliance, the Committee discussed that matter at its twenty-eighth meeting; it decided to apply the criteria for admissibility of "abuse of the right to make such communications" and "manifestly unreasonable" in such a manner so that communications which the Committee deemed to be insignificant in light of their purpose and function would be determined inadmissible as de minimis.

45. Also, the Committee had recently been confronted with allegations of non-compliance concerning a Party reflecting the same legal issues upon which it had already deliberated in a previous communication relating to the same Party (but not to the same facts). In that regard, the Committee noted that, the Party concerned had already worked with the Committee to fully meet compliance. Bearing in mind that according to the Convention the compliance review mechanism was not a redress mechanism, and on the basis of the freedom awarded to the Committee by the Meeting of the Parties to "consider any [...] communications" according to paragraph 20 of the annex to decision I/7, without specifying the process, the Committee reflected upon its experience and the practical dimension of its role and decided that, in cases which were determined to be preliminarily admissible, but where the legal issues raised by the communication had already been tackled by the Committee, summary proceedings could apply as follows:

(a) The Committee would send a letter to the communicant informing them about the process;

(b) The Committee would notify the Party concerned, reminding it of the previous findings and recommendations and requesting it to provide information on the progress achieved on the previous recommendations;

(c) The Committee would record the outcome of the process and its consideration in the report, focusing on the progress, if any, in the law and implementation of the Convention by the Party concerned.

Please do not hesitate to contact us if you need any clarification on our first observations.

With best regards,

MARÍA JOSÉ GÓMEZ GARCÍA-OCHOA

National Focal Point of the Aarhus Convention
Ministry of the Agriculture, Food and Environment
Plaza de San Juan de la Cruz, s/n
28071-Madrid.
Tel: +34 91 597 68 28
e-mail: *mjgomez@magrama.es*