



12 June 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 again 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.

Taking into account our first comments regarding the application of the summary proceedings procedure to allegations on legal aid (see letter of 25 April 2013), we will focus our response exclusively on allegations concerning access to environmental information in relation to the opening and inspection of the zoo.

1. - Distribution of competences in relation with the case.

Firstly, we consider it necessary to clarify some aspects regarding the territorial and administrative structures of Spain and the distribution of competences on environmental matters and more specifically on access to environmental information.

According to the 1978 Spanish Constitution the State territory is organized in municipalities, provinces and autonomous communities (ACs). All these entities have autonomy to manage their own interests (Art 137).

The distribution of competences between the State and the ACs is established by the Constitution (Articles 148 and 149). In general, certain areas are the exclusive competence of the State while other areas are the exclusive competence of the ACs. Some areas are shared competence between the State and the ACs.



In such cases (e.g., environmental matters) the State is usually competent to establish "*basic legislation*" that can be developed by the ACs through further legislation, provided the minimums laid down by the basic legislation are respected.

Regarding environmental information, in accordance with the provisions of Law 27/2006 of 18 July, regulating rights of access to information, public participation and access to justice in environmental matters (basic piece of legislation at national level) and Decree 347/2011, regulating the structure and functioning of the Environmental Information Network of Andalusia and the right of access to environmental information (developed legislation at regional level), the public authority holding the environmental information will be responsible for making the information available upon request.

In this particular case, the public authority holding the information requested is the Government of Andalusia.

Concerning the substantial aspects of the complaint, the Government of Andalusia is also responsible for the opening and inspection of zoos, according to Law 31/2003 of 27 October, regulating the conservation of wildlife in zoos.

2. – Action taken by the National Focal Point of the Aarhus Convention in relation to the complaint of ASANDA.

According to Article 4 of Law 27/2006, "*public administrations will provide the most appropriate means for effective exercise of the rights enshrined in this Law. For this purpose, they will adjust their action to the principles of mutual information, cooperation and collaboration*". Similarly, the Eighth Additional Disposition of Law 27/2006 provides that "*to ensure the compliance of the State with its international obligations, all Public Administrations will collaborate and exchange relevant information.*"

In this context of mutual collaboration, the National Focal Point of the Aarhus Convention and the Environmental Information Coordinator of Andalusia work together in the collection and analysis of all relevant documentation concerning the opening and inspection of the zoo.

At a higher level, the General Technical Secretary of the Ministry of Agriculture, Food and Environment sent an official notification of the communication (see ANNEX I), together with all relevant information and documentation received from the Compliance Committee, to the General Technical Secretary of the Department of Agriculture, Fisheries and Environment of the Government of Andalusia. In his letter, the General Technical Secretary stressed the importance of giving wide access to environmental information bearing in mind the sound interpretation of the exceptions established in Law 27/2006:

"(...) In view of the above reasons, and without prejudice of any further clarifications from the part of the Department, it seems on a preliminary basis that access to environmental information may not have been granted as required by Law 27/2006, of July 18 (...)



(...) Indeed, articles 13.1.d) and 13.4 of Law 27/2006, of July 18, have been interpreted by our jurisprudence in the sense that "this exception could not be invoked for unfinished files, in cases where reports, minutes or any other documents that are part of the files contain real information, taken separately and considered in their own substance and essence (...) Therefore the interpretation of the exception must be made in a restrictive way."

Besides, the National Focal Point has kept permanent telephone and e-mail contact with the communicant, performing an intermediary role between ASANDA and the Andalusian Administration and exchanging all relevant information, including a recent ruling by the Superior Court of Madrid dealing with similar issues. This ruling has also been sent to the Andalusian authorities.

3. - Outcomes of the cooperation with the Environmental Information Coordinator of Andalusia.

As a result of this cooperation between national and regional authorities, the Government of Andalusia finally gave access to all the environmental information initially requested, including the copy of the resolution of the inspection of the zoo (resolution of 17 January 2007, see ANNEX II) and the copy of the permission to open to the public (resolution of 30 may 2007, see ANNEX III).

Additionally, the following information has been provided to the communicant:

- Copy of the resolution of inspection (resolution of 16 June 2008, see ANNEX IV) and copy of the permission to open to the public (resolution of 15 September 2008, see ANNEX V).
- Copy of the resolution of inspection (resolution of 1 September 2010, see ANNEX VI) and copy of the permission to open to the public (resolution of 6 October 2010, see ANNEX VII).
- Copy of the resolution of inspection (resolution of 12 June 2012, see ANNEX VIII).

The communicant, ASANDA, acknowledges the reception of the above-mentioned information but they are not satisfied with the legal basis applied to the case. In their opinion, it is the completion of the disciplinary proceedings against the zoo what has enabled the authorities to provide the required information, based on the Common Administrative Procedure legislation (Law 30/1992) but not on specific legislation on access to environmental information (Law 27/2006).

From the part of the Ministry of Agriculture, Food and Environment, we consider that the initial refusal to make the information available was due to a sole and isolated case of incorrect interpretation of the applicable provisions on access to environmental information. This view is also shared by the Environmental Information Coordinator of Andalusia, who has committed himself to promote awareness and extreme precaution in order to avoid similar situations in the future.



Indeed, the Government of Andalusia has shown continuous and strong commitment in ensuring the rights of access to environmental information within its territory, as proved by recent developments such as the establishment of the Environmental Information Network of Andalusia (REDIAM), created by Law 7/2007, of July 9, on Integrated Environmental Quality Management (GICA), which aims to integrate all environmental information in Andalusia generated by different centres or the enactment of Decree 347/2011, regulating the structure and functioning of the REDIAM and the right of access to environmental information at regional level.

We conclude by reiterating, as always, the full readiness of all Spanish administrations to cooperate with the Secretariat and the Compliance Committee, convinced that its good work is helping to enhance the implementation of the Aarhus Convention in Spain.

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

With best regards,

MARÍA JOSÉ GÓMEZ GARCÍA-OCHOA

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