



ASOCIACIÓN ANDALUZA PARA LA DEFENSA DE LOS ANIMALES

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Asociación de Ámbito andaluz, inscrita con el nº 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

Complaint to the Aarhus Convention's Compliance Committee

Data of the complainants:

Luis Gilpérez Fraile, of legal age, with Nat.ID. 28.302.803 and domicile for the purpose of notifications at P.O. Box 4365, 41080 of Seville, Spain, in the name of the Andalucía Association for Defense of Animals, of which he is the legal representative.

Consent to reveal the identity of the complainants:

The complainants authorize the Committee to reveal their identity in the complaint proceedings and during their administration before the authorities of the Member State against which the complaint is directed.

Collaboration with the Committee:

The complainants are available to collaborate with the Committee by providing other information, documents or specific reports that clarify or establish the grounds necessary to accomplish the purpose of the content of this complaint.

Non-complying Member State and Authority:

The Municipality of Seville, for its repeated non-compliance of the Aarhus Agreement and of that established in law 27/2006 of July 18 regulating the rights of access to information, public participation and access to justice



regarding the environment (incorporates the Directives 2003/4/CE and 2003/35/CE) that transpose the Aarhus Agreement to the regulations of the Kingdom of Spain.

Non-compliance of the Rule of Law:
Aarhus Agreement.

FACTS.

One.-

On July 10, 2013, pursuant to law 27/2006 regulating the rights of access to information regarding the environment, the association that I represent requested the following information from the Municipality of Seville (Municipal Laboratory Service). With regard to the contract signed with the "Elisa María García Vigil" company for *"removal of animals from the public routes outside of the work schedule of the workers of the zoosanitary center,"* we requested the contract terms regarding the environmental contract: collection methods, material used, conditions of the fixed and mobile installations for deposit of animals, qualification of the staff, schedules, and means by which the citizens can directly request their services, etc. (Document 1)

Two.-

In view of the lack of response, on August 20, 2013 we petitioned the *Punto Focal Nacional del Convenio de Aarhus*, National Aarhus Agreement Focal Point, to mediate in our request.

Three.-

The National Focal Point contacted the Municipality of Seville, on August 29, 2013, providing the regulations in effect so that they would know the legal grounds for our request. (Document 2)

Four.-

On September 16, 2013, the Municipality of Seville responded to the Focal Point, informing them that our request to receive the information of reference was rejected because:

- a) ASANDA does not hold the status of interested party in the proceedings for which it requested information.
- b) An administrative contract, such as that cited, is ruled by different legislation from that transposed to Directives 2003/4/CE and 2003/35/CE.



c) the information cannot be provided based on the Personal Data Protection law. (Document 3)

However, independent of the above, the Municipality states, in an affirmation that it will repeat *ad nauseam* in these proceedings, that all the information in this case that may be made public is accessible to any citizen on the website of the Municipality of Seville. Therefore, it is important to emphasize that **absolutely none** of the information requested is located in the website of reference.

Five.-

Focal Point issued us a copy of the aforementioned response of the Municipality of Seville and informed us that it is not empowered to do anything more.

Six.-

On December 12, 2013, in view of the above, we presented a complaint before the European Communities Commission for non-compliance of the Community Law. (Document 4)

Seven.-

On December 18, 2013 the European Commission informed us that in order to process the complaint, we must first document having used the national administrative and jurisdictional recourse mechanisms provided in the Directive. (Document 5)

Eight.-

In view of this information from the European Commission, in February of 2014 we contacted the Ombudsman of Andalucía, explaining what we had been told; i.e., that

"Article 6 of the Directive obligates the member states to guarantee that any person who considers that his or her information request was ignored, rejected without grounds (partially or completely), received an inadequate response, or was addressed in default of the dispositions of the cited Directive, must have access to proceedings in which the acts or omissions of the corresponding public authority may be reconsidered by it or another public authority or cured administratively before an independent and impartial entity created by law. All these procedures shall be fast and free or low cost

...



In this matter, the complainant has not demonstrated having used the national, administrative and jurisdictional recourse mechanisms provided in the Directive. In these cases, the Commission cannot act in substitution of this role that corresponds to the national administrative and judicial authorities."

Being unaware of the existence in Spain of what the European Commission calls an "independent and impartial entity created by law," we were unable to continue with the proceedings and therefore request your protection.

(Document 6)

Nine.-

On February 19, 2014, the Ombudsman informed us that there appeared to be no circumstances on which to initiate actions due to the preferential application of Personal Data Protection. (Document 7)

Ten.-

In view of the above and of the attached documentation, this Association continues to believe that the respondent is in default of the following dispositions of the Aarhus Agreement:

Article 3.1. 1. Each Party shall adopt the necessary legal, regulatory or other type of measures, in particular the measures implemented to guarantee the compatibility of the directives that implement the provisions of this Agreement regarding the information, participation of the public, and access to justice, as well as the appropriate enforcement measures, with the goal of establishing and maintaining a precise, transparent and coherent framework to apply the dispositions of this Agreement.

Article 4.6. 6. Each Party shall ensure, if the information exempt from dissemination according to section 3, item c), and section 4 of this article may be dissociated without neglecting its confidentiality, that the public authorities provide the rest of the environmental information requested.

Article 9.1. 1. Each Party shall be vigilant, within its national legislation, so that any person who considers that his or her request for information in application of Article 4 was not addressed or was illegally rejected, completely or in part, has not obtained a sufficient response, or that, otherwise, has not received the treatment provided in the dispositions of said article, has the possibility of presenting an appeal before a legal entity or before another independent and impartial entity established by law.



THEREFORE:

We petitioned the Aarhus Agreement Compliance Committee to accept this complaint against the Municipality of Seville for the repeated non-compliance of the Aarhus Agreement regarding that enumerated in Item **Ten**, to initiate infraction proceedings against the respondents and, in particular, warn the respondents to immediately cure the current non-compliance of the Aarhus Agreement.

Requested in Seville on 2014/04/30

Luis Gilpérez Fraile
Legal representative of the Andalucía Association for the Defense of the
Animals