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Palais des Nations, Room 429-2
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Ref: ACCC/C/2014/99

8 September 2014

Mr. Alexandre Peñalver i Cabré
Carrer Sant Salvador no. 97
08024 Barcelona
Catalonia
Spain

Dear Mr. Cabré,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Spain in connection with the change of activity for a cement plant to process solid waste and sewage (ACCC/C/2014/99)

On 20 January 2014, the secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) received from you the above communication addressed to the Compliance Committee of the Convention. The communication concerns compliance by Spain with the provisions of the Convention in connection with its alleged failure to ensure public participation and access to justice in connection with the change of activity for a cement plant to process solid waste and sewage. The communication was submitted in accordance with the provisions of chapter VI of the annex to decision I/7 of the Meeting of the Parties.

The communication has been registered under the symbol ACCC/C/2014/99, which you are invited to cite in future correspondence on the matter. The main documentation relating to the communication will be shortly available on the Committee's web site at: <http://www.unece.org/env/pp/pubcom.html>.

The Compliance Committee, having considered the admissibility of the communication at its forty-fifth meeting (29 June-2 July 2014), has on a preliminary basis determined it to be admissible in accordance with paragraph 20 of the annex to decision I/7. A copy of the preliminary determination on admissibility is attached. Please note, however, that the Committee has not reached any conclusions with respect to the compliance issues referred to in the communication.

In addition, at its forty-fifth meeting, the Committee agreed to seek further information from you with respect to several points of your communication and the Committee's questions are attached for your attention. We would be grateful to receive your response to the attached questions no later than **24 September 2014**.

Please do not hesitate to contact the secretariat if you have any questions or will require further time to prepare your responses.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

- Cc: Permanent Mission of Spain to the United Nations Office and other international organizations in Geneva
Ms. María José Gomez, Advisor, Environmental Information Office, Ministry of Agriculture, Food and Environment, Spain
- Enc: Questions to the communicant
Preliminary determination on admissibility
Datasheet on the communication

Questions to the communicant

1. Please provide English translations of the relevant provisions of Spanish legislation and, if relevant, excerpts of Spanish case law to support:
 - a. Your allegations that Spain is in non-compliance;
 - b. Your allegations that court proceedings would not be an effective remedy.
2. Please state whether you consider that the alleged non-compliance with article 6 of the Convention is of a systemic nature (for example, due to inadequate legislation), or is rather an individual case of an administrative authority incorrectly applying the law.
3. Please provide more detailed arguments with respect to the following aspects of your response of 26 June 2014:
 - a. You stated that the court fees for three instances of administrative court proceedings would be €5,070. Would this sum be the total sum irrespective of the number of persons appealing to the court, or would each appellant have to pay this sum?
 - b. You stated that it was not clear if the annual income limit of €22,365.42 for NGOs to be entitled to legal aid (“free justice”) applies also to environmental NGOs. Has this point been clarified since your letter of 26 June 2014?
 - c. You claimed that if the NGO or citizen lost the case at court, they would have to pay “a very important amount to the other parties (Catalan Government, municipality and private company) for lawyers, experts and court fees”, on the basis of the “loser-pays” principle. Please provide an estimate of what the “very important amount” might be. Do the courts have discretion to decide that, despite losing the case, the neighbours or the NGO would not be obliged to pay such costs?
 - d. If possible, please provide further examples to demonstrate your allegation that in environmental court proceedings are “exaggeratedly long (usually up to eight or more years)”.
4. In your answers to question 2 and 3 above, please also take into account the report by the Compliance Committee on compliance by Spain with its obligations under the Conventions submitted to the fifth session of the Meeting of Parties,¹ and in particular the Committee’s considerations and evaluation concerning the implementation of article 9, paragraph 4 and 5 of the Convention with respect to legal aid for NGOs (see paras. 35-37). To the extent that the Committee’s considerations are relevant to your own communication, please comment.

¹ ECE/MP.PP/2014/20, available at http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ECE_MP.PP_2014_20_ENG.pdf