

Response by PALP - 11th of March 2019

This document refers to the Communication submitted to Aarhus (in January 2019) by **Almargem**, a Portuguese environmental association, on behalf of all the associations and citizens that form the **Platform for an Algarve Free of Oil** (also known as **PALP**, "Plataforma Algarve Livre de Petróleo").

Issues and replies posed to clarify during the open session

- 1. The issue of the parliamentary Commission on Access to Administrative Documents (CADA). Is it an effective domestic remedy?** No, because CADA issues non-binding advisory opinions. In September 2016 the national authorities disregarded the opinion by CADA favourable to PALP (see page 5 of PALP's communication, including footnote), which lead to a second complaint to CADA in October 2017 (see page 8). This refusal of access to information persists until today.
- 2. Article 9 (Access to Justice).** Even though PALP resorted to the Portuguese courts, PALP has resorted to Aarhus because this justice system is slow, inaccessible and ineffective, as has been recognized by various international reports (see pages 13 and 14).
- 3. PALP complained about the lack of information in the main action (proceedings) of the injunction process**, where one of the main allegations was the violation of the effective participation and breach of the transparency principle, because of the lack of access to documentation.
Portuguese law on access to justice in administrative matters allows to accumulate requests (article 4 of Law 15/2002 amended by DL 214-G/2015¹). This means that in the same court case, two or more different requests regarding the same issue among the same applicant (PALP) and the same defendant (the Government) can be presented to Court. For reasons of procedural economy and usefulness of the action this was the strategy adopted by PALP in the cases still pending before the national court.
- 4. Why complain to the Aarhus Commission?** The response to this issue is based on our initial statement read on the phone (with some modifications due to the discussion which occurred) during the open session on 11th of March. This is our response:

PALP considers that the domestic remedies available to challenge the different non-compliances would be unreasonably prolonged and not provide an effective and sufficient means of redress.

We hereby list the evidences that exemplify/demonstrate how exhausting the domestic remedies would require an unreasonably prolonged time:

1. The main action in the Portuguese courts, which includes a claim for the lack of information, does not suspend the contested administrative act until there is a final decision.
2. An injunction from that main action to suspend the licence was submitted to the Fiscal and Administrative Court of Loulé on April 2017. In September 2018 (1 year and a half later) the Court decided in favour of PALP.
3. The Portuguese Government appealed against that decision to the Central Administrative Courts in Lisbon. In February 2019 (23 months after the injunction was initially filed by PALP) the Court of Appeal in Lisbon decided against PALP and revoked the suspension.
4. Even though there is a possibility of appeal to the Supreme Administrative Court, the conditions in which this is admissible are very specific and limiting.
5. It took almost 2 years for the courts to reach a decision on an urgent injunction, and the main case is still pending. It is therefore expected that the main action, aimed at contesting the administrative act permitting oil prospection, will take much longer. In

¹ *<http://www.ministeriopublico.pt/iframe/codigo-de-processo-nos-tribunais-administrativos>

fact, the court decision for the main action, the substance of the case, is likely to be unreasonably prolonged because:

- a) the issues at stake in the main action are more complex than those dealt with in the injunction;
- b) there are two levels of appeal (Central Administrative Court and Supreme Administrative Court) and if any of the intermediate decisions are favourable to PALP, the Government will surely appeal
- c) Portuguese judicial statistics demonstrate that exhausting domestic remedies can take decades (see page 14).

7. Therefore, judicial decisions often do not serve to resolve the disputes, as in the case of the decision by the Central Administrative Court in Lisbon that decided against PALP (in February 2019) as expected, considering that the economic interest of the Government is at stake.

8. Court proceedings in Portugal are too lengthy and allow for many appeals, making them very expensive. This in effect is the reason why many complainants give up the complaint and withdraw the application, because there is no way to pay the costs.

As a consequence, the domestic remedies will not, in any case, provide an effective and sufficient means of redress. Because, in the meantime, irreversible damage can be done.

Access to information continues to be illegally denied. This year (on the 4th of February), the Administrative Court of Loulé issued a formal request for information from the Government on the current status of the oil exploration and production contracts. Until now, to our knowledge, no information was provided.

Since 2017 the Government persists on its non-collaborative attitude repeatedly denying or hiding information relevant for the injunction (in the Court of First Instance).

As a conclusion, we consider that PALP has sufficiently used the available domestic administrative or judicial review procedures in this case. The Compliance Committee of the Aarhus Convention is the last resort.

Portugal, 11th of March 2019

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