
Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**Second progress review of the implementation of decision V/9k
on compliance by Spain with its
obligations under the Convention**

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1	2
II. Summary of follow-up action with decision V/9k since the Committee's first progress review	2	2
III. Considerations and evaluation by the Committee	31	6
IV. Conclusions and recommendations	38	7

I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9k on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).¹

II. Summary of follow-up action with decision V/9k since the Committee's first progress review

2. By letter of 13 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9k to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9k.

3. The Party concerned provided its second progress report on 21 October 2015 (dated 15 October 2015).

4. At the Committee's request, on 6 November 2015, the Party concerned's second progress report was forwarded to the communicants of communication ACCC/C/2008/24 and ACCC/C/2009/36, inviting them to provide any comments by 27 November 2015.

5. The communicant of communication ACCC/C/2009/36 provided its comments on 12 December 2015.

6. The communicant of communication ACCC/C/2008/24 provided its comments on 6 March 2016.²

7. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9k in open session taking into account the Party concerned's second progress report and written comments received the communicant of communication ACCC/C/2009/36 as well as the statements made by the Party concerned and the communicant of communication ACCC/C/2009/36 by audio conference during the session. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9k in closed session.

8. On 6 April 2016, the secretariat invited the Party concerned and communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 to submit the comments made during the open session at the Committee's fifty-second meeting in writing, as well as any additional comments they wished to make, by 12 April 2016.

9. The communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 submitted joint comments on 12 April 2016.

¹Decisions of the Meeting of the Parties concerning compliance by Parties and documents related to their follow-up can be found on the Convention website at <http://www.unece.org/env/pp/ccimplementation.html>.

² Due to a technical error the communicant did not receive the secretariat's email of 6 November 2015 inviting it to comment on the Party concerned's second progress report, and the communicant was therefore invited to provide its comments by this later date.

10. The Committee continued the preparation of its second progress review at its virtual meeting on 13 May 2016, taking into account the written statements provided by the Party concerned on 6 April 2016 and the communicants of the communications ACCC/C/2008/24 and ACCC/C/2009/36 on 12 April 2016. The Committee adopted its second progress review through its electronic decision-making procedure on 14 October 2016 and requested the secretariat to forward it to the Party concerned and the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36.

Party concerned's second progress report

Paragraph 5 of decision V/9k

11. In its second progress report submitted on 21 October 2015, the Party concerned reported that the new fees to be charged by Murcia City Council were published in the Murcia Official Gazette on 24 December 2014 and entered into force from 1 January 2015. Article 8 of Murcia's Ordinance provides:

“The deliveries of copies or photocopies dispatched from documents, agreements or records held by the municipal offices or files relating to section 1.2 of the tariff, as well as records relating to urban planning and environmental information, less than 20 pages of A4 format, and sending information electronically, are exempted of payment”.

12. The Party concerned reported that the schedule of charges specified, inter alia, that copies in black and white A4 were €0.03 per page, from the 20th page (first 19 pages exempted) and colour A4 were €0.12 per page, from the 20th page. The Party concerned stated that the schedule of fees in force in Murcia were available on the webpage: www.murcia.es/web/portal/normativaylegislacion

Paragraph 6 of decision V/9k

13. With respect to paragraph 6 of decision V/9k, the Party concerned noted that it had previously acknowledged that the linkages between Law 1/1996 on Free Legal Aid and Law 27/2006 on access to information, public participation in decision-making and access to justice in environmental matters was not as clear and unambiguous as would be desirable and MAGRAMA had therefore expressed its positive attitude towards a possible review of the current regulation in order to redress the current disparity of interpretation regarding legal aid to NGOs. A project to amend the Law 1/1996 on Free Legal Aid has been proposed for discussion at the Parliament since 2014. However, approaching the end of the current legislature (December 2015), Law 1/1996 had not been extensively modified save with respect to two types of beneficiaries: victims of terrorism and victims of domestic violence, who following a review of the Civil Procedure Law could now obtain free legal aid irrespective of their economic resources.

14. The Party concerned stated that Law 27/2006 on access to information, public participation in decision-making and access to justice in environmental matters remained in force and its article 23.2 recognised the right to legal aid for environmental NGOs that meet the terms provided in Law 1/1996, namely:

- (a) The association's bylaws must include as its goal the protection of the environment or of any of its elements;
- (b) The association must be legally constituted at least 2 years before the date in which the action is initiated; it must remain active in achieving its goals;
- (c) There must be a geographical connection (established in their bylaws) with the area affected by the act or omission.

15. The Party concerned asserted that Legal Aid Commissions as well as judges and courts were increasingly recognizing the right to legal aid for environmental NGOs within the above scope of Law 27/2006 and the disparity of interpretation of this provision was progressively being overcome.

16. In its oral statement to the fifty-second meeting, provided in written form on 6 April 2016, the Party concerned submitted that its legal system complied with the Convention's provisions regarding the award of free legal aid to environmental NGOs. Nevertheless, it recognized a reform of the general legislation on free legal aid was needed in order to avoid the disparity of interpretations by the different provincial legal aid commissions, judges and courts. At the present time, however, since it had not yet been possible to form a new government after the elections in December 2015, it was not currently realistic to propose legislative reform.

Comments on the Party concerned's second progress report

Communicant of communication ACCC/C/2009/36

17. In its comments of 12 December 2015 on the Party concerned's second progress report, the communicant of communication ACCC/C/2009/36 claimed that the Party concerned had not taken any measure to remove the barriers to access to justice referred to in decision V/9k.

18. The communicant cited the judgment of the Administrative Chamber of Valencia Superior Court of Justice dated 25 November 2015 which stated that:

“Since Spanish legislation does not recognize the right to access to legal aid to environmental organizations, non-profit organizations that meet the requirements for the exercise of popular action, as set out above, thus being lawful reason invoked by the Commission for the denial of legal aid, Article 23.2 of Law 1/1996 not be³ the plaintiff, an association of public utility under Article 32 of the organic Law 1/2001 regulating the right of association”.⁴

19. The communicant accordingly questioned the correctness of the statement of the Party concerned (see para. 15 above) that legal aid commissions as well as Judges and Courts were increasingly recognizing that right within the scope of Law 27/2006.

20. The communicant recalled paragraph 74 of the Compliance Committee's findings on communication ACCC/C/2009/36 (which, inter alia, 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, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention). The communicant stated that no measure has been taken to correct the national legislation since that time.

Communicant of communication ACCC/C/2008/24

21. In its comments of 6 March 2016 on the Party concerned's second progress report, the communicant of communication ACCC/C/2008/24 submitted that the situation regarding legal aid for environmental NGOs remained the same as described by the Compliance Committee in its findings on communication ACCC/C/2009/36.

³ Sic.

⁴ Administrative Chamber of Valencia Superior Court of Justice, 25 November 2015, Lela aid challenge n°: 1/000055/2015- G, N.I.G: 46250-33-3-2015-0001629, section I.

22. The communicant referred to the conclusion of MAGRAMA's "Study on Access to Justice in Environmental Matters in Spain" in December 2013 that a legal change was needed to make clear that "small" environmental NGOs had the direct right to legal aid under Law 27/2006. The communicant noted that there was a problem of coordination between bodies at State level. It submitted that MAGRAMA was doing tremendous work, but the Ministry of Justice and the legislative bodies had not taken any regulatory measures to resolve the known problems with the legal aid regime.

23. The communicant claimed that following the amendment of the Civil Procedure Law (see para. 13 above), the situation had become very difficult for environmental NGOs. Under the Civil Procedural Law 42/2015, which modified Law 1/1996 on Legal Aid, environmental organizations do not appear together with other organizations (consumers, trade unions, Red Cross, victims of domestic violence and terrorism) and do not have direct legal aid. It submitted that the Ministry of Justice had not taken account of MAGRAMA's suggestions during the review to make clear that environmental NGOs should be able to directly benefit from legal aid. As a result, there were still differing views as to whether environmental NGOs must prove certain financial and legal conditions in order to have the right to legal aid, and these conditions were particularly difficult for small NGOs to meet.

24. The communicant cited several decisions to demonstrate that legal aid commissions and courts still continued to interpret Law 1/1996 as requiring environmental NGOs to meet these conditions. For example:

(a) In two separate decisions of 23 November 2015 and 17 February 2016,⁵ the Valencia High Court had ruled that environmental NGOs do not directly qualify for legal aid under Law 27/2006 and they must meet the general requirements of Law 1/1996 as a "public utility entity";

(b) By a decision of 9 November 2015,⁶ the Legal Aid Commission of Almeria (Andalucía) denied legal aid to an environmental NGO, because it did not prove it met the requirements of Law 1/1996 as a "public utility entity".

25. The communicant submitted that for the above reasons, the Party concerned had failed to take the necessary regulatory steps to fulfil its obligations under article 9, paragraphs 4 and 5, of the Convention.

Joint comments of communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36

26. In their joint written statement dated 12 April 2016, the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 recalled, inter alia, paragraph 6 of the Committee's first progress review on the implementation of decision V/9k which stated that "the Committee awaits the Party concerned's confirmation that the new Law on Free Legal Aid, including the provisions on free legal aid for environmental NGOs, has been adopted".

27. The communicants claimed that despite five years of struggle, participation and continuous campaigning by environmental NGOs, the situation was the same as at the time of communication ACCC/C/2009/36. There was still no clear framework providing NGOs with legal aid in environmental cases and NGOs might still encounter the same problems as experience by the communicant of communication ACCC/C/2009/36.

⁵ Annexes 1 and 2 to the communicant's comments on the second progress report submitted on 6 March 2016.

⁶ Annex 3 to the communicant's comments on the second progress report submitted on 6 March 2016.

28. The communicants claimed that despite the conclusion in MAGRAMA's 2013 "Study on Access to Justice" regarding decision IV/9f that law reform was required, the legislative bodies of the Party concerned had not taken seriously the "non-compliance" status declared by the Aarhus Convention's Meeting of the Parties nor the international duty to change the legal situation regarding legal aid.

29. The communicants expressed strong reservations regarding the Party concerned's submissions (see paras. 11-16 above) that its legal system complied with the Convention's provisions regarding legal aid for environmental NGOs and that legal aid commissions as well as judges and courts were increasingly recognizing that right within the scope of Law 27/2006. The communicants submitted that law reform would be the only way to comply with the Convention. In this respect, they drew the Committee's attention to the administrative and judicial decisions attached to the comments on the Party concerned's second progress report sent by the communicant of communication ACCC/C/2009/36 on 12 December 2015 and the communicant of communication ACCC/C/2008/24 on 6 March 2016. The communicants submitted that these decisions demonstrated that neither legal aid commissions nor the courts recognized NGOs' right to legal aid within the scope of Law 27/2006.

30. The communicants emphasized that, in order to fulfil its obligation with article 9 paragraphs 4 and 5 of the Convention, the Party concerned needed to carry out law reform. The communicants asked the Compliance Committee to keep the "non-compliance" status of the Party concerned as the situation regarding legal aid for environmental NGOs remained the same as in 2009.

III. Considerations and evaluation by the Committee

31. In order to fulfil the requirements of the decision V/9k, the Party concerned would need to provide the Committee with evidence that:

- (a) The necessary measures have been taken to ensure that the fees charged by the Murcia City Council for the provision of copies of land use and urban planning information are reasonable and are set out in a publicly available schedule of fees; and
- (b) Measures have been taken by 30 November 2014 to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid to NGOs are overcome.

32. In its first progress review, which reviewed the Party concerned's first progress report and the comments received from the communicant of communication ACCC/C/2009/36 on that report, the Committee invited the Party concerned to provide, together with its second progress report:

- (a) The relevant excerpt of the Murcia Official Gazette, together with an English translation thereof, to demonstrate that the schedule of fees described in paragraph 12 above has entered into force;
- (b) The necessary documentation, together with an English translation thereof, to demonstrate that the fees described in paragraph 12 above are set out in a publicly available schedule;
- (c) The relevant provisions of the new Law on Free Legal Aid once adopted, in particular the provisions on free legal aid for environmental NGOs, together with an English translation thereof.

33. The Committee welcomes the second progress report of the Party concerned, which was submitted on time, and the information contained therein.

34. With respect to paragraph 5 of decision V/9k, the Committee welcomes the adoption of the new fees to be charged by Murcia City Council published in the Murcia Official Gazette on 24 December 2014 and which entered into force from 1 January 2015. The Committee also welcomes their publication on the webpage: www.murcia.es/web/portal/normativaylegislacion.

35. The Committee accordingly finds that the Party concerned has fulfilled the requirements of paragraph 5 of decision V/9k.

36. Regarding paragraph 6 of decision V/9k, the Committee notes the slow progress of the Party concerned in this direction. More specifically, the Committee regrets that no actual measures have been taken to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid to NGOs are overcome. The Committee points out that paragraph 6 of decision V/9k recommends the Party concerned to take actual measures to ensure that the obstacles are overcome, and it is not enough to rely on legal aid commissions and the judiciary “increasingly recognizing” these obstacles at their own discretion.

37. The Committee accordingly finds that the Party concerned has not yet sufficiently fulfilled the requirement of paragraph 6 of decision V/9k.

IV. Conclusions and recommendations

38. The Committee welcomes the second progress report of the Party concerned, which was submitted on time, and the information contained therein.

39. The Committee finds that the Party concerned has fulfilled the requirements of paragraph 5 of decision V/9k but has not yet sufficiently fulfilled the requirements of paragraph 6 of decision V/9k.

40. The Committee reminds the Party concerned that, in accordance with paragraph 7 of decision V/9k, the Party concerned’s final progress report on the implementation of that decision is due on 31 October 2016.

41. In order for the Committee to be in a position to fully examine the implementation of decision V/9k, the Committee invites the Party concerned, in its final progress report or otherwise by 31 December 2016 to provide a description of all measures it has taken to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid to NGOs are overcome, together with the texts of any such measures accompanied by an English translation thereof.

42. The Committee informs the Party concerned that all measures necessary to implement decision V/9k must be completed by, and reported upon by no later than 31 December 2016, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9k.