

Re: Decision V/9k concerning compliance by Spain - invitation to comment on Party concerned second progress report

**COMMENTS BY “ASOCIACIÓN PARA LA JUSTICIA AMBIENTAL (AJÁ)”.**

AJÁ welcomes the efforts made by the Compliance Committee and the Party concerned in order to enforce the Aarhus Convention in Spain, where the Cases 24 and 36 took place and AJÁ is based.

After the examination of the document “Second Progress Report” which was sent by the Party concerned we want to express that the situation regarding legal aid schemes for environmental NGOs is far from a “compliance” status. It means, that the Party concerned is in non-compliance regarding Case 36 because of the attitude of Spanish Ministry of Justice and the legislative body (Congress).

Despite the tremendous work of the Aarhus National Focal point to obtain the necessary regulatory steps from the Spanish Government and State legislative bodies to get into compliance with Aarhus Convention the situation remains as before. It means that the situation regarding small NGOs is the same as it was described by the Compliance Committee in the of Case ACCC/C/2009/36’s Findings (para. 14, 15 and 66) and Recommendations (para. 75.c).

(66) *“The Committee notes that **the present system of legal aid, as it applies to NGOs (see para. 15 above), appears to be very restrictive for small NGOs.** The Committee considers that by setting high financial requirements for an entity to qualify as a public utility entity and thus enabling it to receive free legal aid, **the current Spanish system is contradictory.** Such a financial requirement challenges the inherent meaning of free legal aid, which aims to facilitate access to justice for the financially weaker. **The Committee finds that instituting a system on legal aid which excludes small NGOs from receiving legal aid provides sufficient evidence to conclude that the Party concerned did not take into consideration the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice. Thus, 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.”***

AJÁ declared before that the Study of the Party concerned on Access to Justice in Environmental Matters was “correct”. Indeed it was a more than valuable diagnosis/assessment about the situation of access to justice in Spain, which included the need of a legal change to make clear that environmental “small” NGOs had the direct right of legal aid under Law 27/2006.

The Second Progress Report recognized in paragraph 9 that “the sense of interlinkages between the Law 1/1996 on Free Legal Aid and Law 27/2006 was not as clear and unambiguous as would be desirable and, thus, MAGRAMA had expressed its positive approach for a possible review of the current regulation in order to redress the current disparity of interpretation on legal aid to NGOs.”

Taking in account the interesting suggestions made by MAGRAMA (Ministry with competences on the Environment) in the Study, AJÁ do not see any regulatory measure taken by the Ministry of Justice in order to avoid the detected problems regarding legal aid schemes.

We meet again a problem of coordination between Administrations, in this case in the same State level. MAGRAMA is doing a tremendous work, but Ministry of Justice and the legislative bodies do not assume the necessary changes.

The Second Progress Report states “near the end of the current Legislature, (December 2015) Law 1/1996 on Legal Aid, has not been extensively modified. Only, in the context of the amendment of the Civil Procedure Law and in order to optimize the economic resources available, two types of beneficiaries: victims of terrorism and victims of domestic violence, can obtain free legal aid irrespective their economic resources, understanding that because of human rights, this new provision was essential”.

Regarding legal aid schemes the situation nowadays after the approval of the Draft of a new Law on Legal Aid in the Council of Ministers is extremely difficult for NGOs, which reacted in the media and wrote a letter to the Ministry of Justice. The necessary changes requested in the mentioned “Study on Access to Justice in Environmental Matters in Spain” have not been taken. Instead of this, in the Civil Procedural Law 42/2015, October 5th, 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 means that the Ministry didn't hear to the suggestions of MAGRAMA and didn't promote the change of Law 1/1996 to make clear that environmental NGOs are directly beneficiaries of legal aid. It still remain the discussion if NGOs must proof some conditions (financial and legal), which are difficult for small NGOs.

The Second Progress Report stated at the end that "the disparity of interpretation of this provision is progressively overcome".

We disagree with the last phrase of the Second Progress Report and to show the real situation in Legal Aid Commissions and Courts we want to share with the ACCC (see documents attached in Spanish language) the following decisions:

- A) Valencia Regional High Court ruled twice recently (November 23th 2015 and February 17th 2016 ) that environmental NGOs do not have a direct recognition for legal aid in the Law 27/2006 (*Aarhus Act*) and they must proof the general requirements of Law 1/1996 (*Legal Aid Act*), it means proof of "public utility entity declaration", for example.
- B) Legal Aid Commission of Almeria (Andalucía) decided on November 9th, 2015 to denied the benefits of legal to an environmental NGO, because the lack of proof of Law 1/1996 requirements, as public utility entity.

For the above mentioned reasons, AJÁ states that the Party concerned has not taken the necessary regulatory steps in order to fulfill its obligations regarding article 9.4 and 9.5 of the Convention.

Murcia, 4 March 2016.

**Eduardo Salazar Ortuño**

**Chairman**

