



Speech to the session of the Compliance Committee 9 march 2016

Thank you Mr. Chairman,

First of all I would like to thank the Secretariat for organizing this session allowing me to address you with a brief statement on the issue of free legal assistance for the environmental NGOs in Spain although, I don't have much to add to my last progress report of October 2015.

Let me remind you shortly of the situation:

1.- Legal aspects

Law 27/2006 on access to information, public participation in decision making and access to justice in environmental matters, incorporates Aarhus Convention to the Spanish legal system. In its article 23.2 provides the following:

“Non-profit legal persons referred in the precedent section will have the right to free legal aid in the terms provided by Law 1/1996 (10 January) on Free Legal Aid”,

This so called “precedent session” refers to the following requirements

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

Beside this law we have the general Law on Free legal Aid which requires two other elements: public utility and level of economic resources.

Nevertheless it is not clear that these two additional requirements are needed in the case of environmental NGOs. We consider that Law 27/2006 is sufficient to grant this benefit, and that the so called “terms of the Law 1/1996”, refer to the administrative procedures.

The situation

In the context of the implementation of decision IV/9f of the Meeting of the Parties Spain carried out a Study on Access to Justice in environmental matters. Concerning free legal aid to NGOs, it expressed that, even

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.

A project to amend in broad terms on Law on Legal Aid (the general) has been for discussion at the Spanish Parliament since 2014. However, at the end of the last Legislature, (December 2015) Law 1/1996 on Legal Aid, was only modified in the sense of granting to two types of beneficiaries: victims of terrorism and victims of domestic violence, free legal aid irrespective of their economic resources, understanding that because of human rights, this new provision was essential. That was all.

In conclusion,

The Spanish environmental legal system complies with the Convention's provisions in the award of free legal aid to environmental NGOs. However, a reform of the general legislation on free legal aid, to avoid the disparity of interpretations of the different Provincial Commissions on free legal aid, judges and courts would be necessary.

At this moment is all I can report. As you probably know, after the elections of December 2015, it has not been possible to form a new government and new elections cannot be excluded in the near future. In this situation it is not realistic to propose a legislative reform.

Thank you very much.

María José Gómez
Aarhus Focal Point