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14 March 2020

To Compliance Committee of the Aarhus Convention [ACCC-C-2009-36]

Decision VI/8j (Spain) - Compliance Committee second progress review of the implementation of decision VI/8j.

Spain seems not to be able to see the obvious: the regulations can be interpreted in different ways. It is evident that this fact produces legal insecurity. This insecurity requires recourse to the courts which produces an overload of the judicial system.

Spain refers to several judgments in which free legal aid is granted to some organizations. However, on this occasion they do not maintain that these cases establish jurisprudence.

In this sense, we provide a copy of the communication of the Free Legal Assistance Commission (see Annex 1), at the meeting held on September 13, 2019, who RESOLVED:

“Confirm the provisional decision adopted by the Oviedo Bar Association and, consequently, DENY the right to Free Legal Assistance to the applicant, as it has been proven that:

The applicant is a person not included within the personal scope of application determined in article 2 of Law 1/1996, of January 10, on free legal aid.”

At the moment, a coalition consisting of two parties is ruling in Spain: Partido Socialista Obrero Español (PSOE) and Unidas Podemos (UP). We would like to remember what these parties have claimed:

- PSOE: Electoral program for the 2019 general elections:
“1.28. The PSOE considers the task of NGOs dedicated to the defense of the environment to be crucial and is committed to facilitating their work through free access to justice, in line with the provisions of the Aarhus International Convention.” (page 46)¹
- Unidas Podemos:
“... the recognition of the right to free assistance to environmental organizations made by article 23.2 of Law 27/2006, of July 18, is void of content, violating paragraphs 4 and 5 of article 9 of the Aarhus Convention of 25 of June 1998 (ratified by Spain in December 2004 and in force since March 31, 2005), as well as Articles 3, point 7, and 4, point 4, of Directive 2003/35 / EC, as regards recognition of non-governmental organizations for the protection of the environment of the right of access to justice in procedures that "will not be excessively burdensome".

¹ <https://www.psoe.es/media-content/2019/04/PSOE-programa-elecciones-generales-28-de-abril-1-15-42.pdf>

In fact, for this reason, since 2014, the Committee on Compliance with the Aarhus Convention of the United Nations has declared Spain's breach of this obligation, in its Decision V/9k.”²

It is evident that both parties considered that there was a problem accessing to free legal aid. Both propose modifications to comply with the provisions of the Aarhus Convention. However, once in government they seem to have changed their minds.

Our association has sent communications to vice president for the Ecological Transition Ms. Teresa Ribera Rodríguez (PSOE) (dated January 20, 2020) and vice president for Social Rights and Agenda 2030 Mr. Pablo Iglesias Turrión (UP) (dated February 28, 2020). In this document we reported through a chronological list of the case (ACCC/C/2009/36) from 2009 to date, and requested that they inform us of the measures that they will take to comply with the Aarhus Convention. Unfortunately, none of the writings had a response.

We believe that the best and fastest solution would be to modify Law 1/1996, January 10, on free legal aid, adding to article 2 of Law 1/1996, a new section as follows:

“Regardless of the existence of resources to litigate or the declaration of public utility, the right to free legal aid is recognized for non-profit legal persons whose purpose is the protection of the environment in general, or that of one of its elements and, in particular, those indicated in article 23 of Law 27/2006, of July 18, which regulates the rights of access to information, public participation and access to justice in matters of environment, when they exercise popular action in environmental matters regulated in article 22 of the aforementioned law, as well as any other action in defense of environmental interests in any jurisdictional order.”

Spain's second argument makes no sense as it is merely speculative.

In Almendralejo, 14 March 2020



Félix Lorenzo Donoso

Plataforma Contra la Contaminación de Almendralejo

² <http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-141-1.CODI.%29>