

2014-02-18

Case Summary posted by the Task Force on Access to Justice

Spain: Dam of Itoiz case, STS 6202/2011

1. <i>Key issue</i>	Access to information. The fact that some pieces of information contained in the files of an unfinished project may be considered as “provisional” should not be interpreted as if they were “material in the course of completion”.
2. <i>Country/Region</i>	Spain
3. <i>Court/body</i>	Supreme Court (<i>Tribunal Supremo</i>)
4. <i>Date of judgment /decision</i>	2011-09-29
5. <i>Internal reference</i>	STS 6202/2011
6. <i>Articles of the Aarhus Convention</i>	Art. 4, para. 3 (c)
7. <i>Key words</i>	Access to information, grounds for refusal, material in course of completion.

8. *Case summary*

Mr. Norberto requested the full copy of all the auscultation reports of the dam of Itoiz, from January 2003 to April 2004, as well as the full copy of all the auscultation reports of the slopes and embankments of the dam. The public authority, Hydrographical Confederation of the Ebro (CHE), considered that Mr. Norberto was in fact demanding access to the *memoire* of the pile load test, which was not finished at the time, and on those grounds they refused to provide the information.

This first response was contested by Mr. Norberto before the Contentious-Administrative division of the High Court of Aragón. This time, the CHE alleged that the requested documents (the auscultation reports) were not finished as they contained “provisional” information which could be subject to subsequent modifications.

The High Court of Aragón dismissed these allegations arguing that the lack of a legal definition of “unfinished document” should not lead to understand that every single document subject to later modifications, due to circumstances such as new developments, new data, technical assessments, etc, can be considered as being unfinished. On the contrary, once the auscultation report has been issued or signed to serve its initial purposes, it must be considered completed. The fact that later on, in view of new factual, technical or legal assessments, the content of the documents might be updated does not mean that the documents were unfinished, but only inaccurate or erroneous in their initial appraisals.

The decision of the High Court of Aragón was again contested before the Supreme Court by the State Lawyer, who reiterated that the requested reports were unfinished documents, of a provisional nature, containing information that might be adjusted during the subsequent stages of the filling process.

In its final ruling, the Supreme Court reconfirmed the decision of the previous instance and highlighted some of the arguments used by the Court of Aragón. An unfinished report (that is, a draft version which lacks, e.g., the necessary signature or the approval of the head of unit) can not be mistaken for an unfinished administrative file or process, which consist of a number of reports, all of them finished reports, that can be completed at a later stage by adding new data or results during the different stages of the process. In this context of “unfinished process”, the auscultation reports already issued are to be

considered as clearly completed.

9. *Link to judgement/
decision*

www.poderjudicial.es

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SPAIN/
Sp_DamItoiz_STS_6202.2011.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SPAIN/Sp_DamItoiz_STS_6202.2011.pdf)

Comments

The dates should be provided in the following format: year-month-day

1. The key issue(s) of the case in one sentence.
- 2.
3. The name of the court/body in English (in the original language in parentheses).
4. Date in the format of year-month-day.
5. Internal reference to be used when searching the case in the national/regional databases.
6. Articles of the Convention that may have relevance in relation to the content of the judgment or decision.
7. Key words to be used when searching on this web site.
8. To facilitate reading, the summary may start with a short description of the procedural framework (the kind of procedure, arguments of the parties, and findings of the previous instances). However, this must be kept short, one paragraph at the most.
As regards the main findings of the court/body, the purpose of the summary is only to give a short orientation of the case. As a main rule, if there are diverging opinions of the court/body, only the opinion of the majority should be referred to.
If the case directly relates to a communication submitted to the Aarhus Convention Compliance Committee, it should be stated clearly in the summary.
The summary as a whole should not exceed a page (A4), preferably no more than 600 words.
9. Link to the national/regional web site where the original judgment/decision can be found. To facilitate access to the judgment/decision in the national language, please provide the secretariat with the text of the judgment/decision either to be included in the file with the case summary or to be sent as a PDF file. You can also submit the translation of the judgment/decision into English, Russian or French.

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