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Case Summary posted by the Task Force on Access to Justice

The GECEN-Castellón case, STS 4460/2008

<i>1. Key issue</i>	NGO standing - The special protection of the environment given by art. 45 of the Spanish Constitution, and the broad and collective interests and protections on Spanish citizens require a wide scope for legal standing in which environmental NGOs should have an important role. In addition to this, art. 23 of the national transposition law of the Aarhus Convention, establishes a quasi class action in environmental matters for non-profit organisations meeting a number of requirements.
<i>2. Country/Region</i>	Spain
<i>3. Court/body</i>	Supreme Court (Tribunal Supremo)
<i>4. Date of judgment /decision</i>	25 June 2008
<i>5. Internal reference</i>	STS 4460/2008
<i>6. Articles of the Aarhus Convention</i>	Art. 9, para. 2; Art. 2, para. 5
<i>7. Key words</i>	Access to Justice, Sufficient Interest, Non-governmental Organisations, Legal Standing.
<i>8. Case summary</i>	<p>The Group for the Study and Conservation of the Natural Environment (GECEN), an environmental NGO, appealed before the Supreme Court a previous decision of the Madrid's High Court of Justice in which a claim was not permitted on grounds of lack of legitimate and sufficient interest. The Supreme Court reversed this decision and held that it was against the provisions of both the Aarhus Convention and the national transposition law because the decision restricted the right to effective judicial protection and legal standing in environmental matters.</p> <p>The court of first instance denied legal standing to GECEN regarding the environmental impact assessment of an airport located on the east coast of Spain. The court considered that the GECEN had no direct interest to challenge the EIA, but only a mere interest in law enforcement that it was not called upon to defend, given that there is no 'class action' in environmental matters.</p> <p>The general clause of art. 19.1(b) of the Spanish Act on Administrative Jurisdiction (LJCA) refers to '...associations affected or legally authorized to defend the collective rights and legitimate interests'. In this context, the court found that the appellant NGO was not affected by the resolution nor legally entitled to the defence of rights and legitimate collective interests by the mere fact that the study and conservation of natural areas of the town of Cabanes (near the airport) is among the purposes of their association. The court reasoned that this would permit an untenably broad standing threshold since it would be sufficient to create an organization or</p>

association to establish standing.

At the second instance, the Supreme Court did not accept such arguments. Firstly, the special protection of the environment given by art. 45 of the Spanish Constitution, and the broad and collective interests and protections on Spanish citizens require a wide scope for legal standing in which associations such as the appellant should have an important role. In particular, these associations act in defence of collective interests that are affected by the positive or negative approach of the administrative decision that is disputed such as in the case at hand regarding the verification of compliance with the conditional environmental assessment on the construction of Castellón Airport.

Secondly, in relation to the notion of public concerned, art. 9, para. 2 of the Aarhus Convention provides that each Party shall ensure that any member of the public 'have access to a review procedure before a court of law...to challenge the substantive or procedural legality of any decision, act or omission subject to the provisions of article 6...', taking into account that NGOs referred to in art. 2, para. 5 have a sufficient interest and are deemed to have rights capable of being impaired.

Finally, art. 23 of the national transposition law (Ley 27/2006), establishes a *quasi* class action in environmental matters for non-profit organisations meeting a number of requirements. These requirements are: (1) the organisation's aims provided in its bylaws expressly include the protection of the environment in general or of any particular element thereof; (2) the organisation was legally established at least two years before the action is brought; (3) the organisation performs activity in a territory that is affected by the administrative act or omission. These requirements are entirely fulfilled by the GECEN association.

9. *Link address*

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