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# Access to Justice in access to environmental information cases in Spain: Is it effective?

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## ARTICLE 9

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an **expeditious procedure** established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and **shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.**



## Two cases on access to justice after environmental information requests were denied

### FACTS

- In 2 February 2016, IIDMA filed to a number of Regional Authorities access to environmental information request ( **access to baseline reports** of coal power plants)
- The Autonomous Community of Asturias never replied
- The Autonomous Community of Aragón:
  1. Provided a summary of the baseline report they produced (28.03.2016)
  2. IIDMA ratified its request (29.04.2016)
  3. Aragón authorities replied baseline reports are not environmental info but an administrative file (27.06.2016)

## Access to Justice

### 1. Aragón case

- Administrative review filed by IIDMA on 22.07.2016
- Administrative review denied on 17.11.2016
- IIDMA filed announcement of judicial review before Supreme Court of Aragón on 17.01.2017 requesting access to legal aid
- Legal aid was denied by the SC on 26.07.2017 after a long procedure
- In spite of legal aid denial, IIDMA continued with the procedure to obtain the baseline report of the coal plant located in Aragón.
- It was when the Court called upon the Administration of Aragon to send the administrative file of the case that Aragón provided within that file the requested baseline report 26.10.2017- almost **two years after IIDMA requested it.**
- IIDMA filed its withdrawal on 17.11.2017 but the codefendant asked the Court to oblige IIDMA not to use it for any purpose



## Access to Justice

### 2. Asturias case

- IIDMA filed a written of execution of the “fictitious” administrative act on 28.06.2017
- As the Administration of Asturias never replied to that written, IIDMA filed a law suit before the Supreme Court of Asturias on 2.11.2017 requesting access to legal aid.
- Legal aid was granted on 29.11.2017
- The Court called twice upon the Asturias Administration to send the adve file
- The Administrative file provided to IIDMA on 6.02.2018 contained most of the requested baseline reports with the exception of a risk analysis for one of the coal plants. That's is **two years after IIDMA requested them**
- IIDMA has contacted the Asturias Administration to provide the missing info and then, it will withdraw the law suit.



## CONCLUSIONS



- Although in general legal aid is granted to organizations holding the status of public interest organizations as IIDMA is, the procedure most of the time is lengthy delaying the judicial procedure
- Some jurisdictions in Spain try to avoid access to justice denying legal aid as it was the case of Aragón.
- There are a number of administrations that avoid the granting of information during the administrative procedure hoping the applicant won't go to a court of law putting barriers to access to information and access to justice. This represent an abuse of the rule of law as finally they know they will have to provide the information but after a cumbersome procedure for the applicant.
- Most of the administrations tend to delay and delay the delivery of the administrative file to the court necessary to formulate the law-suit in ordinary judicial procedures. This represents a barrier to access to justice and the procedure becomes lengthier