

Response by PALP – 28 June 2019

Communication to the Aarhus Convention Compliance Committee concerning compliance by Portugal with articles 4 and 6 of the Convention in connection with oil prospecting (PRE/ACCC/C/2019/166)

This document refers to the Communication submitted in January 2019 to the Compliance Committee by **Almargem**, a Portuguese environmental association, on behalf of all the associations and citizens that form the **Platform for an Algarve Free of Oil** (also known as **PALP**, "*Plataforma Algarve Livre de Petróleo*").

At the open session on preliminary admissibility held during its sixty-third meeting (Geneva, 11-15 March 2019), the Compliance Committee agreed to send questions regarding the use of domestic remedies for the parties' reply in advance of the Committee's sixty-fourth meeting (Geneva, 1-5 July 2019)¹.

Please find as follows PALP's answers to the questions regarding the use of domestic remedies.

Questions to the Party concerned and the communicant

1. What is the deadline for submitting a complaint to the Commission for Access to Administrative Documents (CADA)?

Twenty days ([Article 16 of Law 26/2016 of 22 August](#) on access to environmental information²).

2. What is the deadline for applying to the court to enforce an opinion of CADA?

Twenty days ([Article 105 of the Code for the proceedings in the Administrative courts](#)).

3. When asked to review or enforce an opinion of CADA, do the courts of the Party concerned consider the merits of the request for access to environmental information *de novo*? Alternatively, do the courts simply issue an order enforcing CADA's opinion?

The courts will consider the merits and judge *ex novo*, and as a consequence, the processes are always very time consuming.

4. What is the typical costs for challenging a refusal to grant access to environmental information in court in Portugal? Please provide, in brief form, any available recent statistics regarding the costs of court proceedings for access to information to support your answer.

The average court fees in Portugal can range from hundreds to thousands of euros. For Environmental Non-Governmental Organizations (ENGO) there are no court fees. However, lawyers' costs impose a heavy financial burden on ENGO, considering that justice is slow and any cases can take years in court. According to "The EU Environmental Implementation Review 2019 - Country Report – PORTUGAL"³, "the main deterrent from legal challenges in Portugal appears to be the high judicial costs".

¹ The questions were received in a letter dated the 14th of June 2019, requesting for a reply (to aarhus.compliance@unece.org) by the 28th of June.

² https://dre.pt/home/-/dre/75177807/details/maximized?p_auth=VLJzFY4y [in Portuguese]

³ See page 36 in European Commission. SWD(2019) 129 final. Brussels, 4.4.2019 Commission Staff Working Document. The EU Environmental Implementation Review 2019. Country Report – Portugal http://ec.europa.eu/environment/eir/pdf/report_pt_en.pdf

For illustration and considering only the lawyers' fee, PALP has up to now spent over 27000€ (twenty-seven thousand Euros) with the court proceedings regarding the deep-offshore oil drilling project in the Atlantic Ocean (Alentejo Basin). PALP have already presented this issue, as you may read on page 14 in the document submitted in January 2019.

5. How long do court proceedings to challenge a refusal to grant access to environmental information in Portugal typically take? Please provide, in brief form, any available recent statistics regarding the length of court proceedings for access to information to support your answer.

Portugal is notorious for having an extremely slow administrative justice. Administrative proceedings are known to last for more than 20 years according to a Press Release by the Portuguese Lawyer Associations ("Ordem dos Advogados") having analysed the report by the European Commission and based on 2015 statistics (The 2017 EU Justice Scoreboard). See more information: "Report of the Special Rapporteur on the independence of judges and lawyers" (Gabriela Knaul, 2015)⁴. It should be noted that PALP have already presented these statistics, as you may read on page 14 (where it is stated "Slow justice") in the document submitted in January 2019.

For illustration: The court proceedings in an urgent case as the injunction on the TUPEM (title of private use) started in 27-04-2017, the first favourable decision was issued more than one year later in 12-08-2018, this decision was appealed, and the final decision is issued on 06-07-2019.

Questions to the communicant (PALP)

6. • (a) Why did PALP not apply to the court to have the CADA's advisory opinion of September 2016 enforced when it became apparent in early 2017 that, despite CADA's opinion, the majority of the requested documents had not been made available by the Ministry of Economy and Energy Transition (ENMC)?

PALP did not apply to court because the object of the CADA's opinion was on the refusal by ONE single entity. However, other entities also had relevant documents which were requested and whose access was successively denied to PALP: namely ENMC, APA, the Ministry of the Environment, the Ministry of Economy (Secretary of State for Energy). If PALP decided to go to court each time information was refused, we would have 6 pending actions and would have to bear the respective costs multiplied by 6.

However, PALP did submit a lawsuit against APA on August 17th 2018 for not providing all the information regarding the project on oil prospecting and for not considering effectively the Opinions expressed in the Public Consultation (decision-making process) on whether or not an Environmental Impact Assessment (EIA) is required.

• b) What domestic remedies, if any, did PALP use to challenge the events from 13 March 2017 to 14 July 2017?

PALP did not use any domestic remedies because it considers that it would take too long (CADA's decision should have been taken in 40 days, according to [Article 16\(4\) of Law n.º 26/2016](#)⁵; in fact it took 97 days) and would be ineffective (as in fact it proved to be since the national authorities did not respect CADA's opinion). In 2017, we tried to solve the problem directly with ENMC, convinced that the previous CADA decision had caused some change in ENMC's behavior.

7. Regarding PALP's claim A.2 (see pages 8-10 and 13-14 of the communication), in your statement to the 63rd meeting of the Compliance Committee, you claim that "PALP complained about the lack of information in the main action (proceedings) of the injunction process." Please clarify the following:

⁴ <http://www.smpm.pt/wp-content/uploads/Gabriela-Knaul-Visita-de-2015.pdf>

⁵ https://dre.pt/home/-/dre/75177807/details/maximized?p_auth=VLJzFY4y [in Portuguese]

- **(a) In the court proceedings, did PALP expressly request access to the specific information listed in claim A2, or did it make a more general complaint to the court about the alleged failure to provide sufficient information regarding the decision-making on the TUPEM?**

PALP made a more general complaint as the defendant (the Administration) should present the complete administrative process, with all the documents included. However, during the course of the judicial proceedings, there was one important document which, despite having been requested more than once to the court, has never been made available: the letter of resignation by the concession companies which was disclosed in social networks and in the media and was not sent to the court, despite having been requested by the judge.

- **(b) Has the court to date issued any orders directing any authorities of the Party concerned to release the requested information, and if so:**

(i) On what date was the order issued?

(ii) What was the content of the order?

(iii) Has the authority complied with the court order?

It was not possible to review all of the court documentation, given the limited time to answer the questions⁶ According to the documents analyzed, there is a request dated March 1, 2019⁷. The content requested information on the status of the contract. The request was made to the Ministry of the Sea. However, this Authority did not comply with the order.

8. Did PALP make a complaint to CADA or use any other domestic remedy with respect to its claim A.3 (see pages 10-11 of the communication)? If so, please specify the domestic remedies used, including their outcome.

On August 17, 2018, PALP filed a lawsuit against APA following the public consultation that there was no need to carry out an EIA regarding Aljezur's offshore exploratory drilling project. There was a violation of the right of access to information and public participation⁸, as neither the Opinions, studies, nor the project characterization documents that would be required to inform (in the decision-making process) were disclosed.

This judicial process has not yet developed. We assume that it will be "dismissed".

9. Did PALP make a complaint to CADA or use any other domestic remedy with respect to its claim A.4 (see page 12 of the communication)? If so, please specify the domestic remedies used, including their outcome.

After PALP submitted a complaint to CADA on February 5, 2019, the requested document was received on February 28 having been sent by the Ministry of the Environment.

Portugal, 28th of June 2019

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⁶ We consider that we did not have sufficient time to answer these questions. PALP is a platform that brings together ENGOs and individual citizens, depending heavily on the work of these dedicated VOLUNTEERS.

⁷ It should be noted that there may be more requests

⁸ Judicial process: PALP's claims in Part II, page 7