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19 January 2017

MINISTRY OF JUSTICE

San Bernardo, 45
28071 Madrid

Unofficial English translation

Mr. **D. Rafael Catalá Polo**, Justice Minister.

Issue: Request for environmental information. Repeated non-compliance by Spain with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

Mr. Felix Lorenzo Donoso, of legal age, with address for the purposes of notifications in c/ Guadalupe 17, 06200 Almendralejo (Badajoz), DNI 9154113K, telephone 675 043 835, in the name and on behalf of the Plataforma contra la contaminación de Almendralejo, inscribed in the register of Associations of the Council of Presidency of the Board of Extremadura with the number 3,829, before you, appears and, as best it proceeds in right,

EXPLAIN:

That by means of the present writing, he comes to request information according to the established in the LAW 27/2006, of 18 of July, that regulates the rights of access to the information, of public participation and of access to justice in environmental matters (Incorporates Directives 2003/4 / EC and 2003/35 / EC), and under the provisions of the Aarhus Convention.

BACKGROUND:

In February 2009, the Plataforma contra la contaminación de Almendralejo (hereinafter referred to as the Plataforma) submitted a communication to the Compliance Committee of the Aarhus Convention. At that time, a procedure was initiated for non-compliance by Spain of the aforementioned Convention, which continues now.

In the events that follow a summary of the official Resolutions that have taken place until this moment.

FACTS

First

Report of the Compliance Committee on its Twenty-eighth meeting
Findings and recommendations with regard to communication ACCC/C/2009/36 concerning compliance by Spain

Adopted by the Compliance Committee on 18 June 2010¹

¹ http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-28/ece_mp.pp_c.1_2010_4_add.2_eng.pdf

B. Recommendations

- c) *To change the legal system regulating legal aid in order to ensure that small NGOs have access to justice;*

Second

Fourth session of the Meeting of the Parties (2011)

Spain Decision IV/9f

Decision IV/9f of the Meeting of the Parties on compliance by Spain with its obligations under the Convention (ECE/MP.PP/2011/2/Add.1)²

Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its fourth session.

9. Invites, therefore, the Party concerned to thoroughly examine, with appropriate involvement of the public, the relevant legislation and in particular the court practice with regard to:

b) *Award of legal aid to environmental NGOs;*

10. Also invites the Party concerned to report to the Meeting of the Parties through the Compliance Committee, six months before the fifth session of the Meeting of the Parties, on the progress with the recommendation under paragraph 5, the time frames applicable in public participation according to the Spanish laws, and the studies requested under paragraph 9 above.

Third

In February 20013, the Plataforma sent a letter to the Technical General Secretariat of the Ministry of Justice in which we made a proposal for the ongoing modification of the Free Justice Law.

The Technical General Secretariat of the Ministry of Justice did not reply to the aforementioned communication.

Fourth

Fifth meeting of the Parties (2014)

Decision V/9k on compliance by Spain with its obligations under the Convention

Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its fifth session.

First progress review of the implementation of decision V/9k on compliance by Spain with its obligations under the Convention³

² http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9f_Compliance_by_Spain_e.pdf

³ http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9k_Spain/First_progress_review_on_V.9k_Spain.pdf

II. Considerations and evaluation by the Committee

12. In order to fulfil the requirements of the decision V/9k, the Party concerned would need to provide the Committee with evidence that:

17. With respect to paragraph 6 of decision V/9k, the Committee welcomes the information provided by the Party concerned regarding the draft new Law on Free Legal Aid currently before Parliament. *The Committee awaits the Party concerned's confirmation that the new Law on Free Legal Aid, including the provisions on free legal aid for environmental NGOs, has been adopted and to be provided with an English translation of the relevant provisions of the Law once adopted.*

IV. Conclusions and recommendations

20. The Committee invites the Party concerned to provide, together with its second progress report:

c) *The relevant provisions of the new Law on Free Legal Aid once adopted, in particular the provisions on free legal aid for environmental NGOs, together with an English translation thereof.*

Fifth

Decision V/9k of the Meeting of the Parties on compliance by Spain with its obligations under the Convention (ECE/MP.PP/2014/2/Add.1) ⁴

6. Also recommends that the Party concerned take measures by 30 November 2014 to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with *respect to legal aid to NGOs are overcome*;

Sixth

Second progress review of the implementation of decision V/9k on compliance by Spain with its obligations under the Convention. ⁵

IV. Conclusions and recommendations

41. In order for the Committee to be in a position to fully examine the implementation of decision V/9k, the Committee invites the Party concerned, in its final progress report or otherwise by 31 December 2016 to provide a description of all measures it has taken to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention *with respect to legal aid to NGOs are overcome*, together with the texts of any such measures accompanied by an English translation thereof.

42. The Committee informs the Party concerned that all measures necessary to implement decision V/9k must be completed by, and reported upon by no later than 31 December 2016, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9k.

⁴

http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9k_on_compliance_by_Spain.pdf

⁵

http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9k_Spain/Second_progress_review_on_V.9k_Spain_12_10.2016_final.pdf

Seventh

Report from National Spanish Focal Point of the Aarhus Convention 05.12.2016 ⁶

With regard to paragraph 6 in relation with article 9, paragraph 4 and 5 of the Aarhus Convention, we still believe that Spain would need to carry out law reform, as it is said in de conclusion in MAGRAMA's 2013 "Study on Access to Justice".

However, despite the efforts made from this Ministry, the situation remains the same as at the time of our last communication during second review, given the Spanish courts have not adopted yet any legislative initiative regarding the right to free legal aid for environmental NGOs.

Therefore, from our position, we can do nothing more to the date except regretting not to give you an affirmative answer in relation to an effective implementation of paragraph 6 of decision V/K9 of the Compliance Committee.

For all these reasons

I request

to provide us with the following information:

- First:** If the Ministry of Justice is aware of the process opened to Spain for breach of the Aarhus Convention.
- Second:** If the Ministry of Justice is aware that repeated failure to comply with the Resolutions of the Compliance Committee and the parties to the treaty may have negative consequences for Spain.

Taking into account DECISION I/7, XII. CONSIDERATIONS OF THE MEETING OF THE PARTIES, which states in paragraph 37. "The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (g) *Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;*"

It is important to remember that the **Vienna Convention** on the Law of Treaties states in its article 60. TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY AS A CONSEQUENCE OF ITS BREACH.

"2. A material breach of a multilateral treaty by one of the parties entitles:

- (a) *The other parties by unanimous agreement to suspend the operation of the treaty in whole or*

⁶ http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9k_Spain/frPartyV9k_05.12.2016_email.pdf

in part or to terminate it either.

3. *A material breach of a treaty, for the purposes of this article, consists in:*

(b) *The violation of a provision essential to the accomplishment of the object or purpose of the treaty”*

Third: What steps has the Ministry of Justice taken or are taking to ensure that, without delay, Spain complies with the aforementioned Resolutions, so that before September 11, 2017, when the Sixth Period of the Meeting of the Parties to the Aarhus Convention, which will take place in Budva, Montenegro, Spain does not expose the Parties to deciding to suspend the application of the Aarhus Convention in our country.

In Almendralejo on 19 January 2017.

The president



Félix Lorenzo Donoso

Plataforma Contra la Contaminación de Almendralejo

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