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24 February 2017

To Compliance Committee of the Aarhus Convention [ACCC-C-2009-36]

Decision V/9k (Spain) - Compliance Committee progress review of the implementation of decision V/9k.

*“With regard to paragraph 6 in relation with article 9, paragraphs 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”.

The reading of the communication sent by the Focal Point of the Aarhus Convention shows that Spain has not taken any action to comply with the provisions of the Aarhus Convention. The communication adds resignedly, " *we can do nothing more to the date.*"

In addition, the communication refers to the efforts that the Ministry has made, although it does not specify to what efforts it is concerned.

Trying to bring light to the current situation, the Plataforma contra la contaminación de Almendralejo, dated January 19, 2017, sent a request for information to the Ministry of Justice (See Annex 1). This request has not been answered for the present.

We could summarize the current situation in the following points:

- 1º For more than seven years Spain has repeatedly violated one of the basic principles of the Aarhus Convention, access to justice.
- 2º Notwithstanding the repeated resolutions of the Compliance Committee and the Meeting of the Parties, Spain has not taken any action to comply with those resolutions.
- 3º In the last communication, the Focal Point recognizes these facts. In addition, she does not propose any measures that can correct this repeated breach.

Once established the facts, the Plataforma considers that it would be convenient to determine what consequences could be derived from them:

First: In October 2002, through Decision I/7, adopted by the first Meeting of the Parties (MOP) established a Compliance Committee to review compliance by Parties with the Convention.

“XII. CONSIDERATION BY THE MEETING OF THE PARTIES

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;***

Second: 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 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”*

In our humble opinion, the facts established would lead us to conclude that, pursuant to point 37 (g) of the Decision I/7, adopted by the first Meeting of the Parties, and in accordance with the provisions of The **Vienna Convention** on the Law of Treaties, Spain should be suspended until it complies with the provisions of the Aarhus Convention.

It is clear that the Committee or the Parties could have another interpretation on when to apply paragraph 37 (g) of Decision I/7, adopted by the first Meeting of the Parties. In this case, and for the sake of legal certainty, it might be appropriate to expressly state in what specific circumstances the provisions of the Convention would apply.

In Almendralejo, 24 February 2017

A handwritten signature in blue ink, appearing to read 'Félix Lorenzo Donoso', with a stylized flourish at the end.

Félix Lorenzo Donoso

*Plataforma **Contra la Contaminación de Almendralejo***