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17 October 2015

Secretary to the Aarhus Convention Compliance Committee

Economic Commission for Europe

Environment, Housing and Land

Management Division

Bureau 348

Palais des Nations

CH-1211 Geneva 10

Switzerland

Re: Decision V/9k concerning compliance by Spain with its obligations under the Aarhus Convention

A lot of time has passed since on 17 of July of 2010, when the Aarhus Convention Compliance Committee sent to Spain its "FINDINGS AND RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE WITH REGARD TO COMMUNICATION ACCC/C/2009/36 CONCERNING COMPLIANCE BY SPAIN WITH ITS OBLIGATIONS UNDER THE CONVENTION", apart from this, almost nothing has changed. The Spanish public authorities continue without answering requests of environmental information. We could send copies of several requests for information which have not been answered, despite the maximum time provided in the Law 27/2006, for access to environmental information, has elapsed.

The Treaty loses credibility when one of the signatory Parties breaches it for five years. We would stress that its credibility depends entirely on their implementation.

It would be not fair to put all the blame only in the Party at fault, all the signatories Parties are also responsible for not being able to do more to convince Spain to fulfil their obligations.

Our tiny association is composed for ordinary people, we are not lawyers, so we work a lot to do anything. We are getting tired that so such a hard work had not any positive result.

Spain has not taken any steps to grant access to legal aid to small NGOs working in defence of the environment. Despite it has had some opportunities to do so. Our association reported on 3 November 2012, (see attached document) that since Spain was to modify the 1/1996 of January 10, legal aid, it would be an opportune time to introduce the resolution of the Aarhus Convention Compliance Committee, supported by two meetings of the Parties time.

Spain has not changed directly the Law 1/1996, of January 10, legal aid, but they have modified it by the Law 42/2015, of 5 October, amending the Law 1/2000 of 7 January on Civil Procedure.

The law of assistance to legal aid has been amended as follows:

Original Spanish	Unofficial translation
<p>Ley 42/2015, de 5 de octubre, de reforma de la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil.¹</p> <p>---</p> <p>PREÁMBULO</p> <p>VII</p> <p>Finalmente, se aprovecha la reforma para incluir aquellas modificaciones que se consideraran más necesarias en relación con la Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita, a fin de adecuarla a la realidad actual. La reforma sigue configurando el sistema de justicia gratuita como un servicio público, financiado con fondos públicos y prestado fundamentalmente por la abogacía y la procuraduría.</p> <p>--</p> <p>Disposición final tercera. Modificación de la Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita.</p> <p>La Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita, queda modificada como sigue:</p> <p>Uno. Se modifica el artículo 1, que queda redactado del siguiente modo: «Artículo 1. Objeto de la Ley.</p> <p>La presente Ley tiene por objeto determinar el contenido y alcance del derecho a la asistencia jurídica gratuita al que se refiere el artículo 119 de la Constitución y regular el procedimiento para su reconocimiento y efectividad. Las disposiciones de esta Ley serán de aplicación general en todo tipo de procesos judiciales, incluidos los recursos de amparo constitucional, la vía administrativa previa cuando así se establezca en la legislación específica, así como el asesoramiento previo al proceso contemplado en el apartado 1 del artículo 6.»</p> <p>Dos. Se modifica la letra g) y se añade una letra i) al artículo 2, que quedan redactadas del siguiente modo:</p>	<p>Law 42/2015, of 5 October, amending the Law 1/2000 of 7 January on Civil Procedure.</p> <p>--</p> <p>PREAMBLE</p> <p>VII</p> <p>Finally, the reform will fail to include those changes that are considered necessary in relation to the Law 1/1996, of January 10, legal aid, in order to adapt to the current reality. The reform is setting the legal aid system as a public service, publicly funded and provided primarily by the law and the prosecutor.</p> <p>--</p> <p>Third final provision. Amending Law 1/1996 of 10 January on free legal aid.</p> <p>Law 1/1996, of January 10, legal aid, is amended as follows:</p> <p>One. Article 1, which reads as hereby amended as follows: "Article 1. Purpose of the Act.</p> <p>This Law is to determine the content and scope of the right to free legal assistance referred to in Article 119 of the Constitution and regulate the procedure for recognition and effectiveness. The provisions of this Act shall be of general application in all types of litigation, including constitutional motions, the prior administrative procedure when it is established in specific legislation, as well as the advice to the process referred to in paragraph 1 of Article 6.»</p> <p>Two. Letter g) is amended and a letter i) of Article 2, which are worded as follows is added:</p>

¹ <http://www.boe.es/boe/dias/2015/10/06/pdfs/BOE-A-2015-10727.pdf>

<p>«g) Con independencia de la existencia de recursos para litigar, se reconoce el derecho de asistencia jurídica gratuita, que se les prestará de inmediato, a las víctimas de violencia de género, de terrorismo y de trata de seres humanos en aquellos procesos que tengan vinculación, deriven o sean consecuencia de su condición de víctimas, así como a los menores de edad y las personas con discapacidad intelectual o enfermedad mental cuando sean víctimas de situaciones de abuso o maltrato. [...]</p> <p>«i) Con independencia de la existencia de recursos para litigar, se reconoce el derecho de asistencia jurídica gratuita a las asociaciones que tengan como fin la promoción y defensa de los derechos de las víctimas del terrorismo, señaladas en la Ley 29/2011, de 22 de septiembre, de reconocimiento y protección integral a las víctimas del terrorismo.»</p>	<p>«g) Notwithstanding the existence of resources to litigate, the right to legal aid, to be provided immediately to the victims of gender violence, terrorism and trafficking in those processes that have recognized bonding, arising or resulting from their victimization, as well as minors and people with intellectual disabilities or mental illness when they are victims of abuse or neglect situations. [...]</p> <p>«i) Notwithstanding the existence of resources to litigate, the right to legal aid to associations whose aim is the promotion and defence of the rights of victims of terrorism, outlined in Law 29/2011 recognizes, of September 22, recognition and integral protection of victims of terrorism.»</p>
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As we can see, Spain has modified the Law but has ignored the Aarhus Convention Committee findings and recommendations.

If the only people who can resort to the courts to make use of a right are those with sufficient financial means, then, we would not be talking about rights but privileges.

We hope, although we do not expect too much, that all the Parties resolutely commit to implement de Aarhus Convention, otherwise, it will be only a lost opportunity, for the Earth and for the credibility of the UN.

Almendralejo, 17 October 2015

The President



Félix Lorenzo Donoso

Plataforma Contra la Contaminación de Almendralejo