



MINISTERIO
DE JUSTICIA

Documento 1

MINISTERIO DE JUSTICIA
REGISTRO GENERAL BOLSA, 8

11 MAY 2017

SALIDA

SUBSECRETARÍA

SUBDIRECCIÓN GENERAL DE
INFORMACIÓN ADMINISTRATIVA
E INSPECCIÓN GENERAL DE
SERVICIOS

O F I C I O

S/REF:

N/REF: 1-12192

FECHA: 5 de mayo de 2017

ASUNTO: *Resolución a la Solicitud de
Información Pública*

D. Félix Lorenzo Donoso
C/ Guadalupe, 17
06200 Almendralejo
Badajoz

I attach a copy of the resolution signed by the Technical Secretary General of the Ministry of Justice, to respond to your request for public information, under Law 19/2013, of December 9, on transparency, access to public information and good government.

EL SUBDIRECTOR GENERAL



Jesus Santa-Bárbara Rupérez

Unofficial translation from the original Spanish



MINISTERIO
DE JUSTICIA

portal de la
transparencia
del Gobierno de España

SUBSECRETARIA DE JUSTICIA

SECRETARIA GENERAL TECNICA

Unofficial translation from the original Spanish

Madrid May 5, 20175

Nº CASE FILE: 001-012192

On February 22, 2017 had entered into the Transparency Portal Government, request for access to public information under the Law 19/2013, of 9 December, transparency, access to public information and good governance, application that was registered with the above number with the following content:

First: If the Ministry of Justice is aware of the process opened to Spain for breach of the Aarhus Convention.

Second: We request copies of any documents relating to the issue at stake. In the event that there is information with some type of protection or classification, we request that we communicate what documents are and what Act expressly establishes it.

Third: If the Ministry of Justice is aware that the repeated failure to comply with the Resolutions of the Compliance Committee and the Parties that signed the treaty may have negative consequences for Spain.

Taking into account DECISION 1/7, XII. CONSIDERATIONS OF THE MEETING OF

THE PARTIES, which states in point 37. "In considering a report and the recommendations of the Committee, the Meeting of the Parties may decide on appropriate measures to achieve full compliance with the Convention." The Meeting of the Parties may decide, depending on the particular issue that is presented and taking into account the cause, degree and frequency of non-compliance, one or more of the following measures: "g) Suspend, in accordance with the applicable rules of international law regarding the suspension of the application of a treaty, the special rights and privileges granted to the Party concerned under the Convention.;"

It is important to remember that the Vienna Convention on the Law of Treaties provides in its article "60. Termination of a treaty or suspension of its application as a result of its violation.

"2. A serious breach of a multilateral treaty by one of the parties will empower:

a) to the other parties, proceeding by unanimous agreement to suspend the application of the treaty totally or partially or terminate it.

3. For the purposes of this article, they will constitute a serious violation of a treaty:

b) the violation of an essential provision for the achievement of the object or purpose of the treaty ".

Fourth :

What steps has the Ministry of Justice taken or is it considering to take, without delay, Spain complying with the provisions of the aforementioned Resolutions, so that before September 11, 2017, the date in which it will take place in Budva, Montenegro, the Sixth Period of sessions of the Meeting of the Parties to the Aarhus Convention, Spain does not expose itself to the possibility that the Parties may decide to suspend the application of the Aarhus Convention in our country. "



With date of March 1, 2017 this request was received in this Technical General Secretariat, date from which begins to count the term of a month foreseen in article 20.1 of Law 19/2013, of December 9 for its resolution.

Once the request has been analyzed, the following is indicated:

Article 12 of Law 19/2013, of December 9, regarding the right of access to public information, states: "All persons have the right to access public information, under the terms set forth in article 105.b.) of the Spanish Constitution, developed by this Law."

Next, Article 13, which develops the concept of Public Information, establishes that public information is understood as the contents or documents, whatever their format or support, that are in the possession of one of the subjects included in the scope of application of this title and that have been prepared or acquired in the exercise of their functions.

Considering that the information requested in the first, third and fourth sections (about whether the Ministry of Justice is aware of the process opened to Spain for breach of the Aarhus Convention, if the Ministry of Justice is aware that the repeated failure to comply with the Resolutions of the Compliance Committee and of the Parties that signed the treaty may have negative consequences for Spain, or what measures the Ministry of Justice has taken or is considering to take in this regard), such request is not framed in article 13 transcribed from the law , nor does this norm provide, therefore, coverage to the request made, without prejudice to the fact that it could be channelled under the constitutional right of petition, regulated by Organic Law 4/2001, of November 12, regulating the Law of Petition. Thus, in the exercise of this fundamental right, petitions can incorporate a suggestion, an initiative, an information, express complaints or pleas.

In the referred sections, access to a document or file is not requested, but rather, they reflect the applicant's desire to obtain the position of the executive in a specific open matter.

Secondly, and regarding the second paragraph, which requests that a copy of any document related to the subject matter be sent, and in the case that there is information with some type of protection or classification, what documents are and what is Act establishes it expressly, this Directive Center considers:

- a) Which refers to an open file and whose information is, therefore, in the process of being drawn up.

In fact, internal documentation is required regarding the process opened to Spain in compliance with Decision IV/9 (f) of the meeting of the parties to the Aarhus Convention.

- b) That the information required is subsumed in the case of denial contemplated in article 14
c) of the law of reference, by affecting the foreign relations of our country.

However, which is also reminded that currently the documentation, and the position of Spain to date is in the following public link of the Convention:

<https://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fifth-meeting-of-the-parties-2014/spain-decision-v9k.html>.

Consequently, as provided in letter e) of article 18.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance, this General Technical Secretariat resolves to deny the request for access to the public information.

Against this resolution, which puts an end to the administrative procedure, a contentious-administrative appeal may be filed before the Superior Court of Justice of Madrid or before the Superior Court of Justice in which the applicant has his domicile, at his election, within the term of two months or, previously and optionally, claim before the Council of Transparency and Good Government, within a period of one month. In both cases, the term will be counted from the day following that in which the notification of the present resolution takes place. (Cf. Arts 20.5, 23 and 24 of Law 19/2013, of December 13, on transparency, access to public information and good governance, in relation to Arts 30, 112.2 and concordants of Law 39 / 2015, of October 1, of the Common Administrative Procedure of the Public Administrations, and to the Law 29/1998, of July 13, governing the Contentious-Administrative Jurisdiction).

The Technical Secretary General,



José Américo Alonso.

Unofficial translation from the original Spanish