



## Economic and Social Council

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### Economic Commission for Europe

#### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

##### Fourth session

Chisinau, 29 June–1 July 2011

Item 5 (b) of the provisional agenda

##### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

### **Draft decision IV/9f on compliance by Spain with its obligations under the Convention**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MP.PP/2011/11), as well as the addendum to the report of its twenty-sixth meeting (ECE/MP.PP/C.1/2009/8/Add.1) with regard to a case concerning the decision-making on a residential development project in the city of Murcia, Spain, and the addendum to the report of its twenty-eighth meeting (ECE/MP.PP/C.1/2010/4/Add.2) with regard to a case concerning the general failure of the public authorities in Spain to implement the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, as illustrated in a number of examples in the town of Almendralejo,

*Encouraged* by the willingness of Spain to discuss in a constructive manner the compliance issues in question with the Committee, and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1), that:

(a) As a result of a public authority ignoring a request for environmental information for a period of three months after the submission of the request, by failing to provide the information in the form requested without giving any reasons, and by imposing an unreasonable fee for copying the documents, Spain had failed to comply with article 4, paragraphs 1 (b), 2, and 8, of the Convention;

(b) As a result of a public authority setting a time frame of 20 days during the Christmas holiday season for the public to examine the documentation and to submit comments in relation to the Urbanization Project UA1, Spain had failed to comply with the requirements of article 6, paragraph 3, referred to in article 7;

(c) The failure of Spanish system of access to justice to provide adequate and effective remedies as shown in that case constituted non-compliance with article 9, paragraph 4 of the Convention. The Committee also took note of the evidence demonstrating that, in practice, if a natural or legal person loses in the court of first instance against a public authority, appeals the decision and loses again, the related costs are being imposed on the appellant; it stressed that if this trend reflected a general practice of courts of appeal in Spain regarding costs, this would also constitute non-compliance with article 9, paragraph 4;

2. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2009/36 (ECE/MP.PP/C.1/2010/4/Add.2), that:

(a) As a result of public authorities not making the requested information available unless an interest was stated on the part of the requester, the Party concerned had failed to comply with article 4, paragraph 1, of the Convention;

(b) As a result of public authorities not responding or delaying response to requests for environmental information, and without notifying the requester that a one-month delay was needed along with reasons for that delay, the Party concerned was not in compliance with article 4, paragraph 2;

(c) The public authorities did not allow for access to information in the form requested, and did not provide copies, and as a result the Party concerned failed to comply with article 4, paragraph 1 (b), in conjunction with article 6, paragraph 6 of the Convention;

(d) Public authorities set inhibitive conditions for public participation, and as a result the Party concerned failed to comply with article 6, paragraphs 3 and 6;

(e) Local authority officials insulted the communicant publicly in the local mass media for its interest in activities with potentially negative effects on the environment, and thus that the Party concerned failed to comply with article 3, paragraph 8;

(f) By failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small non-governmental organization (NGO), the Party concerned failed to comply with article 9, paragraph 5, of the Convention, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4; and also stressed that maintaining a system that would lead to prohibitive expenses would amount to non-compliance with article 9, paragraph 4;

3. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MP.PP/C.1/2009/8/Add.1, para.119, and ECE/MP.PP/C.1/2010/4/Add.2, para. 75) and the willingness of Spain to accept them;

4. *Also welcomes* of the progress made by the Party concerned in implementing the Committee's findings and recommendations, in particular with regard to access to information and public participation, and encourages the Party concerned to continue its efforts in this direction in all provinces of Spain;

5. *Notes* that further action should be taken by the Party concerned to ensure that fees charged by public authorities for provision of information relating to urban planning and building are the same as for information relating to the environment;

6. *Further notes* that awareness should be raised among competent authorities and their officials in implementing the time frames for public participation in decision-

making processes in such a manner so as to exclude holiday seasons and allow for broad participation;

7. *Welcomes* the many relevant capacity-building initiatives for civil servants, the judiciary and students at the National Institute of Public Administration, and encourages the Party concerned to organize similar activities in a decentralized manner;

8. *Recognizes* that further efforts, in particular in the area of access to justice, are needed to overcome any obstacles of fully implementing article 9, paragraphs 4 and 5, of the Convention;

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:

- (a) Injunctive relief in cases of environmental interest;
- (b) Award of legal aid to environmental NGOs; and
- (c) The rule of dual representation;

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;

- 11. *Undertakes* to review the situation at its fifth session.
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