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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

#### Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

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

### **Report of the Compliance Committee\***

#### **Compliance by Spain with its obligations under the Convention**

#### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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\* The present document is being issued without formal editing.



## I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9k on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## II. Summary of follow-up

2. On 12 September 2014, the Party concerned informed the Committee that the Ordinance regulating fees for environmental information at the national level had been adopted and published in its official journal. On 13 November 2014, the communicant of communication ACCC/C/2008/24 provided comments on this development.

3. The Party concerned provided its first progress report on the implementation of decision V/9k on 19 December 2014.

4. At the Committee's request, on 2 January 2015 the secretariat forwarded the first progress report of the Party concerned to the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36, inviting them to provide their comments on that report by 23 February 2015. No comments were received from the communicants.

5. By letter of 13 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9k to the Party concerned and the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36.

6. On 19 October 2015, the communicant of communication ACCC/C/2009/36 provided comments on the Committee's first progress review.

7. The Party concerned provided its second progress report on 21 October 2015 (dated 15 October 2015).

8. At the Committee's request, on 6 November 2015, the secretariat forwarded the second progress report of the Party concerned to the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36, inviting them to provide their comments on that report by 27 November 2015. The communicant of communication ACCC/C/2009/36 provided its comments on 12 December 2015 and the communicant of communication ACCC/C/2008/24 on 6 March 2016 (dated 4 March 2016).

9. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9k in open session with the participation of representatives of the Party concerned and the communicant of communication ACCC/C/2009/36 by audio conference. On 6 April 2016, the Party concerned provided a written copy of the oral statement it made during the meeting.

10. On 12 April 2016, the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 provided additional information regarding the second progress report of the Party concerned.

11. By letter of 25 October 2016, the secretariat sent the Committee's second progress review on the implementation of decision V/9k to the Party concerned together with a reminder to provide its final progress report and information on all measures necessary to implement decision V/9k by 31 December 2016.

12. On 5 December 2016, the Party concerned provided an update. On 24 February 2017, the communicant of communication ACCC/C/2009/36 submitted comments on the update by the Party concerned.

13. At its fifty-sixth meeting of the Committee (Geneva, 28 February – 3 March 2017), the Party concerned participated by audio conference in the Committee's review of the implementation of decision V/9k. Despite being invited, none of the communicants attended the session. On 1 March 2017, the Party concerned provided a written copy of the oral statement it had made during the meeting.

14. The Committee prepared its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9k in closed session and adopted it through its electronic decision-making procedure on 26 June 2017. It requested the secretariat to send the report to the Party concerned and communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36.

### III. Considerations and evaluation by the Committee

15. In order to fulfil the requirements of paragraphs 5 and 6 of decision V/9k, the Party concerned would need to provide the Committee with evidence that:

(a) The necessary measures have been taken to ensure that the fees charged by the Murcia City Council for the provision of copies of land use and urban planning information are reasonable and are set out in a publicly available schedule of fees;<sup>1</sup> and

(b) Measures have been taken 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.<sup>2</sup>

16. The Committee welcomes the constructive engagement shown by the Party concerned during the intersessional period, including the two progress reports received from the Party concerned, which were received on time, as well as the further information provided by the Party concerned on 12 September and 19 December 2014, 6 April and 5 December 2016 and 1 March 2017.

17. The Committee also welcomes the comments provided by the communicants on 13 November 2014, 19 October and 12 December 2015, 6 March and 12 April 2016 and 24 February 2017.

#### **Paragraph 5 of decision V/9k: Fees for copying environmental information charged by the Murcia City Council**

18. With regard to paragraph 5 of decision V/9k, in its second progress report the Party concerned reported that the new fees for copies of environmental information to be charged by Murcia City Council were published in the Murcia Official Gazette on 24 December 2014 and entered into force on 1 January 2015.<sup>3</sup> The Party concerned further reported that, in accordance with article 8 of Murcia's Ordinance, records relating to urban planning and environmental information as well as copies of less than 20 pages of A4 format and information sent electronically are exempted from payment.<sup>4</sup> It further stated that, from the

<sup>1</sup> Decision V/9k, para. 5.

<sup>2</sup> Decision V/9k, para. 6.

<sup>3</sup> Second progress report by the Party concerned, 21 October 2015, para. 5.

<sup>4</sup> Ibid, para. 6.

20<sup>th</sup> page (the first 19 pages being exempted), copies in black and white A4 were 0.03€ per page and in colour A4 0.12€ per page.<sup>5</sup>

19. As noted in its second progress review, the Committee welcomes the adoption by Murcia City Council of the schedule of fees as published in the Murcia Official Gazette on 24 December 2014 and which entered into effect on 1 January 2015. The Committee finds that the fees are set at a reasonable level. The Committee also welcomes the publication of the schedule of fees on the Murcia City Council's website.<sup>6</sup>

20. The Committee accordingly finds that the Party concerned has fulfilled the requirements of paragraph 5 of decision V/9k.

#### **Paragraph 6 of decision V/9k: Legal aid for NGOs**

21. In its second progress report, the Party concerned stated that the review of the national legislation on legal aid was ongoing and that the only changes to the legislation had concerned victims of terrorism and of domestic violence.<sup>7</sup> The Party concerned further referred the Committee to article 23, paragraph 2, of Law 27/2006 (which was already applicable when the Committee issued its findings on communication ACCC/C/2009/36)<sup>8</sup> and submitted that Legal Aid Commissions as well as judges increasingly recognized that provision.<sup>9</sup>

22. In its second progress review, the Committee noted the slow progress of the Party concerned in implementing paragraph 6 of decision V/9k.<sup>10</sup> More specifically, the Committee regretted that the Party concerned had taken no actual measures 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.<sup>11</sup> The Committee pointed out that paragraph 6 of decision V/9k recommends the Party concerned to take actual measures to ensure that the obstacles are overcome, and that it is not enough to rely on legal aid commissions and the judiciary "increasingly recognizing" these obstacles at their own discretion.<sup>12</sup>

23. In its update provided on 5 December 2016, the Party concerned concurred that its actions taken so far had been insufficient and that it believed that law reform would be necessary to adequately implement paragraph 6 of decision V/9k.<sup>13</sup> In its update, the Party concerned further reported that the Ministry of Agriculture, Food and Environment had undertaken efforts to bring about this legal reform but the Ministry of Justice had not adopted a requisite legislative initiative.<sup>14</sup>

24. In its statement delivered at the fifty-sixth meeting, the Party concerned further stated that its government had remained a caretaker government for 300 days and that therefore the president could not submit any bill to parliament.<sup>15</sup> While appreciating the practical challenges this presented, the Committee points out that the internal organization

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<sup>5</sup> Ibid, para. 7.

<sup>6</sup> Committee's second progress review, 14 October 2016, para. 34.

<sup>7</sup> Second progress report by the Party concerned, 21 October 2015, paras. 10-11.

<sup>8</sup> ECE/MP.PP/C.1/2010/4/Add.2, adopted on 8 February 2011.

<sup>9</sup> Second progress report by the Party concerned, 21 October 2015, paras. 12-13.

<sup>10</sup> Committee's second progress review, 14 October 2016, para. 36.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Update from the Party concerned, 5 December 2016.

<sup>14</sup> Ibid.

<sup>15</sup> Statement delivered at the Committee's fifty-sixth meeting, 1 March 2017, p. 1.

of the Party concerned does not constitute an excuse for non-compliance with the Convention.

25. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 of decision V/9k.

#### IV. Conclusions

26. The Committee welcomes the constructive engagement with the Committee demonstrated by the Party concerned throughout the intersessional period.

27. The Committee finds that the Party concerned has fulfilled the requirements of paragraph 5 of decision V/9k to the extent that the Party concerned is no longer in a state of non-compliance with article 4, paragraph 8 of the Convention with respect to the specific points of non-compliance identified in paragraph 79 of the Committee's findings on communication ACCC/C/2008/24.<sup>16</sup>

28. The Committee finds that the Party concerned has not yet met the requirements of paragraph 6 of decision V/9k.

29. Pursuant to paragraph 35 of the annex to decision I/7, the Committee recommends to the Meeting of the Parties that it:

(a) Requests the Party concerned to take measures, as a matter of urgency, 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 for NGOs identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 are overcome;

(b) Calls upon all relevant ministries of the Party concerned, including the Ministry of Justice, to work together in that regard;

(c) Provides detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(d) Provides such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the above recommendations;

(e) Participates (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

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<sup>16</sup> ECE/MP.PP/C.1/2009/8/Add.1.