

RE: Draft report of the Aarhus Convention Compliance Committee on the implementation of decision IV/9f of the Meeting of the Parties concerning compliance by Spain

COMMENTS BY THE COMMUNICANT – ASOCIACIÓN PARA LA JUSTICIA AMBIENTAL (AJÁ).

AJÁ welcomes the efforts made by the Compliance Committee and the Party concerned in order to enforce the Aarhus Convention in Spain and in Murcia Region, where the Case 24 took place and nowadays AJÁ is based.

After the examination of the documents which were sent by the Party concerned – including the comments of 21 March 2014 – we want to express that the situation is far from a compliance “status”. It means, that the Party concerned is in non-compliance regarding some of the aspects of Case 24, specially because of the attitude of the regional and local authorities in Murcia and it is in non-compliance regarding Case 36 because of the attitude of Ministry of Justice. For this reason we understand that Compliance Committee should take the “Alternative 2” of the Draft Report on the implementation of Decision IV/9f.

Despite the tremendous work of the Aarhus National Focal point to obtain the necessary regulatory steps from the Murcia Municipality and Murcia regional government to get into compliance with Aarhus Convention (see the letters included in the Follow-Up process), the cost of the access to environmental information in Murcia city is not reasonable (too expensive) and the timeframes for public participation are still too short and there is no limit to produce it in holiday season.

1) Cost of Environmental information.

The cost of the environmental information in Murcia city, under the Tax Regulation (see in the Follow-Up Process’ website “Regulatory Ordinance in Murcia” and its page 3) is 1,10 euro each simple copy for DIN A4 - one side. This is because after the Decision IV/9f the Municipality of Murcia reduced the price for environmental information in 50%. It means, each normal copy in the municipality cost 2,20 euro and environmental information 1,10 euro. The environmental information, which consists only in 19 pages, is for free. It means, if a person want to obtain environmental information in Murcia on paper, and it consist in 400 pages (which is normal in environmental matters because of the complexity of projects and authorizations), this person must pay 440 euro. The fee for a single copy of environmental information under the draft national ordinance (only for State Administration) is for black and white A4 photocopying at €0.03 per page, and cooler A4 photocopying at €0.12 per page. The

price for a commercial copy outside of the building of the Municipality in Murcia is 0,03 euro, as in Geneve or Brussels.

For land use and urban planning information, taking in account the last document sent by the Party Concerned and called “last report of the Municipal Tax Agency” the cost for a map/blueprint/drawing is 1,55 euro each page DIN A4 black and white and 1,90 euro for DIN A3 black and white. One copy in colour costs 1,95€ (DIN A4) and 2,30 DIN A3.

If we read - sadly only on Spanish - the last report of the Municipal Tax Agency (sent by the Party concerned the last 21<sup>st</sup> of March) we can conclude that the Murcia Municipality have no intention to reduce the fees of environmental information (including land use and urban planning information) because of the so called “coste de prestación del servicio” (*cost of the service*) and the needs of the Adjustment Plan of Royal Law-Decree 4/2012. Ther local authority affirms that the fees are conform to Spanish Law (Royal Decree 2/2004).

## 2) Public participation

In this matter, AJÁ declares that there are no measures taken by the Party concerned in order to ensure that timeframes of public participation are beyond 20 days and exclude holiday seasons.

AJÁ want to express his concerns regarding the attitude of the Party concerned regarding “holiday season” issue. The Party concerned has stated: “Having noted the above, we wonder in which way has the communicant argued that the alleged “holiday season” adversely affected public participation. From a logical point of view, we could likely get to the conclusion that a person who does not have to spend 8 hours in its daily job could have more time to study all the documentation and to prepare allegations. Unless of course he or she is out on vacation, which statistics have proved that it is not the case.”

We are extremely against this view and we want to recall the meaning of the Findings and Recommendations of the Compliance Committee regarding the Case 24. Every single person understand that public participation must be “real and effective” and every single person understand that during holiday season every person look for time to rest and meet family. If a group of citizens want to achieve effective public participation in Urban Planning, it needs experts and a general movement of resources. It is sadly too usual that Administration use holiday seasons to publish polemic projects trying to avoid public participation and get silence from the citizens, which are busy by preparing or just enjoying holidays. This was the reason of our claim inside the communication to the Compliance Committee and this was the meaning of the Recommendation to Spain at this point. If the Party concerned, bringing statistics about Spanish habits on tourism,

want to “re-open” the debate about the recommendations trying to avoid the necessary regulatory changes in Murcia Land Use Law, we are against and we want the Compliance Committee to pay attention about this attitude.

As we don't want to reopen the debate, we will not answer to other comments made by the Party concerned regarding the juridical nature of the Urbanization Plan, because is not needed.

### 3) Access to Justice

AJÁ declared that the mentioned Study of the Party concerned on Access to Justice in Environmental Matters was “correct”. Indeed it is a more than valuable diagnosis/assessment about the situation of access to justice in Spain.

Taking in account the interesting suggestions made by MAGRAMA in the Study, AJÁ do not see any regulatory measure taken by the Ministry of Justice in order to avoid the detected problems regarding injunctive relief, legal aid schemes and dual representation.

We meet again a problem of coordination between Administrations, in this case in the same State level. MAGRAMA is doing a tremendous work, but Ministry of Justice does not assume the necessary changes.

Regarding injunctive relief no measures have been taken in the Law 29/1998 (Administrative Procedural Act) and Law 1/2000 (Civil Procedural Act) to avoid unreasonable (expensive) deposit of a bond before the decision and to ensure that injunctive relief will be taken before of the action (damage to the environment).

Regarding legal aid schemes the situation nowadays after the approval of the Draft of a new Law on Legal Aid in the Council of Ministers is extremely difficult for NGOs, which have reacted in the media and written a letter to the Ministry of Justice (AJA can provide the Compliance Committee with further documentation on English and Compliance Committee could ask for the Report of the last session of the Task Force on Access to Justice). The necessary changes requested in the mentioned “Study on Access to Justice in Environmental Matters in Spain” have not been taken. Instead of this, in the Draft Law, environmental organizations do not appear together with other organizations (consumers, trade unions, Red Cross) and do not have direct legal aid. It means that the Ministry didn't hear to the suggestions of MAGRAMA and do not change the Law to make clear that environmental NGOs are directly beneficiaries of legal aid. It still remain the discussion if NGOs must proof some conditions (financial and legal), which are difficult for small NGOs.

Regarding dual representation AJA declares that in the Labour Law Procedural Act, workers do not need to hire mandatory a professional called “Procurador”. No one can say that the Labour Courts are functioning in a chaotic manner or without the necessary

guaranties for claimants because of the lack of “Procurador”. If the Aarhus Convention requests the States to reduce financial barriers, case 36 demonstrated that dual representation is a barrier for environmental cases and the Ministry of Justice is doing nothing to change it.

For the above mentioned reasons, AJÁ states that the Party concerned has not taken the necessary regulatory steps (change of the legal system) in order to fulfill its obligations with article 9.4 and 9.5 of the Convention and to follow up the Decision IV/9f. In this case AJÁ suggest the Compliance Committee to adopt the Alternative 2 of the Draft Report on the Implementation of Decision IV/9f.

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Chairman

