



21 March 2014

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 SPAIN

1. - TIME FRAMES APPLICABLE FOR PUBLIC PARTICIPATION IN DECISION-MAKING IN ENVIRONMENTAL MATTERS

1.1. – Introduction

The communicant (AJÁ) initially reported two instances of time frames that allegedly did not allow for effective participation:

- a) for the Land Allotment Plan ZA-Ed 3 of November 2005, the notice was published on 25 August 2005 providing a time frame of one month for the public to submit comments; and
- b) for the Urbanization Project UA1 of the Land Allotment Plan ZA-Ed3 of April 2006, the notice was published in the *Official Journal* on 22 December 2005 providing a time frame of 20 days for the public to submit comments.

AJÁ alleged that, considering that the comment period started during the summer holiday season for the first case and at the Christmas holiday season for the second case, as well as the volume of the related documentation and the time necessary for the public to process the documentation, the time frames of one month and 20 days, respectively, were unreasonably short for the public to prepare and participate effectively in the environmental decision-making process regarding those activities.

As regards the allegation concerning the Urbanization Project UA1, the Compliance Committee (CC) found that a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country.

As for the allegation concerning the Land Allotment Plan ZA-Ed 3, the CC noted that while the month of August is indeed a traditional summer holiday season month in many countries, the given time frame began on 25 August 2005 and included most of the month of September, which is considered a “regular” working month. Under these circumstances, the Committee did not consider the given time-frame as amounting to non-compliance with the Convention.

In the light of the above, the CC recommended that “Public participation procedures include reasonable time frames for the different phases allowing for sufficient time for the public to prepare and participate effectively, taking into account that holiday seasons as part of such time



frames impede effective public participation; due to the complexity and the need to consult with experts, land use legislation be reviewed to expand the existing time frame of 20 days in the light of the findings and conclusions of the Committee”.

Now, the draft report of the CC on the implementation of decision IV/9f of the Meeting of the Parties concerning compliance by Spain, dated 4 March 2014, states “that [unless clear evidence is provided to the Committee before its 44th meeting that Murcia’s land use law has been amended] the Party concerned has failed to comply with the recommendation set out in paragraph 119 (a) (v) of the findings on ACCC/C/2008/24 (C-24), and welcomed by the Meeting of the Parties through paragraph 3 of decision IV/9f.”

To comment on this last draft report, a further analysis of all the facts, legal framework, relevant administrative decisions, findings and recommendations by the CC has been made, resulting on the following considerations:

1.2. – Timeframes of Public Participation procedures in Murcia’s land use legislation.

Article 9 of the Murcia Land Use Law (Legislative Decree 1/2005, 10 June, approving the consolidated text of the Land Use Law of the Region of Murcia) generally provides that the competent authorities will ensure the broadest participation of all citizens in the elaboration and management of urban plans.

The relevant urban instruments with respect to C-24 are the Partial Plans or Land Allotment Plans (*Planes Parciales*) and the Urbanization Projects (*Proyectos de Urbanización*), which are regulated differently in terms of public participation time-frames due to their different scope: the former are instruments of planning while the latter are executions of the plans.

Partial Plans as instruments of urban planning.

According to article 105 of the Law, the objective of Partial Plans, as instruments of urban development, is to make a detailed planning of the building land for the different sectors established under the General Municipal Urban Plan. The Partial Plan or Land Allotment Plan must include, among other aspects, a determination of its territorial scope; a detailed planning of the sector, including a zoning with the assignment of uses and building typologies; a regulation of the use, exploitation and sanitary-hygienic conditions of the lands and buildings, as well as the aesthetical requirements of the constructions; indication of the allotments reserved for public services equipments such as parks, gardens and other common spaces, etc.

Regarding public participation, Land Allotment Plans must be submitted to public hearing for a period of one month, through its announcement in the Official Journal of the Region and in the two most read newspapers of the region.

Other planning instruments of the Land Use Law with the same commenting period of one month include: Land Use Guidelines (described in article 20 as directing instruments for the regulation of activities and the coordination of urban and land use policies), Land Use Plans (described in article 24 as guiding and operational instruments for the regulation of land use policies in specific geographical areas or activities) or, at municipal level, the Land Use Municipal General Plan (described in article 96 as the comprehensive planning instrument of the municipality)



Urbanization Projects as instruments of execution

Besides these planning instruments, the Land Use Law also regulates a number of execution instruments developing urban plans.

According to article 159.1, Urbanization Projects are aimed at executing the urbanization works in the different sectors or Action Units, developing the provisions of the urban plans, eliminating the architectural barriers and ensuring accessibility. Article 159.2 provides that Urbanization Projects will not modify the provisions of the plan.

As we can see, Urbanization Projects are “building projects” that put into practice the provisions and determinations of the urban plans. In other words, the Urbanization Project is the instrument that allows to physically transforming the building lands under the specifications of the plan.

Accordingly, in terms of public participation, it can be understood that the commenting period for the approval of the Urbanization Project is slightly shorter than for the approval of the plan which is being executed. In this regard, article 159.5 provides that Urbanization Projects will be submitted to public hearing for a period of 20 days.

In this particular C-24 case, the Communicant and the rest of interested persons were able (and so they did) to participate in the first place in the approval of the Partial Plan (Land Allotment Plan ZA-Ed 3) for a period of one month and, afterwards, to comment again on the Urbanization Project (Urbanization Project UA1 of the Land Allotment Plan ZA-Ed3) during a period of 20 working days.

1.3. – Calculation of the 20 days time-frame according to the relevant legislation

With respect to the extension of a particular time-frame, it is of the utmost importance to be mindful of the legal regime applicable to time calculation when dead-lines are expressed in days.

Article 48.1 of national Law 30/1992 regulating the Legal System of Public Authorities and the Common Administrative Procedure provides that, unless otherwise indicated by another Law or European Union regulation, when time-frames are expressed in days, these will be considered working days, so that Sundays and holidays will be excluded from the calculation. In case days are to be considered calendar days, this circumstance will be expressly noted in the relevant notifications.

Besides, article 48.4 provides that time-frames expressed in days will start from the day after the act is notified or published.

According to these general provisions, and given that there are no other laws or EU dispositions in this regard, the 20 days time-frame provided by Murcia's Land Use Law must be considered working days, which means that Sundays and holidays must be excluded from the count.

This means that, on a regular basis, 20 working days will be equal to 23 or 24 calendar days, if there are no holidays in between. If this would be the case, time-frames may be extended to 27 or 28 calendar days.

In the particular case of the Urbanization Project UA1 of the Land Allotment Plan ZA-Ed3 of April 2006, the notice was published in the *Official Journal* on 22 December 2005 providing a time frame of 20 days for the public to submit comments.



According to the above provisions, the 20 working days started on Friday 23rd, the day after the act was published, and Sundays 25th, 1st, 8th, 15th and Friday 6th (Epiphany) were excluded.¹ This means that the last day to participate was Monday 16 January, which makes a total of 26 calendar days.

December 2005							January 2006						
Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
			1	2	3	4							1
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30	31					

In the light of these considerations, we cannot share the CC's view that a *“period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country”* because, as it's been explained, the period of 20 days does not include, but in fact excludes, days of general celebration.

1.4. – The “Holiday Season” issue

In Spain there are no official holiday seasons as such. As in any other country, the holidays, in its sense of non-working periods, can be distributed freely by the worker. Some decide to spend most of the days in August, some in June, July, etc. Others decide to distribute them during the whole year. With respect to the Public Administration, the service is “uninterrupted” as the only non-working periods are Sundays and official bank holidays, which are not seasons as such but isolated dates.

To illustrate this, we think it can be useful to examine the official statistics from the Ministry of Industry, Energy and Tourism regarding the vacation trips of the Spaniards.

<http://www.iet.tourspain.es/WebPartInformes/paginas/rsvisor.aspx?ruta=%2fFamilitur%2fEstructura%2fAnual%2fN%u00famero+de+viajes+por+meses+seg%u00fan+tipo+de+viaje.+Ref.1833&par=1&idioma=es-ES&anio=2012>

¹ 25 December (Christmas Day) and 1 January (New Year's Day) are also holidays, but that particular season they happened to clash with a Sunday.

THE SPANISH DOMESTIC AND OUTBOUND TOURISM SURVEY (FAMILITUR)

Number Of Trips Broken Down By Months And Type Of Trip.

Absolute Data

Year 2012. Definitive data.

	Total	Easter	Summer Holidays	Christmas Holidays	Weekend	Long Weekend	Other *
Total	158,739,314	5,038,426	19,171,028	4,313,597	81,366,962	5,549,480	43,299,820
January 2012	10,858,731	0	0	2,459,515	4,855,571	NaN	3,518,219
February 2012	9,798,279	0	0	0	5,951,318	190,942	3,656,019
March 2012	11,629,800	0	0	0	7,264,404	466,533	3,898,863
April 2012	16,247,946	5,038,426	0	0	6,083,498	138,772	4,987,249
May 2012	13,460,352	0	0	0	8,104,123	872,242	4,483,988
June 2012	13,607,510	0	1,272,148	0	9,074,951	NaN	3,186,640
July 2012	17,175,608	0	4,758,416	0	9,118,316	NaN	3,280,372
August 2012	20,731,519	0	9,805,313	0	6,920,266	516,126	3,489,813
September 2012	14,049,246	0	3,210,354	0	7,527,698	NaN	3,256,947
October 2012	10,360,991	0	124,797	0	5,851,404	1,026,384	3,358,406
November 2012	10,114,868	0	0	0	6,019,802	926,523	3,168,543
December 2012	10,704,465	0	0	1,854,081	4,595,611	1,240,011	3,014,762

As we can see, the majority of trips are made during the summer time, in the months of June, July, September and, above all, August. In this regard, it is interesting to note that September, which was considered by the CC findings to be a “*regular working month*” reflects a number of 14.049.246 total trips, while the months of December or January do not reach 11 million trips. Indeed, December is the fourth month with the least number of trips, less than September and the rest of summer months, but also less than March, April or May.

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.

In any event, as we say, AJÁ did not present any argument whatsoever and only pointed out that the “*comment period started during Christmas Holiday Season*” (see additional information submitted on 28/08/2008). What is more, the communicant indicated in the following paragraph that “*Nevertheless, tens of people submitted comments.*”

1.5. – Concluding remarks

To sum up, we consider that the public participation procedure in the approval of the Urbanization Project UA1 of the Land Allotment Plan ZA-Ed3 did allow for effective participation and was in line with the requirements of article 6, paragraph 3, of the Convention, taking into account that:

- The time-frame of 20 days established by the Murcia’s Land Use Law, as the rest of time-frames expressed in days, does not include Sundays or holidays, resulting that, **in this**



particular case, the dead-line was extended for a period of 26 calendar days, from 22 December to 16 January.

- b) Official statistics show that **this period can not be considered part of a holiday season in terms of vacations**. On the contrary, many other months of the year (including September, a “regular working month” in the view of the CC) reflect a higher number of vacation trips.
- c) The 26 calendar days can be considered sufficient, taking into account that **the Urbanization Project is a technical execution instrument that implements strictly the provisions of the Partial Plan**.

Finally, as the CC was informed in previous communications, the regional Government of Murcia is considering amending the Land Use Law. In this regard, from the part of this National Focal Point, as soon as we have access to the first draft of the amendment, an official communication will be sent to the Murcia Regional Aarhus Focal Point stressing again the importance of taking on board the provisions of the Aarhus Convention regarding public participation time-frames.

2. - FEES FOR PROVISION OF INFORMATION RELATING TO URBAN PLANNING AND BUILDING

The draft report of the CC on the implementation of decision IV/9f of the Meeting of the Parties concerning compliance by Spain, dated 4 March 2014, states “that [unless the Party concerned can, before the forty-fourth meeting of the Compliance Committee, provide clear evidence that the Murcia City municipality has adopted a new fee system specifying reasonable charges for providing copies of land use, urban planning and other environmental information] the Committee finds that the Party concerned remains in non-compliance with article 4, paragraph 8, of the Convention in this respect.

Since the CC presented its findings on ACCC/C/2008/24, the Murcia City Council has taken the following actions:

First, on January 1, 2011, a new municipal Ordinance was adopted providing for specific regulation of issuing copies of administrative documents affected by the Aarhus Convention. Specifically, Article 8.c of the Ordinance provides for exemption from payment of the fee when supplying copies of environmental information in less than 20 DIN A4 pages or sending this information electronically. Besides, paragraph 7 of section 1 of the Annex “Tarifas” (prices) provides a 50% reduction in reproduction and delivery of environmental information, the total that would result from applying the same rates established in Ordinance 1.3 regulating the fees for the provision of urban services.

More recently, on 28 December 2013, a new amendment of the Ordinance for issuing copies of administrative documents was passed. **The Ordinance (see ANNEX I) established a fee of 1 € for a copy of DIN A4 containing any kind of information** and maintained the exemption from payment when supplying copies of environmental information in less than 20 DIN A4 pages or sending this information electronically.

Notwithstanding the above, as the CC has been recently informed, the Municipal Tax Agency of the Murcia City Council will proceed to the study and review of the current fees and will propose



the relevant measures, in line with the future regulation on environmental fees at the General Administration of the State.

In this regard, the draft national Ordinance regulating fees for environmental information at national level has been already submitted to public participation and comments from the Ministerial Departments. The draft Ordinance sets this schedule of charges:

FEES FOR PROVISION OF ENVIRONMENTAL INFORMATION	
B/W photocopy (DIN A4). From 20th copy (first 19 copies are free of charge)	0,03 euros/page
B/W photocopy (DIN A3).	0,04 euros/page
Colour photocopy (DIN A4). From 20th copy (first 19 copies are free of charge)	0,12 euros/page
Colour photocopy (DIN A3)	0,25 euros/page
m ² of b/w maps	0,42 euros
m ² of colour maps	1,10 euros
DVD-R or DVD+R	0,61 euros
DVD RW	0,87 euros

3. - AWARD OF LEGAL AID TO ENVIRONMENTAL NGOS

According to the draft report of the CC on the implementation of decision IV/9f of the Meeting of the Parties concerning compliance by Spain, dated 4 March 2014, the Committee is still not convinced that sufficient efforts have been taken to overcome remaining obstacles of to the full implementation of article 9, paragraphs 4 and 5 with respect to legal aid to NGOs.

Consequently, the Committee recommends Spain to report, by 31 December 2014, on the measures taken to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5 with respect to legal aid for NGOs are overcome.

As reflected in the draft report, our Study on Access to Justice in Environmental Matters found that the current drafting of article 23.2 of Law 27/2006 was not as clear and unambiguous as would be desirable, and with a view to redress to the extent possible the current disparity of jurisprudence, the MAGRAMA expressed its support for the possible review of the current regulation.

In this regard, we inform that **there is an ongoing review process of the national legislation on free legal aid**. The Government of Spain, through its Council of Ministers, has recently



approved a draft of a new Law on Free Legal Aid that will now be discussed at parliamentary level (Senate and Congress) before its final approval.

We will of course keep the CC updated on the outcomes of this process.

With best regards,

MARÍA JOSÉ GÓMEZ GARCÍA-OCHOA

National Focal Point of the Aarhus Convention

Ministry of the Agriculture, Food and Environment

Plaza de San Juan de la Cruz, s/n

28071-Madrid.

Tel: +34 91 597 68 28

e-mail: mjgomez@magrama.es