

**Statement from the communicant in case PRE/ACCC/C/2017/159 Spain**  
**Open session 63<sup>rd</sup> meeting of the Aarhus Convention Compliance Committee (11-15**  
**March 2019)**

- *Was an appeal in fact made to the Constitutional Court by the communicant?*

IIDMA filed an “amparo” appeal before the Constitutional Court on 8 November 2018. However, this Court has yet to accept the appeal.

- *If so, if the communicant were to ultimately succeed in its appeal, could the Constitutional Court through its judgment potentially remedy the non-compliance alleged in the communication?*

This appeal is against the violation by the Supreme Court of the fundamental right to an effective remedy recognized in article 24 of the Spanish Constitution, given the failure of the Court to provide an adequate reasoning for its judgment of 12 July 2018 in the case brought by IIDMA against the Spanish Transitional National Plan (TNP). The judgment of the Supreme Court was not based on a rationale of its own but on the rationale of one of the parties of the case. The “amparo” appeal was filed both against said judgment as well as against the decision of 19 September 2018 of the Supreme Court to reject the nullity action previously filed by IIDMA on 12 September 2018<sup>1</sup>.

Therefore, the appeal before the Constitutional Court does not address the substance of the TNP’s legality. It only addresses the infringement of a fundamental right. **If IIDMA were to succeed in the appeal the only remedy that the Constitutional Court could grant is the obligation for the Supreme Court to issue another judgment on the case, based on its own rationale and wording.** Even in such a case, **the Supreme Court will not reconsider the substance of the TNP case while issuing a new judgment.**

- *Alternatively, could a favourable judgment from the Constitutional Court be used by the communicant to re-open the Supreme Court’s procedure thereby giving rise to a possibility that a re-started procedure in the Supreme Court might ultimately remedy the alleged non-compliance?*

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<sup>1</sup> The content of the nullity action and more information on the procedure undertaken by IIDMA prior to filing the amparo appeal was sent to the Committee on 3 October 2018. For more information, please see here: [https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2017-159/Correspondence\\_with\\_the\\_communicant/frComm\\_ClientEarth\\_IIDMA\\_03.10.2018\\_update.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2017-159/Correspondence_with_the_communicant/frComm_ClientEarth_IIDMA_03.10.2018_update.pdf)

As stated above, if the Constitutional Court upholds IIDMA's appeal the Supreme Court will have to issue a new judgment but it will not have to reconsider the substance of the case. The new judgment by the Supreme Court will have to be based on sufficient and adequate reasoning in order to remedy the violation of the fundamental right to an effective remedy, but it will be based on the same grounds as the judgment of 12 July 2018. **Therefore, there is no possibility that they will remedy the alleged non-compliance. All domestic remedies were exhausted from the moment when the Supreme Court issued its judgment in July 2018.**

- *What is the likely timeframe for the Constitutional Court to issue its judgment?*

The procedures before the Constitutional Court are lengthy in time. According to information from the Constitutional Court's website, the judgment's issued in 2018 corresponded to cases initiated largely between 2015 and 2016. However, some of them were initiated earlier, taking up to 5 and 6 years in finalizing<sup>2</sup>.

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<sup>2</sup> For more information please see:  
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/List?sortOrder=desc&page=9>