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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

#### Compliance Committee

##### Thirty-first meeting

Geneva, 22–25 February 2011

### Report of the Compliance Committee on its thirty-first meeting

#### Addendum

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

#### Introduction

1. During the past intersessional period of 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), the Compliance Committee considered two communications (ACCC/C/2008/24 and ACCC/C/2009/36) concerning compliance by Spain with its obligations under on Convention. The following paragraphs review the findings and recommendations of the Committee with regard to these communications. After taking into consideration information submitted by the Party concerned in its national implementation report and the letter of the Party dated 8 February 2011, as well as information by the non-governmental organization *Asociación Senda de Granada Oeste* on 23 February 2011, the Committee at its thirty-first meeting concluded the draft of the present findings and recommendations. The Party concerned and the communicants were invited to provide comments. The Committee then, taking into consideration the comments submitted, adopted the present findings and recommendations using its electronic decision-making procedure and agreed to submit them to the Meeting of the Parties.

## **I. Implementation of recommendations with regard to communication ACCC/C/2008/24**

2. Communication ACCC/C/2008/24 was made on 13 May 2008 by the Spanish non-governmental organization Association for Environmental Justice (*Asociación para la Justicia Ambiental*) with regard to compliance by Spain with its obligations under article 4, paragraph 8, article 6, paragraphs 1, 2, 4 and 6, and article 9, paragraphs 2, 3, 4 and 5, of the Convention in connection with decision-making on a residential development project in the city of Murcia, Spain.

3. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7 of the Meeting of the Parties, the Committee at its twenty-sixth meeting (15–18 December 2009) found 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 the 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.

4. 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 were being imposed on the appellant; it stressed that if that trend reflected a general practice of courts of appeal in Spain regarding costs, that would also constitute non-compliance with article 9, paragraph 4.

5. In addition to the above main findings and conclusions, the Committee also noted with regret that Spain, by failing to submit written explanations or statements clarifying the matter addressed by the communication, had failed to comply with its obligations under the Convention as related to paragraph 23 of the annex to decision I/7. In the view of the Committee it is of the utmost importance for the effectiveness and credibility of the compliance mechanism that the procedural rules laid down in decision I/7 on review of compliance are complied with not only by the Committee, communicants and the secretariat, but also by the Parties to the Convention.

6. The Committee recommended to the Party concerned, with its agreement, to:

(a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) Only reasonable costs, equivalent to the average costs of a photocopy on paper or electronic means (CD-ROM/DVD) were charged for providing access to environmental information to the public at central, regional and local level, with such measures including a review of the Murcia City Council Fees Chart for Services;

(ii) Information requests were answered as soon as possible, and at the latest within one month after the request had been submitted, unless the volume and the complexity of the information justified an extension of that period up to two months

from the date of the request; and that related legislation was reviewed to provide for an easy and specific procedure to be followed, in the event of a lack of response to a request;

(iii) Clear requirements were established for the public to be informed of decision-making processes in an adequate, timely and effective manner, including informing public authorities that entering into agreements relevant to the Convention that would foreclose options without providing for public participation might be in conflict with article 6 of the Convention;

(iv) A study be carried out on how article 9, paragraph 4, was being implemented by courts of appeal in Spain; and in case the study demonstrated that the general practice was not in line with the provision at issue, to take appropriate measures to align it to the Convention;

(v) Public participation procedures included 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 impeded effective public participation; due to the complexity and the need to consult with experts, land use legislation was reviewed to expand the existing time frame of 20 days in the light of the findings and conclusions of the Committee;

(vi) Adequate, timely, and effective remedies, including injunctive relief, which were fair, equitable, and not prohibitively expensive were made available at first and second instance in administrative appellate courts for members of the public in environmental matters; and

(b) Develop a capacity-building programme and provide training on the implementation of the Aarhus Convention for central, local and regional authorities responsible for Aarhus-related issues, including provincial commissions granting free legal aid, and for judges, prosecutors and lawyers; and to develop an awareness-raising programme on Aarhus rights for the public.

7. The above findings and recommendations of the Committee are contained in an addendum to the report of the twenty-sixth meeting of the Committee (ECE/MP.PP/C.1/2009/8/Add.1).

## **II. Implementation of recommendations with regard to communication ACCC/C/2009/36**

8. On 2 March 2009, the Platform against the contamination of Almendralejo (*Plataforma Contra la Contaminación de Almendralejo*), submitted communication ACCC/C/2009/36 with regard to compliance by Spain with its obligations under article 3, paragraph 8, article 4, paragraphs 1 and 2, article 6, paragraphs 4 and 5, and article 9, paragraphs 1 and 5, of the Convention in connection with the general failure of the public authorities in Spain to implement the Convention. The communication presented a number of examples in Almendralejo in support of its allegations.

9. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, at its twenty-eighth meeting (15–18 June 2010), the Committee found 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 had not allowed for access to information in the form requested, and had not provided copies, and as a result the Party concerned had failed to comply with article 4, paragraph 1 (b), in conjunction with article 6, paragraph 6;

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

(e) Local authority officials had 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 had 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 had failed to comply with article 9, paragraph 5, and had 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.

10. The Committee recommended to the Party concerned, with its agreement, to:

(a) Take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that the recommendations of the Committee in paragraph 119 (a) (ii) and (iii) of its findings for communication ACCC/C/2008/24 became effective (see para. 6 (a) (ii) and (iii) above);

(b) Ensure the implementation of recommendations of the Committee in paragraph 119 (a) (iv) of its findings for communication ACCC/C/2008/24 (see para. 6 (a) (iv) above);

(c) Change the legal system regulating legal aid in order to ensure that small NGOs had access to justice;

(d) Examine the requirements for dual legal representation (“abogado” and “procurador”) for the court of second instance in the light of the observations of the Committee that maintaining a system of compulsory dual representation might potentially entail prohibitive expenses for the public expenses and would amount to non-compliance with article 9, paragraph 4.

11. The above findings and recommendations of the Committee are contained as addendum to the report of the twenty-eighth meeting of the Committee (ECE/MP.PP/C.1/2010/4/Add.2).

### **III. Follow-up and conclusions**

12. The Committee invited the Party concerned to provide information, no less than four months before the fourth meeting of the parties, on the measures taken and the results achieved in implementation of the above recommendations on both communications.

13. On 8 February 2011, the Party concerned submitted the information on measures taken to address the recommendations, as requested by the Committee.

14. The Committee welcomes the increased cooperation by the Party concerned with the Committee. The Committee notes that, while Spain hardly participated in the proceedings

concerning communication ACCC/C/2008/24, Spain entered into a constructive dialogue with the Committee in the proceedings concerning communication ACCC/C/2009/36. Its replies to the letters of the Committee have been timely and specific.

15. The Committee also welcomes the general progress undertaken by the Party concerned. In particular, the following should be noted:

(a) With regard to costs for environmental information in Murcia (para. 6 (a) (i) above), a municipal ordinance has been adopted by the Murcia City Council, effective as of 1 January 2011 (see annex I of the report of the Party of 7 February 2011); according to the new ordinance, the supply of copies of environmental information for less than 20 pages of A4 size or delivery by electronic means is free, while there is a 50 per cent reduction in costs for reproduction and delivery of environmental information of more than 20 pages of A4 size compared with the previous regime;

(b) With regard to the timely response to requests for environmental information (paras. 6 (a) (ii) and 10 (a) above), measures have been taken to make public large amounts of environmental information on the websites of relevant agencies (such as the Ministry of Environment and Rural and Marine Affairs and the Meteorology State Agency) and to monitor the timeliness of the responses on requests for environmental information; accordingly, 94 per cent of the requests handled by the autonomous communities and 97 per cent of those managed by the Environment Ministry are answered within one month of submission, and the efforts are ongoing;

(c) With regard to requirements for the public to be informed of decision-making (para. 6 (a) (iii) and (v) and para. 10 (a) above), the Party concerned has engaged in training and capacity-building activities to raise awareness among the various agencies and to limit as much as possible cases where the deadlines for informing the public during decision-making are not properly adhered to;

(d) With regard to capacity-building programmes and training on the implementation of the Aarhus Convention and the related Spanish legislation (para. 6 (b) above), the Party concerned has implemented a number of capacity-building and training activities during 2009 and 2010, while several have been scheduled for 2011, for public administrators and members of the judiciary (see annexes III, IV, V and VII of the report of the Party of 7 February 2011), while the course "Access to information, public participation and access to justice in environmental matters: legal and sociological aspects" has been organized by the National Institute of Public Administration, the State agency responsible for the continuing training of public employees at all levels, in close collaboration with the national focal point with regard to curricula and selection of teachers. (see annex VI of the report of the Party of 7 February 2011 and the clarification of 15 March 2011).

16. In summary, steps have been taken in achieving compliance with the provisions of the Convention on access to information and public participation.

17. However, with regard to costs, the Committee notes that there is still a difference in fees paid for information relating to urban planning and building. From the information submitted to the Committee, it appears that fees for copies of documentation relating to urban planning and building are much higher than fees for copies of documentation relating to the environment. The Party concerned has not submitted information on why information relating to urban planning and building does not fall under the definition of environmental information in Spain.

18. With regard to its recommendations on access to justice, the Committee, after taking into account the explanation of the Ministry of Justice (see annex II of the report of the Party concerned of 7 February 2011), makes some observations with respect to injunctive relief, legal aid and dual representation.

19. With regard to the application of injunctions by the courts (para. 6 (a) (iv) and (vi)) in environmental cases, the Committee has not received any information by the Party concerned.

20. With regard to legal aid for NGOs (para. 10 (c) above), the Party concerned claims that the recognition of the right of an organization for legal aid depends on the objective assessment of objective factors: that this organization (legal person) is a public utility organization and that it lacks sufficient economic resources to litigate (Organic Law 1/2002 of 22 March on the Law of Associations and Law 1/1996 of 10 January on Legal Aid). In the case of communication ACCC/C/2009/36, the Party concerned argues that none of these criteria were met by the communicant and therefore the competent authority for the award of the legal aid (Badajoz Commission of Legal Aid) denied it.

21. Apart from these legal provisions, the Committee recalls also that article 23 of Law 27/2006 transposing the Aarhus Convention into domestic legislation, provides that non-profit entities that have environmental protection as one of their statutory objectives, that have been in existence for at least two years and that pursue their activities in an area that is affected by an administrative action or omission, are entitled to free legal aid, as provided by Law 1/1996.

22. Considering this provision of Law 27/2006, the Committee finds that the law in Spain provides for free legal aid for environmental NGOs. However, as the facts and the response of the Party concerned demonstrate, there is a problem in the implementation of these provisions.

23. With regard to dual representation for the court of second instance and the potentially prohibitive costs (para. 10 (d) above), the Committee has not received very clear answer by the Party concerned on the costs implied.

24. In order to ensure the comprehensive review of compliance by Spain, the Committee invited Spain, as well as the communicants whose communication had initially triggered the review of compliance by Spain, to comment on the draft of the present report. The Party concerned commented on 15 March 2011. The communicants, *Asociación para la Justicia Ambiental* and the *Plataforma Contra la Contaminación de Almendralejo*, provided comments on 17 March 2011.

25. In its response, the Party concerned expressed its satisfaction at the fact that the Committee acknowledges the progress achieved by Spain so far, and reiterated that the increasing cooperation of the three administrative levels in Spain (national, regional and local) would strengthen the effort to achieve the goal of full compliance with the Convention. The Party concerned also provided clarification of some issues, as well as reports from the City Council of Murcia and the General Directorate of Environmental Quality and Assessment of the Government of Extremadura (Autonomous region).

26. The Party concerned agreed with the recommendations of the Committee. The Committee in particular appreciates the action already undertaken by Spain to tackle the recommendations below. For instance, in its comments of 15 March 2011 the Party concerned recognizes the difficulty that exists in dissociating certain strictly urban planning information from other environmental information, and that the Urban Planning Department of the City of Murcia has commissioned the Environment Service to prepare a report and clarify the question of which documents regarding planning, construction or urbanization projects should be considered “environmental information”.

27. *Asociación para la Justicia Ambiental*, in its comments of 17 March 2011, mentions, inter alia, that the new measures adopted by the Murcia municipality are not sufficient, because information relating to urban planning is not treated as environmental information and therefore its access is more expensive; that the Party concerned has not

reviewed the legislation relating to the time frame of 20 days (and not including holiday seasons) in public participation procedures; and that no substantive action has been taken to address the recommendations of the Committee on access to justice.

28. The *Plataforma Contra la Contaminación de Almendralejo*, in its comments of 17 March 2011, expresses its frustration at the fact that the Autonomous region of Extremadura, in its view, has not taken any action to address the recommendations of the Committee in communication ACCC/C/2009/36. The communicant also informs the Committee of the start of construction works for a new distillery without a permit, and that it has again been insulted publicly by officials of the local administration in the local mass media, contrary to the requirements of article 3, paragraph 8, of the Convention.

29. Having considered the information referred to in the previous paragraphs related to the implementation of its recommendations made in connection with communications ACCC/C/2008/24 and ACCC/C/2009/36, the Committee finds that the Party concerned has not fully demonstrated that some issues on access to justice flagged by the Committee in these findings and recommendations have been fully overcome.

#### IV. Recommendations

30. The Committee recommends to the Meeting of the Parties, pursuant to paragraph 35 of the annex to decision I/7, and taking into account the cause and degree of non-compliance and measures taken by the Party concerned in the intersessional period, to:

(a) Endorse the findings and recommendations of the Committee as adopted at its twenty-sixth and twenty-eighth meetings;

(b) Take note of the progress made by the Party concerned in implementing the Committee's findings and recommendations with regard to communications ACCC/C/2008/24 and ACCC/C/2009/36 in December 2009 and June 2010, respectively, in particular with regard to access to information and public participation, and to encourage the Party concerned to continue its efforts in this directions in all provinces of Spain;

(c) Note that further action should be taken by the Party 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;

(d) Note that awareness should be raised among the 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;

(e) Further welcome the many relevant capacity-building initiatives for civil servants, the judiciary and students at the National Institute of Public Administration, and to encourage the Party concerned to organize similar activities in a decentralized manner;

(f) Note the active engagement and constructive approach demonstrated by the Party concerned in the process of review of compliance and implementation of the recommendations made in this context;

(g) Recognize 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;

(h) Invite, 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:

- (i) Injunctive relief in cases of environmental interest;
  - (ii) Award of legal aid to environmental NGOs; and
  - (iii) The rule of dual representation;
  - (i) Further invite 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 30 (c), the time frames applicable in public participation according to the Spanish laws and the studies requested under paragraph 30 (h) above;
  - (j) Undertake to review the situation at its fifth session.
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