

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VI/8j
on compliance by Spain with its
obligations under the Convention**

Contents

| | <i>Page</i> |
|-----------------------------------------------------------|-------------|
| I. Introduction | 2 |
| II. Summary of follow-up action on decision VI/8j | 2 |
| III. Considerations and evaluation by the Committee | 2 |
| IV. Conclusions and recommendations | 5 |

I. Introduction

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), 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 VI/8j on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8j in open session with the participation by audio conference of representatives of Spain, and the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99. During the session, Spain sought the Committee's view on whether certain proposed measures would fulfil paragraph 7 of decision VI/8j. The Chair requested that Spain provide its request for advice in writing and Spain duly did so directly after the session.

3. On 6 May 2018, the communicant of communication ACCC/C/2008/24 submitted the text of a legislative proposal on legal aid that had been submitted by a political party in Spain to the government for its consideration.

4. On 22 August 2018, the secretariat sent a letter to Spain enclosing the Committee's advice to Spain regarding its request for advice on paragraph 7 of decision VI/8j.

5. On 28 September 2018, Spain submitted its first progress report on decision VI/8j on time.

6. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99, inviting their comments by 1 November 2018.

7. On 8 October 2018, the communicant of communication ACCC/C/2009/36 provided comments on the first progress report. On 31 October 2018, the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99 provided comments on the first progress report.

8. After taking into account the information received from Spain and the communicants, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 18 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Spain and the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99.

III. Considerations and evaluation by the Committee

9. In order to fulfil the requirements of paragraph 3 of decision VI/8j, Spain would need to provide the Committee with evidence that it had taken measures, as a matter of urgency, to ensure that the remaining obstacles to the full implementation of article 9(4) and (5) of the Convention with respect to legal aid for non-governmental organizations identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 have been overcome.

10. In order to fulfil the requirements of paragraph 7 of decision VI/8j, Spain would need to provide evidence that Spain has taken the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6(9) of the Convention not only through the Internet, but also through other means, including but not necessarily limited to the methods used to inform the public concerned pursuant to article 6(2) of the Convention.

Paragraph 3 of decision VI/8j

11. With regard to paragraph 3 of decision VI/8j, in its first progress report Spain reports that on 25 April 2018, a meeting was held between representatives of the Ministry of Justice and of its now defunct Ministry of Agriculture and Fisheries, Food and the Environment. It reports that the purpose of this meeting was to analyse the possible legal discrepancies within Spain, as regards access to justice, between the provisions of Law 27/2006, which is the main piece of legislation transposing the Convention into domestic law, and Law 1/1996, on Legal Aid.¹ Spain further reports that during the meeting, the participants discussed the latest judicial developments in this area, and it was agreed to continue working together in order to adequately coordinate them to ensure compliance with the provisions of the Convention.²

12. In their comments on Spain's first progress report, the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99 each submit that a meeting with the representatives of the Ministry of Justice is not enough to be a serious follow-up process given that it has been eight years since the Compliance Committee's findings and recommendations were issued, and seven years since they were endorsed by the Meeting of the Parties.³ Moreover, they submit that a meeting to "explore *possible* legal discrepancies" is actually a step back because the Compliance Committee's findings had already established that discrepancies existed. Nor is discussing recent judicial developments sufficient but rather any such meeting should aim to find a solution for the systematic contradiction identified in the Committee's findings. They point out that Law 1/1996 on Legal Aid has been amended a number of times since the Committee's findings were adopted and thus there have been multiple opportunities to introduce a change to that Law that would enable environmental NGOs be beneficiaries/holders of legal aid.⁴

13. The Committee reiterates that, in order to meet paragraph 3 of decision VI/8j, Spain will need to prove that it has taken measures to ensure that the remaining obstacles to full implementation of article 9(4) and (5) of the Convention with respect to legal aid for non-governmental organizations have been overcome. Having reviewed the information provided in the first progress report and comments received thereon, it is apparent that Spain has to date taken no such measures. A single meeting between two ministries to discuss possible legal discrepancies between Law 27/2006 and Law 1/1996 is simply not enough. As the communicants have rightly pointed out, the Committee's findings have already clearly identified the points of non-compliance. What is required and as a matter of urgency, is for Spain to take measures to address those points of non-compliance. The Committee expresses its serious concern that, more than eight years since the Committee's findings were adopted, Spain has failed to make any actual progress in this regard.

14. In the light of the above, the Committee finds that Spain has not yet met the requirements of paragraph 3 of decision VI/8j.

Paragraph 7 of decision VI/8j

15. Concerning paragraph 7 of decision VI/8j, in its first progress report Spain states that the Regional Government of Catalonia has issued an instruction which stipulates that permits, once granted, will be made available for access not only on the internet and in the Official Journal, but also for physical consultation at the offices of the relevant Department's territorial services.⁵

¹ Party's first progress report, 28 September 2018, pp. 1-2.

² *Ibid.*, p. 2.

³ Comments on the Party's first progress report from the communicant of communication ACCC/C/2008/24, 31 October 2018, p. 1, and comments on the Party's first progress report from the communicant of communication ACCC/C/2014/99, 31 October 2018, p. 1.

⁴ *Ibid.*

⁵ Party's first progress report, 28 September 2018, p. 6.

16. Spain asserts that the above meets the requirements of article 6(9) of the Convention. In support of its assertion, it cites article 24.2 of the Industrial Emissions Directive⁶ which it contends requires only that the public is informed of the permit once granted “including via the internet”.⁷ It claims that the Directive does not require that the means used to notify the public that an application for a permit has been made and then subsequently, that the permit has been granted, need necessarily be identical.⁸ It submits that the Directive does not require the public to be informed that the permit has been granted through posters or through announcements in the local press.⁹ Finally, it submits that if the Committee considers that Spain’s practice is not sufficient to meet the requirements of the Convention, this would indirectly call into question the compliance of the Directive itself with the Convention.¹⁰

17. While asserting that, in the light of article 24.2 of the Industrial Emissions Directive, it does not consider that publication of decisions other than through the internet is required, Spain reports that, as a gesture of good will, from the date of its first progress report – 28 September 2018 – onwards, municipal councils will be required to publicize any permits granted for activities in their areas on their public notice boards.¹¹

18. In its comments on Spain’s first progress report, the communicant of communication ACCC/C/2014/99 submits that the instruction issued by the Regional Government of Catalonia that permits are to be available for access not only on the internet and in the Official Journal, but also for physical consultation at the offices is not sufficient to fulfil the requirement of paragraph 7 of decision VI/8j. The communicant points out that the question of how the public will become aware that a permit has been issued and that it is available for inspection at the official premises remains unaddressed. It observes that the key point is that the measures taken must be genuinely effective to ensure that the public is, in practice, effectively informed.¹² The communicant also points out that Spain confuses the requirements of the Convention and the Industrial Emissions Directive.¹³

19. With respect to the instruction adopted by the Regional Government of Catalonia, the Committee refers to its advice dated 22 August 2018 regarding the then-draft instruction. In its advice, the Committee made clear that the key point of the recommendation in paragraph 7 of decision VI/8j is that the measures taken to implement that recommendation must actually be effective in practice in ensuring that members of the public are promptly notified of the fact that a decision to permit a proposed activity subject to article 6 has been taken.¹⁴ The Committee reiterates that, while it does not discourage Spain from publishing in its Official Journal notifications of decisions to permit activities subject to article 6, nor from making the texts of environmental permits/authorizations available for consultation at the official premises, neither of these measures are in themselves sufficient to meet the recommendation in paragraph 7 of decision VI/8j.

20. Turning to Spain’s submission that it has met the requirements of article 6(9) of the Convention because its practice, in its view, satisfies the requirements of the Industrial Emissions Directive, the Committee makes clear that Spain as a Party to the Aarhus Convention is directly bound to implement the Convention’s provisions, and it cannot rely on the wording of European Union legislation to avoid doing so. Moreover, the Committee does not consider that the wording of the Industrial Emissions Directive supports Spain’s contention in any event. For example, article 24.2 of the Directive requires the public to be

⁶ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

⁷ Party’s first progress report, 28 September 2018, p. 6.

⁸ *Ibid.*, p. 5.

⁹ *Ibid.*, p. 6.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 7.

¹² Comments on the Party’s first progress report from the communicant of communication ACCC/C/2014/99, 31 October 2018, p. 1.

¹³ *Ibid.*

¹⁴ Committee’s advice to the Party concerned regarding paragraph 7 of decision VI/8j, 22 August 2018, p. 1.

informed of the content of the permit “including via the internet”. There is nothing in that wording that requires notification of the public to be made only through the internet.

21. The Committee welcomes the statement by Spain that, as of 28 September 2018, municipal councils are required to publicize any permits granted for activities in their areas on their public notice boards. The Committee invites Spain, together with its second progress report, to provide the text of this measure, as well as an English translation thereof.

22. With respect to the measure in effect since 28 September 2018, it is not clear from Spain’s first progress report whether this new practice applies to all municipal councils in the country or only those in Catalonia. The Committee emphasises that decision VI/8j concerns the compliance of Spain, not just that of Catalonia.

23. The Committee also notes that, to fulfil paragraph 7 of decision VI/8j, the means used by Spain to promptly inform the public of the decisions taken will need to “include but not necessarily be limited to” the methods it uses to notify the public concerned of applications for permits subject to article 6(2) of the Convention. Accordingly, in order to show that it has met this requirement, Spain will need to demonstrate to the Committee that it has put in place the necessary measures to ensure that, for each decision-making procedure subject to article 6 of the Convention, the means used in practice to notify the public of its opportunities to participate in a particular decision-making procedure under article 6(2) will also be used, as a minimum, to inform the public of the decision once it has been taken. The Committee thus invites Spain, together with its second progress report, to provide the text of the relevant measures it has by then put in place or proposes to put in place to this effect.

24. In the light of the above, while welcoming the reported new practice introduced by Spain on 28 September 2018, the Committee finds that Spain has not yet met the requirements of paragraph 7 of decision VI/8j.

IV. Conclusions

25. The Committee finds that Spain has not yet fully met the requirements of decision VI/8j.

26. The Committee invites Spain, together with its second progress report due on 1 October 2019:

(a) To provide the text of the measures that it has by then taken, together with English translations thereof, to ensure that the remaining obstacles to the full implementation of article 9(4) and (5) of the Convention with respect to legal aid for non-governmental organizations identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 are overcome, or failing that, the draft measures it has by then prepared to ensure that this will be accomplished, together with a time-plan for their implementation;

(b) To provide the text of the measure, together with an English translation thereof, that requires, as of 28 September 2018, municipal councils to promptly publish all permits subject to article 6 of the Convention on their public notice boards.