FINAL PROGRESS REPORT
DECISION VI/8j/SPAIN

The latest Meeting of the Parties to the Aarhus Convention, held in Budva (Montenegro) in 2017, adopted *Decision VI/8j on compliance by Spain with its obligations under the Convention*.

Point 8 of this Decision establishes the obligation to submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the recommendations made by the Compliance Committee:[1]

This report has been prepared to meet the aforesaid obligation.

1) COMMUNICATION ACCC/C/2009/36

Decision VI/8j includes the following recommendations regarding this communication:

3. Requests the Party concerned to take measures, as a matter of urgency, to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 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;

4. Calls upon all relevant ministries of the Party concerned, including the Ministry of Justice, to work together in that regard.

As we pointed out in our previous reports and in our successive remarks to the Aarhus Convention Compliance Committee, we understood that there were two paths to complying with said recommendations made by the Meeting of the Parties as regards this communication:

The first path was to amend Act 27/2006 of 18 July, as regards the discrepancy between the requirements stipulated by said Act for environmental non-governmental organizations for accessing the benefits of legal aid, and those stipulated by Act 1/1996 of 10 January, on legal aid.

For the reasons expressed in our previous reports and remarks, to date it has not been possible to undertake these legislative amendments.

The second path envisaged for compliance with the recommendations referring to this communication was that of monitoring any judgments that might be handed down with respect to requests for legal aid for environmental non-governmental organizations, in the event that they were made in judicial proceedings of this nature.

In this regard, we refer to the two judgments handed down by the Supreme Court's Administrative Chamber, on 16 January 2018 and on 13 March 2019, both of which recognized the right to legal aid for environmental NGOs that meet the requirements set forth in article 23 of Act 27/2006 of 18 July, regulating the rights of access to information, of public participation, and of access to justice in environmental matters. The Supreme Court did not consider it necessary for said NGOs to comply with the requirements set forth in article 2 of Act 1/1996 of 10 January, on legal aid.

These two judgments enshrine the settled case-law of our Supreme Court, and we have disseminated them through the Aarhus Convention focal points of our Autonomous Communities, so that environmental NGOs are aware of our Supreme Court's case-law and may invoke it in their requests for legal aid.

In view of the above, it is our Government's responsibility to decide on the necessity and appropriateness of undertaking the relevant legislative amendments.

The judgment of 16 January 2018 was attached to our second progress report.

We attach the judgment of 13 March 2019.

2) COMMUNICATION ACCC/C/2014/99

Decision VI/8j includes the following recommendation with regard to this communication:

7. *Also welcomes the willingness of the Party concerned to accept the Committee's recommendation, namely, that the Party concerned take the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6, paragraph 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, paragraph 2, of the Convention".*

As we pointed out in our previous progress reports, and to comply with the recommendations of the aforesaid Decision, the Directorate-General for Environmental Quality and Climate Change of the Department of Territory and Sustainability of the Administration of the Autonomous Community of Catalonia issued an Instruction, on 28 September 2018, indicating that once an environmental authorization has been granted or refused, the units under the aegis of that Directorate-General must stipulate, when communicating said decision to the council of the municipality in which the activity is to take place, that the public must be informed of this decision on the corresponding municipal notice boards and on the municipal website.

This Instruction has been forwarded to the different Administrations of Spain's Autonomous Communities, through the regional Aarhus Convention focal points, so that they may adapt their actions in this regard in their respective territories to the contents of the Instruction and pursuant to the indications of Decision VI/8j.

Moreover, we must bear in mind that the provisions included in the Industrial Emissions Directive regarding access to information and public participation in the granting, reconsideration or updating of permits (article 24), as well as the European Directives transposing the three pillars of the Aarhus Convention, comply with the legal requirements regarding this matter set forth in this Convention. We consider that the fact that Spanish legislation transposes the IED articles on access to information and public participation literally by means of article 24 of Royal Decree 1/2016, approving the consolidated text of the comprehensive Act on the prevention and control of pollution, and that the publication of the corresponding decision regarding the reconsideration of the permit conditions meets all the requisites set forth in the aforementioned article 24, of the IED, provides assurance that the provisions of article 6, paragraphs 2 and 3, of the Aarhus Convention have been respected and implemented in a legally appropriate manner.

We must, therefore, confirm the existence of a margin of appreciation to which the Member States must have recourse in order to comply with the provisions of the

Convention, and that Spanish law, and the administrative practice followed by the Catalan authorities to comply with article 6, paragraph 9, of the Convention, have respected the guidelines established by EU regulations, specifically Directive 2010/75/EU of the European Parliament and of the Council of 24 November on industrial emissions, in relation to the granting of permits for specific activities. If we analyse the instruments for access to information and for participation in procedures for the granting of integrated environmental authorizations referred to therein, we find that a distinction is made between the instruments implemented while a dossier is being processed and those that are used once the decision to grant a permit has been adopted.

In this regard and with respect to public participation while a permit is being processed, point 1 of Annex IV of the Directive sets forth the following:

"The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided," establishing the appropriateness of using such means at this stage. point 5 of the Annex stipulates that the *"arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States."*

As has already been brought to the attention of the Aarhus Convention Compliance Committee, Spain's domestic legislation provides, at this early stage, for a 30-day period of public information by means of the publication of an announcement in the Official Gazette as well as dissemination on the website of the administration concerned. Simultaneously, the documentation is publicly displayed for a specific period at the town hall of the municipality where the activity is to be carried out, to enable the local community to inform itself thereof, and any individuals living in the immediate vicinity of the activity location are informed personally. Any party with a specific interest in the procedure shall also be notified personally.

By contrast, once the permit has been granted, article 24(2) of the Directive provides that:

"When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the Internet in relation to points a), b) and f), the following information…"

As regards this issue, mention should be made of a recent judgment of the Court of Justice of the European Union on the request for a preliminary ruling concerning the interpretation of articles 6 and 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. This judgement addresses a number of different questions. As regards the matter at hand, Greek legislation provides that, once development consent has been granted, this decision must be

published on the internet within one month of its approval. We highlight grounds 50 to 53 of the judgment, establishing that:

“50 Next, pursuant to Article 9(1) of the EIA Directive, the competent authority or authorities are to inform the public in accordance with the appropriate procedures of the decision to grant or refuse development consent. Whilst that provision lays down certain conditions relating to the content of the announcement, it is silent as to the procedure to be followed.

“51 As, moreover, no rule relating to the triggering and calculation of the period for bringing proceedings is laid down in the EIA Directive, it must be held that the EU legislature intended to reserve those questions for the procedural autonomy of the Member States, in compliance with the principles of equivalence and effectiveness referred to in paragraph 27 above; however, for reasons analogous to those set out in paragraph 28 above, only the second of those principles appears to be at issue here.

“52 The referring court’s doubts in the light of the principle of effectiveness should be dispelled as regards publication of the decision on the internet, or the existence of a time limit for bringing proceedings, per se.

“53 Indeed, Article 6(2) of the EIA Directive expressly refers to electronic media, where available, as a means of communicating information to the public.”

Therefore, our consideration that Member States should be allowed a certain margin for deciding the means by which to meet the obligation to make the granting of environmental development consent public information is supported by this judgment, which places the determination of the appropriate procedures in the hands of the competent authorities, and in this regard, endorses the publication on the internet of a decision once it has been approved.

(Judgment attached)

Madrid, October 2020