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August 1, 2018

MINISTRY OF JUSTICE

San Bernardo, 45
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Unofficial translation from the original Spanish

Illustrious Mrs.: **Dolores Delgado García**, Minister of Justice.

Subject: Request for environmental information. Repeated failure by Spain of the Convention on access to information, public participation in decision-making and Access to Justice in Environmental Matters (**Aarhus Convention**).

D. **Félix Lorenzo Donoso**, adult, with domicile for the purposes of notifications in c/Guadalupe 17, 06200 Almendralejo (Badajoz), DNI 9154113K, telephone 675 043 835, in the name and on behalf of the Plataforma contra la contaminación de Almendralejo, registered in the register of Associations of the Ministry of the Presidency of the Junta de Extremadura with the number 3,829, before you, appears and, as best applicable in law,

STATE:

That by means of this document, I request information pursuant to the provisions of LAW 27/2006, of July 18, which regulates the rights of access to information, public participation and access to justice in matters of environment (incorporates Directives 2003/4 / CE and 2003/35 / CE), and under the provisions of the **Aarhus Convention**.

BACKGROUND

In February 2009, the Plataforma contra la contaminación de Almendralejo. (hereinafter Platform) submitted a Communication to the Compliance Committee of the Aarhus Convention. At that time, proceedings were initiated for non-compliance by Spain of the aforementioned Agreement that continues at this time.

In the following facts, a summary of the official Resolutions that have taken place up to this moment is made.

Important facts

- **First**

Report of the Compliance Committee on its Twenty-eighth Meeting

Conclusions and recommendations regarding communication ACCC/C/2009/36 on compliance

by Spain, approved by the Compliance Committee on June 18, 2010¹

B. Recommendations

"C) Change the legal system that regulates legal assistance so that small NGOs have access to justice;"

- **Second**

Fourth session of the Meeting of the Parties (2011)

Spain Decision IV/9f

Decision IV/f of the Meeting of the Parties on compliance by Spain with its obligations under the Convention (ECE/MP.PP/2011/2/Add.1)²

Approved by the Meeting of the Parties to the Convention on Access to Information, Public Participation in decision-making and access to justice in environmental matters at its fourth session.

"9. Calls, therefore, on the interested Party to carefully examine, with the appropriate participation of the public, the relevant legislation and, in particular, the practice of the courts with regard to:

b) The granting of legal assistance to environmental NGOs;

10. Also invites the Party concerned to submit to the Meeting of the Parties, through the Compliance Committee, six months before the fifth session of the Meeting of the Parties, the progress made in the recommendation made under paragraph 5, the terms applicable to public participation in accordance with Spanish legislation and the studies requested under paragraph 9 supra."

- **Third**

In February 2013, the Platform sent a letter to the Technical General Secretary of the Ministry of Justice (output registration number 2013002040000611) in which the Platform made a proposal to the ongoing amendment of the Law on Legal aid.

The General Technical Secretariat of the Ministry of Justice did not answer the aforementioned communication.

- **Fourth**

Fifth Meeting of the Parties (2014)

Decision V/9k on compliance by Spain with its obligations under the Convention

Approved by the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in the Field of the Environment at its fifth session.

1 http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-28/ece_mp.pp_c.1_2010_4_add.2_eng.pdf

2 http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9f_Compliance_by_Spain_e.pdf

First review of the implementation of decision V/9k on compliance by Spain with its obligations under the Convention ³

II. Considerations and evaluation by the Committee

"12. In order to meet the requirements of decision V/9k, the Party concerned shall provide the Committee with proof that:

17. *With regard to paragraph 6 of decision V / 9k, the Committee welcomes the information provided by the interested party on the draft new Law on Free Legal Aid that is currently before Parliament. The Committee expects the Party concerned to confirm that the new Law on Free Legal Assistance has been adopted, including the provisions on legal aid to environmental NGOs, and that an English translation of the relevant provisions of the Law will be provided once adopted. "*

IV. Conclusions and recommendations

20. The Committee invites the interested Party to submit, together with its second status report:

"c) *The relevant provisions of the new Law on Free Legal Assistance once adopted, in particular the provisions on legal aid to environmental NGOs, together with their translation into English.*"

- **Fifth**

Decision V/9k of the Meeting of the Parties on compliance by Spain with its obligations under the Convention (ECE/MP.PP/2014/2/Add.1)⁴

"6. *It also recommends that the Party concerned to take action before November 30, 2014 to ensure that the remaining obstacles to the full implementation of paragraphs 4 and 5 of Article 9 of the Convention are exceeded with respect to legal aid NGOs.*"

- **Sixth**

Second review of the application of decision V/9k on compliance by Spain with its obligations under the Convention.⁵

IV. Conclusions and recommendations

"41. *In order for the Committee to be in a position to fully examine the implementation of decision V/9k, the Committee invites the Party concerned, in its final progress report or otherwise by 31 December 2016 to provide a description of all measures it has taken 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 to NGOs are overcome, together with the texts of any such measures accompanied by an English translation thereof.*

³http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9k_Spain/First_progress_review_on_V.9k_Spain.pdf

⁴http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9k_on_compliance_by_Spain.pdf

⁵http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9k_Spain/Second_progress_review_on_V.9k_Spain_1_2.10.2016_final.pdf

42. *The Committee informs the Party concerned that all measures necessary to implement decision V/9k must be completed by, and reported upon by no later than 31 December 2016, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9k.*"

- **Seventh**

Report of the Spanish National Focal Point of the Aarhus Convention (05.12.2016⁶)

"With regard to paragraph 6 in relation with article 9, paragraphs 4 and 5 of the Aarhus Convention, we still believe that Spain would need to carry out law reform, as it is said in the conclusion in MAGRAMA's 2013 "Study on Access to Justice".

However, despite the efforts made from this Ministry, the situation remains the same as at the time of our last communication during second review, given the Spanish courts have not adopted yet any legislative initiative regarding the right to free legal aid for environmental NGOs.

Therefore, from our position, we can do nothing more to the date, except regretting not to give you an affirmative answer in relation to an effective implementation of paragraph 6 of decision V/K9 of the Compliance Committee."

- **Eighth**

On January 19, 2017, the Platform sent a letter to the Ministry of Justice, which summarized the procedure followed by our communication (ACCC/C/2009/36). In this same document, under the provisions of LAW 27/2006, of July 18, which regulates the rights of access to information, public participation and access to justice in environmental matters, information was requested on this matter.

- **Ninth**

The Ministry of Justice did not answer to the request referred to in point eight above. Failing to comply with the provisions of art.10.c of Law 27/2006.

"c) The competent public authority to resolve will provide the environmental information requested or will communicate to the applicant the reasons for the refusal to provide it, taking into account the schedule specified by the applicant, as soon as possible and, at the latest, within the periods indicated below:

- 1.º *In a maximum period of **one month** from the receipt of the request in the register of the competent public authority to resolve it, in general.*
- 2.º *Within **two months** of receiving the request in the registry of the competent public authority to resolve it, if the volume and complexity of the information are such that it is impossible to meet the aforementioned deadline. In this case, the applicant must be informed, within a maximum period of one month, of any extension thereof, as well as the reasons that justify it."*

Faced with this alleged refusal due to lack of express response to requests sent to the Ministry of Justice, the aforementioned Law 27/2006 establishes in its TITLE IV - Access to justice and administrative protection in environmental matters.

6 http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9k_Spain/frPartyV9k_05.12.2016_email.pdf

- Article 20. Resources.
 - *The public that considers that an act or, as the case may be, an omission imputable to a public authority has violated the rights granted by this Law in terms of information and public participation, may file the administrative remedies regulated in Title VII of the Law 30/1992, of November 26, on the Legal Regime of Public Administrations and the Common Administrative Procedure, and other applicable regulations and, as the case may be, the contentious-administrative appeal provided for in Law 29/1998, of July 13, regulator of the Contentious-Administrative Jurisdiction.*

That is, the Law provides, at least theoretically, the possibility of appealing to the courts of justice. At this point, we have to state that the Platform is a small organization that lacks economic resources, given that it does not request or receive any type of subsidy or aid. Their few partners pay a fee of one euro (€ 1) per year, since we believe that imposing a higher quota would be socially unfair. Because according to Article 45.1 of the Spanish Constitution "*Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it*". Thus, not only is the right to enjoy an adequate environment, but also the obligation to preserve it. It is evident that this obligation falls on all citizens, not only on those who can economically afford it.

Due to these circumstances, despite our firm conviction that we were right in the request, we could not resort to initiate a contentious-administrative proceeding. This lack of economic means deprives us of effective judicial protection, one of the rights recognized with the rank of fundamental by Article 24.1 of the **Spanish Constitution**.

In fact, this is the reason why the repeated Resolutions of the Aarhus Convention require that Spain must modify access to Free Justice for small organizations that defend the environment.

- **Tenth**

Faced with the situation of not being able to access justice due to lack of economic resources, on February 16, 2017, the Platform under the provisions of Law 19/2013, of December 9, on transparency, access to information public and good government, sent a copy of the request mentioned in point eight above to the Transparency Section of the Ministry of Justice.

- **Eleventh**

In response to the request referred to in the tenth point above, the Office of Transparency and Access to Information sent us a letter in which it informed us that: "*On March 1, 2017, your request for access to the public information with number 0010012192, it is in the Ministry's General Technical Secretariat of Justice, the management centre that will solve your request.*" (Attached document as Annex 1).

- **Twelfth**

Having passed the maximum period established in Article 20 of Law 19/2013, of December 9, Transparency, access to public information and good governance without having received a response to the request referred to in the tenth point above, on April 4, 2017, a claim is sent to the Council of Transparency and Good Governance. (Attached copy as Annex 2).

- **Thirteenth**

On May 15, 2017, we received the resolution of the Ministry of Justice to our request for information dated March 1, 2017, in which we are informed: "*as provided in letter e) of article 18.1 of the Law 19/2013, of December 9, of transparency, access to public information and good governance, this General Technical Secretary resolves to inadmit the request for access to public information*". (Attached copy as Annex 3).

On the same day, the Platform presents arguments to the Transparency and Good Government Council by not agreeing with the decision of the Ministry of Justice.

- **Fourteenth**

On July 3, 2017, through a letter from the Transparency and Good Government Council, they sent us their Resolution, in which they partially estimated our claim. Resolving:

“In short, for all the arguments set forth above, this Claim must be partially estimated, so the Ministry must provide the Claimant with the following information:

- *If the Ministry of Justice is aware of the process opened to Spain for breach of the Aarhus Convention.*
- *If the Ministry of Justice is aware that repeated non-compliance with the Resolutions of the Compliance Committee and the Parties that signed the treaty may have negative consequences for Spain.*
- *What measures has the Ministry of Justice taken or is it considering to ensure that, without delay, Spain complies with the aforementioned provisions in which the sixth session of the Meeting of the Parties to the Aarhus Convention will take place in Budva, Montenegro, Spain is not exposed to the Parties can decide to suspend the application of the Aarhus Convention in our country.”*

(Attached copy as Annex 4)

- **Fifteenth**

On July 5, 2017, in compliance with the resolution of the Transparency Council referred to in the fourteenth point above, the Ministry of Justice sent a letter to the Platform in which, among other things, it communicates:

“Question 3. Regarding the measures taken or studied by the Ministry of Justice so that, without delay, Spain complies with the provisions of the aforementioned Resolutions, so that before September 11, 2017, the date on which it will take place, in Budva, Montenegro, the sixth session of the Meeting of the Parties to the Aarhus Convention, Spain is not open to the Parties to decide to suspend the application of the Aarhus Convention in our country.

Answer: *It is stated that work is being done to establish the position of the Kingdom of Spain for the meeting in Budva, Montenegro, and for this purpose it is in contact with the Ministry of Agriculture and Fisheries, Food and Environment.”* (Attached copy as Annex 5).

At this point it is very important to show that the position of the Ministry of the Environment is expressly stated in the report sent by the Focal Point of the Aarhus Convention on December 5, 2016 (see point 7 above). Therefore, the Ministry of Justice is preventing the amendment of the Law that would allow compliance with the provisions of the Aarhus Convention.

The Ministry, complying with a legal obligation, informs us that "Against this resolution, which puts an end to the administrative procedure, a contentious-administrative appeal may be filed before the Superior Court of Justice of Madrid, or the Superior Court of Justice in which it has the applicant's address within two months (Law 29/1998, of July 13, governing the contentious-administrative jurisdiction). However, the Ministry of Justice should know that it is precisely the breach by Spain of the Aarhus Convention that prevents us from making use of this right.

- **Sixteenth**

By disagreeing with the information submitted by the Ministry of Justice on July 6, 2017, the

Platform submits a written statement to the Council of Transparency and Good Governance. We consider that we have not been given the information that we have requested. In accordance with that established in Article 13 of Law 19/2013, of December 9, on transparency, access to public information and good governance that defines:

“Public information.

Public information is understood as the contents or documents, whatever their format or support, which are in the possession of any of the subjects included in the scope of application of this title and which have been drawn up or acquired in the exercise of their functions.”

It is incomprehensible that the Ministry of Justice does not have any document to contribute to the information.

- **Seventeenth**

On August 2, 2017, the Transparency and Good Government Council in response to the letter of July 6, 2017 (point sixteenth above), communicates to us *“Studied the content of his letter of July 6, 2017 and since this Council lacks the capacity to replace the Ministry of Justice as the organ responsible for the execution of the provisions of R / 0155/2017, of June 27, and of sanctioning authority to demand compliance, it is informed that the proceedings will be terminated and that, consequently, this file must be considered completed, without the adoption of new measures by this Council.”* (Attached copy as Annex 6).

We believe that this response from the Transparency and Good Government Council should make the Ministry of Justice reflect.

At this point, we would like to reproduce the first paragraph of Law 19/2013, of December 9, on transparency, access to public information and good governance.

“Transparency, access to public information and rules of good governance must be the cornerstones of all political action. Only when the action of public officials is subject to scrutiny, when citizens can know how decisions that affect them are made, how public funds are handled or under what criteria our institutions act can we talk about the beginning of a process in which the public authorities begin to respond to a society that is critical, demanding and that demands the participation of public authorities.”

- **Eighteenth**

Sixth Meeting of the Parties to the Aarhus Convention held in Budva, Montenegro, from September 11 to 13, 2017

Compliance by Spain of the obligations incumbent upon it under the Agreement.

Decisión VI/8j⁷, Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its sixth session.

“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;

⁷https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/Compliance_by_Spain_VI-8j.pdf

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

In addition, it continues:

"8. Requests the Party concerned:

a) 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 above recommendations;"

This is the fourth decision in which the parties to the Convention maintain that Spain fails to comply with it. It is a breach that has occurred continuously for more than seven years, thus becoming a clear attitude of contempt for the resolutions of the Parties.

It is important to take into consideration what is established by Law 25/2014, of November 27, of Treaties and other International Agreements.

"Article 29. Compliance.

All public authorities, organs and agencies of the State must respect the obligations of the international treaties in force in which Spain is a party and ensure the proper compliance of these treaties.

Article 30. Execution.

1. International treaties will be of direct application, unless it is clear from the text that such application is subject to the approval of the laws or pertinent regulations.

2. The Government will send to the Cortes Generales the bills that are required for the execution of an international treaty.

Article 31. Prevalence of treaties.

The legal norms contained in the validly celebrated and officially published international treaties will prevail over any other norm of the internal order in case of conflict with them, except for the norms of constitutional rank."

For all these reasons,

I REQUEST

That you provide us with the following information:

First: That you send us all public information⁸ held by the Ministry of Justice related to the procedure opened for more than seven years to Spain for breach of the Agreement of Aarhus.

Second: That you send us a report on what measures the Ministry of Justice has taken or is

⁸ Public information is understood as the contents or documents, whatever their format or support, which are in the possession of any of the subjects included in the scope of application of this title and which have been drawn up or acquired in the exercise of their functions.

considering to take, so that without delay, Spain will comply with the provisions of the aforementioned Resolutions, so that before October 1, 2018, the deadline for submitting the first report on the measures adopted and the results obtained in the application of the previous recommendations.

Third: Let us know if the Ministry of Justice is aware of the international loss of prestige that supposes for a country that all the Parties signatories of an international treaty maintain that one of the Parties repeatedly fails to comply for more than seven years.

In Almendralejo on August 1, 2018

President

A handwritten signature in blue ink, appearing to read 'Felix Lorenzo Donoso', written over a horizontal line.

Félix Lorenzo Donoso

*Plataforma **C**ontra la **C**ontaminación de **A**lmendralejo*

Unofficial translation from the original Spanish