

To Compliance Committee of the Aarhus Convention [ACCC-C-2009-36]

Decision VI/8j (Spain) - Compliance Committee progress review of the implementation of decision VI/8j.

Comments on the Spain first progress report statement and annexes.

It is disconcerting Spain alleges it complies with the Aarhus Convention by providing a ruling that is contrary to what the Government's lawyer (representative of Spain before the court) defends, who maintains that small NGOs do not have the right to legal aid.

In the seventh point of the judgment of the Supreme Court - Contentious Chamber, it reads verbatim:

"SEVENTH

The State Advocacy affirms that such article of *Law 27/2006 does not confer such unconditional right, but in the terms of Law 1/1996, which implies fulfilling the conditions or requirements thereof*. The legal norm that proclaims the objective of the all-inclusive *regulation of this right (Law 1/1996) does not exempt entities such as the one that deals with fulfilling the requirements that it contemplates*, in logical coherence with the remission of Law 27/2006 to the "terms" of it."

Spain states:

"In this line, on 16 January 2018 the Administrative Chamber of the Supreme Court, upheld an association's appeal against the Legal Aid Committee's decision to deny it the right to legal aid, reasoning that the appellant is entitled to legal aid because it meets the requirements set forth in Act 27/2016, of 18 July, and need not meet the additional requirements of Act 1/1996, of 10 January. We consider that this ruling establishes a legal precedent and clarifies the future interpretation of these two Acts.

*Last but not least, it is necessary to outline that this sentence has created a **precedent** and consequently, it might be alleged by NGOs when expecting to be given legal aid; therefore, -in our opinion, the issue under question is solved because the remaining obstacles to full implementation of articles of the Convention with respect to legal aid for non-governmental organizations have been overcome."*

Spain seems to confuse precedent with jurisprudence, and this is not the case at all, "Article 1.6 of the Civil Code, inserted in its preliminary title (Of legal norms, its application and effectiveness) and cross-application in our legal system", continues saying that "jurisprudence will complement the legal system with the doctrine that, **repeatedly**, establish the Supreme Court in interpreting and applying the law, custom and general principles of law."

However, not all decisions by the Supreme Court will reach the range of jurisprudential doctrine, since this requires attending a series of requirements:

- In the first place, the doctrine that bases the sentence must have an important dose of stability. In practice, *it is necessary to reiterate the application of the doctrine in at least two rulings or sentences*. The Supreme Court, on the other hand, is *not always obliged to follow the same doctrinal* line and is the only one free to vary it or modify it whenever there are sufficient causes of justification.
- Secondly, we must pay attention to the ratio decidendi. This means that, for a doctrine to rise to the highest category, its rationale must have been the basic motive for making a decision. This excludes incidental argumentation or mere factual conjuncture, although the distinction between what is substantial and what is not, is drawn by *a thin line very difficult to define in practice*.
- Finally, it is necessary that the similarity between the cases affected by the sentences is substantial. It cannot be considered that a reasoning has been made based on a specific legal interpretation if it is carried out on two accounts of different facts. In relation to this last requirement, the jurisprudence that emanates from a Chamber of the Supreme Court in particular only affects the matters of that same kind.

It is sadly disappointing that Spain resorts to this kind of naive linguistic tricks to say that it fulfils decision VI/8j when it does not do so.

Spain wants the Compliance Committee of the Aarhus Convention to conclude that without doing anything, Spain has removed all obstacles so that small NGOs can access legal aid.

We consider that the behaviour of Spain is a lack of respect for the hard work that our association has carried out for more than eight years. It is evident what Spain has to do is modify the law so that there is no possibility of interpretation in something that should not be open to interpretation.

In Almendralejo, 19 March 2019

A handwritten signature in blue ink, consisting of a stylized 'F' followed by 'elix' and 'Lorenzo' written below it.

Félix Lorenzo Donoso

Plataforma Contra la Contaminación de Almendralejo