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

Comments of communication Spain's final progress report on decision VI/8j.

We request the understanding of the Compliance Committee, we know that the Committee can verify the inconsistencies of the allegations presented by Spain, but we are obliged to put them in evidence so that silence not be interpreted as acceptance of them.

We have to remember what the Compliance Committee communicated in its Twenty-eighth meeting - Geneva, 15–18 June 2010.

"Findings and recommendations with regard to communication ***ACCC/C/2009/36*** *concerning compliance by Spain Adopted by the Compliance Committee on 18 June 2010.*

Effective access to justice and not prohibitively expensive remedies (art. 9, paras. 4 and 5)

66. *The Committee notes that the present system of legal aid, as it applies to NGOs (see para. 15 above),* ***appears to be very restrictive for small NGOs****.* ***The Committee considers that by setting high financial requirements for an entity to qualify as a public utility entity and thus enabling it to receive free legal aid, the current Spanish system is contradictory.***

Such a financial requirement challenges the inherent meaning of free legal aid, which aims to facilitate access to justice for the financially weaker. The Committee finds that instituting a system on legal aid which ***excludes small NGOs*** *from receiving legal aid provides sufficient evidence to conclude that the Party concerned did not take into consideration the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice. Thus, the Party concerned failed to comply with article 9, paragraph 5, of the Convention and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention.*

A. Main findings with regard to non-compliance

74. Finally, the Committee finds that, by failing to consider providing appropriate assistance mechanisms to remove or reduce ***financial barriers to access to justice to a small NGO****, the Party concerned failed to comply with article 9, paragraph 5, of the Convention, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention (see para. 66 above); and also stresses that maintaining a system that would lead to prohibitive expenses would amount to non-compliance with article 9, paragraph 4, of the Convention (see para. 67 above)."*

It seems to us that this communication refers to small non-governmental organizations.

Spain in its FINAL PROGRESS REPORT DECISION VI/8j, alleges there are some judgments that grant legal assistance to some non-governmental organizations. And it gives two sentences as an example.

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We are going to delve into one of them: The Supreme Court's Administrative Chamber, on 16 January 2018 and on 13 March 2019.

*"**CONCLUSIONS OF LAW*** (page 2)

*"**FOUR.** We have to proceed on the basis that the decision of 27 March 2017 by **the Central Committee on Legal Aid of the Ministry of Justice recognized the appellant's right to legal aid** by **express legal provision**, given its status as an environmental NGO, in application of article 23.2 of Act 27/2006, due to which, therefore, the requirements set forth in Act 1/1996 are not applicable for the recognition of said right, including the requirement to prove insufficient resources to pursue legal action.*

Indeed, according to the aforementioned decision, "Art. 23.2 of Act 27/2006 establishes that 'the legal persons that are non-profit organizations referred to in the previous section shall have the right to legal aid in the terms provided in Act 1/1996 of 10 January, on not be interpreted as.

"Art. 2 of Act 1/1996, section c), establishes that the following legal persons shall have the right to legal aid when they are able to prove that they have insufficient resources to pursue legal action:

*1. **Associations of public interest**, provided for in article 32 of Organic Law 1/2002 of 22 March, regulating the Right of Association. "*

2. Foundations entered on the corresponding Public Register."

It is very important to know that the International Institute for Law and the Environment (IIDMA), was declared of public utility (interest) in 2001.[1] It is not a small organization, on the contrary, the law expressly recognizes it the right to have access to free legal aid because it was declared of public utility.

We cannot understand the attitude of Spain, which on the one hand recognizes the right to free legal aid to (all) non-governmental organizations that defend the environment, and on the other hand refuses to modify the law to expressly establish it.

More than ten years after the Findings and Recommendations of the Compliance Committee Spain still does not comply with the obligations imposed by the Aarhus Convention. With this attitude, Spain highlights its lack of commitment to the provisions of the Aarhus Convention.

In Almendralejo, 5 November 2020

Félix Lorenzo Donoso

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[1] http://iidma.org/index.php/en/about-us-2/

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