

2012-09-14

## **Case Summary posted by the Task Force on Access to Justice**

### **[Port of Granadilla, Decision on interim measures # 66/09]**

1. Key issue	An injunction to stop works at the industrial port of Granadilla was granted with no bond requirement.
2. Country/Region	Spain/Autonomous Community of the Canary Islands
3. Court/body	High Court of Justice of the Canary Islands (Tribunal Superior de Justicia de Canarias)
4. Date of judgment /decision	2009-06-15
5. Internal reference	ATSJ ICAN 14/2009
6. Articles of the Aarhus Convention	Art 9.3; 9.4
7. Key words	Access to justice, interim relief, injunction, bond, weighing of interests.

#### 8. Case summary

The environmental NGO *Federación Ecologista Ben Magec, Ecologistas en Acción* obtained at first instance an interim measure suspending the entry into force of a Department Order removing the *Cymodea Nodosa* (a species of seagrass) from the Catalogue of Threatened Species of the Canary Islands. This decision, which implied the halt of the works at the port, was contested to the High Court by both the Government (at national and regional level) and the private company *Gas de Canarias*. The appellants argued that the suspension would cause irreparable damage to the public interest represented by the project in terms of socioeconomic benefits. In their view, this public interest was superior to the interest represented by the protection of the seagrass.

The Court took into account the irreversibility of the environmental damages as well as the danger to the enforceability of the proceedings, and on these grounds the suspension was reconfirmed.

With regard to the requirement of a bond, article 133 of Act 29/1998 of July 13 regulating Administrative Jurisdiction states that a bond sufficient to compensate for harm to the other party may be required. In this particular case, given the nature of the dispute, the Court considered that the requirement of a bond would impede the right to effective access to justice. The judicial body must weigh, on a case-by-case basis, the appropriateness of the suspension in relation to its purpose. In this particular case, the risk of irreversibility of the damage potentially caused by the discontinuation of the protection was the main reason for adopting the injunction, and it is precisely this irreversibility that excludes the requirement of such a bond, the imposition of which would defeat the purpose of the interim measure.

While being entirely aware of the economic consequences deriving from stopping the project, the Court is not less aware of the fact that making the injunction dependent on the deposit of a bond means that the injunction would be, *de facto*, denied.

9. Link address	<a href="http://www.poderjudicial.es">www.poderjudicial.es</a> <a href="http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SPAIN/Granadilla2009/Spain_2009_PortGranadilla_Judgement.pdf">http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SPAIN/Granadilla2009/Spain_2009_PortGranadilla_Judgement.pdf</a>
-----------------	---