



To: Compliance Committee of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

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Re: (Ref. ACCC/C/2008/24) Comments to the draft findings and recommendations of the Aarhus Convention Compliance Committee regarding communication ACCC/C/2008/24.

Please, find enclosed our comments to your draft findings and recommendations.

I - General comments

We are aware of the effort made by the Committee to understand the complexity of this case, specially bearing in mind the inconveniences created by the lack of participation of the Party during the procedure.

In addition, we are also aware that the absence of the Party during the procedure put a major burden on us, the communicant, as regards to provide information and clarifications to the Committee on the Spanish legal system.

Nevertheless, we deeply regret that despite the tremendous effort made by the communicant and the Association to provide the Committee with all clarifications and information requested at different phases of the procedure the Committee has considered that it does not have at its disposal sufficient



information to ascertain different important issues. This is specially the case on access to justice issues as regards to consider that:

- a) the costs of EURO 2,148 imposed to the Association after losing the appeal against the denial of the injunctive relief and the procedures applied by the Party are prohibitively expensive (paragraph 106 of the draft); and
- b) that there were not available appropriate assistance mechanisms to remove or reduce financial barriers to access justice (paragraph 112 of the draft).

We are also afraid that the lack of participation of the Party in the procedure would have led the Committee to be more restrictive in its conclusions than expected.

Finally, as regards access to justice we would like to stress that up today, December 10 2009 none of the three pending administrative lawsuits initiated against each of the three major decisions included in this case have finalised at its first instance. So far, any court judgment has been issued at first instance on the merits of the case. That it is to say there is not yet any court judgment as regards whether the Modification No. 50 to the City General Plan was made in compliance with the law. This administrative lawsuit was filed in October 2005. The same can be said about the administrative lawsuit that challenged the decision approving the Land Slot Plan ZA - Ed3. This administrative lawsuit was filed in February 2006. Finally, there is not yet any court judgment as regards whether the Urbanisation Project UA1 was fully in compliance with the law. This administrative lawsuit was filed in July 2006. However, as the urbanisation was fully completed it has become meaningless what court decisions are eventually issued in first or second instance, the environment at stake has vanished and it will be impossible to restore it. We consider it is important that the Committee underlines this key issue in its findings and recommendations.

II - Considerations and evaluation by the Committee

It is necessary to reconfirm to the Committee that under Spanish administrative law if a plaintiff loses in the court of first instance against a public authority, appeals the decision and loses again, the plaintiff will have, as a rule, to bear the related costs (paragraphs 108 and 109 of the draft) and therefore citizens and organisations are discourage from seeking correction of the decisions of courts of first instance. This is the reason why the Association decided not to appeal each of the court decisions made as regards the denial of the requested injunctive relief and it did it only with the last one, the one related to Urbanisation Project UA1.

III - Main findings with regard to non-compliance



Main findings related to access to justice (paragraph 115) are too restrictive and do not fully correspond to the considerations and evaluation previously made by the Committee. Therefore we kindly ask the Committee to redraft paragraph 115 bearing in mind considerations and evaluations made specifically under paragraphs 104 and 111 as regards to injunctive relief and to include in the findings of the Committee that *no timely, adequate or effective remedies were available because although injunctive relief is theoretically available, it is not available in practice and therefore the Party is in non-compliance with article 9, paragraph 4, of the Convention, which requires Parties to provide adequate and effective remedies, including injunctive relief.*

IV - Recommendations

Following the suggestions made by the communicant at different phases of the procedure and with the aim of helping the Party to fully comply with the obligations set by the Aarhus Convention the communicant kindly invites the Committee to be more specific in its recommendations and to redraft them as follows:

- Paragraph 117 (a) (i): *to ensure that all central, regional and local legislation, including Murcia City Council Fees Chart for Services, applicable to information charges is reviewed and amended to provide that only reasonable costs, equivalent to the average costs of a photocopy on paper or electronic means (CD/DVD) are charged for providing access to environmental information.*
- Paragraph 117 (a) (ii): *information requests are answered as soon as possible, at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months and ensure that applicable legislation is reviewed to provide for an easily understandable specific procedure to be followed whenever a request is ignored. In addition measures should be also taken to punish those authorities responsible for ignoring environmental information requests and for helping those people who sought that information to get it by accessing to justice free of any charge.*
- Paragraph 117 (a) (iii): *clear requirements for the public to be informed of decision-making processes in an adequate, timely and effective manner are established, for instance by opening an information desk to provide early information to all public concerned and helping them to participate in an effective manner. And informing public authorities that to enter into agreements that foreclose options is in conflict with article 6 of the Convention as it is the case of urban agreements between public authorities and legal or private persons adopted under Spanish land use legislation.*



- Paragraph 117 (a) (iv): public participation procedures include reasonable time-frames for the different phases allowing for sufficient time for the public to prepare and participate effectively, taking into account that holiday seasons as part of such time-frames impede effective public participation *and that due to the complexity and the need to get advise from experts land use legislation is specifically reviewed to amend existing time frame of 20 days to at least 2 months.*

- Paragraph 117 (a) (v): adequate and effective remedies, which are fair, equitable, *timely* and not prohibitively expensive be made available *at first and second instance* in administrative *and criminal* courts for members of the public in environmental matters. *Injunctive relief shall be made available in practice, current dispositions on the “loser pays principle” shall be reviewed and the imposition of unreasonable surety bonds in criminal proceedings shall be avoided.*

- Paragraph 117 (b): Develop a capacity building program and provide training on the implementation of the Aarhus Convention for *all* central, local and regional authorities, *including land use authorities; develop a capacity building program for judges, prosecutors and lawyers; inform provincial Commissions granting free legal aid about the Aarhus Convention provisions; and develop awareness raising program on Aarhus rights for the public and with the public.*

- Paragraph 118: Pursuant to paragraph 37 (c) of the annex to decision I/7, invite the Government of Spain to draw up *with public participation* an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 June 2010 and the action plan by 31 December 2010.