



O F I C I O

S/REF:

N/REF: SG DE LEGISLACIÓN Y ORD.NORMATIVA

FECHA: Madrid, 10 de diciembre de 2009

ASUNTO:

**DESTINATARIO:** SR. SUBDIRECTOR GENERAL DE INFORMACIÓN AL CIUDADANO, DOCUMENTACIÓN Y PUBLICACIONES.

With regard to your letter dated 23 November 2009 concerning recommendations from the secretary of the Aarhus Convention, I hereby inform you, as regards point 115 of the epigraph "A. *Main findings with regard to non compliance*", of the following:

Article 9.4 of the Aarhus Convention states that administrative and judicial procedures established to safeguard the right of access to public information on environmental matters "...*shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible*".

The study of these requisites in Law 26/2007, governing the rights of access to information, public participation and access to justice in environmental matters is as follows:

1. **Adequate and effective remedies, including injunctive relief as appropriate:** The resources to which Law 26/2007 (art. 20) refers are administrative appeals set down in Law 30/1992 (Legal System of Public Authorities and the Common Administrative Procedure) and judicial appeals set down in the Judicial Review Law, all of which are appeals set down in Spain's legal system in the area of administrative law. Both laws consecrate the principles of effectiveness and timeliness (e.g. art. 3, 74 and 75 of the Legal System of Public Authorities and the Common Administrative Procedure, and the system of administrative silence) and ensure that administrative and judicial decisions contain pronouncements on the remedy for damage that may arise (art. 107 et seq of the Legal System of Public Authorities and the Common Administrative Procedure, and art. 71 et seq of the Judicial Review Law).
2. **Fair, equitable and timely and not prohibitively expensive:** The Spanish Constitution (art. 103 and 117 et seq) lays forth the principles of fairness and equitability regarding the processing of administrative procedures and judicial proceedings. As regards timeliness, the corresponding articles have already been mentioned in the paragraph above.

As regards **the fact of not being prohibitively expensive**, in addition to article 119 of the Spanish Constitution, which assures free justice for those who can prove a lack of funds to enter into litigation, Law 26/2007, in its article 23(2), sets down the possibility that "Non-profit legal entities to which the section above refers, shall be entitled to legal aid under the terms set down in [Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita](#), in such a way that vastly favours the access to justice of non-governmental agencies constituted to protect the environment.



Further, the first additional provision regulates the fee for supply of environmental information for State authorities and their Public Bodies. A particular feature of this regulation is that the fee is a tax figure whose sum tends to adjust to the service cost, pursuant to Law 8/1989, of 13 April, on Public Fees and Charges and the exemption of certain activities such as the on-site examination of the information requested and the access to any list or register created and maintained under the terms set down in article 5(3)c of the aforementioned Law. For these reasons, it is understood that the cost is not prohibitively expensive.

To conclude, we consider that **the requisites specified by the Aarhus Convention are adequately reflected in Law 26/2007 and, as such, no amendment is necessary.**

LA SUBDIRECTORA GENERAL

Paloma García-Galán