



To: Compliance Committee of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)

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Re: (Ref. ACCC/C/2008/24) Clarification requested by the Committee at the 23rd meeting with regard to the following questions:

1.- Reasons why the Association did not challenge before the courts the lack of access to environmental information (art. 9 (1) of the Convention)

2.- Brief description of the Spanish legal system regarding environmental responsibilities

1. Reasons why the Association did not challenge before the courts the lack of access to environmental information (art. 9 (3) of the Convention)

The reason is very simple the administrative and judicial appeals available for protecting the exercise of access to information rights do not comply with requirements lay down by art. 9(3) of the Aarhus Convention: they are not timely and they are prohibitively expensive. Therefore, it is easier to pay the unreasonable costs requested than to challenge the decision before the courts, especially because it can take from 5 to 8 years to get a final court decision, depending on the court responsible for.



Professor Lucia Casado has recently published in the Public Administration Magazine a study on jurisprudential decisions on access to environmental information. (El derecho de acceso a la informacion ambiental a traves de la jurisprudencia. Lucia Casado Casado Profesora Agregada de Derecho Administrativo Universitat Rovira i Virgili)

Abstract: This paper analyzes the right of access to information regarding the environment from a jurisprudential perspective. The paper therefore examines the principal rulings in this matter. These include rulings by the European Court of Justice, the Supreme Court of Spain, the National Court of Spain, and the Courts of Justice of the Autonomous Communities of Spain, although reference may also be made to rulings by the European Court of First Instance and some Courts for Contentious-Administrative Proceedings. The aim of this is to try and offer some guidelines for interpreting Law 27/2006, 18 July, which will facilitate the application of this law regarding the right of access to environmental information.

It concludes that access to justice under art. 9 (1) in Spain rarely meets the criteria lay down in art. 9 (4) because of the excessive length of judicial proceedings (five years or more are needed to obtain a final court decision on access to information) and prohibitively costs involved.

2. Brief description of the Spanish legal system regarding environmental responsibilities

The current Spanish parliamentary monarchy was set up by the democratic Constitution adopted in 1978 after 40 years of dictatorship.

The Spanish Constitution recognizes in article 45 the “right to enjoy an environment suitable for the development of the person”¹. However, this is not provided as a fundamental right but as a guiding principle for economic and social policy. Which affords a lesser degree of protection than, for example, is given to the right to life and physical and moral integrity (art. 15), which is a fundamental right. Therefore, article 45 of the Spanish Constitution needs to be developed by legislation that can then be invoked and applicable. However, this right is claimed by many jurists to be a substantive right providing Spanish people with the right to enjoy a healthy environment, hand in hand with the obligation to protect it.

The constitutional framework of environmental responsibilities distributed between central and regional government set out in articles 148 and 149 entails a complex administrative situation for environmental matters. Since 1978, central government has been responsible for providing basic environmental legislation and establishing common levels of environmental protection.

Spain’s 17 autonomous regions are able to set high standards of legal protection and are also responsible within their own territories for matters



such as hunting and fishing, public works, transport, non-commercial ports and airports, agriculture and livestock, forestry management, etc.

Besides these regional responsibilities, local councils also have considerable responsibilities on some environmental issues, e.g. urban waste management, town planning, parks, or siting an authorization of activities that can have an impact on the environment².

¹ Art. 45 of Spanish Constitution states that: “(1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it. (2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity. (3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.”

² Law 7/1985 of April 2 regulating the basic legal framework for local government, which sets out the powers and responsibilities of local councils.