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REPORT ON COMMUNICATION TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE (REF. ACCC/C/2009/36)

Although these questions are for the Spanish Government, we considered of interest to answer to the same from our point of view.

1. Is the physical presence of the requester required in order to receive information according to Spanish Law? Does the public have the possibility to make photocopies of document or a CD?

Answer:

Environment's Ministry, after making a report of the pieces of legislation that allow the public interested accessing the information on the environment, concludes that citizens have also according to law to obtain copies of documents contained in administrative procedures. It is necessary to fall back into that it is not enough with having a right, because as we can verify in the present case, the administration refuses the requester to make photocopies, photos or to supply the information in electronic support CD, DVD. Taking into account the complexity of the presented project, an oil refinery situated more than 200 Km from the coast where oil tankers dock, the conditions imposed to access the project makes a serious and rigorous study be impossible. The behaviour of the administration is incompressible, not only does not collaborate with the citizens that want to participate, but they put some conditions that make the real and effective participation be impossible. If the citizens do not have access to the justice free of charge, the decision of the administration cannot be appealed in front of the justice.

2. Can projects with a likely significant impact on the environment (e.g. sewage treatment plants) be carried out without licence under Spanish Law?

Answer:

We return to accuse that a thing is what the Spanish rules allow and another it is what is happening in practice, in front of the passivity of public administration.

We consider that the most illustrative is attaching another example of what in reality it happens.

At the present time a plant to treat wine-growing by-products and distillation of wines has been built.

1. On Monday April 6, 2009 an Advert appears in the BOP (the Province Gazette) in which Urban evaluation for installation of manager of wine-growing by-products is communicated (Annex 17)
2. When some members of the Platform went to place where he intends to instal the industry to see if it can have some environmental impact, they verify, although no with surprise, that the works of the construction already have begun. So, on April 13, 2009, we remitted a paper to the Town Council communicating this fact. (Annex 18)
3. The May 28, 2009, the media inform “It have been opened a file to Viñaoliva because it has begun the works of the distillery without licence”. (Annex 19)
4. In spite of the file, works continue. Such is the sensation of impunity that the infringers should feel, that they allow to insert an advert about their construction in the regional press. (Annex 20)
5. On August 10, 2009, an advert appears in the BOP which communicated that the works fulfilled without licence comprise:

“Projects carried on: Closing of cement blocks face sight on metal band of reinforced concrete through the façade of the plot toward the road of Arroyo of San Serván with a length brought nearer of 40 m.

Construction of a concrete flooring polished of a surface brought nearer of 15,000 m².

Construction of a building of two-story destined to offices, being finished the relative units of work to foundation, structure, cover, closings and isolations.

Construction of two building of industrial typology with a total surface brought nearer of 1,440 m².

One construction of several deposits of stainless steel.

Laminate-steel construction of a high-altitude structure with pillars and beams closed at the bottom by means of panels prefabricated of reinforced concrete.

Construction of a roof-like covering and installation of machinery of washing.

Construction of two ponds with a surface brought nearer of 48,000 m².”

It is added than “the full value of the realized works is the 2,095,142.00 euros, industrial benefits, general expenses and I.V.A. included.”

And it comes to an end proposing a sanction “ Sanction: Atticles 209.1.a), 199, 214 and 206,3 of the Lsotex, 261,892.75 euros (two hundred sixty one thousand eight hundred ninety two euros and seventy five cents) reciprocating my love to Construcciones Vélez, S.L, a sanction of 130,946.37 (one hundred thirty thousand nine hundred forty six euros and thirty seven cents). (Annex 21)

6. In spite of the reports of the Platform and of the presumed sanction of the Town Council, nothing has impeded that the industry was built without having fulfilled any environmental evaluation. The administration has allowed that the industry be built. The promoters of the project feel such impunity that they resort to the media to communicate that the distillery is about to open. On October 4, 2009, the manager attends to the journalists and affirms without the minor bashfulness, in fact, what more has delayed this project has been having to do one's job scrupulously with all the red tape that he demands the legislation environmental to the contaminating industries. (Annex 22)

We can see, with a practical case that in fact that projects that will have a probably significant impact on the environment are carried out without a submitted environmental evaluation. Besides, it is clear how the administration does not take measures to stop them.

In this case the Platform has not denounced, much to my regret, the start of the illegal works for fear the consequences that their members could suffer. The Committee knows for the communication that is processed to what a degree of harassment have arrived some public authorities in other denounced cases.

3. Why the relevant authorities take no actions in the case described in the communication?

Answer:

Environment's Ministry in his answer admits of, of implicit way, that authorities did not take effective measures to try correcting the detected deficiencies.

The administration not only did nothing to try correcting problems, in spite of having exhaustive knowledge that a situation of danger in the facilities to be storing alcohol without the proper supervision of the facilities, existed rather he besieged through the media our organisation to denounce the detected deficiencies.

The media have voiced this case with profusion.

Just like example some press cuttings.

- October 17, 2007. "The Health Environmental Service of Junta of Extremadura requires that the emissions of dioxins, furanos and PCBs in the industry Vinibasa should be analysed ". (Annex 23)
- December 01, 2007. "The SEPRONA (Protective Service of Nature) denounces Vinibasa after detecting irregularities". (Annex 24)
- December 01, 2008. "The autonomous government proposes to penalise Vinibasa with 20,000 euros " (Annex 25)

But not only they did not correct the detected deficiencies, but than in spite of knowing the problems that there was at the industry, the Town Council of Almendralejo authorized to be open again.

- August 17, 2008. "The Town Council studies Vinibasa's temporary reopening". (Annex 26)

If the industry Vinibasa closed down, it was not at the intervention of administration. What closed the industry was a fire that was produced in its facilities. Only thanks to providence there were no personal misfortunes. We have to bear in mind that in the facilities they stored or they had stored more of 2 million litres of alcohol in carried out deposits without authorization. A filter system inside the industry that made great quantity of methane accumulate in the facilities had also been built. The deposits of alcohol and the filter system were built in spite of the fact that there were technical reports that they did not enable to make them. The administration, knowing these irregularities did nothing to correct them.

- December 05, 2009. “Controlled the fire in Vinibasa’s distillery in Almendralejo”. (Annex 27)
- January 13, 2009. “Vinibasa finalizes the burning of residue before it foreseen and closedown”. (Annex 28)

The case of the industry Vinibasa has caused a lot of problems to the members of our organisation. We have fulfilled a job that has been extended in time. He started up in July 2004 and at this moment it continues, because, although the administration denies facilitating it, we have the right to access to the file that the Junta of Extremadura has to have opened for the storage of alcohol. This is another case in which to lack from access to the gratuitous justice he handicaps us to appeal a decision of the administration that we considered antagonizes to right.

We attach a document of the carried on chronology in the case Vinibasa. (Annex 29)

But, the members of the Platform are not only the ones that denounce the inefficacy of the staff. The Ombudsman, in answer to a copy of the complaint that is treated in, affirms: *“In our opinion, we would be most of all (and nothing less) than in front of a source of serious contamination with deficient administrative supervision.”* (Annex 30. Page 3, paragraph 3)

4. What means are available to challenge a failure of a public authority to act in such a case?

Answer:

In practice it has been proven that the effective resources to make opposition to the lack of behaviour of the public authority do not exist.

We considered that only the access to the courts of law could make the public authority act, although only it was for fear to the sanction he could expose oneself to.

5. What are the opportunities for the public to comment on the environmental impact assessment (EIA) report and how are their comments supposed to be taken into account.

Answer:

We have to emphasize that a thing is what establishes the rules and another one what happens in reality. It's of no use that according to the rules citizens have some rights determined, if afterward the administration is not capable to make citizens can make use of those, presumed, rights.

6. What effective means of injunctive relief are available in cases such as the one referred to in the communication in accordance with national legislation or case law??

Answer:

We thought that to lacking of the possibility of accessing the justice on the subject of environment, in reality, no effective means exist.

7. Can activists or opponents of a project be penalised, persecuted or harassed for their activities? What kind of protection is available under Spanish law for such persons?

Answer:

The proof that he can be done with impunity is, as we have demonstrated, that it has happened and has not had any consequences for the person that has insulted gravely the members of our association.

The Ombudsman's judgement also contributes this issue in answer to complaint's copy that is treating at entity case, and he affirms: *“Certainly, some manifestations of public authority referred whom as you attempt to obtain information, to take part in the public affairs and to impugn and to denounce irregularities, they prove to be this Defense unacceptable.”* (Annex 30. Page 3, paragraph 2)

8. What are the conditions for eligibility or necessary requirements for legal aid in accordance with Spanish legislation (Law 1/1996 on legal aid and Law 27/2006)?

Answer:

The conditions imposed by the Spanish State prevent in a definite and evident way the access to justice just as he establishes himself in the Aarhus Convention. As we affirmed in our communication, without access all the agreement to the gratuitous justice becomes useless.

We considered that citizens have right to take part in the defense off the environment without counting on the authorization of Government, and without that they have such much money to belong to the wealthy class.

9. How is the Spanish Government securing implementation of the Aarhus Convention at local level?

Answer:

We have to incise again in which a thing is the one that it is said and another one is the one that is done.

We believe that the examples contributed in communication are very illustrative that the deficiencies in the implementation of Aarhus Convention are too evident.

In Almendralejo, on 15 November 2009

A handwritten signature in blue ink on a light yellow background. The signature consists of a large, stylized 'F' followed by the name 'Félix Lorenzo Donoso' written in a cursive script.

Félix Lorenzo Donoso
President of the Platform Against the Contamination of Almendralejo