



**SPEECH BY THE SPANISH NATIONAL FOCAL POINT IN THE TWENTY-FIFTH SESSION OF
THE AARHUS CONVENTION COMPLIANCE COMMITTEE**

(Geneva, 16 December 2009)

Mr Secretary to the Aarhus Convention, Mr Chairman of the Compliance Committee, Mr Chairman of Plataforma contra la contaminación de Almendralejo, Ladies and Gentlemen,

First of all, as stated in the letter dated 17 June 2009 to Mr. Jeremy Wates from our Ambassador and Permanent Representative to the international organisations in this city, Mr. Javier Garrigues, I would like to reiterate the disposition of the Spanish Government, to collaborate with both the Secretariat and the Compliance Committee in the duties with which they are charged for implementation of the Aarhus Convention.

As you know, one of the priorities of the Spanish Government's policy is closely related to environmental sustainability and the concepts of participatory environmental democracy on which the Aarhus Convention is based.

From the outset, I wish to express our profound respect for the institutions and individuals exercising their civil rights in relation to environmental protection, as recognised by the Spanish Constitution and the Convention cited above, along with our rejection of any act, omission or attitude that could restrict these rights.

Moreover, before moving on to the topic of this session, I consider it relevant to draw attention to the fact that environmental awareness and concern in Spain has increased significantly over recent years. As evidence of the concern of our citizens for environmental issues, I would like to point out that in 2008 over half a million queries were made to Spain's General Administration of the State and autonomous authorities on these matters.

Clearly, as the National Implementation Report for Spain states, together with the policies developed by the various authorities that conform our State, the action of non-governmental organisations and civic associations and platforms has been of vital importance to the development of this environmental conscience and to furthering the effective implementation of the Aarhus Convention in Spain.

Following analysis of the documentation submitted by Plataforma contra la contaminación de Almendralejo and in view of the specific questions posed by the Compliance Committee to this focal point, the Subdirector General for Information to the Public, Documentation and Publications, to which this national focal point reports, based on the provisions of Article 4 of Law 27/2006 (18 July 2006) regulating the rights of access to information, public participation and access to justice in environmental matters, made a formal written request by registered fax asking the following institutions to issue a report:

- Confederación Hidrográfica del Guadiana and the Subdirectorate General for Quality and Environmental Assessment (Ministry of the Environment and Rural and Marine Affairs).
- Department for Industry, Energy and the Environment and the Department for Agriculture and Rural Development of the regional government of Extremadura.
- Almendralejo Town Council.



- Federación Española de Municipios y Provincias (FEMP, Spanish Federation of Municipalities and Provinces).

All of the above institutions acted in accordance with the principles of mutual information, cooperation and collaboration provided for in the aforementioned Article 4.

In view thereof and having consulted the Senior State Lawyer of this Ministry, the National Report was drafted and sent to the Secretariat in Spanish and English, together with the reports of the bodies consulted.

The focal point was subsequently asked for a series of clarifications regarding the Spanish Government's position with regard to the Report of Almendralejo Town Council. In the reply submitted on 27 November 2009 to the Secretariat of the Convention, it was made clear that "in accordance with the legal and constitutional configuration of Spain, the activities conducted by Almendralejo Council and the Autonomous Community of Extremadura in the sphere of their powers are the sole responsibility of those public authorities" and concluded by stating that "the position of the Government of Spain regarding this issue can be none other than that of expressing its wish to cooperate, as it routinely has so far, with the public authorities that are constitutionally competent in the area, and, where applicable, with the courts, in clarifying the facts giving rise to the proceedings opened by the Aarhus Convention Compliance Committee for alleged infringements and with the Secretariat regarding all that is necessary, subject to maintaining consistency with Spain's internal constitutional order".

In order to provide this Committee with all the relevant information, further reports have been requested by e-mail and registered fax from the Nature Conservation Department of the Ministry of the Interior, the regional Department for the Environment, the Confederación Hidrográfica del Guadiana and Almendralejo Town Council.

Given this background and the reply sent by Plataforma contra la contaminación de Almendralejo to the Secretariat on 15 November 2009, I reiterate my respect for the points raised by Plataforma contra la contaminación de Almendralejo – and specifically by its Chairman – and consider it opportune to clarify to the Compliance Committee the following aspects concerning the provision of environmental information, the action of the competent Administrations and access to justice in environmental matters in Spain.

1. The general statement made in the reply of Plataforma contra la contaminación de Almendralejo that "the Government refuses to allow photocopies to be made or to supply information in electronic form, 'CD or DVD'" is not considered an adequate reflection of the current situation of the development and dissemination of environmental information in Spain.

. Law 11/2007 (22 June 2007) on electronic access of citizens to public services and Law 37/2007 (16 November 2007) on reuse of public sector information are two important legal instruments for addressing the challenges posed by new information technologies to public authorities in the context of information transparency and increased democratic participation in today's information and knowledge society.

These laws are not without practical application. According to European Commission data, the percentage of basic public services available entirely online in Spain is 80%, compared to an average of 71% in the European Union.

In recent years, Spain's various public authorities and specifically the Ministry of the Environment and Rural and Marine Affairs (hereinafter, MARM) have made great efforts to adapt to the growing demand for citizen information on agriculture, fisheries, rural affairs and the environment using new information and communication technologies.



Since, in its reply, the communicating party insists that there is a gap between the regulations and the actual situation, allow me to cite some – though not all – of the specific actions of the diverse public authorities designed to facilitate access to information and citizen participation, in accordance with the principles of the Aarhus Convention.

With the Avanza-2 programme and the Aporta project, developed by the Spanish Government's Ministry of Industry, Tourism and Trade (www.proyectoaporta.es), efforts are being made to coordinate the reuse of public information in public authorities.

The website of the Ministry of the Environment and Rural and Marine Affairs (www.marm.es) provides information on different media, which naturally include digital, specifically through its platform for knowledge of rural affairs and fisheries, its Information and Citizen Participation sections, the SABIA programme, its e-government centre, the Protocol on Pollutant Release and Transfer Registers (recently ratified by Spain), and its Citizens' Advice Offices. This Ministry also publishes its own environmental information on digital media to encourage citizen participation.

The Ministry's website, currently under reconstruction, contains 114,000 PDFs whose access is completely free. Moreover, this year's monthly average of over one million users of the site show that the Ministry freely and openly provides a range of information in digital format that is used substantially.

With regard to the Communication in question, the website of the Confederación Hidrográfica del Guadiana (www.chguadiana.es), which is attached to the MARM, provides extensive information in digital format for documentary consultation and citizen participation in the scope of its activity.

For its part, the Autonomous Community of Extremadura has been pioneering in the development of the information society in Spain. In particular, the website of the Department for Industry, Energy and the Environment of the regional government of Extremadura (www.extremambiente.es) has a special section on information and social participation in the scope of its authority.

Lastly, on a local level, despite the difficulties of territorial and demographic structure faced by Spain's municipalities, great efforts have also been made, especially through the Local Agenda 21, to promote the development of information and citizen participation in relation to the environment. Almendralejo Town Council in particular has launched a new website with a special section on environmental matters.

Consequently, and without omitting the exceptions established in the Aarhus Convention and Law 27/2006 for access to certain information and, naturally, those resulting from the economic cost of digitising documentation, I believe that, as the Aarhus Convention National Implementation Report for Spain also shows, our country has made significant progress in supplying information on new digital media.

Nonetheless, taking into account the recommendations of this Committee regarding the Communication of Asociación de Justicia Ambiental, over the coming year, this Ministry will develop a programme to provide training and information on the Aarhus Convention within the scope of its activity and will encourage all Autonomous Communities and local authorities to bolster their actions in this area.

2. We fail to comprehend the basis for the assessment of the communicating party in its reply, where it literally states that the "Ministry of Environment implicitly admits in its reply that the authorities did not take effective measures to try and correct the deficiencies detected and that the Government did nothing to try and correct the problems".



In its detailed chronology of the VINIBASA case, the communicating party itself provides documentation on various punitive measures taken by the national, autonomous and local administrations (by Almendralejo Council itself).

First of all, as the National Focal Point, I myself have handled the procedures mentioned at the start with the various administrative bodies involved in this Communication. I have collaborated with all of the requests made by the Secretariat of the Aarhus Convention, reiterating the obligations deriving from the Aarhus Convention before public, national, autonomous and local authorities.

The National Report on this issue already contained the punitive actions taken by the Confederación Hidrográfica del Guadiana, attached to the Ministry of the Environment, literally indicating "in the case of the treatment plant of Almendralejo, between 2003 and 2007, this confederation has taken ten disciplinary measures against Almendralejo Town Council for discharges in violation of Article 116.3 of the revised Water Law, with administrative penalties for sums ranging from EUR 200 to 240,000". For its part, the Nature Conservation Department (SEPRONA), which reports to the Ministry of the Interior, has handled several complaints lodged against VINIBASA.

Moreover, in the detailed chronology of the case, the communicating party refers to various actions by different public agencies. It specifically refers to the letter dated 4 September 2009 from the Directorate General for Quality and Environmental Assessment informing it that "the disciplinary measure is at the decision stage and a fine of EUR 20,000 has been imposed on VINIBASA".

The appeal lodged by VINIBASA against this fine was admitted in part, and a fine of EUR 12,000 was subsequently imposed, thus ending the disciplinary process with no possibility of administrative appeal.

I also consider it relevant to report that one of the recent initiatives of the Spanish Ministry of the Environment has been to create the post of Coordinating Prosecutor for Land Planning and the Environment, who reports to the Attorney General's office. The duties of this position include initiating own-initiative proceedings for alleged breaches of environmental legislation, including environmental crimes, if there is judged to be sufficient evidence.

Citizens and associations can use this system for free access to justice where applicable. This prosecutor's office opened 602 legal proceedings in 2008 for suspected breach of environmental regulations.

In conclusion, it is clear that the authorities involved have acted within their respective powers in the case of VINIBASA.

3. The communicating party considers in its reply that the "conditions imposed by Spain clearly and openly prevent access to justice, as set down in the Aarhus Convention".

Article 119 of the Spanish Constitution of 1978 establishes legal aid when thus provided for by law and, in all events, when insufficient means to enter litigation are accredited. This is not, therefore, a general recognition of access to legal aid; rather, as reiterated by the Constitutional Court, it is a right to legal form to be exercised under the terms set forth in Law 1/1996 (10 January 1996) on legal aid, cited below.

Law 27/2006, Article 23, regulates the legitimation of the exercise of popular action by non-profit legal entities accrediting compliance with certain requirements and also establishes that such legal persons are eligible for legal aid as set down in Law 1/1996 (10 January 1996) on legal aid.



This extends the previous regulations on the right of access to legal aid granted to non-profit organisations and introduces an important change with respect to the financial obstacles that can restrict access to environmental justice.

Consequently, the requirements of paragraph 9.4 of the Aarhus Convention are deemed to be adequately reflected in Law 26/2007.

In all events, notwithstanding the fact that compliance with the provisions of the Convention is enshrined in international law, the power to adjudicate on any matter of breach or non-performance by any public authority of the current legal order, including any breach of the Aarhus Convention – which forms an integral part of that legal order – is reposed in the courts of justice.

As recorded in the file, Judicial Review and Appeals Court Number 2 of Mérida issued *Auto* 177/2008 containing a final decision to dismiss the challenge lodged by Plataforma contra la Contaminación del Almendralejo against the decision of the Comisión de Asistencia Jurídica Gratuita [Legal Aid Commission] of 29 July 2008. The Court held that that administrative decision had been lawful. The Court of First Instance and Preliminary Investigation of Almendralejo had previously issued a ruling to that same effect on 4 December 2008.

I would like to conclude by reiterating that the position of the Spanish Government regarding this communication is none other than to readily collaborate with the Compliance Committee in the conviction that the recommendations made by the latter will serve to improve implementation of the Aarhus Convention in Spain.

Thank you very much.