



Madrid, 27 November 2009

Mr Jeremy Wates
Secretary
Convention on Access
to Information, Public Participation
in Decision-making and Access to
Justice in Environmental Matters
United Nations Economic Commission
for Europe Environment, Housing and
Land Management Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

Dear Mr Wates,

Regarding the clarifications requested by Mr Pietro Rabassi in the email sent to this focal point on 17 November 2009 as to the position of the Government of Spain as regards Communication ACC/C/2009/36, I am pleased to inform you that:

One. 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, directed to the parties concerned and to that Secretariat, are the sole responsibility of those public authorities.

The National Government cooperates with the other levels of government in virtue of the constitutional principle of inter-administrative collaboration. However, such cooperation does not imply that the National Government becomes subrogated to the rights, duties and obligations of other public authorities.

In the case in issue, the National Government, by way of the Ministry of Environment, has conducted itself in accordance with the principles of mutual information, cooperation and collaboration with the Autonomous Community of Extremadura and Almendralejo Council, pursuant to the principle of inter-administrative collaboration laid down in article 4 of Law 27/2006, of 18 July, governing the rights of access to information, public participation and access to justice in environmental matters.

Two. Article 24 of the Spanish Constitution of 1978 gives to all persons the fundamental right to obtain the effective protection of the courts in the exercise of their legitimate rights and interests, such that all persons' rights of defence are inviolable. Article 119 prescribes that justice shall be free of charge when so provided by statute and, in any case, shall be free of charge for persons producing evidence of an insufficiency of resources.



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 dated 23 December 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.

The reply from the Minister of the Environment to Plataforma contra la Contaminación de Almendralejo on 17 March 2008 in connection with its communication on the situation of wastewater treatment in the town of Almendralejo and its demand for a legal assessment of the request for information addressed by the Plataforma to the Council under Law 27/2006 was as follows:

“...I must inform you that it falls outside the scope of jurisdiction of this Ministry to conduct the analysis that you request because control over the legality of administrative action is a power that constitutionally corresponds to the judges and courts, as set down in Article 106 of the Constitution. It thus follows that it is not ordinarily the competence of the National Government to review the actions of other public authorities or to supervise the manner in which they exercise their powers.”

“In view of this situation and given that it is beyond the scope of jurisdiction of this Ministry to conduct a legal analysis of the legality of the response of Almendralejo Council to the request for information formulated by the platform that you represent, it remains only for me to remind you of your right to apply for review of the action taken by this municipality under the terms established in Article 20 of Law 26/2007, by challenging the decision taken by Almendralejo Council either before the Council itself or in the courts, in pursuance of current legislation.”

Three. The Government of Spain, by virtue of article 97 of the Constitution, oversees the General Administration of the State and exercises executive powers and regulatory authority in accordance with the Constitution and statute. The scope of its responsibility in connection with this Communication does encompass any actions of the Confederación Hidrográfica del Guadiana (an autonomous government body attached to the Ministry of the Environment and Rural and Marine Affairs) concerning the wastewater treatment plant of Almendralejo and any impact on water quality generated by the company VINIBASA, together with those of the Directorate General for Energy Policy and Mines (Ministry of Industry, Tourism and Trade) and the Directorate General for Quality and Environmental Assessment (Ministry of the Environment and Rural and Marine Affairs) in relation to the substantive authorisation and environmental impact assessment, respectively, of the Balboa refinery.

Moreover, within the structure of the National Government, reporting specifically to the Ministry of Interior, the Civil Guard Corps Nature Conservation Department, SEPRONA, is a national environmental police force with the special mission of investigating complaints concerning the conservation of natural heritage and protection of the environment, and of informing the public authorities directly affected if signs of illegality are detected, or the Environmental Prosecutor's Office or the relevant court in the event of a suspected environmental crime.



According to the documents on file and the allegations recently submitted by Plataforma contra la Contaminación de Almendralejo, SEPRONA has intervened in the case of the VINIBASA alcohol distillery on various occasions. It is therefore appropriate to supply the relevant information on this matter. I inform you that the relevant report has already been requested from SEPRONA and that the result will be communicated to the Committee in due course.

Four. To conclude, 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.

I trust that this letter provides adequate clarification of the official position of the Government of Spain on this matter, and shows that the Government operates strictly within the bounds of legality..

Yours sincerely,

Signed: Juan Manuel García Bartolomé
National Focal Point of the Aarhus Convention

Approved

Signed : José Abellán Gómez
Deputy Director Citizen Information, Documentation et Publications

