

**Communication to the Aarhus Convention Compliance Committee  
concerning compliance by Portugal with articles 4 and 6 of the  
Convention in connection with oil prospecting  
(PRE/ACCC/C/2019/166)**

Questions to the Party concerned regarding the use of domestic remedies for the parties' reply in advance of the Committee's sixty-fourth meeting (Geneva, 1-5 July 2019)  
(cf. letter from Secretary to the UNECE Aarhus Convention Compliance Committee on 14<sup>th</sup> June 2019)

1. What is the deadline for submitting a complaint to the Commission for Access to Administrative Documents (CADA)?

The deadline for submitting a complaint is 20 days, counted continuously, pursuant to paragraph 1, Article 16.º of Law no. 26/2016, of August 22 (LADA), in conjunction with article 105.º of the Code of Procedure of the Administrative Courts and Article 138.º of the Code of Civil Procedure. This period of 20 days is counted from the date of the decision of the requested entity on the request for access, or, failing that, from the 10 working days provided for the response (Article 15.º n.º 1 of the LADA). Lodging a complaint with CADA interrupts the time limit for applying for a judicial summons to provide information, consultation of files or issuing of certificates (paragraph 2, Article 16.º of the LADA). It should be noted that, in exceptional cases, if the volume or complexity of the information demands it, the aforementioned 10-day period may be extended to a maximum of two months, in which case the applicant shall be informed accordingly, within ten days of the date of submission of the application – LADA, Article 15 (4).

2. What is the deadline for applying to the court to enforce an opinion of CADA?

As will be better explained in the answer to following question, the complaint to CADA and the use of judicial means constitute autonomous guarantees against each other, so the mobilization of the latter does not depend on the prior use of the former.

The Opinions issued by CADA are not binding. In order to obtain a binding decision regarding the access to administrative or documentary information it is necessary to apply for a judicial summons to the Administrative Courts

for the Provision of Information, Process Consultation or Issuing of Certificates, in accordance with the provisions of article 104.º et seq. Of the Code of the Process of Administrative Courts (CPTA), amended and republished by Decree-Law No. 214.-G / 2015, of October 2.

Pursuant to paragraph 2, Article 105 of the CPTA, the deadline for filing a summons is 20 days counted from the date of verification of the following facts:

- a) The expiry of the deadline established by law, without the requested entity satisfying the request addressed to it;
- b) Rejection of the request;
- c) Partial satisfaction of the request.

3. When asked to review or enforce an opinion of CADA, do the courts of the Party concerned consider the merits of the request for access to environmental information *de novo*?  
Alternatively, do the courts simply issue an order enforcing CADA's opinion?

The Judicial decisions are independent of the opinions of the CADA, being verified an *ab initio* assessment of the questions. However, it is observed that the Administrative Courts, in their decisions, mostly accept and follow the underlying legal orientations of the opinions of the CADA.

(Simplified answer to these questions can be seen at [www.cada.pt](http://www.cada.pt) "Frequent Questions" and in English "FAQ").

In order to provide a satisfactory answer to the question, we will start by clarifying that the complaint to CADA does not exhaust all the guarantees of individuals in this context and that this expedient does not have mandatory precedence with respect to the judicial challenge, given the aforementioned independence existing between both instruments.

In fact, the Portuguese legal order provides for a relatively wide catalogue of instruments for the implementation of the provisions on access to justice provided for in Article 9 of the Convention, of which we should point out Law 83/95, of August 31 – Law on procedural participation and popular action (LAP), the Code of Procedure in Administrative Courts (CPTA), the Code of Administrative Procedure (CPA) and in the already mentioned Law 26/2016, of August 22 – Law on Access to Administrative Documents (LADA).

Therefore, any applicant who considers that his request for information has been disregarded, unduly rejected – in whole or in part –, has received an inadequate response, or has received a treatment not compliant with what the law provides, has two different types of guarantee at his disposal: administrative guarantees and judicial guarantees.

Regarding administrative guarantees, we should mention the following:

- a) The administrative complaint – challenge addressed to the author of the act (CPA, Article 191);
- b) The hierarchical appeal – challenge addressed to the hierarchical superior of the author of the act (CPA, Articles 193 ff.);
- c) Special administrative appeals – challenge addressed to the body exercising supervisory powers; for an organ exercising oversight powers; to a collegial body (in this case, acts or omissions of any of its members, commissions or sections), or to the delegating authority or sub delegating authority of the acts practiced by the delegate or sub-delegate (CPA, Articles 199 ff.);
- d) The complaint directed to the Ombudsman; and
- e) The complaint to CADA.

On the other hand, in the scope of the judicial challenge, it is possible for the interested party to use:

- a) The summons of the administrative authority to provide information, allow the inspection of documents or official certificate issuance – “intimação da entidade administrativa a prestar informações, permitir a consulta de documentos ou passagem de certidões” – CPTA, Articles 104 ff.; and
- b) The right of popular action (“ação popular”) – provided by Article 52 of the Portuguese Constitution (CRP) and in Law 83/95, of august 22.

Without dwelling on the requirements of each one, we should emphasize taking into account its importance – and especially since it was not addressed by the Communicant –, the role of the summons of the administrative authority to provide information, allow the inspection of documents or official certificate issuance, which constitutes a special autonomous procedure for verifying the reasons for the rejection of requests made by private parties to public authorities in this context. According to Articles 104 to 108 of the CPTA, such procedure, created to respond precisely to these situations, is characterized by its speed and effectiveness: the procedural deadlines are reduced, the decision period is short – tending to be less than one month (CPTA, Article 107) – and the court may order the imposition of a penalty payments, in case of conviction of the requested party, for each day of delay in complying with the decision issued – CPTA, Article 108 (2) –, thus making it the most suitable judicial procedure for cases such as the ones invoked by the Communicant. Thus, even if the most common situation is to begin by attempting to resolve the case by administrative proceedings before CADA, the truth is that nothing in the law indicates a mandatory precedence of one procedure over the other and constitutes independent procedures.

The same order of reasons explains why the judges are not bounded by the opinion issued by CADA on the same subject, a situation that stems directly from the principle of separation of powers, regulated in Articles 2 and 111 of the CRP (it should be stressed that, under the terms prescribed by Article 28, paragraph 1, of LADA, CADA is an independent administrative entity, which works with the Assembly of the Republic and, as such, cannot be involved in the jurisdictional function. As such, when the summons is proposed, the judge of the case will assess ex novo its merits, not being limited to the mere imposition of the decision of CADA on the same issue.

4. What is the typical costs for challenging a refusal to grant access to environmental information in court in Portugal? Please provide, in brief form, any available recent statistics regarding the costs of court proceedings for access to information to support your answer.

The answer to this question must take into account the catalogue of guarantees referred to in the previous answer, since its costs vary greatly depending on the means used by individuals to react to the refusal of access to the information sought.

Regarding administrative safeguards – administrative complaint, hierarchical appeal, special administrative appeals, complaint to the Ombudsman and complaint to CADA – its use is free of charge and does not require the interested party to appoint a lawyer.

With regard to judicial guarantees, it should be clarified that their costs also vary according to the means used.

Regarding the right to popular action, the interested parties may request from the competent authorities the issuance of the certificates and information they deem necessary to be provided in due time. In such cases, the refusal, delay or omission of indispensable data and information, except where justified on grounds of confidentiality of State or of justice, will cause the agent responsible to sustain civil and disciplinary liability.

Procedurally, its exercise may take the form of civil action or administrative procedure (in this case it may take any of the forms of proceedings provided for in the CPTA).

Concerning the costs involved, it should be pointed out that for the exercise of the right of popular action no preparation is required and its author is exempt from the payment of court fees as long as the request is partially upheld – Article 4 (1b) and (5) of the Procedural Costs Regulation (RCP). On the other hand, the summons of the administrative authority to provide information, allow the inspection of documents or official certificate

issuance, despite the fact of requiring the nomination of a lawyer – and the payment of his fees – they are subjected to a reduction in the value of the court fees by half – RCP, Article 12 (1b) –, a fact that is not mentioned by the Communicant.

Regarding the actual figures involved, although there are no estimates regarding the average cost of this type of action, and bearing in mind that the summons is the only of the aforementioned instruments in which there is a cost payment at the outset, its value is reduced by half. Moreover, since it is a special and necessarily swift process, its total costs will always be much lower than those resulting from the general "administrative action", a far more complicated lawsuit which demands far superior costs and takes much more time to be decided (this was actually the procedure that was used in the Communication, and it is unfit for situations such as simple access to information or documents). As an example, taking into account the value of the UC (the unit for calculating court fees) for 2019 (€ 102.00) the value of the court fee to be paid in a summons case with a fixed value of € 2,000.00 amounts to € 51.00.

5. How long do court proceedings to challenge a refusal to grant access to environmental information in Portugal typically take? Please provide, in brief form, any available recent statistics regarding the length of court proceedings for access to information to support your answer.

Taking as a reference the previous considerations, and assuming that the interested party to react judicially against a decision to refuse access to environmental information uses the means most appropriate for that purpose – which, as we demonstrated, could be the summons of the administrative authority to provide information, allow the inspection of documents or official certificate issuance, established under CPTA Articles 104 to 108 (and not the general "administrative action" established in CPTA, Article 35), we can safely say that national law ensures a speedy judicial decision in these cases.

Moreover, established as an "urgent procedure", under Article 36 (1d) of the CPTA, it benefits from a special procedure in order to ensure prompt access in a timely manner to the data and/or documents sought: once the application has been filed, the judge orders the administrative entity to respond within 10 days and, in the event of a positive decision, the judge determines the period within which the request must be fulfilled, which cannot exceed 10 days. If there is a noncompliance with the summons without acceptable justification in the timeframe indicated, there is, as we said, possible cause for the imposition of penalty payments and the

establishment of civil, disciplinary and criminal liability (CPTA, Articles 107 and 108).

Therefore, although official data on the average completion time of these processes is not available because the current method of collection in place does not allow for the provision of information with this degree of disaggregation, the fact is that its decision period is relatively short (less than a month).

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