

ATT

**SECRETARIAT OF THE AARHUS CONVENTION
COMPLIANCE COMMITTEE,**

**UNITED NATIONS ECONOMIC COMMISSION FOR
EUROPE - ENVIRONMENT DIVISION**

PALAIS DES NATIONS

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Communication on non-compliance by Spain with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

(The extension of exploration of Almaraz nuclear power plant up to 2028)

I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION

1

The communication is submitted by Pessoas – Animais – Natureza (PAN), a political party with a seat in the Portuguese Parliament, with the NIPC 509779662, represented here by André Silva as its Member of Parliament and legal representative.

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II. PARTY CONCERNED

This communication concerns non-compliance with the Aarhus Convention by Spain. Spain signed the Convention on June, 25, 1998 and ratified on Dec, 29, 2004.

III. FACTS OF THE COMMUNICATION

1. The reactor I of the Almaraz Nuclear Power Plant, in Spain, distancing less than 100 km from Portuguese boarder, is in operation since 1981, and the reactor II of the above-mentioned plant is in operation since 1983.
2. Since then, there has been a succession of level up to 1 incident per the International Nuclear Event Scale, the last of which happened in June 2020, with the safety authority finding and acknowledging that there was a violation of the operational limits of a nuclear power plant.
3. In the Almaraz Nuclear Power Plant's 39 years of life, the incidents and failures have amounted to up to 3000, making environmentalists warn to the threat that the existence of this nuclear facility poses and to its harmful side-effects. In 2017, in Slovenia, there was a serious nuclear accident at a plant that uses the same reactors as Almaraz.
4. In June 2020, the Almaraz Nuclear Power Plant reached the deadline of its operating life license, after an extension of exploration provided in 2010¹. The extension of exploration provided in 2010 was not subject to public consultation, neither in Spain or Portugal.
5. In May 2020, the Spanish regulatory body for the nuclear activity (CSN – Consejo de Seguridad Nuclear) had authorized the extension of exploration of both Almaraz reactors up to 2028, subject to final decision of Spanish Government, according to the Portuguese Government (declarations on the Portuguese Parliament).

¹Available in: <https://www.csn.es/documents/10182/27922/Orden%20ITC-1588-2010,%20de%207%20de%20junio,%20por%20la%20que%20se%20concede%20renovaci3n%20de%20la%20autorizaci3n%20de%20explotaci3n%20a%20la%20Central%20Nuclear%20Almaraz,%20Unidades%20I%20y%20II>

6. In May, June and July 2020, the Portuguese Minister of the Environment and Climate Action, affirmed, in the Portuguese Parliament, that Portuguese authorities had send a letter to Spanish authorities claiming an environmental impact assessment, including transboundary effects, on the extension of exploration of Almaraz Nuclear Power Plant.
7. In 25th July 2020, press media announced the decision of the Spanish Government of authorizing the extension of exploration of Almaraz Nuclear Power Plant up to 2028², which means the function of a nuclear power plant with almost 50 years old, when the life cycle is 30 years old. This extension of exploration was not subject to public consultation, neither in Spain or Portugal.
8. The extension of exploration of Almaraz Nuclear Power Plant up to 2028 poses serious added risks of nuclear accidents. A technical document issued by the international atomic energy agency³, sets clearly that “ageing degradation of NP components may have an adverse impact on the effectiveness of the defense in depth. Various ageing processes occurring in NPPs gradually degrade characteristics of plant components, may reduce design safety margins and cause failures of both process and safety system components. In particular, it is possible that degradation may not be revealed during normal operation and testing, but may lead to failure or even multiple common cause failures of redundant components under transient conditions (e.g. high pressure, vibration, steam, electrical pulse) associated with an operational upset or accident.”.
9. Recently, on the 22nd and 27th of June 2020, two incidents occurred in both reactors at the Almaraz Nuclear Power Plant. On the 22nd of June, in the reactor I, during the energization process after the recharge, it was automatically stopped as a result of the turbine trip caused by the action of the electrical protection of the main alternator. On 27 June, reactor II automatically shut down as a result of operation of train B of the reactor protection system. According to the CSN (Consejo de

² Available in: <https://jornaleconomico.sapo.pt/en/news/espanha-renovou-licencas-de-exploracao-da-central-nuclear-de-almaraz-are-2027-e-2028-617869>.

³ Available in: https://www-pub.iaea.org/MTCD/publications/PDF/te_540_prn.pdf.

Seguridad Nuclear), the reactor was in the hot standby mode (mode 3), with all parameters stable. These types of incidents are of a different type from those previously verified and in areas other than where the CSN had already identified the need for intervention to authorize the extension of the operation of the Plant until 2020, namely those related to hydrogen escape valves and failures that had occurred in the motors of the cooling system pumps.

10. Almaraz nuclear power plant was designed for a 30 years life cycle that ended in 2010. The recent decision of the Spanish Government of authorizing the extension of exploration of Almaraz Nuclear Power Plant up to 2028 will lead to an extension of more than 65% of the projected years of life. According with the international atomic energy agency, “component ageing contributed to approximately 30% of the reported failures”. Thus, this extension of exploration of Almaraz Nuclear Power Plant up to 2028 will lead to a substantial increase in the risk of nuclear accidents occurrence and those risks may not be revealed during normal operation and testing. Additionally, this lifetime expansion will implicate an increased use of uranium and therefore increased environmental impacts from uranium mining, processing and fuel production as well as an increased production of radioactive waste.
11. The recent decision of the Spanish Government to extend the exploration of Almaraz Nuclear Power Plant up to 2028 was not preceded by any environmental impact assessment neither public consultation in Spain or Portugal, although the Portuguese Government, according to declarations of the Portuguese Minister of the Environment and Climate Action, had send a letter to Spanish Government clamming the realization of the environmental impact assessment with transboundary impacts analysis and the correspondent public participation.
12. In July 30, PAN made a complaint also for non-compliance of Espoo Convention. The article 1 of the Espoo Convention defines "Proposed activity" as any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure. The extension of exploration of Almaraz Nuclear Power Plant up to 2028 is a “major change” to the activity due the substantial increased risk of nuclear accidents occurrence as explained before. This “major change” was subject to the decision of Spanish authorities (CSN) and

government in “accordance with an applicable national procedure”. Thus, the extension of exploration of Almaraz Nuclear Power Plant up to 2028 should be considered as a "Proposed activity".

13. It is precisely this activity that appears on Appendix 1 that Spain wants to make a “major change”, that, under the terms of the above-mentioned Article 3, requires notification with the indication of a reasonable time within which the affected Party must inform if it intends to participate in the environmental impact assessment (EIA) procedure and, therefore, in a public consultation.
14. Regarding NGO reactions, we underline that MIA (Movimento Ibérico anti-nuclear - Iberian anti-nuclear movement), that aggregates more than 50 civil associations, both Portuguese and Spanish, announced in July 2020, that “if Madrid chooses to ignore all participation and legitimate expectations of citizens on both sides of the border” and does not carry out a Transboundary Environmental Impact Assessment to legitimize the possible continuation of operation of the Nuclear Power Plant after 2020, it will “proceed with a complaint formal request to the European Commission, for non-compliance with several international directives and conventions ”⁴.

IV. Provisions of the Convention with which non-compliance is alleged

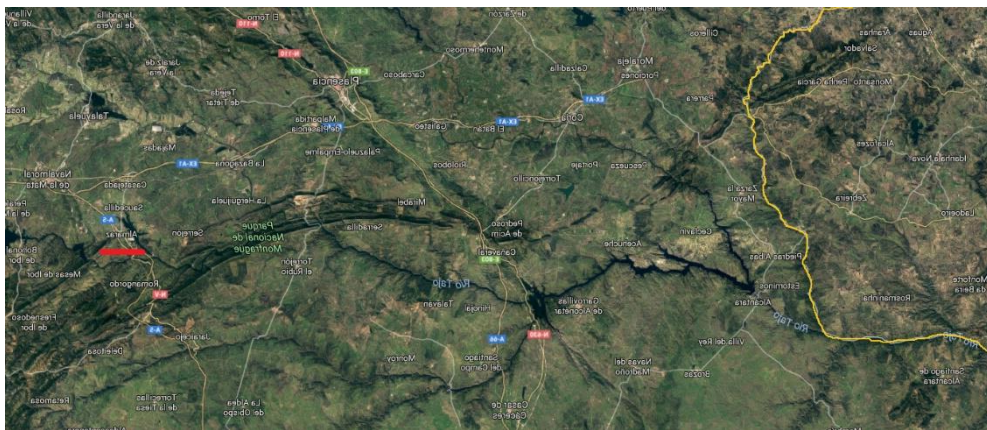
Summarizing the next, the communicant claims that Spain violated its obligations under article 6, by extending the life cycle of the exploration of Almaraz Nuclear Power Plant for more 8 years with a decision-making process without Environmental Impact Assessment which violated its public participation obligations.

1. The Aarhus Convention concerns the access to information, public participation in the decision-making and access to justice in environmental matters.

⁴ Available in: <https://tvi24.iol.pt/internacional/central-nuclear/almaraz-movimento-iberico-admite-queixa-na-comissao-europeia>.

2. It foresees effective public participation and an open decision-making process in matters concerning nuclear energy with long term effects.

3. In the *sub iudice* case, the Spanish State, a Contracting Party of the Aarhus Convention, internally decided to extend the exploration of Almaraz Nuclear Power Plant up to 2028, distancing 100Km from the border of the Portuguese State, also a Contracting Party of the above-mentioned Convention, as shown in the image below.



4. Article 6 of the Aarhus Convention, “Public participation in decisions on specific activities”, states that:

“The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

 - (a) The proposed activity and the application on which a decision will be taken;
 - (b) The nature of possible decisions or the draft decision;
 - (c) The public authority responsible for making the decision;
 - (d) The envisaged procedure, including, as and when this information can be provided: (i) The commencement of the procedure; (ii) The opportunities for the public to participate; (iii) The time and venue of any envisaged public hearing; (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public; (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule

- for transmittal of comments or questions; and (vi) An indication of what environmental information relevant to the proposed activity is available; and
- (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.”
5. It continues, on paragraph 3, that the public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public, and for the public to prepare and participate effectively during the environmental decision-making.
 6. The Annex 1 list of activities includes, in point 1 – Energy Sector: Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors.
 7. It is precisely this activity that appears on Appendix 1 that Spain wants to make a “major change”, by extending the life cycle for more 8 years and, therefore, updating the operating conditions, that, under the terms of the above-mentioned Article 6, requires that the public should be informed in an effective, timely and appropriate manner.
 8. Since there was no such notification, the whole procedure laid out in the subsequent articles is flawed and totally closed.
 9. Spain didn't attend the Portuguese Government will to conduct an Environmental Impact Assessment (EIA) on the extension of the exploration of Almaraz Nuclear Power Plant up to 2028, as foreseen in the Espoo Convention as well as the Directive n° 2011/92/EU of 13 of December 2011, modified by the 2014/52/EU of 16 of April 2014.
 10. Therefore, we ask the Commission to take the initiative to start an investigation, in the face of a potential violation of the Convention by Spain.

11. This case is similar to the Aarhus Convention case ACCC/C/2014/104 Netherlands, although, in this potential violation of the Convention by Spain, none public consultation, neither in Spain or Portugal was made.

VI. USE OF DOMESTIC REMEDIES

There were not any domestic remedies we could have resorted to. As far as we know, Portuguese Government manifest to Spain, by letter, the will to conduct an Environmental Impact Assessment (EIA) on the extension of the exploration of Almaraz Nuclear Power Plant up to 2028, as foreseen in the Espoo Convention as well as the Directive n° 2011/92/EU of 13 of December 2011, modified by the 2014/52/EU of 16 of April 2014. This will has not be attended by Spain.

In Portugal, according to the jurisprudence of the Portuguese Constitutional Court⁵, political parties are associations of a private nature with constitutional relevance, with a special regime provided for the Portuguese Constitution and Lei Orgânica n.º 2/2003, de 22 de Agosto. The nature of political parties in Spain is the same: political parties are private associations with constitutional relevance, under the provisions of the Spanish Constitution, Ley Orgánica 6/2002 and Ley Orgánica 1/2002 (which establishes that the regulation of political parties is special and distinct from that existing for most associations of a private nature).

The article 19 of Ley 29/1998, of 13 de julio, which regulates access to administrative courts in Spain, although recognizing the general possibility of appeal in the Spanish administrative courts against the extension of exploration of Almaraz nuclear power plant up to 2028 without EIA, does not expressly provide for the attribution of active procedural legitimacy to political parties to do that - be they Portuguese political parties, be they Spanish political parties.

⁵ Portuguese Constitutional Court, Sentence nr. 304/2003, of 18 June - available in: <https://dre.pt/web/guest/pesquisa-avancada/-/asearch/670763/details/normal?emissor=Tribunal+Constitucional&types=JURISPRUDENCIA&search=Pequisar>.

In 2014, the Supreme Court sentence of 3 March⁶, established the general doctrine about the active legitimacy of political parties towards the Spanish courts. In that sentence, it was defined that the fact that political parties have recognized constitutional relevance, does not allow an interpretation of Ley 29/1998, of July 13, in order to guarantee the active jurisdictional legitimacy of political parties to confront any action or administrative decision. According to the Supreme Court of Spain, to exist the legitimacy of a political party to react against an administrative action or decision, it is necessary that the contested measure has, in an effective and accredited way, an impact, directly or indirectly, in the sphere of the political party (such as acts related to the electoral process), and not merely a hypothetical, abstract, general or potential impact, nor a mere impact on the “objectives or purposes of the party's general political interest”. This jurisprudence was followed, without deviation, by several Spanish courts - sentence of sentence of the Superior Court of Justice of Cantabria of 1 September 2014⁷, sentence of the Superior Court of Justice of Catalonia No. 840/2014 of 8 July⁸, and sentence of the Supreme Court of 31 July 2020⁹.

This means that, as a political party, the communicant (or any other Portuguese or Spanish political party) has no legitimacy of appeal in the Spanish administrative courts against the extension of exploration of Almaraz nuclear power plant up to 2028 without EIA. Therefore, even though there are domestic remedies, the communicant, as a Portuguese political party, does not have procedural legitimacy to use them.

VII. USE OF OTHER INTERNATIONAL PROCEDURES

⁶ Available in: https://www.acalsl.com/wp-content/uploads/2014/05/Jur_TS-Sala-de-lo-Contencioso-Administrativo-Secci%C3%B3n-Especial-Sentencia-de-3-marzo-2014_JUR_2014_96347.pdf.

⁷ Available in: <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=7208966&links=STSJ%20CANT%20815/2014&optimize=20141118&publicinterface=true>.

⁸ Available in: <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=6969870&links=28079130012014200132&optimize=20140224&publicinterface=true>.

⁹ Available in: <http://www.poderjudicial.es/cgpi/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-Tribunal-Supremo-inadmite-por-falta-de-legitimacion-los-recursos-del-PP-y-de-diputados-de-VOX-contr-la-inclusion-de-Pablo-Iglesias-en-la-Comision-del-CNI>.

1. In May, June and July 2020, the Portuguese Minister of the Environment and Climate Action, affirmed, in the Portuguese Parliament, that Portuguese authorities had send a letter to Spanish authorities claiming an environmental impact assessment, including transboundary effects, on the extension of exploration of Almaraz Nuclear Power Plant.
2. In July 2020, the communicant asked the Implementation committee of Espoo convention to take the initiative to start an investigation against Spain about a potential violation of its obligations under Espoo convention, by extending the life cycle of the exploration of Almaraz Nuclear Power Plant for more 8 years with a decision-making process without EIA and which violated its public participation obligations, either in Spain and Portugal.

VIII. SUPPORTING DOCUMENTATION

Annex 1 – Espoo Convention complaint

10

Annex 2 - In June 2020, the Almaraz Nuclear Power Plant reached the deadline of its operating life license, after an extension of exploration provided in 2010 (<https://www.csn.es/documents/10182/27922/Orden%20ITC-1588-2010,%20de%207%20de%20junio,%20por%20la%20que%20se%20concede%20renovaci3n%20de%20la%20autorizaci3n%20de%20exploraci3n%20a%20la%20Central%20Nuclear%20Almaraz,%200Unidades%20I%20y%20II>).

Annex 3 - In 25th July 2020, press media announced the decision of the Spanish Government of authorizing the extension of exploration of Almaraz Nuclear Power Plant up to 2028, which means the function of a nuclear power plant with almost 50 years old, when the life cycle is 30 years old (<https://jornaleconomico.sapo.pt/en/news/espanha-renovou-licencas-de-exploracao-da-central-nuclear-de-almazar-are-2027-e-2028-617869>).

Annex 4 - The extension of exploration of Almaraz Nuclear Power Plant up to 2028 poses serious added risks of nuclear accidents (https://www-pub.iaea.org/MTCD/publications/PDF/te_540_prn.pdf).

Therefore, summarizing the above, the communicant asked the Commission to take the initiative to start an investigation, in the face of a potential violation of the Aarhus Convention by Spain. The communicant requests an appropriate follow up to this communication.

Best regards,

André Silva