

Financial barriers to access to environmental justice in Spain

Mitigating the costs

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Relevant Aarhus Convention provisions

Article 9.4

In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1,2 and 3 above shall provide adequate and effective remedies, including **injunctive relief** as appropriate, and be fair, equitable, timely and **not prohibitively expensive**.

Art. 9.5

In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms **to remove or reduce financial** and other **barriers to access to justice**

Main financial barriers in Spain to access to environmental justice

1. Court fees
2. Bonds for Injunctive relief
3. Expert's fees
4. Loser pays principle

1. Court fees

- **Law 10/2012, of 20 November, regulating determined fees in the scope of the Administration of Justice**

Only applicable to legal persons from 1.03.2015 what includes ENGOs unless they have the right to legal aid in accordance with the 1996 on Legal Aid (this is subject to different interpretations by Courts)

Fees applicable in proceedings before Administrative Courts:

- First instance proceedings: 200 € for summary and 350 € ordinary
- Appeal: 800 Euros
- Casation: 1.200 Euros

To that amount it is applicable an increase of 5% when the value of the subject matter of the case is below 1M € and of 0,25 % when the value is above 1M € with maximum applicable of 10.000 €

2. Bonds for injunctive relief

- Marina Valdecañas case: the Supreme Court of Extremadura fixed a bond of 41 M € to order the execution of its judgment stating the nullity of that project in a Natura 2000 area as its Judgment was appealed before the Spanish Supreme Court.



The M-501 case:

- The Supreme Court of Madrid annulled the decision of the Madrid Regional Government to build new lanes in a road which was in a Natura 2000 site was null. Madrid Government appealed the judgement before the Spanish Supreme Court and Ecologistas en Acción requested the provisional execution of that judgement. The SCM fixed a bond for injunctive relief of 497.367 €



The Algarrobico case

- An injunctive relief without caution which paralyzed the construction of a Hotel in a Natural Park and against the Spanish Law on Coastal Protection



3. Experts' fees

- Judicial (list from professional associations designated by the judicial bodies) and independent experts
- Both types are paid by the proposing party except when it is a judicial expert and the party has a right to legal aid
- Judicial experts lists usually do not include environmental experts
- Experts fees are not fixed fee as they depend on the kind of case

4. Loser pays principle

Art. 139.- Law 29/1998, of 13 July, regulating the Judicial Procedure before Administrative Courts

1. In first or in an one instance case, the judicial body when issuing its judgment or in orders from appeals and incidents before it, shall impose the costs on the party **ALL pleas** were rejected unless the body finds and reasons the case brought serious doubts on merits or on Law.

In cases where demands have been partially estimated or dismissed, each party shall pay their own costs

2.- In the following instances, the costs shall be imposed on the plaintiff (appellant) if his/her case is totally dismissed unless the judicial body finds and reasons that there are concurrent circumstances justifying not to impose the costs.

3. The costs can be imposed in its totality, to one part of them or up to a maximum amount.

Conclusions

- It is necessary to create public interest litigation funds funded by the collection of environmental taxes to avoid the financial barriers to access to environmental justice
- Usefulness of having Guidance establishing criteria on the imposition of bonds and costs
- Legal aid helps in certain occasions to mitigate the costs