

Statement to the session of the Compliance Committee 1 march 2017

Thank you Mr. Chairman,

First of all I would like to thank the Committee that it allows this party to express our arguments regarding Free legal assistance of environmental NGOs.

Very briefly, this is the current situation with regard to paragraph 6 of V9k Decision in relation with article 9, paragraphs 4 and 5 of the Aarhus Convention:

Law 27/2006 on access to information, public participation in decision making and access to justice in environmental matters, incorporates the regulatory content of Aarhus Convention to the Spanish legal system.

Article 23.1 sets up the requirements that non-profit legal persons have to fulfill in order to bring the environmental popular action.

However, paragraph 2 of the same article sets that ***“Non-profit legal persons referred in the precedent section will have the right to free legal aid in the terms provided by Law 1/1996 (10 January) on Free Legal Aid”***.

The consequence of this has been that the legislation about this matter is no at as clear and unambiguous as desirable, in order to determine the scope of the right to free legal aid for environmental NGOs. For this reason, this part have been expressing support of reviewing the current regulation of free legal aid in order to avoid the disparity of interpretations of the different Provincial Commissions on free legal aid, Judges and Courts.

As you know the law 1/1996 on Legal Aid was modified, in the sense of granting legal free aid to victims of terrorism and victims of domestic violence, free legal aid irrespective of their economic resources. However, environmental ongs were not included in that reform.

On the second progress review of the implementation of decision V9k, the Compliance Committee invites this part to provide information about the measures taken in order to fulfill the requirement of paragraph 6 of such Decision, to which this part answered in a communication, dated 5 December 2016, expressing the impossibility, to date, to comply with the requirements of the reform of the law on Free Legal Aid.

At this point this party would like to refer to the comments submitted by the communicant “Plataforma contra la Contaminación de Almendralejo, in relation to this matter.

The communicant alleges that in her last communication, the Spanish Aarhus Focal Point is resigned to the situation. In this regard, the Focal Point is not expressing resignation, but noting a real fact: In fact, the Government of Spain has remained a caretaker government for more than 300 days, near a year. As a result, the President of a caretaker government cannot submit any bill to the parliament, so any attempt in this regard would have been impossible.

The new Government took office on November 2016, so that means that there has not been enough time to resume any legislative proposal.

On the other hand, the communicant refers to article 60 of the Vienna Convention, as well as to article 37, paragraph 9) of the Decision 1/7 adopted by the first Conference of the parties, pointing to the possibility of a suspension of the implementation of the Convention as a result of a serious violation of the same.

In this regard we believe that Spain is not in the situation described by the communicant, given that our country has demonstrated compliance with part of its obligations as it is recognized in the second report of implementation of the Decision v9k, which found in its conclusions that the Party concerned has fulfilled the requirements of paragraph 5 of the Decision V9k , although there is no sufficiently fulfilled the requirement of paragraph 6 of Decision.

Furthermore, this party does wonder how the suspension of the Aarhus Convention for Spain could benefit the general goal of *protecting of the right of every person to live in an environment adequate to his or her health and well-being*, and therefore, how the suspension could help the communicant to achieve their own objectives related with Environment.

Consequently, as we stated in our last communication, we trust that, during this new term that have just began now, this legal reform will be taken into account. To this end we are in contact with de Ministry of Justice to resume this project of reform of the Spanish Free Legal Aid legislation

Thank you very much.

Susana García Martínez