



# Economic and Social Council

Distr.: General  
8 May 2014

Original: English

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## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation  
of the Convention: compliance mechanism**

## Compliance by Spain with its obligations under the Convention\*

### Report by the Compliance Committee

#### *Summary*

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1) and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8).

The document reviews the progress made by Spain in the intersessional period in implementing decision IV/9f of the Meeting of the Parties on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

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\* The present document has been submitted late due to the short interval between the forty-fourth meeting of the Compliance Committee and the deadline for the submission of documents to the fifth session of the Meeting of the Parties, and the need for further consultation on the document before its submission.

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## I. Introduction — decision IV/9f of the Meeting of the Parties

1. At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision IV/9f on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).<sup>1</sup>

2. Review of Spain's compliance had been triggered by two communications, communication ACCC/C/2008/24 in connection with an urbanization project in the city of Murcia, and communication ACCC/C/2009/36, relating to general issues and referring to specific projects on waste disposal, vine distillery and oil refinery in the vicinity of Almendralejo.<sup>2</sup>

3. In its findings on communication ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1), adopted on 18 December 2009, the Committee found that the Party concerned had failed to comply with article 4, paragraphs 1 (b), 2 and 8, article 6, paragraph 3, in conjunction with article 7, and article 9, paragraph 4, of the Convention. In its recommendations to the Party concerned, made with its agreement, the Committee recommended Spain:

(a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) Only reasonable costs, equivalent to the average costs of a photocopy on paper or electronic means (CD-ROM/DVD) are charged for providing access to environmental information to the public at central, regional and local level, with such measures including a review of the Murcia City Council Fees Chart for Services;

(ii) Information requests be answered as soon as possible, and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months from the date of the request; and that related legislation be reviewed to provide for an easy and specific procedure to be followed, in the event of a lack of response to a request;

(iii) Clear requirements be established for the public to be informed of decision-making processes in an adequate, timely and effective manner, including informing public authorities that entering into agreements relevant to the Convention that would foreclose options without providing for public participation may be in conflict with article 6 of the Convention;

(iv) A study be carried out on how article 9, paragraph 4, is being implemented by courts of appeal in Spain; and in case the study demonstrates that the general practice is not in line with the provision at issue, to take appropriate measures to align it to the Convention;

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<sup>1</sup> Decisions of the Meeting of the Parties concerning compliance by Parties and documents related to their follow-up can be found on the Convention website at <http://www.unece.org/env/pp/ccimplementation.html>.

<sup>2</sup> Communications and other documents related to them, including the findings and recommendations of the Committee, where applicable, are accessible on the Convention website from <http://www.unece.org/env/pp/pubcom.html>.

(v) Public participation procedures include reasonable time frames for the different phases allowing for sufficient time for the public to prepare and participate effectively, taking into account that holiday seasons as part of such time frames impede effective public participation; due to the complexity and the need to consult with experts, land use legislation be reviewed to expand the existing time frame of 20 days in the light of the findings and conclusions of the Committee;

(vi) Adequate, timely, and effective remedies, including injunctive relief, which are fair, equitable, and not prohibitively expensive be made available at first and second instance in administrative appellate courts for members of the public in environmental matters;

(b) Develop a capacity-building programme and provide training on the implementation of the Aarhus Convention for central, local and regional authorities responsible for Aarhus-related issues, including provincial commissions granting free legal aid, and for judges, prosecutors and lawyers; and to develop an awareness-raising programme on Aarhus rights for the public.

4. In its findings on communication ACCC/C/2009/36 (ECE/MP.PP/C.1/2010/4/Add.2), adopted on 18 June 2010, the Committee found that the Party concerned had failed to comply with article 3, paragraph 8, article 4, paragraphs 1 (a) and (b) and 2, article 6, paragraphs 3 and 6, and article 9, paragraph 5, of the Convention. In its recommendations to the Party concerned, made with its agreement, the Committee recommended Spain:

(a) Take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that the recommendations of the Committee in paragraph 119 (a) (ii) and (iii) of its findings on communication ACCC/C/2008/24 become effective (i.e., para. 3 (a) (ii) and (iii) above);

(b) Ensure the implementation of the recommendations of the Committee in paragraph 119 (a) (iv) of its findings on communication ACCC/C/2008/24 (i.e., para. 3 (a) (iv) above);

(c) Change the legal system regulating legal aid in order to ensure that small non-governmental organizations (NGOs) have access to justice;

(d) Examine the requirements for dual legal representation (“abogado” and “procurador”) for the court of second instance in the light of the observations of the Compliance Committee in paragraph 67 of its findings.

5. In January 2011, the Committee invited the Party concerned to provide information by February 2011 on its progress in implementing the Committee’s recommendations. Based on the information received, the Committee prepared its report on the Party’s progress to the Meeting of the Parties at its fourth session.

6. In its report (ECE/MP.PP/C.1/2011/2/Add.7), the Committee welcomed the general progress undertaken by the Party concerned, and in particular: with regard to costs for environmental information in Murcia (para. 3 (a) (i) above); the timely response to requests for environmental information (paras. 3 (a) (ii) and 4 (a) above); requirements for the public to be informed of decision-making (para. 3 (a) (iii) and (v) and para. 4 (a) above); and capacity-building programmes and training on the implementation of the Aarhus Convention and related Spanish legislation (para. 3 (b) above). In summary, the Committee found that steps had been taken to achieve compliance with the provisions of the Convention on access to information and public participation. However, with regard to costs, the Committee noted that there was still a difference in fees paid for information relating to urban planning and building. With regard to access to justice, the Committee made observations with respect to injunctive relief, legal aid and dual representation.

7. Through decision IV/9f, the Meeting of the Parties:

(a) Endorsed the findings of the Committee, welcomed the recommendations made by the Committee to the Party concerned during the intersessional period, as well as the progress achieved by the Party in implementing them, in particular with regard to access to information and public participation, and encouraged the Party to continue its efforts in this direction in all provinces of Spain;

(b) Noted that further action should be taken by the Party concerned to ensure that fees charged by public authorities for provision of information relating to urban planning and building are the same as for information relating to the environment;

(c) Further noted that awareness should be raised among competent authorities and their officials in implementing the time frames for public participation in decision-making processes in such a manner so as to exclude holiday seasons and allow for broad participation;

(d) Welcomed the many relevant capacity-building initiatives for civil servants, the judiciary and students at the National Institute of Public Administration, and encouraged the Party concerned to organize similar activities in a decentralized manner;

(e) Recognized that further efforts, in particular in the area of access to justice, were needed to overcome any obstacles of fully implementing article 9, paragraphs 4 and 5, of the Convention;

(f) Invited, therefore, the Party concerned to thoroughly examine, with appropriate involvement of the public, the relevant legislation and in particular the court practice with regard to:

(i) Injunctive relief in cases of environmental interest;

(ii) Award of legal aid to environmental NGOs;

(iii) The rule of dual representation;

(g) Invited the Party concerned to report to the Meeting of the Parties through the Compliance Committee, six months before the fifth session of the Meeting of the Parties, on the progress with the recommendation under subparagraph (b) above, the time frames applicable in public participation according to the Spanish laws, and the studies on access to justice requested under subparagraph (f) above.

## II. Summary of follow-up action

8. By letter of 7 December 2011, the communicant of communication ACCC/C/2009/36 informed the Committee that the European Ombudsman, through Decision 49/2011/AN dated 17 November 2011, had rejected a complaint by the communicant of maladministration by the European Commission for not proceeding with the communicant's infringement complaint related to the facts referred to in the communication, and specifically its allegations of non-compliance with article 3, paragraph 8, of the Convention.

9. On 8 August 2012, the Committee received communication ACCC/C/2012/78 alleging non-compliance by Spain with the provisions of the Convention on access to information and access to justice in connection with the inspection of a new zoo. The Committee determined that the communication was admissible at its thirty-ninth meeting (Geneva, 11–14 December 2012) and the communication was forwarded to the Party concerned for its response by 24 June 2013. In its response dated 12 June 2013, the Party concerned conceded that the allegations concerning access to information had initially been

well founded, but stated it had acted to redress the situation, which constituted an isolated case, immediately and that the information had in the meantime been provided to the communicant. The Committee sought the communicant's view on whether, in the light of that response, the case should remain open. In its response of 11 August 2013, the communicant acknowledged that it had received most of the information requested, but expressed its wish that the case remain open. Given that the situation with regard to access to information had been redressed at the domestic level and also the fact that the allegations of the communication relating to access to justice would be considered under the summary proceedings procedure in the context of the follow-up with decision IV/9f, at its forty-second meeting (Geneva, 24–27 September 2013) the Committee decided to close the case.

10. At its fortieth meeting (Geneva, 25–28 March 2013), the Committee requested the secretariat to invite the Party to inform it about the steps it had already taken to address the recommendations of decision IV/9f, along with its response to communication ACCC/C/2012/78, which was due to be sent by 24 June 2013.

11. On 12 May 2013, the communicant of communication ACCC/C/2009/36 provided information to the Committee commenting on the progress by the Party. The communicant informed the Committee that a new draft law on legal aid did not address the recommendations of the Committee and that, despite repeated efforts to express its views to the Ministry of Agriculture, Food and Environment (MAGRAMA) and the Ministry of Justice, it had not yet received any satisfactory reaction.

12. On 12 June 2013, the Party concerned reported that MAGRAMA, in close cooperation with the Ministry of Justice, had launched a process to undertake the preparation, in a participatory manner, of a study on access to justice in environmental matters as required by decision IV/9f. First, a preliminary paper had been drafted explaining the factual and legal background of communications ACCC/C/2008/24 and ACCC/C/2009/36, the conclusions of the Committee, decision IV/9f, and describing briefly the current situation in Spain regarding access to justice in environmental matters, as a starting point. In addition, a questionnaire was prepared including questions on the three substantive issues addressed by decision IV/9f, namely, injunctive relief, legal aid and dual representation. Both the preliminary paper and the questionnaire were sent to a wide range of stakeholders including other units within MAGRAMA and the Ministry of Justice, Regional Focal Points of the Aarhus Convention, associations in defence of environmental justice, environmental NGOs, the General Council of Spanish Lawyers, the General Council of Attorneys, associations of judges and magistrates, prosecutors, universities and law observatories, etc. The responses received were taken into account in the preparation of the first draft of findings of the study. The deadline for stakeholders to complete the questionnaire was 15 May 2013. The next step would be the drafting of a preliminary study taking due account of all the contributions received. This draft study would be uploaded to the website of both MAGRAMA and the Ministry of Justice for the general public to submit further comments, observations or suggestions. Following this last period of public consultations, the final study would be completed, translated and sent to the Compliance Committee.

13. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee took note of the information received. It agreed that it would review the information again at its forty-second meeting, when it would also consider its recommendations to the Meeting of the Parties at its fifth session.

14. By e-mail of 30 August 2013 to the Party concerned, the secretariat thanked the Party concerned for the update and recalled that, in addition to a study on access to justice, decision IV/9f had also invited the Party concerned to report on progress with respect to: (a) the fees charged by public authorities for provision of information relating to urban

planning and building, to ensure that such fees were the same as for information relating to the environment; and (b) the time frames applicable in public participation according to the law of the Party concerned. The secretariat invited the Party concerned to share with the Committee any information it might have on these two issues, as well as the preliminary outcomes of the ongoing study on access to justice.

15. On 16 September 2013, the Party concerned provided information on both the fees charged by public authorities for provision of information relating to urban planning and building and the time frames applicable in public participation according to its national laws. It also indicated that its study on access to justice was not yet finished, but was expected to be uploaded on the Ministries' websites by 15 October 2013 for the public to submit comments.

16. On 20 November 2013, the Party concerned provided the Committee with a letter from the Secretary General of the Federation of Municipalities and Provinces (FEMP) dated 24 October 2013 and addressed to the Secretary General of MAGRAMA. In the letter, the Secretary General stated that, at its meeting of 24 October 2013, the FEMP Environment Commission had recommended the insertion of information on its website and in its publications to encourage local entities to adopt measures to harmonize the fees charged by the public authorities for providing information on urban planning and on environmental matters.

17. On 9 December 2013, the Party concerned sent to the Committee the final study on access to justice, in Spanish. On 11 December 2013, the Party concerned provided the Committee with an English translation of the study.

18. On 17 December 2013, the communicant of communication ACCC/C/2009/36 sent to the Committee its views on the implementation of decision IV/9f by the Party concerned. It submitted that the study on access to justice failed to concretely define a single measure that had been taken or that would be taken in the near future to correct the issues it identified. The communicant reported a feeling of sadness and hopelessness that, more than three years after the findings on communication ACCC/C/2009/36 had been adopted, all the Party concerned had done was to produce a document that highlighted the discrepancies between MAGRAMA and the Ministry of Justice concerning the interpretation of the Aarhus Convention. It also reported that it was still experiencing difficulty in accessing information and participating effectively, for example due to documents only being available during office hours and rarely published in electronic format.

19. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee continued preparation of its report to the Meeting of the Parties on the implementation of decision IV/9f.

20. On 26 December 2013, the communicant of communication ACCC/C/2008/24 provided brief comments on the Party concerned's response, in which it stated that the Party concerned had not fulfilled the requirements of decision IV/9f in the following respects: (a) the Murcia City Council had not changed its fees for providing access to information on land use and the price was still €2.15 per page; and (b) the Murcia regional government had not changed the land use law to introduce sufficient time frames for public participation. The communicant confirmed the final study on access to justice was correct.

21. By e-mail of 16 January 2014, the Party concerned informed the Committee that an article on fees for access to urban planning and building information had been included in the latest issue of *Carta Local*, an internal FEMP news bulletin for municipal entities.

22. On 21 January 2014, the Party concerned informed the Committee that, in the light of the information from the communicant of communication ACCC/C/2008/24 that the Murcia City Council was still charging €2.15 per page to provide copies of information on

land use, MAGRAMA had sent an official letter to the Murcia City Council recalling decision IV/9f and the findings of the Compliance Committee. The letter also referred to the information on fees circulated by FEMP. The Party also informed the Committee that, according to local newspapers and the website of the governing party in the region of Murcia, the Murcia regional government was considering amending its law on land use. As soon as MAGRAMA had access to the draft amendment, an official communication would be sent to the Murcia Regional Aarhus Focal Point stressing again the importance of taking on board the recommendations of the Compliance Committee regarding time frames for public participation.

23. On 4 February 2014, the Party concerned informed the Committee that it had recently been informed by the Murcia City Council that the Municipal Tax Agency was currently working on a new version of the fee system in order to simplify it and make it more coherent and to further reduce the current rates. In addition, MAGRAMA had provided the Murcia Municipal Tax Agency with a copy of the draft national ordinance regulating fees for environmental information at the national level, which provided for black and white A4 photocopying at €0.03 per page, and colour A4 photocopying at €0.12 per page, with the first 19 pages free of charge in both cases.

24. Following its forty-third meeting, the Committee completed the draft of the present report using its electronic decision-making procedure and on 4 March 2014 sent it to the Party concerned and the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 for their comments by 24 March 2014.

25. On 21 March 2014, the Party concerned provided its comments on the Committee's draft report, including further information on the time frames for public participation procedures in Murcia's land use legislation and the fees for provision of information relating to urban planning and building.

26. On 24 March 2014, the communicant of communication ACCC/C/2008/24 provided its comments on the draft report, in particular with respect to the costs of environmental information, time frames for public participation and the study on access to justice.

27. On 25 March 2014, the communicant of communication ACCC/C/2008/24 provided additional information on the new draft law on legal aid.

28. On 26 March 2014, the Party concerned provided additional information stating that the current fee charged was €1 per copy "for any kind of information", and confirmed that the time frame for public participation in the Murcia Land Use Law was 20 days excluding Sundays and public holidays.

29. Taking into account the information received, at its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee finalized its report for submission to the Meeting of the Parties at its fifth session.

### **III. Considerations and evaluation by the Committee**

30. The Committee welcomes the constructive engagement of the Party concerned in the follow-up to decision IV/9f demonstrated by its correspondence with the Committee and its efforts to meet the deadlines set by decisions IV/9f. The Committee also appreciates the cooperation shown by the Party concerned in providing interim progress reports at the invitation of the Committee in June and September 2013 to assist the Committee's deliberations at its forty-first and forty-second meetings — although no such reports were specified in decision IV/9f — and the efforts made by the Party concerned to submit its progress report, due six months in advance of the fifth session of the Meeting of the Parties



(i.e., by 30 December 2013), several weeks early at the invitation of the Committee in order to assist the Committee's deliberations at its forty-third meeting.

31. In order to have fulfilled the requirements of decision IV/9f, the Party concerned would need to have undertaken the following actions, and reported on them to the Committee six months before the fifth session of the Meeting of the Parties:

(a) A thorough examination, with the appropriate involvement of the public, of the relevant legislation, and in particular the court practice with regard to:

- (i) Injunctive relief in cases of environmental interest;
- (ii) The award of legal aid to environmental NGOs;
- (iii) The rule of dual representation;

(b) Action to ensure that the fees charged by public authorities for provision of information relating to urban planning and building are the same as for information relating to the environment;

(c) Awareness-raising among competent authorities and their officials with regard to implementing the time frames for public participation in decision-making in such a manner so as to exclude holiday seasons and allow for broad participation and the preparation of a report on the time frames applicable in public participation according to the Spanish laws.

The Committee will examine the fulfilment by the Party concerned of each of these below.

#### **Study on access to justice (injunctive relief, legal aid and dual representation)**

32. In 2013, the Party concerned undertook a study on access to justice through a consultative process run by MAGRAMA (see para. 12 above). The study examined relevant legislation and court practice, and stakeholders' views on these, with regard to (a) injunctive relief in cases of environmental interest; (b) the award of legal aid to environmental NGOs; and (c) the rule of dual representation. The study incorporated an appendix by the Ministry of Justice reflecting its position on the situation of environmental justice in Spain with regard to these three issues. The findings of the study, together with the conclusions of MAGRAMA and the Ministry of Justice, are summarized below.

#### *Injunctive relief in cases of environmental interest*

33. The study examined the assessment of interests for injunctive relief, the costs of injunctive relief, the length of the injunction process and the interim suspension of urban plans and urbanization projects. With respect to the assessment of interests, the stakeholders submitted that, when balancing the interests involved, economic interests were often placed above environmental ones. To overcome this trend, the stakeholders demanded more objective legal criteria for injunctions. MAGRAMA concluded that the current legislation ensured full access to interim relief in environmental matters. Nevertheless, the possible introduction of a general principle in favour of giving prevalence to environmental interests could be considered, for example, through its inclusion in Law 27/2006, with a view to reinforcing the right to access to environmental justice according to article 45 of the Constitution and the principles of the Aarhus Convention. With respect to the cost of injunctive relief, most of the stakeholders participating in the study — mainly environmental NGOs — shared the view that the sometimes prohibitive costs of these bonds were insuperable obstacles and acted, de facto, as a deterrent when demanding environmental interim justice. MAGRAMA concluded that, while the current legislation permitted interim measures to be granted without a bond requirement when environmental interests were involved, that line of reasoning was not universally supported among the

judiciary. MAGRAMA stated that it would thus consider suggesting legal amendments to clearly provide for the possibility to exempt the requirement for the deposit of a bond in such circumstances. With respect to the length of the injunction process, stakeholders expressed concern at the length of time taken to resolve applications for interim measures. MAGRAMA concluded that it was in favour of the possible enhancement of the current legislation to allow for interim measures to be requested before the action was brought in cases of environmental risk. Finally, regarding the interim suspension of urban plans and urbanization projects, MAGRAMA considered that there was a misunderstanding of the Compliance Committee in its findings on communication ACCC/C/2008/2004 with respect to this issue and that no specific initiatives were needed.

34. In its appendix to the study, the Ministry of Justice stated that it considered the current legislation for precautionary measures (Law 29/1998) was adequate and sufficiently precise to enable the judiciary to react sufficiently in advance so as to avoid irreparable damage to the environment. It noted that there was growing awareness of the need to prioritize environmental public interests over other interests and to exempt bonds and cautions when effective access to justice could be at risk. It considered that the key to the successful implementation of the precautionary measures system lay in further awareness-raising and training. It also referred to the review of Law 29/1998 currently being undertaken by the Special Sections of the General Law Commission of the Ministry of Justice in order to identify any areas for possible improvement.

#### *Award of legal aid to environmental NGOs*

35. The study found that the majority of stakeholders were of the opinion that the incorrect interpretation and implementation of article 23, paragraph 2, of Law 27/2006 was rendering that provision ineffective and that clarification or legislative modification was needed. Legal commentators and academics were divided, with some considering that Law 27/2006 automatically recognized the right to free legal aid for environmental NGOs, while others felt that it did not and consequently was not in line with the article 9, paragraph 5, of the Aarhus Convention regarding the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice. In the light of the study's finding that the current drafting of article 23, paragraph 2, of Law 27/2006 was not sufficiently clear and unambiguous, and with a view to redressing to the extent possible the current disparity in jurisprudence, MAGRAMA expressed its support for the possible review of the current regulation or, if appropriate, the introduction of training and awareness-raising activities for the institutions and public bodies responsible for the processing and resolution of the requests for free legal aid.

36. The Ministry of Justice, in its appendix to the study, stated that it considered that the relevant legislation (Laws 27/2006 and 1/1996) were adequate given their purpose, and ensured that the limited resources would be used to grant aid to those legal persons whose nature and purposes were oriented to the general interest, avoiding any abusive or incorrect use.

37. The Committee shares the view of MAGRAMA. Recalling the finding in paragraph 74 and the recommendation in paragraph 75 (c) of the Committee's findings on communication ACCC/C/2009/36, made with the agreement of the Party, and endorsed and welcomed by the Meeting of the Parties through paragraphs 2 (f) and 3 of decision IV/9f, which recommended the Party to change the legal system regulating legal aid in order to ensure that small NGOs have access to justice, the Committee is not convinced that sufficient efforts have been taken to overcome the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid for NGOs.

*The rule of dual representation*

38. The study examined the roles of lawyers (“*abogados*”) and procurators (“*procuradores*”) in the context of costs of access to justice. It found that the duties performed by procurators and lawyers were not interchangeable. Procurators played an important role in case management, which enables lawyers to concentrate on substantive legal issues. The fee for procurators were fixed, and formed only a small part of the litigation costs (e.g., €400 per case in comparison with €3,000 for expert fees). Legal stakeholders, especially judges and magistrates, stated that in cases without procurators, delays and other malfunctions were noticed, and thus their involvement facilitated the efficient functioning of justice. MAGRAMA considered that, in the light of the study’s findings, changes were not currently warranted.

**Fees for provision of information relating to urban planning and building**

39. In its report of 16 September 2013, the Party concerned provided information on the activities it had undertaken to notify the competent public authorities that the fees charged for the provision of information relating to urban planning and building should be the same as for information relating to the environment, in accordance with paragraph 5 of decision IV/9f. It also provided the Committee with a letter dated 24 October 2013 from the Secretary General of FEMP to MAGRAMA, confirming that such a notification had also been inserted on the FEMP website.

40. However, on 26 December 2013, the communicant of communication ACCC/C/2008/24 informed the Committee that the Murcia City Council had not changed its fees for providing access to information on land use and that the price was still €2.15 per page.

41. On 21 January 2014, the Party concerned informed the Committee that it had itself been informed by the communicant of communication ACCC/C/2008/24 of this issue. MAGRAMA had thereafter sent an official letter to the Murcia City Council recalling decision IV/9f and the findings of the Compliance Committee. The letter also referred to the information on fees circulated by FEMP.

42. On 4 February 2014, the Party concerned informed the Committee that it had recently been informed by the Legal Services of the Urban Planning Department of the Murcia City Council that the Municipal Tax Agency was currently working on a new version of the fee system in order to simplify and add coherence to the system. The current rates would also be further reduced. MAGRAMA informed the Committee that it had provided the Murcia Municipal Tax Agency with a copy of the draft national ordinance regulating fees for environmental information at the national level, which provided for black and white A4 photocopying at €0.03 per page, and colour A4 photocopying at €0.12 per page, with the first 19 pages free of charge in both cases.

43. In its comments of 24 March 2014 on the draft of the current report, the communicant of communication ACCC/C/2008/24 informed the Committee that the cost for copying environmental information under the ordinance currently in force in Murcia was €1.10 per page, with the first 19 pages free of charge. This was substantially confirmed by the Party concerned in its comments of 21 March 2014 on the draft of the current report, and also in its subsequent e-mail of 26 March 2014, when it informed the Committee that, according to Murcia’s ordinance, the fee for a copy of any kind of information was €1 per page.

44. In paragraph 79 of its findings on communication ACCC/C/2008/24, endorsed by the Meeting of the Parties through decision IV/9f, the Committee held:

Given that the commercial fee for copying in Murcia is €0.03 per page, which seems to be generally equivalent to the standard commercial fee for copying in the United Nations Economic Commission for Europe ... countries, the Committee concludes that the charge of €2.05 per page for copying cannot be considered reasonable and constitutes non-compliance with article 4, paragraph 8, of the Convention.

45. Following the above reasoning, the Committee finds that the Party concerned remains in non-compliance with article 4, paragraph 8, of the Convention, as the current fee charged by the Murcia City Council of €1 per page for a copy of any kind of information is still unreasonable.

#### **Time frames applicable for public participation in decision-making in environmental matters**

46. On 16 September 2013, the Party concerned provided the Committee with a summary of the general approach taken in the national law with respect to time frames for public participation in decision-making in environmental matters. It also informed the Committee of the activities it had undertaken to raise the awareness of competent authorities and their officials in implementing the time frames for public participation in decision-making processes, in accordance with paragraph 6 of decision IV/9f.

47. The Party informed the Committee that time frames for public participation were regulated differently depending on the level of the public administration involved, the kind of decision-making process and the specific subject matter. In general, the applicable legal frameworks set minimum time frames for public participation which might be extended depending on the circumstances, such as the complexity of the case, the volume of documentation or if the period included public holidays. The Party provided examples of legislation that specified such minimum time frames, as well as examples of a draft policy, programme and legislative act each of which had recently been open to public participation.

48. Regarding the actions taken by the Party concerned to raise awareness among the competent authorities in implementing the time frames for public participation in decision-making processes, the Party concerned informed the Committee that Spain's Constitution enshrined the autonomy of municipalities, provinces and Autonomous Communities to manage their own interests. The actions taken by MAGRAMA to implement this recommendation were thus necessarily limited to the exchange of information and cooperation with the competent authorities and raising awareness. To this end, MAGRAMA had organized a meeting with Regional Focal Points (representing the Autonomous Communities) and representatives of FEMP, in order to raise awareness of the findings and recommendations of the Compliance Committee and to call for their implementation, including those related to the time frames for public participation. MAGRAMA was collaborating with the Ministry of Finances and Public Administration in order to put this matter on the agenda of future meetings. Courses on the Aarhus Convention, relevant European Union directives and Law 27/2006 regulating the right of access to information, public participation and access to justice in environmental matters had been added to the training programme of MAGRAMA and its autonomous bodies, with the aim of improving implementation. The training programme was expected to be continued in the coming years.

49. Against this background, the communicant of communication ACCC/C/2008/24, in its e-mail of 26 December 2013, informed the Committee that the Murcia regional government had not changed its land use law to introduce sufficient time frames for public participation.

50. On 21 January 2014, the Party concerned informed the Committee that, according to local newspapers and the website of the governing party in the region of Murcia, the

regional government was considering amending its law on land use. The Party informed the Committee that as soon as MAGRAMA had access to the draft amendment, an official communication would be sent to the Murcia Regional Aarhus Focal Point stressing again the importance of taking on board the recommendations of the Committee regarding time frames for public participation.

51. In its comments of 21 March 2014 on the draft of the current report, and again in its e-mail of 26 March 2014, the Party concerned informed the Committee that, while the time frame applicable for public participation in the Murcia Land Use Law had not changed since the Committee made its findings on communication ACCC/C/2008/24, Sundays and public holidays were not included in the calculation of this time frame and therefore the time frame in calendar days was several days longer. For example, in the case of communication ACCC/C/2008/24, the time frame for consultation in calendar days was actually 26 days. The Party submitted that, for this reason, it could not share the view of the Committee in its findings on communication ACCC/C/2008/4 that a “period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country” because, the period of 20 days did not include, but in fact excluded, the days of general celebration in that period.

52. Having considered the comments received, the Committee finds that, in the overall context of the facts of communication ACCC/C/2008/24, the time frame provided by the authorities was unreasonable as the start of the period (22 December) was immediately before the Christmas public holidays and thus had a negative impact on the possible participation of the public. However, the Committee does not exclude that a time frame of 20 days for public participation may be regarded as reasonable in the context of urban planning, provided that only working days count and a separate reasonable period is provided in addition to that period for the public to inspect all information relevant to the decision-making. In other circumstances, a longer time frame may be required. Leaving aside communication ACCC/C/2008/24 and its specific circumstances, and bearing in mind the explanations of the Party concerned regarding the applicable rules for calculating the time frames in Spanish law, the Committee has at present no evidence before it to conclude that the Party concerned is still in non-compliance with article 6, paragraph 3.

#### **IV. Conclusions and recommendations**

53. The Committee welcomes the active and constructive engagement of the Party concerned in the compliance review process. It also appreciates the cooperation of the Party in providing interim progress reports in addition to those envisaged in decision IV/9f to assist the Committee, as well as providing its final progress report ahead of time in order to facilitate the Committee’s work.

54. Having reviewed the information provided in the intersessional period, the Committee finds that the Party concerned has seriously and actively engaged in efforts to follow the recommendations set out in paragraphs 5, 6 and 9 of decision IV/9f. Based on the information provided, the Committee considers that the Party concerned is no longer in a state of non-compliance with the provisions of article 3, paragraph 8, article 4, paragraphs 1 (a) and (b) and 2, and article 6, paragraphs 3 and 6, of the Convention with respect to the specific points of non-compliance identified in the Committee’s findings on communications ACCC/C/2008/24 and ACCC/C/2009/36. In the light of its findings in paragraph 45 above, the Committee finds, however, that the Party has failed to take sufficient measures to comply with article 4, paragraph 8, of the Convention. Moreover, further to its findings in paragraph 37 above, the Committee is still not convinced that sufficient efforts have been taken to overcome remaining obstacles to the full

implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid for NGOs.

55. The Committee recommends, pursuant to paragraphs 35 and 37 (d) of the annex to decision I/7, that the Meeting of the Parties:

(a) Endorse the above report of the Committee with regard to compliance by Spain;

(b) Welcome the efforts made by the Party concerned to meet the recommendations of the Committee, and the significant progress it has achieved in that respect;

(c) Recommend that the Party take the necessary measures, such as those envisaged in the recent information provided by the Party concerned, to ensure that the fees charged by the Murcia City Council for the provision of copies of land use and urban planning information are reasonable and are set out in a publicly available schedule of fees;

(d) Recommend that the Party concerned report to the Committee by 31 December 2014 on the measures taken to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid for NGOs are overcome;

(e) Request the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in accordance with the above recommendations.

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