

From: Carril Martinez, Joaquin
Sent: Monday, December 21, 2020 10:08 AM
To: ECE-Aarhus-Compliance; Fiona Marshall
Cc: SG de Relaciones Internacionales MITECO; Escobar Paredes, Victor Andres; Fernández Fernández, Susana
Subject: Response to the communicant's new comments communication ACCC/C/2009/36

Dear colleagues Aarhus Convention Compliance Committee,

In response to the communicant's new comments regarding our response to their previous comments, we must assert the following:

The document attached by the communicant to its comments is not a ruling, as the communicant asserts, but an order of the clerk of court notifying the plaintiff of the decision adopted by an administrative authority.

As indicated in the aforementioned order, this decision could be reviewed, i.e., it is not a final decision.

It is completely different to the court order we attached to our previous comments, as the corresponding decision was final in nature, and therefore could not be appealed. Quoted below are paragraphs taken from the two documents that illustrate the aforementioned differences:

"An appeal may be filed against this decision with the Attorney of the Justice Administration, within a period of FIVE days beginning on the day following notification thereof."

"By virtue of this order, against which no appeal as of right may be filed, as decided, ordered and signed by the Judges whose names are included in the margin of this page, in my presence, as Attorney of the Justice Administration, to which I attest."

It is our consideration that the communicant would contribute more effectively to the defence of the right to legal aid were it to inform the NGO that is the plaintiff in this case of the existence of the rulings of our Supreme Court that award the right to legal aid to those NGOs that meet the criteria set forth in article 23 of Act 27/2006 of 18 July regulating the Rights of Access to Information, Public Participation and Access to Justice in Environmental Matters.

This was the course of action pursued by the NGO Coordinadora Ecoloxista d'Asturies in its claim filed with the High Court of Justice of Asturias, which, by invoking the case law of our Supreme Court, was awarded the right to legal aid in the corresponding ruling. We attached this ruling to our previous comments.

As indicated in our prior communications, in order for the case law of the Supreme Court to be taken into account by a court, it must first be invoked in the submissions made to that court.

Without aiming to be exhaustive and to settle this issue, given that, as can easily be verified, the courts and judges—the bodies entrusted with interpreting and applying the law—largely refer to the case law on this matter, we attach new orders issued by High Courts of Justice of different Autonomous Communities which ruled to the same effect, i.e. which awarded the right to legal aid to those entities meeting the criteria set forth in article 23 of Act 27/2006 of 18 July. Moreover, each of these rulings expressly indicates that it is not necessary to meet the criteria set forth in article 2 of Act 1/1996 of 10 January in order to obtain the aforementioned right.

It is very hard for us to understand the conduct of the recalcitrant communicant which, rather than publicizing the numerous rulings that endorse the course of action that it, in principle, seeks to

defend (i.e. the awarding of legal aid to those entities that meet the criteria set forth in article 23 of the Act 27/2006 of 18 July), has instead concealed them. Indeed, it has disseminated documents from administrative bodies that uphold the opposing course of action.

Due to a lack of human and financial resources we are only sending an English translation of two of the court decisions. The other court decisions attached are in Spanish, but as the communicant understands this language it might help convince it of our point of view, given that all of the decisions are to the same effect.

We would be very gratefully if you can confirm the receipt of this email and attached documents.

Kind regards.

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