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4 February 2021

## To Compliance Committee of the Aarhus Convention [ACCC-C-2009-36]

### Comments of communication Spain's progress report on decision VI/8j.

In response to the comments made by Spain regarding our comments.

In Spain's comment dated December 21, 2020, it is stated verbatim "*It is very hard for us to understand the conduct of the recalcitrant communicant*". However, it is not about being recalcitrant, but about exposing the real situation of the problem we are dealing with.

We consider that it can shed light on the matter by addressing what the Ombudsman communicated to the General Courts of the Spanish Parliament in his annual report for 2019 (latest report by the Ombudsman).

#### Ombudsman—Annual Report 2019<sup>1</sup>

##### “1.4.2 Free Justice

##### Collectives in defence of the environment

In 2016, an environmental group reported to the Ombudsman that the Bar Association of Gran Canaria had denied it the right to free legal aid by requiring it to accredit its recognition as a public utility association.

The association understood that Law 27/2006, of 18 July, which regulates the rights of access to information, public participation and access to justice in environmental matters, expressly and unconditionally attributes the right to free legal aid to environmental NGOs.

However, as this right is recognised in Article 23 of the aforementioned legal text, it is subordinated to the terms of Law 1/1996, of 10 January, on free legal aid.

**The Ombudsman considers that the wording of Law 27/2006 is not clear, and, furthermore, there is a disparity in the criteria of the free legal aid commissions, and it is necessary to establish a unified criterion in this matter.**

Against one of the denials of free legal aid by the Free Legal Aid Commission of Gran Canaria, the association appearing before the Ombudsman filed a contentious-administrative appeal and, in judicial proceedings, their right to litigate free of charge was recognised under the terms of Law 1/1996, of 10 January, on free legal aid, revoking the decision of the Free Legal Aid Commission.

**The Ombudsman initiated proceedings with the Ministry of Justice, which reported that the Central Commission on Free Legal Aid was not empowered to unify the different criteria that could be applied by the different free legal aid commissions on the wording of Law 27/2006 and clarified that the criterion "as could not be otherwise, is that which is currently contained in the Law on Free Legal Aid for all applicants for free legal aid".**

In view of the response from the Ministry of Justice, proceedings were initiated with the Secretary of State for Agriculture and Fisheries, Food and Environment, who informed this institution that meetings were held

<sup>1</sup> [https://www.defensordelpueblo.es/wp-content/uploads/2020/05/I\\_Informe\\_gestion\\_2019.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2020/05/I_Informe_gestion_2019.pdf)

periodically with the main environmental organisations, and that in the meetings held on 6 February, 26 June and 27 September 2017, this matter had been discussed.

In this sense, **it was admitted that the right to legal aid, beyond the legal standing recognised in article 23.2 of the aforementioned law, was not included in the rights relating to access to justice and administrative protection set out in article 3. 3:** the right to appeal against acts and omissions attributable to the public authorities that contravene the rights recognised in said law in terms of information and public participation; the right to exercise popular action to appeal against acts and omissions attributable to the public authorities that constitute violations of environmental legislation, and any other right recognised in the Constitution or in the law.

In relation to NGOs' access to legal aid, in 2011, the Aarhus Convention Compliance Committee invited Spain to review national legislation in relation to access to justice in environmental matters and, in particular, judicial practice in granting free legal aid to environmental NGOs. Spain, for its part, undertook to carry out this in-depth study.

**It seems clear that there is a need to harmonise the mismatch between the provisions of Law 27/2006 (transposing Aarhus) and Law 1/1996 on free legal aid.**

On 27 March 2017, the General Technical Secretariat of the Ministry of Agriculture and Fisheries, Food and Environment formally addressed its counterpart in the Ministry of Justice proposing to make progress on this issue. **However, the working group did not become a reality.**

On 17 January 2019, the Ombudsman again addressed the Secretary of State for the Environment, making a Recommendation urging the creation of a working group between the Ministry of Ecological Transition and the Ministry of Justice to assess the application of existing regulations on access to legal aid and to analyse the issues raised by access to legal aid for environmental defence associations.

On 8 April 2019, the Secretary of State accepted the Ombudsman's recommendation and communicated that the General Technical Secretariat had been urged to promote the creation of a specific working group with the competent body of the Ministry of Justice, in order to harmonise the existing regulations.

**At the moment, the proceedings on this case are suspended for a prudent period of time, until the aforementioned working group has been set up and has begun its work (16007426)."**

We would like to apologize to the Committee for submitting comments outside the established deadlines, however, given the importance of the Ombudsman's opinion, we hope that they will take this information into consideration.

In Almendralejo, 4 February 2021



Félix Lorenzo Donoso

*Plataforma Contra la Contaminación de Almendralejo*