



To: Aarhus Convention Compliance Committee

13th of December of 2022

PRE/ACCC/C/2022/195 (Spain)

Determination of preliminary admissibility (Written statement by the Communicant)

Dear Chair,

Following the initial public discussion held today at the 77th meeting of the Committee regarding the preliminary admissibility of communication PRE/ACCC/C/2022/195 (Spain), Verdegaia respectfully submits the following written statement.

Since Verdegaia's initial communication submitted in July 2022, further developments in the cases mentioned in our submission and connected cases consistently expose the systematic breaches by Spain of Article 9, para. 3 and 4, of the Convention.

In paragraph 15 of our communication we explained how criminal proceedings DPA 370/2019 were "referred to a different Court in Santiago de Compostela due to court jurisdiction (the crime of falsehood had taken place in Santiago, and not in Noia). The No. 3 Court of Instruction of Santiago opened proceedings DPA 2226/2021 limited to the alleged crime of falsehood, but has so-far failed to receive a statement as an accused person of the same former Director General of Energy and Mines, leading to the stall of the procedure."

After being part of the procedure since its initiation in 2019 through its own lawyer and attorney, the Judge of the No. 3 Court of Santiago issued a decision on 17th of July 2022, demanding a deposit of 3,000 euros. Verdegaia submitted an appeal of reform arguing that the deposit was not mandatory in the given circumstances and that, even so, the amount was disproportionate. Verdegaia requested that the deposit be lifted or, alternatively, be reduced, and that, while a final decision was not reached, that Verdegaia was allowed to continue to appear in the proceedings. The Court issued a decision on the 1st of September 2022, rejecting the appeal.

An additional appeal was filed on the 19th of September against that decision with the Provincial Court of A Coruña, together with a request to bring the matter before the Court of Justice of the European Union for a preliminary ruling, based on the following question:

"In the light of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, its successors and the Aarhus Convention on Access to Justice in Environmental Matters: (1) May a court or tribunal impose a deposit for the exercise of environmental class actions which, because of its onerousness in relation to the means of those seeking to exercise it, prevents or seriously obstructs the exercise of environmental class actions? (2) How should the concept of unreasonably onerous limit be calculated and considered given the circumstances?"

Instead of forwarding the appeal to the Provincial Court, the lower Court decided it would not forward the appeal to the competent Provincial Court arguing that Verdegaia had no right to appeal as it was no longer a part of the proceedings. An appeal for annulment in the face of such unseen decision was submitted, but the Court remained silent in this regard.

As soon as Verdegaia was expelled from the proceedings, the Court immediately issued a decision on the 17th of November of 2022 for the provisional dismissal of the proceedings alleging that the maximum period for judicial investigation of proceedings of 12 months had elapsed. During that period the Court incurred in deliberate delays and did not issue a decision for the extension of the time limit. As a consequence, the accused never made a statement before Court, generating once again impunity using the same judicial strategy that had been applied in the previous proceedings laid out in Verdegaia's original communication.

This kind of practices are not isolated but systemic when cases regarding environmental corruption are handled and showcase the lack of independence of the Spanish judiciary, as has been repeatedly denounced by international bodies.¹

Complete disregard for basic judicial rules of fair process have also been faced by other ENGOs denouncing corruption on other environmental cases relating to the San Finx mines. This includes the separate proceedings DPA No. 2296/2021, handled by the same No. 3 Court of Instruction of Santiago, in which another ENGO was expelled from the proceedings after being imposed a disproportionate 3,000 € deposit, and its right to appeal the decision was equally prevented.

Based on the ongoing systemic disregard for basic provisions guaranteeing the right to access to justice on environmental issues, Verdegaia requests that the Committee decides to admit this Communication and further investigates the matter. Verdegaia can also provide additional documentary evidence regarding the additional facts presented in this written statement.

Yours sincerely,



Sabela Iglesias Garrido
Asociación Verdegaia

¹ https://www.coe.int/en/web/greco/home/newsroom/-/asset_publisher/sCeIUhEJG5bw/content/greco-calls-for-an-overall-anticorruption-strategy-and-effective-implementation-of-laws-in-spain?inheritRedirect=false