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21 April 2023

**Secretary to the Aarhus Convention Compliance Committee**  
Economic Commission for Europe Environment,  
Housing and Land Management Division  
Bureau 348  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland

**Re: Decision VII/8p of the Meeting of the Parties Aarhus Convention on compliance by the Kingdom of Spain with its obligations under the Convention (ACCC/C/2009/36)**

1. After over 13 years of working with the Aarhus Convention, we regret to inform you that we have decided not to continue our participation. While we believe that the Convention is an essential instrument for the protection of the environment through the direct participation of citizens in decision-making, we have come to the conclusion that its implementation is very flawed and does not achieve the objectives it was originally intended to accomplish.
2. Throughout these years, the opinions and excuses of the Focal Point, seldom backed up by any documentation, prevailed over the documentation provided by the Platform, showing that Spain had never adopted any measure to comply with the decisions of the Compliance Committee or the Parties.
3. Some of the decisions of the Compliance Committee lacked the **statement of reasons** required by Spanish law. For example, the judgment of the Catalan High Court of Justice 44/2017 of 9 October states that "the statement of reasons must express the elements and reasons for the judgment that make it possible to know the essential legal criteria on which the decision was based, or, in other words, that its 'ratio decidendi' is the result of a rational exegesis of the legal system and not the result of arbitrariness. This is not the case (a) where there is no reasoning at all, (b) where the reasoning is inadequate in the form of general assessments without reference to the specific case, to which we must add (c) those cases where the reasoning is obvious and confused, leading to an arbitrary conclusion with such an inadequate reasoning".
4. For instance, in the communication on Decision VII/8p (Spain) - Outcome of the Committee's review of Spain's Plan of Action, the Secretary of the Compliance Committee sent an email to the Spanish Focal Point communicating: "I am writing to inform you that at its virtual meeting on 17 November 2022, the Compliance Committee reviewed the plan of action for Decision VII/8p submitted by Spain on 1 July 2022, together with the comments received from the addressees of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99 in relation thereto.
5. After considering all of the information received, the Commission concluded that the action plan submitted by Spain **appeared to be adequate.**"
6. We cannot analyse the reasons that led the Committee to reach this conclusion, simply because they are not provided. After so many years of excuses from Spain, we do not understand the reasons that could have led the Committee to this vote of blind faith.
7. We believe that we are on the verge of what Arnstein would classify as 'tokenism'<sup>1</sup>. Essentially,

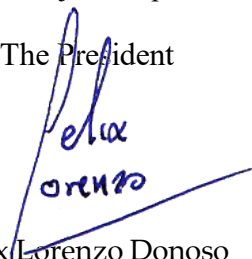
<sup>1</sup> Sherry R. Arnstein (1969) A Ladder of Citizen Participation, Journal of the American Institute of Planners, 35:4, 216-224  
Pag 1 / 2

the author highlights a potential gap between the meaning of environmental democracy and the actual form of public participation that is implemented. He suggests that the consultative approach outlined in the Convention may not be sufficient to fully realise the principles of environmental democracy and may instead serve as a superficial attempt to involve the public. By using the term 'tokenism', the author conveys a critical stance towards the current approach to public participation in environmental decision-making.

8. This situation reminded me of a passage from Rudolf von Jhering's book, *The Struggle for Law*<sup>2</sup>, in which he asserts: "Under such circumstances, the lot of the few who have the courage to enforce the law becomes a real martyrdom. Their strong feeling of legal right, which will not permit them to quit the field, becomes a curse to them. Forsaken by all who should have been their natural allies, they stand alone against the lawlessness which has grown up in consequence of universal indolence and cowardice; and if, after all their sacrifices, they earn the satisfaction of having remained true to themselves, they reap, instead of gratitude, ridicule and scorn. The responsibility for this state of things falls not upon those who transgress the law, but on those who have not the courage to assert it. -- Do not accuse injustice of usurping the place of the law, but the law of permitting that usurpation.
9. If I were called upon to pass judgment on the practical importance of the two principles: "Do no injustice," and: "Suffer no injustice," I would say that the first rule was: Suffer no injustice, and the second: Do none!
10. If we take man as he actually is, there is no doubt that the certainty of meeting a firm and resolute resistance is far more powerful to prevent the commission of an injustice, than a simple prohibition which has, in fact, no greater practical force than a moral precept!"
11. Our analysis of the results of our work over the years has led us to this difficult decision. We have found that the implementation of the Convention has been inconsistent and ineffective, and that it often falls short of the principles it espouses. Despite our efforts to address these issues, we have not seen the necessary changes to ensure the Convention's success.
12. We would like to express our gratitude to the members of the Committee for their work, and especially to the Secretariat for their help over the years. We recognize the significant efforts that have been made to promote the Convention's implementation, and we hope that our decision will serve as a call to action to improve its effectiveness.
13. We remain committed to environmental protection and to the principles of the Aarhus Convention, and we will continue to work towards these goals through other means. We thank you for your understanding, and we wish you all the best in your ongoing efforts.

Almendralejo, 21 April 2023

The President



Félix Lorenzo Donoso

*Plataforma Contra la Contaminación de Almendralejo*

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<sup>2</sup> Jhering, Rudolf von (1915/1997) *The Struggle for Law*, trans Lalor, J. J. Union, NJ: Lawbook Exchange reprint. Google Scholar