

Courtesy translation

## **REPORT ON ACCESS TO LEGAL AID FOR ENVIRONMENTAL NON-GOVERNMENTAL ORGANISATIONS IN COMPLIANCE WITH THE AARHUS CONVENTION**

### **PURPOSE OF THE REPORT**

This report is issued for the purpose of its transmission to the Central Commission for Free Legal Aid and to the Free Legal Aid Commissions dependent on both the Ministry of Justice and the Autonomous Communities (CCAA) that have acquired competences in matters of Justice, as well as to the General Council of Spanish Barristers and the General Council of Solicitors of Spain, on the occasion of the request made to Spain in Decision VII/8p of the Meeting of the Parties to the Aarhus Convention.

### **REGULATORY CONFLICT BY APPLICATION OF LAW 1/1996, OF JANUARY 10, AND LAW 27/2006, OF JULY 18, IN THE CASE OF ENVIRONMENTAL NGOS**

The legal issue that motivates this report comes from the joint interpretation of Law 27/2006, of July 18, which regulates the rights of access to information, public participation and access to justice in environmental matters, and Law 1/1996, of January 10, of Legal Aid, with regard to the recognition or not of **free legal aid in favor of environmental associations and NGOs**.

Law 27/2006, of July 18, came to incorporate into our legal system rights and obligations agreed in the **Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus, Denmark, on June 25, 1998)**. This Convention was ratified by Spain in 2004<sup>1</sup>. This Convention also forms part of European Union law by virtue of Regulation (EC) N° 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

Law 27/2006, of July 18, in article 23, referring to the legitimacy of popular action in environmental matters, section 2, recognizes the legitimacy of environmental associations that comply with the requirements of section 1, however in the terms provided for in Law 1/1996, of January 10. This Law 1/1996, of 10 January, specifies the recognition of the right to free legal assistance to "Associations of public utility, provided for in article 32 of Organic Law 1/2002" (L.O. 1/2002, of 22 March, regulating the right of association) "when they prove insufficient resources to litigate". This article 32 regulates the figure of association of public utility, which must meet several requirements, including "that the members of the representative bodies that receive remuneration do not do so from public funds and subsidies" and "that they have the

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<sup>1</sup> Instrument of ratification by Spain, published in the Official State Gazette: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2005-2528](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2005-2528)

adequate personal and material means and with the appropriate organization to guarantee the fulfilment of the statutory purposes".

The problem that arises in the light of this regulation lies for smaller environmental NGOs, which have claimed for years that they do not have sufficient resources or personal and material means to constitute themselves as an association of public utility and that they have been denied access to legal aid by the Free Legal Aid Commissions. For this reason, NGOs have lodged appeals against decisions refusing legal aid issued by the Legal Aid Commissions.

### **CASE-LAW ON THE ISSUE**

The jurisprudence has been consolidated in favour of recognizing free legal aid in favour of environmental NGOs.

First of all, it is worth mentioning the order issued by the Administrative Division of the Supreme Court, dated **16 January 2018 (appeal No 405/2017)**, ruling on an appeal brought by an Association whose right to legal aid had been denied by the Central Commission for Legal Aid. The appellant was a local association of those affected by the installation of telecommunications antennas.

The SC ruled that the applicant NGO was entitled to free legal aid when it met the requirements established in article 23 of Law 27/2006, of July 18, not being necessary that the applicant NGO also meet the requirements indicated in article 2 of Law 1/1996, of January 10. According to FJ 2<sup>a</sup> "*The requirement of article 2 of Law 1/1996 for the legal persons outlined there in general and for the exercise of actions of any kind -which prove insufficient resources to litigate- is not enforceable here. Otherwise, the express provision of article 23.2 for the exercise of actions by non-profit legal persons of this precept would be unnecessary or useless.*

*Consequently, by strict application of article 23.2 - which would otherwise be superfluous - such recognition is appropriate.*" The Court therefore recognises the right to legal aid sought.

Reference should also be made to **the order of 13 March 2019 (appeal No 42/2017)** by the same Chamber, which ruled reiterating the doctrine of the previous order of 16 January 2018.

This jurisprudence must also be assumed by the High Courts of Justice in the appeals that must be resolved by the corresponding Chambers.

Both orders of the Supreme Court are attached to this report as **ANNEXES**.

### **IMPLEMENTATION OF THE AARHUS CONVENTION**

With regard to the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the main governing

and decision-making body is the Meeting of the Parties, which brings together all members. It meets at an interval of 3 years except in the case of extraordinary meetings.

The monitoring and enforcement body of the Convention is the **Compliance Committee**. The Committee examines potential violations of the Convention by Parties (member countries or organizations). In addition, "members of the public" (organizations, private associations...) are entitled to communicate a complaint to the Compliance Committee for an alleged violation of the Convention by a Party.

With regard to the subject matter of this report, the Meeting of the Parties to the Aarhus Convention of 11-14 September 2017 adopted a Decision addressed to Spain (Decision **VI/8j**), following a complaint filed, in which our country was required to adopt the necessary measures to ensure that the obstacles that existed for the full application of Article 9, paragraphs 4 and 5 of the Convention, with regard to legal assistance to environmental non-governmental organizations, should be paid for. That is, recognizing that there should be no obstacles to these NGOs to access legal aid under Law 1/1996, of January 10.

Subsequently, the matter has remained unresolved and has been followed up by the Compliance Committee.

In recent years the Ministry for the Ecological Transition and the Demographic Challenge (MITECO), where the focal point of the Agreement is integrated into the General State Administration, has addressed the treatment of this issue. In particular, by conveying to the Compliance Committee in the successive Progress Reports that were required of Spain, the measures that could be taken to comply with Decision VI/8j and the recommendations received.

Regarding progress reports and successive interventions before the Compliance Committee, MITECO has considered two possible ways to comply with the Decision: a legislative reform or ensuring a follow-up of the application of the jurisprudence of the Supreme Court by the Legal Aid Commissions. **This last option is the one that has been considered most legally appropriate.**

In this regard, MITECO informed the Compliance Committee that it was going to inform the contact points or focal points of the Autonomous Communities of the Aarhus Convention about the relevant jurisprudence, with the purpose that said jurisprudence would be transferred in turn to the Autonomous Commissions of Free Legal Aid, so that they take it into consideration when granting the benefit of free legal aid to the entities that request it, avoiding unnecessary judicial appeals.

However, to some extent it seems that **the Autonomous Commissions of Free Legal Aid are still frequently ignorant of the jurisprudence, denying environmental NGOs their right to legal aid**, which would force them to present the corresponding judicial appeals even if in the end they are resolved in their favor.

On 18-21 October 2021, a new Meeting of the Parties to the Aarhus Convention was held and again a Decision (Decision **VII/8p**) was adopted reaffirming the previous Decision VI/8j, endorsing the position proposed by the Compliance Committee and noting that Spain, although having taken positive steps, has not solved the issue in the terms required by the Aarhus Convention. The Decision requires Spain to **take urgent measures to ensure that the persistent obstacles to full compliance with Article 9(4) and (5) of the Convention with regard to legal aid for the benefit of NGOs, as identified by the Compliance Committee, are overcome, and in particular in relation to the Law on Legal Aid and in accordance with the decisions dated 16 January 2018 and 13 of March 2019 of the Contentious-Administrative Chamber of the Supreme Court.**

It also obliges Spain to **submit an Action Plan**, including a work schedule, to the Compliance Committee until July 1, 2022 in relation to compliance with the recommendations made.

It also obliges to **provide progress reports** to the Committee by **1 October 2023 and 1 October 2024** in relation to the measures taken and the results obtained in the implementation of the Action Plan and the recommendations.

#### **SPAIN 2022 ACTION PLAN**

Pursuant to Decision VII/8p, MITECO submitted the Action Plan to the Compliance Committee. The following commitments were communicated in this Plan:

- The Ministry of Justice will be informed of the orders of the Supreme Court in order to instruct the Free Legal Aid Commissions to ensure that their decisions are in accordance with consolidated jurisprudence.
- -The General Council of Spanish Lawyers will also be informed of this jurisprudence in order to inform in turn the Associations that participate in the Free Legal Aid Commissions.
- -Follow-up of the decisions of the Legal Aid Commissions in this matter.

#### **COMPLIANCE WITH THE ACTION PLAN**

In order to comply with the commitments referred to in Decision VII/8p and the Action Plan, in particular with regard to the progress report to be submitted on October 1, 2023 to the Compliance Committee, MITECO has requested the Ministry of Justice, specifically through the General Subdirectorate of Institutional Collaboration for the Public Service of Justice, of the Directorate-General for the Public Service of Justice, its collaboration and cooperation.

At first, it was agreed that the measures committed by Spain in the Action Plan would be submitted to the next meeting **of the State Council for Free Legal Aid, although no such meeting has been held.**

As a result, MITECO and the Ministry of Justice have agreed to send a report to the Free Legal Aid Commissions attached to it, to the competent departments of the Autonomous Communities that have assumed competence in matters of justice, to the

General Council of Spanish Barristers and to the General Council of Solicitors of the Courts of Spain, so that these bodies are aware of the relevant jurisprudence of the Supreme Court and they can adopt the appropriate measures.

## **CONCLUSION**

In order to comply with the commitment assumed by Spain in the framework of compliance with the Aarhus Convention, the Ministry of Justice is requested to communicate the contents of this report to the Central Commission for Free Legal Aid and the Free Legal Aid Commissions existing in each autonomous territory, as well as to the General Council of Spanish Barristers and the General Council of Solicitors of Spain. with the aim of disseminating the jurisprudence of the Supreme Court that supports the right to free legal aid to associations and non-governmental organizations whose statutory purposes include the protection and preservation of the environment or other ecological purposes.