



**To: Aarhus Convention Compliance Committee**

18th of March 2023

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

**Response to questions by the Committee ahead of the determination of preliminary admissibility in its 78<sup>th</sup> Meeting**

Dear Ms. Marshal,

Please find attached written response to the questions posed by the ACCC ahead of the determination of preliminary admissibility in its 78th Meeting, in addition to the additional documents that have been requested (personal data has been redacted in accordance to the Law).

Yours sincerely,

A handwritten signature in black ink that reads "Sabela". The signature is written in a cursive style and is underlined with a single horizontal stroke.

**Sabela Iglesias Garrido**  
Asociación Verdegaia

**Questions to the communicant:**

*1. With respect to your allegation that the Party concerned has failed to comply with article 9 (3) of the Convention, please specify the law(s) relating to the environment that you allege in your communication that Verdegaia did not have access to administrative or judicial procedures to challenge contraventions of.*

In paragraph 4, items a), b) and c), and again in paragraph 18, items a) to f) of our Communication, the fundamental contraventions are listed. Each of these relate to particular laws:

- a) Discharging water with high concentrations of hazardous and priority hazardous substances (cadmium, copper and zinc) on a continuous and intensified basis at specific times, evading the mandatory authorisation of the Hydraulic Authority and without imposing any sanctions or requiring measures to prevent or minimize such discharges, is in contravention of the *Royal Legislative Decree 1/2001, of 20 July, which approves the revised text of the Water Act*, the *Royal Decree 817/2015 of 11 September, establishing the criteria for monitoring and evaluating the status of surface waters and Environmental Quality Standards*, and other regulations (including Hydrological Plans) under the EU's Water Framework Directive (2000/60/EC).

- b) Continuing to prevent the submission of mining activity to the mandatory environmental assessment procedure, is in contravention of *Law 21/2013 of 9 December on Environmental Assessment*, and other regulations under the EU's *Environmental Impact Assessment (EIA) Directive* (2011/92/EU as amended by 2014/52/EU). This also contravenes the rights of public participation established by the *Aarhus Convention* and *Law 27/2006 of 18 July, which regulates the rights of access to information, public participation and access to justice in environmental matters*.
- c) Excluding mining waste dams from the scope of the mining project and restoration obligations, is in contravention of *Royal Decree 975/2009 about extractive industries waste management and the protection and rehabilitation of areas affected by mining activities*, under the EU's *Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/E*, as well as *Law 26/2007, of October 23, Environmental Responsibility* (EU *Environmental Liability Directive*). The failure to subject the mine restoration plan to public participation is also in contravention of *Royal Decree 975/2009* and earlier regulations.

The impediments posed by the Party in accessing and allowing the development of judicial procedures to address such serious acts or omissions by the mining company and public authorities is evidence of failure to comply with Article 9(3).

*2. Please specify which obligation(s) in article 9 (4) you allege in your communication that the Party concerned has failed to comply with. For each such obligation, please clearly explain in what way you consider that the Party concerned has failed to comply with that obligation.*

Judicial remedies and administrative reviews available and exercised by Verdegaiia and other NGOs in this case as well as other similar cases have not been **adequate, effective, fair, equitable or timely**. Additionally, courts in some criminal proceedings imposed deposit requirements in amounts that are **prohibitively expensive** for small NGOs as explained in the responses to Questions 4 and 5 below.

As stated in our Communication posted on 28/07/2022, judicial decisions and omissions have created a space of impunity with regard to the alleged crimes against the environment (illegal mine waste water discharges on a continuous basis until today), administrative and/or environmental prevarication (lack of sanctions, lack of environmental assessment and omission of waste dams from the scope of responsibility of the mining concessionaire) and criminal group (of officials and authorities with alleged criminal intent), as their investigation is barred. This not only infringes the right to adequate, effective, fair and equitable remedies as established by the Aarhus Convention in Art. 9, paragraph 4, but is also in breach of Art. 45 of the Spanish Constitution that establishes that:

“2. The public authorities shall safeguard rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity.

**3. Criminal or, where applicable, administrative sanctions, as well as the obligation to make good the damage, shall be imposed, under the terms established by the law, against those who violate the provisions contained in the previous clause.”**

As explained below in our response to question 4, Verdegaiia first presented an administrative claim presenting the evidence for serious heavy metal pollution in 2016. It then filed a criminal

complaint in December 2016 with the Public Prosecutor and subsequently filed additional criminal claims and supported other NGOs in also doing so. In spite of the time that has lapsed (over 7 years), not a single criminal procedure has been brought to the trial phase, and all have been stayed not because of lack of evidence, but because Courts allowed procedural expiry to take place without issuing the mandatory and effective decisions to bring the cases and those responsible to Justice. Seven years later, illegal discharges with high concentrations of heavy metals continue to take place on a continuous basis under the indifference of the judicial system and the complicity of the Administration that tolerates such environmental damage, evidencing the infringement of the right to a **timely** remedy, even if in this case there's no remedy at all.

To highlight the violations of specific obligations in Article 9(4):

- No **timely** judicial remedy – As described above, over seven years after filing with the courts an administrative claim and a criminal complaint, no trial has been held and no court ruled on the evidence. Instead, the courts allowed procedural expiry to take place without issuing decisions. The responses to Question 4 below note additional proceedings filed in 2020, one an administrative appeal and the other a case filed in the High Court of Justice of Galicia, that have languished without decisions on the merits and without remedial orders. These responses also state that appeals to courts to review discharge authorizations generally take at least three to five years, and the courts do not issue injunctions against the discharges during the judicial review.
- No **adequate, effective, fair, or equitable** remedy – Despite the filings for administrative and judicial remedies, the polluting activities have continued and the government agencies and officials who allowed these activities in violation of national laws have not been sanctioned, required to remedy their illegal authorizations or omissions, or ordered to perform environmental assessments and testing. Article 9(4) specifically notes the availability of “injunctive relief as appropriate.” The responses to Question 4 below note the February 2023 administrative appeal filed by Verdegaia and another dozen NGOs and fishermen guilds as well as four local municipalities against a discharge permit that was granted without an environmental impact assessment. While the appeals included a request of suspension of the effectiveness of the discharge permit until decisions on the appeals are made, the Administration denied the injunctive relief, thus allowing the discharge of almost 1 million cubic meters of mine water per year.
- **Prohibitively expensive** access to judicial reviews – As described in the responses to Questions 4 and 5 below, Courts involved in this case required deposits of €3,000 in order for an NGO to participate in criminal proceedings. These exorbitant deposit requirements prevented Verdegaia and another NGO from participating in proceedings arising from unlawful authorizations of mining operations. Moreover, because the prohibitively expensive deposits excluded the small NGOs from the proceedings, when the courts subsequently adopted decision on the provisional closures, these NGOs could not appeal them. Again, the polluting activities have continued and the government agencies and officials who allowed these activities in violation of national laws have not been sanctioned, required to remedy their illegal authorizations or omissions, or ordered to perform environmental assessments and testing.

*3. Please specify in what capacity Verdegaia participated, if at all, in preliminary proceedings no. 223/2017, no. 370/2019 and no. 2226/2021.*

Verdegaia appeared in all three proceedings as “popular prosecutor” (*acusación popular* or *acción popular*). Popular prosecution is enshrined in Article 125 of the *Spanish Constitution*, while *Organic Law 6/1985, of 1 July, on the Judiciary*, establishes in Art. 20 that “No deposit may be required which, due to its inadequacy, prevents the exercise of the popular action, which shall

always be free of charge.” In application of the Aarhus Convention, Law 27/2006 of 18 July, which regulates the rights of access to information, public participation and access to justice in environmental matters, establishes in Art. 22 a specific form of “**popular prosecution in environmental matters**”.

4. Please explain what, if any, other possibilities (e.g. civil claim, administrative review) existed or still exist for Verdegaia to address the allegedly illegal ongoing wastewater discharges from the San Finx mine? Has Verdegaia attempted to use these other avenues? If so, what was the outcome? If not, why has Verdegaia not done so?

In terms of context, it must be stated that the existence of illegal wastewater discharges was known to the Administration for years (at least since 2010), yet water analyses were carried out for the first time in February 2016 after claims presented by Verdegaia and other NGOs. This forced the initiation of a water discharge authorization procedure that has been ongoing for over 7 years, but during all this period, the Administration failed to initiate mandatory sanctioning proceedings and failed to adopt measures to prevent the continuation and intensification of discharges.

As part of this Administrative procedure, Verdegaia has intervened dozens of times (by the means of claims, comments, appeals and scientific reports commissioned by Verdegaia) requesting the cessation of illegal discharges and the adoption of measures to minimize their impact:

- a) In December 2016, Verdegaia and another dozen NGOs, fishermen’s guilds and a local municipality presented claims in the context of the water discharge authorisation procedure, requesting the cessation of discharges. It must be noted that the requested authorisation includes not only existing (illegal) discharges from mine drainage adits but the pumping of almost 1 million cubic metres per year of mine water from lower levels, that would effectively duplicate the volume of the river during most of the year.
- b) In January 2017 Verdegaia and 3 other NGOs presented administrative claims regarding continuing illegal wastewater discharges. The Administration did not adopt any measure to stop the discharges and failed to impose sanctions to the mining company.
- c) In April 2018, after the maximum time to issue a decision of the discharge procedure had lapsed, Verdegaia and 4 other NGOs requested the declaration of administrative silence. Still, the Administration did not terminate the procedure, continuing it for another 4 years.
- d) In August 2018, Verdegaia submitted 4 technical reports to the Administration: “*Estudio de los macroinvertebrados fluviales en el río San Finx*” [“Study of fluvial macroinvertebrates in the San Finx river”, which provided evidence of the severe deterioration of aquatic life downstream from the mine], “*Informe pericial sobre modificación de trazado en el Río San Fins*” [“Expert report on the modification of the route of the San Finx river”, which provided evidence that the mine waste facilities that were being authorized were built on the riverbed], “*Informe sobre o proxecto de autorización de verteduras da Mina de San Finx*” [“Report on the discharge authorisation project of the San Finx mine”, which refuted the company’s claim of an alleged natural background level causing heavy metal pollution and provided evidence of the severe environmental impacts caused by acid mine drainage] and “*Informe histórico relativo a la autorización de vertido del proyecto minero de Tungsten San Finx S.L.*” [“Historical report on the discharge authorisation of the Tungsten San Finx S.L. mining project”, which refuted the company’s claim that pollution was due to pre-historic mining by Phoenicians]. Together with the reports, a request was made to the Administration to initiate sanctioning and remediation proceedings regarding wastewater discharges. The Administration did not adopt any measure to stop the discharges and failed to impose sanctions to the mining company. Verdegaia is attaching all 4 reports as **Documents 1, 2, 3 and 4** as evidence of the effort, including financial, made to demonstrate the extent of the environmental harm being caused by the illegal water discharges.

- e) In February 2020, Verdegaia requested the termination of the water discharge authorization procedure and adoption of measures to immediately cease or minimize the discharge of water with heavy metals from the mine. The Administration did not adopt any measure to stop the discharges and failed to impose sanctions to the mining company.
- f) Also in February 2020, Verdegaia filed an administrative appeal against the Administration decision to allow a pilot water treatment plant, and reiterated its claims. The Administration ignored the appeal, failed to issue a decision in due time, did not adopt any measure to stop the discharges, and failed to impose sanctions to the mining company. In connection to this, a related contentious-administrative action was filed at the High Court of Justice of Galicia [see point i) in the next list]
- g) In March 2021, 4 NGOs filed a request urging the adoption of measures to prevent ongoing wastewater discharges, initiating sanctioning procedures and other measures. The Administration did not adopt any measure to stop the discharges and failed to impose sanctions to the mining company.
- h) In December 2021, Verdegaia (through the Galician Environmental Federation) and another 20 NGOs, fishermen's guilds and a local municipality presented claims against the water discharge project and reiterated its claims to cease and minimize discharges. The Administration ignored all requests.
- i) In January and March 2022, 4 NGOs reiterated a request for the immediate application of the illegal wastewater discharge control fee and the establishment of environmental guarantees in the face of ongoing discharges. Public servants are warned of their personal responsibility for their failure to act. The Administration ignored all requests.
- j) In July 2022, Verdegaia and another 20 NGOs and fishermen's guilds as well as 3 local municipalities presented claims against the proposed decision to allow a water discharge authorisation, ignoring previous claims presented in the procedure regarding lack of environmental impact assessment, lack of treatment of discharges from mine waste facilities and other sources of emissions, ineffectiveness of proposed treatment solution and absence of post-closure provisions to address continuing acid mine drainage.
- k) In February 2023, Verdegaia and another dozen NGOs and fishermen guilds as well as 4 local municipalities file administrative appeals against the discharge authorization, that was granted on February 1, 2023, in absence of EIA. The appeals included a request of suspension of the effectiveness of the discharge permit until decisions on the appeals are made, but this was denied in March 2023 allowing the discharge of almost 1 million cubic meters of mine water per year.
- l) While Verdegaia and other parties have filed judicial appeals against the discharge authorisation, these are lengthy (3-5 years) and will likely not prevent the continuation and intensification of polluting discharges with the mine's reopening.
- m) In parallel, following the granting of a wastewater discharge authorisation, the Fishermen's guilds of Noia and Portosín initiated a criminal lawsuit against the three officials of the Water Authority deemed responsible for allowing discharges and failing to impose sanctions and environmental protection measures. Another NGO, with the support of Verdegaia, filed another criminal claim in February 2022 with the Spanish Prosecutor General, leading to preparatory proceedings No. 8/2023. The ACCC has in the record of proceeding ACCC/C/2017/153 (Spain) the statement filed by the Noia Fishermen's Guild (with the PDRA) on February 28, 2023 regarding the inadequacy of the administrative and judicial reviews.

Beyond the criminal judicial actions described by Verdegaia in its Communication and actions as part of the wastewater discharge procedure, other actions have been undertaken in collaboration with other parties to attempt to address the allegedly illegal ongoing wastewater discharges. These include:

- i. In 2020 a contentious-administrative action was filed at the High Court of Justice of Galicia by one of the Communicants of case ACCC/C/2017/153. The action sought to address the illegal permitting of the San Finx mine, in absence of a mandatory Environmental Impact Assessment, and to force a Court injunction to suspend the mine's activity and prevent ongoing discharges by suspending the water discharge procedure and other decisions. The action led to case 7162/2020 and a separate injunction case, which was refused by the Court. In its June 2020 response to the Court, the Administration stated that *"the water discharge which is being addressed by the Galician Water Authority [Augas de Galicia] in the said [discharge authorisation] file does not encompass water from the mining process itself, because there is no mining activity as we have shown, but instead rainwater that must be treated for the necessary environmental protection"*. This is false, as all discharges from inside the mine as well as from waste dumps are mine drainage, not rainwater.
- ii. Verdegaia and other NGOs have repeatedly requested the Mining Administration to suspend the mine activity, adopting measures to cease the pumping of mine water from level 5 (which continued until 2020) and to prevent discharges through existing drainage adits by installing bulkheads and other measures. In 4 March 2020 a mining engineer from the Mining Authority itself issued a report stating that the mine required an Environmental Impact Assessment and that a temporary suspension order should be issued until a new mining project was presented, subjected to EIA and approved. The report stated that such order by the Mining Authority should include that the mining company *"shall take measures to ensure the mitigation of environmental damage that may be caused by the current state of the mine, in particular that which may affect the state of the receiving environment of the water leaving the mine."* The Director General of Mines ignored such report. In March 2021 NGOs sent this report to both the Water Authority and the Environmental and Mining Authorities. The Mining Authority failed to adopt the measures indicated by the civil servant responsible for the mine's administrative oversight, and so none of the measures of the March 2020 report were enacted. The report is attached as **Document 5**.
- iii. In reaction to the Administration's failure to suspend the mine, several legal actions were taken in collaboration with other NGOs. In 2021 Verdegaia supported Fundación Montescola to file a contentious-administrative action at the High Court of Justice of Galicia so that it would be recognized as an interested party in the administrative files regarding the modification of the mine projects and restoration plan, a prerequisite to have access to the files and being able to challenge them in Court. This was refused by the Mining Administration. Case PO 7096/2021 is still ongoing and pending a judicial decision. Because Montescola is a conservation NGO that owns lands affected by the mine, it has additional landowner rights beyond those of an environmental NGO.
- iv. In 28 January 2022 a criminal claim was brought against the Director General of the Mining Administration and the head of the territorial delegation in A Coruña, for ignoring the 4 March 2020 report that established the need to suspend the mine until a valid project was approved. Verdegaia supported the claimants leading to criminal proceedings DPA 264/2022 at the No. 1 Court of Instruction of Santiago. The Court did not notify the claimants of the opening of the proceedings and in April 2022 issued a decision adopting the provisional closure without allowing the claimants to appear, and thus stripping them from the possibility of appeal from such decision.
- v. Another criminal claim was filed on 13 December 2021 against 11 officials of the Mining and Water Administration because of alleged misconduct regarding the San Finx abandoned mine tailings dams. Verdegaia again supported the claimants leading to criminal proceedings DPA 2296/2021 at the No. 3 Court of Instruction of Santiago, which failed to conduct an investigation, imposed 3,000 Euro deposits to each of the claimants, rejected their appeals regarding the deposits being disproportionate, excluded them from

the proceedings and subsequently adopted a decision on the provisional closure, which the claimants could not appeal. This is the same strategy used by the same No. 3 Court with Verdegaia in proceedings DPA 2226/2021 as explained in our Communication.

Verdegaia, in collaboration with all other NGOs, fishermen's guilds and local municipalities that are actively involved the ongoing work to stop and prevent further environmental damage, will continue to initiate and promote all possible legal actions to address this critical situation, including bringing any new facts to the attention of the ACCC.

*5. In your written statement of 14 December 2022, you claim that Verdegaia was expelled from criminal proceedings DPA 370/2019 after unsuccessfully appealing a decision by the judge of the No. 3 Court of Santiago requiring Verdegaia to submit a deposit of €3,000. You also claim that, in proceedings no. 2296/2021 before the same court, another environmental NGO was expelled from the proceedings after likewise being denied the right to appeal the court's decision to require it to submit a €3,000 deposit.*

*(a) Please briefly explain what is the stated purpose of requiring environmental NGOs to make a "deposit" in criminal proceedings concerning the environment.*

Art. 280 of the Spanish **Criminal Procedure Code** establishes that "*The private complainant shall provide a deposit of such kind and in such amount as the Judge or Court may determine to guarantee the outcome of the trial.*" The amount remains at the discretion of the Judge or Court, and has been used, as evidenced in this case, to exclude NGOs from appearing in cases that affect high-ranking political officials.

While the amount remains at the discretion of the Judge, *Organic Law 6/1985, of 1 July, on the Judiciary*, establishes in Art. 20 that "***No deposit may be required which, due to its inadequacy, prevents the exercise of the popular action, which shall always be free of charge.***" The Spanish Constitutional Court (SSTC 62/1983, 113/1984) has declared that the amount of a deposit, in relation to the means of those who intend to exercise it, cannot prevent or seriously hinder the exercise of the popular prosecution role ("*acusación popular*"), as this would lead in practice to the defencelessness prohibited by Article 24.1 of the Spanish Constitution. This should be related to **Article 9, paragraph 4, of the Aarhus Convention**, that establishes that remedies should not be "**prohibitively expensive**".

*(b) If you allege that these events constitute breaches of the Aarhus Convention, please explain which article of the Convention these events breach and how they are in breach of that article.*

The systematic imposition of deposits of 3,000 euros per claimant and case is considered in breach of Article 9, paragraph 4, of the Convention in terms of making remedies "**prohibitively expensive**". This question has been repeatedly brought to the attention of the ACCC based on unreasonable charges imposed on small NGOs for access to Spanish courts to appeal administrative decisions. In **ACCC/C/2008/24** (Spain), especially paragraphs 53-55, 105-113, 117, and 119(a)(iv), the ACCC expressed strong concerns about financial burdens for access to judicial review in Spain, including in criminal cases similar the ones of this Communication:

"Criminal proceeding No. 4444/2006 was initiated by a complaint submitted in 2006 by the communicant before the Murcia Magistrate's Court. The complaint asserted the application of article 404 of the Criminal Code on wilful breach of official duty for failure to afford due protection of archaeological remains found within the boundaries of the land affected by the urbanization project. **The Magistrate's Court shelved the case and**

**imposed upon the communicant a “bond” (deposit) requirement of €60,000 in the event the Court decides to take up the case.”**

In that decision in 2009, the ACCC’s Recommendations included that: “A study be carried out on how article 9, paragraph 4, is being implemented by courts of appeal in Spain; and in case the study demonstrates that the general practice is not in line with the provision at issue, to take appropriate measures to align it to the Convention.”

Failure of Spain to address such issues is also in breach of Article 9, paragraph 5, of the Convention in terms establishing mechanisms to “**remove or reduce financial and other barriers to access to justice.**”<sup>1</sup> In ACCC/C/2009/36 (Spain), especially paragraphs 46-47, 65-66, 74, and 75, the ACCC found that Spain’s provisions for free legal aid were inadequate in violation of Article 9(5):

“[T]he Committee finds that, by failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small NGO, the Party concerned failed to comply with article 9, paragraph 5, of the Convention, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention (see para. 66 above); and also stresses that maintaining a system that would lead to prohibitive expenses would amount to non-compliance with article 9, paragraph 4, of the Convention (see para. 67 above).”

This decision in 2010 included recommendations for legislation in Spain to comply with Article 9, paragraphs 4 and 5:

- (a) To take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that the recommendations of the Committee in paragraph 119 (a) (ii) and (iii) of its findings for communication ACCC/C/2008/24 become effective;
- (b) To ensure the implementation of recommendations of the Committee in paragraph 119 (a) (iv) of its findings for communication ACCC/C/2008/24;
- (c) To change the legal system regulating legal aid in order to ensure that small NGOs have access to justice.

In the final ACCC report on ACCC/C/2008/24 and ACCC/C/2009/36 from its February 2011 meeting (ECE/MP.PP/C.1/2011/2/Add.7, paras. 22, 30), the ACCC expressed disappointment with Spain’s inadequate actions to remedy its violations of Article 9, paragraphs 4 and 5 for small NGOs to access judicial review: “Considering this provision of Law 27/2006, the Committee finds that the law in Spain provides for free legal aid for environmental NGOs. However, as the facts and the response of the Party concerned demonstrate, there is a problem in the implementation of these provision.” The Recommendations include:

- (g) Recognize that further efforts, in particular in the area of access to justice, are needed, to overcome any obstacles of fully implementing article 9, paragraphs 4 and 5, of the Convention;

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<sup>1</sup> Other relevant previous ACCC decisions on violations of Article 9, paragraphs 4 and 5 (prohibitive expenses, delays, and limitations on access to judicial review) involving parties other than Spain include (shown in order from the most recent decision): ACCC/C/2016/142 (UK); ACCC/C/2016/141 (Ireland), ACCC/C/2015/130 (Italy), ACCC/C/2014/111 (Belgium), ACCC/C/2012/77 (UK), ACCC/C/2011/63 (Austria), ACCC/C/2011/58 (Bulgaria), ACCC/C/2011/57 (Denmark), and ACCC/C/.



(h) Invite, therefore, the Party concerned to thoroughly examine, with appropriate involvement of the public, the relevant legislation and in particular the court practice with regard to:

- (i) Injunctive relief in cases of environmental interest;
- (ii) Award of legal aid to environmental NGOs; and
- (iii) The rule of dual representation;

Excluding Verdegaia and other NGOs from criminal proceedings by means of imposing prohibitively expensive deposits to appear in Court, is in breach of Article 9, paragraph 3, of the Convention, in terms of infringing the right to access “**administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment**”. Verdegaia and other NGOs have been denied access to environmental justice through various court orders, with regard to the possibility of investigating certain alleged criminal acts, particularly environmental crimes consisting of continuous illegal dumping of waste water and ongoing environmental prevarication. Again, similar situations have previously been brought to the attention of the ACCC, that decided against Spain under Article 9 in ACCC/C/2008/24 (Spain)<sup>2</sup> and ACCC/C/2009/36 (Spain). (Compilation of CC findings, 2021: pages 224 and 390.) Similarly, in ACCC/C/2011/63 (Austria), 13 January 2014, para. 64, the ACCC also has stated that:

*“[A]ccess to justice under article 9, paragraphs 3 and 4, requires more than a right of members of the public to address an administrative authority or the prosecution about an illegal activity. **Members of the public should also have access to administrative or judicial procedures to challenge acts or omissions by private persons or public authorities when they consider that such acts or omissions amount to criminal acts or administrative offences.**”*

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<sup>2</sup> “In communication ACCC/C/2008/24 (Spain), the communicant had first approached the Spanish court to request the suspension of a land allotment plan and modification. The court held that the request was too early and reversed the application on the ground that there would be no irreversible impact on the environment because the construction could not start without additional decisions. Yet, when the Urbanization Project was approved and the communicant requested suspension of the decision until the court hearing was completed, the court held that it was too late, because this decision was subject to consideration and the subject of preceding decisions, namely the land allotment plan and modification which had not been suspended. On appeal, the court endorsed this judgement and did not suspend the decision. In its findings, the Compliance Committee held that this kind of reasoning creates a system where citizens cannot actually obtain injunctive relief early or late; it indicates that while injunctive relief is theoretically available, it is not available in practice. As a result, **the Committee found that the Party concerned was in non-compliance with article 9, paragraph 4, of the Convention, which requires Parties to provide adequate and effective remedies, including injunctive relief....**”

“The Committee held that since no timely, adequate or effective remedies were available, the Party concerned was in non-compliance with article 9, paragraph 4. The Committee referred to its findings in ACCC/C/2006/17 (European Community), where it had held that: *If there were no opportunity for access to justice in relation to any permit procedures until after the construction has started, this would definitely be incompatible with article 9, paragraph 2, of the Convention. Access to justice must indeed be provided when it is effectively possible to challenge the decision permitting the activity in question....*”

([Aarhus Implementation Guide](#), p. 201, 203)

## **Attachments**

### **Documents requested by the Committee:**

- a) Order of the Provincial Court of A Coruña dated 19 July 2019 as referred to in paragraph 6 of the communication;
- b) Judgment of the No. 2 Court of Preliminary Investigation of Noia dated 27 January 2020 as referred to in paragraph 10 of the communication;
- c) Decision of the No. 3 Court of Santiago dated 17 July 2022 referred to at page 1 of your written statement of 14 December 2022;
- d) Decision of the No. 3 Court of Santiago dated 1 September 2022 referred to at page 1 of your written statement of 14 December 2022 [the report by the Public Prosecutor mentioned in the Decision is also attached]

### **Additional documents:**

1. “Estudio de los macroinvertebrados fluviales en el río San Finx” [“Study of fluvial macroinvertebrates in the San Finx river”].
2. “Informe pericial sobre modificación de trazado en el Río San Fins” [“Expert report on the modification of the route of the San Finx river”].
3. “Informe sobre o proxecto de autorización de verteduras da Mina de San Finx” [“Report on the discharge authorisation project of the San Finx mine”].
4. “Informe histórico relativo a la autorización de vertido del proyecto minero de Tungsten San Finx S.L.” [“Historical report on the discharge authorisation of the Tungsten San Finx S.L. mining project”].
5. Report by the mining engineer of the Mining Authority responsible for the San Finx mine dated 4 March 2020.