



CASE ACCC/C/2022/195

STATEMENT BY SPAIN

At the closing session of the Aarhus Convention Compliance Committee's seventy-ninth meeting (Geneva, 13-16 June 2023), the Chair announced that the Committee determined communication ACCC/C/2022/195 (Spain) to be admissible on a preliminary basis with respect to the issue set out in paragraph 9, on page 4, of the communicant's letter of 30 May 2023 only. The Committee determined all other allegations in the communication to be inadmissible under paragraph 20 (d) of the annex to decision I/7 for being incompatible with the provisions of the Convention.

The aforementioned paragraph 9 of the communicant's letter of 30 May 2023 states the following:

'Additionally, in our December 2022 statement regarding "Determination of preliminary admissibility", we showed how No. 3 Court of Instruction of Santiago, in proceedings DPA 2226/2021, imposed a disproportionate 3,000 € deposit to Verdegaiá and prevented its right to appeal the decision. This action violated Article 9, paragraph 4, of the Aarhus Convention, providing that remedies should not be "prohibitively expensive". We have already shown in our March 2023 statement how this is not an isolated response, but how it has been used systematically to prevent access to justice, as similar deposits were imposed by the same No. 3 Court in case DPA 2296/2021. This practice has already emerged in other ACCC cases regarding Spain, including ACCC/C/2008/24, in which "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".'

Spain would like to thank the Compliance Committee for offering the opportunity to express its views on the grounds for this case. In this regard, Spain would like to highlight the following considerations:

1. As shown in the documentation provided by the communicants (Annex D of March 18th, 2023), the court did not demand to pay court fees from the communicant, but a precautionary and refundable judicial bond. Free Access to Justice was granted.



2. A 'bond' or 'deposit' in the Spanish legal system is an amount to be temporarily retained in order to respond for any economic consequences derived from the lawsuit. Therefore, it is not a judicial cost, but rather a guarantee to respond of the possible consequences of the lawsuit, which is fully reimbursable. Therefore, it is not a fee and it does not prevent free access to justice.
3. A bond can be required by the court discretionally when considered necessary in administrative or civil lawsuits, but in criminal trials, such as the case at hand, it is required by law as it will be explained below.

In case 195, the communicants had resorted to criminal justice, understanding that an environmental crime had been committed and accusing both the public administration and the natural person in charge.

The criminal lawsuit was submitted in December 2016 under Article 270 of the Spanish Criminal Procedural Act (*Ley de Enjuiciamiento Criminal*), being an *actio popularis* in form of complaint (*querrela*) on the basis of a criminal offence.

In this light, article 280 states that, for this type of complaints in a criminal procedure, the complainant shall provide a bond (*fianza*) of the kind and amount to be set by the Judge or Court in order to be liable for the results of the trial:

'Artículo 280. El particular querellante prestará fianza de la clase y en la cuantía que fijare el Juez o Tribunal para responder de las resultas del juicio.'

The provision set in is article has been confirmed by the Spanish Constitutional Court, which, in Sentences 62/1983 and 147/1985, found that demanding a bond from the claimant is in fact compatible with Constitutional law; one of the main purposes of this bonds is to prevent abusive use of the Courts or accusations under false claims.

Therefore, the bond would be returned to the claimant in case the Judge or the Court finds that the lawsuit stood on solid legal grounds.

4. The Court must determine, on a case by case basis, whether a bond is necessary and its specific amount, always bearing in mind that it is not no prevent access to justice but rather to answer for any economic consequences of a lawsuit.

The bond is freely imposed by the judge, prior to the admission of the complaint. If the claimant refuses to deposit the bond, as this was the case, the lawsuit shall not be admitted. The bond has to be set in a proportional and equitable amount in relation to the criminal complaint itself. The Law forbids setting a bond which may be considered high or disproportionate in relation to the personal and economic conditions of the claimant. This could therefore prevent the submission of the popular action and could be considered a violation of the right to effective



judicial protection. Article 20.3 of the Judiciary Act (*Ley Orgánica del Poder Judicial*) is expressed in these terms, stating that no bond can be required if it is inadequate and thus prevents the submission of *actio popularis*, which will be free of charge.

5. Furthermore, this legal approach is accordingly established by the public prosecutor in the report provided by the communicant (frCommC195_18.03.2023_annexD_spa). In that document, the public prosecutor states that the bond set for *actio popularis* needs to be proportionate and equitable, and must not prevent access to due process. The Public Prosecutor considers the amount of 3.000 euros to be adequate considering the nature of the alleged crimes and that it fully complies with legal requirements for facilitating access to justice.

In this respect, it should be highlighted that the communicant decided not to pursue the lawsuit, being aware that the bond is a legal mandatory requirement for these specific criminal cases (*querellas*) and that they could be fully reimbursed should the lawsuit be eventually found rightful.

For the abovementioned reasons, it is the view of this Focal Point that:

1. With respect to article 9.4 of the Convention, a bond as requested in Article 280 of the Spanish Criminal Procedural Act (*actio popularis* in form of complaint) does not constitute a fee or expense in the terms expressed by the communicant. In fact, it constitutes a judicial guarantee (*fianza*) and is fully reimbursable if the case may be. It is the Court's decision to set it in order to respond for possible economic consequences. Therefore, the alleged bond cannot be considered as a prohibitively expensive cost.
2. The claimant's liability for the possible consequences of its lawsuit is clearly established by law.
3. Therefore, the court's decision to set a bond does not constitute a breach of article 9.4 of the convention and is fully compatible with a legitimate and free access to justice.

We thank the Committee for taking these arguments into consideration when assessing the grounds of the case. We will be pleased providing further considerations regarding this case, if needed.