

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/8p  
on compliance by Spain with its  
obligations under the Convention**

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## **I. Introduction**

1. At its seventh session (Geneva, Switzerland, 18–21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/8p on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

## **II. Summary of follow-up**

2. At its seventy-third meeting (Geneva, 13–16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Representatives of the Party concerned took part in the open session at the seventy-third meeting. Though invited, none of the communicants took part in that session.

3. On 8 February 2022, on the Committee's instructions, the secretariat sent an information note and a template for its plan of action to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15–16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. Representatives of the Party concerned took part in the open session. Though invited, none of the communicants took part in that session.

5. On 1 July 2022, the Party concerned submitted its plan of action, on time.

6. On 4 July 2022, the secretariat forwarded the Party concerned's plan of action to the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99, inviting their comments by 1 August 2022.

7. On the same date, the communicant of communication ACCC/C/2009/36 provided an update to the Committee.

8. On 14 July 2022, the Party concerned provided its comments on the update of the communicant of communication ACCC/C/2009/36 dated 4 July 2022.

9. On 29 July 2022, the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99 each provided their comments on the Party concerned's plan of action.

10. At its virtual meeting on 17 November 2022, the Committee reviewed the plan of action of the Party concerned, together with the comments from the communicants received thereon.

11. On 12 December 2022, the secretariat wrote to the Party concerned to inform it that, having reviewed its plan of action, the Committee had concluded that Spain's plan of action appeared to be appropriate.

12. On 21 April 2023, the communicant of communication ACCC/C/2009/36 submitted a letter stating that it had decided to withdraw from the Committee's follow-up procedure on decision VII/8p.

13. On 26 September 2023, the Party concerned submitted its first progress report on decision VII/8p, on time.

14. On 29 September 2023, the secretariat forwarded the Party concerned's first progress report to the communicant of communications ACCC/C/2008/24 and ACCC/C/2014/99, inviting their comments by 27 October 2023.

15. On 21 November 2023, the communicant of communication ACCC/C/2014/99, submitted its comments on the Party concerned's first progress report.

16. At its virtual meeting on 25 January 2024, the Committee prepared its first progress review on decision VII/8p, taking into account the information received, and adopted it through its electronic decision-making procedure on 13 February 2024. The Committee thereafter requested the secretariat to forward the first progress review to the Party concerned and to the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99.

### **III. Considerations and evaluation by the Committee**

17. In order to fulfil the requirements of paragraph 2 (a) and (b) of decision VII/8p, Spain would need to provide the Committee with evidence that:

(a) It has taken measures, as a matter of urgency, to ensure that the remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention with respect to legal aid for non-governmental organizations identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 are overcome, and in particular that its Legal Aid Commissions act in accordance with the decisions dated 16 January 2018 and 13 March 2019 of the Administrative Chamber of the Supreme Court in practice;

(b) It has taken the necessary legislative, regulatory or other measures and practical arrangements to ensure that, in each of its Autonomous Communities, the public is promptly informed of decisions on integrated environmental permits taken under article 6 (9) of the Convention not only through the Internet, but also through other means, including, but not necessarily limited to, the methods used to inform the public concerned pursuant to article 6 (2) of the Convention.

#### **General observations**

18. The Committee welcomes the Party concerned's first progress report, which was received on time, and expresses its appreciation for the level of engagement that the Party concerned has demonstrated so far in the Committee's follow-up on decision VII/8p.

#### **Paragraph 2 (a) of decision VII/8p**

19. In its first progress report, the Party concerned reports that, in line with its plan of action, on 18 July 2023, the Technical Secretary General of the Ministry for the Ecological Transition and Demographic Challenge (MITECO) wrote to the Deputy Director General for Institutional Cooperation in the Ministry of Justice, enclosing a report on access to legal aid for environmental non-governmental organizations (NGOs) and requesting that the report be forwarded to the Central Commission on Free Legal Aid, the Regional Commissions on Free Legal Aid, the General Council of Barristers and General Council of Solicitors.<sup>1</sup> The Party concerned reports that, on 28 July 2023, MITECO received confirmation from the Ministry of Justice that it had delivered the report and the relevant case-law to the above-mentioned recipients. The Party concerned states that, in 2024, a follow-up report will be requested from the Regional Commissions on Free Legal Aid to assess the full implementation of the plan.<sup>2</sup>

20. No comments were received from communicants or observers regarding the Party concerned's progress report on paragraph 2 (a) of decision VII/8p.

21. Having reviewed the abovementioned documentation, including MITECO's letter of 18 July 2023 and accompanying report on access to legal aid for environmental NGOs,<sup>3</sup> the Committee welcomes the practical measures taken by the Party concerned to ensure that its Legal Aid Commissions approve legal aid for environmental NGOs.

22. The Committee also welcomes that the Party concerned will request a follow-up report from the Regional Commissions on Free Legal Aid in 2024 to check whether, in practice,

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<sup>1</sup> See Party's first progress report, 26 September 2023, annexes 3-4.

<sup>2</sup> Party's first progress report, 26 September 2023, pp. 1-2.

<sup>3</sup> See Party's first progress report, 26 September 2023, annexes 3-4.

environmental NGOs are indeed being granted legal aid in all cases. The Committee invites the Party concerned to submit the report from the Regional Commissions to the Committee together with its final progress report due on 1 October 2024.

23. The Committee points out that, should the Regional Commissions' follow-up report(s) reveal that environmental NGOs are still, even in only isolated cases, being denied access to legal aid, the Party concerned will need to take further measures, as a matter of urgency, to ensure that the remaining obstacles to environmental NGOs being granted legal aid are overcome prior to the submission of its final progress report due on 1 October 2024.

24. Based on the foregoing, the Committee considers that it is not yet in a position to conclude that the Party concerned has met the requirements of paragraph 2 (a) of decision VII/8p. However, if following the submission by the Party concerned of its final progress report on 1 October 2024, the information before the Committee, including from communicants and observers, confirms that environmental NGOs are in practice being granted legal aid in accordance with the decisions of the Administrative Chamber of the Supreme Court dated 16 January 2018 and 13 March 2019, the Committee will report to the Meeting of the Parties that the Party concerned has fulfilled paragraph 2 (a) of decision VII/8p.

#### **Paragraph 2 (b) of decision VII/8p**

25. The Party concerned reports that, in line with its plan of action, Royal Decree no. 815/2013 was amended on 24 January 2023 through the insertion of article 10 bis, which provides:

[T]he Autonomous Communities and cities of Ceuta and Melilla will make available to the public on their website the text of the administrative resolutions by which the integrated environmental authorizations have been granted, substantially modified or revised, accompanied by the reasons and considerations on which said decision is based. Likewise, they will send to the municipalities the announcement of said resolutions, making available to the public for exhibition on the bulletin boards of the municipalities in which the facilities are located for a minimum period of twenty calendar days. Municipalities must provide citizens who request it with a printed copy of the text of these resolutions.<sup>4</sup>

26. The communicant of communication ACCC/C/2014/99 claims that the requirement to publish the announcements of the administrative resolutions granting the integrated environmental permits should apply not only for the municipalities in which the activity is undertaken, but in all municipalities which are affected by the activity.<sup>5</sup>

27. The Committee welcomes the 24 January 2023 amendment of the Royal Decree no. 815/2013, and in particular that article 10 bis imposes an express obligation on all Autonomous Communities to inform the public of decisions on integrated environmental permits through means which are not limited to the Internet. However, as explained below, in its current form, article 10 bis is not sufficient to fully meet the requirements of paragraph 2 (b) of decision VII/8p.

28. Paragraph 2 (b) requires that the public is promptly informed of decisions on integrated environmental permits not only through the internet, but "also through other means, including, but not necessarily limited to, the methods used to inform the public concerned pursuant to article 6 (2) of the Convention". With respect to the means used in the Party concerned to notify the public of the proposed decision-making on integrated environmental permits, the Committee understands these to include: (a) publication of the public notice in the Official Journal and its dissemination on the website of the administration concerned; (b) the public display of the documentation for a specific period of time in the town hall of the

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<sup>4</sup> Party's first progress report, 26 September 2023, p. 2.

<sup>5</sup> Comments of the communicant of communication ACCC/C/2014/99, 21 November 2023.

municipality where the activity is to be carried out; and (c) personal notification of individuals living in the immediate vicinity and parties with a specific interest.<sup>6</sup>

29. Article 10 bis requires that the public be informed of decisions on integrated environmental permits through the means described in paragraph 28 (a) and (b) above. However, article 10 bis does not require that individuals living in the immediate vicinity and parties with a specific interest be personally notified of those decisions (see para. 28 (c) above).

30. With respect to personal notification, the Committee points out that all members of the public who submitted comments in the public participation procedure on the proposed decision should also be personally notified of the decision on the integrated environmental permit once taken.

31. In addition, it is not sufficient that decisions on integrated environmental permits are only published on the bulletin boards of the “municipalities in which the facilities are located”. In this regard, the Committee recalls that in its second progress review on decision VI/8j (Spain) it held:

The Committee considers that there is a lack of clarity as to whether Catalonia’s instruction requires the decision to be notified in all municipalities affected by the activity or only in the municipality where the activity will be undertaken. ... Should the instruction indeed be limited to requiring notification of permits only on the municipal notice boards and websites in which the activity in question is to actually take place, this would not fulfil paragraph 7 of decision VI/8k.<sup>7</sup>

32. In keeping with the above, article 10 bis should be amended, or other measures taken, to ensure that:

(a) Individuals living in the immediate vicinity, parties with a specific interest and all members of the public who submitted comments during the public participation procedure on the proposed decision are personally notified of the decision on the integrated environmental permit once taken;

(b) Decisions on integrated environmental permits are published on the bulletin boards of all municipalities affected by the activity, and not only the municipalities in which the facilities are located.

33. Based on the foregoing, the Committee considers that the Party concerned has not yet met the requirements of paragraph 2 (b) of decision VII/8p, though it welcomes the efforts to date made by the Party concerned in that direction.

## IV. Conclusions

34. The Committee considers that the Party concerned has not yet fully met the requirements of paragraphs 2 (a) and 2 (b) of decision VII/8p, while welcoming the positive steps made in that direction.

35. The Committee invites the Party concerned, together with its final progress report due on 1 October 2024:

(a) With respect to paragraph 2 (a) of decision VII/8p, to provide:

(i) The follow-up reports on the grant of legal aid to environmental NGOs submitted by the Regional Commissions on Free Legal Aid by 1 October 2024.

(ii) Should the follow-up report(s) by the Regional Commissions on Free Legal Aid reveal that environmental NGOs are still, even in only isolated cases, being denied access to legal aid, the text of the further measures the Party concerned has taken to

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<sup>6</sup> ECE/MP.PP/2021/57, para. 62.

<sup>7</sup> Committee’s second progress review on decision VI/8j (Spain), para. 44.

ensure that the remaining obstacles to environmental NGOs being granted legal aid are overcome.

(b) With respect to paragraph 2 (b) of decision VII/8p, to provide the text, together with an English translation thereof, of article 10 bis of Royal Decree no. 815/2013 as amended or other measures taken to ensure that:

(i) Individuals living in the immediate vicinity, parties with a specific interest and all members of the public who submitted comments during the public participation procedure on the proposed decision are personally notified of the decision on the integrated environmental permit once taken;

(ii) Decisions on integrated environmental permits are published on the bulletin boards of all municipalities affected by the activity, and not only the municipalities in which the facilities are located.

36. The Committee reminds the Party concerned that all measures necessary to implement decision VII/8p must be completed by, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/8p.

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