

***“Access to justice in Spain
under the Aarhus Convention”***

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Table of contents

1. - Spanish legal system regarding environmental matters	3
2. - Access to justice under the Aarhus Convention	5
2.1. Access to justice in exercising information rights	5
2.2. Access to justice in exercising public participation rights	8
2.3. Access to justice in enforcing environmental legislation	9
2.4. Common minimum requirements for access to justice procedures	11
3. Conclusions	14
Bibliography	15

1. - Spanish legal system regarding environmental matters

The current Spanish parliamentary monarchy was set up by the democratic Constitution adopted in 1978 after 40 years of dictatorship.

The Spanish Constitution recognizes in article 45 the “right to enjoy an environment suitable for the development of the person”¹. However, this is not provided as a fundamental right but as a guiding principle for economic and social policy. Which affords a lesser degree of protection than, for example, is given to the right to life and physical and moral integrity (art. 15), which is a fundamental right. Therefore, article 45 of the Spanish Constitution needs to be developed by legislation that can then be invoked and applicable. However, this right is claimed by many jurists to be a substantive right providing Spanish people with the right to enjoy a healthy environment, hand in hand with the obligation to protect it.

The constitutional framework of environmental responsibilities distributed between central and regional government set out in articles 148 and 149 entails a complex administrative situation for environmental matters. Since 1978, central government has been responsible for providing basic environmental legislation and establishing common levels of environmental protection.

Spain’s 17 autonomous regions are able to set high standards of legal protection and are also responsible within their own territories for matters such as hunting and fishing, public works, transport, non-commercial ports and airports, agriculture and livestock, forestry management, etc. Besides these regional responsibilities, local councils also have considerable responsibilities on some environmental issues, e.g. urban waste management, town planning, parks, or siting an authorization of activities that can have an impact on the environment².

The right of access to information and public participation is set out in articles 9(2)³, 23(1)⁴ and 105⁵ of the Spanish Constitution. The right of access to information

¹ Art. 45 of Spanish Constitution states that: “(1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it. (2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity. (3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.”

² Law 7/1985 of April 2 regulating the basic legal framework for local government, which sets out the powers and responsibilities of local councils;

³ Art. 9(2) provides that: “It is the responsibility of the public powers to promote conditions so that liberty and equality of the individual and the groups he/she joins will be real and effective; to remove those obstacles which impede or make difficult their full implementation, and to facilitate participation of all citizens in the political, economic, cultural, and social life.”

⁴ Spanish Constitution, art. 23(1): “Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage.”

⁵ Spanish Constitution, art. 105: “The law shall regulate: (a) The hearing of citizens, directly or through the organisations and associations recognized by the law, in the process of elaborating the administrative decisions which affect them; (b) access by the citizens to the administrative archives and registers except

contained in public registers and files is recognized as a non-fundamental right. But the right to participate in public affairs is a fundamental right whose exercise has to be actively facilitated by the public authorities, which are obliged to remove any obstacles impeding it.

Article 24 of the Constitution recognizes as fundamental the right to obtain effective protection of the courts in the exercise of rights and legitimate interests⁶. The Constitution does not establish a right or specific procedure for access to justice in matters related to the environment; it is necessary to resort to ordinary legal procedures provided in general law on effective judicial protection. However, in article 125 it provides for so-called *actio popularis*⁷ (or “popular action”), which gives citizens and, implicitly, organisations the right to go before the courts and challenge an activity which affects a collective interest, such as the environment. The use and scope of this “popular action” has been developed by national and regional sectoral laws. Finally, article 119 of the Constitution guarantees that everyone is able to access to justice by establishing that Justice shall be free of charge when the law so provides and in any case for those who have insufficient means to litigate.

The rights of access to information, public participation in decision-making, and access to justice in environmental matters have been developed through a range of specific legislation since 1978, e.g. Organic Law 3/1984 of March 26 regulating popular legislative initiative; Law 30/1992 of November 26 on the legal framework of public administration and common administrative procedure, which defines the participation of interested parties in administrative procedures and access to information contained in official registers and files; Legislative Royal Decree 1302/1986 on the assessment of environmental impact assessment regulation, which establishes a mechanism for public participation in environmental impact assessment; Law 38/1995 of December 12, on the right to access to environmental information, public participation and access to justice in environmental matters, etc.

More recently these three rights were firmly recognized and a new regulation of their exercise was adopted with the ratification of the Aarhus Convention, in December 2004, and the passing of Law 27/2006 of July 18 regulating the rights of access to environmental information, public participation, and access to justice in environmental matters.

where it affects the security and defense of the State, the investigation of crimes, and the privacy of persons; and (c) the procedure for administrative actions and for guaranteeing when appropriate the hearing of interested persons.”

⁶ Spanish Constitution, art. 24: “(1) All persons have the right to the effective protection of the judges and courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense. (2) Likewise, all have the right to the ordinary judge predetermined by law, to defense and assistance of an attorney, to be informed of the accusation made against them, to a public trial without delays and with all the guarantees, to utilize the means of proof pertinent to their defense, to refrain from self-incrimination, to refrain from pleading guilty, and to the presumption of innocence. The law shall regulate the cases in which for reasons of family relationship or professional secrecy it shall not be obligatory to make declarations concerning allegedly criminal actions.”

⁷ Spanish Constitution, art. 125: “Citizens may exercise popular action and participate in the Administration of Justice through the institution of the Jury in the manner that the law may determine for certain criminal trials, as well as in the customary and traditional Courts.”

2. - Access to justice under the Aarhus Convention

The Aarhus Convention was ratified by Spain in December 2004, more than six years after it was signed. The Convention was published in the Spanish Official Journal on February 16, 2005 and came into force in March 29, 2005. From that moment on the Convention was part of Spanish law, and it is therefore enforceable⁸.

Law 27/2006 of July 18, regulating the rights of access to environmental information, public participation and access to justice in environmental matters, was passed to create a legal framework for the application of these rights. In its article 3 it provides a firm legal recognition of the three rights as an implementation of article 45 of the Spanish Constitution. This Law has been in force since July 20, 2006 but the **access to justice provisions came into force only on October 20, 2006**.

This law's provisions aim on one hand to meet the obligations arising from the Aarhus Convention, and on the other, to transpose two EU directives, Directive 2003/4/EC of 28 January 2003 on public access to environmental information, and Directive 2003/35/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

This law seems to be the starting point for the adoption of a number of subsequent laws and regulations governing the exercise of these rights at national, regional and local level. Without such subsequent development, it will not be possible for the rights to be adequately exercised.

There follows a review of how the Spanish legal framework fulfils or fails to fulfil the requirements of article 9 of the Aarhus Convention:

2.1. Access to justice in exercising information rights⁹

A public authority impedes access to information

Law 27/2006 does not establish a specific administrative appeal or judicial review procedure for remedy when the exercise of the right of access to environmental

⁸ Spanish Constitution, art. 96(1): "*Validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order. Their provisions may only be abolished, modified, or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law.*"

⁹ Art. 9(1) of the Aarhus Convention states that: "*Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.*"

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph."

information is impeded by an act or an omission of the public authority. **Article 20**¹⁰ of the Law states that when a member of the public¹¹ considers that an act or omission of a public authority impedes the exercise of the right of access to environmental information, such a person is entitled to use the administrative procedures set out in Title VII - “administrative review of administrative acts” - of Law 30/1992 of November 26 on the legal framework of public administration and common administrative procedure; and moreover, when appropriate, entitled to access to review by an administrative court, according to Law 29/1998 of July 13 regulating administrative jurisdiction.

The procedures applicable in these cases operate as follows:

Once the request for information is made, the relevant public authority must respond within one month, or two months when the volume and complexity of the information requested so require¹².

It is a mystery how “**administrative silence**” (a lack of official response) would operate in practice in requests for environmental information. Although administrative silence is prohibited by Law 27/2006, at least as regards responses to environmental information requests, and refusals must always be reasoned¹³, administrative silence is a common phenomenon in Spanish public administration. This law fails to give an appropriate solution to the situation caused by the lack of responses of Spanish public authorities.

If the request is not dealt with according to the provisions of Law 27/2006, the requester would have to lodge an administrative appeal, if the authority to which the requester was addressed has a **hierarchical superior**, within one month of the response¹⁴. This appeal must be resolved and the decision notified within three months.

When the decision notified on appeal is not satisfactory or there is no decision at all, the requester can appeal to an administrative court within two or six months, depending on whether there is a negative response or no response¹⁵.

If there is **no body superior** to the authority to which the request was addressed, the decision can be appealed against in the administrative courts within two or six months, depending on whether there is a negative response or no response, i.e. administrative silence¹⁶. Alternatively, the requester may prefer to lodge another administrative appeal to seek a review of the decision by the same authority that was requested to provide the

¹⁰ Art. 20. *Appeals*. “Any citizen who believes that an act or, if applicable, omission attributable to a public authority infringes the rights enshrined in this Law as regards information and public participation may file an administrative appeal as provided in Title VII of Law 30/1992 of 26 November on the legal framework of public administration and common administrative procedure, and other applicable legislation, as well as, if applicable, an appeal for judicial review as provided in Law 29/1998 of 13 July on Administrative Jurisdiction.”

¹¹ Art. 2(1) of Law 27/2006 provides that a member of the public is any natural or legal person or any legally established association, organisation or group of such persons.

¹² Art. 10(2. c) 1º of Law 27/2006.

¹³ Arts. 10(2) in fine, 11(3) and 13(6) of Law 27/2006.

¹⁴ Arts. 114 and 115 of Law 30/1992, of November 26, on the legal framework of public administration and common administrative procedure.

¹⁵ Art. 46 of Law 29/1998, of July 13, regulating Administrative Jurisdiction.

¹⁶ Art. 46 of Law 29/1998, of July 13, regulating Administrative Jurisdiction.

information¹⁷. This appeal must be resolved and notified within one month; only then would be the requester be allowed to lodge an appeal with the administrative court.

A natural or legal person impedes access to information

Article 21 provides a **specific procedure** to be followed when the right of access to environmental information is impeded by an act or omission attributed to a person, whether natural or legal, acting as a public authority; that is to say, a person who has public responsibilities or functions, or is providing services in relation to the environment under the control of an administrative body¹⁸.

In these cases the requester is allowed to lodge a complaint directly with the administrative body with control over the administrative functions of that natural or legal person¹⁹. If the administrative body competent to make the decision on the complaint is a central government body, it must decide and notify the complainant within three months. If the administrative body is a regional one, the time in which a decision must be taken would be provided by regional legislation.

When the decision handed down on the complaint is not satisfactory to the complainant, he or she can appeal to an administrative court within two or six months, depending on whether there was a negative response or the complaint was ignored²⁰.

The decision made on the complaint by the administrative body is directly enforceable. If it is not complied with by the natural or legal person, the body would request the person to comply with it. If this request is ignored, the administrative body may impose penalty payments²¹.

There are **no further specifications on the new complaint procedure**, such as on the content of the complaint. Nor is it explained how **administrative silence** would operate when no decision on the complaint is taken or notified within the established period.

And once more it is not clear how **“administrative silence”** would operate when the request addressed to a private person, acting as a public authority, receives not response.

17 Arts. 116 and 117 of Law 30/1992, of November 26, on the legal framework of public administration and common administrative procedure.

18 Art. 2 (4.2) and 3 (1) of Law 27/2006 state that environmental information requests can be addressed to a person, whether natural or legal, who has public responsibilities or functions, or is providing services in relation to the environment under the control of an administrative body.

19 Art. 21(1) of Law 27/2006.

20 Art. 46 of Law 29/1998, of July 13, regulating Administrative Jurisdiction

21 Art. 21(2) of Law 27/2006.

2.2. Access to justice in exercising public participation rights²²

Law 27/2006 does not establish specific administrative appeal or judicial review procedures for remedy when the exercise of the right of public participation is impeded by an act or omission of a public authority²³.

When a public authority impedes the exercise of public participation rights, the member of the public affected would have to use the administrative procedures set out in Title VII - “Administrative review of administrative acts” - of Law 30/1992 of November 26 on the legal framework of public administration and common administrative procedure; and once the administrative review procedures were exhausted he or she would be entitled to lodge an appeal for judicial review according to Law 29/1998 of July 13 regulating Administrative Jurisdiction.

Who has legal standing to appeal?

Anyone allowed to take part in an environmental decision-making process has legal standing to appeal²⁴. Law 27/2006 states that, regarding public participation in the preparation of certain plans, programmes and general legal provisions relating to the environment, it is up to the competent public authorities to decide sufficiently in advance of the participation process which members of the public are regarded as having an interest and therefore allowed to take part in the decision-making process. But the following persons would always be regarded as interested²⁵:

- anyone who is deemed to have an interest under article 31 of Law 30/1992 on the legal framework of public administration and common administrative procedure²⁶; and
- any non-profit organisation meeting the following requirements:

²² Art. 9(2) of the Aarhus Convention: “Each Party shall, within the framework of its national legislation, ensure that members of the public concerned (a) Having a sufficient interest or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.”

²³ Art. 21(1) of Law 27/2006.

²⁴ Art. 31 and 107 to 119 of Law 30/1992 of 26 November on the legal framework of public administration and common administrative procedure.

²⁵ Art. 16(2) of Law 27/2006, which refers to arts. 2(2) and 23 of the same law.

²⁶ Art. 31 states that interested parties in administrative procedures in general include those promoting a procedure as holders of rights or legitimate individual or collective interests – NGOs included – and those who, without having initiated the procedure, may be affected by the decision adopted.

- the aims provided in its bylaws expressly include the protection of the environment in general or of any particular element thereof
- it was legally established at least two years before the action is brought and has been actively pursuing the aims provided in its bylaws
- it performs its activity pursuant to its bylaws in a territory that is affected by the administrative act or, if applicable, omission

These persons, as explained above, would also be deemed to have an interest as regards public participation in environmental impact assessment and integrated pollution prevention and control procedures.

We should stress that these specific requirements applicable to non-profit organisations, that is to say NGOs, did not previously exist in Spanish law. They are introduced by this new Law 27/2006 clearly with the aim of setting limits on legal standing in access to justice in environmental matters. Moreover, some of these requirements are easily and objectively checkable, while others need further criteria for interpretation.

2.3. Access to justice in enforcing environmental legislation²⁷

There are not specific procedures for access to justice in matters related to the environment; it is necessary to resort to ordinary legal procedures provided in general law on effective judicial protection.

Access to criminal courts is granted whenever a public authority or a natural or legal person commits a breach of criminal provisions regulated by the Criminal Code or any specific criminal law. *Actio popularis* is granted for environmental crimes²⁸. Every citizen has the right to exercise *actio popularis* in respect of criminal offences. Criminal offences are regulated by Title XVI of the Criminal Code: “Offences related to town and country planning and protection of historical heritage and of the environment”²⁹. By accessing criminal courts, individuals and NGOs can become party to criminal proceedings and therefore help protect the environment. By being a party to a criminal suit, acting as a private prosecutor, assisting the public prosecutor in the investigation of offences, and even acting in the role of public prosecutor. We should add that any declared criminal liability implies a civil liability.

Access to civil courts is possible when damage is caused by any natural or legal person. This access is limited to affected parties. The application of this jurisdiction in relation to the environment would correspond to matters concerning civil liability not arising from an offence, or arising from an offence about which the criminal process has expressly made reservations.

²⁷ Art. 9(3) of the Aarhus Convention establishes that: “In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to 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.”

²⁸ Art. 19 of Organic Law 6/1985 of July 1 regulating the Judiciary and art. 101 of the Law on Criminal Prosecution.

²⁹ Arts. 319-340 of Organic Law 10/1995 of November 23 on the Criminal Code.

Access to administrative courts is ruled under Law 29/1998 of July 13 regulating Administrative Jurisdiction. Access is possible whenever there is a breach of any specific environmental legislation such as legislation on EIA, IPPC, water, air quality, waste management, protected natural areas, etc.

Law 27/2006 expressly recognises the right to *actio popularis* whenever a public authority acts or fails to act in breach of environmental legislation³⁰. Articles 22 and 23 regulate the scope of this *actio popularis*.

Legal standing is granted only to non-profit organisations that fulfil the following requirements, as explained above:

- the aims provided in its bylaws expressly include the protection of the environment in general or of any particular element thereof
- it was legally established at least two years before the action is brought and has been actively pursuing the aims provided in its bylaws
- it performs its activity pursuant to its bylaws in a territory that is affected by the administrative act or, if applicable, omission

A list of what is regarded as environmental legislation is included in article 18(1) “all general provisions concerning the following matters:

- protection of water
- protection against noise pollution
- protection of soil
- air pollution
- rural and urban planning and land use
- nature conservation and biodiversity
- woodlands and forest management
- waste management
- chemical products, including biocides and pesticides
- biotechnology
- other emissions, discharges and releases of substances into the environment
- environmental impact assessment
- access to information, public participation in decision-making and access to justice in environmental matters
- any other matters provided for by regional legislation”

The procedures available for challenging breaches of environmental legislation by an act or omission of a public authority are ruled by Law 29/1998 regulating Administrative Jurisdiction. This law requires exhausting the administrative review procedures established in Title VII - “Administrative review of administrative acts” - of Law 30/1992 on the legal framework of public administration and common administrative procedure before accessing to a judicial review.

Finally, Law 27/2006 provides that non-profit organisations allowed to exercise *actio popularis* under Law 27/2006 are entitled to obtain **free legal aid** pursuant to Law

³⁰ Art. 3(3.b) of Law 27/2006.

1/1996 of January 10 on legal aid³¹ as amended by Law 16/2005 of July 18. This provision is intended to establish an assistance mechanism to help reduce financial barriers in access to environmental justice, as required by article 9(5) of the Aarhus Convention.

2.4. Common minimum requirements for access to justice procedures

Articles 9(4)³² and 9(5)³³ of the Aarhus Convention set certain common requirements for access to justice procedures. These procedures must be fair, equitable, timely and not prohibitively expensive. They should provide adequate and effective remedies and be carried out by independent and impartial bodies. There are also obligations to meet regarding the dissemination of information on access to justice procedures and the development of assistance mechanisms to remove or reduce financial and other barriers to access to justice.

Apart from granting free legal aid to non-profit entities meeting the requirements of article 23 of Law 27/2006, this law does not introduce any further provisions on how to meet the minimum requirements and fulfil the obligations laid down in articles 9(4) and 9(5) of the Aarhus Convention. There follows a brief commentary on how the Spanish legal system addresses or fails to address these minimum requirements and obligations to promote effective access to justice:

- ***Adequate and effective remedies, including injunctive relief***

In general terms, injunctions cannot be used against public administration in the administrative review process. However, it is possible to request the adoption of precautionary measures in the civil, criminal and contentious-administrative jurisdictions.

Precautionary measures are aimed at impeding the continuation of a situation liable to have harmful effects or to ensure the effectiveness of a future resolution, anticipating its effects or adopting measures allowing a future judicial decision to be put into practice. These precautionary measures can be ordered at the request of a party whenever the court considers them to be applicable, or adopted by the judge or the court of its own motion. If precautionary measures are adopted at the request of one party, the judicial authority sets a bond which must be paid up in order for the measures to be implemented. These bonds tend to be prohibitively expensive and non-profit entities – NGOs – usually cannot afford to pay them. Thus, though it is legally possible, such

³¹ This Law develops art. 119 of the Spanish Constitution: “Justice shall be free of charge when the law so provides and in any case for those who have insufficient means to litigate.”

³² Art. 9(4): “In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.”

³³ Art. 9(5): “In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.”

measures are not often taken. Mainly because these legal measures were originally designed to protect private interests and not a “collective interest” such as the protection of the environment. And therefore there are no well-developed tools, for instance, to calculate the costs involved for the various interests at stake. There are easy, well-established methods for calculating the money that a developer would lose if the construction of a dam is stopped while it is decided if it is being built in compliance with applicable environmental legislation. However, there are no criteria, customs, internal directives or resources, and often not even the will, to calculate the damage to the environment if the dam is built and afterwards it is decided that it was built in breach of environmental legislation. Regrettably we often find that final court decisions are unenforceable because the environment that they sought to protect is not there any more – is gone, and there is no way to return to the previous situation.

- *Fair and equitable procedures*

To be fair, the process must be impartial and free from prejudice, favouritism or self-interest. Fair procedures must also apply equally to all persons, regardless of position, race, nationality or other discriminatory criteria³⁴. To be equitable, procedures need to avoid the application of the law in an unnecessarily harsh and technical manner³⁵.

Since 1979 Spain is member of the Council of Europe and a party to the European Convention on Human Rights. The Spanish Constitution establishes under art. 24 some minimum requirements to guarantee a fair and equitable judicial procedure: “(1) *All persons have the right to the effective protection of the judges and courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defence. (2) Likewise, all have the right to the ordinary judge predetermined by law, to defence and assistance of an attorney, to be informed of the accusation made against them, to a public trial without delays and with all the guarantees, to utilize the means of proof pertinent to their defence, to refrain from self-incrimination, to refrain from pleading guilty, and to the presumption of innocence. The law shall regulate the cases in which for reasons of family relationship or professional secrecy it shall not be obligatory to make declarations concerning allegedly criminal actions.*”

The Constitution also recognises as a fundamental right that we are all equal before the law and that we cannot be discriminated against on any grounds³⁶. This fundamental right gets the highest degree of protection in our legal system.

Our judiciary is regulated by an organic law and developed by various laws and regulations which set out strict provisions guaranteeing fair and impartial process and trials. There are procedures to guarantee fairness, for instance to remove judges from their posts when they act partially or protect the interests of just one of the parties.

³⁴ Cited from p. 133 of The Aarhus Convention – An Implementation Guide. UNECE. New York and Geneva, 2000.

³⁵ Explanation taken from page 134 of The Aarhus Convention – An Implementation Guide. UNECE. New York and Geneva 2000.

³⁶ Art. 14 of the Spanish Constitution says: “*Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance.*”

- ***Timeliness***

Timeliness is crucial to the administration of justice. There is a Spanish saying: “justicia tarde no es justicia” (late justice is no justice at all). This is always true, but especially in environmental issues. The excessive length of Spanish judicial procedures is one of the weakest points of access to justice in Spain. A court case on the right of access to environmental information can take more than 6 or 8 years. Getting environmental information requested more than 6 or even 8 years after the request was submitted is useless. However, so far no measures have been taken in this regard to comply with this provision of the Aarhus Convention. We should add that the excessive slowness of judicial procedures has for many years appeared in reports on the malfunctioning of judicial administration in Spain and in proposals to improve it.

- ***Not prohibitively expensive***

Since 2003 access to justice may require payment of a fee. Although under the Spanish system accessing to justice on cases related to article 9 of the Aarhus Convention usually do not involve paying a fee. However, the costs of a suit may include the fees of lawyers, solicitors, technicians and experts; bonds for becoming a party to a criminal suit; bonds for applying for injunctive relief or precautionary measures, and finally to cover the costs of the other party if you lose the case – the loser-pays principle³⁷.

Access to justice in Spain is also constitutionally guaranteed for those who lack the means to bear the costs involved. Law 1/1996, on free legal aid, regulates the way in which anyone who can prove that his or her income is low may request and obtain access to free-of-charge judicial proceedings³⁸. NGOs regarded by the Ministry of Internal Affairs as “of public utility”³⁹ are also entitled to access to free-of-charge justice under that law.

As we saw above, this system is improved on by article 23(2) of Law 27/2006, which states that all non-profit entities meeting the requirements set in article 23(1) are entitled to free legal aid in accessing to administrative judicial procedures as regulated in Law 1/1996.

Free legal aid may cover besides attorney’s fees other costs involved in a judicial review, i.e.: expert fees, bonds for becoming a party, for applying for injunctive relief, etc.

- ***Decisions in writing and publicly accessible***

Administrative review decisions and court rulings are recorded and notified in writing to the parties. Judicial decisions are accessible and published in official journals and legal publications, and are easily available in most public libraries. In this regard it is important to recall that Law 27/2006 includes among the information that should be

³⁷ This is a governing principle under civil jurisdiction.

³⁸ It can be requested online at: <http://www.justiciagratis.es>

³⁹ Organic Law 1/2002 of March 22 on the right of association, developed by Royal Decree 1740/2003 of December 19 on procedures related to associations of public utility.

actively disseminated by central government: judicial decisions on key aspects of that Law⁴⁰.

- ***Obligation to inform the public on access to administrative and judicial review procedures***

There is no trace of any provision related to this obligation. Yet such a provision is clearly needed to inform the public of its options for properly exercising its rights, including obtaining access to administrative and judicial review, when appropriate. Moreover, it is important to keep lawyers, judges and other members of the judiciary informed in order to promote positive developments in access to justice on environmental issues in Spain.

- ***Appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice***

In this regard, the granting of free legal aid to non-profit entities, including NGOs meeting the requirements of art. 23(1) of Law 27/2006, explained above, may be seen as a step forward⁴¹. Although there is a potential handicap, namely the lack of training and expertise on environmental issues of lawyers providing this free legal aid.

3. Conclusions

Effective access to environmental justice is vital in achieving the right of enjoying a sound environment. And also in ensuring that everyone contributes to protecting the environment for future generations. The Aarhus Convention and all related legal developments are indeed positive, and in Spain we have the experience of some progressive mechanisms allowing access to justice on environmental issues, but we still face the following main obstacles:

- Excessive length of judicial processes.
- Prohibitive costs involved, i.e. bonds, experts' fees, etc.
- Difficulties in obtaining an injunction to suspend/stop an activity, or other precautionary measures.
- Burden of proof and difficulties in obtaining evidence.
- Judges, prosecutors, lawyers and solicitors lack appropriate training or skills for dealing with environmental cases.
- Weak enforcement of judgments and court decisions.

And although progress has been made in terms of legal provisions, it is clear that these are not enough to meet all the requirements imposed by the ratification of the Aarhus

⁴⁰ Art. 6(5) of Law 27/2006.

⁴¹ See above: 2.3. Access to justice in enforcing environmental legislation

Convention. An improvement in procedural provisions is needed to facilitate effective access to environmental justice. However, it is necessary to clearly stress that **such improvement will have no positive impact on access to justice if it is not accompanied by other implementation measures such as:**

- capacity building and training programmes for the judiciary;
- provision of information to the public on the procedures available and ways to exercise the right of access to justice to protect the environment;
- adequate budgets to provide financial support for the implementation of all these legal provisions;
- staff trained on and aware of these issues;
- sufficient means for the courts to deal with costly suits;
- training programmes on the environment for lawyers, especially those provided under Law 1/1996 on free legal assistance;
- appointment of experts to help judges correctly assess or properly balance technical evidence submitted by the parties, and
- proper assistance for members of the public seeking access to judicial procedures to protect the environment.

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