CASE STUDY
for Aarhus Convention topic

1. Case title:
SENDA DE GRANADA Case

2. Case subject:
This case addresses an urbanization project that was approved through complicated and lengthy procedure covering two major issues: land and urbanization (construction). There were not any specific environmental decision-making procedures applied to the project approval and there were not enough environmental information and public participation under Aarhus Convention standarts for neighbours The project was to develop a residential area to construct houses for young families (*Joven Futura* project). The City of Murcia decided to assign special lands of Traditional Orchards (*Huerta Tradicional*) for the use of the project.

3. Country:
Spain

4. Location:
Murcia

5. Geographic dimension:

local	x
regional	x
national	x The case at the Spanish Constitutional Court can be a precedent
EU	☐
international	x (the international relevance has to be with the Aarhus Compliance Committee Complaint, in case it can be an example for other NGOs in other countries)

6. Initiator of case:
Asociación de Vecinos Senda de Granada (Neighbours Association)

7. Participants involved:
Asociación para la Justicia Ambiental

8. Other interested parties and/or stakeholders:
Ayuntamiento de Murcia (City Council)
Consejería de Obras Públicas, Vivienda y Urbanismo (Regional Authority for Public Works and Land Use)
Sociedad Cooperativa de Viviendas "Joven Futura" (House Community that is responsible for the urbanization and planning of the projects)

9. Background facts:

In February 2003 a private company *Joven Futura* (Future Youth) made a proposal to Murcia City Council to start negotiations on development of a residential area to construct houses for young families covering 92,000 square meters. The proposal for the agreement included a special requirement – to re-classify the land slot into a second (?) category of lands. The re-classification would become part of City's responsibilities under the proposed agreement.

In July 2003 Murcia City Council approved the agreement without public participation, which after that was authorized by the local government. The agreement included the obligation of the City Council to re-classify 111,000 square meters' land slot, which becomes property of *Joven Futura* and where the company would construct approximately 2,000 apartments.

The lands were classified as "non-residential" by Murcia City General Plan, as revised in January 31, 2001. This latest revision of Murcia City General Plan was subject to environmental impact assessment (EIA) before its adoption in 2001, as required by the national and community (EC) law. The EIA verified and justified the landscape, historical, cultural, environmental, scientific and archeological values of the lands to classify some of them as non-residential. Non-residential lands are subject to special protection regime that prohibits their urbanization.

In 2004, the neighbours of Senda de Granada, who were living and working in an agricultural and protected landscape, knew that the city plan would be changed to build a large urbanization for young people. The decision to change the classification of land from protected and non-residential to urban, was taken without taking into account the EIA and was based on false facts, such as the non-exploitation of the agricultural land, then they decided to participate in the decision.

The neighbours, with the help of AJA, tried to access the environmental information (knowing there were problems at the Administration) and to participate in the decision-making despite the haste of the public proceedings. When the public efforts of more than 300 neighbours to preserve the area were unsuccessful after presenting different arguments and scientific reports regarding the environmental values, the needs of EIA and the obligation of taking in account the participation results, AJA prepared to take the case to court.

9.1 Account of facts (a short summary of the case)

In May 2004, the Urbanization Unit [of the Municipality] submitted to the City Council a draft modification to the City General Plan for the new residential zone (ZM-Ed3, Espinardo) as well as Environmental accident study developed by the construction company and a draft EIA for creation of urban zone "ZM-Ed3, Espinardo". The latter document referred to the legal requirements to develop EIA for the modification of city plans and it pretends to be an environmental impact assessment. Environmental accident study states that the lands proposed for re-classification "have no special significance as agricultural land".

On June 24, 2004, Murcia City Council decided to make a public notice about Modification to the City General Plan no 50 for establishment of a residential zone ZM-Ed3, Espinardo. It suggested a development of a medium density residential area, i.e. 0.6 m2/m2. The notice was published on July 22, 2004 in Murcia Region Official Journal and set one month for public comments period. At the same time, the Council made a request to the environmental authority to clarify whether such a modification requires an EIA.

In August 2004, the Association with some 2,000 people from Murcia presented comments to the Modification no 50. The comments were based on the environmental, economical and agricultural importance of the area and pointed out the breaches in the project and the need for EIA.

On September 15, 2004, after the period of public comments has passed, the company *Joven Futura* requested to change the area density into 0.95 m2/m2, the highest density category of residential lands in Murcia. The director of the City Urban Planning Department signed a report saying that this "minor change" is not significant and does not require new public

comment procedure. On September 21, 2004 the project was submitted by the City Urbanization Board for initial approval together with a decision to notify affected owners and authorities about initial approval.

On September 24, 2004, the Environmental Quality Office adopted a resolution according to which no EIA is needed for the modification of the General Plan. The resolution was based on decision taken at extraordinary session of the EIA Commission held on September 23, 2004 (the Commission is a competent authority to take pre-screening decisions under EIA legislation). Its decision stipulated that the lands in question were abandoned because of their low agricultural and environmental values as well as profitability.

Since the decision to submit the project for initial approval, various affected persons notified the City Council about their concerns. Over 2,000 people expressed their disagreement with the proposed re-classification of lands, including owners of the lands and houses. The key issues raised were the absence of EIA; the legality of agreement between City Council and *Joven Futura* as neither was the owner of the lands subject to re-classification and the landscape and environmental values of the lands protected by City General Plan.

On April 28, 2005, City Council adopted a modification no 50 to City General Plan, re-classifying the lands as "residential". Consequently, a Land Slot Plan ZA-Ed3 (*Plan Parcial*) was adopted in 2005 with details of the future development, residential construction, in the area.

The construction project itself was approved by the resolution of the City Government on April 5, 2006, following its initial approval in 2005. The official name of the project is called Urbanization Project UA1 of the Land Slot Plan ZA-Ed3. No EIA study was ever done for this project.

Soon after the project approval, the construction works began. Numerous remainings of the Roman Empire and Germanic folks and items of Al-andalus culture were found on the lands. In some parts, limitations were imposed on the construction works to protect some of the archeological sites discovered.

9.2 Description of the project and its main environmental impacts

Residential area of 140,000 square meters in the rural area to build 2,000 apartments in 16 towers. The area cannot sustain the waste, sanitation and traffic of the population planned. The valuable and until now protected land "Huerta" will be damaged: wild and traditional flora, protected fauna (birds, reptiles and mammals), millenarian irrigation systems and infrastructure, traditional roads, etc. The biggest impact, however is the loss of fertile soil, one of the most fertile ones in the area being close to the river Segura. From the global point of view, it will increase desertification and climate change. It will also be detrimental to any initiative of ecological agriculture.

10. Applicable EC and/or international laws:

Directive 1985/335/CEE, Environmental Impact Assessment.
Directive 2003/4/CE, on January 23, regarding public access to environmental information.
Directive 2003/35/CE, on May 23, regarding public participation.

The **Aarhus Convention** was signed by Spain on 25 June 1998, ratified on 29 December 2004, published in the Spanish Official Journal on 16 February 2005, and came into force on 29 March 2005.

Landscape Convention of Firenze 2000.

11. Applicable national laws:

Murcia's Soil Legislation, **Ley 1/2001**
Spanish EIA's Legislation:
Real Decreto Legislativo 1302/1986
Ley 6/2001
Murcia's Environmental Protection Legislation, **Ley 1/1995**

Aarhus Convention and Ley 27/2006, access to information, public participation and access to justice in environmental matters

12. Type of procedure

Land use planning modification at local and regional level, conducted by the City Council, using administrative procedure with public participation (1 month for comments).

13. Administrative procedural history

Modification no 50 to 2001 Murcia City General Plan

Initial approval: 22 July 2004 (paragraph 18 of the communication)
City Council approval: 28 April 2005
Final approval: 24 June 2005 (paragraph 22 of the communication)

Land Slot Plan ZA-Ed 3

Initial approval: 11 May 2005 (paragraph 22 of the communication)
Final approval: 24 November 2005 (paragraph 22 of the communication)

Urbanization project UA1 of the Land Slot Plan ZA – Ed 3

Initial approval: 7 December 2005 (paragraph 23 of the communication)
Final approval: 5 April 2006 (paragraph 23 of the communication)

Each administrative decision identified above, approving the modification of the City General Plan, the Land Slot Plan and the Urbanization Project, was challenged.

14. Outcome of the actions:

A part of the protected area (Huerta) was not classified as residential land. However, the protection measure did not cover area big enough to preserve the land and avoid serious impacts.

The Environmental Quality Office made a Resolution to allow an exemption for the EIA.

15. Remedies taken:

On January 4, 2005, the Association made an administrative claim to annul the Resolution (saying that the EIA is not needed for modification of General Plan) by Environmental Quality Office.

As the public participation turned out to be unsuccessful, the Association, started preparing judicial actions against the planning modification of the urbanization project, against the civil servants who allowed the exemption of EIA, and to oppose the obstacles to access to information, to public participation and to access to justice.

As the project had significant local importance, the Association contacted the local media to demonstrate the injustices in the urban planning.

16. Judicial procedural history/timeline:

Administrative

On March 2005, the Modification no 50 was challenged in the Administrative Proceedings Court (*Sala de lo Contencioso-Administrativo Del Tribunal Superior de Justicia de Murcia*). As a part of this lawsuit, the Association requested the court as a precautionary measure to suspend Modification no 50 of the City General Plan. The request for a precautionary measure was argued based on the national legislation and Aarhus Convention (articles 9.3 and 9.4).
The court rejected the request arguing that the decision on Modification no 50 cannot have irreversible impact on the environment because the Modification "does not directly grant the right to start constructions in the area and that the development of the project is subject to future approval of other decisions" (court case 487/2005).

On July 4, 2006, the Association filed an administrative lawsuit to the same court challenging the Urbanization Project UA1 of the Land Slot Plan ZA-Ed3 (finally adopted on April 5, 2006). In the lawsuit the Association, inter alia, requested the court to suspend the decision on final adoption of "Urbanization Project UA1 of the Land Slot Plan ZA-Ed3".
In addition to the arguments related to precautionary principle of national and international environmental law, the Association argued that both requirements of national law for precautionary suspension are satisfied in this case (*periculum in mora* and *fumus bonis iuris* requirements*)*. In brief, the Association argued that the adoption of the project gave the final approval to the construction works and that if the land is built it will cause irreversible loss in environmental and historical values (*periculum in mora*). As to *fumus bonis iuris*, the Association argued the obvious violations of EIA and land laws, and the evident violation of the general interest of the public in preservation of the environment.

On March 12, 2007, (eight months after the request, and eleven months of construction) the Administrative Proceedings Court took a separate decision on application of precautionary measure (suspension). The court rejected the request based on consideration of *periculum in mora* element only. The court noticed that the preservation and assessment of environmental values was not part of the project decision, but subject to consideration and to preceding decisions, namely Modification no 50 and Land Slot Plan (*Plan Parcial*). According to the judgment, since neither of them was suspended by the courts, the project could not be suspended either. The court also stated that it had no strong evidence of the existence of environmental, cultural and agricultural values which could be irreversibly damaged by project implementation (court case 539/2006).

On April 17, 2007, the Association filed an appeal to the decision of March 12, 2007. In addition to *periculum in mora* and *fumus bonis iuris* requirements, the Association argued that precautionary suspension of project approval should not be linked to earlier decision and the need to preserve newly discovered archeological sites.

On December 21, 2007, the Administrative Proceedings Court (section one) rejected the appeal based on similar arguments as the first instance court. First, the court noticed a

presumption of legality of administrative acts and an exceptional nature of the suspension measure. Second, in its opinion, the environmental values were subject to previous (land modification) decisions which were challenged and pending in courts but not suspended. Third, urban issues, such as city planning and development are fundamental general interests, while plaintiffs express private interests. Fourth, an Environmental accident study was done at the time of land planning (even though it was not an EIA). Last, the court stated that certain limitations were imposed on construction works in some places to protect some of the newly discovered Roman remainings (court case 953/2007).

Criminal

9 April 2007 -

Criminal proceeding no. 2708/2007 initiated by a complaint submitted by the Association before Murcia Magistrate's Court. The complaint claims the application of art. 404 of the Criminal Code – wilful breach of official duty – against regional authorities involved in the decision to ignore required EIA procedures during the process of approving the Modification no 50 of Murcia City General Plan of 2001. The environmental prosecutor of Murcia supports the criminal proceeding. It is foreseen that it will take about 2 years for the criminal court to issue a decision.

22 September 2006 -

Criminal proceeding no. 4444/2006 initiated by a complaint submitted by the Association before Murcia Magistrate's Court. The complaint claims the application of art. 404 of the Criminal Code – wilful breach of official duty – for failure to afford due protection to archaeological remains found on land within the urbanization project boundaries. Administrative decisions were made without protecting, as required by law, culturally important remains and old irrigation systems. Some remains were preserved while others have been covered by buildings and other facilities, or simply removed. Currently a decision from the High Court is pending on an appeal lodged by the Association against a Court order from the Magistrate's Court shelving the case and imposing upon the Association a bond requirement of 60,000 € in the event the Court decides to take up the case.

Constitutional

18 March 2008 -

Constitutional Court decision on the constitutional redress claim lodged by the Association regarding Murcia High Court Decision of 21 December 2007 rejecting the appeal and imposing all costs (2,148 €) to the plaintiff. The constitutional redress claim alleges that required EIA procedures were not followed prior to approving the urbanization project and seeks to overturn the lower court's decision to impose all costs against the Association. It is expected that the Constitutional Court will take approximately three years to issue a decision.

On May, 15, 2008, the Association presented a communication to the Aarhus Convention Compliance Committee and it was admitted.

17. Outcome of the actions:

Participation of Environmental Prosecutor by the criminal action.
Changes to the Modification and Urbanization project.
Capacity building on public participation and land matters of the members of the Association.
Partial protection of Roman and Arabic ruins.

18. Current status of case:

Judicial Procedures are running and the Association is waiting for judicial resolutions and preparing proofs for the proceedings.

19. Follow-up actions planned and their timeline (in the case of ongoing matters, also the estimated end date of the case):

Administrative suits against Planning Modification and Urbanization Project (2-3 years)

Suit at the Constitutional Court (2-3 years)

Case at the Criminal Court (2 years)

Aarhus Convention Compliance Committee (1 year)

20. Analysis of legal problems, conclusions:

Conclusions:

Lack of democratic culture at land use decisions bring about cases like this.

At the first line, environmental information regarding planning or land use is too expensive (2 € per page) and difficult to find (no organization or not seeking processes to serve the information to the public. At the procedures not all the information is on the table and if it comes is too late.

One decision, in favor of a group of interest can cross all the legal controls to avoid irrational projects. Despite the active participation of neighbors, there are not enough mechanisms to make public participation effective before the final administrative decision. On this case, the public participation at EIA process was directly omitted without public participation and the neighbours could not discuss about the environmental impacts of the decision in order to obtain measures. If public participation works, the decision would take in account all the different comments. The comments were not considered, there were not really answers for the suggestions and warnings about the procedure.

Lack of environmental information and suitable conditions to participate forces the affected to resort to court in these types of cases. In addition, the court proceedings in Spain are very time-consuming, and the decision may not be received in time to protect the environment. Suspension measures could be considered, but they are usually difficult to obtain.

The Aarhus Convention requirements are not implemented in land use sector, that is causing an incredible environmental impact in the Southern coast of Spain. The Soil and Land Use Laws do not take into account that public participation shall be effective and the duties for the Administration do not include mechanisms for a better information generation and public participation. At the same time, after administrative level, the judicial procedures are lengthy and expensive and there are few possibilities to use suspension measures or injunctive relief.

With this case we want to show to the Highest Courts and at Aarhus Convention Compliance Committee, that there is no way for simple citizens to participate effectively in land use decisions, neither to access to Courts with this frame of legislation and administrative proceedings.

AJA, taking in consideration the requirements of public participation under Aarhus Convention, understand that the local and regional authorities didn't give the public enough opportunities and time to show a different opinion/view for the project. What AJA expects from Aarhus Compliance Committee is a declaration of the lack of effective public participation in Spain, other under Spanish land use laws, and the needs in the practice to get the "Aarhus requirements", the same by environmental information. This kind of declaration is very useful to show that the appearance of democracy do not means public participations at land use decisions, and to make clear the requirements. Procedures of decision making, including on land planning and project itself, violated public participation obligations under Article 6 paragraphs , paragraph 1 a), paragraph 2 a) and b), paragraph 4 of Aarhus Convention.

At the field of access to justice, AJA expect a serious concern regarding Spanish administrative process law and its finantial barriers, it means, a important declaration in relation with the costs of justice, the prices of injunctive relief (bonds) and this kind of obstacles, wich are avoiding access to environmental justice of NGOs in Spain. Denial by the courts to suspend decisions taken by local authority in the court law suit, where the merits of the case relate to lack of EIA in decision making process, as well as length of the procedure on granting suspension, violated requirements of Article 9 paragraph 4 Aarhus Convention. Imposing of costs in a court proceeding related to suspension measure (of the governmental decision challenged) on a non-profit organization, while no assistance mechanisms were available to affected public, constitutes a violation of the requirements of paragraphs 4 and 5 of the Article 9, and, in this connection, of the paragraphs 2 and 3 of Article 9 Aarhus Convention.

What the Neighbours Association expects is a international legal recognition of his work defending a common piece of land, an international advertise for the local and regional authorities who can bring changes for the local legislation of environmental legislation and public participation, and a local example for other districts in Murcia, to participate at the decisions of planning using Aarhus Convention.

21. Lawyer and organization:

Eduardo Salazar Ortuño

Association for Environmental Justice (Asociacion para la Justicia Ambiental, AJA), Spain

Contact Information:
Asociación para la Justicia Ambiental, AJÁ

22. Contact information:

Asociación para la Justicia Ambiental
Address: P° Maria Agustin, 3, dcha. E-50004 Zaragoza, Spain
Tel. + 34 968 21 14 39
Fax + 34 968 22 71 91

Eduardo Salazar Ortuño
eduardo@bufetesalazar.com