



**COMMUNICATION ON NON-COMPLIANCE BY SPAIN WITH THE
AARHUS CONVENTION ON ACCESS TO INFORMATION, PUBLIC
PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS.**

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I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION

1. The communication is submitted by **GUS URDAIBAICO MUSEOAREN PROIEKTUA STOP HERRI PLATAFORMA ELKARTEA**.

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2. GUS URDAIBAICO MUSEOAREN PROIEKTUA STOP HERRI PLATAFORMA ELKARTEA is referred to as 'the Communicant' throughout this Communication.
3. The Communicant is a non-profit citizen platform founded on February 13, 2023 and registered in the General Registry of Associations of the Basque Country in January 2024 with the aim of conserving the cultural heritage, biodiversity, birds and ecosystems of the Urdaibai estuary in Bizkaia (Basque Country, Spain).
4. Acting in representation and defense of the Communicant in relation to this communication is **Jaime Doreste Hernández**, Lawyer, with professional address at Magerit Abogados, c/ Pedro Muguruza 1, 28036 Madrid, jaimedoreste@icam.es and telephone number +34 661 81 56 86.

II. PARTY CONCERNED

5. This communication concerns non-compliance with the Aarhus Convention by **Spain**. Spain signed the Convention on June 25, 1998 and ratified on December 29, 2004.

III. FACTS OF THE COMMUNICATION

A. Summary of the facts

6. The purpose of this communication is to denounce the project of 'Ampliación discontinua' -'discontinuous expansion'- of the Guggenheim Museum Bilbao in Urdaibai (Bizkaia, Spain), which is being promoted by the Solomon R. Guggenheim Foundation, with the explicit support of local, regional and national authorities - the Diputación Foral de Bizkaia¹, the Gobierno Vasco² and the Government of Spain - is being promoted without any possibility for the public to participate in the decision-making process, thus infringing the provisions of the Aarhus Convention.



Source: El Correo 6 MAY 2022

7. According to information released by the media³, *"The Guggenheim Museum Bilbao expansion would comprise two locations in the Biosphere Reserve of Urdaibai: the former Dalia factory in Gernika and the shipyards in Murueta. These two locations would be connected by a natural path⁴".*
8. This discontinuous expansion of the Guggenheim Museum Bilbao in Urdaibai is projected in an area of enormous environmental value: the estuary of the Urdaibai Reserve. This area has been designated a Special Protection Area (SPA) and a Special

¹ Provincial Council of Bizkaia.

² Basque Government

³ Mass media El Correo, Deia and eitb are members of the Guggenheim Museum Bilbao Board of Trustees. See:

<https://www.guggenheim-bilbao.eus/en/corporate-support/our-corporate-members>

⁴ See: <https://guggenheim-bilbao-urdaibai.eus/en/>

Area of Conservation (SAC) and is part of the Natura 2000 network, as well as being included in the List of Wetlands of International Importance of the RAMSAR convention and having been declared a UNESCO Biosphere Reserve since 1984.

9. Despite the fact that this initiative is very present and well known to the public, the truth is that, as of today, the project for the discontinuous expansion of the Guggenheim Museum in Bilbao in Urdaibai has not been presented publicly and officially. For this reason the public has not had the opportunity to participate in the decision-making process and to express their opinion on the convenience of carrying it out, thus infringing Article 6 of the Aarhus Convention. Despite this, the Spanish and Basque public authorities have already begun to adopt the administrative and regulatory measures necessary to guarantee the viability of the project, but always in a partial manner and never from a global and joint perspective of the museum expansion project.

B. Urdaibai Biosphere Reserve

10. **Urdaibai** is an extraordinarily beautiful and diverse natural area located in the eastern basin of the Cantabrian Sea and in the coastal area of the province of Bizkaia (Basque Country). Its territory is defined by the hydrographic basin of the Oka River and other smaller rivers that drain their waters into the estuary of the Mundaka River, which make up the Urdaibai Marshes.



The best conserved natural elements of the Urdaibai Biosphere Reserve are the coastal cliffs, the different estuarine habitats (intertidal areas of sand and silt, marshes, reed beds), the rivers and the Cantabrian holm oak forests. Perhaps the best known, recognized and popular natural element of this area is its birdlife. The Urdaibai Marshes are an internationally important site as a wintering, resting and feeding area for dozens of species of birds, mostly aquatic. These include the Eurasian spoonbill (*Platalea leucorodia*), the Osprey (*Pandion haliaetus*) and the Eurasian bittern (*Botaurus stellaris*) and the highly threatened, sensitive and shy European mink (*Mustela lutreola*). In addition, the cliffs are a nesting area for the European shag (*Gulosus aristotelis*), the European storm petrel (*Hydrobates pelagicus*), the Peregrine falcon (*Falco peregrinus*) and the Egyptian vulture (*Neophron percnopterus*)⁵.

11. Due precisely to these environmental, but also ethnographic and cultural values, Urdaibai was declared a Biosphere Reserve by UNESCO in 1984, the only one in the Basque Country. Its management and conservation is governed by Law 5/1989, of July 6, on the Protection and Management of the Urdaibai Biosphere Reserve.

Furthermore, the entire area is within the space designated as a RAMSAR Site since the inclusion of “the Mundaka-Gernika estuary” in 1993 in the list of the RAMSAR Convention on Wetlands of International Importance.

In Urdaibai there are also two Special Protection Areas for Birds, the SPA “Ría de Urdaibai⁶”, declared in 2013, and the SPA “Marine area of the Ría de Mundaka-Cabo de Ogoño⁷” and the Special Areas of Conservation “Cantabrian Encinar Forests of Urdaibai⁸”, “River Network of Urdaibai⁹” and “Coastal Areas and Marshes of Urdaibai¹⁰”, which are part of the Natura 2000 Network and are also included in the Special Interest Area for the conservation of the European Mink of the Oka¹¹.

⁵ See the information sheet on the Urdaibai Biosphere Reserve from the Autonomous Organization of National Parks (under the Ministry for Ecological Transition) accessible at: https://www.miteco.gob.es/content/dam/miteco/es/parques-nacionales-oapn/reservas-biosfera/programa-mab-espana/listRB_09_urdaibai_tcm30-280292.pdf

⁶ Site ES0000144 ‘Ría de Urdaibai’. Standard Data Form accesible en: <https://natura2000.eea.europa.eu/Natura2000/SDF.aspx?site=ES0000144>

⁷ Site ES0000490 ‘Espacio marino de la Ría de Mundaka-Cabo de Ogoño’. Standard Data Form accesible en: <https://natura2000.eea.europa.eu/Natura2000/SDF.aspx?site=ES0000490>

⁸ Site ES 2130008 ‘Encinares cantábricos de Urdaibai’, Standard Data Form accesible en: <https://natura2000.eea.europa.eu/Natura2000/SDF.aspx?site=ES2130008>

⁹ Site ES2130006 ‘Red fluvial de urdaibai’ Standard Data Form accesible en: <https://natura2000.eea.europa.eu/Natura2000/SDF.aspx?site=ES2130006>

¹⁰ Site ES2130007 ‘Zonas litorales y marismas de Urdaibai’. Standard Data Form accesible en: <https://natura2000.eea.europa.eu/Natura2000/SDF.aspx?site=ES2130007>

¹¹ Declared under Regional Decree 118/2006, of June 19, which approves the Management Plan for the European Mink in the Historical Territory of Biscay, as a species in danger of extinction

However, and despite this protection, the best scientific evidence shows that the carrying capacity of Urdaibai is exceeded by the tourist pressure suffered by its ecosystems. A situation that will only get worse if the Guggenheim Museum Bilbao is extended into Urdaibai¹².

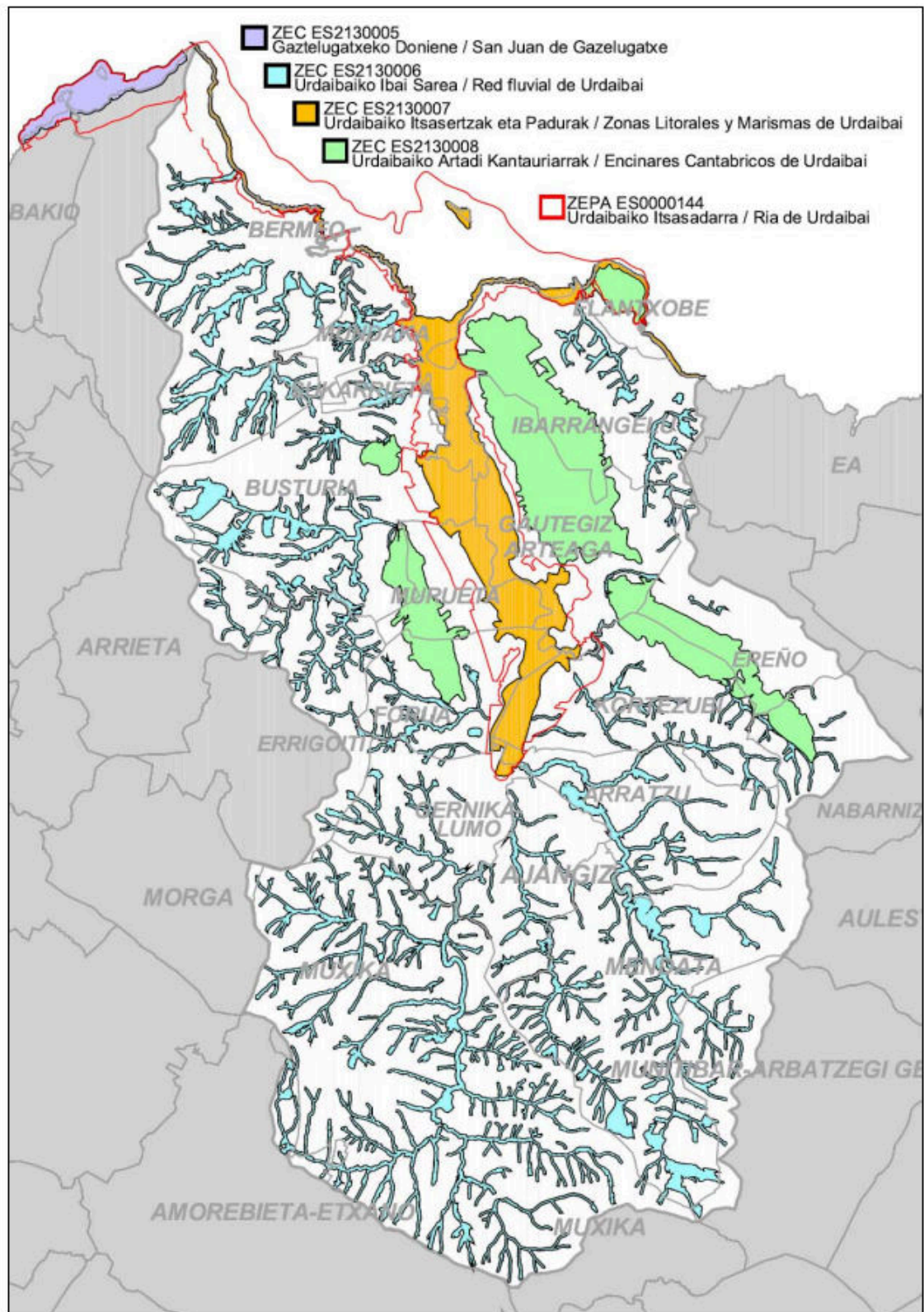
12. The numerous figures of environmental protection in Urdaibai and the current regional land-use planning of Busturialdea-Artibai and urban planning of Gernika and Murueta, as well as the coastal protection regime, would make the Guggenheim museum project unfeasible. For this reason, local, regional and state authorities are carrying out the modifications and alterations to the planning instruments that are necessary to allow its execution, from the Partial Territorial Plan of the Functional Area of Gernika-Markina (Busturialdea-Artibai)¹³, to the urban planning of Murueta and Gernika, including the management instruments of the Urdaibai Reserve¹⁴. But as has been said, always from a partial perspective and never from a global and joint view of the museum expansion project that allows the public to express their opinion on the aforementioned project.

and whose protection requires specific measures, accessible at: <https://gardentasuna.bizkaia.eus/documents/1261696/4898028/02+22+DF+118-2006.pdf/ded84663-5738-25e9-753e-b55cfd9ebdea?t=1572260311973>

¹² See. Arizaga, J., Garaita, R., Galarza, A., 2020. Leisure activities as a main threat for the conservation of waterbirds in an estuary in Northern Iberia. *Animal Biodiversity and Conservation*, 43.2: 243–253, Doi: <https://doi.org/10.32800/abc.2020.43.0243>.

¹³ By a resolution of the Provincial Council of Biscay on March 1, 2022, it was agreed to initiate the procedure for the non-substantial modification of the Busturialdea-Artibai Partial Territorial Plan to *"undertake, through the expansion of the Guggenheim Museum Bilbao, an emblematic project of social and economic transformation of the Busturialdea-Urdaibai region, whose headquarters will be located in the municipalities of Gernika-Lumo and Murueta"*.

¹⁴ By virtue of the Resolution of February 22, 2023, of the Director of Natural Heritage and Climate Change of the Basque Government, the draft modification of the Master Plan for the Use and Management of the Urdaibai Biosphere Reserve was submitted to public information. See https://www.euskadi.eus/informacion_publica/modificacion-del-plan-rector-uso-y-gestion-reserva-biosfera-urdaibai/web01-a2ingurd/es/



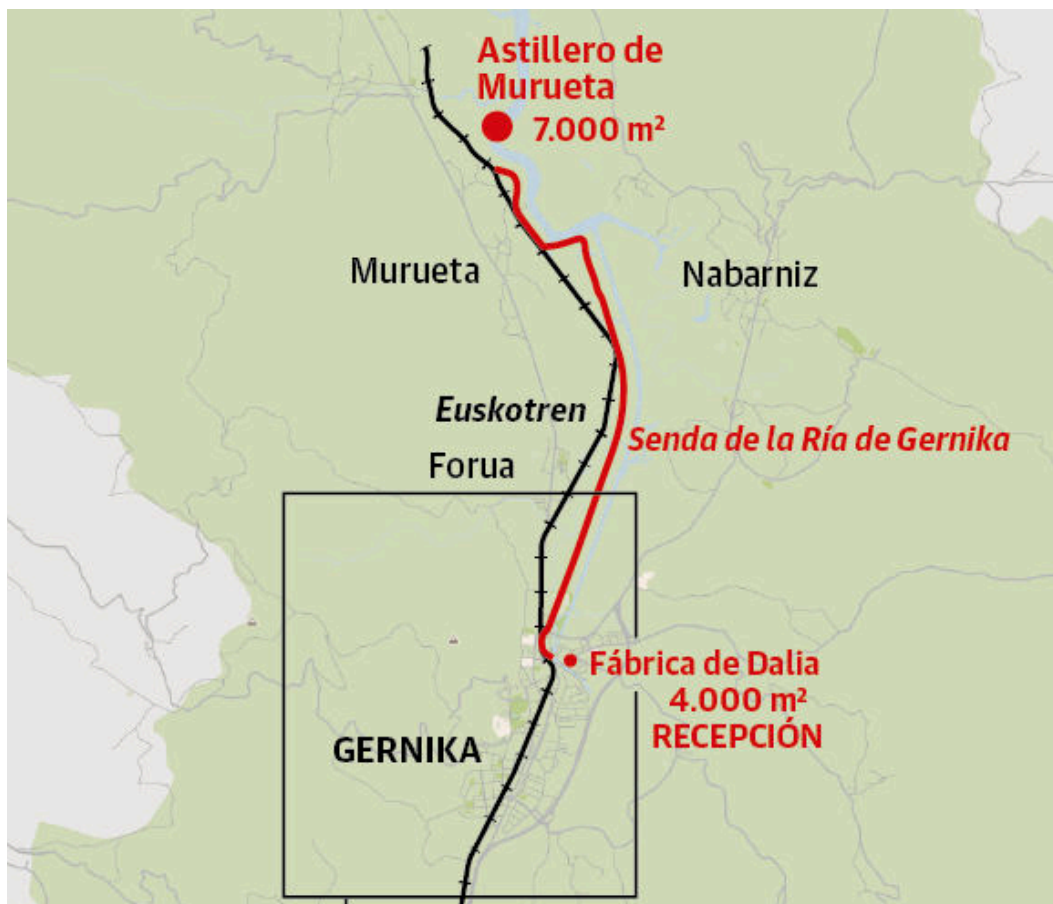
Overlapping protection figures in Urdaibai

Source: Diagnosis Conservation Measures of the Natura 2000 Network In Urdaibai.

https://www.euskadi.eus/contenidos/informacion_publica/inf_201205301217/eu_def/adjuntos/zec_urdaibai_informacion_doc1_diagnostico.pdf

C. The planned expansion of the Guggenheim Museum Bilbao in Urdaibai

13. As mentioned above, the planned extension of the Guggenheim Museum Bilbao in Urdaibai is discontinuous and consists of two sites, one in the town center of Gernika and the other on the grounds currently occupied by the Murueta Shipyards, on the bank of the Oka river estuary, both linked by a pedestrian and cycle path that would cross the most sensitive area of the marshland.



Source: El Diario Vasco. 7 JUN 2021

14. Gernika Center in the old Dalia cutlery factory. According to the project presented by the Solomon R. Guggenheim Foundation the former Dalia Cutlery factory on the urban industrial land of the Vega de Gernika - a site classified as having maximum flood risk due to its location on the Mundaka estuary plain - will house the “gateway” to the Museum, where a two-storey building, an auditorium, a restaurant and a 100-space car park are planned. The industrial activity carried out has ended up contaminating the soil and the adjacent aquifer.

In June 2024, the Gernika City Council granted the public company Azpiegiturak SAMP¹⁵, owned by the Diputación Foral de Bizkaia -DFB-, a license to demolish the old Dalia cutlery factory, and the demolition began immediately.

Since municipal urban planning designates these lands as industrial, Gernika Town Council is pushing for a modification of the General Urban Planning Plan to change the classification of these lands to unconsolidated urban land with the designation 'private facilities' and thus allow for the eventual granting of the permit for the construction and opening of the Museum.

Therefore, as of today, no building or activity permit has been requested, processed or granted for the Museum's headquarters in Gernika, as it is for cultural facilities or equipment, incompatible with the classification of the site as industrial lands.

15. Location in Astilleros de Murueta. The second location of the Museum is planned for the plot currently occupied by the Astillero de Murueta, a working shipyard¹⁶ located on the left bank of the Gernika estuary, near its river mouth. This will contain the exhibition area, the museum space itself, and the restaurant area, with a coffee shop and a restaurant.

Since this site has been classified as industrial urban land, incompatible with a 'Singular Cultural Space' as the Museum, the Town Council of Murueta is promoting the revision of the General Urban Development Plan of Murueta¹⁷, among whose main measures is the reclassification of the land occupied by the facilities of the Murueta Shipyards as urban land for cultural facilities to make viable the implementation of the Guggenheim Bilbao Museum in Urdaibai.

Astilleros de Murueta S.L. carries out its activity on these lands thanks to a concession for occupation of the maritime-terrestrial public domain granted in 1943 to develop its activity and no other for different purposes or uses, for 75 years.

According to Spanish coastal legislation, there is a protective easement of 100 meters inland from the edge of the seashore in which only will be allowed "*works, installations*

¹⁵ See <https://www.azpiegiturak.bizkaia.eus/>

¹⁶ See. <https://www.astillerosmurueta.com/shipyards/shipyard-murueta.php>

¹⁷This innovation to the Murueta General Urban Development Plan is currently in the Advance phase, an early stage of the procedure. See: <https://www.murueta.eus/es-ES/Servicios/Urbanismo/Paginas/elaboracion-pgou.aspx>

and activities that, by their nature, cannot have another location"¹⁸. This doesn't affect the shipyard, which by its very essence has to be located on the shore, but it would not allow the establishment of a museum, which could easily be located elsewhere.

That's why, in October 2023, and at the request of the Provincial Council of Bizkaia, the Spanish Ministry for Ecological Transition¹⁹ agreed to reduce the width of the protective easement from 100 meters to 20 meters in the area occupied by the Murueta shipyard²⁰. This administrative act of reducing the protective easement was issued without any reference to the Guggenheim Museum Bilbao project in Urdaibai, concealing the real reason for this change in the protective easement and obscuring the possibility for citizens to assess the real impacts of this new delimitation.

16. The 'Senda natural' (nature trail) connecting the old Dalia factory in Gernika and the Murueta shipyards. The two sites of the new Guggenheim Museum Bilbao in Urdaibai will be connected by a pedestrian and cycle path, which will partly follow an existing route. From the place known as "Punta Murueta" to "La Tejera" (in the immediate vicinity of the Shipyard), the project enters the most sensitive area of the Urdaibai Biosphere Reserve through the construction of a raised wooden walkway (a stilt path).

¹⁸ See Ley 22/1988, de 28 de julio, de Costas (Coastal Law 22/1988 of July 28), accessible at <https://www.boe.es/eli/es/l/1988/07/28/22/con>.

According to article 23: "1. *The protection easement shall cover an area of 100 meters measured inland from the inner limit of the seashore.*

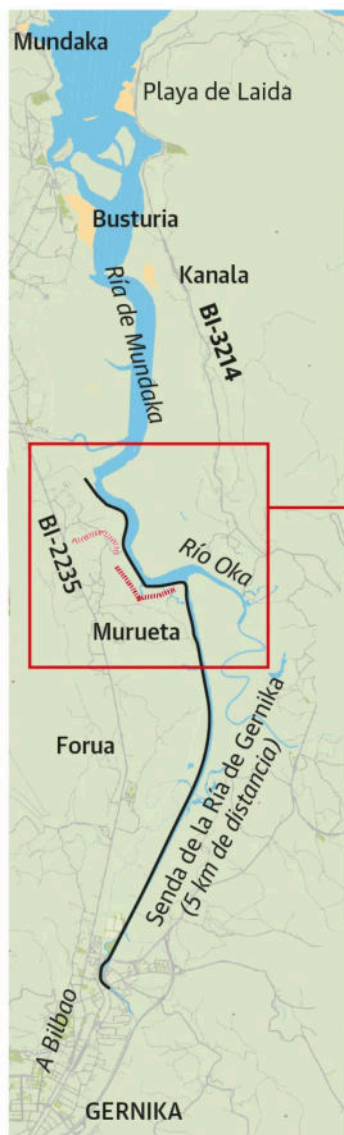
2. *The extension of this zone may be increased by the State Administration, in agreement with the Autonomous Community and the corresponding Town Council, up to a maximum of another 100 meters, when it is necessary to ensure the effectiveness of the easement, in accordance with the peculiarities of the stretch of coast in question.*

3. *On riverbanks up to where the tides are perceptible, the extension of this zone may be reduced by the State Administration, in agreement with the corresponding Autonomous Community and Town Council, to a minimum of 20 meters, in accordance with the geomorphological characteristics, the vegetation environments, and the distance from the river mouth, in accordance with the regulations".*

Article 25.2 establishes that "2. *Ordinarily, only works, installations and activities that, by their nature, cannot be located elsewhere, such as marine cultivation establishments or maritime salt flats, or those that provide services necessary or convenient for the use of the maritime-terrestrial public domain, as well as outdoor sports facilities, will be allowed in this area".*

¹⁹ According to article 149 of the Spanish Constitution, the General State Administration is responsible for coastal matters, including the demarcation of coastlines and the establishment of protective easements.

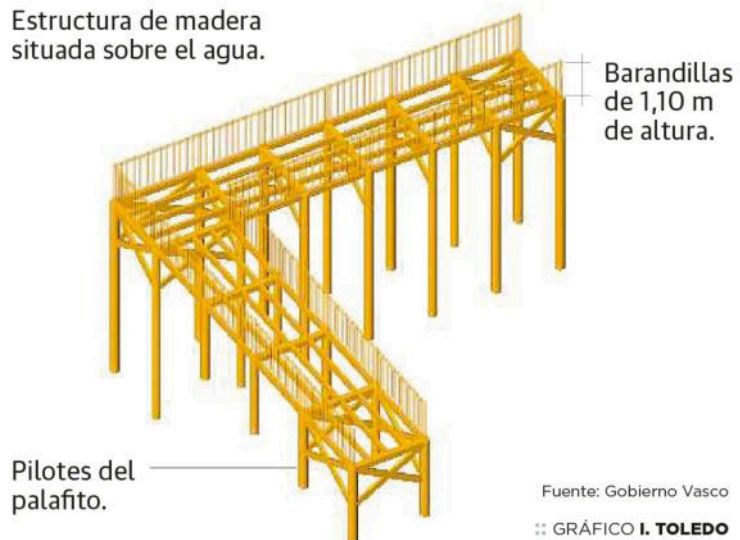
²⁰ Order of the Ministry for Ecological Transition of October 19, 2023, approving the reduction of the protective servitude between vertices M-87 to M124 of the boundary of the municipality of Murueta (Bizkaia).



Solo va a llevarse a cabo la fase A.



Estructura de madera situada sobre el agua.



Fuente: Gobierno Vasco

GRÁFICO I. TOLEDO

Source: El Correo, 16 SEPT 2024

17. The palafitte trail was authorized by virtue of the Resolution of July 16, 2024, of the Director of Services of the Department of Industry, Ecological Transition and Sustainability, which approves the project for the works of "Environmental restoration and enhancement of the natural and cultural heritage of the upper estuary of the Oka estuary, within the framework of the recovery, transformation and resilience plan -financed by the European Union, NextGenerationEU". This resolution was not made public. And as can be seen, its name conceals the project to connect the Guggenheim Museum sites in Urdaibai as *"enhancing the natural and cultural heritage of the upper estuary of the Oka River"*.

The project authorization procedure was initiated ex officio at the request of the Basque Government's Department of Natural Heritage and Climate Change and not by the Solomon R. Guggenheim Foundation.

On the other hand, given that the new stilt path runs along and rises on public maritime-terrestrial domain land, the Basque Government's Department of Natural Heritage and Climate Change asked the Ministry for Ecological Transition (MITECO) for the appropriate concession for the occupation of the land. And it was granted to them by virtue of the Resolution of July 15, 2024.

18. The estimated number of visitors to this museum is 150,000 per year, according to Solomon R. Guggenheim Foundation²¹, in the months between June and September. Comparing this figure with the barely 45, 000 inhabitants in Busturialdea local district²² where the project will be developed, the enormous and unsustainable pressure to which both the region and the outstanding environmental values of the Urdaibai estuary will be subjected (including the highly threatened, sensitive and shy European mink, an endangered species that has one of its last strongholds in the Oka estuary) is evident.

IV. PROVISIONS OF THE CONVENTION WITH WHICH NON-COMPLIANCE IS ALLEGED

19. As related, the provisions that Spain has failed to comply are paragraphs 1 to 5 of article 6 in connection with article 7 of the Aarhus Convention (AC).

Paragraph 4 of the Article 6 requires that *"each Party shall provide for early public participation, when all options are open and effective public participation can take place"*.

Article 7 requires that public is able to participate in preparation of plans *"within a transparent and fair framework"*, and requirements of several provisions of Article 6 must be met, including *"when all options are open"* (para.4 of Article 6)

V. NATURE OF ALLEGED NON-COMPLIANCE

20. This communication refers to a specific case of violation of the right of public participation in decision-making as a result of the alleged non-compliance of the Party in question, as mentioned in Section IV above and further developed in this section.

²¹ See. <https://guggenheim-bilbao-urdaibai.eus/proyecto/>

²² Barely 322 in Murueta, a municipality that will host one of the Guggenheim Museum Bilbao's expansion sites, according to data from the National Institute of Statistics (INE). See. <https://www.ine.es/jaxiT3/Datos.htm?t=2905>.

21. As has been repeatedly pointed out, as of today neither the Solomon R. Guggenheim Foundation - promoter of the extension of the Guggenheim Museum Bilbao in Urdaibai - nor the Provincial Council of Bizkaia nor the Basque Government have publicly and officially presented a comprehensive and joint project for the planned extension of the Museum. What the competent public authorities have done up to now is to atomize the project of enlarging the Guggenheim Museum Bilbao in Urdaibai into a plurality of administrative actions formally unconnected with each other to make it possible.
22. However, the intention of these public and private entities is publicly known through leaks to the regional media. But the general public, Basque society and the people of Busturialdea have NOT had the opportunity to learn about the project in detail, its scope, viability and social and environmental repercussions. And they certainly have not had the chance to participate in a real and effective way at an early stage in the decision-making process in which all options are open, as provided for in the Aarhus Convention.
23. Based on the above mentioned facts, the Communicant thinks that there has been a breach of their rights for public participation, including the violation of principle of public participation in early stages (Art. 6(2) and principle of ensuring effective public participation (Art. 6(4)), both in relation to plans and programmes under article 7 of the Convention²³ according to the Committee case-law.
24. The public must be given the opportunity to discuss and comment at an early stage of the decision-making process about the content of an environmental plan, when all options are still open (art 6(4)). As the Compliance Committee said in its findings on Communication Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para.71 *"A public participation must take place at an early stage of the environmental decision-making process under the Convention"*.
25. During the initial phase of the decision making process, the public must have the capacity and opportunity to influence the public authority's conduct and the outcome of public participation can be duly taken into account²⁴. Indeed, public participation at an

²³ In United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 81 *"The Committee emphasizes that article 6, paragraph 4, of the Convention requires "early public participation, when all options are open and effective public participation can take place", both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7 of the Convention"*.

²⁴ See the findings of the Compliance Committee on communication ACCC/2006/16 concerning Lithuania (ECE/MP. PP/2008/5/Add.6), 4 April 2008, para. 71; the findings of the Compliance Committee on communication ACCC/C/2006/17 concerning the European Community (ECE/MP. PP/2008/5/Add.10), 2 May 2008, para. 51; the findings of the Compliance Committee

early stage in the decision-making process can lead to a more incisive delineation of the options or scope of action that the public authority is obliged to follow, and can also influence subsequent decisionmaking steps²⁵. The Compliance Committee has found that *«removing this phase might lead to removing the important opportunity for the public to participate»*²⁶. Therefore, *«once a decision to permit a proposed activity has been taken without public involvement, providing for such involvement in the other subsequent decision-making stages can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”*²⁷». Consequently, when there is *«[a] lack of adequate opportunities for public participation, there was no real possibility for the outcome of public participation to be taken into account in the decision»* and *«the Party concerned failed to implement the requirements set out in paragraphs 3, 4 and 8 of article 6, and consequently was in breach of article 7»*²⁸.

- 26.** As the Compliance Committee stated in its findings on Communication European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 51 and Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 71, *“The requirement for “early public participation when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decisionmaking certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, according to the particular needs of a given country and the subject matter of the decision-making, Parties have a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological specifications related to specific environmental standards. Within each and every such procedure, where*

on communication ACCC/C/2008/26 concerning Austria (ECE/MP. PP/C.1/2009/6/Add.1), 8 February 2011, para. 66.

²⁵ See the findings of the Compliance Committee on communication ACCC/C/2009/38 concerning the United Kingdom (ECE/MP. PP/C.1/2011/2/Add.10), April 2011, para. 81.

²⁶ See the findings of the Compliance Committee on communication ACCC/C/ 2004/4 concerning Hungary (ECE/MP. PP/C.1/2005/2/Add.4), 14 March 2005, para. 11.

²⁷ See the findings of the Compliance Committee on communication ACCC/C/2009/43 concerning Armenia (ECE/MP. PP/2011/11/Add.1), April 2011, para.76.

²⁸ See the findings of the Compliance Committee on communication ACCC/C./2005/12 concerning Albania (ECE/MP. PP/C.1/2007/4/Add.1), 31 July 2007, para. 74

public participation is required, it should be provided early in the procedure when all options are open and effective public participation can take place”.

27. And, of course, despite the fact that the regional media had been made aware of the Solomon R. Guggenheim Foundation's intention to expand its museum in Urdaibai, this does not imply that an adequate public notice for the purpose of public participation has been carried out. In this regard, the ACCC's findings on communication Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.86, recall that *“journalists’ articles commenting on a project in the press or on television programmes (as referred to by the Party concerned), in general, do not per se constitute a public notice for the purpose of public participation, as required under article 6, paragraph 2, of the Convention”.*

VI. USE OF DOMESTIC REMEDIES

28. As has been said, the Communicant (and the general public) has not had the opportunity to discuss or comment on the project to extend the Guggenheim Museum Bilbao in Urdaibai, as it has not yet been formally presented, despite the fact that the public authorities have been working on it for years.

29. Instead, the Communicant has been intensely involved in publicly questioning the project and in alleging and challenging the different instruments and decisions adopted to make the Guggenheim Museum Bilbao's expansion in Urdaibai possible. For example:

- Interposition of a contentious-administrative appeal against the Ministerial Order of October 19, 2023, which approved the reduction of the protective servitude between vertices M-87 to M124 of the demarcation of the municipality of Murueta (Bizkaia) before the Contentious-Administrative Chamber of the National High Court, in collaboration with the NGO Enaden Begiak. Pending first instance sentence
- Submissions in the public information process of the Advance and the initiation document for the strategic environmental assessment of the General Urban Planning Plan of the municipality of Murueta, which aims to redevelop the plot of the Astilleros de Murueta, altering the admissible uses from industrial to cultural-endowment to host the Museum. December 11, 2023.
- Submission of an administrative appeal against the approval of the project “Environmental restoration and enhancement of the natural and cultural heritage of the upper estuary of the Oka river, in September 2024; no response.

- Submission of an administrative appeal against the Resolution of July 15, 2024, of the General Director of the Coast and the Sea, approving the concession for the occupation of public maritime-terrestrial domain land for the connectivity path from Punta Murueta to La Tejera, in September 2024; no response.
- Application for termination due to expiry of the concession period for the occupation of maritime-terrestrial public domains granted on July 16, 1943 to "Astilleros Murueta, Sociedad Anónima", to build a shipyard on the left bank of the Guernica estuary (Murueta) in January 2025, no response.
- Request to appear in the procedure to review the Gernika-Lumo General Urban Plan, which aims to reclassify the plot of the former Dalia factory, altering the permissible uses from industrial to endowment-cultural to host the Museum. Submitted on 24.01.2025, no response.

VII. USE OF OTHER INTERNATIONAL PROCEDURES

- 30.** No international procedures besides the Aarhus Convention Compliance Committee have been invoked to address the issue of non-compliance which is the subject of the communication.

VIII. CONFIDENTIALITY

- 31.** No information contained in this communication should be kept confidential, except for the e-mail addresses and telephone numbers of the Communicant and its representative.

IX. CONCLUSIONS

- 32.** In light of the above, we respectfully ask the Committee:
1. To declare the communication admissible with regard to the complaints under article 7, taken in conjunction with article 6 (3) and (4) and (8) of the Convention; and
 2. To find that Spanish public authorities (including DFB and GV) failed to comply with article 7, taken in conjunction with article 6 (3) and (4) and (8) of the Convention.

X. SIGNATURES

Madrid, 26 february, 2025

Eider Gotxi Aurtenetxea
Gus Urdaibaiko Museoaren Proiektua Stop
Herri Plataforma Elkarte

Jaime Doreste Hernández
Lawyer.
I accept representation

XI. ANNEXES; SUPPORTING DOCUMENTATION²⁹

1. Registration of GUS URDAIBAIKO MUSEOAREN PROIEKTUA STOP HERRI PLATAFORMA ELKARTEA in the General Register of Associations of the Basque Country
2. Agreement signed on February 8, 2023 between the DFB and the town councils of Gernika-Lumo, Forua and Murueta to promote the AMG, adapt their urban planning and entrust the DFB with the formulation of a Special Plan for this purpose.
3. Agreement signed on July 4, 2023, between the MITECO and DFB for the direct concession of forty million Euros to the DFV charged to the general state budget for 2023 to *"promote unique sustainable development actions in the area of the 'Urdaibai Estuary'.*
4. Order of the Ministry for Ecological Transition of October 19, 2023, approving the reduction of the protective servitude between vertices M-87 to M124 of the boundary of the municipality of Murueta (Bizkaia).
5. Resolution of July 15, 2024, of the Director General of the Coast and the Sea, approving the concession of occupation of land in the public maritime-terrestrial domain for the purpose of a connectivity path from Punta Murueta to La Tejera.
6. Chronology of events

²⁹ All annexes are both in Spanish and unofficially translated into English.

Chronology of Events³⁰

2020-2021. The first news appears in the regional media regarding the planned expansion of the Guggenheim Museum Bilbao -hereafter referred to as the EMG- in Urdaibai through the construction of two sites, one in Gernika (on the site of the Dalia cutlery factory) and the other in Murueta (on the Astilleros de Murueta plot).

May 19, 2021 The Basque Government (GV) requests the Ministry for Ecological Transition (MITECO) for a concession to occupy land in the public maritime-terrestrial domain for the construction of a stilt path in Tejera de Murueta as an action included in the “Project for the Environmental Restoration and Enhancement of the Natural and Cultural Heritage of the Upper Estuary of the Oka Estuary”.

June 7, 2021. El Correo (a regional newspaper with a large circulation and a patron of the Guggenheim Museum Bilbao) publishes the first report on the EMG: El Correo: 'La Diputación da el primer paso para el Guggenheim de Urdaibai'³¹:

October 8, 2021 The Provincial Council of Bizkaia (DFB) requests that the Ministry of Ecological Transition and Demographic Challenge (MITECO) reduce the coastal protection easement from 100m to 20m on a 950m stretch between vertices M-87 and M-127 of the Murueta demarcation. The area coincides with the plot of the Murueta Shipyards and the aim of the reduction is to make the implementation of the Museum viable.

March 1, 2022. The DFB agrees to initiate the procedure for the non-substantial modification of the Busturialdea-Artibai Partial Territorial Plan to *“undertake, through the expansion of the Guggenheim Museum Bilbao, an emblematic project of social and economic transformation of the Busturialdea-Urdaibai region, whose headquarters will be located in the municipalities of Gernika-Lumo and Murueta”*.

November 10, 2022. The DFB “shields” 40 million euros to execute the EMG³².

February 8, 2023. The DFB and the Mayors of Gernika-Lumo, Forua and Murueta sign an Agreement to promote the AMG, adapt their urban planning and entrust the DFB with the formulation of a Special Plan for this purpose.

³⁰ For further information: <https://guggenheimurdaibaistop.info/es/cronograma-de-los-hechos/>

³¹ See <https://www.elcorreo.com/bizkaia/pistoletazo-salida-guggenheim-urdaibai-20220508233650-nt.html>

³² See <https://www.elcorreo.com/bizkaia/guggenheim-urdaibai-blindado-40-millones-20221110120026-nt.html>

March 14, 2023. The Basque Government (GV) speaks for the first time about the Guggenheim Urdaibai project: 'Bingen Zupiria: we are defining the project in all its aspects'³³.

May 19, 2023. The then candidate for Deputy General of the DFB, Ms. Elisabete Etxanobe, speaks publicly for the first time at an electoral rally in Gernika about the AMG project and *"commits that the demolitions necessary to begin the development of the Guggenheim Urdaibai will start after the summer"*³⁴.

July 4, 2023. MITECO and DFB sign an Agreement for the direct award of forty million Euros to the DFB from the General State Budget for 2023 to *"promote unique sustainable development actions in the area of the 'Urdaibai Estuary' and, specifically, the construction of the pedestrian and cycle path between the two AMG sites, the decontamination of the flights of the Murueta Shipyards and the refurbishment of this plot and that of Dalia, Gernika.* For its part, the DFB undertakes to allocate a further forty million euros to the AMG.

July 10, 2023. The Basque Government's Director of Environmental Quality and Circular Economy formulates the environmental impact statement for the project for the environmental restoration and enhancement of the natural and cultural heritage of the upper estuary of the Oka estuary (Bizkaia). Published in the BOPV of 08.16.2023.

October 9, 2023. The Modification of the General Urban Development Plan (PGOU) of Murueta is initially approved and exposed to public information, in order to reclassify the land where the Shipyard is currently located, from industrial to equipment, to make the implementation of the AMG headquarters viable in that location.

October 19, 2023. The Ministry of Ecological Transition approves the reduction of the coastal protection easement from 100m to 20m in the section corresponding to the Murueta Shipyards. This resolution would be published in the BOE (Official State Gazette) on November 22, 2023.

June 2024. The Gernika-Lumo City Council grants the public company Azpiegiturak SAMP of the DFB a license to demolish the Dalia cutlery factory. Demolition begins on June 13th.

July 15, 2024. The Ministry of Ecological Transition and Demographic Challenge grants the concession for the occupation of land in the public maritime-terrestrial domain for the connectivity road from Punta Murueta to La Tejera, in Murueta (Bizkaia). Resolution to be published in the Official State Gazette on August 8, 2024.

³³ See.

<https://www.eitb.eus/es/noticias/sociedad/videos/detalle/9137831/bingen-zupiria-sobre-guggenheim-de-urdaibai-estamos-definiendo-proyecto-en-todas-sus-vertientes/>

³⁴ See

<https://jigg-bizkaia.eaj-pnv.eus/es/noticias/54609/elisabete-etxanobe-se-compromete-a-que-lo-s-derribo>