

Nº Expediente: 16001468

Sr. D.  
FÉLIX LORENZO DONOSO  
PRESIDENTE PLATAFORMA CONTRA LA  
CONTAMINACIÓN DE ALMENDRALEJO  
CALLE GUADALUPE Nº 17  
06200 ALMENDRALEJO  
BADAJOZ

EL DEFENSOR DEL PUEBLO  
REGISTRO

SALIDA  
19/09/2018 - 18092754

**Unofficial translation from  
the original Spanish**

Dear Mr.:



In connection with the above complaint, we communicate that we have received a writing from the Guadiana Hydrographic Confederation. It informs that, on July 23, 2018, they referred to that Platform a copy of the trades addressed to the Almendralejo City Council, in which it was notified of the agreement to initiate a procedure for restoring the public domain for damages caused by the spillage produced in a section of the Harnina stream, on July 6 and September 6, 2015, as well as the Resolution of said procedure, in which the City Council is obliged to indemnify the damages caused to the public hydraulic domain for an amount of 10,045 euros.

The Basin Organization states that the section of the Almendralejo outfall that collapsed was not repaired due to the high technical difficulty and the disproportionate costs involved. The City Council chose to build a new section of collector-emissary that was put into service on September 6, 2015. Since then, it has worked properly.

Regarding the execution of the works of the Complementary Project n ° 1 of the Construction Project of the works of integral purification of the Residual Waters of Almendralejo, the Hydrographic Confederation explains that these works consist of the construction of a collector to replace the current one, which will allow connecting other existing emissaries and collectors. The degree of execution of the work is 50%. The new collector has been placed from the EDAR (P.K. 6 + 186) to the vicinity of the EX-359 road that has partially replaced the old one in the sections where breaks were most

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frequent. The current term of execution of this work ends on November 30, 2018, but the basin organization states that the work has been delayed by the heavy rains of the past months of March, April and May, and by the appearance of numerous archaeological remains, mostly from the Chalcolithic period. The Confederation has begun the archaeological monitoring of the works and is waiting for the General Directorate of Heritage of the Junta de Extremadura indicates what actions have to be performed in that section before continuing with the works.

So far, the information received from the Guadiana Hydrographic Confederation, to which this institution has directed, with this same date, the following considerations:

1. "This Confederation is acting to solve the problem and is completing the execution of the works of a new collector to improve water purification in Almendralejo. In addition, it has informed the complainant Platform of the initiation and resolution of the restoration procedure of the hydraulic public domain for the damages generated by the reported dumping, for which reason the third suggestion formulated must be considered accepted.

However, the first Suggestion should be considered rejected, after the clarifications made by that Confederation in a previous writing, it should be understood referring to the resolution of the filing of the sanctioning procedure due to the statute of limitations of the dumping infringement and not to the decision of file of proceedings prior to the start of the sanctioning procedure. Since that basin organization has not supplied the complainant Platform with a copy of the resolution terminating the sanctioning procedure, nor has it justified the legal reasons that support its refusal, it can be concluded that it has not facilitated access to environmental information, compliance with the provisions of Law 27/2006.

2. The second suggestion is without purpose because there have been no new spills, nor therefore new alleged infractions that motivate the start of a sanctioning process.
3. In relation to the possible commission of a crime of prevarication to which you allude in your letter of July 3, 2018, it should be pointed out that the type regulated in Article 404 of the Penal Code requires, in accordance with the judgments of the courts of justice, not only that the resolution issued (or the omission) is illegal, but that the arbitrariness is of such an entity that it can not be explained with a technical-legal argument that is minimally reasonable, that is to say, that is clear and evident in such way that becomes manifestly unjust, and that the resolution is dictated with the

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purpose of making effective the particular will of the authority or official with the knowledge of acting against the law.

This institution understands that, after the informal and summary investigation conducted in accordance with the provisions of Article 18.1 of its regulatory Organic Law, there is not enough conclusive evidence to prove the concurrence of all the elements that make up the criminal offense or that allow presume that the resolutions or omissions warned have been "knowing their injustice", so that the referral of the case to the Office of the Prosecutor is justified. However, since that Platform has filed a complaint directly with the Office of the Prosecutor, it can send this response to the institution for its knowledge and incorporation into the file.

In virtue of the above considerations, and in accordance with article 30 of the Organic Law 3/1981, this matter will be included in the annual report to the Cortes Generales and the proceedings are considered FINALIZED.

It may be suggested that, after a reasonable period of time, request information from the Hydrographic Confederation on the state of execution of the works of the collector. If you notice that there are unjustified delays or any other irregularity, you can go back to this institution if further action is necessary.

Best regards,



Francisco Fernández Marugán  
Defensor del Pueblo (e.f.)

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