



JDO. CONTENCIOSO/ADMTVO. N. 2
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AVDA. REINA SOFIA 80

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Translated from the Spanish original

Number of Identification: 06083 3 0200652/2008
Procedure: BRIEF PROCEDURE 620/2008
About THE STATE ADMINISTRATION
From . PLATFORM AGAINST THE CONTAMINATION OF ALMENDRALEJO
Attorney WITHOUT ALLOCATED PROFESSIONAL
Against COMMISSION OF FREE JUSTICE
Attorney WITHOUT ALLOCATED PROFESSIONAL

COPIA

PROCEDURE 177/2008

Dña. CARMEN MARCED CAÑETE

In MERIDA, on the twenty-third of December of two thousand eight.

FATCS

FIRST. - On October 28, 2008 it has had entry in this Court of Contentious-Administrative, 'WRITING OF APPEAL AGAINST THE REFUSAL OF THE FREE JUSTICE, agreed by the Commission of Free Juridical Assistance of Badajoz of July 29, 2008 presented by D. Félix Lorenzo Donoso, acting in name and representation of the Platform against the Contamination of Almendralejo, together with the administrative records, arranging to meet to the parts to the appearance foreseen in the article 20 of the Law 1/1996, of January 10, of Free Juridical Assistance foreseen for December 17, 2008, to that only the appellant appeared.

SECOND. – In the act of appearance, the representative of the appellant was ratified in his appeal writing, requesting the revocation of the appealed agreement, as well as that grants the profit of free justice to him for the appeal of an administrative act, contributing diverse documents to credit the purposes of the platform, his inscription as association and the lack of sufficient material means. Next the procedure remained pending on resolution.

JURIDICAL REASONINGS

ONLY ONE. - The appellant bases his pretension on the articles 3.3 and 23 of the Law 27/2006, of July 18, which comes to regulate the public action in environmental matter, establishing that there are legitimized the legal persons that take the protection of the environment as purposes credited in his articles of association, they had been constituted two years before the year of the share and realize his performance in the same ambience affected by the administrative performance; as well as in the lack of economic and material means.

The first question to be elucidated is the distinction between legitimization to exercise the action, question that is not an object of this appeal, and that will have to be analyzed in the principal procedure of contentious-administrative resource against the appealed administrative performance, which also has been identified not neither in the writing of request of the profit of free justice, nor in his procedure, and, on the other hand, the right of the Platform to obtain the profit of free justice.

Centering the debate on this second question, the article 2 of the Law 1/1996, of January 10, of Free Juridical Assistance, on the writing given by the article one of the Law 16/2005, of July 18, it came to establish the personal law enforcement ambience, distinguishing between the natural persons, be already Spanish citizens, nationals of other Member states of the European Union and the foreigners who are in Spain, when they credit resources insufficiency to dispute; and the legal persons. Between the above mentioned, the current legislation only attributes the right of profit of free justice, whenever they credit resources insufficiency to dispute at law, to the associations of public use, foreseen in the art. 32 of the Organic Law 1/2002, of March 22, regulatory of the Right of Association and to the foundations inscribed in the corresponding Public Register

After viewing the previous thing and being processed as a right, that although it has lace in the fundamental right of the effective judicial tutelage, in his origin of right to the defense, it is of legal disposition except the limits imposed by the constitutional text, and without having become famous that the Platform appellant is in any of the assumptions foreseen in the Law 1/1996, not either that the appealed resolution infringes constitutional rights, which might lead to raising an unconstitutionality question, it proceeds to reject the resource and to declare in accordance with right the appealed resolution.



Viewed the said prescripts and the others of pertinent application,

DISPOSITIVE PART

To reject the appeal against the resolution of the Commission of Free Juridical Assistance of Badajoz of July 29, 2008, this declares to be in accordance with the right.

This resolution is firm, and against it there is not possible appealing.

She resolves it and Judge signs the Magistrate. I give faith.



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