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18 de febrero de 2009

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## **“Communication to the Aarhus Convention's Compliance Committee”**

### **The claimant's data**

D. *Félix Lorenzo Donoso*, president of *the Platform against the contamination of Almendralejo*.

**Consent to reveal the denunciator's identity:** The informers authorize to the Committee to reveal his identity in the procedure of the complaint and in his negotiations before the authorities of the State member against whom the denunciation goes.

**Collaboration with the Committee:** The informers stay at the disposal of the Committee to collaborate with him with the contribution of information or documents, as well as the achievement of specific reports that clarify or specify the ends that are necessary to achieve the fulfillment of the Agreement of Aarhus and the protection of the environment that is denounced in this complaint.

### **State member and authority that have failed to fulfill:**

The Kingdom of Spain for the repeated non-performance of the Agreement of Aarhus. And of the established in the LAW 27/2006, of July 18, by that regulated the rights of access to information, of public participation and of access to the justice on the subject of environment

(it incorporates the Instructions 2003/4/CE and 2003/35/CE); that transposed the Agreement of Aarhus to the regulation of the Kingdom of Spain.

**Unfulfilled norms of Community law:**

Aarhus's Agreement.

## **1. Facts**

# **I denounce the infringement of the basic principles of the Agreement of Aarhus on the part of the Spanish state.**

D. **Félix Lorenzo Donoso**, with domicile to notifications effects in c / *Guadeloupe 17, 06200 Almendralejo* (Badajoz), ID card *9154113K*, phone *675 043 835*, in name and representation of *the Platform Against the Contamination of Almendralejo*, registered in the record of Associations of the Commission of Presidency of the Junta of Extremadura with the number 3.829.

### **EXPOSE:**

When on Wednesday, the 16th of February 2005 in the BOE n. 40 appeared the announcement of the "*Ratification of the Agreement on the access to information, the audience participation in the decision making and the access to the justice on the subject of environment done in Aarhus (Denmark), on June 25, 1998*", the members of many small associations, as ours, received it with big happiness and full of hope. We liked the preamble of the Agreement so much that we put it like motto on the first page of our web site.

Subsequently, the ratification of the Agreement of Aarhus transposed to the Spanish legislation by means of the creation and approval of the Law 27/2006. It is not easy to say the happiness that produced this norm to us.

With the approval of these two norms, we were thinking that we could have a real participation in the preservation of our environment, of our dear and only planet Earth.

After the years passed from his coming into effect, ruefully immensely, we have to recognize that both the Agreement and the Law that transposed them to the Spanish legal regulation are worthless papers. They have generated so many disappointments, so much discouragement, as hopes produced his promulgation.

With the sadness, which perhaps of course you could not imagine, we proceed to do this report to show up the entire defeat of the regulation that allows to the citizens to take part in the environmental protection.

To reveal with more clarity the detected shortcomings we have chosen the procedure of studying case for case, with practical and real examples, the non-fulfillments of three basic principles in which the Agreement settles. Not to do the excessively voluminous report, we have decided to illustrate our complaint only with two examples for every unfulfilled of the principles, although in many cases we might enclose many others. The information is related to our personal experience in the Extremaduran Autonomic Community, therefore our assertions will be always recounted to the above mentioned community specially.

## **ACCESS TO INFORMATION**

### **Case1**

Almendralejo is a city of approximately 30.000 inhabitants that, in spite of not being provided with big industries, produces a considerable contamination. So much it is so the Department of Environment has imposed sanctions in multiple occasions to the Town hall for spilled pollutants to the Creek Harnina. There came to such a grade of environmental degradation the mentioned creek, that the district attorney's office of Badajoz (the capital of the province) interposed a denunciation for "crime against the environment". Denunciation that prospered in the first instance, being condemned the Councilman in charge of the water Service and the technician responsible for the above mentioned service. Later, in the second instance they were absolved.

The problems that these spilled cause and the deficient functioning of the sewage treatment plant, has led us in several occasions to asking to the Town hall on the grade of fulfillment of the Municipal Regulation of Spilled and Treatment. In the writing that is enclosed (Numbered 1), it is possible to verify the last request of realized information, which takes as an object to know as this problem was managed.

In the exhibition of facts it is possible to be proved that the first information request was realized on June 2, 2005, without being answered until October 26, 2005, FIVE MONTHS after having been realized. With date June 23, he turned to repeat the information request. This request was answered also on October 26, 2005, FIVE MONTHS after the request. The methodical nonperformance remains so clear and it shows the maximum period established in the Law 27/2006 that transposes the Aarhus agreement to the Spanish regulation. Of course, no previous communication justifying the delay simply ignores the civil worry and his will to take part.

But this is not the most serious thing, in the answer to this request, (Copy of the written Document 2) the Mayor of Almendralejo sends to us a report that was signed by the General Secretary of the municipality that reveals not only the ignorance, but the intention of not giving the requested information. The reading of some paragraphs of this writing has no waste. This way, in the paragraph 3 of the page four, it is possible to read: *"in the terms in which the information is requested and without reasoning the motive and purpose of it, more than the exercise of the right to information on the part of the neighbors or citizens, one would try to exercise a local inspection of the governmental bodies that only corresponds – in our case – to the councilmen [.]"* The paragraph that follows this one does not also have waste, since he reports of the functions of the councilmen, thinking that the requested information cannot happen because this direct participation of the citizens might be considered to be an inspection of the work of the councilmen.

Not only this official demonstrates to unknown the established in the Agreement of Aarhus and the Law 27/2006, but also he does not know what is established in the Spanish Constitution, which establishes

in its **Article 23 about participation 1. *The citizens have the right to take part in the public matters, straight or by means of representatives freely chosen in periodic elections by universal suffrage.***

Before a nonperformance so clear that it produces to itself like general norm, of the Agreement and the Law that the transposes, the association went to the Department of Environment putting in his knowledge these non-fulfillment. At the same time was communicating to him the problems that the sewage treatment plant has had from his construction for lack of a suitable use. Finally he was requested that it was interyielding in our favor before the Town hall, communicating him to this one what in the Agreement of Aarhus is established as for the access to information. (Document 3).

The answer of the Minister of Environment (Copy of the answer. Documented 4) comes to say to us that the denounced is not of his competition and that we should resort to the courts of justice. And he reminds to us the rights that they assist to us in accordance with the Law 27/2006.

We have to admit that this answer produced a big despair to us, but we did not know the worst thing as for the access to the justice yet. This topic will talk each other further on.

## Case 2

In Almendralejo there exists, inside the city center, a processing industry of the products of the vine (VINIBASA), in which there were carried out activities that supposed a danger for the health and the physical integrity of the citizens, and for which had no license. The passivity of the authorities that had been requested repeatedly that they were intervening in the matter closing the activities that the industry realized without the pertinent authorization was continuous. Activities consisting of the treatment of wine residues that were producing in addition to a few unbearable smells that were flooding the whole village, the accumulation of such a quantity of methane that in the local press they informed that a few torches were going to be placed to burn it. Also there were stored more than 2 million liters of alcohol and there were incinerated more than 25 million tons of exhausted residue. Since before this passivity, the association denounced the facts before the protection Service of the Nature of the Civil Guard (SEPRONA), which verified that all the facts denounced by our association were true and proceeded to send the denunciations to the administrations that had the competences on the denounced topics.

So with date December 4, 2007, the Platform sent written to the Hydrographic Confederacy of the Guadiana, dependent on the Department of Environment, interested by the measures that had taken as a result of the denunciation studied by the SEPRONA with date November 27, 2007, owing to the cross-check of a denunciation of the Platform Against the Contamination on the industry VINIBASA.

This information request did not take answer, so with date February 18, 2008 we sent height resource to the Minister of Environment, for the supposed disrespect of the requested in the same one.

In answer to the mentioned resource of height, with date April 11, 2008, there was received answer of the General Secretary of the Hydrographic Confederacy of the Guadiana (copy is enclosed, Documented 5), in which he was communicating us that: "*cross-checks are realized to determine if the same ones are capable of constituting an administrative infraction of the typified ones in the article 116 of the water Law, of being like that will impose the corresponding sanctioning records, what will be made known of this Platform, fulfilling this way the arranged in the article 329.2 of the Regulation of the Hydraulic Public domain.*"

That having spent a time more that reasonable to receive the information without this one having come, one proceeded to send writing to the Hydrographic Confederacy of the Guadiana requesting again information about the state of the possible records opened for the industry. (Copy is enclosed. I document 6).

Until the day of the date answer has not been received to this request.

We might put a few tens more of serious non-fulfillment to the right to information that the Agreement recognizes to the citizens, although we think that these two are enough to appreciate the non-observance of the norm.

## **AUDIENCE PARTICIPATION IN THE DECISION MAKING**

To try to make use of the right to the participation turns into it in a danger. In some cases the authorities that would have to stay awake because it was fulfilled, have a behavior that in some cases might be considered to be criminal. The leaders use the mass media to insult and to criminalize the members of the associations for the simple fact of denouncing some cases in which the nonperformance of the protection norms of the environment puts, even in danger, the health of the citizens.

In Extremadura a career has begun to install very pollutant industries, a refinery of oil, three thermal power stations, the extension of the functioning of a nuclear power plant beyond what it was foreseen when it was constructed. These projects are generating the birth of social movements that are opposed to the installation of these pollutant industries in an area through which lives fundamentally of the agriculture. In no case it has become a participant to these movements, not to no other that defends the environment, of the plans for his implantation, and much less they have invited them to take part in them. Much on the contrary, the authorities have tried by all the means to silence his protests, thing that to a great extent they have obtained, on having been provided with a few mass media much subsidized by the public administration, and therefore predisposed to expire with the slogans that from the administrations receive.

The participation turns this way for the citizens into a risky activity. The leaders not only criminalize and insult the members of the associations, but they go so far as to declare in the mass media that the culprits of any dismissal that takes place in the denounced industries are the members of the association. It is easy to suppose that if some worker is dismissed, it will bear in mind the affirmed for the authorities, and if his economic situation is serious, he can feel the temptation of attempting against the persons that the authorities say that are the culprits.

### **Case 1**

For years it worked inside the city center of Almendralejo an industry that is classified like dangerous for the activities that in it are developed. This company named VINIBASA requested the administration, Town hall of Almendralejo, authorization to realize substantial modifications in his facilities. The requested modifications were the enlargement and modification of the deposits for storage of alcohol and the construction of a sewage treatment plant of wine residues. These two projects were informed negatively by all the technical staff whom it was sent; this way the chief of municipal health, informed that the project of storage of alcohol, especially in the requested quantities, (more than 2 million liters) were classified like dangerous and therefore they could not be carried out inside the city center, but at

least to 2.000 meters away of it, as it is established in the current regulation. So his report was negative. The Municipal Engineer used the same arguments to inform negatively the project. Even the Section of Classified Activities, clerk of the Meeting of Extremadura, informed negatively the project. As for the sewage treatment plant that to construct was requesting, the municipal technician in charge of the study of the project expressed a negative report, alluding to the inconveniences for the smells and to the danger for accumulation of methane that it would mean.

The projects were withdrawn by the industry, nevertheless, they were carried out (without licenses) and, as the technical staff had foreseen, the smells flooded the village. Also there concentrated such a quantity of methane that in the local press went so far as to say that the industry was going to install two torches to burn it. Torches burning methane to a few tens meters of the deposits of alcohol that were storing more than 2 million liters of this flammable liquid!

As the requests realized to the Town hall requesting the paralyzation of these activities did not have any positive result, our association denounced the facts to the SEPRONA, which could verify that the denounced was true in all its ends. The SEPRONA realized a report that they sent to all the administrations implied according to the competitions of each one.

The denunciation to the Hydrographic Confederacy of the Guadiana (CHG) went for an infraction to the water Law. The CHG up to the date only has communicated to the Platform his absence of personnel, fact that in no case it justifies that the necessary measures should not have been taken to purify the responsibilities which the industry could have incurred, as well as to prevent from putting itself in danger the groundwaters.

The denunciation to the Headquarter of Evaluation and Environmental quality (Section of not Dangerous Residues of the Junta of Extremadura) for infraction to the Law of Residues, which has proposed a sanction to the company for 200.000 Euros.

The denunciation to the Headquarter of Agrarian Developments of the Junta of Extremadura for an infraction to the Royal decree 1310/1990, which regulates the use of the muds of sewage treatment plant in the agrarian sector, took as a surprising answer that "there are no initiate sanctioning records" alluding to that the "agrarian company that would be using the muds elaborate and treated by Vinibasa is in Andalusia". Apparently the companies that want to break the current regulation the only thing that have to allege is that the company that treats the residues is of out of the autonomous region. The argument is of such a juridical weakness that for decency the administration should not resort to it to justify the unjustifiable, amen of opening the door so that the Extremaduran companies generate jobs out of the region.

The last denunciation of the SEPRONA sent to the General manager of Industrial Arrangement for infraction the Law 38/1972 of Protection of the Atmospheric Ambience, is based on the reform carried out by the industry for the enlargement and modification of the facilities of storage of alcohol, considered substance as very dangerous and for it subject to proper legislation. The Headquarter of Industrial, Energy Arrangement and Mines has refused the information about the state of the records that is of supposing must have initiated, alluding to that the Platform "cannot be considered to be an interested person". The Platform initiated the judicial procedure that will be commented in the point dedicated to the access to the justice.

There has not put in danger the health and the physical safety of the citizens for the facts that we have just reported, but the incineration of more than 25 thousand tons of residue exhausted in the industry, used like energy source, in a most ancient facilities and therefore inadequate, they led our association to realizing a bibliographical study about the possible dioxins and furans emission. And on December 11, 2006 the report was sent to the Headquarter of Consumption and Community Health of the Meeting of Extremadura on the activities of the industry VINIBASA, as well as a realized study.

Once they received the mentioned study, on February 27, 2007, our association was summoned for a meeting at which there were present the Chief of Service of Food security and Environmental Health, the Chief of Service of Epidemiology and an official belonging to this service. After studying the papers that our association presented, the officials who were present at the meeting agreed in that it was necessary to treat the topic. And this way, the Service of Epidemiology promised to do a study of the possible consequences for the health of the citizens of the emission for residues incineration, and the Service of Food security and Environmental Health promised to request to the Headquarter of Environment that realizes a finished analysis of the emission of VINIBASA, like minimum some organic gases. (Dioxins, furans. PCBs, etc.)

The first study was realized as it was foreseen giving as the already established proved in the bibliography on dioxins and furans. The second one never go so far as to realize, although the Chief of Service of Food security and Environmental Health sent a writing to the Environmental Service of Rationalization of Activities requesting to be done because he was lacking proper means to carry out it. Until today the administration has not realized the requested study. (There is enclosed copy of the realized request. Document 7). Well is true that the industry did one for his account that it announced and in which it was established that the dioxins and furans that were expressed were much underneath of the authorized maximum limits. It is of supposing that the results obtained in a few analyses paid for the affected industry cannot be considered to be trustworthy from any point of view.

Well, all these performances, and more than are not detailed for not doing the denunciation too extensive, led the Mayor of Almendralejo to accusing the members of our association across the mass media, between others thing of "new inquisitors", "ignorants ", "manipulative", etc. Accusing us in addition to "only they try to promote the scandal in the city, looking for publicity on having done accusations without foundation". (There are enclosed copies of the news appeared in the media of regional communication. Documents 8, 9 and 10).

From the study of the documents that are enclosed and of the history of the facts it is possible to extract the conclusion that our association has realized a very important work in environmental protection ambience and from the public health. Also it is possible to come to the conclusion that the accusations of the Mayor, in addition to slanderous, are false, since in all the cases our association has based his denunciations on facts that we can prove certifying with proper documentation.

## **Case 2**

In Extremadura, since we have exhibited in advance, there are carried out projects of an importance that, undoubtedly, demand that the public opinion should have knowledge and participation in the decision on them.

The reality is very different. From the Junta of Extremadura not only they have not reported to the public opinion, but they have put all the possible impediments so that the associations and citizens' platforms that have been created owing to these projects could be provided with the finished information of the same ones.

In these moments there are to public exhibition the projects of installation of three thermal power stations of cycle combined in the same area of the Extremaduran region. (The area of Alange-Mérida). Also there is in public exhibition the construction of a refinery of oil in the area of the Saw of San Jorge, in the municipal term of Los Santos de Maimona.

We do not believe that the complexity of these facilities escapes from anybody, especially, that of the refinery situated to more than two hundred kilometers of the coast where the oil will be disembarked and taken up to the place of the refinery across an oil pipeline that will cross protected, some natural areas as important as the National park of Doñana.

**On June 3, 2008** (BOP of Badajoz 105), is published the announcement of public exhibition of the project of the refinery, in which it was specified that *"that in the course of thirty days told from the following one to that of the publication of this announcement, by any interested party there could be examined the Basic Project and the Study of Environmental Impact as well as the papers relative to the request of Integrated Environmental Authorization (only for the Refinery) in the field of Industry and Energy of the Subdelegation of the Government in Badajoz, situated in Avda. of Europe, 1-6.th plants, 06004 Badajoz, and there were formulated by triplicate, in the above-mentioned term, any allegations that this one is considered to be opportune directed an Area of Industry and Energy. The papers relative to the request of Integrated Environmental Authorization will be also during the above mentioned term of manifesto in the Headquarter of Evaluation and Environmental quality, of the Commission of Industry, Energy and Environment (Meeting of Extremadura), Avda. of Portugal s/n of Merida"*.

The complexity of the project, as well as his volume, does that to all lights the term of thirty days is insufficient to examine it with the thoroughness that it needs. That's why our association sent a writing to the **Headquarter of Quality** and environmental Evaluation, dependent on the Department of Environment, Rural and Marine Environment, in which one was making it see that the conditions in which the announcement was done it was not possible to realize the study of the whole papers. (Copy of the writing is enclosed. I document 11)

This writing was answered by the Assistant general director of Environmental Evaluation, and the same one informs himself that. "At present, already there has been realized the phase of public information of the said project". He communicates to our association that does not possess the study of environmental impact, and breaking the norm that forces him to send the writing of the association to the competent organ, sends us to a direction of Department of Industry. (Copy of the writing is enclosed. I document 12)

Writing in the same terms was sent to the Headquarter of Evaluation and Environmental quality, dependent on the Commission of Industry, Energy and Environment of the Meeting of Extremadura. This writing is answered by the General Manager of Evaluation and Environmental quality, being repeated in the conditions imposed for the access on the Study of Environmental Impact of the project. The answer (copy is enclosed. Document 13) communicates that the papers will be able to be examined, during the term of thirty working days, starting from the day to that of the publication of the said announcement. And he adds to himself that he will be able to gain access to the same one across one of the following means:

1 **Presenting physically** at the dependencies on the DGECA, Agreed on Portugal, s/n, Merida, these papers find role available for his consultation so much in format as in digital format.

2 Also there is at the disposal of the public not technical Summary of the request of AAI and the Document of Study of Environmental Impact;

It is an easy comprehension that the imposed conditions of physical presence during the office hours to be able to consult a project of thousands of pages, it does that the right to the real and effective participation is cut of radical form. Also, he denies to us the possibility that our association should do photocopies of the project prohibits that photos to be done and prevents us from being able to do copies of the project in DVD.



In front of these conditions that prevent us from analyzing with the thoroughness that the project deserves, our association sends written to the Headquarter of Evaluation and Environmental quality (copy is enclosed. Document 14) in which we communicate to him that the aberrations committed in the process of information to the public the real and effective participation has prevented us, and it is requested that this allegation is quoted textually in the authorization. As well as that in case that the same one is granted, our association will appeal to the judicial route to defend his legitimate right to take part really and effective.

This project has created such a social alarm in the area that, in spite of the impediments imposed by the administration, there have presented more than 8.000 (eight thousand) allegations opposite to it.

It remains so completely clear that the administration has acted so that the audience participation in the decision making has prevented, violating this way the established in the second beginning in those that the Agreement of Aarhus sustains.

## **I ACCESS TO THE JUSTICE ON THE SUBJECT OF ENVIRONMENT**

The two previous principles only have real value if the citizens are provided in a way that it is real and effective to appeal any administrative act that deprives them of his rights.

When the Law 27/2006 was approved, we think that it was the tool that we needed to be able to make to cost our rights before the courts of justice.

And this way it is established in its article 3.3).

As regards the access to the justice and to the administrative tutelage:

- a) **A to appeal the acts and omissions attributable to the public authorities that violate the rights that this Law recognizes on the subject of information and public participation.**
- b) A to exercise the popular action to appeal the acts and omissions attributable to the public authorities that constitute violations of the environmental legislation in the terms foreseen in this Law.

The same Law establishes the legitimization to act in environmental matters:

Article 23. Legitimization.

1. Legal persons are legitimized to exercise the popular action regulated in the article 22 any without fortitude of lucre that credit the fulfillment of the following requisites:
  - a) **That has between the ends credited in his articles of association the protection of the environment** in general or that of some of his elements in particular.
  - b) That had been constituted legally at least two years before the exercise of the action and that have exercising in an active way the necessary activities to reach the ends foreseen in his articles of association.
  - c) That according to his articles of association develops his activity in a territorial ambience that turns out to be affected by the performance, or in his case, administrative omission.
2. **The legal persons without fortitude of lucre to which the previous paragraph refers will have right to the free juridical assistance in the terms foreseen in the Law 1/1996, of January 10, of Free Juridical Assistance.**

Well, although our association fulfills all the requisites that are established in the article 23.1. In all the cases that we have requested the Free Justice to which alludes in the article 23.2, it has been denied to us they based it in that we do not fulfill the requisite of being a declared association of public utility.

It is possible to verify the conditions that are imposed for the access to the free justice are such that cannot be considered to be an advance, but rather a regression, on having sent to the Law 1/1996, an approved norm ten years earlier.

The conditions so that an association is declared of public utility are such that does impossibly the small associations that they could dream at least that is granted to them. This does that really only the big associations could have right to Free Justice, right that grants them the Law 1/996, not the Law 27/2006 that transpose the Aarhus agreement to the Spanish legislation.

It remains so demonstrated that the Agreement of Aarhus is worthless paper on having lacked the measures that allow to the citizens to resort to the courts. This absence of legal support is generating a despondency between the members of our organization because they see as the administration can do what they want remaining unpunished before the repeated non-performance, since the only route that would have the citizens, the judicial route, it is forbidden for them.

Enclosure we send two judgments that deny the right to be able to gain access to the Free Justice to our association. (Documents 15 and 16)

Our association is a project that takes as a beginning to make aware the biggest number of persons in the environmental protection. At present it is composed by approximately 150 members. As what we are interested in is that every time there are more associates, because that will mean that there are more aware people, the annual quota is 1 euro a year. Quantity that does not allow us to come to the courts of justice for lack of economic resources. From the creation of the association in the year 2004, it has never received any type of subsidy or helps of the administration. The only occasion in which we have resorted to the justice has been thanks to the altruistic collaboration of advocates friends. In this case not only we gain to the administration the contentious - administrative, but the judgment was ratified by the Top Court of Justice of Extremadura.

If there is not corrected the real access of the associations to the free justice, our association will study seriously the possibility of finishing his activities for lack of means to take them to effect and for the danger, even physic, for his members supposes defending the right that generations and the future ones bear in mind to an environment that allows them a real enjoyment of the life.

For everything exposed,

**WE REQUEST TO THE COMMITTEE OF FULFILLMENT OF THE AGREEMENT OF AARHUS** that admits and registers the present complaint against the Kingdom of Spain for the repeated non-performance of the established in the **Agreement of Aarhus**; initiate an infraction process opposite to the Kingdom of Spain to the fulfillment of the community legality and the protection of the environment; urge the Spanish Government to which in an immediate way corrected the shortcomings that are observed in the fulfillment of the mentioned agreement. Proceed to communicate to the implied authorities the obligation that they contract according to the above mentioned norm.

In Almendralejo on February 18, 2009

A handwritten signature in blue ink on a light yellow background. The signature consists of a stylized 'F' followed by 'elix' and 'Lorenzo' written below it.

Félix Lorenzo Donoso  
President of the Platform Against the Contamination of Almendralejo