

[Seals of the Justice Administrations]

NO. 2 COURT OF FIRST INSTANCE AND INSTRUCTION OF NOIA

PLAZA DE LA CONSTITUCION, S/N, 15200, NOIA (A CORUÑA) TFNO 881997512/13 (PENAL)
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PRELIMINARY INVESTIGATION IN SUMMARY (CRIMINAL) PROCEEDINGS NO. 0000223/2017

N.I.G: 15057 41 2 2017 0000598

Offence/Minor Offence: AGAINST NATURAL RESOURCES AND THE ENVIRONMENT

Complainant/Complainant: VERDEGAIA

Attorney: [REDACTED]

Lawyer: [REDACTED]

Against: LAWYER OF THE [AUTONOMOUS] COMMUNITY [OF GALICIA], [REDACTED]

Lawyer: [REDACTED]

ORDER

Given in Noia, on the tenth day of December in the year two thousand and twenty-one.

FACTS

FIRST.- The present Preliminary Proceedings 223/2017 were opened in this Court derived from the complaint filed by the Public Prosecutor's Office on 3 July 2017, by virtue of a prior written complaint from the environmental NGO VERDEGAIA, represented in the proceedings as a popular accusation by the Attorney Ms. [REDACTED] with the legal assistance of Mr. [REDACTED], for facts that could constitute a crime against natural resources and the environment, with [REDACTED] being investigated, having carried out as many investigative measures as were considered appropriate (expert and documentary). By Order of the Provincial Court of A Coruña, 2nd Section, dated 19 July 2019, the appeal lodged by the defence of Mr. [REDACTED], was upheld, declaring the nullity of the Order dated 9 February 2018, limiting the proceedings to the proceedings carried out within the legal time limit of six months from the initiation of the proceedings (27 July 2017); clarification of this decision was requested by the Public Prosecutor's Office, being rejected by Order dated 2 January 2020. As a result of the above, and the Public Prosecutor's Office having requested the proceedings to be closed as it was unable to bring charges without the prior statement of the person under investigation, this Court, on 27 May 2019, issued an order for the provisional dismissal and closure of the proceedings. This decision became final.

SECOND.- A new complaint was filed by VERDEGAIA, giving rise to the DPA 370/2019 processed before this same Court which, in a resolution dated 27 January 2020, agreed to restrict the scope of these proceedings only to a possible offence of falsehood in public documents, given that the environmental prevarication denounced had already been the subject of proceedings 223/2017.

Verdegaia lodged an appeal for reconsideration against the previous decision, which was dismissed by Order dated 10 July 2020, which in turn was appealed by the complainant Association. The Provincial Court of A Coruña, 2nd Section, in an Order dated 4 February 2021, dismissed the appeal. Likewise, the Provincial Court of A Coruña, 2nd Section, in an Order dated 30 March 2021, rejected the request for clarification and supplementation filed by Verdegaia against the previous decision. Finally, by Order issued in DPA 370/2019, dated 9 August 2021, it was agreed to defer the hearing that the offence of falsehood in public documents to the Court of First Instance of Santiago de Compostela.

THIRD.- In a writ dated 22 February 2021, Verdegaia requested the reopening of proceedings DPA 223/2017 and the extension of the complaint to include the new facts denounced in its written complaint dated 5 December 2019, with the exception of those of falsehood in public documents investigated in DPA 370/2019.

LAW

SINGLE.- It should be recalled that article 779.1 of the Criminal Procedure Act provides that “Once the relevant proceedings have been carried out without delay, the judge will adopt one of the following resolutions by means of an order: If he considers that the act does not constitute a criminal offence or that its perpetration does not appear to be sufficiently justified, he will agree to dismiss the case, notifying this decision to those who could be prejudiced, even if they have not been a party to the case. If, although he considers that the act may constitute an offence, there is no known perpetrator, he shall agree to the provisional dismissal and order the case to be closed. Dismissal is therefore permitted in the preliminary proceedings phase, either because the act does not constitute a criminal offence (dismissed with prejudice under Article 637 of the Criminal Procedure Act); or because there is no known perpetrator (dismissed without prejudice under Article 641.2) or because the alleged offence is not justified (dismissed without prejudice under Article 641.1).

The dismissal without prejudice is an act of simple suspension of the proceedings and does not produce the effect of *res judicata* (it does not exclude the possibility of resuming the investigative activity when new facts or new evidence make it advisable to continue the proceedings, after the case has been removed from the case file), as the dismissal without prejudice allows the proceedings to be reopened when new information subsequently acquired makes it advisable or necessary, as the act still has the characteristics of a crime, although it is not duly justified or accredited or the perpetrator is not known, unlike the dismissal with prejudice of the case under Art. 637 of the Criminal Procedure Act, which is an act of definitive termination of the proceedings, being a decision that has the preclusive effect of *res judicata*.

Having said that, in the present case, VERDEGAIA has not provided any new data or evidence proving circumstances other than those already taken into consideration that would allow the reopening of the present proceedings, the extension of the complaint being a reiteration of what has already been denounced. Furthermore, this claim must be considered in the light of the aforementioned previous decisions of the Provincial Court of A Coruña, as well as Sentence of the Supreme Court 455/2021, of 27 May, invoked by the counsel for the Xunta [de Galicia] in his statement of allegations dated 13 July 2021, which are shared in their entirety and which, for the sake of brevity, are reproduced here because, no matter how many twists and turns one may wish to give it, the maximum legally established period of investigation has simply elapsed, vetoing any possibility of agreeing new proceedings as this is an insurmountable limit.

In view of the aforementioned,

OPERATIVE PART

I DENY THE REOPENING of the present proceedings.

BRING THIS DECISION TO THE ATTENTION OF THE PUBLIC PROSECUTOR'S OFFICE AND THE OTHER PARTIES INVOLVED, warning them that they may lodge before this Court an **APPEAL of REFORM THREE DAYS** of notification or a direct **APPEAL** within **FIVE DAYS** of its notification.

So orders and signs [REDACTED], JUDGE of the No. 2 Court of First Instance and Instruction of Noia. I bear witness.

THE JUDGE

THE LEGAL ADVISER FOR THE ADMINISTRATION OF JUSTICE

The dissemination of the text of this decision to parties not interested in the proceedings in which it has been issued may only be carried out after dissociation of the personal data contained therein and with full respect for the right to privacy, the rights of persons requiring a special duty of protection or the guarantee of anonymity of the victims or injured parties, where appropriate.

The personal data included in this resolution may not be transferred or communicated for purposes contrary to the law.