

18 February 2008

Mr. Jeremy Wates, secretary

**Additional Comments to “Draft findings and recommendations”ACCC/C/2006/18**

carrying the following title:

**With regard to compliance by Denmark with its obligations under the Aarhus Convention in the case concerning access to justice to challenge decisions to cull certain bird species in alleged violation of European Community legislation (Communication ACCC/C/2006/18 by Mr. Søren Wium-Andersen (Denmark))**

Dear Mr. Jeremy Wates

**Addendum to comments**

In my comments forwarded to the Compliance Committee on the 15 February 2008 I wrote the following:

**“ Ad 23, 37, 39, 43, 44 and 45**

The case in the Danish Western Court was introduced in the discussions with the Compliance Committee through the study by Milieu Ltd “On access to justice in environmental matters in Denmark (Article(9.3)), Country report for Denmark” forwarded to me by the Compliance Committee. I already disputed the quality of the study by Mileu Ltd during the meeting in Geneva. The quality is also discussed in the expert opinion from professor Peter Pagh forwarded to the secretariat on the 8 January 2008. Peter Pagh argues that the study from Mileu Ltd. is subject to both analytical and substantive errors and in his opinion Denmark is not in compliance with the Aarhus Convention. The opinion is attached for easy reference as attachment no: 5.

It is not clear to me why the Committee did not in detail discuss the arguments presented in professor Pagh’s opinion concerning the implementation of article 9.3. of the legal system in Denmark.”

To avoid misunderstandings I think I should mention that the Compliance Committee at least should take into consideration the following paragraphs in professor Peter Pagh’s comments<sup>1</sup> send to EU, 5 December 2007, about the study by Milieu Ltd., before they finalize their decision. The substance in the opinion by Peter Pagh is closely related to my communication with the Compliance Committee:

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1) ) [http://ec.europa.eu/environment/aarhus/comments\\_civil\\_society.htm](http://ec.europa.eu/environment/aarhus/comments_civil_society.htm)

Søren Wium-Andersen

**2.3 Regarding article 9(3) of the convention** Denmark hasn't adopted any legislation to implement this provision. The official Danish perception is that the possibilities for citizens to asking the police, the public authorities or the Ombudsmand to take action in case of offences of Danish Environmental legislation made by private or public parties are sufficient to comply with article 9(3) because article 9(3) does only require "access to administrative or judicial procedures". The official Danish interpretation ignores that such requests from citizens to the police, administrative authorities or the ombudsmand cannot be subject to injunctive relief as required under article 9(4). Regarding the ombudsmand, the interpretation ignores that the Ombudsmand have no discretion to respond to offences made by private parties. It should however be observed that under the Danish Fishing Act, the Anglers Association has a right to legal action in accordance with article 9(3) and under the Planning Act, citizens have also a right to legal action in case of violation of local plans (but not violation of Environmental Impact Assessment obligations) in accordance with article 9(3). With these two exceptions Danish Law doesn't provide any access to justice in accordance with article 9(3). Finally, it must be mentioned that with very few exceptions, the appeal boards have no competence regarding sanctions or other response to offences of Danish environmental legislation. Even complains from a local NGO on the local authority not issuing order to a pig farm on compliance with the Habitat Directive (92/43) article 6(2) has been rejected by the Nature Appeal Board as beyond its competence. – In contrast, the report on Denmark gives the impression that the access to administrative appeal is sufficient to implement article 9(3) despite this position is neither taking by the official authorities neither by legal literature. Further more, the few court cases mentioned in the report didn't concern article 9(3) of the convention, but article 9(2) on access to participation in decision making.

**2.4 Regarding article 9(4) of the convention** Denmark hasn't adopted any legislation to implement the obligation to ensure that the access to justice under article 9(1)-9(3) provide "adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive." As mentioned above the Danish authorities don't have an answer to how article 9(4) is implemented regarding article 9(3). .....

**3.3 Regarding article 9(3) the Danish implementation** relies on the interpretation that to comply with article 9(3) it is sufficient if people can write to the police, administrative authorities and the Ombudsmand. If this interpretation is correct then article 9(3) requires only a mail system enable people to write to the authorities. If this position is shared by the EC Commission one wonders why the Commission has asked for a comprehensive study on the implementation of article 9(3). In my opinion it is obvious that such narrow interpretation of the obligations under article 9(3) must be rejected and that Denmark is pretty far from having implemented article 9(3) taking into account the obligations under article 9(4).

Yours sincerely

Søren Wium-Andersen  
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