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Dear Sir

**Concerning Draft Findings and Recommendations of the Aarhus
Convention Compliance Committee with regard to Communication
ACCC/C/2006/18**

In the letter dated 1 February 2008, Denmark received a copy of the draft findings and recommendations of the Compliance Committee in the above matter with a pledge to provide comments by 18 February 2008.

On 4 February 2008 Denmark informed Mr. Jeremy Wates from the Secretariat by phone that it would unfortunately not be possible to meet the short deadline. On 5 February 2008 Denmark followed this up with an e-mail according to which Denmark reserves its right to report back on the issue of whether Denmark would agree to accept recommendations and on the content of these recommendations.

Denmark has now had the opportunity to look more closely at the case and has noted that the Committee does not find that Denmark does not comply with its obligations according to the Convention. As a consequence Denmark does not wish to accept the recommendations, cf. paragraphs 36 (b) and 37 (b) of the annex to decision 1/7.

However, Denmark has great respect for the Committee and its work and has the following remarks on the recommendations of the Committee:

Recommendation a). Consider whether jurisprudence for access to judicial review for non-governmental organizations should be converted into legislation.

When the Convention was implemented in Danish legislation in 2000 it was considered, whether article 9, 3, required an explicit rule about access to the courts for non-governmental organizations in Danish legislation (The Administration of Justice Act).

This was rejected after thorough considerations concerning the content of article 9, 3, and taking into account the organization and the character of the Danish system of justice.

It should be noted that according to Danish law, whether a plaintiff is entitled to instigate legal proceedings depends on a specific assessment of the nature and degree of interest of the plaintiff.

For example, the following decisions can be mentioned: Decision by the Eastern High Court which can be found in "*Ugeskrift for Retsvæsen*" 1994, page 780, concerning Greenpeace and the Decision by the Western High

Court which can be found in "*Ugeskrift for Retsvæsen*" 2001, page 1594, concerning the Danish Anglers' Association.

As also noted by the Committee, there is only rather limited jurisprudence in Denmark on the access to judicial review for non-governmental organizations, but the jurisprudence available shows that, following a specific assessment, non-governmental organizations have been granted access to instigate legal proceedings by the Danish courts and that this jurisprudence complies with the requirements of the Convention.

It should also be noted that the issue about the need to state more clearly the criteria for access to instigate legal proceedings in Danish law in 2005 has been considered in general by the Standing Committee on Procedural Law¹, which has found that there has not in practice been any need to clarify the legal practice through legislation and that the matter is best suited to solution through continuous development in jurisprudence.

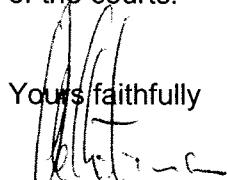
Recommendation b). Consider providing an administrative appeal in addition to the court procedure.

Article 9, 3, of the Convention obliges the Parties to provide either administrative or judicial review, but not to provide both. Denmark does not wish to commit itself beyond the wording of the Convention which is a result of a well-balanced compromise and which has been the basis of economic as well as legal considerations in connection with the Danish ratification of the Convention.

Recommendation c). Ensure that public authorities take account of the obligations of the Convention in cases before court raised by non-governmental organizations.

Denmark does not think that in general it is ever desirable to bind public authorities to refrain from declaring a case dismissed because of lack of legal standing. There must always be a specific assessment of the nature and the strength of the plaintiff's interest in a given case to determine whether he or she should be considered to have legal standing and of course the public authorities will always take into account the legal practice of the courts.

Yours faithfully



Ole Christiansen
Director-General

¹ The Standing Committee on Procedural Law was set up in 1961 and on request from the Ministry of Justice it gives recommendations about changes in the Administration of Justice Act in order to reform legislation. The Committee also functions as an advisory body for the Ministry of Justice concerning the rules of procedure in specific legislation and in international agreements as well as fundamental questions about laying down administrative rules of procedural importance.