

# Professor dr. Jur. Peter Pagh

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## Secretary to the Aarhus Convention

### Att. Fiona Marshall

United Nations Economic Commission for Europe  
Environment and Human Settlement Division  
Room 332, Palais des Nations  
CH-1211 Geneva 10, Switzerland

March 19, 2015

Communication to the Aarhus Convention's Compliance Committee (CC)

***Regarding: Lack of compliance with article 6, article 7 and article 9 of the Aarhus Convention in the State of Denmark in the decisions on modification of the project, Cityringen in Copenhagen – answer to question from CC by mail of March 6 2015***

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You had asked for an update on what has happened in Denmark since Beboerforeningerne omkring Marmorkirken (BoM) last informed the Compliance Committee of the development in letter December 14 2014. More specific, you did ask if the Danish Court had made the decision expected in January 2015 and whether BoM in the light of that decision intends to proceed with, or modify or withdraw the complaint to the Compliance Committee.

I can inform you that the Copenhagen Court 6 of March 2015 decided to follow the request of BoM and submit the case to the Eastern High Court because of the principle legal questions of the case regarding standing and by this rejected the arguments of the Minister of Transport.

There is however still not a decision from the Ministry of Justice regarding legal cost. Because of this and taken into account that the case now has been pleading before the lower court in more than a one year before the lower court submitted the case to the Eastern High Court the proceeding itself seems not in accordance with the Aarhus Convention art. 9(4) on timely proceeding.

After the case has been submitted to the Eastern High Court, two principle questions regarding noncompliance with the Aarhus Convention are still resting. One regards the legal standing of BoM in the EIA case pleading before the court and the way this has been handles by the Minister of Transport seems in direct conflict with the Aarhus Convention art. 9(2) by preventing local ENGOs to have adequate legal remedies regarding complains on EIA

compliance (Aarhus Convention art. 6). The second problem is that the Parliament's adoption of an amendment to the Cityring Act circumvented the access to justice under art. 9(2) and 9(3) and 9(4) of the Aarhus Convention and has the declared goal with the reversed Act was to prevent that legal actions before Nature and Environmental Appeal Board from citizens would cause future problems for the Metro project ignoring that the complains from citizens on this project was followed by the Appeal Board in almost all cases. The implications of this legislation might at least indirectly be addressed by the High Court.

Since the case is still pleading on the first step I don't find it possible to withdraw or modify the complaint and will ask the Compliance Committee to place this complaint on stand still waiting for the decision of the Eastern High Court.

I enclose the decision of the Copenhagen Court.

Yours sincerely

Peter Pagh