# Secretariat to the Aarhus Convention

# United Nations Economic Commission for Europe

# Environment and Human Settlement Division Room 332, Palais des Nations CH-1211 Geneva 10 Switzerland

Communication to the Aarhus Convention’s Compliance Committee:

# Lack of compliance with the Aarhus Convention in the State of Denmark

# Information on correspondent submitting the communication

*Full name of submitting organization or person(s):*

*Permanent address:*

*Address for correspondence on this matter, if different from permanent address:*

*Telephone: Fax: E-mail:*

**Dansk Ornitologisk Forening – BirdLife Denmark (DOF)**

(Danish Ornithological Society)

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# State concerned

*Name of the State Party concerned by the communication:*

Denmark

# Facts of the communication

Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a breach of the provisions the Convention.

NGOs like the Danish Ornithological Society, BirdLife Denmark (DOF) have for decades been important stakeholders in the surveillance of nature and environmental protection in Denmark. This is reflected in most of the Danish laws and legal orders within nature and environment, where NGOs with nature or environmental protection as their objectives are given special rights as representatives of the civil society to appeal decisions made by public authorities, which otherwise are restricted to individuals or enterprises directly affected by the decisions. DOF has received this privilege.

The importance of the NGO surveillance of nature and environmental protection in Denmark has increased since the reform of the public structures that took place from January 1st, 2007, where the former counties were disbanded and most of the authority within nature and environmental affairs was decentralized to 98 new municipalities. After a two year transition period, the national institutions no longer supervise the administrative decisions taken on laws and legal orders in the municipalities.

On December 17th, 2010 the Danish Parliament approved a new act on differentiated fees for appeals to the Nature and Environment Appeal Board (Act no. 1608 signed December 22nd, 2010). This act is effective from January 1st 2011 and imposes fees on nearly all kinds of appeals on public authority decisions within nature and environmental affairs. One of the main arguments for the new legal act – stated openly by the government – was to diminish the number of complaints from environmental NGOs.

This act imposes a new fee of 403 € on every appeal sent by NGOs to the Appeal Board, which is six times the fee charged on appeals from individual citizens. In most affairs the appeals were free of charge until January 1st, 2011.

The new fee will present a heavy burden on the limited financial resources of DOF and will in the future restrict organisations like DOF from appealing on authority decisions that might be violations of the different acts on nature and environmental protection.

A case study with examples of the influence that the new differentiated fees for appeals to the Nature and Environment Appeal Board has on the economy and work of DOF is enclosed. This case study is from one of DOF’s 13 local branches, DOF Sønderjylland. It documents that DOF in the future will not be able to fulfil its role as civil society surveillor of the decision-making within the public administration.

# IV. Nature of alleged non-compliance

Indicate whether the communication concerns a specific case of a person’s rights of access to information, public participation or access to justice being violated as a result of non-compliance or relates to a general failure to implement, or to implement correctly, (certain of) the provisions of the Convention by the Party concerned:

This complaint concerns a newly implemented legislation in Denmark that restricts the ability of NGOs like DOF to appeal on public authority decisions of importance to nature and environment.

# V. Provisions of the Convention relevant for the communication

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that the Party is alleged to not comply with:

It is DOF’s opinion that this law is a violation of article 9, paragraph 2 of the Aarhus Convention, because we by economic means are restricted in our ability to challenge the substantive and procedural legality of decisions, acts or omissions subject to the provisions of article 6 taken by the Danish authorities within nature and environmental matters.

It is also DOF’s opinion that this law is a violation of article 9, paragraph 3 of the Aarhus Convention, because DOF, due to the new high fees, in the future will be hampered from having full access to administrative or judicial procedures, which are necessary to challenge acts and decisions taken by public authorities contravening provisions of our national law relating to the environment.

It is DOF’s opinion that this law is a violation of article 9, paragraph 4 of the Aarhus Convention, because the procedures referred to in paragraphs 1, 2, and 3 of article 9 no longer are fair, because of the fee differentiation, and because they in the long run are prohibitively expensive.

It is DOF’s opinion that this law is a violation of article 9, paragraph 5 because Denmark has not established appropriate assistance mechanisms to remove or reduce the financial barriers to our access to justice. In fact it is the *very purpose* of Act. No 1608 to establish such a financial barrier.

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# VI. Use of domestic remedies or other international procedures

*Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:*

DOF received the proposed bill in the late afternoon on the November 17th, 2010. Comments were due before noon on November 22nd, 2010, a deadline of less than three working days. In our response, DOF pointed out the weaknesses of the proposal and the violation of the Aarhus Convention. The same was done in responses from The Danish Society for Nature Conservation (DN) and the Danish Ecological Council (DØR).

On November 30th, 2010 DOF sent its opinion to the Danish Environmental Protection Agency, Danish Ministry of the Environment as a response to a hearing on the draft of the 3rd Danish Aarhus Convention Implementation Report. In its answer to the Ministry DOF stressed that draft report did not mention the proposed bill on differentiated fees and its implications, including DOF’s reduced access to justice in the future.

DOF participated in a delegation of NGOs to the Environment and Regional Planning Committee of the Danish Parliament on December 1st, 2010. At the meeting the committee was informed about DOF’s opinion on the reduced access to justice as a consequence of the proposed bill.

Members of the Danish Parliament's Environment and Regional Planning Committee forwarded no less than 16 questions to the Minister of Environment during the evaluation of the proposed bill. The minister of environment, Ms. Karen Ellemann answered that she assessed that the future fees were not prohibitively expensive (See supporting documentation, Question 15 and answer).

*Indicate if any other international procedures have been invoked to address the issue of non-compliance which is the subject of the communication and if so, provide details (as for domestic procedures):*

Not yet.

# VII. Confidentiality

*Unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including the information on your identity, be kept confidential. If you request any information to be kept confidential, you are invited to clearly indicate which. You may also elaborate on why you wish it to be kept confidential, though this is entirely optional.*

N.A.

# VIII. Supporting documentation (copies, not originals)

* + *Relevant national legislation, highlighting the most relevant provisions.*
  + *Decisions/results of other procedures.*
  + *Any other documentation substantiating the information provided under VII.*
  + *Relevant pieces of correspondence with the authorities.*

*Avoid including extraneous or superfluous documentation and, if it is necessary to include bulky documentation, endeavour to highlight the parts which are essential to the case.*

1: Act no. 1608 on differentiated fees, signed December 22nd, 2010 (in Danish)

2: Legal order no. 1673 on fees for appeals, signed December 22nd, 2010 (in Danish)

3: Case on the impact of the act from DOF Sønderjylland (in English)

4: Hearing response from DOF on the proposed act (in Danish)

5: Hearing response from DOF on the Aarhus Convention (in Danish)

6: Question no. 15 and answer from the minister of Environment (in Danish)

# XI. Summary

Attach a two to three-page summary of all the relevant facts of your communication.

The Danish Parliament has on December 17th, 2010 approved a new act on differentiated fees for appeals to the Nature and Environment Appeal Board (Act no. 1608), which from January 1st, 2011 imposes fees for NGOs on nearly all kinds of appeals to public authority decisions within nature and environmental affairs. The fees are differentiated, and NGOs must pay 403 € for every appeal sent to the Appeal Board, which is six times the fee charged on appeals from individual citizens. In most affairs, the appeals were free of charge until January 1st, 2011.

The very purpose of this new fee is to set up an economical barrier that restricts us from using our legal rights to appeal in cases, where the protection of nature and environment is violated. It is DOF’s opinion that this law is not in compliance with article 9, paragraph 2, 3, 4 and 5 of the Aarhus Convention.

# X. Signature

*The communication should be signed and dated. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.*

January 25th, 2011



Christian Hjorth

Chairman of DOF

*Contact person in DOF’s secretariat: Knud N. Flensted, conservation manager, MSc*