

United Nations Economic Commission for Europe
Environment Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Send by e-mail to: Aphrodite.Smagadi@unece.org

Håkun Djurhuus
Partner
+ 45 72 27 33 44
djur@bechbruun.com
Our ref. 052030-0002 djur/gsc
Secretary Jeanette Lillie Edlich
T +45 72 27 38 56
jle@bechbruun.com

21 September 2012

Dear Mrs. Smagadi

Communication to the Aarhus Convention Compliance Committee concerning compliance by Denmark with the provisions on public participation in the adoption of river management plans (ref. ACCC/C/2012/67)

Thank you for your letter dated 8 May 2012 announcing the preliminary decision on the admissibility of our communication.

In the annex to the letter, you have listed some questions, which I will answer to the best of my knowledge. Some of the questions are entirely determined by the authorities involved.

Regarding question 1:

According to the website of the Danish Nature and Environment Board, the average time for examination of complaints filed after 1 January 2011 is 12 months.

We have asked the chairman of the Danish Nature and Environment Board, whether it is possible to be more specific in regards to the complaints regarding the river management plans. The chairman has responded that the board expects to make a number of decisions during the autumn 2012. These decisions will establish the Danish understanding of the provisions on public participation in the Act on Environmental Objectives.

Regarding question 2:

The Danish Nature and Environment Board is an independent unit established to consider complaints from citizens, associations, enterprises etc. subject to a challengeable decision issued by an authority. The board is organised as a part of the Ministry of Environment.

The board has, however, limited competence in regards to the river management plans laid down by the Danish Nature Agency. The board can only examine infringements related to the

adoption of the river management plans, e.g. whether the provisions of the Act on Environmental Objectives regarding public participation has been applied. Thus, the board has competence to decide that the three river management plans brought before the board by the Agriculture & Food Council should be annulled. The annulment can, however, only be based on infringements due to flawed process etc.

All the river management plans have been adopted in the same procedure in regards to public participation. If the board decides that the three plans brought before the board should be annulled due to infringements in adoption process in regards to the public participation, the Danish Nature Agency will be imposed to initiate a new public participation process for at least the plans brought before the board.

However, according to Danish case law, infringements in public participation often only lead to annulment, if the lack of public participation is to be considered vital for the possible outcome in a case. Thus, the complainant must make probable (convince the board), that information the complainant would have submitted to the authority is of substantial interest for the assessment of the river management plan.

Depending on the terms of the annulment of the three river basin management plans, the Danish Nature Agency is to consider whether the same mistakes have been made in regards to the rest of the river management plans. If the decision by Nature and Environment Board sets out general principles for the understanding of the Act of Environmental Objectives and/or the Aarhus Convention, the Danish Nature Agency should make sure that all the river management plans was adopted in accordance with the general principles, that the board may apply in the decisions on the cases brought before the board. If the plans were not adopted in accordance with these general principles, the Danish Nature Agency should recall all river management plans and restart the process. This, however, depends entirely on the decisions from the Nature and Environment Board and the understanding of these decisions by the Danish Nature Agency. Also, it will be uncertain how the Danish Nature Agency will interpret the decisions from the Nature and Environment Board and whether the agency will consider possible criticism from the board of such nature, that all the river management plans must be reviewed in light of a proper public consultation process.

Thus, there is great risk that the Danish Nature Agency will decide that any annulments of the river management plans by decision of the Nature and Environment Board shall be limited to those brought forward by the complainants. As the annulment usually will lead to "*another try*" in order to comply with the procedural processes, there is great risk, that the Danish Nature Agency will only ask the three complainants to give any further information that they may consider vital to the part of the river management plan of relevance to them and then assess whether these new information should lead to changes in the river management plans.

Regarding question 3:

(a)

We have translated those parts of the annexes that we find of relevance to the process and the issues addressed under the Aarhus Convention.

Please find enclosed the translated extracts of the central annexes.

(b)

We have asked the Ministry of Environment, whether they have an official translation of the Act on Environmental Objectives.

The Ministry of Environment has replied that they do not have an English version of the law. Thus, we have asked our own translators to translate the provisions of the Act on Environmental Objectives, which are central in regards to public participation and access to administrative appeal. Please find this translation enclosed.

A copy of this letter and the translated documents are send to the Danish Environment Agency, att.: Mr. Morten Imer Møller.

Yours sincerely

Håkun Djurhuus
