

Ref.: 2018/OES/344/ENV/176

5 September 2018

Excellency,

I have the honour to write to you at the request of the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

At its sixth session (Budva, Montenegro, 10-14 September 2017), the Meeting of the Parties to the Convention adopted decision VI/8 on general issues of compliance. Through paragraph 18 of that decision, the Meeting of the Parties welcomed the constructive efforts made by Turkmenistan to address the recommendations made by the Meeting of the Parties through decision V/9l, while expressing its concern that the Party concerned had failed to inform the Compliance Committee of the amendments to its Act of Public Associations adopted on 4 February 2017.

Through paragraph 19 of decision VI/8, the Meeting of the Parties requested the Compliance Committee, pursuant to paragraph 13(b) of the annex to decision I/7, to review the compliance of Turkmenistan with articles 3, paragraphs 1, 4 and 9 of the Convention in the light of the amendments to the Act of Public Associations of 4 February 2017 with respect to the possibilities for foreign citizens and persons without citizenship to found and participate in non-governmental organizations promoting environmental protection.

The above request by the Meeting of the Parties has been given the reference ACCC/M/2017/2 which you are invited to cite in future correspondence on the matter. All substantive documentation and correspondence relating to the request is available on the Committee's website at: <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/requests-from-the-meeting-of-the-parties.html>.

His Excellency  
Mr. Raşit Meredov  
Deputy Chair of the Cabinet of Ministers and  
Minister for Foreign Affairs of Turkmenistan  
Ashgabat

In order to enable it to review the compliance of Turkmenistan in accordance with the Meeting of the Parties' request, the Committee has prepared a list of questions for your reply, enclosed. The Compliance Committee would be grateful to receive replies to all questions by **1 October 2018**. However, if you would require a longer timeframe to provide answers to questions 7-20 of the enclosed or to provide English translations of the requested legislation, the Compliance Committee would ask you to provide those by no later than **1 December 2018** (please note that answers to questions 1-6 and the Turkmen and Russian versions of the requested legislation should still be provided by 1 October 2018).

I would like to emphasize the importance of cooperating with the Compliance Committee, which forms an integral part of the functioning of the Convention. Your country's timely answers will facilitate the possibility of the Committee completing its review well in advance of the next session of the Meeting of the Parties.

On behalf of the United Nations Economic Commission for Europe, I would like to express the willingness of the secretariat to work with the Government of the Turkmenistan in meeting its obligations under the Aarhus Convention. Please do not hesitate to contact the secretariat ([aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org)) if you require any further information.

Please accept, Excellency, the assurances of my highest consideration.

Olga Algayerova



Enclosure

## Questions from the Committee to the Party concerned:

### The status and content of relevant legislation

1. Please provide the text of the following legislation, in Turkmen language as well as Russian and English translations thereof:
  - a) The amendment to the Law on Public Associations adopted on 4 February 2017;
  - b) All other amendments to the Law on Public Associations made since the Law was provided to the Committee on 26 March 2014;<sup>1</sup>
  - c) All amendments to the Law on Nature Protection made since the Law was provided to the Committee on 13 May 2014<sup>2</sup>.
2. Are there any regulations, bylaws, or instructions that implement the provisions of the Law on Public Associations? If so, please provide the current versions of all such instruments, in Turkmen language as well as Russian and English translations thereof.
3. Have there been any amendments since 30 March 2016 to the 2011 Law on the Legal Status of Foreign Citizens in Turkmenistan and specifically to its article 15 relating to participation in public associations? Please provide the text of article 15 of this Law currently in force, in Turkmen language as well as Russian and English translations thereof.
4. Are there any regulations, bylaws, instructions or forms implementing the provisions of the Law on Public Associations? If so, please provide the current versions of all such instruments in Turkmen language as well as Russian and English translations thereof.
5. Have there been any amendments since 30 March 2016 to the 2011 Law on the Legal Status of Foreign Citizens in Turkmenistan and specifically to its article 15 relating to participation in public associations? Please provide the text of article 15 of this Law currently in force, in Turkmen language as well as Russian and English translations thereof.
6. Please provide the text of article 65 of the Administrative Code currently in force, in Turkmen language as well as Russian and English translations thereof

### The Law on Public Associations

7. What was the purpose and the official justification for amending articles 1, 3, and 16, paragraph 2 by replacing in each the words: “upon the initiative of citizens” with the words “by citizens of Turkmenistan”?
8. What was the purpose and the official justification for deleting paragraph 2 of article 4 of the Law on Public Associations? What was the purpose and official justification for including it originally?

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<sup>1</sup> The version of the Law on Nature Protection provided to the Committee on 26 March 2014 is available at: [https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Turkmenistan/Law\\_on\\_Nature\\_Protection.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Turkmenistan/Law_on_Nature_Protection.pdf)

<sup>2</sup> The version of the Law on Public Associations provided to the Committee on 13 May 2014 is available at: [https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Turkmenistan/NV-2014-05-13-%E2%84%96253\\_Law\\_on\\_Public\\_Associations\\_russian.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Turkmenistan/NV-2014-05-13-%E2%84%96253_Law_on_Public_Associations_russian.pdf)

9. Has there been any official explanation or interpretation by an executive, legislative or judicial authority at the national level of the term of “citizens” in article 4, paragraph 1 of the Law on Public Associations? In particular, has there been any official explanation or interpretation which makes clear that “citizens” is to be understood to include “foreign citizens” and “persons without citizenship”? If so, please provide it in Turkmen language as well as a Russian and English translation thereof.

#### The 2014 Law on Nature Protection

10. Has there been any official explanation or interpretation by an executive, legislative or judicial authority at the national level of the term “citizen” in article 9, paragraph 2 of the Law on Nature Protection? In particular, has there been any official explanation or interpretation which makes clear that “citizens” is to be understood to include “foreign citizens” and “persons without citizenship”? If so, please provide it in Turkmen language as well as a Russian and English translation thereof.
11. Is the establishment of a public association undertaking activities in the area of nature protection regulated by article 4 of the Law on Public Associations in every case? Alternatively, does article 9(2) of the Law on Nature Protection establish a separate legal mechanism through which public associations undertaking activities in the area of nature protection may be created? If so, which legislative provisions (other than those of the Law on Public Associations) establish the precise criteria, requirements and other details concerning the formation and regulation of activities of public associations undertaking activities in the area of nature protection? Please provide the text of any such provisions, in Turkmen language as well as Russian and English translations thereof.

#### Contradictions (collisions) and their resolution or avoidance

12. On page 2 of its statement of 30 March 2016 concerning paragraph 6 of decision V/91,<sup>3</sup> the Party concerned acknowledged the possibility of a contradiction between article 9 of the Law on Nature Protection and article 7 (2) of the Law of Public Associations. Please precisely specify each point of possible contradiction.
13. What, if any, legislative, administrative, judicial or practical measures have been taken since the February 2017 amendments to the Law on Public Associations to resolve the possible contradictions identified in your reply to question 12 above? Please provide the text of any such measures/court decisions, in Turkmen language as well as Russian and English translations thereof.

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<sup>3</sup> “Nothing enshrined in the laws of Turkmenistan on nature protection and public associations makes provision for them to prevail over other laws. To a certain extent there is a contradiction (collision) between Article 9 of the Law on Nature Protection and Article 7 (2) of the Law on Public Associations.

Therefore, in the case of the application of these norms of the laws and in the event of a dispute on this matter, the primacy will be given to Article 9 of the Law on Nature Protection, since it complies with the provisions of the Aarhus Convention. Under the Constitution of Turkmenistan of 18 May 1992, as amended on 26 September 2008, “Turkmenistan recognizes the primacy of generally recognized norms of international law. If an international agreement entered into by Turkmenistan establish rules other than those provided for by a statute law of Turkmenistan, then the rules of the international agreement are applicable” (Article 6). All Turkmenistan’s laws also contain such provisions: this includes the Law on Nature Protection (Article 2 (2)) and the Act on Public Associations (Article 2 (2)).”

14. On page 3 of its letter of 24 August 2017,<sup>4</sup> the Party concerned acknowledged the possibility of contradictions between articles 1, 3 and 16 and articles 4(1) and 11(1) of the Law on Public Associations. Please precisely specify each point of possible contradiction.
15. What, if any, legislative, administrative, judicial or practical measures have been taken since the February 2017 amendments to the Law on Public Associations to resolve the possible contradictions identified in your reply to question 14 above? Please provide the text of any such measures/court decisions, in Turkmen language as well as Russian and English translations thereof.
16. How has the potential contradiction between article 9 of the Law on Nature Protection and article 65 of the Code on Administrative Offences been dealt with by the authorities in practice? Please provide any relevant examples from administrative practice, in Turkmen language as well as Russian and English translations thereof. In addition, please provide any relevant case law from the courts in which both article 9 of the Law on Nature Protection and article 65 of the Code of Administrative Offences have been considered, in Turkmen language as well as Russian and English translations thereof.
17. Are there any specific rules of legal interpretation to assist the resolution of contradictions related to subsequent legislation? For example, do provisions enacted later in time prevail over provisions enacted earlier?
18. Please provide any relevant case law where the courts have given primacy to the requirements of the Aarhus Convention over conflicting provisions of national law. Please also provide any relevant case law where the courts have given primacy to the provisions of national law despite an apparent conflict between those provisions and the requirements of the Aarhus Convention. In case there is no case law on the matter, please explain why.

#### Evidence of practice

19. How many public associations undertaking activities in the area of nature protection have been established since the February 2017 amendments? How many of these were founded by persons that are not citizens of Turkmenistan? How many of these were founded by a combination of citizens of Turkmenistan and non-citizens?
20. How many public associations undertaking activities in the area of nature protection have been liquidated, terminated or banned since the February 2017 amendments? How many of these were founded by persons that are not citizens of Turkmenistan? How many of these were founded by a combination of citizens of Turkmenistan and non-citizens? For any public associations undertaking activities in the area of nature protection that have been liquidated, terminated or banned since the February 2017 amendment and that were either partially or wholly founded by persons that were not

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<sup>4</sup>“Of course, these are separate amendments to the Act on Public Associations, which, when their provisions are applied, could lead to specific contradictions (*collisio*) between the articles concerned (Articles 1, 3, 16 and Articles 4(1), 11(1)).”

citizens of Turkmenistan, please briefly explain the reasons and legal basis under which each such public association was liquidated, terminated or banned.

21. Since its entry into force on 10 May 2014, has article 7, paragraph 2, of the Law on Public Associations been invoked to prohibit the activities of an unregistered public association that was undertaking activities in the area of nature protection? If so, please provide details.
22. Has to date a fine ever been imposed under article 65 (1), article 65(2) or article 65(3) of the Code on Administrative Offenses on an unregistered, banned, terminated or liquidated environmental association or on persons engaged in promoting environmental protection? If so, please provide details, including the offense committed, the nature of the persons/entity that committed the offense and the fine imposed.

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