

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**Second progress review of developments relating to request
ACCC/M/2017/2 on compliance by Turkmenistan
with its obligations under the Convention**

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I. Introduction

1. Through paragraph 19 of its decision VI/8 on compliance adopted at its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) requested the Committee, pursuant to paragraph 13(b) of the annex to decision I/7, to review the compliance of Turkmenistan with articles 3(1), (4) and (9) of the Convention in the light of the amendments to the Law 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.

II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of request ACCC/M/2017/2 (Turkmenistan) in open session with the participation of representatives of the Party concerned in person. Though invited, neither the communicant of communication ACCC/C/2004/5 nor registered observers took part in the session. The Chair informed the Party concerned that, following the meeting, a letter would be sent with questions for its reply by 1 October 2018.

3. On 5 September 2018, the secretariat sent a letter from the ECE Executive Secretary enclosing questions from the Committee to the Party concerned, with questions 1-6 to be answered by 1 October 2018, and questions 7-22 to be answered by 1 December 2018.

4. On 1 October 2018, the Party concerned submitted its replies to questions 1, 3, 5 and 6 of the Committee on time. It indicated that its replies to questions 2 and 4 would be submitted by 1 December 2018, together with its replies to the remaining questions.

5. On 5 October 2018, the secretariat forwarded the replies to questions 1, 3, 5 and 6 to the communicant of communication ACCC/C/2004/5 and registered observers, inviting their comments by 1 November 2018. No comments were received.

6. On 7 December 2018, the Party concerned submitted additional information explaining *inter alia* that they were not able to provide their answer to the remaining questions by the deadline of 1 December 2018 and requesting an extension for its reply to these questions. It also expressed concern about a possible misunderstanding by the Committee regarding its compliance with the Convention. It also called upon the Committee to carefully consider its comments of 24 August 2017, submitted in the context of decision V/91.

7. On 21 December 2018, the secretariat informed the Party concerned that the Chair had agreed to extend the deadline for its reply to the remaining questions to 11 January 2019.

8. On 17 January 2019, the Party concerned submitted an update as to the steps it was taking to prepare its replies to the Committee's remaining questions.

9. On 19 February 2019, the Party concerned submitted its answers to questions 2 and 4 and resubmitted answers to questions 1, 3, 5 and 6.

10. After taking into account the information received by that date the Committee prepared its first progress review and adopted it at its virtual meeting on 21 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Turkmenistan, the communicant of communication ACCC/C/2004/5 and registered observers. As of the date of the adoption of the first progress review, the Party concerned had not yet provided its replies to questions 7-22 of the Committee's questions dated 5 September 2018.

11. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of request ACCC/M/2017/2 (Turkmenistan) in open session with the participation of a representative of the Party concerned in person. Though invited, neither the communicant of communication ACCC/C/2004/5 nor registered observers took part in the session.

12. On 15 March 2019, the Party concerned submitted an update and on 25 April 2019, the Party concerned submitted its replies to questions 7-22 of the Committee's questions of 5 September 2018.

13. On 29 May 2019, the secretariat invited the communicant of communication ACCC/C/2004/5 and registered observers to comment on the replies by the Party concerned to questions 7-22. No comments were received.

14. After taking into account the replies of the Party concerned to questions 7-22 of the Committee's questions of 5 September 2018, the Committee prepared a supplementary first progress review and adopted it through its electronic decision-making procedure on 16 August 2019. The Committee thereafter requested the UNECE Executive Secretary to forward the supplementary first progress review to the Party concerned and the communicant of communication ACCC/C/2004/5 and registered observers.

15. On 27 August 2019, the UNECE Executive Secretary wrote to the Deputy Chairman of the Cabinet of Ministers and Minister for Foreign Affairs of the Party concerned enclosing the Committee's supplementary first progress review, and inviting the Party concerned to provide a second progress report by 1 October 2019 on the implementation of paragraph 19 of decision VI/8.

16. On 20 November 2019, the secretariat informed the State Committee on Environmental Protection and Land Resources of the Party concerned that, since the Party concerned had failed to provide its second progress report on 1 October 2019 as requested, in order that the Committee could still take into consideration any measures the Party concerned had by then taken to implement paragraph 19 of decision VI/8, the Committee had requested that the Party concerned submit its second progress report as a matter of urgency, and by Tuesday, 10 December 2019 at the latest.

17. On 24 December 2019, the Party concerned provided its second progress report in reply to the letter of the UNECE Executive Secretary dated 27 August 2019.

18. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 1 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned and the communicant of communication ACCC/C/2004/5 and registered observers.

III. Consideration and evaluation by the Committee

19. In order to fulfil request ACCC/M/2017/2 of the Meeting of the Parties, the Party concerned would need to provide evidence to the Committee to demonstrate that it complies with article 3(1), (4) and (9) of the Convention in the light of the amendments to the Law 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.

20. To recall, the Committee in its supplementary first progress review of 16 August 2019 concluded that:

“in light of the deletion of article 4(2) and the insertion of the words ‘of Turkmenistan’ after ‘citizens’ in articles 1 and 3(1) of the 2014 Act of Public Associations, and lacking any evidence that these amendments have not in practice affected the rights of foreign citizens and persons without citizenship to found and participate in non-governmental organizations promoting environmental protection, the Committee finds that the Party concerned has not demonstrated that it complies with article 3(9) of the Convention...

In addition, in the light of the ongoing lack of clarity as to how the prohibition on activities of unregistered associations set out in article 7(2) of the 2014 Act on Public Associations is to be applied in practice, the Committee finds that the Party concerned has not demonstrated that it complies with article 3(4) of the Convention.

Finally, in the light of the Committee's findings [...] above, the Committee finds that Turkmenistan has not demonstrated that it complies with the obligation in article 3(1) of the Convention to provide a clear, transparent and consistent framework to implement the provisions of article 3(4) and (9) of the Convention.¹

21. The Committee accordingly invited the Party concerned "to take the necessary legislative, regulatory or other measures to:

- (a) Ensure that its legal framework explicitly sets out that foreign citizens and persons without citizenship have the same right to found and participate in non-governmental organizations promoting environmental protection as do citizens of Turkmenistan;
- (b) Ensure that its legal framework makes clear that members of the public who decide to come together to exercise their rights under article 9(2) of the Law on Nature Protection, for example, to undertake environmental rehabilitation activities or to take part in demonstrations on nature protection issues and, in doing so, choose to identify themselves by a common name, would not be considered as acting as an "unregistered public association" and thus have their activities prohibited under article 7, paragraph 2, of the 2014 Act on Public Associations."²

22. The Committee invited the Party concerned, by 1 October 2019, to:

- (a) Provide a progress report on the progress it has by that date made to address paragraph 21 above.
- (b) Together with its progress report, to provide the text of any legislative measures proposed to address paragraph 21 above, whether then in draft or final form, together with English translations thereof and the envisaged timeframe by when any such draft measures will be adopted.³

General observations

23. The Committee welcomes the second progress report provided by the Party concerned on 24 December 2019, while expressing its disappointment that it was submitted so long after the requested deadline of 1 October 2019. The Committee also welcomes the confirmation by the Party concerned in its second progress report that the assessment and the comments provided by the Committee in its supplementary first progress review "are in no small measure" enabling the Party concerned to move forward towards harmonizing the Act on Public Associations with the requirements of the Convention.⁴ The Committee reminds the Party concerned of the importance of engaging with the Committee in a timely manner in order that the Committee can assist the Party concerned to come into full compliance as soon as possible.

Article 3(9)

24. The Committee takes note of the acknowledgement by the Party concerned in its letters of 25 April and 24 December 2019 that the amendments to articles 1, 3 and 16(2) of the Act on Public Associations, which were introduced on 4 February 2017, have led to certain contradictions with other articles of the Act and "should form the basis of further discussions of the above-mentioned provisions of Turkmenistan's Public Associations Act."⁵ In this regard, the Party concerned specifies that "Turkmenistan is ready to discuss all the existing provisions of the Act which are connected with the rights of foreign citizens and persons without citizenship, in particular concerning participation in the operation of public associations."⁶

¹ Committee's supplementary first progress review, 16 August 2019, paras. 62-64.

² Committee's supplementary first progress review, 16 August 2019, para. 65.

³ Committee's supplementary first progress review, 16 August 2019, para. 66.

⁴ Letter from the Party concerned, 24 December 2019, p. 2.

⁵ Letter from the Party concerned, 24 December 2019, p. 2.

⁶ Letter from the Party concerned, 24 December 2019, p. 2.

25. The Party concerned reports further that steps “currently being taken by the *Mejlis* (Parliament) of Turkmenistan towards preparing a draft law to further amend and supplement the 2014 Public Associations Act (as amended on 4 February 2017) indicate that Turkmenistan’s Public Associations should indeed come under review. Moreover, the working group set up by the relevant Parliamentary Committee to prepare the above-mentioned draft law will include representatives (experts) from the Ministry of Agriculture and Environmental Protection of Turkmenistan.”⁷

26. The Committee welcomes the information by the Party concerned that it has established a parliamentary working group to prepare draft legislation to address the uncertainties identified by the Committee in its supplementary first progress review with respect to the rights of foreign citizens and persons without citizenship to found and participate in non-governmental organizations promoting environmental protection.⁸ The Committee also welcomes the proposed inclusion of representatives from the Ministry of Agriculture and Environmental Protection in the parliamentary working group to this end.

27. The Committee, however, reminds the Party concerned that all measures to address request ACCC/M/2017/2 must be taken, and reported upon, by no later than 1 October 2020. To this end, so that the Committee can provide advice and assistance to the Party concerned in due time before the deadline of 1 October 2020 for its final progress report, the Committee invites the Party concerned to provide, as a matter of urgency, the text of any draft legislative measures through which the Party concerned proposes to address the uncertainties identified in paragraphs 26 and 39 of the Committee’s supplementary first progress review.

28. In the light of the above, while welcoming the initial steps taken in that direction, the Committee finds that the Party concerned has not yet demonstrated that it complies with article 3(9) of the Convention.

Article 3(4)

29. In its letter of 24 December 2019, the Party concerned states that “the Compliance Committee has also thrown light on the situation with regard to Article 7(2) of the Act, which prohibits the operation of unregistered public associations”.⁹ Noting the Committee’s analysis of article 7(2) of the Act on Public Associations and article 9 of the Law on Nature Protection of 1 March 2014,¹⁰ the Party concerned states that “given that adjustments should be made between Article 7(2) of the Public Associations Act and Article 9 of the Law on Nature Protection, Turkmenistan deems it appropriate to hold additional consultations and to discuss this question in the light of the requirements of the Aarhus Convention.”¹¹

30. The Committee welcomes the acknowledgement by the Party concerned that adjustments should be made between article 7(2) of the Act on Public Associations and article 9 of the Law on Nature Protection. The Committee also welcomes the information that the Party concerned is holding internal consultations to this end.

31. The Committee, however, again reminds the Party concerned that all measures to address request ACCC/M/2017/2 must be taken, and reported upon, by no later than 1 October 2020. In order therefore that the Committee can provide advice and assistance to the Party concerned in due time before the deadline of 1 October 2020 for its final progress report, the Committee invites the Party concerned to provide, as a matter of urgency, the text of any draft legislative measures through which the Party concerned proposes to address the lack of clarity identified in paragraphs 51-59 of the Committee’s supplementary first progress review. The Committee emphasizes that it would be important that any such measures make very clear that the exercise of the rights in article 9(1)-(9) of the Law on Nature Protection

⁷ Letter from the Party concerned, 24 December 2019, p. 2.

⁸ Committee’s supplementary first progress review, 16 August 2019, paras. 26 and 39.

⁹ Letter from the Party concerned, 24 December 2019, pp. 2-3.

¹⁰ Committee’s supplementary first progress review, 16 August 2019, paras. 51-59.

¹¹ Letter from the Party concerned, 24 December 2019, p. 3.

would not, in themselves, amount to an activity of an unregistered associations for the purposes of article 7(2) of the Act on Public Associations.

32. In the light of the above, while welcoming the initial steps taken in that direction, the Committee finds that the Party concerned has not yet demonstrated that it complies with article 3(4) of the Convention.

Article 3(1)

33. In light of the Committee's findings in paragraphs 28 and 32 above, the Committee finds that the Party concerned has not yet demonstrated that it complies with the obligation in article 3(1) of the Convention to provide a clear, transparent and consistent framework to implement the provisions of article 3(4) and (9) of the Convention.

IV. Conclusions

34. The Committee finds that the Party concerned has not yet demonstrated that it is in compliance with article 3(1), (4) and (9) of the Convention, while welcoming the initial steps taken in that direction.

35. The Committee invites the Party concerned to take the necessary legislative, regulatory or other measures to:

- (a) Ensure that its legal framework explicitly sets out that foreign citizens and persons without citizenship have the same right to found and participate in non-governmental organizations promoting environmental protection as do citizens of Turkmenistan;
- (b) Ensure that its legal framework makes clear that members of the public who decide to come together to exercise their rights under article 9(2) of the Law on Nature Protection, for example, to undertake environmental rehabilitation activities or to take part in demonstrations on nature protection issues and, in doing so, choose to identify themselves by a common name, would not be considered as acting as an "unregistered public association" and thus have their activities prohibited under article 7, paragraph 2, of the 2014 Act on Public Associations.¹²

36. The Committee invites the Party concerned to provide, as a matter of urgency, the text of all draft legislative measures through which the Party concerned proposes to address paragraph 35 (a) and (b) above, together with an English translation thereof and the envisaged timeframe by when the draft legislative measures will be adopted.

37. The Committee invites the Party concerned to provide a final progress report by 1 October 2020 on the measures it has by that date taken to address paragraph 35 (a) and (b) above, including the text of all legislative measures it has by that date adopted to that end.

38. The Committee reminds the Party concerned that all measures necessary to implement request ACCC/M/2017/2 must be completed by, and reported upon, by no later than 1 October 2020, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it is fully in compliance with respect to the matters within the scope of that request. If the Party concerned has not by that date taken the necessary measures to demonstrate that it is in compliance, the Committee will report that fact to the Meeting of the Parties. The Meeting of the Parties would then be expected to adopt a decision on the compliance of the Party concerned at its seventh session.

¹² Committee's supplementary first progress review, 16 August 2019, para. 65.