

REPLIES

of Turkmenistan, Party to the Aarhus Convention,
to the questions asked in the letter of 5 September 2018 from
Under-Secretary-General Ms O. Algayerova, Executive Secretary of the UNECE

Law of Turkmenistan of 3 May 2014 on Public Associations ('the Public Associations Act') with the amendments and additions introduced by Law of Turkmenistan No. 503-V of 4 February 2017.

ANSWER TO QUESTION 7:

The main reason for amending Articles 1, 3 and 16(2) of the Public Associations Act related to the fact that a drafting error had introduced the inaccurate wording "*raýatlaryň başlangyjy boýunça*" into the original Turkmen version of the Act (the Law of 3 May 2014). The word "*başlangyjy*" does not correspond to the Russian "*по инициативе*" ['on the initiative of']. In view of this, a decision was taken to replace it with the word "*tarapyndan*", which means "*со стороны*" ['for and on behalf of']. That is, public associations are to be established by citizens or on behalf of citizens. Amending the text of the Act in this way does not essentially change its meaning, since the text goes on to use the wording "... associated on the basis of community of interests...", which, clearly, refers to the initiative of citizens.

The addition of the words "of Turkmenistan" to the word "citizens" in Articles 1, 3 and 16(2) of the Act leads to some contradictions with Articles 4(1), 6(1)1-2, 7(1), 8(3), 11(1), 11(5) and 13(2), which employ the concepts "citizens" and "natural persons". In view of these possible contradictions, we propose that this situation should form the basis of further discussions of the above-mentioned provisions of Turkmenistan's Public Associations Act.

ANSWER TO QUESTION 8:

The deletion of Article 4(2) from the Public Associations Act resulted from the fact that this issue is governed by other articles of the Act. However, it has had no effect whatsoever on the rights of foreign citizens and persons without citizenship in establishing public associations. Regardless of the deletion of Article 4(2), the Act nevertheless maintains the right to establish public associations with the participation of foreign citizens and persons without citizenship. The following articles of the Act evidence this:

Article 4(1) of the Act provides that "the right of citizens to establish public associations is to be realized both directly, *through the association of natural persons*, and via legal entities that are public associations". In other words, the reference to 'natural persons' in this Article also includes foreign citizens and persons without citizenship.

Article 11(1), covering "Founders and members of public associations", provides that the founders of a public association may be *natural persons* who have attained the age of 18 and legal entities that are public associations.

Furthermore, under the legislation of Turkmenistan, the concept "natural persons"

includes foreign citizens and persons without citizenship. By way of example, we can instance Article 14(1) of the Tax Code of Turkmenistan, which states that citizens of Turkmenistan, citizens of foreign countries and persons without citizenship are to be recognized as natural persons. In addition, the Civil Code of Turkmenistan provides that “natural persons and legal entities may be subjects of civil-law relations. ... This rule shall apply to citizens of Turkmenistan, foreign citizens and persons without citizenship, whether engaging in entrepreneurship or not.” (Article 2(3)).

ANSWER TO QUESTION 9:

There has been no official interpretation by an executive, legislative or judicial authority at the national level of the term “citizens” in Article 4(1) of the Public Associations Act. Nevertheless, in a number of laws of Turkmenistan, the concept “citizens” includes or is intended to include foreign citizens and persons without citizenship. It is important to mention, by way of example, Article 44 of the Constitution of Turkmenistan (as amended) of 14 September 2016, which states that “citizens have the right to establish political parties and other public associations operating within the limits of the Constitution and laws”. This approach is confirmed by Article 15 – “Participation in public associations” – of the Law of Turkmenistan of 26 March 2011 on the Legal Status of Foreign Citizens in Turkmenistan. This article states that “foreign citizens in Turkmenistan have the right to join public associations if this is provided for by the associations’ charters. Foreign citizens’ membership of public associations is governed by the relevant legislation of Turkmenistan.”.

Drawing on this and by analogy, *inter alia* the wording of Article 4(1) and Article 4(2) [*sic*] of the Law of Turkmenistan on Nature Protection enshrines the following:

“1. Citizens of Turkmenistan, foreign citizens and persons without citizenship have the right to a favourable environment, to defend it from the negative impact of economic and other activities.

2. Citizens have the right:

2) to create public associations undertaking activities in the area of nature protection;”.

Law of Turkmenistan of 1 March 2014 on Nature Protection with the amendments introduced by Law of Turkmenistan No. 281-V of 18 August 2015 and Law No. 532-V of 20 March 2017.

ANSWER TO QUESTION 10:

There has been no official explanation or interpretation by an executive, legislative or judicial authority at the national level of the term “citizens” in Article 9(2) of the Law on Nature Protection. Nevertheless, in this instance, the concept “citizens” in Article 9(2) of the Law of Turkmenistan on Nature Protection is intended to include foreign citizens and persons without citizenship, in addition to citizens of Turkmenistan. This flows from the preceding provision: Article 9(1) of the Law states that “citizens of Turkmenistan, foreign citizens and persons without citizenship have the right to a favourable environment, to defend it from the

negative impact of economic and other activities.”, while Article 9(2) begins: “Citizens have the right: ...”.

ANSWER TO QUESTION 11:

The establishment of any public association, including one undertaking activities in the area of nature protection, is regulated in every case by Article 4 of the Public Associations Act. Article 3 of the Public Associations Act states that “the force of this Act extends to public associations established by citizens of Turkmenistan, excluding religious organizations, political parties, trade unions and also non-commercial unions and other public associations established by commercial organizations, where the procedure for this establishment and for their operation is regulated by special laws”. Thus, the legislation of Turkmenistan does not make any provision to regulate the establishment of a public association undertaking activities in the area of nature protection as a special matter.

In addition, Article 9(2) of the Law on Nature Protection does not establish a separate legal mechanism through which public associations undertaking activities in the area of nature protection may be created. Article 9(2) simply and solely enshrines the right of citizens to found public associations.

The legal mechanism for establishing public associations is governed not only by the Public Associations Act, but also by

- Resolution No. 654 of the President of Turkmenistan of 14 January 2004 (as amended by Resolution No. 14354 of 4 August 2015), which approved a procedure for registering public associations, and by

- the Regulations on the Commission for reviewing materials on the registration of religious organizations and public associations at the Ministry Adalat (Ministry of Justice) of Turkmenistan, approved by Resolution No. 7197 of the President of Turkmenistan of 22 April 2005 (as amended by Resolution No. 10717 of 2 December 2009).

ANSWER TO QUESTION 12:

The contradiction concerned lies in the fact that the drafting of Article 9(2)2 of the Law on Nature Protection, which provides that “citizens have the right ... to create public associations undertaking activities in the area of nature protection”, did not take into account the requirements of Article 7(2) of the Public Associations Act. In other words, Article 9(2) of the Law on Nature Protection ought rather to have provided that ‘citizens have the right to create, *under the established procedure*, public associations undertaking activities in the area of nature protection’.

ANSWER TO QUESTION 13:

No legislative, administrative, judicial or practical measures have been taken since the February 2017 amendments to the Public Associations Act.

ANSWER TO QUESTION 14:

The contradiction between the articles of the Public Associations Act referred to lies in the fact that they do not employ a uniform concept: Articles 1, 3 and 16(2) refer to “citizens of Turkmenistan”, while Article 4(1) and other articles of the Act refer to “citizens”. This gives rise to the possibility of differing interpretations of these concepts. This point should be discussed further by officials and experts from the relevant ministries, departments and agencies.

ANSWER TO QUESTION 15:

No legislative, administrative, judicial or practical measures to eliminate the contradictions identified have been taken since the 4 February 2017 amendments to the Public Associations Act.

ANSWER TO QUESTION 16:

We do not see any contradiction between Article 65 of the Administrative Offences Code, whose provisions cover responsibility for evading state registration of a public association, and the provisions of Article 9 of the Law on Nature Protection. Article 7(2) of the Public Associations Act, which provides that “it is forbidden to operate unregistered public associations in the territory of Turkmenistan”, was in force before the 4 February 2017 amendments to the Act: yet this issue was not raised then as an instance of non-compliance with the provisions of the Aarhus Convention.

ANSWER TO QUESTION 17:

With regard to the legislation of Turkmenistan, the fundamental approach to determining whether one legislative act prevails over another is to apply the criterion of precedence of legal effect.

Article 8 of Turkmenistan’s Statutes and Regulations Act establishes a hierarchy of legislation, under which the Constitution has supreme legal effect, while statutes and other regulatory acts are to be adopted on the basis of and in accordance with the Constitution.

Articles 9, 10, 19 and 20 of that Act also set out other provisions relating to the operation of and the procedure for applying different types of legislation, in particular:

By comparison with other laws and regulations, constitutional laws have the highest legal effect after the Constitution.

Codes have a higher legal effect than other laws. Thus, the Civil Code of Turkmenistan exerts greater legal force in civil matters than other codes and statutes that contain relevant provisions. The Land Code of Turkmenistan states that laws and regulations governing matters of land law are to be adopted on the basis of the Land Code and may not run counter to its

provisions. In the case of any such contradiction, the provisions of the Land Code are to prevail (Article 2(3)). The Water Code of Turkmenistan provides that laws and regulations of Turkmenistan governing matters of water use and conservation are to be adopted on the basis of the Water Code and must not run counter to its provisions (Article 2(2)).

If particular social relations are governed by both general and special laws, then the provisions of the special legislation are to prevail.

Where there are contradictions between the provisions of laws and regulations which have different levels of legal effect, the provisions of the higher-level legislation are to apply.

In the event of a contradiction between the provisions of laws and regulations that have equal legal effect and the same scope, the provisions of the legislation enacted later in time are to prevail.

ANSWER TO QUESTION 18:

Since the date of Turkmenistan's accession to the Aarhus Convention, the country's courts have not delivered any judgments on the primacy of the requirements of the Convention over any conflicting provisions of national legislation, or vice versa.

Evidence of practice

ANSWERS TO QUESTIONS 19-20:

No public associations undertaking activities in the area of nature protection have been registered since the February 2017 amendments to the 2014 Public Associations Act. Nor has any issue of liquidation, termination of operation or banning of a public association undertaking activities in the area of nature protection arisen since then.

ANSWER TO QUESTION 21:

Under Article 7(2) of the Public Associations Act, it is forbidden to operate unregistered public associations in the territory of Turkmenistan. However, in practice, no such situations have come to light.

ANSWER TO QUESTION 22:

The provisions of Article 65 of the Administrative Offences Code cover administrative responsibility for violation of the procedure for organizing the activities of a public association. Evading state registration of a public association, operating liquidated public associations or any public association whose operation has been terminated or prohibited under the procedure laid down by the legislation of Turkmenistan or participating in the activities of such associations is to entail a fine of between five and ten basic units.

Disseminating information about liquidated public associations or about those whose

operation has been terminated or prohibited under the procedure laid down by the legislation of Turkmenistan, without giving any indication of their status, is a procedural violation and is to entail a fine of between two and five basic units.

Financing the operation of a public association that has no state registration or of a liquidated public association or of a public association whose operation has been terminated or prohibited under the procedure laid down by the legislation of Turkmenistan is to entail a fine of between five and ten basic units with or without confiscation of financial resources.

To date, no fine has been imposed under Article 65(1), Article 65(2) or Article 65(3) of the Administrative Offences Code on an unregistered, banned, terminated or liquidated public association undertaking activities in the area of nature protection.