

Comments of the State Committee of Turkmenistan on Environmental Protection and Land Resources on the questions attached to Letter No. 2018/OES/344/ENV/176 of 5 September 2018 from Ms Olga Algayerova, Executive Secretary of the UNECE

The State Committee of Turkmenistan on Environmental Protection and Land Resources ('the State Committee') expresses its appreciation to the United Nations Economic Commission for Europe (the UNECE) for its co-operation in implementing national and regional environmental protection programmes, including *inter alia* its major contribution to the work of the Interstate Commission on Sustainable Development of Central Asia (ICSD). The State Committee is also grateful to the UNECE for its continued support in regard to implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) in Turkmenistan.

Pursuant to the list of questions addressed to Turkmenistan by the UNECE Aarhus Convention Compliance Committee ('the Compliance Committee'), and in accordance with the conditions specified in the UNECE's Letter No. 2018/OES/344/ENV/176 of 5 September 2018, the State Committee prepared and sent its comments on Questions 1 to 6 in the letter (including Turkmen, Russian and English versions of the legislation requested in Questions 1 to 6) by 1 October 2018.

The State Committee wishes to point out that the Law of Turkmenistan on Public Associations ('the Public Associations Act') does not fall within the competence of the State Committee: therefore, in order to provide detailed clarification on Questions 7 to 22, which relate to the content of the Act, longer is needed than the period up to 1 December specified in the UNECE's letter. A number of different departments need to undertake a thorough joint examination of the questions received; in addition, Questions 19 to 22 relate to the activities of public associations, which are regulated by the Ministry *Adalat* ('the Ministry of Justice') of Turkmenistan.

Moreover, the State Committee considers that, in the aim of continuing to engage in constructive dialogue with the UNECE within the framework of the Aarhus Convention and in the aim of implementing the Convention's provisions, it is again necessary to provide a detailed review of the chronology of events connected with both the previous and the new requirements placed on Turkmenistan by the Compliance Committee.

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In 2005, the Compliance Committee made a finding to the effect that the legislation of Turkmenistan did not comply with the Aarhus Convention. From 2005

to 2014, the Ministry of Nature Protection of Turkmenistan (which was reconstituted as the State Committee of Turkmenistan on Environmental Protection and Land Resources on 8 January 2016) corresponded with the Compliance Committee regarding Decisions II/5e [*sic*], III/6 and IV/9g of the Meeting of the Parties to the Aarhus Convention about the compliance of Turkmenistan's legislation with the provisions of the Convention.

A national working party also met to discuss this issue in 2009 and 2010. These meetings were attended by representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Nature Protection, the National Institute for Democracy and Human Rights under the President of Turkmenistan, the Society of Nature Protection of Turkmenistan and others. They engaged in detailed discussion of implementation of the Aarhus Convention in Turkmenistan and related issues of national legislation.

A delegation of members of the Compliance Committee visited Turkmenistan on 18 and 19 April 2011. During their visit, they met representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Nature Protection, the Ministry of Education, the National Institute for Democracy and Human Rights under the President of Turkmenistan, the Society of Nature Protection of Turkmenistan and other public organizations. The Turkmen side presented in-depth information on the implementation of the Aarhus Convention in Turkmenistan and the members of the delegation explained what the Compliance Committee required of Turkmenistan.

After consideration of the outcome of the expert mission's visit to Turkmenistan and of its report to the fourth session of the Meeting of the Parties to the Aarhus Convention (June 2011), Decision IV/9g was adopted. One paragraph of the Decision states that Turkmenistan should introduce amendments to the 2003 Public Associations Act and should provide the UNECE with information on this by 1 October 2012. **Decision IV/9g** and the document '**Suggestions** by the Members of the Compliance Committee of the Aarhus Convention on Amendments to the Law on Public Associations of Turkmenistan' were sent to Turkmenistan by the UNECE.

Since discussion of this issue began and the Meeting of the Parties adopted its first Decisions on Turkmenistan, the Ministry of Nature Protection has sent a series of official letters (Ref. No. 47/01 of 27 July 2005, Ref. No. 28/01 of 6 January 2006, Ref. No. 1484/01 of 3 August 2006, Ref. No. 1361/01 of 7 June 2008, Ref. No. 746/01 of 27 March 2009, Ref. No. 2441/01 of 6 November 2009, Ref. No. 434/01 of 4 March 2011) to the UNECE Aarhus Convention Secretariat, clarifying the actions undertaken to implement the Aarhus Convention in Turkmenistan and to bring national legislation into compliance with the Convention. These responses all emphasized that Turkmenistan has complied with its international obligations under the Aarhus Convention. In each of these letters, Turkmenistan presented detailed information on the issues concerned.

On 26 September 2012, a meeting took place in Turkmenistan, at the Ministry of Nature Protection, between the Minister for Nature Protection and Andrey Vasilyev, Deputy Executive Secretary of the UNECE. During the meeting, Mr Vasilyev reminded the Minister once again of the Compliance Committee's requirements and of the need for Turkmenistan to submit a report by 1 October 2012, with information on amendments made to the country's legislation. The Minister for Nature Protection presented detailed information about the implementation of the Aarhus Convention in Turkmenistan, about the opening of an Aarhus Centre (supported by the Ministry of Foreign Affairs of Turkmenistan and the OSCE) and the plans for its work, and about the work being undertaken to improve national environmental protection legislation in the aim of further extending the provisions of the Aarhus Convention in new draft environmental laws. In particular, the Ministry of Nature Protection drew the UNECE Deputy Executive Secretary's attention to the fact that many provisions of the Public Associations Act already complied with the Convention. Moreover, it should be taken into account that the process of amending such important laws, which form the basis for building civil society, is a lengthy one and that in some countries it can extend over a number of years. Consequently, the introduction of any amendments into the Public Associations Act could take longer than the time specified in Decision IV/9g of the fourth session of the Meeting of the Parties in regard to Turkmenistan. The Minister for Nature Protection also explained **that the Ministry of Nature Protection was responsible only for environmental laws and monitoring their implementation, and that the Public Associations Act did not form part of environmental law.**

In the light of Turkmenistan's work on implementing the Aarhus Convention and its active ongoing process of reforming national legislation, the Ministry of Nature Protection also requested that the UNECE Executive Secretary assist Turkmenistan with the possible withdrawal or reformulation of the Compliance Committee's requirements.

Following the meeting with Mr Vasilyev, therefore, the Ministry of Nature Protection sent Mr Sven Alkalaj, Executive Secretary of the UNECE, a letter providing detailed clarification of issues relating to implementation of the Aarhus Convention in Turkmenistan (Ref. No. 2083/04, dated 28 September 2012).

Unfortunately, both Turkmenistan's in-depth clarification in that letter and the detailed oral explanations provided by the Ministry of Nature Protection at the meeting with the UNECE Deputy Executive Secretary, when it requested that the requirements might be withdrawn, have been misunderstood. Furthermore, they have not been reflected in the Compliance Committee's course of action towards Turkmenistan.

As a result of the UNECE's failure to understand Turkmenistan's explanations and its divergent interpretation of the country's legislation, in July 2013 it sent another request, urging Turkmenistan to provide information on progress made in

amending the Public Associations Act in line with the Compliance Committee's recommendations.

As part of the ongoing reform of national legislation and in view of the UNECE's conditions, Turkmenistan had previously produced recommendations (with a comparative analysis in the form of a table) for possible amendments and additions to the Public Associations Act. In August 2013, the Ministry of Nature Protection sent these recommendations by letter (Ref. No. 1959/01 of 19 August 2013) for consideration by the *Mejlis* (Parliament) of Turkmenistan, the Ministry of Justice and the National Institute for Democracy and Human Rights under the President of Turkmenistan.

A review of the suggestions and recommendations put forward and a significant amount of work carried out by the Parliament of Turkmenistan formed the basis for the subsequent **adoption of the new Law of Turkmenistan on Public Associations of 3 May 2014.**

In practice, the new 2014 Public Associations Act took into account most of the recommendations made by the Compliance Committee. In addition, some of the specific requirements of the Aarhus Convention were taken into account in the new Law of Turkmenistan on Nature Protection of 1 March 2014.

Taking into account the above legislative developments in Turkmenistan, a meeting of the Compliance Committee considered that Turkmenistan was no longer in a state of non-compliance with the Aarhus Convention and recommended that the 6th Meeting of the Parties to the Aarhus Convention (held at Budva, Montenegro, in September 2017) endorse this finding.

The situation then took a new turn. On 4 February 2017, the Parliament of Turkmenistan adopted a Law to amend and supplement the Public Associations Act. In the opinion of the Compliance Committee, practically all the necessary amendments to or deletions from the Public Associations Act were covered by the resulting changes made to the 2014 Act. The Compliance Committee subsequently received a letter (dated 1 August 2017) from the European Environmental Bureau, alleging that the new amendments to the Public Associations Act did not comply with the provisions of the Aarhus Convention. In this connection, the Aarhus Convention Secretariat asked Turkmenistan to provide a detailed explanation of the provisions of the Law adopted on 4 February 2017.

In August 2017, therefore, the State Committee submitted its Explanatory Note on the amending Law (*three-page document appended*) to the Secretariat. However, the Compliance Committee considered that it could not draw any conclusions from the Note. In view of this, the matter of Turkmenistan's compliance with the Aarhus Convention was removed from the agenda for the 6th Meeting of the Parties (September 2017).

Conclusions: The current situation demonstrates that the interpretation of Turkmenistan's compliance with the Aarhus Convention by members of the Compliance Committee diverges from Turkmenistan's understanding of the matter. In this connection, Turkmenistan is committed to continuing active consultations and co-operation with the UNECE in order to clarify the conditions imposed on Turkmenistan, to have these revoked and to implement the Aarhus Convention in the country: therefore Turkmenistan again urges the Compliance Committee to consider carefully the State Committee's Explanatory Note of 23 August 2017 on the amendments to the Public Associations Act. In the light of Turkmenistan's positive experience of co-operation with the UNECE to date, the State Committee believes that detailed joint examination and discussion of this issue from every angle are essential. Turkmenistan is ready to engage in constructive dialogue with the Aarhus Convention Secretariat and the Compliance Committee in order to achieve effective implementation of the provisions of the Convention, taking into account not only national but also global environmental interests.

EXPLANATORY NOTE

by the State Committee of Turkmenistan on Environmental Protection and Land Resources on the Law of Turkmenistan of 4 February 2017 amending and supplementing the Law of Turkmenistan on Public Associations ('the Act on Public Associations').

The Law of Turkmenistan of 4 February 2017 amended and added to the 2014 Act on Public Associations, affecting several of its articles.

1. First and foremost, **Article 3 of the Act, 'Scope of this Law', was amended**, so that the amended provision now reads: *"The force of this Law extends to public associations, 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"*.

The previous wording of Article 3 of the Act allowed the operation of such public associations (religious organizations, political parties, trade unions and non-commercial organizations) to be governed by the Act on Public Associations pending the adoption of special laws. Relevant laws concerning these public associations have now been adopted (with the exception of a law on non-commercial organizations), and this is the reason for amending Article 3.

2. As far as the amendments to Articles 1, 4 and 16 of the Act on Public Associations are concerned, these **have had no impact on the rights of foreign citizens and persons without citizenship in establishing public associations**. Regardless of the amendments, the Act maintains the right to establish public associations with the participation of foreign citizens and persons without citizenship. The following articles of the Act provide evidence of this:

Article 4 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 – i.e. public associations"* (Article 4(1)). That is, this Article concerns all citizens who are natural persons, which means that foreign citizens and persons without citizenship also have the right to establish public associations.

Article 10, 'Operating international public associations in Turkmenistan' states:

"1. Structural subdivisions – organizations, departments (branches) and representations – of international public associations may be established and operate in Turkmenistan."

2. *The operation of structural subdivisions – organizations, departments (branches) and representations – of international public associations is to be governed by their charters, adopted in accordance with Article 19 of this Law”.*

*Article 11(1), ‘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. The concept of ‘natural persons’ includes foreign citizens and persons without citizenship.*

Article 20 enshrines matters connected with the registration of a public association, including an international (foreign) one, the list of documents to be submitted for State registration, etc.

Article 26 has maintained all rights for public associations with the exception of the right “*to participate in elections in accordance with the procedure laid down by the legislation of Turkmenistan*”. The exclusion of this right from the list of rights of public associations is entirely justified, since international public associations cannot participate in the political life of the country, most especially in central and local government elections.

3. The Law of Turkmenistan of 4 February 2017 amending and supplementing the Act on Public Associations has also had ***no impact whatsoever on the environmental rights of public associations and citizens, provided for by Turkmenistan’s 2014 Law on Nature Protection. In the relevant period from 2014, this has not been amended or supplemented in any way affecting the rights of foreign citizens and persons without citizenship.***

Article 9(1) of the Law on Nature Protection lists all the categories of people who have environmental rights – ***these are citizens of Turkmenistan, foreign citizens and persons without citizenship.*** Article 9(1) provides that they “*have a right to a favourable environment, to defend it from the negative impact of economic and other activities*”. In turn, “the right to a favourable environment” includes all the environmental rights referred to in Article 9(2) of the Law, which are enjoyed by the persons listed in Article 9(1) of the Law.

This wording is based on the fact that the Constitution of Turkmenistan (as amended on 14 September 2016) provides that *every person has the right to an environment that is favourable to life and health* (Article 53). That is, the concept of ‘every person’ includes citizens of Turkmenistan, foreign citizens and persons without citizenship. Further, it is important to note that the *Constitution of Turkmenistan is the Fundamental Law of the State. The norms and provisions enshrined in it have direct effect. Statutes and other legislation which contradict the Constitution have no legal force* (Article 8).

4. 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)). Therefore, if any dispute arises on a particular issue, primacy will be given to Article 4(1) and/or Article 11(1), since these concern all categories of citizens and thus comply with the provisions of the Aarhus Convention. Under the Constitution of Turkmenistan, Turkmenistan will recognize the primacy of universally recognized norms of international law (Article 9). In addition to the Constitution, the Act on Public Associations (Article 2 (2)) and the Law on Nature Protection (Article 2 (2)) also state the primacy of the norms of international law over national legislation.

In addition, under Article 11 of the Constitution of Turkmenistan “*Foreign citizens and persons without citizenship enjoy the same rights and freedoms and bear the same obligations as citizens of Turkmenistan under the laws and international treaties of Turkmenistan*”.