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## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Compliance Committee

Thirty-second meeting  
Geneva, 11-14 April 2011

## Report of the Compliance Committee

### Addendum

## Compliance by Turkmenistan with its obligations under the Convention

### I. Implementation of decision III/6e of the Meeting of the Parties

1. At their third meeting, the Parties adopted decision III/6e on compliance by Turkmenistan with its obligations under the Convention (ECE/MP.PP/2008/2/Add.13).
2. Through decision III/6e, the Meeting of the Parties noted with regret the failure of Turkmenistan to take measures to implement decision II/5c of the Meeting of the Parties (ECE/MP.PP/2005/2/Add.9) and decided to issue a caution to Turkmenistan, to become effective on 1 May 2009, unless Turkmenistan had fully satisfied the conditions set out in the subparagraphs below and had notified the secretariat of this fact by 1 January 2009. The successful fulfilment of these conditions was to be established by the Committee:
  - (a) The Act on Public Associations is amended in such a way as to make clear that foreign citizens and persons without nationality can enjoy the same rights as citizens in the formation of and participation in public associations (see article 5(1) of Act);
  - (b) The Act on Public Associations is amended in such a way as to make clear that members of the public may conduct activities on behalf of non-registered public associations in harmony with the requirements of the Convention, in particular, article 3, paragraph 4 (see article 17(3) of Act);

(c) Other legislation does not run counter to the above amendments (ECE/MP.PP/2008/2/Add.13, para. 5).

3. The Meeting of the Parties invited Turkmenistan to submit to the Committee periodically, namely in November 2008, November 2009 and November 2010, detailed information on progress in implementing the recommended measures (ECE/MP.PP/2008/2/Add.13, para. 6).

4. The Meeting of the Parties also invited Turkmenistan to consider accommodating an expert mission, with the involvement of Committee members and other experts as appropriate, with a view to making available to it a wide range of expert opinion on possible ways to implement the measures referred to in decision II/5c, including any possible amendments to the Act of Public Associations (ECE/MP.PP/2008/2/Add.13, para. 7). It requested the secretariat, and invited relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in implementing of these measures (ECE/MP.PP/2008/2/Add.13, para. 8).

5. On 2 October 2008, the Convention secretariat forwarded decision III/6e to Turkmenistan with a reminder concerning the requests and recommendations of the Meeting of the Parties contained therein. On 12 January, 27 January and 9 March 2009, the secretariat sent reminders to Turkmenistan referring to the deadlines set in decision III/6e for the submission of information by that Party.

6. The Committee received information from Turkmenistan by letter of 29 March 2009.

7. At its twenty-third meeting (31 March – 3 April 2009), the Committee reviewed the steps taken by Turkmenistan to fulfill the conditions set out in paragraph 5 of decision III/6e. In particular, the Committee considered the letter sent by Turkmenistan on 28 March 2009.

8. In its findings, the Committee welcomed the invitation by Turkmenistan to members of the Committee to visit that country and also the willingness of Turkmenistan to take part in joint projects with the UNECE to strengthen Turkmenistan's capacity to implement the Convention. The Committee also expressed its willingness, within available resources, to work with the Government to assist it in ensuring that its new legislation, where relevant to the Aarhus Convention, would be in compliance with Turkmenistan's obligations under the Convention.

9. At the same time, the Committee found that Turkmenistan had failed to communicate, by 1 January 2009 or since, that it had taken measures to implement the conditions set out in paragraph 5 of decision III/6e. In particular, the Committee found that the Party concerned had not indicated that the 2003 Act on Public Associations had been amended in such a way as to bring its provisions into compliance with the Convention. In light of the Committee's findings, the caution issued by the Meeting of the Parties through that decision would become effective on 1 May 2009.

10. By letter of 16 April 2009, the UNECE Executive Secretary informed the Party concerned of the evaluation and findings of the Committee at its twenty-third meeting.

11. On 25 September 2009, the secretariat sent a reminder to the Party concerned about the upcoming deadlines and about the possibility of a mission of members of the Committee to Turkmenistan in accordance with that Party's previous invitation.

12. On 6 November 2009, the Party concerned sent to the Committee its report due in November 2009 according to decision III/6e. In its report, the Party concerned indicated that in the reporting period November 2008 – November 2009, the Ministry of Nature Protection

in collaboration with other ministries and official bodies had undertaken a number of activities:

(a) Implementation of a State master plan for environmental protection that had the status of a law - the National Action Plan for Environmental Protection - and execution of measures designed to ensure its successful implementation;

(b) A large number and variety of environmental protection measures and environmental actions undertaken by the Ministry of Nature Protection and related ministries and official bodies with the support of projects run by UNDP, UNEP, TACIS and other international organisations;

(c) Participation by Turkmen experts in national, regional and international seminars and theoretical and practical conferences on building capacity to implement international conventions; and

(d) Environmental awareness-raising and public education about environmental protection through the media, TV, and the publication of books, textbooks and various types of informational material.

13. In its report, the Party concerned also provided information to the Committee regarding the outcomes of the regional project "Strengthening Public Participation and Civil Society Support in the Implementation of the Aarhus Convention in Central Asian Countries" which ran in Turkmenistan from 2007 to 2009 with the aim to develop cross-border co-operation and enhance public participation in the environmental decision-making process. Specific work was carried out with the collaboration of international experts in relation to the project, including:

(a) A training course for the judiciary on national provisions based on international documents relating to the Aarhus Convention;

(b) An analysis on the conformity of the country's legislation with the Convention;

(c) A round table on promoting the mechanism for public participation in the country's environmental policy;

(d) A guide for state officials and civil society on using the Convention;

(e) Seminars on 'Access to Justice' in every provincial [velayat] centre of Turkmenistan;

(f) Four issues of a newsletter published on Turkmenistan's activities in relation to the project;

(g) A seminar in Ashgabat on promoting the Protocol on Pollutant Release and Transfer Registers (PRTR Protocol);

(h) A comparative analysis between the PRTR Protocol and the national statistical reporting system; and

(i) Three pilot projects, including the opening of a national Aarhus resource centre.

14. The Party concerned also reiterated its willingness to host an expert mission of members of the Compliance Committee.

15. By letter of 25 November 2009, the Committee, through the secretariat, requested the Party concerned to provide information on the concrete proposals for changes to the Act on Public Associations referred to its report submitted in November 2009.

16. By email of 9 December 2009,<sup>1</sup> the Party concerned provided clarification that following several roundtables conducted by the National Institute of Democracy and Human Rights under the President of Turkmenistan with the support of the International Center for Not-for-Profit Law, proposals for changes to articles 5, 13-18, 28-29 and 31 of the Act on Public Associations had been drafted and it was planned to seek the approval of the State Inter-ministerial Commission on International Environmental Agreements<sup>2</sup>. Specifically, the proposed changes included the following:

(a) Repealing the prohibition on activities of unregistered associations (art. 17(3) of Act);

(b) Setting the minimal number of founders (5 founders), for the creation of any public association, irrespective of its area of activity (art. 15(2) of Act);

(c) Recognizing the right of foreign citizens and persons without citizenship to act as founders, members and participants of public associations (art. 5(1) of Act); and

(d) Limiting the power of the Ministry of Justice to cancel the registration of a public association or to suspend its activities, with a requirement that any decision on these issues is to be the exclusive prerogative of the court (art. 32(1) of Act).

17. On 18 December 2009, the Committee received information from the European ECO Forum indicating that it considered that no significant steps had been taken by the Party concerned to implement decision III/6e of the Meeting of the Parties.

18. At its twenty-sixth meeting (15-18 December 2009), the Committee took note of the report provided by Turkmenistan dated 6 November 2009 and its subsequent correspondence of 9 December 2009 in response to the secretariat's letter of 25 November 2009 requesting more detailed information on the concrete proposals for changes to the Act of Public Associations referred to in Turkmenistan's email of 9 December 2009. The Committee also took note of correspondence received from the European ECO Forum dated 18 December 2009 and an oral statement made in open session by Earthjustice regarding the situation for environmental NGOs in Turkmenistan.

19. The Committee welcomed the progress that appeared to have been made towards amending the Act on Public Associations in accordance with decision III/6e, as well as the other activities referred to in the email of 9 December 2009. The Committee asked the secretariat to write to the Party concerned requesting the full text of the draft revised Act on Public Associations in both the national language and the Russian language and, if possible, in an English translation by 1 February 2010, so as to enable the Committee to review the legislation in advance of its twenty-seventh meeting (16-19 March 2010). The Committee welcomed the Party's confirmation of its previous invitation to host a visit by the Committee to review progress in the implementation of the Convention and asked the secretariat to liaise with Turkmenistan regarding arrangements for such a visit.

20. By letter of 22 December 2009, the secretariat communicated to the Party concerned the outcome of the Committee's review at its twenty-sixth meeting and the Committee's requests.

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<sup>1</sup> The names of the institutions and the English language usage contained in the email of 9 December 2009 have been edited for infallacies.

<sup>2</sup> The Commission's full name translates as the State Commission on Implementation of International Environmental Agreements Ratified by Turkmenistan and Programmes of the United Nations. The Commission was established by a Decree of the President of Turkmenistan and its members are deputy ministers of the relevant ministries. The Commission has 9 working groups, including a working group responsible for the Aarhus Convention.

21. At the request of the Committee, the secretariat sent further reminders to the Party concerned on 23 April, 29 July and 1 November 2010, about the full text of the draft revised Act on Public Associations and the possibility of a mission of Committee members.

22. The Party concerned submitted its national implementation report on 13 November 2010. The national implementation report does not report any revisions having been made to the Act on Public Associations.

23. On 14 January 2011, the UNECE Executive Secretary wrote to the Party concerned again requesting the Party concerned to provide the full text of the draft revised Act on Public Associations. He also enclosed a provisional programme for the proposed mission in April 2011 and a list of members of the Committee and the secretariat who were available to participate.

24. Between October 2010 and April 2011, the secretariat engaged in informal correspondence regarding the organization of the proposed mission by the Committee in April 2011.

25. At its thirty-first meeting (22-25 February 2011), the Committee finalized its report to the fourth session of the Meeting of the Parties (29 June – 1 July 2011), including its recommendations on individual Parties' compliance. With respect to decision III/6e, the Committee discussed its upcoming mission to Turkmenistan scheduled for April 2011 and agreed that it should prepare its progress report and recommendations to the Meeting of the Parties after the mission.

26. The mission of members of the Committee and the UNECE secretariat took place on 18-20 April 2011 and was organized in close cooperation with OSCE. The Committee was represented by Mr. Veit Koester, Chair of the Committee, and Mr Vadim Nee. The secretary of the Aarhus Convention together with the UNECE officer responsible for servicing the Compliance Committee attended to support the Committee members.

27. A key aim of the mission was to enable the Committee to gather relevant information to assist it to prepare its report to the Meeting of the Parties on Turkmenistan's implementation of decision III/6e. In addition, the mission had the following specific objectives:

- (a) To understand the status of the revision of the Act on Public Associations and to discuss concrete drafting suggestions
- (b) To obtain a commitment from Turkmenistan on future cooperation and ongoing collaboration and to explore possible ways to make this as effective as possible.
- (c) To create greater awareness among government officials of the Aarhus Convention and their obligations under it, including amongst those from ministries other than nature protection, in particular the Ministry of Justice
- (d) To build greater awareness amongst civil society of their rights under the Convention and the tools at their disposal

28. The mission had the following four segments:

- (a) A formal session with representatives of various government ministries and institutions and relevant international organizations;**

29. The formal session on the morning of 18 April 2011 was chaired by Turkmenistan's Deputy Minister of Nature Protection. Representatives of the following government authorities of Turkmenistan participated in the session: the Ministry of Foreign

Affairs, Ministry of Justice, Ministry of Nature Protection, Ministry for Education, ministries responsible for social and economic affairs, and the National Institute for Democracy and Human Rights under the President of Turkmenistan. In addition, the Organisation for Security and Cooperation in Europe (OSCE), the United Nations Regional Center for Preventive Diplomacy in Central Asia and several legal consultants attended the formal session. The Deputy Minister for Nature Protection, the Chair of the Compliance Committee and the Secretary of the Aarhus Convention gave addresses to open the formal session. A government official from the Ministry for Nature Protection then presented an overview of how the Aarhus Convention has been implemented in the legislation of Turkmenistan. The session ended with closing remarks by the Deputy Minister of Nature Protection and the Chair of the Compliance Committee.

**(b) A working session on the Law on Public Associations with the above representatives;**

30. The working session on the Law on Public Associations on the afternoon of 18 April 2011 was co-chaired by the Chair of the Compliance Committee and the Head of the Environment Protection Department of Turkmenistan's Ministry of Nature Protection. In addition to the participants attending the morning's formal session, the International Center for Not-for-Profit Law (ICNL), an international non-governmental organization, also attended.

31. The working session took the form of a roundtable and included a discussion of possible ways, including wording suggestions, through which the Law on Public Associations might be brought into compliance with the Aarhus Convention. In this regard, the members of the Committee were assisted by two sets of written comments containing suggested revisions to the Law on Public Associations. The first set of comments was prepared by ICNL, as an outcome of several roundtables organised with the National Institute for Democracy and Human Rights under the President of Turkmenistan and with the involvement of government officials, including from the Ministry of Justice, in late 2009 (see paragraph 16 above). A number of ICNL's written comments were discussed during the working session on 18 April 2011 and members of the Committee expressed the view that these would be a good basis from which Turkmenistan might work when undertaking revisions to the Law on Public Associations in accordance with decisions II/5c and III/6e of the Meeting of the Parties. The Committee was also in possession of a second set of written comments dated 22 June 2010 that had been independently prepared by OSCE's Office for Democratic Institutions and Human Rights (ODIHR) at Turkmenistan's request. ODIHR was not present at the working session on 18 April 2011 and these comments were not directly discussed, although the Committee considers that these, together with the ICNL comments, would be a good basis from which to work when revising the Act on Public Associations in accordance with decisions II/5c and III/6e of the Meeting of the Parties.

**(c) An interactive multistakeholder training;**

32. The multi-stakeholder training on 19 April 2011, organised jointly by the UNECE in and OSCE, was attended by government officials from the Ministry for Nature Protection, Ministry of Justice, Ministry for Construction, ministries responsible for social and economic affairs and the National Institute for Democracy and Human Rights under the President of Turkmenistan. Representatives of several national non-governmental organizations took part. The United Nations Regional Center for Preventative Diplomacy in

Central Asia and the international non-governmental organization, International Center for Not-for-Profit Law, also took part, as did several Turkmenistan academics. The training took the form of presentations by members of the Committee and the UNECE secretariat on the pillars of the Convention (followed by opportunities for questions and discussion) and interactive case studies in smaller groups. Participants demonstrated strong interest in the Convention and called for more trainings that would allow for wider participation from Turkmenistan's provinces. Many participants indicated that they had learnt new information about the rights and obligations under the Convention. Several topics, such as EIA, were of particular interest.

33. The Ministry for Nature Protection announced at the training that Turkmenistan welcomed the opening of an OSCE Aarhus Center in Ashgabat, which will help to promote the Convention more effectively.

**(d) A wrap-up session between the Ministry of Nature Protection and the secretariat on members of the Compliance Committee.**

34. A wrap-up session between the members of the Compliance Committee and the Ministry for Nature Protection took place on the afternoon of 20 April 2011. At the wrap-up session, members of the Compliance Committee and the representative of the Ministry for Nature Protection discussed the outcomes of the mission and the process going forward, including possible recommendations that the Committee might decide to make to the Meeting of the Parties in light of the mission.

## II. Conclusions

35. The Committee makes the following conclusions in light of the information it gathered during the mission:

- a. As at the date of this report, the Act on Public Associations has not been revised to address the Committee's findings endorsed by the Meeting of the Parties through paragraph 1 of decision II/5c. However, Turkmenistan appears to have taken some initial steps to address the Committee's concerns. In particular, in 2009 the National Institute of Democracy and Human Rights under the President of Turkmenistan invited ICNL to prepare written comments on the Act on Public Associations and together with ICNL organises a seminar and two roundtables with officials from various government ministries to obtain their input on ICNL's proposals. The government subsequently requested OSCE's ODIHR to also prepare written comments on the Act on Public Associations (see paragraph 31 above).
- b. In addition to the Act on Public Associations, other legislation may need to be examined in light of the revision to the Act on Public Associations to ensure consistency, and a clear and transparent framework in accordance with article 3, paragraph 1, of the Convention. The Code of Administrative Offences and the Presidential Decree on the Registration of Public Associations were mentioned during the working session on 18 April 2011 in this regard.
- c. The following form a good foundation on which Turkmenistan's revisions to the Act on Public Associations might be based: (i) the suggestions made by members of the Committee during the working session on the afternoon of 18 April 2011; (ii) the comments prepared by the ODIHR; and (iii) the comments

prepared by the International Center for Not-for-Profit Law, resulting from the roundtables organised in 2009 by the National Institute for Democracy and Human Rights under the President of Turkmenistan, in cooperation with the International Center for Not-for-Profit Law.

- d. The Committee welcomes the clear commitment by Turkmenistan expressed during the Committee's mission on 18-20 April 2011 that it will revise the Act on Public Associations to bring all its provisions, and any related legislation, into compliance with the Convention.

35. In addition, the Committee notes that Turkmenistan's Ministry of Nature Protection (which serves as the national focal point for the Aarhus Convention) does not have competence over the Act on Public Associations (or any revision to that Act) as that would lie with the Ministry of Justice. In these circumstances, the role of the Ministry of Foreign Affairs (responsible for international cooperation and having a supreme role over line ministries) is crucial for engaging the Ministry of Justice as to ensure the successful follow up.

### **III. Recommendations**

36. Taking into consideration the above clear commitment by Turkmenistan to bring its legislation into compliance with the Convention, the Committee:

- (a) Recommends that the caution to Turkmenistan issued through decision III/6e, and which entered into effect on 1 May 2009, be suspended by the Meeting of the Parties at its fourth session.
- (b) Recommends that the caution to Turkmenistan should re-enter into effect on 1 January 2013 unless Turkmenistan:
  - i. has amended the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention as requested by the Meeting of the Parties through paragraph 2 of decision II/5c; and
  - ii. has notified the secretariat of this fact by 1 October 2012.The successful fulfilment of these conditions is to be established by the Committee.
- (c) Recommends, inter alia, to avoid a situation where the Act on Public Associations may need to be revised again in the near future, Turkmenistan should ensure that the revisions to the Act on Public Associations are made in accordance with:
  - i. the suggestions made by members of the Compliance Committee at the working session 18 April 2011 [see accompanying document C.1/2011/4/Add.../Inf.1]; and
  - ii. the outcome of the roundtables organised by the National Institute of Democracy and Human Rights under the President of Turkmenistan and the International Center for Not-for-Profit Law in 2009, [see accompanying document C.1/2011/4/Add.../Inf.2]

- iii. The comments of the OSCE's Office for Democratic Institutions and Human Rights dated 22 June 2010 [see C.1/2011/4/Add.../Inf.3].
- (d) Recommends that Turkmenistan examine other relevant legislation, including its Code of Administrative Offences and the Presidential Decree on the Registration of Public Associations, with a view to ensuring that all relevant legislation is consistent with the provisions of the revised Act on Public Associations and together provide a clear and transparent framework to implement the provisions of the Convention, as required by article 3, paragraph 1, of the Convention.
- (e) In accordance with paragraph 4 of decision II/5c, recommends that Turkmenistan carry out the measures referred to above with the involvement of the public, including relevant non-governmental and international organizations.
- (f) To ensure the effective implementation of the above recommendations, recommends that the above measures are carried out through constructive cooperation between the Ministry of Nature Protection and the Ministry of Justice, whose engagement as the competent authority for the Act on Public Associations is crucial.
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