

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

Fifth session (Maastricht, the Netherlands, 30 June and 1 July 2014)

Excerpt from the report of the fifth session of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1)*

Decision V/91 on compliance by Turkmenistan

6. *Recommends* that by 30 November 2014 the Party concerned provide information through an official statement to confirm, to the satisfaction of the Committee, that:

Question:

a) The concept of “citizen” in article 9, paragraph 2, of the 2014 Law on Nature Protection includes any natural person, i.e., also foreign citizens and persons without citizenship, and that the concept of “natural persons” in article 11, paragraph 1, of the 2014 Act on Public Associations includes foreign citizens and persons without citizenship;

Answer:

Article 9(1) of Turkmenistan’s Law on Nature Protection (2014) lists all the categories of people who have environmental rights - *these are citizens of Turkmenistan, foreign citizens and persons without citizenship*. Article 9(1) of the Law provides that they have a constitutional 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. Consequently, the concept of “citizen” in article 9, paragraph 2, of the Law on Nature Protection includes any natural person, i.e., also foreign citizens and persons without citizenship and the concept of “natural persons” in Article 11(1) of the Act on Public Associations (2014) includes foreign citizens and persons without citizenship. The fundamental (constitutional) laws of Turkmenistan define the concept of “natural persons”. Thus, under the Civil Code of Turkmenistan (1998) “natural persons” means citizens of Turkmenistan, foreign citizens, and also persons without citizenship” (Article 19).

The Tax Code of Turkmenistan (2004) also provides that “citizens of Turkmenistan, citizens of foreign states, persons without citizenship are recognized as natural persons” (Article 14).

Question:

b) The intended interpretation of article 4, paragraph 2, of the 2014 Act on Public Associations is that foreign citizens and persons without citizenship may, in the same way as citizens of Turkmenistan, become founders of public associations;

Answer:

Not only Article 4(2) of the Act on Public Associations (2014) but also Article 4(1) confirms the fact that foreign citizens and persons without citizenship who are residing in Turkmenistan may be founders of a public association.

The concept of “natural persons” is used in Article 4(1) of the Act on Public Associations, which means that foreign citizens and persons without citizenship also have the right to establish a public association.

Excerpt from the Act on Public Associations (2014)

Article 4. Right of citizens to establish public associations

1. 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.

2. In cases provided for by this Law, foreign citizens and persons without citizenship who are residing in Turkmenistan may, alongside citizens of Turkmenistan, become founders of public associations.

Question:

c) With respect to activities of non-registered associations within the scope of the Convention, article 9 of the 2014 Law on Nature Protection prevails over the prohibition on activities of non-registered associations in article 7, paragraph 2, of the 2014 Act on Public Associations and other relevant legislation (e.g. as *lex specialis*, in the form of a special law which prevails over a more general law);

Answer:

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)).