

Report from the Ministry of Nature Protection of Turkmenistan on the fundamental provisions of the Aarhus Convention, with an analysis of Turkmen legislation and its compliance with the Convention, and on work undertaken by the country's public authorities to implement the Convention

The Aarhus Convention on Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("the Aarhus Convention" or "the Convention") was adopted at the Fourth Ministerial Conference as part of the "Environment for Europe" process in Aarhus, Denmark, on 25 June 1998 and occupies an important place among the UN's international environmental conventions and agreements.

The Aarhus Convention aims to protect the rights of every human being to live in an environment that is adequate to his or her health and well-being. Turkmenistan ratified the Convention on 30 April 1999, and hence was one of the first countries to join it. The Convention came into force on 30 October 2001; from that date, all obligations under the Convention became legally binding on all Parties to the Convention.

The Aarhus Convention is an international legal instrument that aims to protect the right of every human being to live in an environment adequate to his or her health and well-being. The Convention contains provisions regulating relationships between public authorities and the public in general and covers practically every aspect of the environment, such as water, air, soil, chemical substances, biological diversity, human health and the conditions of human life.

Promoting comprehensive public awareness of the state of the environment and its protection and establishing long-term popular awareness of environmental issues are priorities for Turkmenistan's environmental policy. The dissemination of information and educational initiatives on access to essential environmental information, on ways and Means for the public to participate in decision-making and on access to justice are put into effect in Turkmenistan on an ongoing basis.

Various means are used to inform the public about the state of the environment and its conservation and to raise environmental awareness, including the media, specifically targeted campaigns and a multitude of environmental conferences, forums, seminars, training events, meetings and so on. The international applied science journal *Problems of Desert Reclamation* is published in Turkmenistan, alongside the Ministry of Nature Protection's popular science journal *Environmentalism and Conservation*,

and scientific and popular science books, leaflets, pamphlets, manuals and guides on environmental protection are regularly produced.

A comprehensive system of environmental law has been put in place in Turkmenistan, designed to ensure broad public participation in the application of government policies on environmental protection, the efficient use of natural resources for sustainable development and the implementation of the Aarhus Convention. Turkmenistan's legislation, including the Constitution of Turkmenistan, includes a number of laws containing articles providing for public access to environmental information.

Turkmen legislation provides sufficient full, clear legal rules and guarantees to secure public access to justice; the public does not face any obstacles in this respect. However, the practice of challenging breaches of environmental rights in court has not yet developed among public associations and citizens, owing to the fact that the State and society are in a period of transition. Historically, many social issues were resolved within local communities, without recourse to complex proceedings before judicial authorities. Tackling the issue of access to justice is in many respects linked to issues of legal culture and public awareness of the instruments and procedures for applying to the courts and other authorities.

The Aarhus Convention is a binding international legal instrument, and therefore all its provisions are now being successively introduced into current Turkmen legislation. Article 6 of the Constitution of Turkmenistan recognises the primacy of generally recognised rules of international law, meaning that the provisions of international agreements and treaties ratified by Turkmenistan enter into national law and prevail over national legal rules. This principle has been embodied in legislation since the adoption of the Constitution and has subsequently been implemented in practice. In the case of a conflict between Turkmen laws and international legal instruments, international legal instruments apply.

The Aarhus Convention, ratified by Turkmenistan in 1999, prevails over national law, and consequently its provisions and rules are reflected in national legislation, particularly environmental legislation. The Aarhus Convention may be implemented by amending or adding to existing legislation or by passing new legislative acts.

Since 1991, Turkmenistan has adopted a number of environmental laws and regulations as well as other legislative acts that in one way or another relate to the implementation of the provisions of the Aarhus Convention. An analysis of current legislation identified over 40 normative instruments containing provisions of the Convention. Therefore it can be

concluded that most of the Convention's provisions are now reflected in Turkmen legislation and are implemented directly by public authorities, public associations and citizens in their daily activities. To this end, Turkmenistan has a stable political and institutional basis for ensuring the successful implementation of the main provisions of the Aarhus Convention.

Public access to environmental information is the first main pillar of the Convention, since effective public participation in decision-making requires comprehensive, accurate and up-to-date information. Access to information may be divided into two elements. The first consists of the public's rights to request information from public authorities and the duties of public authorities to provide it. The second comprises the public's rights to receive information and the authorities' duties to collect and disseminate information that is of concern to the public.

It is important to note that the provisions of articles 3, 4 and 5 of the Aarhus Convention are enshrined in Turkmenistan's current legislation:

- Article 29 of the Constitution of Turkmenistan guarantees the right of citizens to participate in managing the affairs of society and the State, either directly or through freely elected representatives. In the aim of ensuring that this constitutional provision is implemented, current legislation provides for detailed implementation mechanisms; this applies to environmental matters as well as other areas.

- The Law on Citizens' Communications and their Consideration (1991) gives Turkmen citizens the right to make oral or written proposals/suggestions for detailed improvements and to apply or complain to public authorities, public associations and other bodies, enterprises, organisations and institutions under any form of ownership. If such communications request environmental information, public authorities, public associations and other bodies and their officials, and the managers and officials of enterprises, institutions and organisations under any form of ownership must examine citizens' communications promptly, objectively and comprehensively, check the facts contained in them, make decisions in accordance with current legislation, ensure implementation of these decisions, and inform citizens of the results of their examination of the communications.

- Under the Law on State Statistics (1998), State statistical bodies must ensure that users have access to statistical information, including environmental information (Article 16).

- The Law on Citizens' Health Protection (2005) contains a specific article providing for the right of citizens to information relating to health protection, including information on public health in their place of residence, recommended nutritional intake levels, the quality of products and services and their compliance with health rules and standards. This information may be provided through the media or directly to citizens at their request under the procedure established by the Cabinet of Ministers (Article 29).

- The Turkmen Public Health Code (2009) contains a number of provisions requiring the public authorities and local government bodies to safeguard public health, including by implementing measures to provide information to the public in a timely fashion (Article 7). The Code also states that every Turkmen citizen has the right to an adequate environment that does not have an adverse effect on the health of the present and future generations and that protects public health (Article 12). It enshrines the right of citizens to participate in the preparation of decisions whose implementation may affect public health and the environment (Article 13).

- The Law on the Prevention and Management of Emergencies (1998) also contains a provision specifying that "information on emergencies" consists of information about the threat of an emergency situation arising, including radiation, chemical, biological, ecological or other impact on the population and the environment, about fires or explosions At potentially dangerous sites and also about emergency situations that have already risen and their consequences.

Under the Aarhus Convention, one of the most important aspects of the public's right to environmental information is environmental education and environmental awareness among the public. These issues are reflected in various contexts in Turkmen legislation on environmental protection and other areas of social development.

These issues are dealt with most extensively in the Law on Environmental Protection (1991) and in the amended version of that law, which is currently being considered by the *Mejlis* (Parliament). The primary purpose of the Law is to make all levels of government responsible for advocating environmental protection and for conducting environmental education, both formal and informal.

In the aim of fostering a culture of environmental responsibility in society and raising the standard of vocational training, the State provides a system of universal, continuing, accessible environmental education that encompasses preschool facilities, schools and out-of-school facilities, vocational courses for specialists, secondary specialised and higher

educational institutions, and continuous professional development.

All secondary specialised and higher educational institutions, regardless of their type, teach the fundamentals of environmental protection and courses on this topic.

The heads of ministries and government departments, enterprises, institutions and organisations, and other officials and specialists who deal with activities that have an environmental impact must have the required knowledge of environmental protection.

Public education and environmental authorities and other public authorities, public organisations and the media must spread environmental knowledge and raise awareness of environmental legislation through the media (Article 32).

Under Article 30 of the Law, environmental NGOs and other public organisations and associations carrying out activities relating to environmental protection have the right to design and approve environmental programmes, publicize them in the press or on radio and television, protect the public's rights and interests with regard to the environment, contribute to building a public culture of environmental responsibility, and engage citizens in environmental activities on a voluntary basis.

As public authorities and officials have duties with regard to providing environmental education, so citizens have the right to receive it (Article 28).

The Aarhus Convention requires the Parties to provide for appropriate recognition of and support to associations, organisations or groups promoting environmental protection. In this connection, the Constitution and legislation of Turkmenistan provide specific legal guarantees with respect to the creation and operation of public associations of citizens, including those with an environmental focus:

- Article 28 of the Constitution of Turkmenistan enshrines the right of citizens to form political parties and other public associations that operate within the framework of the Constitution and laws.

- The Law on Public Associations (2003) governs the relations of public associations with the State and public authorities. Hence, under Article 14, interference by public authorities and their officials in the activities of public associations, as well as interference by public associations in the activities of public authorities and their officials, is not permitted, except in cases specified by the Law.

In cases provided for under the legislation of Turkmenistan, questions that affect the interests of public associations are to be resolved by the public authorities with the involvement of the appropriate public

associations or in agreement with them.

The Law on Public Associations also sets out a broad list of rights of public associations, including the right: to disseminate information about their activities; to participate in decision-making by public authorities in accordance with the procedure and scope provided for by this Law and by other legislative acts of Turkmenistan; to hold meetings, rallies, demonstrations and marches following the procedure provided by the legislation of Turkmenistan; to establish media and engage in publishing in accordance with the legislation of Turkmenistan; to represent and protect their rights, the rights and legal interests of their members and participants, and those of other citizens, before public authorities and public associations; to put forward initiatives on social matters; to submit proposals to public authorities; to participate in election campaigns (if the charter of the given public association contains provisions on its participation in elections).

Public associations may cooperate with international public associations, maintain international contacts and relations, and sign relevant agreements alongside the Ministry of Foreign Affairs of Turkmenistan (Article 21).

The Law on Public Associations provides that public authorities and their officials who cause damage to public associations as a result of a violation of the Law by the aforementioned bodies and officials may be held liable (Article 29).

An important aspect of implementing the Convention is the Party's obligation to ensure that persons exercising their rights in conformity with the provisions of this Convention are not penalised, persecuted or harassed in any way for their involvement. Turkmenistan possesses a solid legal framework for compliance with this provision.

First of all, it should be noted that these matters are enshrined in law at the highest level – in the Constitution of Turkmenistan. Article 17 of that basic law guarantees equality of civil rights and freedoms and, likewise, the equality of citizens before the law regardless of their nationality, origin, property status, official status, place of residence, language, religious affiliation, political convictions or membership of a political party. Moreover, citizens are guaranteed judicial protection of their honour and dignity and of the human, civil, personal and political rights and freedoms set out in the Constitution and laws. Any actions of public authorities, public organisations, and officials that break the law, are *ultra vires* or restrict the rights and freedoms of citizens, may be appealed in court (Article 40). In their turn, citizens have the right to restitution through the

courts for material and non-material damage suffered as the result of the unlawful acts of public authorities, other organisations, their employees, or private individuals (Article 41).

Second, current legislation sets out certain rules and guarantees to ensure that persons exercising their rights in conformity with the Convention are not penalised, persecuted or harassed in any way for their involvement. In particular, Turkmenistan has passed the Law on Judicial Appeals against the Actions of Public Authorities, Public Associations, Local Governments and Officials Violating the Constitutional Rights and Freedoms of Citizens (1998), under which any citizen whose constitutional rights and freedoms are violated or restricted by the actions or decisions of public authorities, public associations, local government bodies or officials is entitled to submit a complaint to the courts.

Foreign nationals and stateless persons are entitled to submit a complaint to the courts as specified by this Law, unless otherwise stated in Turkmenistan's legislation or international agreements (Article 1).

Furthermore, the Law on Citizens' Communications and their Consideration (1991) gives Turkmen citizens, in accordance with the Constitution and laws of Turkmenistan, the right to make oral or written proposals/suggestions for detailed improvements and to apply or complain to public authorities, public associations and other bodies, enterprises, organisations and institutions under any form of ownership (Article 2).

Officials' liability for infringing the rights of citizens is also governed by the Law on Public Associations and the Turkmen Criminal Code (2009).

Many provisions of the Aarhus Convention deal with access to environmental information (article 4) and its collection and dissemination (article 5). These apply primarily to public authorities and their duty to provide the public with information, the time-frame for doing so, payment for its provision, etc.

The Constitution of Turkmenistan enshrines the right of citizens of Turkmenistan to obtain information if it is not a State, official or trade secret (Article 26).

A number of legislative acts impose a duty on public authorities and officials to provide information to the public and to citizens and also oblige them to be open and transparent in their work.

In particular, the Law on Environmental Protection (Articles 1, 13 and 31), the Law on State Statistics (Articles 7, 11 and 12) and the Law on Hydro-Meteorological Activity (Article 9), as well as others, state that information should be accessible and open.

In order to advance the principles of the openness and transparency of environmental and related information, legislative acts specifically oblige public authorities and officials to grant access to environmental information to citizens and public organisations and to disseminate it. Provisions of this type are contained in the Law on Environmental Protection (Article 31), the Law on the Protection of the Air (Article 28), the Law on State Statistics (Article 16), the Law on the Prevention and Management of Emergencies (Article 7) and the Public Health Code (Article 15).

Public authorities are obliged to actively disseminate environmental information and knowledge among citizens, though this is just one form of dissemination. The Law on Environmental Protection also places such duties on local government (Articles 4-6).

In their turn, citizens and public organisations have the right to receive environmental information. This right is enshrined in the Law on Environmental Protection (Articles 28, 30), the Law on the Protection of the Air (Article 9), the Law on the Press and Other Media (Article 24), the Law on Citizens' Health Protection (Article 29) and the Public Health Code (Article 12).

If a request for environmental information is refused, public organisations and citizens may appeal to the courts or submit a complaint to the given public authority. These issues are covered in detail by the Law on Citizens' Communications and their Consideration of 14 January 1999.

That Law gives Turkmen citizens, in accordance with the Constitution and laws of Turkmenistan, the right to make oral or written proposals/suggestions for detailed improvements and to apply or complain to public authorities, public associations and other bodies, enterprises, organisations and institutions under any form of ownership (Article 2).

Public authorities, public associations and other bodies and their officials, and the managers and officials of enterprises, institutions and organisations under any form of ownership must examine citizens' communications promptly, objectively and comprehensively, check the facts contained in them, make decisions in accordance with current legislation, ensure implementation of these decisions, and inform citizens of the results of their examination of the communications.

A response detailing the results of the examination of a communication must be provided by the body, enterprise, organisation or institution that received the communication and which is competent to resolve the issues raised in the communication.

The second pillar of the Aarhus Convention is public participation

in decision-making and during the preparation of documents concerning the environment. Its effectiveness depends on the two other pillars: access to information and access to justice. Three elements of public participation may be distinguished. These are set out in articles 6, 7 and 8 of the Convention and consist of the following:

- public participation in environmental decision-making;
- public participation concerning plans, programme and policies relating to the environment;
- public participation in the preparation of executive regulations and/or generally applicable, legally binding normative instruments.

An analysis of Turkmenistan's legislation reveals that more than 15 normative instruments contain this type of Convention provision.

- As the basic law, the Constitution of Turkmenistan provides the starting-point for implementation of the provisions of the Aarhus Convention relating to public participation in decision-making, concerning plans, programme and policies relating to the environment, and in the preparation of normative instruments.

In particular, Article 29 of the Constitution guarantees the right of every citizen to participate in managing the affairs of society and the State, either directly or through freely elected representatives.

- The Law on Public Associations enshrines the right of public associations to participate in decision-making by public authorities in accordance with the procedure and scope provided for by this Law and by other legislative acts of Turkmenistan (Article 21).

Turkmenistan's environmental legislation allows the public to participate in decision-making and during the preparation of documents relating to the environment in a variety of ways.

- The Environmental Protection Law grants citizens the right to participate in discussion of draft legislative and other instruments relating to environmental protection; to participate in making decisions aiming to improve the environment and in public environmental reviews (*expertiza*); to propose the cancellation of decisions on the location, design, construction, reconstruction or operation of environmentally hazardous installations and the limitation, suspension or cessation of the activities of legal entities that have an adverse impact on the environment and human health (Article 28).

The Law on State Environmental Review (*Expertiza*) numbers "public consultation during the preparation of the conclusions of State environmental review" among the basic principles of State environmental review (Article 5).

- The Law on Specially Protected Natural Areas contains provisions on the participation of public associations and citizens in the organisation, protection and use of specially protected natural areas (Article 18).

- The Public Health Code states that every Turkmen citizen has the right, directly, through a representative, public association, or by other means, to participate in the preparation, implementation and monitoring of the implementation of decisions taken by authorities and officials, either jointly or individually, the implementation of which have an impact on human health and the environment (Article 13).

The Land Code enshrines a State guarantee that the parties concerned may participate in the preparation of proposals aiming to ensure efficient use and protection of land (Article 5).

In accordance with the Constitution, such issues are also reflected in the participation of public organisations and citizens in a variety of activities (including monitoring) undertaken by environmental authorities and organisations:

- For example, the Law on Environmental Protection states that Turkmen citizens may be involved in environmental protection either through personal participation (at their own wish) in activities aiming to prevent and remedy breaches of environmental legislation, through voluntary contributions from their earnings to environmental protection funds, through involvement in environmental protection in the workplace undertaken by staff and by public associations, and by providing assistance to them in their environmental protection activities (Article 29). At the same time, public environmental organisations that carry out environmental protection activities have the right: to take part in the work of expert groups; to set up public environmental inspectorates; to take part in the checks made by public environmental authorities on implementation of environmental protection plans and measures by legal entities and to request that such checks be carried out by the competent authorities; to set up public environmental funds and spend them on activities aiming to protect the environment; to ask questions about the State environmental review (*expertiza*) of decisions on the location, construction and operation of installations and on the limitation, suspension or cessation (conversion) of their operations; and to take part in the work of expert groups (Article 30).

The Law on Specially Protected Natural Areas (Article 18), the Law on Protection of the Air (Article 8) and the Law on Hunting and Game Husbandry (Article 7) all contain similar provisions on the participation of public associations and citizens in the work of public environmental authorities.

- The Water Code provides that public associations, in accordance with their charters (by-laws), and citizens may assist or participate directly in work undertaken by the public authorities to implement measures relating to the efficient use and conservation of water in accordance with the legislation of Turkmenistan (Article 11).

Public oversight plays an important part in Turkmenistan's environmental legislation as one of the forms in which the public and citizens may participate in the making and implementation of decisions by environmental authorities and as a means by which they can participate in the work of these authorities as equal members. The Law on Environmental Protection (Article 30), the Law on Specially Protected Natural Areas (Article 18), the Law on Hunting and Game Management (Article 37) and the Public Health Code (Article 73) contain such provisions.

Many secondary legislative instruments (Edicts, Resolutions and Instructions of the President of Turkmenistan and of the Cabinet of Ministers of Turkmenistan) include provisions on the consultation with public associations and citizens and on participation by their representatives in environmental activities. This type of provision can be found in:

- the Regulations on the Procedure for the Conduct of State Environmental Review (*Expertiza*) (approved by Resolution No. 2864 of the President of Turkmenistan of 13 November 1996) (paragraph 8);
- the Regulations on Hunting and Game Management in Turkmenistan (approved by Resolution No. 2422 of the President of Turkmenistan of 15 December 1995) (paragraph 32);
- the Model Regulations on State Nurseries and Breeding Farms for Rare and Endangered Flora and Fauna Species of Turkmenistan (approved by Resolution No. PB-1137 of the President of Turkmenistan of 15 December 1995) (paragraph 10);
- the Model Regulations on the Buffer Zones of State Nature Reserves of Turkmenistan (approved by Resolution No. PB-1137 of the President of Turkmenistan of 15 December 1995) (paragraph 10);
- the Model Regulations on the State Preserves of Turkmenistan (approved by Resolution No. PB-1137 of the President of Turkmenistan of 15 December 1995) (paragraph 6);
- the Regulations on Turkmenistan's State Commission for Implementation of the Obligations of Turkmenistan arising from UN Environmental Conventions and Programmes (approved by Resolution No. 4091 of the President of Turkmenistan of 1 March 1999) (paragraph 7).

The third pillar of the Aarhus Convention is access to justice.

Many Turkmen normative legal instruments contain the provisions of article 9 of the Convention on access to justice for the public and citizens.

The Constitution of Turkmenistan guarantees citizens judicial protection of their honour and dignity and of the human, civil, personal and political rights and freedoms set out in the Constitution and laws. Citizens may appeal to courts of law against any actions of public authorities, public organisations, and officials that break the law, are *ultra vires* or restrict the rights and freedoms of citizens, may be appealed in court (Article 40). Under the Constitution, citizens have the right to bring legal proceedings for restitution for material and non-material damage suffered as a result of the unlawful acts of public authorities, other organisations, their employees, or private individuals (Article 41).

The Constitution of Turkmenistan states that judicial authority is vested only in the courts. Judicial authority is to be used to defend the rights and freedoms of citizens and the legally protected interests of the State and society. Judicial authority is exercised by the Supreme Court of Turkmenistan and by other courts specified by law.

Parties have the right to appeal a judgment on the merits, a sentence or another decision issued by any court of Turkmenistan. The right to qualified legal assistance is to be recognised at any stage of legal proceedings. Legal assistance is to be provided to citizens and organisations by attorneys and other persons.

A number of legislative acts give effect to constitutional provisions on the protection of human and civil rights and freedoms, including access to justice. Current legislation contains both substantive and procedural rules in this connection. These are found primarily in civil, administrative and criminal law, as well as in other branches of legislation.

Civil law is based on recognition of the equality of parties in the relations which it regulates, inviolability of property, freedom of contract, the impermissibility of arbitrary interference by anyone whomsoever in private matters, the necessity of unimpeded exercise of civil law rights, and securing the restoration of violated rights as well as their defence in courts of law.

Civil law rights may be limited only on the basis of statute and for the purposes of defending the morals, health, rights and lawful interests of others or of ensuring the security of society and the State or the protection of the environment.

According to the Civil Procedure Code of Turkmenistan (CPC), the aim of civil proceedings is to hear and decide correctly and promptly civil actions for the defence of property, socio-economic, political and personal

rights and freedoms of citizens guaranteed by the Constitution of Turkmenistan and by its laws, of the legally protected interests of citizens and the State and of the legally protected interests of enterprises, institutions, organisations, their associations, and public organisations. Under the CPC, any interested party may apply to the courts following the procedure established by law for the judicial defence of infringed or disputed rights or a legally protected interest. The right to apply to a court cannot be waived.

Justice in civil matters may be dispensed only by a court and on the basis of equality before the law and before the courts of all citizens, regardless of their origin, social and property status, racial and national identity, gender, education, language, religious affiliation, the nature and character of their employment, place of residence and other circumstances.

When dispensing justice in civil matters, judges and lay assessors are independent and subordinate only to the law. Judges and lay assessors decide civil cases on the basis of the law guided by their inner convictions and under conditions that ensure no external influences.

Under the CPC, a judgment on the merits, interim ruling or decision issued by the court that has come into force is binding on all enterprises, institutions, organisations and their associations, public organisations, officials and citizens and must be executed throughout Turkmenistan.

The CPC states that the capacity to have civil procedural rights and obligations (civil procedural capacity) is recognised equally for all citizens of Turkmenistan, foreign nationals and stateless persons as well as for enterprises, institutions, organisations and their associations, and public organisations with the rights of a legal entity.

The CPC grants civil procedural capacity to foreign nationals and stateless persons, who have the right to apply to Turkmen courts and to exercise civil procedural rights on an equal basis with Turkmen citizens.

Foreign enterprises and organisations have the right to apply to Turkmen courts and exercise civil procedural rights in order to defend their interests.

A number of CPC provisions provide for public participation in trials and cassation appeals as well as the execution of judgments (Article 358).

According to the Turkmen Criminal Code (2009), the aim of criminal law is to protect the person, rights and freedoms of citizens, the interests of society and the State, the property, independence, constitutional order and neutrality of Turkmenistan, and the peace and security of humankind from criminality, and to prevent crimes. The Criminal Code states that Turkmen

criminal law is based on the principles of legality, equality before the law, guilt, justice and humanity.

The Criminal Code contains articles that specifically address liability for breaches of environmental rules, namely: Article 306 “Illegal extraction, acquisition or sale of snake venom”; Article 309 “Concealment of information on circumstances that pose a threat to human life or health”; Article 311 “Violation of environmental safety rules during the performance of works”; Article 312 “Violation of rules on the transport, storage, disposal and recycling of environmentally hazardous substances and waste”; Article 313 “Water pollution”; Article 314 “Atmospheric pollution”; Article 315 “Pollution of sea water”; Article 316 “Violation of legislation concerning the continental shelf”; article 317 “Contamination of land”; Article 318 “Illegal procurement of aquatic animals and plants”; Article 319 “Violation of the rules on the protection of fish stocks”; Article 320 “Violation of the rules on the protection of fish stocks”; Article 321 “Illegal hunting”; Article 322 “Illegal felling of trees and shrubs”; Article 323 “Destruction or damage to woodlands”; Article 324 “Violation of the rules on specially protected natural areas and natural sites” and others.

The criminal punishment of people who have broken the law is, therefore, an important guarantee of the public’s right of access to justice.

The Administrative Offences Code of Turkmenistan (2013): The Administrative Offences Code aims to protect the social structure of Turkmenistan, all forms of property, and the socio-economic, political and personal rights and freedoms of citizens as well as the rights and legal interests of enterprises, institutions and organisations, the established administrative order, State and social order, to prevent violations of the law, and to foster an attitude among citizens of exact and undeviating compliance with the Constitution and laws, respect for the rights, honour and dignity of other citizens, and fulfilment of obligations and responsibilities to society in good faith.

Systematic oversight by higher authorities, officials and the public prosecution service, the right to appeal and other measures established by legislation ensure that penalties for administrative offences comply with the requirements of legislation.

The Administrative Offences Code and the Criminal Code both provide penalties for administrative offences. The relevant articles are contained in a special part of the Administrative Offences Code. Penalties for administrative offences are an important guarantee of the public’s access to justice.

As far as administrative offences relating to the environment are concerned, the special part of the Administrative Offences Code mentioned above contains 67 articles on administrative responsibility for such offences. If environmental rules are broken, public associations and citizens may apply to the relevant competent public authorities or even to the courts in defence of their rights.

The Law on Judicial Appeals against the Actions of Public Authorities, Public Associations, Local Government Bodies and Officials Violating the Constitutional Rights and Freedoms of Citizens (1998) is an important guarantee of the constitutional rights and freedoms of Turkmen citizens. Under the Law, every citizen whose constitutional rights and freedoms have been breached or impaired by the actions or decisions of public authorities, public associations, local government bodies or officials is entitled to appeal to the courts.

The Law on Environmental Protection also provides a wide range of guarantees of access to justice for the public and citizens.

First of all, when carrying on economic, administrative or other activities that have an impact on the environment, executive and administrative authorities, legal entities and citizens must be guided by the principle of ensuring that citizens have a genuine right to an environment that is adequate to life (Article 1).

Second, public environmental organisations and other public associations that work to protect the environment have the right to file claims in the courts or in the economic courts seeking compensation for damage to the environment or to the health and property of citizens and public organisations caused by violations of environmental legislation, including claims against public environmental authorities (Article 30).

Third, Turkmenistan guarantees that citizens and public organisations working to protect the environment may exercise their rights with regard to environmental protection in accordance with applicable legislation.

Public environmental authorities and other specially authorised bodies are obliged to provide comprehensive assistance to citizens and public environmental organisations in the exercise of their rights and obligations with regard to environmental protection, to take the necessary steps to examine suggestions on the organisation of activities to protect the environment, and to ensure the transparency and accessibility of information on the state of the environment, on all types of pollution and on the results of environmental reviews (*expertiza*), and to inform the public effectively about environmentally hazardous accidents and situations.

Persons who hinder the exercise by citizens and public organisations of

the rights and obligations arising from the Law or who deliberately distort or conceal information on the state of the environment will be held liable in accordance with the applicable legislation of Turkmenistan (Article 31).

Defence of the rights and lawful interests of owners, users and lessees of land is among the land law guarantees provided for by Article 5 of the Land Code.

Individual provisions in this area are also contained in legislation on the registration of public associations. In particular, Article 19 of the Law on Public Associations contains a provision stating that a refusal to register a public association may be appealed in court following the procedure established by law.

Implementation of the Aarhus Convention by the Public Authorities of Turkmenistan

The State Commission for Implementation of the Obligations of Turkmenistan arising from UN Environmental Conventions and Programmes was approved by resolution of the President of Turkmenistan in 1999. Nine working groups were set up within this Commission, one of which focuses on the Aarhus Convention. In compliance with the requirements of the Convention, Turkmenistan periodically submits information on its implementation of the Convention; a report was last submitted in Geneva in December 2012.

From 2007 to 2009, the regional project “Strengthening public participation and civil society support to implementation of the Aarhus Convention in Central Asia” was carried out in Turkmenistan. The project’s main aim was to improve the condition of the environment through the development of transborder cooperation and increasing public participation in the environmental decision-making process. The project achieved the following outcomes: a training course on national provisions was developed for the judiciary on the basis of international documents; an analysis of national environmental legislation was conducted; a round table was held to promote a mechanism for public participation in environmental policy; a guide on applying the Aarhus Convention was produced for civil servants and NGO representatives; seminars on “Access to Justice” were held in the main cities of every *velayat* (province); four issues of a newsletter were published; a seminar to promote the Protocol on Pollutant Release and Transfer Register (PRTR) was held in Ashgabat; a comparative

analysis of the PRTR Protocol and the national statistical reporting system was conducted; and three pilot projects were carried out.

The Ministry of Nature Protection works with other ministries and departments on a continual basis to carry out numerous initiatives to implement the Aarhus Convention, including: conducting a large number of different campaigns and activities to raise public environmental awareness; organising and conducting international, regional and national forums, conferences and seminars in which a great many public authorities and public organisations take part; running regional and national programmes and projects jointly with UNEP, UNDP, GIZ, the Regional Environmental Center for Central Asia and others; presenting environmental knowledge in popular forms and educating civil society through the media, TV, books, textbooks and various other informational materials.

To assist in the further implementation of the provisions of the Aarhus Convention, in 2011 the Organization for Security and Co-operation in Europe (OSCE) Centre in Ashgabat approached the Ministry of Foreign Affairs of Turkmenistan with a proposal to set up an Aarhus Centre, coordinated by the Ministry of Nature Protection. As a result of joint efforts by the Ministry of Foreign Affairs, the OSCE Centre in Ashgabat and the Ministry of Nature Protection, in August 2012, an Aarhus Centre opened in Ashgabat under the Ministry of Nature Protection, in collaboration with the NGO Tebigy Kuwwat and with the support of the OSCE Centre in Ashgabat. The opening of this Centre represents a significant contribution to the implementation of the Aarhus Convention in Turkmenistan, and its successful operation will play an important role in fulfilment of the Convention's provisions.

Conditions of the UNECE Aarhus Convention Compliance Committee concerning Turkmenistan

In 2005, the UNECE Aarhus Convention Compliance Committee adopted a decision on the non-compliance of Turkmen legislation with the Convention. Since 2005, the Ministry of Nature Protection has corresponded with the Aarhus Convention Compliance Committee regarding Decisions II/5e, III/6 and IV/9g of the Meeting of the Parties on the compliance of Turkmen 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, the Public Environmental Association of Turkmenistan and others. They carried out a detailed discussion of the Convention's implementation in Turkmenistan and related issues of national legislation.

Members of the UNECE Aarhus Convention Compliance Committee visited Turkmenistan on 18 and 19 April 2011. During the 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, the Public Environmental Association of Turkmenistan and other public organisations. The Turkmen side presented in-depth information on the implementation of the Aarhus Convention in Turkmenistan, and members of the delegation explained the Compliance Committee's conditions for Turkmenistan.

Based on the expert mission's findings from this visit and their report to the Fourth Meeting of the Parties (June 2011), Decision IV/9g was adopted. One of its paragraphs states that Turkmenistan must amend the Law on Public Associations and inform the UNECE of this by 1 October 2012. The UNECE sent **Decision IV/9g** and **Suggestions by the Members of the Compliance Committee of the Aarhus Convention on Amendments to the Law on Public Associations of Turkmenistan** (a copy is appended).

Since the beginning of discussion of this issue and the adoption by the Meeting of the Parties to the Aarhus Convention of the 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 July 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 UN European Commission for Europe (ECE) as the Convention Secretariat, explaining the actions undertaken to implement the Convention in Turkmenistan and the compliance of national legislation with the Aarhus Convention. These responses all emphasised that Turkmenistan has complied with its international obligations under the Aarhus Convention. The Turkmen Ministry presented detailed information on the issues concerned in each of these letters.

On 26 September 2012, a meeting took place between the Minister for Nature Protection and Andrey Vasilyev, Deputy Executive Secretary of the UNECE, at the Turkmen Ministry of Nature Protection. During the meeting, Mr Vasilyev reminded the Minister once again of the Aarhus Convention Compliance Committee's conditions and of the need to submit a report on work done to amend Turkmen legislation by 1 October 2012. The Minister

of Nature Protection presented detailed information on the implementation of the Aarhus Convention in Turkmenistan, on the opening of an Aarhus Centre with the support of the Turkmen Ministry of Foreign Affairs and the OSCE and on plans for its work, and on work to amend national environmental legislation with a view to further extending the provisions of the Aarhus Convention in new draft environmental laws. The Ministry of Nature Protection particularly drew the UNECE Deputy Executive Secretary's attention to the fact that many provisions of the Turkmen Law on Public Associations already complied to varying degrees with the Convention's requirements. Moreover, it had to be taken into consideration that the process of amending such important laws, which form the basis for building a civil society, was lengthy and that in some countries this process could take several years. Consequently, it could take longer to insert any amendments into the Law on Public Associations than recommended in regard to Turkmenistan by Decision IV/9g of the fourth session of the Meeting of the Parties. The Minister of Nature Protection also explained that the Ministry of Nature Protection was responsible only for environmental laws and monitoring of their implementation, whereas the Law on Public Associations did not form part of environmental law.

In the light of Turkmenistan's work to implement the Convention and its active progress in reforming national legislation, the Ministry of Nature Protection also requested the UNECE Executive Secretary's assistance to revoke or reformulate the Aarhus Convention Compliance Committee's conditions concerning Turkmenistan, if possible.

Following this meeting with the UNECE Deputy Executive Secretary, the Ministry of Nature Protection sent Mr Sven Alkalaj, UNECE Executive Secretary, a letter (Ref. No. 2083/04 of 28 September 2012) that provided a detailed explanation of issues relating to the implementation of the Convention in Turkmenistan (*a copy is appended*).

Neither Turkmenistan's in-depth explanation, provided in this letter, nor the detailed oral clarifications by the Ministry of Nature Protection and its request that the conditions be withdrawn, made at the meeting with the UNECE Deputy Executive Secretary, have been met with understanding or reflected in the Aarhus Convention Compliance Committee's course of action towards Turkmenistan.

As a result of this lack of understanding of the explanations provided by Turkmenistan and of the UNECE's divergent reading of its national legislation, in July 2013, Turkmenistan was again requested to send information on progress in amending the Law on Public Associations 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 Law on Public Associations (*a copy is appended*).

In August 2013, the Ministry of Nature Protection sent these recommendations for review by the *Mejlis*, the Ministry of Justice and the National Institute of Democracy and Human Rights under the President of Turkmenistan.

The Ministry of Nature Protection received a letter from the Ministry of Justice containing the latter's proposals with regard to the recommendations concerning the Law on Public Associations.

The Ministry of Nature Protection also received a letter from the National Institute for Democracy and Human Rights under the President of Turkmenistan containing the Institute's suggestions with regard to the proposed amendments to the Law on Public Associations.

It can be concluded from an examination of the comments from the Ministry of Justice and the National Institute for Democracy and Human Rights under the President on the recommendations for possible amendments and additions to the Law on Public Associations that it may be appropriate to make some of the proposed revisions. However, the Ministry of Justice and the Institute do not deem it appropriate to make the fundamental amendments required by the Aarhus Convention Compliance Committee regarding: the provision by the Law of additional rights to foreign nationals; the removal from the Law of territorial restrictions on the activity of public associations; and the reduction in the Law of the minimum number of founders of public associations.

Furthermore, the Ministry of Nature Protection also wishes to make its own comments on the Compliance Committee's recommendations regarding additions and amendments to particular provisions of the Law on Public Associations:

1) Article 5 of the Act "Founders, members and participants of public associations". According to the Decisions adopted by the Meeting of the Parties, this article contradicts article 9, paragraph 3 of the Convention, since it does not allow foreign nationals to be founders of public associations. This is not actually the case. Article 15 of the Law states that "...in the cases provided for by the present Law, founders may include foreign nationals [...] alongside Turkmen citizens". The Law hence allows foreign nationals to be founders of public associations.

2) Article 13 of the Law, which specifies the territorial field of

operation of public associations, by no means restricts their activities but classifies them according to the way the country is divided administratively and territorially. Public associations may pursue their interests at every territorial level of the country;

3) It has been proposed that Article 14 should include a provision giving public associations the right to appeal decisions of public authorities in court. We fully agree with this proposal, since the Constitution of Turkmenistan (Article 43) guarantees judicial protection to citizens, implicitly covering their public associations as well. A legal basis for such a provision also arises from the Law on Judicial Appeals against the Actions of Public Authorities, Public Associations, Local Governments and Officials Violating the Constitutional Rights and Freedoms of Citizens (1998).

4) In Article 15, it is proposed to extend the provision that a minimum of five founders is necessary to establish a public association, regardless of its territorial field of operation. It appears appropriate to agree with this recommendation. However, in view of the Aarhus Convention, we deem it appropriate to extend this provision only to the establishment of public associations with an environmental orientation.

5) It has been suggested that the list of grounds for a refusal to register a public association provided under Article 18 be specified and limited, in application of the principle that no one can be punished twice for the same offence. We believe that this provision is completely acceptable, since a conviction expires after a defined period. Pursuant to Article 23 of the Constitution of Turkmenistan, which provides that citizens may not be restricted in their rights, divested of their rights, convicted or punished other than in strict compliance with the law, the Turkmen Criminal Code (Article 3, "Principles of Criminal Law") provides that no one may be punished twice for the same crime. According to Article 81 of the Criminal Code, "A person who is convicted of a crime shall be deemed to be convicted from the date of the entry into force of the verdict of guilty until the conviction expires or is quashed". This amendment would enable application of the principle of double jeopardy.

6) A review of the procedure for inspecting the operations of public associations set out in Article 28 is proposed. We believe this to be entirely admissible. In this connection, the following new item should be added to Article 28: "Scheduled inspections of public associations are to take place no more than once in three years. Unscheduled inspections are to be initiated if the Ministry of Justice receives reliable information that a public association has violated the rights of third parties or Turkmen legislation.

The same procedure shall apply to inspections by the Ministry of Justice as to inspections of commercial legal entities by other public authorities.” Paragraph 2 should be worded as follows: “A public association must rectify the breach specified by a warning within a minimum of one month from the date of receipt of the warning or within a reasonable period specified by the Ministry of Justice in the warning”. And further: “If more than two written warnings or orders to rectify breaches are issued to a public association within a period of one year, and if these breaches are not rectified, the Ministry of Justice of Turkmenistan may apply to the courts for liquidation of the public association.” In such cases, it is proposed to limit the powers of the Ministry of Justice to revoke a public association’s registration and to decide on the distribution of its assets in the event of its enforced liquidation by making it the sole prerogative of a court to revoke a public association’s registration, to liquidate it, or to decide how to distribute its assets, as is the case in every European and CIS country.

7) The introduction of a provision on the personal liability of officials who have violated the Law with regard to public associations (Article 29) is entirely acceptable. The introduction of personal liability for officials who violate/breach the Law with regard to public associations would increase their decision-making responsibility, which would have a positive impact on government regulation of public associations.

Conclusions: The current situation is evidence of a divergence in the interpretation of Turkmenistan’s compliance with the Convention between the members of the UNECE Aarhus Convention Compliance Committee and Turkmenistan. In this connection, Turkmenistan intends to continue active consultations and cooperation with the UNECE to have the conditions with regard to Turkmenistan removed and to implement the Aarhus Convention in the country. In the light of our positive experience of cooperation with the UNECE to date, we believe it may be necessary to request the Aarhus Convention Secretariat to send another delegation to Turkmenistan for detailed practical examination and discussion of this issue from every angle. It would be essential to arrange for the delegation to meet all the parties concerned during such a visit, including ministries and departments, public organisations, the private sector and so forth.

As an additional possible activity at national level, an interdepartmental working group could be set up to (re)draft recommendations and to examine and insert possible appropriate amendments into the applicable legislation of Turkmenistan, in accordance with the request of the Aarhus Convention Compliance Committee.

**SUGGESTIONS BY THE MEMBERS OF THE COMPLIANCE COMMITTEE
OF THE AARHUS CONVENTION ON AMENDMENTS TO THE LAW ON
PUBLIC ASSOCIATIONS OF TURKMENISTAN**

At the meeting with the government of Turkmenistan in Ashgabat on 18 April 2011, Veit Koester and Vadim Nee, members of the Aarhus Convention Compliance Committee suggested that Turkmenistan considers the following amendments to the current Law of Turkmenistan on Public Associations:

1. Exclude from articles 5, paragraphs 1, 2; 3 and 7 and article 15, paragraph 1, of the Law on Public Associations the provisions which restrict or can be interpreted as restricting the right of citizens of Turkmenistan, foreign citizens or persons without citizenship to participate in public associations established on the territory of Turkmenistan.. It is suggested to delete “citizens of Turkmenistan” in articles 5, paragraphs 1, 2; and 3 and article 15, paragraph 1, and replace these words with “physical persons”. Article 5, paragraph 7 should either be deleted entirely or amended to make it clear that citizens of Turkmenistan (as well as foreign citizens, persons living in Turkmenistan without citizenship and legal entities) may participate in international public associations.

2. Include a provision into article 13 of the Law on Public Associations, which in compliance with article 3, paragraph 9 of the Aarhus Convention, guarantees that public associations shall be entitled to have access to environmental information (including information upon request), have the possibility to participate in decision-making and have access to justice in environmental matters in the whole territory of Turkmenistan, without discrimination as to where the public association has its registered seat or an effective centre of its activities.

3. Significantly decrease the threshold for the minimum number of founders required for the establishment of nationwide public associations (the current threshold of 500 members and moreset in article 15, paragraph 2 of the Law on Public Associations is markedly higher than many other Aarhus Convention Parties and restricts unduely the possibilities of founding nationwide public associations).¹

..

4. Lift the legislative ban on the activity of unregistered public associations, which can be done by way of deleting the entire third paragraph from Article 17 of the Law on Public Associations and the article from the Code of Administrative Offences

¹ For a helpful overview of the minimum number of persons required to found a public association in various UNECE countries, see OSCE’s Office for Democratic Institutions and Human Rights Comments on the Law of Turkmenistan on Public Associations dated 22 June 2010, footnote 30. This notes, for example, that an association can be established by **two persons** in France (article 1 of the Law on Associations), Moldova (article 1 of the Law on Public Associations), Armenia (article 9 of the Law on Public Organizations), and Estonia (Article 5 of the Non-Profit Associations Act); by **three persons** in Lithuania (Article 5 of the Law on Associations and ten persons in Hungary (article 3 of the Act on the Right of Association) and Kazakhstan (Article 10 of the Law on Social Associations and Article 19 of the Law on Non-Profit Organizations).

defining the participation in activities of unregistered public associations as an administrative offence.

5. Consider necessary amendments to the provisions of the Law on Public Associations, which create or may create almost insurmountable obstacles for lawful activities of public associations in the process of their registration, carrying out control over and monitoring their activities, as well as suspension and cessation of their activities. In this respect the attention should be paid to provisions of articles 18, 28, 31, 32 of the current Law on Public Associations, and it is suggested to consider the appropriate amendments to these articles proposed by the International Center for Not-for-Profit Law.

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

Fourth session

Chisinau, 29 June–1 July 2011

Excerpt from the addendum to the report of the fourth session of the Meeting of the Parties (ECE/MP.PP/2011/2/Add.1)*

Decision IV/9g on compliance by Turkmenistan with its obligations under the Convention

Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its fourth session

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Mindful of the conclusions and recommendations set out in its decision II/5c (ECE/MP.PP/2005/2/Add.9) and its decision III/6e (ECE/MP.PP/2008/2/Add.13) with regard to compliance by Turkmenistan with its obligations under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention),

Taking note of the report of the Compliance Committee (ECE/MP.PP/2011/11) with regard to follow-up on decision III/6e,

Recalling that according to decision III/6e a caution was issued by the Meeting of the Parties, which, following the review by the Compliance Committee at its twenty-third meeting of the steps taken by the Party concerned to fulfil the conditions set out in paragraph 5 of that decision, entered into effect on 1 May 2009,

1. *Notes with appreciation* the recent engagement of the Party concerned demonstrated by its cooperation with the Committee, in particular with respect to the mission by members of the Committee and the secretariat to Ashgabat on 18–20 April 2011;

* The full text of addendum to the report of the fourth session of the Meeting of the Parties (ECE/MP.PP/2011/2/Add.1) is available in English at http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp_pp_2011_2_add.1_eng.pdf, in French at http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp_pp_2011_2_add.1_fre.pdf and in Russian at http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp_pp_2011_2_add.1_rus.pdf.

2. *Decides* to suspend the caution issued to the Party concerned through decision III/6e, and which entered into effect on 1 May 2009;

3. *Decides* that the caution should re-enter into effect on 1 January 2013 unless the Party concerned:

(a) 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;

(b) Has notified the secretariat of this fact by 1 October 2012;

The successful fulfilment of these conditions is to be established by the Committee;

4. *Requests*, inter alia, to avoid a situation where the Act on Public Associations may need to be revised again in the near future, that the Party concerned should ensure that the revisions to the Act on Public Associations are made in accordance with:

(a) The suggestions made by members of the Compliance Committee at the working session held during its mission to Turkmenistan on 18 April 2011 (informal document C.1/2011/4/Add.2/Inf.1);

(b) The outcome of the round tables organized 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 (informal document C.1/2011/4/Add.2/Inf.2);

(c) The comments of the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights dated 22 June 2010 (informal document C.1/2011/4/Add.2/Inf.3);

5. *Requests* that the Party concerned 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, provides a clear and transparent framework to implement the provisions of the Convention, as required by article 3, paragraph 1, of the Convention;

6. *Requests*, in accordance with paragraph 4 of decision II/5c, that the Party concerned carry out the measures referred to above with the involvement of the public, including relevant non-governmental and international organizations;

7. *Requests*, in order to ensure the effective implementation thereof, 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;

8. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

9. *Undertakes* to review the situation at its fifth session.

Proposals of the Ministry of Justice of Turkmenistan with regard to the recommendations concerning the Law of Turkmenistan on Public Associations

Having examined the Table of Proposed Amendments to the Law on Public Associations, the Ministry of Justice deems it appropriate to adopt some of the recommendations. At the same time, we consider that:

Paragraphs 1-3 of Article 5 of the Law:

Under Article 5 of the Law on Public Associations, foreign nationals who are permanently resident in Turkmenistan, stateless persons and legal entities which are public associations of Turkmenistan or of foreign states may also participate in the activities of international public associations.

Legal entities which are public associations of Turkmenistan may take part in the activities of nationwide public associations.

Article 15 of the Law on the Legal Status of Foreign Nationals in Turkmenistan states that foreign nationals in Turkmenistan have the right to join public associations, if this is provided for by the associations' charters. Foreign nationals' membership of public associations is governed by the relevant Turkmen legislation.

Under Article 15 of the Law on Public Associations, public associations are to be created on the initiative of their founders who must be Turkmen citizens and who must not number fewer than five. In cases provided for by the present Law, founders may include, alongside Turkmen citizens, foreign nationals and legal entities that are public associations of Turkmenistan or of foreign states.

Article 13 and item 3, paragraph 2, Article 16 of the Law:

Article 1 of the Law on Public Associations states that a public association is a voluntary, self-governed, non-commercial formation, created on the initiative of citizens who come together on the basis of common interests to realise the common objectives laid out in the charter of the public association.

Citizens create public associations at their own choice and have the right to join such public associations on the condition that they comply with their charters. Article 13 of the Law says that international, nationwide and local public associations may be established and operate in Turkmenistan.

A public association established in Turkmenistan is deemed to be international, if, in accordance with its charter, at least one of its structural subdivisions – an organization, department (branch) or representative office – is created and operates in a foreign state.

Associations whose activities, in accordance with their charter objectives, extend throughout Turkmenistan or most of its *velayats* are deemed to be nationwide public associations.

Local public associations are public associations whose activities, in accordance with their charter objectives, extend throughout a *velayat*, town, *etrap*, settlement or village.

Paragraph 3, article 14 of the Law:

We consider it is appropriate to include this recommendation in the Law on Public Associations. In this connection, we observe that under Article 3 of the Civil Procedure Code of Turkmenistan, any interested party has the right, following the procedure established by law, to apply to a court to defend a violated or disputed right or legally protected interest. Moreover, according to Article 1 of the Law on Judicial Appeals against the Actions of Public Authorities, Public Associations, Local Government Bodies and Officials Violating the Constitutional Rights and Freedoms of Citizens, adopted on 6 February 1998, every citizen whose constitutional rights and freedoms are violated or restricted by the actions or decisions of public authorities, public associations, local self-government bodies or officials is entitled to submit a complaint to a court. Foreign nationals and stateless persons are entitled to submit a complaint to a court following the procedure specified by this Law, unless otherwise stated in the legislation or international agreements of Turkmenistan.

Under Article 29 of the Law on Public Associations, public authorities and their officials causing damage to public associations as a result of violation of the present Law or of other laws on particular forms of public association by the said authorities and officials, are liable under the branch of law specified by the legislation of Turkmenistan.

Article 15 of the Law:

Article 15 of the Law on the Legal Status of Foreign Nationals in Turkmenistan states that foreign nationals in Turkmenistan have the right to join public associations, if this is provided for by the associations' charters.

Article 17 of the Law:

We consider that the previous version of the Law should be left as it stands.

6. We consider that the proposal to amend Article 17 of the Law on Public Associations with regard to removing the prohibition on activities by unregistered public associations is inappropriate. The registration of public associations by the Ministry of Justice does not hinder the exercise by citizens of their right to freedom of association.

7. We consider that the proposal to amend Article 18 of the Law on Public Associations with regard to limiting the list of grounds for refusing to register a public association is inappropriate. Legal entities are registered according to the procedure and in accordance with the legislation of Turkmenistan.

8. We consider that the proposal to amend Article 18 of the Law on Public Associations with regard to simplifying the rules on the activities of public associations is inappropriate.

9. We consider that the proposal to amend Articles 28 and 31 of the Law on Public Associations so as to limit the powers of the Ministry of Justice to suspend or terminate a public association's activities is inappropriate.

10. We consider that the proposal to amend Article 29 of the Law on Public Associations in order to make officials personally liable for compensating any damage inflicted is inappropriate. Under Turkmen legislation, officials may be subject to administrative penalties, employment sanctions or criminal prosecution if they break the law.

11. We consider that the proposal to bring the provisions of the Law on Public Associations into line with the constitutional principles of judicial defence is appropriate.

MINISTRY OF NATURE PROTECTION OF TURKMENISTAN

To: His Excellency Mr. Sven Alkalai
Executive Secretary of the United Nations Economic Commission for Europe,
UN Deputy Secretary General

cc: Secretary of the UNECE Aarhus Convention

Dear Mr. Sven Alkalai,

The ministry of nature protection of Turkmenistan presents its complements to the United Nations Economic Commission for Europe (UNECE) for realization of common programs in the area of environmental protection, and in particular for the great input of your experts into the preparation of the 1st Environmental Performance Review (EPR) project in Turkmenistan. Besides, UNECE on the permanent basis supports realization of the UNECE Convention on access of information, public participation in the decision making process and access of justice in environment related issues (Aarhus Convention) in Turkmenistan. And in this regard we would like to inform you on the realization process and progress made in implementation of the Convention in Turkmenistan.

Aarhus Convention was adopted and ratified by Turkmenistan in 1999. The main purpose of the Aarhus Convention is development of the public rights to participate in policy making and implementation of the environmental policy, which fully complies with one of the priority directions of the state environmental policy of Turkmenistan – comprehensive public informing on the issues of nature conditions and protection, development of the environmentally oriented public view. Circulation of information, training activities on the issues of access of necessary environmental information, methods and means of public participation in decision making process and access to justice, are carried out in Turkmenistan on the permanent basis.

Informing of population regarding conditions and protection of nature, improving of environmental education of population are implemented in different directions. We use mass media, including TV programs, carry out special purposeful actions with public involvement, forums, seminars, trainings, meetings etc.

From the moment Turkmenistan gained independence in 1991 and also after ratification of the Aarhus Convention in 1999, the process of introduction of provision on public participation into the national legal environment, as well as their practical implementation, is carried out in Turkmenistan. Complex environmental legal system has been developed in Turkmenistan, it provides broad public participation in implementation of the state policy of nature protection, rational utilization of its resources in order to steady develop and implement the provisions of Aarhus Convention. The current national legislation of Turkmenistan contains a number of nature protecting laws, the articles of which envisage public access to the environmental information: the law of Turkmenistan “On nature protection” (1992), the law of Turkmenistan “On the state environmental expertise” (1995), the law of Turkmenistan “On air protection” (1996), the state standard of Turkmenistan TDS-579-2001 “Assessment of impact of economic or other activities on environment in Turkmenistan. Main provisions.” (2001), Forest code of Turkmenistan (2001) etc.

According to the laws of Turkmenistan, state bodies and officials are obliged to provide required environmental information to the public, to assist the public in obtaining access to the information, there was created a unique legislative mechanism for participation of the public and its associations in the process of decision making, for access of justice on environmental issues.

The law of Turkmenistan envisages: “Turkmenistan guarantees to the citizens and public

organizations implementation of the rights provided to them in the area of nature protection...”, “state bodies of nature protection are obliged to provide every kind of assistance to citizens and public environmental organizations in implementation of their rights ... take necessary measures to consider proposals on organization of nature protecting activity, and provide publicity, availability of information on environmental conditions..., operatively inform population about dangerous accidents and situations.”

Responsibility for “hiding or distortion of information about nature pollution” is envisaged by the article 85 of the Code on administrative offenses of Turkmenistan.

Article III of the law of Turkmenistan “On air protection” is called: “Participation of public associations and citizens in air protection”. According to article 9 of the above law the citizens of Turkmenistan have right: to obtain from the state authorities and legal persons reliable information on the level of air pollution and measures, taken by these bodies in order to protect and improve the air; to present to the authorities the issues on necessity to carry out state environmental expertise, including additional expertise, to participate in activities on air protection, carried out by the state organs.

According to the article 30 of the law on “Nature protection” public environmental associations have right “to file in court or economic court compensation claims for damages to nature, health and property of citizens and public organizations”.

All above mentioned legislative and legal measures provide guaranteed public access to information, establish obligations for persons and bodies to assist in obtaining necessary information, create steady, legal conditions for direct participation of public associations in decision making and access to justice, which corresponds to pg.2, art.3 of the Convention.

It is important to specifically mention, that in the passed years a large work, has been done in Turkmenistan on reforming and improving of national legislation, which was initiated by the President of Turkmenistan. Outcomes of this work are: adoption of the new version of the Constitution of Turkmenistan (September 2008), in which, upon with the proposal of the ministry of nature protection, a new article 36 “On the right of citizens to have favorable environmental surroundings” was included. This article insures implementation of the rights and freedoms of citizens in the area of environmental policy of the state. The work on improvement of the environmental legislation is actively carried out. As a result of work, which was done by the ministry of nature protection in cooperation with other entities of Turkmenistan, new laws were adopted in the last three years: “On protection of ozone layer” (2009), Forest code of Turkmenistan (2011), “On specially protected natural territories” (2012), “On floral world (2012). At the present time the ministry of nature protection elaborates new versions of the following laws: “On animal world”, “On nature protection”, “On the state environmental expertise”. All above mentioned adopted laws and laws under elaboration contain provisions on providing the public with required environmental information and public participation in decision making on environmental issues.

In order to facilitate further implementation of the provisions of the Aarhus Convention in Turkmenistan, in 2011 the OSCE center in Ashgabat sent a proposal to the ministry of foreign affairs of Turkmenistan on realization of project on establishing an Aarhus center under coordination of the ministry of nature protection of Turkmenistan. As a result of the joint work of the ministry of foreign affairs of Turkmenistan, the OSCE center in Ashgabat and the ministry of nature protection of Turkmenistan in August 2012 in cooperation with NPA “Tebigi Kuvvat” and with assistance of the OSCE center in Ashgabat, the Aarhus center was established to the ministry of nature protection of Turkmenistan. We consider the opening of the above center an important input in implementation of the the Aarhus Convention in Turkmenistan and put large hopes on

successful operation of the center for implementation of the Convention provisions.

Along with the above mentioned activities on implementation of the the Aarhus Convention in Turkmenistan we have some delays on implementation of the decision IV/9g of the 4th session of Meeting of the Parties of the Aarhus Convention (June 29 – July 1, 2011, Kishinev), in particular on introducing amendments to the law of Turkmenistan “On public associations”. Earlier Turkmenistan was visited by the expert mission (April 18-19, 2011) of the committee on implementation of the Aarhus Convention. Meetings with all interested parties, including representatives of the Turkmen parliament, ministries of justice, education, nature protection, national institute of democracy and human rights to the President of Turkmenistan, public organization, private sector etc. were organized during the visit. In the course of joint consultations the Turkmen side presented possible amendments to the law of Turkmenistan “On public associations”, in accordance with the Aarhus Convention.

Based on consideration of the outcomes of the visit of the expert mission of the committee on implementation of the Aarhus Convention and their report, the 4th session of Meeting of the Parties of the Aarhus Convention has adopted the decision IV/9g, one of the points of which says that Turkmenistan should introduce amendments to the law of Turkmenistan “On public associations” and inform UNECE about that by October 1, 2012. In this regard we would like to inform UNECE that possible amendments to the law of Turkmenistan “On public associations”, proposed earlier by the Turkmen side, currently undergo procedures of consideration by domestic agencies of Turkmenistan. Taking into consideration the fact that the law of Turkmenistan “On public associations” does not belong to the sector of environmental legislation and at the same time embraces many spheres of social-public system, introduction of any amendments into this law may take more time than it was indicated in the decision IV/9g of the 4th session of Meeting of the Parties of the Aarhus Convention.

On the basis of the above stated, and taking into consideration the total activities of Turkmenistan on implementation of the Aarhus Convention in Turkmenistan, as well as objective factors related to possible amendments to fundamental laws, which regulate social-public system, we turn to UNECE with a request to treat with understanding the current process and to petition to the Secretariat of the Aarhus Convention for Turkmenistan to be able to have an opportunity to present its position at the Secretarial Meeting in December 2012, before new decision to issue possible warning on noncompliance can be made regarding Turkmenistan.

We sincerely hope that UNECE and Secretariat of Aarhus Convention will understand our efforts and situation, and guarantee to continue active implementation of the Convention provisions in Turkmenistan.

We express our assurance in continuation of active cooperation with UNECE on all direction of nature protection.

Please accept, your Excellency, assurances of our highest consideration.

Sincerely yours,

Annabayramov B.
Minister

**Table of proposed amendments
To the Law of Turkmenistan “On Public Associations” of October 21 2003, No. 197-II**

On the initiative of His Excellency the President of Turkmenistan, Dr Gurbanguly Berdimuhamedov, wide- ranging reform is underway to develop national legislation for the country at the new stage of state building. The statements of the Turkmen Head of State emphasize that the “legal acts regulating the state’s policy in different spheres of social life must reflect the realities of contemporary time, conform to the generally accepted norms of international law”.

The proposed amendments to the Law of Turkmenistan “On Public Associations” (hereinafter: the PA Law) of October 21, 2003, № 197-II enable to considerably improve the legal regulation of PA activities, bring its norms into conformity with Turkmenistan’s international obligations and advanced global practice. They will also normatively fix and streamline the mechanism of identifying by authorized state bodies of shortcomings in PA activities and subsequent removal of such shortcomings.

The recommended changes propose:

1. For the purpose of implementing international obligations arising from the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (adopted by Resolution 2200 A (XXI) of the UN General Assembly of December 16, 1966. Entered into force on March 23, 1976) and the UNECE (United Nations Economic Commission for Europe) Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters (ratified by Mejlis of Turkmenistan on April 30, 1999, hereinafter – the Aarhus Convention), as well as from provisions of Article 8 of the Constitution of Turkmenistan, provide for the realization of the rights of foreign citizens and persons without citizenship to act as founders, members of PAs as well as their participants (Articles 5, 15 of the PA Law).
2. Remove the discrimination of NGOs as compared to commercial organizations, which can carry out their activities without territorial limitations.
3. For the purpose of implementing Article 2 of the Constitution of Turkmenistan, provide a PA with the right to appeal against the decisions of state bodies concerning the interests of PAs in the court (Article 14 of the PA Law).
4. In accordance with the advanced world practice provide individuals and legal entities with an opportunity to act jointly as founders and participants of PAs (Articles 5, 15 of the PA Law).
5. Set the minimum number of founders necessary for PA establishment – 5 founders for establishment of any PA regardless of the territory of its activities (Articles 15, 16 of the PA Law).
6. Cancel the restriction for activities of unregistered PAs that impedes the right of citizens to the freedom of association and contradicts the norms of international law: the International Covenant on Civil and Political Rights and the Aarhus Convention (Article 17 of the PA Law).
7. Verify and reduce the list of grounds for refusal in PA registration bringing it into conformity with international practice and thereby implementing the principle of inadmissibility of double punishment (Article 18 of the PA Law).
8. Streamline the procedure of conducting checks of PA activities and bring it into conformity with the similar legislation concerning commercial organizations changed upon the instruction of President Gurbanguly Berdimuhamedov (Article 28 of the PA Law).
9. Limit the authority of the Ministry of Adalat to cancel the PA registration, suspend their activities as well as make a decision on distribution of its property in case of its forced liquidation by making cancellation of registration, PA liquidation, suspending its activities and making a decision regarding the

distribution of the PA property an exclusive prerogative of the court as it is the case in all countries of Europe and CIS (Article 28, 31 of the PA Law).

10. Introduce the personal responsibility of officials making the violation of the PA Law (Article 29 of the PA Law).

11. Bring the corresponding norms of the Law in conformity with the constitutional principles of judicial protection of the citizens, including the streamlining of the mechanism of PA liquidation upon the court's decision.

Below is the Table showing the existing provision of the Law, its proposed amendment in accordance with the suggestions made above, and the detailed justification for such change.

Provision of the law in the existing version	Proposed amendment of the provision of the law	Justification of proposed amendments
<p>Paragraphs 1-3 of Article 5. Founders, members and participants of public associations</p> <p>Adult citizens of Turkmenistan can be the founders, members as well as participants (if membership is not provided by the charters) of public associations unless this Law and laws on separate types of public associations state otherwise.</p> <p>Citizens of Turkmenistan, upon reaching 14 years of age, can be the members of youth public associations.</p> <p>Citizens of Turkmenistan, upon reaching 8 years of age, can be the members and participants of children's public associations.</p>	<p>Write down Paragraphs 1-3 of Article 5 in the following version:</p> <p>Adult citizens of Turkmenistan, foreign citizens and persons without citizenship legally residing in Turkmenistan as well as legal entities of Turkmenistan and legal entities of foreign countries can be the founders, members as well as participants (if membership is not provided by the charters) of public associations.</p> <p>Citizens indicated in paragraph 1 of this Article and persons without citizenship, upon reaching 14 years of age, can be the members of youth public associations.</p> <p>Citizens indicated in paragraph 1 of this Article and persons without citizenship, upon reaching 8 years of age, can be the members and participants of children's public associations.</p>	<p>The proposed amendments allow implementing the international norms recognized by Turkmenistan and removing the restriction of the right of foreign citizens and persons without citizenship to association arising from the International Covenant on Civil and Political Rights and Aarhus Convention, realizing the constitutional provision in Article 8 ("Foreign citizens and persons without citizenship enjoy the rights and freedoms, bear obligations of the citizens of Turkmenistan, in accordance with the legislation and international treaties of Turkmenistan") of the Constitution of Turkmenistan, as well as Articles 3 15 and 32 of the Law of Turkmenistan "On legal status of foreign citizens in Turkmenistan".</p> <p>In accordance with the advance world practice it is suggested that individuals and legal entities are provided with an opportunity to act jointly as founders and participants of public associations.</p>

<p>Article 13. Territorial scope of activities of public associations</p> <p>International, nation-wide and local public associations can be established and operate in Turkmenistan</p> <p>A public association, established in Turkmenistan, is recognized as international, if in accordance with its charter, at least one its structural division – organization, department (branch) or representation - is created and operates in foreign countries.</p> <p>Associations, activities of which in accordance with the statutory goals spread to the entire territory of Turkmenistan or most of its velayats, are recognized as nation-wide public</p>	<p>Add paragraph 5 to Article 13 in the following version:</p> <p>Members and participants of public associations have the right carry out statutory activities on the entire territory of Turkmenistan and beyond.</p>	<p>The indicated amendment removes the discrimination of public associations (PA) as compared to commercial organizations that may carry out activities without territorial restrictions. In addition, it removes the discrimination of PA members as compared to commercial organizations and realizes their constitutional rights envisaged by Articles 18, 19 (“Turkmenistan guarantees the equality of rights and freedoms of a human being and citizen as well as the equality of a human being and citizen before the law regardless of the place of residence”), Articles 30, 33 (“Citizens have the right to choose an occupation on their discretion).</p>
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<p>associations.</p> <p>Local public associations are the public associations, activities of which in accordance with the statutory goals spread to the territory of velayat, city, etrap, settlement and village.</p>	<p>Paragraph 3 of Article 14. The State and public associations.</p> <p>Issues, touching upon the interests of public associations, in cases specified by the legislation of Turkmenistan, are resolved by state authorities with the participation of appropriate public associations or upon coordination with them.</p>	
<p>Paragraph 3 of Article 14. The State and public associations.</p> <p>Issues, touching upon the interests of public associations, in cases specified by the legislation of Turkmenistan, are resolved by state authorities with the participation of appropriate public associations or upon coordination with them. In case of disagreement with the made decision, the public associations have the right to appeal against such decisions in the court in the established order.</p>	<p>Write down paragraph 3 of Article 14 in the following version:</p> <p>Issues, touching upon the interests of public associations, in cases specified by the legislation of Turkmenistan, are resolved by state authorities with the participation of appropriate public associations or upon coordination with them. In case of disagreement with the made decision, the public associations have the right to appeal against such decisions in the court in the established order.</p>	<p>This amendment will result in implementation of the provision of Article 23 of the Constitution of Turkmenistan (“A human being cannot be restricted in the rights or deprived of the enjoyed rights in the way other than in strict accordance with the law”).</p>
<p>Article 15. Establishment of public associations</p> <p>Public associations are established on the initiative of their founders - citizens of Turkmenistan in the number no less than 5 people. In cases, provided by this Law, foreign citizens, legal entities – public associations - both of Turkmenistan and foreign countries can join the composition of founders along with the citizens of Turkmenistan. International public associations conduct their activities in accordance with the legislation of Turkmenistan.</p> <p>International and nationwide public associations</p>	<p>Write down paragraph 1 of Article 15 in the following version:</p> <p>Public associations are established on the initiative of their founders - citizens of Turkmenistan, foreign citizens and persons without citizenship legally residing in Turkmenistan in the number no less than 5 people as well as legal entities of Turkmenistan and legal entities of foreign countries. International public associations conduct their activities in accordance with the legislation of Turkmenistan.</p> <p>Delete Paragraph 2 of Article 15</p>	<p>See the justification to Article 5. The proposed version of Article 15 will enable realizing the right of citizens of Turkmenistan, who are workers of commercial and other legal persons, to association. The proposed amendment will allow implementing the international norms recognized by Turkmenistan and remove the restriction of the right of foreign citizens and persons without citizenship to association arising from the International Covenant on Civil and Political Rights and Aarhus Convention. It will provide for implementation of Article 8 of the Constitution of Turkmenistan.</p> <p>In accordance with the advanced world practice it is suggested providing individuals and legal</p>

<p>can be established upon the presence of 50 and 500 members or participants accordingly.</p>		<p>entities with the right to jointly act as founders and participants of public associations. The minimal number of founders necessary or establishment of international and nationwide public associations (50 and 500 members or participants accordingly) makes it considerably difficult to establish such public associations and limits the rights of individuals to association in contradiction to the international obligations of Turkmenistan.</p>
<p>Paragraph 2 of Article 16. Charter of public association</p> <p>The Charter must reflect:</p> <ul style="list-style-type: none"> - name, goals, objectives of a public association, its organizational-legal form; - territory, within the bounds of which a public association performs its operation, - structure of public association, its managing and control-auditing bodies; - conditions and procedure of acquiring and losing membership in a public association (for an association, the charter of which envisages membership), - rights and responsibilities of the members and participants of this association; - competence and procedure of setting up managing bodies of a public association, terms of their mandate; - location of the permanent managing body; - procedure of convening sessions of the managing body and decision-making; - sources of accumulated funds and other 	<p>Delete item 2 of paragraph 2 of Article 16</p>	<p>See the justification to Article 13 of the PA Law. The amendment removes PA discrimination as compared to commercial organizations as well as discrimination of PA members by restricting their activities according to the territorial basis.</p>

<p>property of a public association, rights of a public association and its structural divisions to manage the property;</p> <ul style="list-style-type: none"> - procedure of introducing amendments to the charter of a public association; - procedure of reorganization, liquidation of a public association, as well as distribution of the property of a public association remaining after liquidation. 		
<p>Paragraphs 1-5 of Article 17. State registration of public associations</p> <p>Registration of public associations, regardless of their type, is made by the Ministry of Adalat of Turkmenistan in the order provided by Saparmurat Turkmenbashi Civil Code of Turkmenistan and other legislation of Turkmenistan.</p> <p>Public associations are subject to obligatory inclusion in the Unified State Register of legal entities in the order established by the legislation of Turkmenistan.</p> <p>Activities of an unregistered public association are prohibited. A person conducting activities on behalf of the unregistered public association bears responsibility in accordance with the legislation of Turkmenistan.</p> <p>The documents below are submitted for registration of a public association:</p>	<p>Delete paragraphs 3 and 5 of Article 17</p>	<p>The proposed amendment will enable Turkmenistan to implement the international norms recognized by it and remove the restriction on the human right to association arising from the International Covenant on Civil and Political Rights and Aarhus Convention. The restriction of activities of unregistered organizations impedes the implementation of the right of citizens to freedom of association and directly contradicts the norms of international law. The right to association (in contrast, for example, to the political rights such as to elect and be elected to representative and state bodies) is one of the natural rights and not the one that can be granted, permitted or not permitted by a state body. Every human being is born with this right.</p>

<ul style="list-style-type: none"> - application, signed by all founders and members of the managing body of this public association with indication of surnames, names, and patronymic names; - charter of a public association in 2 copies; - minutes of the constituent congress (conference) or the general meeting, containing information on creation of a public association, ratification of its charter and formation of managing and control-auditing bodies; - information on founders; - document on payment of the registration fee; - document on providing a legal address to a public association. <p>For registration of an international public association, in addition to the documents listed in paragraph 4 of this article, submission of a document confirming the presence of a structural division – organization, department (branch), representation – outside the territory of Turkmenistan is necessary.</p>		
<p>Paragraph 1 of Article 18. Refusal to register public association</p> <p>A public association can be refused in registration on the following grounds:</p> <ul style="list-style-type: none"> - if the charter of a public association contradicts the Constitution of Turkmenistan, 	<p>Write down item 2 of paragraph 1 of Article 18 in the following version:</p> <p>if there was an earlier registered public association with the same name;</p> <p>Delete item 6 of paragraph 1 of Article 18</p>	<p>In accordance with Article 23 of the Constitution of Turkmenistan, a citizen cannot be restricted in the rights or deprived of the enjoyed rights, convicted or subjected to punishment in the way other than in strict accordance with the law. The Criminal Code of Turkmenistan (Article 3. Principles of the criminal legislation) sets forth</p>

<p>provisions of Articles 4, 5, 16, 17 of this Law and other legislation of Turkmenistan;</p> <ul style="list-style-type: none"> - if there was an earlier registered public association with the same name on the territory, within which this association performs its activities; - if the complete list of constituent documents is not submitted or they were processed improperly; - if it is determined that the submitted documents contain deliberately false information; - if the name of a public association abuses morality, national and religious feelings of citizens; - if one of the founders is a person, who has criminal record of committing a grave crime. 		<p>that no one can be punished twice for one and the same crime.</p> <p>According to Article 81 of the Criminal Code of Turkmenistan, “a person convicted for committing a crime is considered convicted from the date when the conviction entered into force till cancellation of conviction”.</p> <p>Adoption of the proposed amendment will allow implementing the principle of inadmissibility of double punishment.</p>
<p>Article 28. Control and supervision over the activities of public associations</p> <p>The Ministry of Adalat of Turkmenistan and adalat departments in velayats shall exercise control over the compliance of activities of public associations with their statutory goals. They are entitled to request from the managing bodies of public associations to provide their constituent documents; to send their representatives to attend events conducted by public associations; to get explanations from the members of a public association and other citizens on issues connected with observance of the charter; can issue a written warning to public associations in case of revealing the violation of</p>	<p>To add paragraph 2 to Article 28 in the following wording:</p> <p>The routine checks of public associations are carried out no more than once in three years, and unscheduled checks shall be assigned in case the Ministry of Adalat receives verified information of the violation by a public association of the rights of third parties or legislation of Turkmenistan. The procedure established for checking the activities of commercial legal entities carried out by other government bodies shall spread on the checks conducted by the Ministry of Adalat.</p> <p>To consider paragraphs 2 and 3 of Article 28 as paragraphs 3 and 4 accordingly.</p>	<p>The proposed amendment regulates the procedure of conducting checks of PA activities, brings it into conformity with the similar legislation regarding for-profit entities reformed on President Gurbanguly Berdimuhamedov’s instruction.</p> <p>The mechanism of removing of revealed shortcomings is legalized.</p> <p>The functions of the judicial power not characteristic of the Ministry of Adalat are regulated and brought into conformity with the legislation. It is proposed to restrict the authority of the Ministry of Adalat to cancel the registration of a public organization and make a decision on distribution of its property in case of</p>

<p>the legislation of Turkmenistan by them.</p> <p>The Ministry of Adalat of Turkmenistan cancels the registration, if a public association has mainly switched to entrepreneurial operations, or if the realization of the goal stipulated by the charter becomes impossible.</p>	<p>To write down paragraph 3 (former paragraph 2) of Article 28 in the following version:</p> <p>A public association is obliged to eliminate a violation indicated in the warning within, at least, one month from the date of receiving the warning, or during the reasonable time established by the Ministry of Adalat in the warning.</p>	<p>its forced liquidation by making the cancellation of registration, liquidation of a public association and making a decision on distribution of the property of a public association an exclusive prerogative of the court as it is the case in all countries of Europe and CIS.</p>
<p>If during one year a public association receives more than two written notifications or instructions about elimination of violations, as well as in case of non-presenting during a year to the Ministry of Adalat of Turkmenistan of the updated data subject to registration, the ministry may submit to the court an appeal on liquidation of such public association.</p>	<p>If during one year a public association receives more than two written notifications or instructions about elimination of violations, and if the indicated violations are not removed the Ministry of Adalat of Turkmenistan may submit to the court an appeal on liquidation of such public association.</p>	
<p>Prosecutor General of Turkmenistan and his/her subordinate prosecutors exercise supervision over compliance with the legislation on public associations.</p> <p>The financial and taxation bodies exercise control over public associations' sources of income, sizes of received assets and payment of taxes in accordance with the legislation of Turkmenistan.</p>		
<p>The Ministry of Adalat of Turkmenistan shall submit, in the order established by the legislation of Turkmenistan, to the designated government body information on the projects and programs of foreign technical, financial and humanitarian assistance and grants, if their</p>		

<p>amount either exceeds the threshold amount or is not peculiar to the activities of the public association receiving such assistance.</p> <p>The ecological, fire-fighting, sanitary-epidemiological and other bodies of state supervision and control may exercise supervision and control over public associations' compliance with the existing norms and standards.</p>		
<p>Article 29. Responsibility for violation of the legislation on public associations</p> <p>The government bodies and their officials that caused damage to public associations as a result of violation by the mentioned bodies and officials of this law as well as other laws on separate forms of public associations, bear responsibility as envisaged by the legislation of Turkmenistan.</p>	<p>To write down Article 29 in the following version:</p> <p>The government bodies and their officials that caused damage to public associations as a result of violation by the mentioned bodies and officials of this law as well as other laws on separate forms of public associations shall reimburse the damage caused by such illegal actions and bear responsibility as envisaged by the legislation of Turkmenistan.</p>	<p>Introduction of the personal responsibility of officials violating the Law relating to PA will allow increasing their responsibility in decision making that will favorably tell on the state regulation of PA functioning.</p>
<p>Paragraph 1 of Article 31. Suspension of activities of public associations</p> <p>The Ministry Adalat of Turkmenistan and the court's judgment can suspend the activities of public associations in the order established by this Law and other legislation of Turkmenistan in case of violation of the Constitution, legislation of Turkmenistan, as well as provisions of public association charters.</p>	<p>Write down paragraph 1 of Article 31 in the following version:</p> <p>The activities of public associations, in case of violating the Constitution, legislation of Turkmenistan and provisions of their charters, may be suspended by the court's judgment for the term up to one month or other term agreed upon with the public association needed to remove the revealed violation in the order established by this law and other legislation of Turkmenistan.</p>	<p>The proposed amendment shall enable bringing the provision of Article 31 into conformity with the constitutional principles of judicial protection of the rights of citizens.</p>
<p>Article 32. Termination of activities and</p>	<p>Delete in paragraph 1 of Article 32 the words:</p>	<p>See justification to Article 28 of the Law on PA.</p>

<p>liquidation of public associations</p> <p>Public associations are liquidated and terminate their activities in cases provided by their charter by virtue of the decision of their congress (conference) or general meeting, or by the court judgment, as well as in case the Ministry of Adalat of Turkmenistan cancels their registration.</p> <p>Public associations can be liquidated by the court judgment in case of:</p> <ul style="list-style-type: none"> - violation of requirements of Article 4 of this Law; - violation of rights and freedoms of citizens caused by their actions; - repeated or gross violation of the legislation of Turkmenistan or other legal acts, or systematical performing of activities conflicting with their statutory goals; - non-presenting, during the year, of the changes of facts, which are subject to registration and inclusion in the Unified State Register of legal entities; - presenting of inadequate information during registration of a public association. <p>The Ministry of Adalat of Turkmenistan submits to the court an application for liquidation of a public association for the reasons specified in this article.</p> <p>Liquidation of the public association by the</p>	<p>“, as well as in case the Ministry of Adalat of Turkmenistan cancels their registration”.</p> <p>Add to paragraph 9 of Article 32 the following sentence:</p> <p>“, or by liquidation commission designated by the court and composed of the members of a public association or other persons”.</p>	<p>It is proposed to limit the authorities of the Ministry of Adalat to cancel registration of a public association by making the liquidation of a PA and exclusive prerogative of the court as it is the case in all countries of Europe and CIS.</p> <p>It streamlines the mechanism of PA liquidation on the court’s decision.</p>
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<p>court's decision means prohibition of its activities.</p>		
<p>Liquidation of public association is conducted in accordance with the legislation of Turkmenistan.</p>		
<p>During the liquidation all current actions should be finished, the monetary value of the remaining property should be defined, the creditors should be satisfied and the remaining property should be distributed among authorized persons.</p>		
<p>The Charter can determine the persons, authorized to accept the property. In case of absence of such definition, the Ministry of Adalat of Turkmenistan on its own discretion decides to pass the remaining property to one or several public associations pursuing the same or similar goals as the liquidated public association. In case such associations do not exist it can decide to pass this property to a charitable organization or the state.</p>		
<p>Information on liquidation of public associations is subject to publication. Distribution of property is permitted only upon expiration of 3 months after publication.</p>		
<p>Liquidation is conducted by the authorized body of a public organization.</p>		
<p>Decision about liquidation of the public association is sent to the body handling the</p>		

Unified State Register of legal entities in order to remove the mentioned association from this register.

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