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## Economic Commission for Europe

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

#### Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

#### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

### **Report of the Compliance Committee\***

#### **Compliance by Turkmenistan with its obligations under the Convention**

#### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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## I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/91 on compliance by Turkmenistan with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## II. Summary of follow-up

2. On 20 October 2014, the Executive Secretary of the United Nations Economic Commission for Europe wrote to the Minister of Foreign Affairs to draw his attention to decision V/91, and in particular paragraph 6 of that decision which recommended the Party concerned to provide information through an official statement by 30 November 2014 that would confirm it had met the requirements of that paragraph.

3. On 16 December 2014, the Party concerned provided a draft statement by its Ministry of Justice with respect to paragraph 6 of decision V/91.

4. On 2 January 2015, the draft statement by the Party concerned was forwarded at the Committee's request to the communicant of communication ACCC/C/2004/5 for its comments. No comments were received.

5. On 27 June 2015 the Party concerned provided a second draft statement concerning paragraph 6 of decision V/91.

6. At the Committee's request, on 21 August 2015 the secretariat forwarded the second draft statement by the Party concerned to the communicant of communication ACCC/C/2004/5, inviting it to provide comments on that draft statement by 4 September 2015. The letter also informed the communicant that if no comments were received, the secretariat would inform the Party concerned that it may proceed with submitting an official version of the statement through the Minister of Foreign Affairs.

7. Also by letter of 21 August 2015, the secretariat informed the Party concerned that the draft statement was sent for comments to the communicant of communication ACCC/C/2004/5 and reminded the Party concerned that it was expected to submit its report on the meetings it has organized to fulfil the requirements of paragraph 7 of decision by 30 November 2015.

8. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/91 in open session taking into account the second draft statement by the Party concerned. The Party concerned took part in the open session. The Party concerned informed the Committee that the official statement of the Minister of Foreign Affairs would be provided as soon as possible. The Committee requested the Party concerned to submit both the statement and the report by the end of March 2016.

9. On 30 March 2016, the Party concerned through its Ministry of Foreign Affairs provided its official statement concerning paragraph 6 of decision V/91 as well as its report concerning the implementation of paragraph 7 of that decision.

10. The Committee adopted its report to the sixth session of the Meeting of the Parties on the implementation of decision V/91 through its electronic decision-making procedure on 31 July 2017, and thereafter requested the secretariat to send it to the Party concerned and the communicant.

### III. Considerations and evaluation by the Committee

11. In order to fulfil the requirements of the decision V/91, the Party concerned would need to:

(a) Provide information through an official statement by 30 November 2014 confirming, to the satisfaction of the Committee, that:

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

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

(iii) With respect to activities of non-registered associations within the scope of the Convention, article 9 of the 2014 Law on Nature Protection prevails over the prohibition on activities of non-registered associations in article 7, paragraph 2, of the 2014 Act on Public Associations and other relevant legislation (e.g. as *lex specialis*, in the form of a special law which prevails over a more general law);<sup>3</sup>

(b) Report to the Committee by 30 November 2015 as well as in its national implementation report to the sixth session of the Meeting of the Parties on the meetings (e.g., round tables, workshops or conferences) it had organized with broad public participation, open to all members of the public and dedicated to:

(i) Sharing experiences in activities carried out by associations, organizations and groups promoting environmental protection in the Party concerned;

(ii) Ensuring the consistency of the national legal system of the Party concerned with the obligation set out in article 3, paragraph 4, of the Convention.<sup>4</sup>

12. The Committee welcomes the information received from the Party concerned on 16 December 2014, 27 June 2015 and 30 March 2016.

**Paragraph 6 of decision V/91: Official statement on “citizens”, “natural persons”, “founders of public associations” and “activities of non-registered associations”**

13. In its official statement provided through its Ministry of Foreign Affairs on 30 March 2016, the Party concerned stated the following:<sup>5</sup>

(a) Regarding the concept of “citizen” in the 2014 Law of Nature Protection and the concept of “natural persons” in Article 11, paragraph 1, of the 2014 Act on Public Associations:

Article 9 (1) of Turkmenistan’s Law on Nature Protection (2014) lists all the categories of people who have environmental rights - **these are citizens of Turkmenistan, foreign citizens and persons without citizenship**<sup>6</sup>. Article

<sup>1</sup> Decision V/91, para. 6 (a).

<sup>2</sup> Ibid., para. 6 (b).

<sup>3</sup> Ibid., para. 6 (c).

<sup>4</sup> Ibid., para. 7.

<sup>5</sup> Annex 1 to the letter from the Party concerned of 30 March 2016.

<sup>6</sup> Emphasis in original.

9 (1) of the Law provides that they have a constitutional right to a favourable environment, to defend it from the negative impact of economic and other activities. In turn, “the “right to a favourable environment” includes all the environmental rights referred to in article 9 (2) of the Law, which are enjoyed by the persons listed in Article 9 (1) of the Law. Consequently, the concept of “citizen” in article 9, paragraph 2, of the Law on Nature Protection includes any natural person, i.e., also foreign citizens and persons without citizenship and the concept of “natural persons” in Article 11 (1) of the Act on Public Associations (2014) includes foreign citizens and persons without citizenship. The fundamental (constitutional) laws of Turkmenistan define the concept of “natural persons”. Thus, under the Civil Code of Turkmenistan (1998) “natural persons” means citizens of Turkmenistan, foreign citizens, and also persons without citizenship” (Article 19).

The Tax Code of Turkmenistan (2004) also provides that “citizens of Turkmenistan, citizens of foreign states, persons without citizenship are recognized as natural persons” (Article 14). ”<sup>7</sup>

(b) Regarding who may become founders of public associations under article 4, paragraph 2, of the 2014 Act on Public Associations:

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

The concept of “natural persons” is used in Article 4 (1) of the Act on Public Associations, which means that foreign citizens and persons without citizenship also have the right to establish a public association.<sup>8</sup>

In this context, the Party concerned also provided the text of the Article 4, paragraphs 1 and 2 of the 2014 Act on Public Associations:

1. The right of citizens to establish public associations is to be realized both directly, through the association of natural persons, and via legal entities – i.e. public associations.

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

(c) With respect to activities of non-registered associations within the scope of the Convention:

Nothing enshrined in the laws of Turkmenistan on nature protection and public associations makes provision for them to prevail over other laws. To a certain extent there is a contradiction (collision) between Article 9 of the Law on Nature Protection and Article 7 (2) of the Law on Public Associations. Therefore, in the case of the application of these norms of the laws and in the event of a dispute on this matter, the primacy will be given to Article 9 of the Law on Nature Protection, since it complies with the provisions of the Aarhus Convention. Under the Constitution of Turkmenistan of 18 May 1992, as amended on 26 September 2008, “Turkmenistan recognizes the

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<sup>7</sup> Annex 1 to the letter from the Party concerned of 30 March 2016, pp. 1-2.

<sup>8</sup> Ibid., p. 2.

primacy of generally recognized norms of international law. If an international agreement entered into by Turkmenistan establish rules other than those provided for by a statute law of Turkmenistan, then the rules of the international agreement are applicable” (Article 6). All Turkmenistan’s laws also contain such provisions: this includes the Law on Nature Protection (Article 2 (2)) and the Act on Public Associations (Article 2 (2)).<sup>9</sup>

14. Having examined the official statement submitted by the Party concerned on 30 March 2016 as summarized above, and in the absence of any information from the communicant of communication ACCC/C/2004/05 or observers to the contrary, the Committee considers that the official statement sufficiently addresses each of the points in subparagraphs (a)-(c) of paragraph 6 of decision V/91. Accordingly, the Committee finds that the Party concerned has met the requirements of paragraph 6 of decision V/91, and, on the basis that the official statement reflects the law as it stands and is applied, the Party concerned is no longer in non-compliance with article 3, paragraph 4, of the Convention with respect to the points of non-compliance identified in the Committee’s findings on communication ACCC/C/2004/05.<sup>10</sup> The Committee makes clear that this does not preclude it from examining future allegations with respect to the compliance with the Convention of the Act on Public Associations or Law on Nature Protection, if brought before it.

**Paragraph 7 of decision V/91: Round tables and other meetings on activities of associations, organizations and groups promoting environmental protection**

15. With respect to paragraph 7 of decision V/91, in its report submitted on 30 March 2016, the Party concerned stated that in 2015 the Ministry of Nature Protection, with the participation of the Turkmenistan Aarhus Centre, had organized a series of round tables, seminars and workshops for representatives of public associations, organizations and groups. It reported that representatives of government, environmental and other organizations, and local executive agencies of both central and local government had participated in the meetings. It stated that in the course of 2015, such meetings were held in Ashgabat (8 and 19 November 2015), in the provincial capitals Balkanabat (2 October 2015), Dashoguz (23 April 2015), Mary (9 June 2015), Turkmenabat (19 May 2015) and Turkmenbashi (26 November 2015). The total number of participants exceeded 200 persons.<sup>11</sup>

16. The Party concerned reported that the above meetings were conducted by specialists from the Ministry of Nature Protection and staff of the Turkmenistan Aarhus centre. In addition, representatives of public associations and government organizations were invited to speak at the meetings, informing the audience about their environmental protection activities and inviting the public to take part in these. The Party concerned expressed its gratitude for the assistance provided by the Environmental Information and Resource Centres established in the provinces of Turkmenistan with financial support from the Organization for Security and Co-operation in Europe in Ashgabat.<sup>12</sup>

17. The Party concerned reported that, at the meetings, a significant amount of time was allocated to the implementation of the provisions of the Convention in national environmental and other legislation, including the issue of public access to environmental information during the preparation of environmentally significant decisions and the issue of access to justice in environmental matters. The Party concerned stated that the participants

<sup>9</sup> Ibid., pp. 2-3.

<sup>10</sup> ECE/MP.PP/C.1/2005/2/Add.5.

<sup>11</sup> Annex 2 to the letter of the Party concerned of 30 March 2016.

<sup>12</sup> Ibid.

were informed about recently adopted environmental legislation and that the 2014 Act on Public Associations and its differences from the 2003 Public Associations Act was also discussed.<sup>13</sup>

18. The Committee welcomes the above activities carried out by the Party concerned and considers that they are sufficient to fulfil the requirements of paragraph 7 of decision V/9I.

#### **IV. Conclusions**

19. The Committee welcomes the constructive engagement of the Party concerned in the compliance review process during the intersessional period.

20. Having reviewed the information provided in the intersessional period, the Committee finds that the Party concerned has seriously and actively engaged in efforts to follow the recommendations set out in paragraphs 6 and 7 of decision V/I. Based on the information provided, and having received no evidence to the contrary, the Committee considers that the Party concerned has fulfilled the requirements of paragraphs 6 and 7 of decision V/9I, and accordingly is no longer in a state of non-compliance with article 3, paragraph 4, of the Convention with respect to the points of non-compliance identified in the Committee's findings on communication ACCC/C/2004/05.<sup>14</sup>

21. The Committee recommends that, pursuant to paragraph 35 of the annex to decision I/7, the Meeting of the Parties endorse the above report with regard to compliance by Turkmenistan.

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<sup>13</sup> Ibid.

<sup>14</sup> ECE/MP.PP/C.1/2005/2/Add.5.