

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/8q
on compliance by Turkmenistan with its
obligations under the Convention**

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I. Introduction

1. At its seventh session (Geneva, Switzerland, 18–21 October 2021), 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 VII/8q on compliance by Turkmenistan with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

II. Summary of follow-up

2. At its seventy-third meeting (Geneva, 13–16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. The communicant of communication ACCC/C/2004/5 took part in the open session at the seventy-third meeting. Though invited, the Party concerned did not take part in the open session.

3. On 7 February 2022, on the Committee's instructions, the secretariat sent an information note and a template to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15–16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. Representatives of the Party concerned took part in that session.

5. In accordance with paragraph 4 (a) of decision VII/8q, the Party concerned was requested by the Meeting of the Parties to submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in that decision.

6. On 3 December 2022, the secretariat wrote to the Party concerned that, as of that date, the Committee had not yet received its plan of action due on 1 July 2022. The Committee therefore invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13–16 December 2022), to discuss its outstanding plan of action. At that meeting, the Party concerned informed the Committee that it had prepared its draft plan of action and that, once it had completed consultations with associations and relevant Ministries on the draft plan of action, it hoped to submit its final plan of action to the Committee by early February 2023.

7. On 13 March 2023, the secretariat, upon the Committee's instructions, sent an email to the Party concerned requesting an update on its plan of action.

8. On 5 May 2023, the Party concerned provided an update on its plan of action.

9. In accordance with paragraph 4 (b) of decision VII/8q, the Party concerned was requested by the Meeting of the Parties to provide a detailed progress report to the Committee by 1 October 2023 on the measures taken and the results achieved in the implementation of its plan of action and the recommendations in decision VII/8q.

10. On 9 November 2023, the Party concerned submitted its first progress report on decision VII/8q, more than a month after the deadline of 1 October 2023.

11. On 14 November 2023, the secretariat forwarded the Party concerned's first progress report to the communicant of communication ACCC/C/2004/5 and the registered observers, inviting their comments by 12 December 2023.

12. On 15 November 2023, the communicant of communication ACCC/C/2004/5 provided its comments on the Party concerned's first progress report.

13. On 6 December 2023, the Party concerned submitted its plan of action, together with additional information concerning matters related to decision VII/8q.

14. On 6 December 2023, the secretariat forwarded the plan of action and the additional information received to the communicant of communication ACCC/C/2004/5 and the registered observers, inviting their comments by 20 December 2023.

15. On 17 December 2023, the communicant of communication ACCC/C/2004/5 submitted its comments on the plan of action and additional information submitted by the Party concerned on 6 December 2023.

16. The Committee prepared its first progress review on decision VII/8q at its virtual meeting on 25 January 2024 and adopted it through its electronic decision-making procedure on 19 February 2024. The Committee thereafter requested the secretariat to forward the first progress review to Turkmenistan, the communicant of communication ACCC/C/2004/5 and the registered observers.

III. Considerations and evaluation by the Committee

17. In order to fulfil the requirements of paragraph 2 (a) and (b) of decision VII/8q, Turkmenistan would need to provide the Committee with evidence that it has taken, as a matter of urgency, the necessary legislative, regulatory, administrative and practical measures to ensure that its legal framework:

- (a) Explicitly sets out that foreign citizens and persons without citizenship have the same right to found and participate in non-governmental organizations promoting environmental protection as do citizens of Turkmenistan;
- (b) Makes clear that members of the public who decide to come together to exercise their rights under article 9 (2) of the Law on Nature Protection, for example, to undertake environmental rehabilitation activities or to take part in demonstrations on nature protection issues and, in doing so, choose to identify themselves by a common name, will not be considered as acting as an “unregistered public association” and thus have their activities prohibited under article 7 (2) of the 2014 Act on Public Associations.

18. In paragraph 5 of decision VII/8q, the Meeting of the Parties decided at its seventh session:

- (a) To issue a caution to the Party concerned;
- (b) That the caution will become effective on 1 January 2024, unless the Party concerned has fully satisfied the conditions set out in paragraph 2 (a) and (b) of the decision and has notified the secretariat of this fact by 1 October 2023.

19. In paragraph 6 of decision VII/8q, the Meeting of the Parties requested the Committee to establish the successful fulfilment of paragraph 2 (a) and (b) for the purposes of paragraph 5 of the decision.

General observations

20. The Committee welcomes the Party concerned’s first progress report on decision VII/8q submitted on 9 November 2023, while noting that it was received more than one month after the deadline of 1 October 2023 set by the Meeting of the Parties.

21. The Committee also welcomes the Party concerned’s plan of action due on 1 July 2022 but submitted on 6 December 2023. The Committee welcomes, in particular, the clear course of action set out in the plan of action, namely to amend the “Act on Public Associations” and “On Nature Conservation”, as well as the clear timeline set in the plan of action regarding the legislative process for the preparation, timeline and enactment of these two laws. The Committee however expresses its disappointment that the plan of action was received more than a year after the deadline of 1 July 2022 set by the Meeting of the Parties in paragraph 4 (a) of decision VII/8q.

Paragraph 2 (a) of decision VII/8q

22. In its first progress report, the Party concerned reports that it has proposed a draft Act amending the Law on Public Associations which was submitted by the Cabinet of Ministers to the Parliament of Turkmenistan.¹

23. The proposed amendment provides:

In Article 1 after the words “created by citizens of Turkmenistan”, delete the word “Turkmenistan” further in the text.

In part one of Article 3, after the words “created on the initiative of citizens of Turkmenistan” delete the word “Turkmenistan” further in the text.

In part two of Article 16, after the words “A public initiative body is formed on the initiative of citizens of Turkmenistan,” delete the word “Turkmenistan” further in the text.²

24. The communicant of communication ACCC/C/2004/5 submits that article 11 of the Constitution of Turkmenistan makes a distinction between citizens of Turkmenistan, foreign citizens, and stateless persons. It therefore concludes that the Law “On Public Associations” should not distinguish between these three groups with regard to their right to create public associations and participate in their activities. In its view, the law should preferably contain the terms “individuals”, “physical persons” or “natural persons” instead of “citizens” to avoid any ambiguity.³

25. The Committee notes that the Party concerned has not provided any evidence showing that the concept of “citizen” in the proposed amendment would include any natural person, including foreign citizens and persons without citizenship. The Committee is therefore not in a position to conclude that the Party concerned would meet the requirement of paragraph 2 (a) of decision VII/8q if the proposed amendment were to be adopted in its current form. The Committee therefore invites the Party concerned to confirm through an official statement that the word “citizen” includes “any natural person”, including also foreign citizens and persons without citizenship. If it is, in fact, not the case that the word “citizen” in article 11 includes “any natural person”, including also foreign citizens and persons without citizenship, the Party concerned will need to take additional measures to ensure that foreign citizens and persons without citizenship are able to participate in and found public associations in the same way as citizens of Turkmenistan and to provide evidence to the Committee of these measures as soon as possible.

26. Based on the foregoing, while welcoming the steps taken so far by the Party concerned to amend its Law on Public Associations, the Committee concludes that the Party concerned has not yet fulfilled paragraph 2 (a) of decision VII/8q.

Paragraph 2 (b) of decision VII/8q

27. In its first progress report, the Party concerned reports that a draft Act amending the Law on Nature Protection has been submitted by the Cabinet of Ministers to the Parliament of Turkmenistan.⁴ The proposed amendment provides:

In Article 9, provide for part 2-1 in the following wording:

“The exercise of the rights specified in paragraphs 1-9 of part two of this article by two or more persons cannot be recognized as the activity of an unregistered public

¹ Party’s first progress report, 9 November 2023, p. 6.

² Party concerned’s additional information, 6 December 2023, annex 2.

³ Comments from the communicant of communication ACCC/C/2004/5, 17 December 2023.

⁴ Party’s first progress report, 9 November 2023, p. 6.

association in accordance with the legislation of Turkmenistan on public associations.”⁵

28. The communicant of communication ACCC/C/2004/5 submits that the proposed amendment could be a way to overcome the general prohibition in article 7 (2) of the Law on Public Associations forbidding activities of unregistered public associations on the territory of Turkmenistan.⁶

29. The Committee welcomes the Party concerned’s proposal to amend its Law on Nature Protection with the aim of ensuring that members of the public who decide to come together to exercise their rights under article 9 (2) of that Law will not be considered as acting as an “unregistered public association” and thus have their activities prohibited under article 7 (2) of the 2014 Act on Public Associations.

30. The Committee recalls that, in its report to the seventh session of the Meeting of the Parties on request ACCC/M/2017/2 (Turkmenistan), it held:

The Committee reiterates the importance of ensuring that any measure proposed to address the present lack of clarity makes clear that the exercise of the rights in article 9 (1)–(9) of the Law on Nature Protection would not in themselves amount to an activity of an unregistered association for the purposes of article 7 (2) of the Act on Public Associations.⁷

31. The Committee considers that the proposed amendment makes clear that the exercise of the rights under article 9 (1)–(9) of the Law on Nature Protection would not in itself be considered as an activity of an unregistered public association prohibited under the Act on Public Associations.

32. Since the proposed amendment has not yet been adopted, the Party concerned has not yet fulfilled paragraph 2 (b) of decision VII/8q. The Committee however considers that, subject to any information to be received to the contrary, if the proposed amendment to article 9 of the Law on Nature Protection were to be adopted in its current form, it would fulfil the requirements of paragraph 2 (b) of decision VII/8q.

IV. Conclusions

33. The Committee welcomes the significant progress made by the Party concerned to implement paragraph 2 (a) and (b) of decision VII/8q to date, but considers that the Party concerned has not yet demonstrated that it has met the requirements of those paragraphs.

34. The Committee recalls that, at its seventh session, the Meeting of the Parties decided to issue a caution to the Party concerned, to become effective on 1 January 2024, unless the Party concerned had fully satisfied the conditions set out in paragraph 2 (a) and (b) above and had notified the secretariat of this fact by 1 October 2023.

35. Since the Party concerned has not yet satisfied the conditions set out in paragraph 2 (a) and (b), the caution became effective as of 1 January 2024.

36. The Committee invites the Party concerned as soon as possible and no later than 1 October 2024 together with its final progress report:

(a) With respect to paragraph 2 (a) of decision VII/8q:

(i) To confirm through an official statement that the word “citizen” mentioned in articles 1, 3 and 16 of the Law on Public Associations includes “any natural person”, including foreign citizens and persons without citizenship. If this is not the case, the Committee invites the Party concerned to provide evidence

⁵ Party concerned’s additional information, 6 December 2023, annex 3.

⁶ Comments from the communicant of communication ACCC/C/2004/5, 17 December 2023.

⁷ ECE/MP.PP/2021/58, para. 47.

that it has taken additional legislative measures to ensure that foreign citizens and persons without citizenship are able to participate in and found public associations in the same way as citizens of Turkmenistan.

(ii) To provide the text of articles 1, 3 and 16 of the Law on Public Associations, as amended, once the amendment has been adopted, together with an English translation thereof;

(b) With respect to paragraph 2 (b) under decision VII/9q, to provide the text of article 9 of the Law on Nature Protection, as amended, once it has been adopted, together with an English translation thereof.

37. The Committee reminds the Party concerned that all measures necessary to implement decision VII/8q must be completed, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/8q.
