

# Communication to the Aarhus Convention Compliance Committee

## I. Information on correspondent submitting the communication

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## II. State concerned

Turkmenistan

## III. Facts of the communication

On the 21<sup>st</sup> of October 2003 in Turkmenistan a new law "On Public Associations" was adopted, which repealed the former acting law "On Public Associations" as of 12 November 1991. The new law entered into force on 21 November 2003 after one month from the date of its adoption. Speaking of its significance (status) it is the main law, which regulates issues of creation, registration, activity and liquidation of non-governmental organizations in Turkmenistan, including nature protection non-governmental organizations. Moreover, in the former Soviet Union countries it is the law on public associations that traditionally fulfills the key role in terms of implementation of the right of citizens to associate, because this exactly law stipulates provisions allowing to acknowledge associations of citizens, which do not form a legal entity, as legal or illegal. In the case of Turkmenistan the law of Turkmenistan "On Public Associations" is the law pertinent to the subject.

At the beginning of 1990-s about 10 public associations were registered in Turkmenistan. Out of them 5 organizations carried out activities in the field of environmental protection. At that it is important to note that representatives of environmental NGOs of Turkmenistan have been quite active with activities related to objectives of the Aarhus Convention, thus among such activities, they took part in the discussion of the Convention on the stage of its drafting and adoption.

The new law "On public associations" introduces the whole series of restrictions with regard to the legal status of registered organizations, their legal capability, their possibilities to carry out the publicly beneficial activity, as well as it introduces the direct ban for activities of unregistered associations of citizens in Turkmenistan.

A series of restrictive and even repressive provisions of the new law "On public associations" are directly affecting the UNECE/UN Convention on Access to Information and Public Participation in Decision Making and Access to Justice in Environmental matters (the Aarhus Convention). Thus, for instance, article 5 of the law limits the right of foreign citizens and persons with no citizenship to participate in non-governmental organizations, rendering such a right only to international public associations. At that international public associations

in this case are those public associations, which are established in Turkmenistan and have at least one structural sub-division (branch or repoffice) in a foreign state. Therefore in practice the aforementioned legislative restriction can be considered as a full ban to participate in associations created in the territory of Turkmenistan for foreign citizens and persons with no citizenship, only giving the right to membership (participation) for foreign citizens and persons with no citizenship in foreign branches and repoffices of Turkmen public associations. It should be noted that earlier in compliance with article 7 of the repealed 1991 law foreign citizens and persons with no citizenship had the right to be members of any public associations except for political parties.

The new law also establishes restrictions with regard to the territorial extension of activities of public associations having the local status, i.e. such associations cannot carry out activity outside the boundaries of one velayat (oblast). With reference to the Aarhus Convention, this restriction means the inability of public associations having local status to carry out the following:

- to request information from central state bodies and state bodies of other velayats (oblasts);
- to participate in the decision making process on the national scale, as well as on matters taking place outside their oblast;
- to apply suits and appeals to courts and administrative bodies on cases concerning other oblasts , and to apply to other authorities located outside the certain oblast.

At that according to requirements of article 15 of the new law, in order to create and register a public association having a national status, which has the right to carry out activity within the whole territory of Turkmenistan, there should be more than 500 members (participants). Prior adopting this law, according to the current and earlier adopted Civil Code of Turkmenistan (article 51), in order to create a public association it was required to have only 5 or more members. Generally speaking the adoption of the new law created a problem with determination of territorial status of the majority of NGOs, or, better to say, they automatically acquired the status of local organizations carrying out their activities within the territory of one oblast only.

After the adoption of the new law on public associations in Turkmenistan the activity of unregistered associations of citizens is officially prohibited. Moreover, at the day of adoption of the new law “On public associations” on 21 October 2003, at the same time new amendments were introduced to the Code of administrative violations and Criminal code of Turkmenistan envisaging the liability for assisting and participating in the activity of unregistered associations of citizens. Thus, according to part one of article 2231 of the Turkmen Criminal Code in case of the repeated violation of legislation on public associations during one year, a custodial restraint up to six months can be applied as a sanction. In several cases stipulated in the second part of this article, the criminal sanction for the same violations can be applied even in the case of the first violation, and the severest punishment according to this article is extended up to one year of custodial restraint.

Provisions of article 32 of the new law should be noted with regard to the earlier registered organizations and organizations liquidated basing on a court’s decision. The liquidation of a public association basing on the decision of kazyet (a court) not only means the deprivation of a status of a legal person, but also the introduction of the ban to further carry out activity by the corresponding association. At that the reasons for liquidation of registered public associations provided for by the new law are very broad, and some of them are dependent exclusively on a broad discretionary power of representatives of the Ministry of adalat (justice). Thus, article 32 of the law “On public associations” envisages the possibility to liquidate a public association on the basis that it presented invalid information at the moment of registration. However the law does not even specify the issue of intentional or

unintentional distortion of information, hence any unimportant error accidentally made when presenting information at the moment of registration is now the ground for liquidation of registered organizations.

Article 32 of the new law also envisages the possibility to annul the registration of a public association using a non-judicial procedure on the basis of the order of the Ministry of justice. The basis for such registration annulment is set in part two of article 28 of the law on public associations. “The Ministry of justice of Turkmenistan annuls registration if a public association switched to an entrepreneurial activity or if the fulfillment of objectives envisaged in the Bylaws of the association becomes impossible”. It is obvious that both reasons give wide possibilities to use these norms at the discretion of the Ministry of Justice. At the same time the Law “On public associations” does not give the right to organizations to appeal the decision concerning the annulment of registration.

An international expertise of this law has been done basing on assignment under “Turkmenistan” program of the Open Society Institute. (*The text of expertise is attached*). Many of the abovementioned problems concerning this law are mentioned in the opinion of the expertise. Particularly the opinion states that it violates the obligations of Turkmenistan taken under the International Covenant of Civil and Political Rights (articles 19 and 22). Another international expert opinion on the Turkmen law on public associations is prepared by International Center for Not-for-Profit Law (<http://www.icnl.org/car>). It also points on the whole series of obstacles set by the new law on public associations for the creation, registration and activities of non-governmental organizations in Turkmenistan.

After the adoption of the new law the Ministry of Justice, violating a series of norms of Turkmen laws, abolished the majority of nature protection nongovernmental organizations in Turkmenistan. At the moment there is only one environmental public association in Turkmenistan – Society for Nature Protection. It was established in the soviet time and headed by a deputy Prime Minister of Turkmenistan. . In the recent interview given to “Reuters”, one of the governmental officials said verbatim the following: “Why in general we need to create a lot of NGOs – it would be enough to have one in each profile department. For instance, the Society of nature protection has been already existing for long within the Ministry of Nature”, - a representative of the Turkmen government said Wednesday.

[http://www.reuters.com/locales/c\\_newsArticle.jsp?type=topNews&localeKey=ru\\_RU&storyID=4970281](http://www.reuters.com/locales/c_newsArticle.jsp?type=topNews&localeKey=ru_RU&storyID=4970281).

#### **IV. Nature of alleged non-compliance**

This communication concerns about the non-compliance by Turkmenistan of the general obligation envisaged in Article 3.4 of the Aarhus Convention concerning the appropriate recognition of registered public associations and associations of citizens who do not register as a legal entity. Turkmenistan adopting the new law “On public associations” on October 21, 2003 violated its obligation to ensure the compliance of its national legal system to the abovementioned requirement of the Convention. Thus, article 17 of this law provides for a ban of activity of unregistered public associations thereby prohibiting the possibility of citizens to assemble with the purpose to protect the environment without registering as a legal entity. The former law of November 12, 1991 did not envisage the ban of activity of unregistered associations of citizens.

The adoption of the new law also led to the abolishment of the majority of earlier registered environmental non-governmental organizations in Turkmenistan. Thus, Turkmenistan put under a big threat the implementation of articles 2.5, 6 and 9.2 of the Aarhus Convention envisaging a special status of nature-protection NGOs in terms of implementation of this Convention.

New requirements concerning the creation and registration of public associations are more onerous and hard to implement in comparison with earlier acting law. In particular,

organizations are separated/differentiated into local, national and international, and higher quantitative requirements to the minimum required number of members (participants) are set with regard to associations having national and international status (article 15 of the law). In addition, the new law “On public associations” limits the possibilities of foreign citizens and persons with no citizenship to participate in nature protection NGOs, and gives such a possibility only to those organizations, which have the structural subdivision in foreign states and international status in compliance with Turkmen legislation (article 5 of law). Thus the new Turkmen law “On public associations” violates the provision of article 3.9 of the Aarhus Convention on non-discrimination as to citizenship and the registered seat in case of legal persons.

## **V. Provisions of the Convention relevant for the communication**

### *Article 3. General provisions*

4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

## **VI. Use of domestic remedies or other international procedures**

Article 32 of the Turkmen law “On public associations” provides for a possibility to annul registration of public associations in a non-court procedure basing on a decision of the Ministry of justice. At the same time, the legislation of Turkmenistan does not envisage the possibility to appeal against the decision to annul registration, which is made solely by the Ministry of justice. As a result of such a decision the registration certificate and the registered Bylaws are withdrawn from a public association.

In case if a public association, which has been liquidated upon decision of the Ministry of justice, continues its activity it automatically becomes unregistered citizens’ association. Therefore the following attempt to appeal against the decision on the annulment of registration can be qualified as “the assistance or participation in the activity of the knowingly unregistered public association”, which can possibly lead to the institution of administrative proceedings against “guilty” persons in compliance with article 2041 of the Code of Administrative Offences or institution of criminal proceedings in compliance with article 2231 of the Criminal Code. The above given facts witness that the currently acting legislation of Turkmenistan does not provide with adequate domestic legal remedies, which could be used with regard to the violation of rights of non-governmental organizations due to the adoption of the new law “On public associations”. Besides, as it was mentioned above the new law sets bans on any activity in Turkmenistan of non-registered associations and associations of foreign citizens and persons without citizenship.

## **VII. Confidentiality**

## **VIII. Supporting documentation**

1. Current law of Turkmenistan of 21 October 2003 “On Public Associations” (Copies in Turkmen, Russian and English);
2. Cancelled law of Turkmenistan of 12 November 1991 “On Public Associations” (Copies in Russian and English);

3. Law of Turkmenistan on amendments dated 21 October 2003 to the Code of Turkmenistan on Administrative Offences (copies in Russian and Turkmen);
4. Law of Turkmenistan on amendments dated 21 October 2003 to the Criminal Code (copies in Russian and Turkmen);
5. Comments of Open Society Institute to the Draft Law “On Civic Organizations” of Turkmenistan.

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*Signature:*