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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

Third meeting
Riga, 11–13 June 2008
Item 6 (b) of the provisional agenda
Procedures and mechanisms facilitating
the implementation of the Convention:
Compliance mechanism

REPORT BY THE COMPLIANCE COMMITTEE*

Addendum

**COMPLIANCE BY TURKMENISTAN WITH ITS OBLIGATIONS UNDER THE
CONVENTION AND ITS IMPLEMENTATION OF DECISION II/5c OF THE
MEETING OF THE PARTIES**

This document has been prepared by the Compliance Committee pursuant to the request set out in paragraph 1 of decision II/5 of the Meeting of the Parties on general issues of compliance (ECE/MP.PP/2005/2/Add.6).

*This document was submitted on the above date to allow due time for necessary consultations with the parties concerned following the nineteenth meeting of the Compliance Committee (5–7 March 2008).

I. IMPLEMENTATION OF DECISION II/5c OF THE MEETING OF THE PARTIES

1. At their second meeting, the Parties adopted decision II/5c on compliance by Turkmenistan with its obligations under the Convention (ECE/MP.PP/2005/2/Add.9).
2. Through decision II/5c, the Meeting of the Parties endorsed the findings of the Compliance Committee with regard to the failure of Turkmenistan to comply with the provisions of article 3, paragraphs 1, 4 and 9, of the Convention, in connection with the introduction of new legislation regulating establishment and operation of non-governmental organizations and its practical application in Turkmenistan.
3. The Meeting of the Parties requested the Government of Turkmenistan to amend the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention (ECE/MP.PP/2005/2/Add.9, para. 2).
4. It also recommended to the Government of Turkmenistan:
 - (a) To immediately take appropriate interim measures with a view to ensuring that the provisions of the Act on Public Associations are implemented as far as possible in a manner which is in compliance with the requirements of the Convention (ECE/MP.PP/2005/2/Add.9, para. 3);
 - (b) To carry out both the process of amending the Act and the appropriate interim measures with the involvement of the public (ECE/MP.PP/2005/2/Add.9, para. 4);
 - (c) To develop and make publicly available official guidance on the interpretation of the Act on Public Associations, taking into account the relevant provisions and standards of the Convention (ECE/MP.PP/2005/2/Add.9, para. 5).
5. The Meeting of the Parties invited the Government of Turkmenistan to submit a report to it, through the Compliance Committee, no less than four months before the third meeting of the Parties on the measures taken to implement the recommendation in paragraph 2 of decision II/5c to amend the Act on Public Association (ECE/MP.PP/2005/2/Add.9, para. 6).
6. On 14 July 2005, the secretariat forwarded decision II/5c to the Government of Turkmenistan with a reminder concerning the requests and recommendations of the Meeting of the Parties contained therein.
7. On 27 July 2005 the secretariat received and forwarded to the Committee a letter from the Government of Turkmenistan in which the latter challenged the earlier findings of the Committee adopted in February of that year (ECE/MP.PP/C.1/2005/2/Add.5) which had served as a basis for decision II/5c of the Meeting of the Parties. The Party concerned, in particular, disputed the legal analysis of the provisions of the Act on Public Associations, which were the subject matter of the Committee's review of compliance.
8. The Committee considered this information at its ninth meeting held from 12 to 14 October 2005 on the basis of an analysis prepared by one of its members. The Committee noted that its

findings and recommendations had been endorsed by the Meeting of the Parties, and that it was not in a position to reconsider them at this stage. It also noted that the Party concerned had failed to make the most of various opportunities to provide information and input during the preparatory process leading up to the adoption of the findings and recommendations, first by the Committee and later during the preparation and adoption of the relevant decision by the Meeting of the Parties.

9. Regarding the substance of the letter, the Committee considered that even if the information and argumentation provided had been available before the Committee finalized its findings and recommendations, this would not have altered their content. The Committee was however, ready to enter into a dialogue on the substantive issues addressed in the letter within the framework of the recommendations of the Meeting of the Parties and considered that such a dialogue could be fruitful. With this in mind, it invited representatives of the Government of Turkmenistan to attend one of its meetings.

10. The Committee's considerations, set out in a letter to the Ministry of Environment of Turkmenistan dated 18 October 2005, were acknowledged by the Party concerned through a letter of 6 January 2006, in which the Party maintained its position with regard to findings of non-compliance but expressed its readiness to cooperate.

11. At the invitation of the Committee, two representatives of the Government of Turkmenistan participated in the twelfth meeting of the Committee (14–16 June 2006). During the discussion, several suggestions as to practical steps to implement decision II/5c were put forward, including a proposal to draw up a plan of the specific steps to be taken to implement the recommendations.

12. In February 2007, the secretariat received from the Government of Turkmenistan a document in the form of a national implementation report, broadly structured according to the format contained in the annex to decision I/8 on reporting requirements (ECE/MP.PP/2/Add.9). An updated version of the report was submitted in December 2007. While neither version of the report specifically addressed measures to implement decision II/5c, the Committee considered the information contained therein to the extent possible in the preparation of this document.

13. No further written input was received from Turkmenistan in advance of the Committee's nineteenth meeting (5–7 March 2008). In particular, the Party concerned did not submit a report on the implementation of measures referred to in decision II/5c to be submitted pursuant to paragraph 6 of that decision. The Committee reviewed the situation at that meeting and noted that while it welcomed the general intent to cooperate expressed by the Party concerned, it did not, unfortunately, have any information on any steps taken by the Party to implement the provisions of decision II/5c.

14. The Committee took note of the information in the national implementation report of Turkmenistan for the period 2005–2007 (ECE/MP.PP/IR /2008 /TKM). While welcoming the report and the general information on the implementation of the Convention contained therein, it noted that it did not contain any information on measures taken to implement provisions of decision II/5c. In particular, it noted that the report asserted that national legislation was fully in conformity with the Convention and did not contain information on the measures taken to bring

legislation and practice into compliance with the provisions of the Convention, as requested in paragraph 2 of decision II/5c.

15. In order to ensure the comprehensiveness of its review of compliance by Turkmenistan, the Committee invited the Government of Turkmenistan as well as the communicant whose submission and communication, respectively, had initially triggered the review of compliance by Turkmenistan, to comment on the draft of this report. No comments were received from either.

II. CONCLUSIONS

16. The Committee wishes to note the initial engagement of the Government of Turkmenistan, demonstrated by its correspondence with the Committee and the participation of its representatives in one of the Committee's meeting. The Committee regrets, however, that this initial willingness to engage in the process does not appear to have been coupled with any measures to implement the recommendations contained in decision II/5c.

17. Having considered the information available to it, the Committee concludes that Turkmenistan has failed to implement the measures referred to in paragraphs 2 to 5 of decision II/5c of the Meeting of the Parties, apparently because it contests the finding of non-compliance by the Meeting. The Committee does not consider that the information and argumentation provided by the Government of Turkmenistan during the intersessional period provide grounds for the Meeting of the Parties to revise its earlier finding of non-compliance.

III. RECOMMENDATIONS

18. In the light of the above, the Committee suggests that the Meeting of the Parties may wish to (a) confirm its earlier finding of non-compliance, and (b) consider whether to apply other measures set out in paragraph 36 of the annex to decision I/7, taking into account that no steps have been taken by the Party concerned to implement the measures referred to in decision II/5c.

19. The Meeting of the Parties may also wish to explore the possibility that an expert mission, with the involvement of Committee members and other experts, as appropriate, be undertaken with a view to assisting the Party concerned in implementing the measures referred to in decision II/5c, including any possible amendments to the Act on Public Associations, and to invite the Party concerned to accommodate such a mission.
