



Table of proposed amendments

To the Law of Turkmenistan “On Public Associations” of October 21 2003, No. 197-II (with changes of July 2, 2009)

President of Turkmenistan Gurbanguly Berdimuhamedov has been steadily implementing legal reforms at the new stage of state building that has entered the Turkmenistan history as the Age of New Revival.

In his programmatic speech at the meeting in the University of Columbia (New York, September 24, 2007) he specially stressed: “The program of reforms has comprehensive nature and includes improvement of our state institutions and social life, including the process of democratization of the society”¹.

At the meetings of the Cabinet of Ministers of the country, President Gurbanguly Berdimuhamedov pointed out numerously that “many existing laws in the country have become outdated and they have to be amended, improved”. He tasked the leadership to “synchronize our legislation with international one”². 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”³.

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

¹ The *Neytralniy Turkmenistan*, № 235 (25049), September 25, 2007.

² The *Neytralniy Turkmenistan*, № 288 (25102), November 13, 2007.

³ The *Neytralniy Turkmenistan*, № 11 (25154), January 12, 2008.

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</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</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</p>

<p>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>in Turkmenistan as well as legal entities of Turkmenistan and legal entities of foreign counties 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>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>

<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>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 style="color: red;">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>

the legislation of Turkmenistan by them.

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.

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.

Prosecutor General of Turkmenistan and his/her subordinate prosecutors exercise supervision over compliance with the legislation on public associations.

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.

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

To write down paragraph 3 (former paragraph 2) of Article 28 in the following version:

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.

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.**

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>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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court's decision means prohibition of its activities.

Liquidation of public association is conducted in accordance with the legislation of Turkmenistan.

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.

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.

Information on liquidation of public associations is subject to publication. Distribution of property is permitted only upon expiration of 3 months after publication.

Liquidation is conducted by the authorized body of a public organization.

Decision about liquidation of the public association is sent to the body handling the

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