

EXPLANATORY NOTE
on the Law of Turkmenistan of 4 February 2017
amending and supplementing
the Law of Turkmenistan on Public Associations
(‘the Act on Public Associations’).

The Law of Turkmenistan of 4 February 2017 amended and added to the 2014 Act on Public Associations, affecting several of its articles.

1. First and foremost, **Article 3 of the Act, ‘Scope of this Law’, was amended**, so that the amended provision now reads: *“The force of this Law extends to public associations, excluding religious organizations, political parties, trade unions and also non-commercial unions and other public associations established by commercial organizations, where the procedure for this establishment and for their operation is regulated by special laws”*.

The previous wording of Article 3 of the Act allowed the operation of such public associations (religious organizations, political parties, trade unions and non-commercial organizations) to be governed by the Act on Public Associations pending the adoption of special laws. Relevant laws concerning these public associations have now been adopted (with the exception of a law on non-commercial organizations), and this is the reason for amending Article 3.

2. As far as the amendments to Articles 1, 4 and 16 of the Act on Public Associations are concerned, these **have had no impact on the rights of foreign citizens and persons without citizenship in establishing public associations**. Regardless of the amendments, the Act maintains the right to establish public associations with the participation of foreign citizens and persons without citizenship. The following Articles of the Act provide evidence of this:

Article 4 of the Act provides that *“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”* (Article 4(1)). That is, this Article concerns all citizens who are natural persons, which means that foreign citizens and persons without citizenship also have the right to establish public associations.

Article 10, ‘Operating international public associations in Turkmenistan’ states:

“1. Structural subdivisions – organizations, departments (branches) and representations – of international public associations may be established and operate in Turkmenistan.

2. The operation of structural subdivisions – organizations, departments (branches) and representations – of international public associations is to be governed by their charters, adopted in accordance with Article 19 of this Law”.

*Article 11(1), ‘Founders and members of public associations’, provides that the founders of a public association may be **natural persons** who have attained the age of 18 and legal entities that are public associations. The concept of ‘natural persons’ includes foreign citizens and persons without citizenship.*

Article 20 enshrines matters connected with the registration of a public association, including an international (foreign) one, the list of documents to be submitted for State registration, etc.

Article 26 has maintained all rights for public associations with the exception of the right *“to participate in elections in accordance with the procedure laid down by the legislation of Turkmenistan”*. The exclusion of this right from the list of rights of public associations is entirely justified, since international public associations cannot participate in the political life of the country, most especially in central and local government elections.

*3. The Law of Turkmenistan of 4 February 2017 amending and supplementing the Act on Public Associations has also had **no impact whatsoever on the environmental rights of public associations and citizens, provided for by Turkmenistan’s 2014 Law on Nature Protection. In the relevant period from 2014, this has not been amended or supplemented in any way affecting the rights of foreign citizens and persons without citizenship.***

Article 9(1) of the Law on Nature Protection lists all the categories of people who have environmental rights – ***these are citizens of Turkmenistan, foreign citizens and persons without citizenship.*** Article 9(1) provides that they *“have a 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.

This wording is based on the fact that the Constitution of Turkmenistan (as amended on 14 September 2016) provides that *every person has the right to an environment that is favourable to life and health* (Article 53). That is, the concept of ‘every person’ includes citizens of Turkmenistan, foreign citizens and persons without citizenship. Further, it is important to note that the *Constitution of Turkmenistan is the Fundamental Law of the State. The norms and provisions*

enshrined in it have direct effect. Statutes and other legislation which contradict the Constitution have no legal force (Article 8).

4. Of course, these are separate amendments to the Act on Public Associations, which, when their provisions are applied, could lead to specific contradictions (*collisio*) between the articles concerned (Articles 1, 3, 16 and Articles 4(1), 11(1)). Therefore, if any dispute arises on a particular issue, primacy will be given to Article 4(1) and/or Article 11(1), since these concern all categories of citizens and thus comply with the provisions of the Aarhus Convention. Under the Constitution of Turkmenistan, Turkmenistan will recognize the primacy of universally recognized norms of international law (Article 9). In addition to the Constitution, the Act on Public Associations (Article 2(2)) and the Law on Nature Protection (Article 2(2)) also state the primacy of the norms of international law over national legislation.

In addition, under Article 11 of the Constitution of Turkmenistan “*Foreign citizens and persons without citizenship enjoy the same rights and freedoms and bear the same obligations as citizens of Turkmenistan under the laws and international treaties of Turkmenistan*”.