



**International Center for Not-For-Profit Law**  
**Международный Центр Некоммерческого Права**  
1126 16th Street, NW, Suite 400 ул. Жандосова, 36  
Washington, DC 20036 USA Алматы, 480057  
USA Казахстан  
Tel: (202) 452-8600 Тел: (73272) 50-19-50  
Fax: (202) 452-8555 Факс: (73272) 50-19-49

## **Analysis of the Law of the Republic of Tajikistan on Public Associations**

**February 18, 2007**

This Analysis<sup>1</sup> of the *Law of the Republic of Tajikistan on Public Associations* adopted on February 14, 2007 by the Majlisi Namoyandagon of the Republic of Tajikistan (Lower Chamber of the Tajik Parliament) (hereinafter, “The Law”) was prepared by the *International Center for Not-for-Profit Law* (ICNL) at the request of the public association *Obschestvo i pravo* (Society and Law).

The purpose of this Analysis is to help the stakeholders improve the Draft Law prior to its review by the Upper Chamber of the Parliament so that it would fully meet the rules of international law and the best international practices, and would enhance the development of civil society in Tajikistan.

The Draft Law has undergone a number of serious changes (both positive and negative ones) in comparison with the previous redaction dated February 2006. The positive changes in the Draft Law include the decrease of the minimum number of founders required for establishing a public association from five persons to three (Article 16 of the Draft) and dropping Article 42 of the original Draft, which granted officials with a discretion to suspend activities of a public association without a court decision. Nevertheless, a number of other changes seem to be problematic. Certain provisions of the new Draft Law on Public Associations contradict the standards of international law. Moreover, their adoption may lead to violations of human rights and freedoms, thus hampering the civil society development in Tajikistan.

This Analysis will focus on the following major issues of the Draft Law:

- 1. Restriction on the right to association if legal personality is not acquired.**
- 2. Introduction of a new organizational and legal form referred to as “a body of public initiative” may result in violations of the international law and may also lead to the emergence of practical complications hampering local self-governance.**
- 3. Restrictions on the right to association for foreign citizens and stateless persons.**
- 4. Restrictions on establishing public associations.**
- 5. Complication of the registration procedure for foreign public associations, their branches and rep offices.**
- 6. Restrictions on the rights of public associations.**

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<sup>1</sup> This review was prepared by the *International Center for Not-for-Profit Law (ICNL)* with the financial support of the *US Agency for International Development*.

7. **Extremely broad powers of government authorities as to the monitoring of public associations.**
8. **Registration and restriction on activities of public associations based on the territorial scope.**
9. **A broad range of grounds for denying registration of a public association.**
10. **The forthcoming re-registration of public associations.**

In general the version of the Law adopted by the Majlisi Namoyandagon of the Republic of Tajikistan (Lower Chamber of the Tajik Parliament) on February 14 2007 will result in deterioration of the legal environment for public associations in comparison with the currently effective legislation, unless certain amendments are introduced into the Draft.

Below we shall address each of the aforementioned issue:

### **1. Restriction on the right to association if legal personality is not acquired.**

Article 4 provides that citizens shall have the right to establish public associations of their choice without any prior permission from government and regulatory authorities. Nevertheless, Section 2 of Article 16 reads that “within one month upon establishing a public association, the founders shall submit the constituent documents for the state registration by the authorized body of registration”.

#### ***Analysis***

“...shall have the right to establish public associations of their choice without any prior permission from government and regulatory authorities” does not seem to anything but a declaration because the Draft does not stipulate the right of a new public association to be engaged in any activities except for preparing documentation to be submitted for the state registration. It also makes it mandatory for the founders to register their association within one month.

#### ***Recommendations***

We recommend that the Draft Law should only apply to those public associations that are legal entities and expressly declare the right of citizens to form associations without a compulsory registration as a legal entity:

Article 1 shall include Paragraph 1 reading as follows:

“Citizens have the right to associate and to establish public associations of their choice, whether with or without the rights of a legal entity.”

Section 2 of Article 16 shall read as follows:

“2. Resolutions in regard to establishing a public association, adopting its charter and forming its governing, control and revision bodies shall be adopted by a congress (conference) or a general meeting. The public association then shall be deemed as established as of the time of adoption of the aforementioned resolutions. *In the event of a resolution, adopted by the founders, to acquire the status of a legal entity*, the founders shall submit constituent documents to the state body of registration within one month upon the said resolution has been passed”.

### **2. Introduction of a new organizational form, “a body of public initiative”, may cause incompatibility with the standards of international law as well as practical complications in the area of local self-government.**

The Draft Law establishes and regulates a new organizational form of a public association: a body of public initiative (Articles 7, 10 and other). However, the legal regulation of this form appears to be quite ambiguous due to a number of controversial issues and the lack of definitions in the Draft Law:

1. The body of public initiative is not a legal person; however it is subject to compulsory registration for record-keeping purposes.
2. The meaning of registration for record-keeping purposes with local self-government authorities is not clear. According to Section 2 of Article 10, a body of public initiative is required “to declare itself in writing with the local executive body of the government authority.” However, according to Section 3 of Article 22 “The registration for record-keeping purposes is performed in the manner and within the period established by the legislation on registration of legal persons.”
3. “A body of public initiative is organized on the initiative of the majority of residents at their place of residence” pursuant to Section 4 of Article 16. However, the Draft Law does not clarify how to calculate the majority (that of the registered individuals, residents or owners of residential property). The meaning of the place of residence is not clear: one or several or all apartments in an apartment building, or entire village or a district town or a street.

### ***Analysis***

The following two issues are of particular concern:

- (1) The requirement to register an organization which has no legal personality is inconsistent with the rules of international law.
- (2) Practical complications in ensuring compliance with the provisions on bodies of public initiative.

Before reviewing these issues, it is necessary to note that we do not quite understand the need to introduce a new organizational form in order to address local self-government issues. The body of public initiative, like any other public association, is voluntary, in other words it may bring members together based on any criteria, including individuals residing at the same locality, and may choose any statutory goals, including those relating to local self-government.

*(1) The requirement to register an organization which has no legal personality is inconsistent with the rules of international law.*

Practically any informal public association may be treated as a local self-government body due to the lack of expressly defined membership criteria and absence of any distinctions in the inside management structure or any other differences between local self-government bodies and other public associations. As the result, the registration requirement may be applied to informal public associations, this being a violation of the rules of international law.

The Republic of Tajikistan is a member of the 1999 *International Covenant on Civil and Political Rights* (ICCPR). Pursuant to Article 22 of the ICCPR and other major international treaties<sup>2</sup>, freedom of association is a human right and not something that the State grants to its citizens first. Consequently, citizens don't need to officially register an established NGO or notify government authorities when they wish to exercise their right to free association.<sup>3</sup> Imposing a requirement according to which a group of citizens should notify government authorities of the fact that they get.

<sup>2</sup> *Universal Declaration of Human Rights* (Article 20) (1948), *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 11) (1950), and *International Covenant on Civil and Political Rights* (Article 22) (1976) have similar provisions.

<sup>3</sup> *Legislative initiative regarding public interests. Creating opportunities for civil society development: practical aspects of freedom of association. Collection of documents, Budapest, 2003, p. 14*

together for the common purpose of exercising their right to association, and therefore subject themselves to control of government authorities, is directly inconsistent with the very concept of the freedom of association.

Section 5 of *The Fundamental Principles on the Status of Non-government Organizations in Europe* adopted by the Council of Europe in 2003 makes a direct reference to this effect.<sup>4</sup> The explanatory memorandum to this document reads that “an NGO may wish to pursue its activities without having legal personality to that end, and it is important that national law should do likewise.”<sup>5</sup>

That does not mean that the law should equate informal groups and registered organizations. Registered organizations are allowed to have legal personality which means that they can have some benefits implicit in this status. As a rule it allows an organization to act on its own behalf, for example, enter into agreements, open bank accounts, hire personnel, obtain funding, and limit personal liability of its founders, managers or directors for the actions committed by the organization.

*(2) Practical complications in ensuring compliance with the provisions on bodies of public initiative.*

The Draft Law gives a broad definition to “the body of public initiative” is: “The body of public initiative is a public association without membership whose goal is to address jointly various social problems which citizens may have at their place of residence. Its purpose is to satisfy the needs of individuals whose interests are related to the founding goals and programs implemented by the body of public initiative at the place of its establishment.”

Any informal group may wish to “address jointly social problems” at the place of residence. If several neighbors unofficially agree to get together and clean up their area on a monthly basis, will they have to register for record-keeping purposes? Or if a group of women with small children agree to look after their children, will they also have to notify government authorities? These are exactly the type of issues which registration authorities and informal groups will have to deal with.

What does “the place of residence” mean: an apartment, an apartment building, a village, a town or a district? Does the criterion of “the place of residence” mean that individuals from the neighboring building cannot be the members, or, when they become members, does a “body of public initiative” change its status? Do government authorities have to do checks, do they have to check on all participants “at the place of residence”, and how to do it in practice if an organization keeps no formal record of its participants?

Furthermore, paragraph 4 of Article 16 reads that “the body of public initiative is organized on the initiative of the majority of residents at their place of residence.” How “the majority” can be calculated at a district/area if there is no formal record of participants? What if not the majority but minority gathers? Shall an association of minority be banned or shall it be exempt from compulsory registration for record-keeping purposes? The latter situation, however, will directly discriminate against the “majority” organizations as they gain no rights compared to the “minority” organizations (do not acquire legal personality) following their registration for record-keeping purposes.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

The Ministry of Justice, as the authority responsible for collection of such information, simply does not have, and should not have, adequate resources to trace each group of citizens who get together from time to time to perform all possible kinds of activity to address jointly their social problems.

Furthermore, it follows from the Draft Law that persons identified by government authorities as leaders of informal groups, who failed to register for record-keeping purposes with government authorities, are subject to liability (Article 33). Written orders issued to suspend activity of such informal groups ban them from exercising their right which is an integral part of human rights and freedoms, including the right to “freely disseminate information on their activity” and the right to “hold rallies, meetings, demonstrations, processions and other mass events” (Article 24).

By adopting the provision on compulsory registration, Tajikistan will put itself in a row of such countries as Uzbekistan, Belarus and Turkmenistan, where the law restricts the right of informal groups to association. It is in fact a groundless violation of the right of informal groups to association, inconsistent with the rules of international law.

We would like to note that the Russian Government followed the advice of the Council of Europe and international experts when it considered *The Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation* of January 10, 2006 No. 18-FZ and dropped the requirement of compulsory notification for public associations which exist without legal personality.

### ***Recommendations***

We recommend that the Draft Law should regulate only the public associations which have legal personality and any articles referring to “bodies of public initiative” should be excluded:

We propose to remove:

- The words “body of public initiative” from Article 7
- Article 10
- Section 4 of Article 16
- Article 30
- Section 5 of Article 37.

## **2. Restrictions on the right to association for foreign citizens and stateless persons.**

Article 17 of the Draft Law restricts activity and rights of foreigners and stateless persons in Tajikistan. Pursuant to Section 2 of Article 17 of the Draft Law, foreign citizens and stateless persons, who have no permanent residence in the Republic of Tajikistan or a residence permit, will not be allowed to establish public associations or be members or participants therein. Moreover, foreign citizens and stateless persons cannot be managers of public associations pursuant to Section 5 of Article 17. (Only adult citizens, who have permanent residence in the Republic of Tajikistan, may be managers of public associations).

### ***Analysis***

The ban on the establishment of and participation in public associations for foreigners appears to be inconsistent with a number of rules of international law, in particular the European Convention on Human Rights which guarantees the protection of interests to “everyone within [the] jurisdiction” of the signatory states. It means that not a single foreigner may be deprived of his/her fundamental rights secured by the Convention. Therefore, banning foreigners from being the founders or

members of NGOs is an ostensive violation of Articles 2(1) and 22 of the ICCPR and Articles 10<sup>2</sup> and 11 of the European Convention on Human Rights. Under the ICCPR, each Government undertook to justify any imposed restriction. If a restriction is necessary, the government should demonstrate why restricting foreign founders and foreign members of a public association is “necessary in a democratic society” for protection of certain public interests. In this particular case, it is not clear what public interests are served by banning foreigners from founding and participating in public associations and how this ban can be justified as necessary in a democratic society.

Furthermore, the discriminatory provisions of the Draft Law do not conform to the Constitution of Tajikistan (Article 16), which reads that “foreign citizens and stateless persons enjoy the declared rights and freedoms and incur obligations and responsibilities equally with the citizens of Tajikistan, unless otherwise provided for by the law.”

A case against Belgium heard by the European Court of Justice in 1999 is another example of the same principle. The Belgium was criticized by the Court for requirements applied to activity of non-profit organizations in its two different laws (*Commission of the European Communities v the Kingdom of Belgium*, Case C-172/98 of 29 June 1999)<sup>3</sup>. Under the Belgian law on non-profit associations (NPA-law) of 1921, a non-profit association should at least by 75% consist of Belgian nationals; if it did not, the association was deprived of its legal personality. The 1919 law on international associations also required at least one Belgian national in the management of the association. The European Court of Justice examined the argument that these requirements violate the rights of citizens of EC Member States, discriminating them on the basis of nationality, and ruled that:

“...by requiring the presence of a Belgian member in the administration of an association or a minimum, and majority, presence of members of Belgian nationality in order for the legal personality of an association to be recognized, the Kingdom of Belgium has failed to fulfill its obligation under Article 6 of the Treaty.”

(*Commission of the European Communities v Kingdom of Belgium*, Case C-172/98 of 29 June 1999).

In fact, the same procedure applies in both European countries and the Big 8 countries. According to the general rule, any individual or legal entity may found or participate in an NGO in any European country. In Germany, foreigners are allowed to establish associations, foundations and other NGOs. Similarly, the Netherlands have no restrictions of that kind. Also, the United States, where the establishment of associations is regulated at the state level, in general have no requirements restricting the rights of foreigners as to becoming the founders. The countries, which have recently become the EC members, also have very little restrictions imposed on foreign nationals. Hungary, for instance, does not require a person to follow any requirements on citizenship or length of residence when establishing associations or foundations (two main organization forms of NGOs). Even Macedonia is currently revising its law on associations to comport it with international standards by repealing any provisions restricting the ability of foreign citizens to establish NGOs.

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In compliance with the Law of the Republic of Tajikistan “On the legal status of foreign nationals in the Republic of Tajikistan”, the status of “permanent residency” may only be granted to an individual who has lived in Tajikistan for at least a year.

<sup>2</sup> Article 10 of the ECHR guarantees the freedom of expression “without interference by public authority and regardless of frontiers.”

<sup>3</sup> See also *Belgian Non-Profit Associations and Belgian International Associations Loose Belgian Nationality and Residency Requirements for Their Members and Directors*, in Bart Servaes, *International Journal of Not-for-Profit Law*, Vol. 3, Issue 2 ([www.icnl.org](http://www.icnl.org)).

It should be noted that the Russian Government deferred to the opinion of the Council of Europe and international and international experts when considering *The Law of the Russian Federation Amending Certain Laws of the Russian Federation* of January 10, 2006 No. 18–FZ and abolished the requirement of permanent residence for foreigners and stateless persons.

### ***Recommendations***

The ICNL recommends that the provisions requiring foreigners to have permanent residence in the Republic of Tajikistan in order to be the founders, members or participants of public associations in Tajikistan should be removed from the Draft Law.

We suggest removing the following words from Section 2 of Article 17:

“provided that they have a permanent residence in the Republic of Tajikistan or an appropriate residence permit in the Republic of Tajikistan” and the word “these” in the sentence following the deletion.

Give the following wording to Section 5 of Article 17:

“5. Only adult *persons* who have a permanent residence in the Republic of Tajikistan may be managers of public associations or members of their audit bodies.”

### **4. Restrictions on establishing public associations.**

In compliance with Article 14 of the Draft Law “Establishing and carrying out activities of public associations, which are engaged in propaganda of racial, national, social and religious enmity or calling for forcible toppling of the constitutional order or organizing armed groups shall be banned. It shall not be allowed to establish and carry out activities of a public association that infringes on the rights and lawful interests of the people, or present threat to public health and morality”.

The list, contained in Article 14, may seem long but it does comply with the provisions of ICCPR. At the same time, it shall be noted that that ICCPR only allows for restrictions on the freedom of association in the cases when such restriction is prescribed by law and only in the event when the said limitation is “necessary in a democratic society”.

Various issues may arise at the stage of applying this provision of the law. For instance, “a threat to public health and morality” is too broad a notion. It is the criminal law that normally addresses the issues of harming someone’s health. It is administrative and/or criminal law that defines *corpus delicti* such as hooliganism, which can endanger public morality and health. In the event when state agencies apply the provisions of this article in too broad a context, a more specific version of this article may be needed. In each specific case of a denial to register a public association, the main questions are likely to be whether: (1) there is (was) a *real* threat to the national security and constitutional order or health, and (2) if the measures taken by the government have been *justifiable and adequate* or unnecessary and excessive.

### **5. Complication of the registration procedure for foreign public associations (NGOs and NCOs), their branches and rep offices.**

In compliance with section 1 of Article 21 of the Draft Law, the state registration of foreign public (non-commercial and non-government) associations (hereinafter FPA) shall be exercised upon their accreditation with the Ministry of Foreign Affairs. The Draft Law does not stipulate for any special features of registering a FPA with the Ministry of Justice or the very procedure of accreditation with the Ministry of Foreign Affairs.

It is hard to assess this innovation. In the event when foreign organizations will have to undergo registration (accreditation) only with the Ministry of Justice or only with the Ministry of Foreign Affairs, with subsequent transfer of documentations from one of these agencies to another, then this new procedure should be commended. But, in the event when foreign entities will have to undergo a double process of registration and accreditation with both the Ministry of Justice and the Ministry of Foreign Affairs, then the process will get much more complicated. In which event the issue of regulating foreign organizations will get deteriorated.

### **Recommendation**

We hope that the lawmakers will select one government agency, either the Ministry of Justice or the Ministry of Foreign Affairs that will be authorized to register/accredit FPA. We also hope that the new procedure of registration/accreditation will not be more burdensome than the currently existing one.

### **6. Restriction on the rights of public associations.**

Pursuant to Section 1 of Article 24, public associations may exercise only “the rights provided for by legislation of Tajikistan”.

### ***Analysis***

Article 24 of the Draft Law establishes quite a broad list of rights for public associations. However, this list is restricted only by the rights provided for by the legislation. It means that any other right of a public association should be spelled out in a certain legislative act, and a public association cannot have the right that was not provided for in any act. For instance, the current Draft Law does not give public associations the right to hold cultural and entertainment events. And even if such right is secured by some law, any official may require that a public association should “show where that right is spelled out,” and that would generate ground for corruption and cannot be justified by any public interests.

It should be noted that the general legal capacity of non-profit organizations (including public associations) may turn out to be restricted in comparison with that of commercial organizations. As a rule, non-profit organizations may only engage in business as long as it facilitates achievement of their constituent goals. Furthermore, non-profit organizations (including public associations) may set the limits for their own activity in their constituent documents as they think appropriate. However, with the exception of these restrictions, the government should not restrict their general legal capacity and discriminate against public associations in comparison with commercial organizations. Public associations are protected by the rules of international law and normally should enjoy the same rights as natural persons.

### ***Recommendation***

Give the following wording to paragraph 13 of Section 1, Article 19:  
“Exercise other rights *not prohibited* by law.”

### **7. Extremely wide powers of government authorities as to the monitoring of public associations.**

Pursuant to Section 2 of Article 34 of the Draft Law: “The registration authority monitors activities of public associations to ensure consistency with their constituent goals. The registration authority may:



- request the governing bodies of public associations to provide their administrative paperwork, resolutions and other information;
- have its representatives participate in events held by public associations;
- in finding any noncompliance with the legislation of the Republic of Tajikistan by public associations or in finding any activity inconsistent with their constituent goals, issue a written warning to the governing body of a public association, outlining specific reasons for such warning.

The warning made by the registration authority shall be examined by the public association within one month.”

The drafters should be commended for removing from the Draft Law a provision (former Article 42) that allowed officials to take decisions suspending the activity of a public association. The new version of the Draft Law (Article 34) provides for suspension only by a court order.

### *Analysis*

Article 25 raises concerns for the following reasons:

(1) The unrestricted authority of the registration authority to request public associations to provide their administrative documents and to have their representatives participate in events conducted by public associations may result in interference with an association’s internal affairs.

It is important to note that a number of government authorities have the competency to oversee the lawfulness of activities of organizations. These include the prosecutor’s office, the law enforcement, the fire marshal’s office, the tax services and other agencies. There is no need and reasons for the registration authorities to spend their limited resources for any additional inspections of public associations.

Besides checking on any violations of law, the state agencies are authorized to check the compliance with constituent goals. This is a dangerous path because it implies that any activity, which is not spelled out in the charter, for instance, helping children or assisting an ecological organization, may be reviewed and punished as a violation of the legislation. In the event when an activity does not contradict the law but is not specifically mentioned in the charter, this issue should be dealt with by members of and participants in the public association but not by the government agencies.

### *Recommendations*

Specify in the Draft Law the grounds on which the registration authority may request the documentation or participate in events held by an organization. For instance: “If registration authorities receive any complaints from citizens about activity of an association or any information from other government authorities about any violations of law by an association, the registration authorities may verify if the violation took place by way of...”

“The registration authority may inspect an association at its own discretion by way of..., not more often than once a year. The inspections should be conducted in the normal business hours of the association and may not last for more than two work days, unless any noncompliance with the laws of the Republic of Tajikistan has been identified during this period.”

## **8. Registration and restriction of activity depending on the territorial scope.**

Pursuant to Articles 12 and 21 of the Draft Law, public associations are registered by government authorities depending on the territory within which these associations operate. A public association is required to re-register in the event when its territory of operation expands.

### *Analysis*

Establishment and operation of public associations within the territory of registration hinders their development as the expansion of the territory of operation entails re-registration of the association by government authorities, which creates additional workload for registration authorities and bureaucratic obstacles for public associations. Moreover, public associations are discriminated against in comparison with business entities, which can get registered without specifying any territorial scope of activities and can engage in their activities throughout the country and abroad. The process of registration of a public association may not be more complicated or burdensome than the process of establishing any business structure.

The territorial status of public association is the category which does not exist in other countries of the world outside the NIS. A number of the newly independent states have abandoned this notion or are in the process reviewing it in order to drop it altogether, for instance, Ukraine, Armenia, Georgia. This category may only be acceptable for countries with federal administrative structure as a means of providing for the interests of various subjects of a federation (in Russia, for example). The Republic of Tajikistan has no federal division.

### *Recommendations*

We suggest abolishing registration of public associations based on the territorial criterion and examine a possibility to register them in compliance with the registration procedure established by *The Law on the State Registration of Legal Entities*.

### **9. Broad range of grounds for denial of registration of a public association.**

Article 23 provides for a broad range of grounds for denial of registration of a public association:

“ – the charter of a public association runs counter to the Constitution of the Republic of Tajikistan, the provisions of Articles 14, 17 and 18 of this Law and other norm-setting and legal acts of the Republic of Tajikistan;

- the documentation required for state registration in conformity with this Law, has not been submitted in full, or the said documents have not been executed in full and in a procedurally valid manner, or have been submitted to a wrong body of power;

- there exists a registered public association bearing the same name and maintaining activities within the same territory;

- it has been discovered that the constituent documents, submitted for registration, contain unreliable information;

- the name of a public association insults public morality, ethnic and religious feelings”.

It is also stated that “in the event of a denial of the state registration of a public association, the applicants shall be notified in writing; the said notice shall list specific provisions of the legislation of the Republic of Tajikistan that were not complied with, thus resulting in a subsequent denial of state registration”.

### **Analysis**

The range of grounds for denial of registration of public associations is extremely broad. Thus, a potential denial in connection with a non-compliance with a norm-setting (not legislative!) act, may lead to a situation when any official will be able to come up with a regulation or an official letter establishing provisions, which the charter of a public association will have to comply with.

Furthermore, some of the grounds mentioned in the Article may be only deemed as shortcomings, which can be easily taken care of and which do not constitute grounds for a denial. These include the cases when the documentation required for state registration in conformity with this Law has not been submitted in full or when the said documents are incomplete.

It is not quite clear how the registration bodies plan to check on the validity of the information contained in the submitted constituent documentation. What type of information is to be verified? The state body of registration will hardly be able to cope with this mandate because it is not assigned the functions of the law-enforcement agencies. In the event when it has been determined that an organization has submitted false information, the state body of registration should be authorized to seek termination of the organization in the course of a court procedure. It should not squander its limited resources and slow down the registration process because it has to verify the validity of information.

We do not believe that the aforementioned grounds necessitate a denial of registration. All countries that signed ICCPR must comply with the provisions related to acceptable restrictions on the freedoms of public associations. In compliance with ICCPR, in a democratic society, these restrictions may be imposed within the framework of the law for the purpose of protecting national or public security, preventing crime and riots, protecting health, morality and securing rights and freedoms of other people. In the event when the government agencies deny registration on the grounds, which are not based on the provisions of ICCPR, these actions will run counter to the international covenants signed by Tajikistan.

I should be noted that, in accordance with legislations of a number of European countries, France, Germany and Spain in particular, the state agencies are not authorized to assess the content of documentation submitted for registration, with the exception of verifying whether the declared purpose of association is allowed by the law. Only in Germany the body of registration may refuse to accept the application (but not to deny registration!) if the documentation package is incomplete. In these countries, any deficiencies related to incomplete information and absence of documents are usually resolved in the process of registration. This may impact the required time period for registration but does not entail a denial.

### **Recommendation**

Article 23, Section 1 shall read as follows:

“1. The state registration of a public association may be denied on the following grounds:

the charter of a public association runs counter to the Constitution of the Republic of Tajikistan, the provisions of Articles 14, 17 and 18 of this Law and other *legislative* acts of the Republic of Tajikistan;

- the documentation required for state registration in conformity with this Law, has not been submitted in full, or the said documents have not been executed in full and in a procedurally valid manner, or have been submitted to a wrong body of power, and, upon being notified of the defects, the founders have failed to remedy them”.

### **10. The forthcoming re-registration of public associations.**

Article 41 of the Draft Law stipulates re-registration of all public associations in connection with this Law coming into effect. The date mentioned is “no later than September 1, 2007”. Assuming that the Law will be inured by March 1, 2007, all public associations will only be given 6 months to complete re-registration.

### ***Analysis***

The process of re-registration is always painful and costly, both for public associations and for the government agencies. In the event of adoption of this new Law, the legal status of public

associations will not undergo any substantial change. It is feasible that not all of the public associations' charters will contradict the new Law. Consequently, only the public associations whose constituent documents will not comply should have to register corresponding amendments. The mandatory re-registration of all of the public associations does not seem expedient.

Additionally, when regulating the issues pertaining to the state registration, it is important to separate the procedures of introducing amendments and addenda into constituent documents from the procedure of re-registering public associations. Quite frequently, introducing amendments and addenda into constituent documentation does not entail any substantial changes in the legal status of an entity, for instance, this applies to the change of address, the re-distribution of authority among an organization's governing bodies, the change of the composition of the standing governing body, the change of name or any stylistic editing of the wording of certain provisions contained in the charter.

Any re-registration of a public organization, or any legal entity for that matter, may only be caused by an essential change of the entity's legal status. It implies the re-issuing of a registration certificate and a new signing up with certain other government agencies. Such substantial changes may happen when a public association is being transformed into a foundation, or when the declared goal of a public association has to be changed. As a rule, this range of substantive changes, which does entail re-registration, is very narrow for all of the legal entities.

Most European countries and the USA do not require re-registering a legal entity in the event when its constituent documents are amended. The amendments are regarded valid if they are adopted in compliance with the procedure established in the constituent documents, and after the state bodies of registration have been duly notified of the said amendments.

For instance, a public association may have to change its address in connection with the office lease expiration. In most cases, a decision to look for a new office and sign a lease agreement does not require a decision of the general meeting, which in larger associations is only convened once a year or even more seldom. The decision is taken by the executive director or any other authorized body, in compliance with the charter. An association is obliged to provide the state body of registration with the text of the amendment accompanied with a document in regard to the decision, taken by the CEO or other authorized body, complete with a reference to corresponding provision in the charter and/or power of attorney authorizing the said body to take this decision. It would be much less time-consuming for the body of registration, as well as for a public association, to check or prepare such set of documents than to handle the minimum of 8 documents in compliance with Article 21 of the Draft Law.

### **Recommendation**

Section 3 of Article 41 shall read as follows:

“In the event when there is a need to introduce amendments into constituent documents for the purpose of bringing them into compliance with the provisions of the new Law, public associations, established prior to the inurement of this Law, shall submit corresponding amendments for registration no later than March 1, 2008; the said associations shall be exempted from paying the state duty”.

Section 6 of Article 21 shall read as follows:

“6. Amendments, introduced into charters of public associations, *related to changing the name, purpose, organizational and legal form*, shall be subject to the state registration following the same procedures and within the same time frames as the registration of public associations, and shall acquire legal effect as of the date of such registration.

A public association shall notify state bodies of registration of any other amendments of the charter within 15 days upon the decision of the said amendments has been taken by the authorized body of such public association. The following documents shall be submitted to the state body of registration:

- an application signed by the association's CEO;
- a copy of the resolution of the authorized body in regard to amending the charter, complete with a reference to the article of the constituent documents confirming the said authority.
- the text of the adopted amendments signed by members of the authorized body.

Amendments to the charter shall come into effect as of the date of their submission to the state agency in charge of registration».