



## **Law on Public Associations. Key Amendments**

### **Analytical Note**

On 14 February 2023, the Law of the Republic of Belarus No. 251-Z “On Amending Laws Regarding the Activities of Political Parties and Other Public Associations” was adopted. *Lawtrend* experts have prepared this analytical note on key amendments by the law. It is important to note that the law does not change either the procedure for registration or the procedure for operation of public associations. It was developed in line with the usual amending the law on public associations over the past decade: without changing the system as a whole, some positive technical regulations and some ones aimed at restricting activities of associations have been introduced.

#### **Definition**

The definition of the concept of “public association” was amended. Prior to this, a public association was considered as a voluntary association of citizens united on the basis of a common interest to satisfy intangible needs and to achieve statutory purposes. A new version of the law defines a public association as a voluntary association of citizens united to jointly implement and satisfy social, economic, cultural, and other interests and to achieve statutory purposes. This is not the first amendment introduced into the concept of “public association” during the law applying. So, for example, as amended by the Law of 2005, a public association was considered as a voluntary association of citizens united on the basis of a common interest for joint implementation of civil, social, cultural, and other rights.

#### **Public Association Status**

As before, the law determines that local, republican, and international public associations may be established in the country, as well as branches of international public associations established in the territory of foreign states. However, the requirements for the status of public associations have been changed significantly.

Requirements for international public associations. Earlier, the law determined that international public associations are those established in the territory of the Republic of Belarus, whose activities cover the territory of the Republic of Belarus and the territory of one or more foreign states. It was also enshrined that for establishment of an international public association it is necessary to create its organizational structure/structures in the territory of a foreign state/states. In practice, a statute stated that the structure of an organization includes a Belarusian branch and a foreign branch/branches. Both Belarusian and foreign branches were created at the founding event. No other (besides protocols) documents confirming creation of branches had to be submitted to the registering body. The new amendment at the legislative level provides that international public associations must have organizational structures in the

territory of one or several foreign states and in the territory of the Republic of Belarus. It also stipulates the obligation to establish such structures within six months after registration and to submit supporting documentation to the Ministry of Justice. On the one hand, the Law has eliminated the eternal question arising in practice when creating an international public association: how a branch of a not having established association may be created (the Belarusian Civil Code defines that a legal person is considered created from the moment of its registration). On the other hand, the Law significantly complicates the activities of international public associations. First, it provides for compulsory creation of an organizational structure in the Republic of Belarus in accordance with the procedure established by the legislation. The legislation, in its turn, defines that organizational structures must be registered. Accordingly, in order to register, it is necessary to find a legal address for such a structure, to prepare the necessary documentation, and to perform some other actions. Secondly, it is currently unclear what documents the Ministry of Justice will require to confirm the establishment of organizational structures in the territory of foreign countries. Often, during inspections of public associations, the Ministry of Justice demanded from international associations confirmation of registration of their branches abroad, despite the fact that organizational structures had been created under the law of a foreign state, i.e. a country of location, where most often obligatory registration had been not required. A similar approach to providing supporting documents often applies to creation of branches and representative offices of international foundations.

Requirements for republican public associations. Earlier legislation determined that a republican public association must have not less than 50 members (founders) from the majority of Belarus' regions and the city of Minsk. At the same time, a republican public association could be integral (without additional organizational structures in it), as well as create such structures. While maintaining the same requirements for the numerical composition of a republican public association, the Law amendments provide that it must have organizational structures in all regions (oblasts) of the Republic of Belarus and the city of Minsk. These structures must be created within six months after registration. According to the law, all these structures must be registered and have a legal address in the administrative premises. The latter requirement might significantly reduce the number of republican public associations in the country, because, on the one hand, it significantly increases the financial burden on public associations and, on the other hand, it is often extremely difficult for public associations in the regions to find a legal address. Obviously, this requirement has been introduced precisely for the purpose of reducing the number of republican public associations in the country, because exactly republican public associations (though with an additional criterion - the number of members of not less than 100000), according to the newly adopted law "On the Essentials of Civil Society," may have special forms of interaction with the state bodies. The Law amendments determine that only republican public associations may be transformed into political parties, etc.

Requirements for local public associations. Legislative requirements for the status of local public associations have become a little simpler. Previously, the law defined that for establishment and operation of a local public association it was necessary to have not less than ten founders (members) from two or more administrative-territorial units of the territory, which would be covered by the activities of this public association. The Law amendments contain a requirement simply to have at least ten founders (members) in a local association. Also, it is

determined that a local public association is an association that does not meet the requirements established for international and republican public associations. It follows that the Law, without abolishing the notion of "territory of public association's operation", gives an opportunity to provide in the statute of a local public association a very wide territory of its operation, practically including the whole territory of the Republic of Belarus.

### **Restrictions on purposes and principles of establishment and operation of public associations, and their duties**

The Law amendments extend the list of the purposes prohibited for public associations' establishment and operation. As before, an association must not have war propaganda or extremist activities as its purpose. This wording was supplemented with the prohibition on such purposes as violent change of the constitutional order; propaganda of social, national, religious, and racial enmity; implementation of terrorist activities; other activities prohibited by the law. These restrictions, when properly used, can be regarded as proportionate restrictions, according to the [Guidelines on Freedom of Association](#). The Guidelines state that "the only legitimate aims recognized by international standards for restrictions are national security or public safety, public order (ordre public), the protection of public health or morals and the protection of the rights and freedoms of others. The scope of these legitimate aims shall be narrowly interpreted." The Law amendments also prohibit establishment and operation of associations allowing the above-mentioned activities in the course of pursuing legitimate purposes. This wording is completely inconsistent with international standards on freedom of association. The Guidelines provide that a law restricting the right to association "must be precise, certain and foreseeable, in particular in the case of provisions that grant discretion to state authorities." There shall be a presumption in favour of the lawfulness of the establishment of associations and of their objectives and activities, regardless of any formalities applicable for establishment.

The Law amendments stipulate that public associations shall be established and operate on the basis of the principles of freedom of association, democracy, legality, publicity, voluntariness, independence, self-government, and equality of all public associations. The state may provide public associations with informational, methodological, and other support. State support of public associations is based on the principles of legality, partnership, transparency, equality, coherence, and responsibility. Such provisions correspond to international standards, but do not correspond to the domestic law and the existing practice in Belarus. First of all, this noncorrespondence is based on the current situation of unprecedented repression of independent public associations – their mass liquidation and other forms of pressure. Belarusian legislation discriminates against some NPOs in comparison with others, creating favorable conditions for a very limited number of organizations. Ultimately, this discrimination is in the sphere of providing direct state support, when a very limited number of NPOs are provided with direct state funding. For example, in accordance with the law "On the State Budget for 2023" only three organizations are allocated funding, and the criteria for the allocating is completely non-transparent. The Edict of the President of the Republic of Belarus № 559 of 17 December 2012 "On Some Issues of State Support for the Public Association 'Belarusian Republican Youth Union'" provides for allocation of the support, but the information on the expenditure of funds is classified as "for official use."

The Law amendments establish the following obligation for public associations: to observe the Constitution of the Republic of Belarus, the Law "On Public Associations", other

legislative acts, and their own statutes; to ensure compliance with the main lines of internal and foreign policy and the concept of national security approved by the All-Belarusian People's Assembly.

### **Requirements for legal address**

The law stipulates that one of the documents to be submitted for registration of a public association, as well as its organizational structures, is a one confirming the existence of a legal address. Requirements for a legal address have always been one of the formal reasons complicated establishing public associations. Until recently, the Belarusian law has contained a possibility of locating a legal address of a public association in an individual apartment house. At least to some extent, it has eased the situation for public associations, especially in the regions. The Law amendments categorically state that only non-residential premises may be used for a legal address. Location of a legal address in non-residential premises, as above, imposes an additional financial burden on public associations. In small towns, the majority of non-residential premises are owned by state bodies, which can provide such premises for free use only to a small number of public associations included in the special list. Also, independent public associations are often denied legal addresses in the state non-residential properties. As to the private properties, location of a public association there is often used for pressing on owners of the premises.

The Law amendments also enable a public association to have its legal address at the place of work of its leader or deputy leader upon receiving a written consent of the head of the legal entity, whose employee is an association's leader or deputy leader. Obviously, in the current situation, this novelty is targeted at pro-governmental organizations.

### **Procedure for registration of public associations**

As it mentioned above, the procedure for registration of public associations has not changed in general. In fact, it remains the same - too complicated, demanding a large number of documents to submit to the registering body and giving the possibility to refuse registration to any public association.

The Law amendments, in addition to personal and postal application to the registering body for registration of a public association, provide for submitting documentation in electronic form. It is stipulated, though, that statutes and annexes to a statute shall be submitted to the registering body on paper in any case.

One of the technical problems in the process of registration of public associations is removed by the Law amendments. Earlier, the law stipulated the necessity to indicate in the lists of founders and elected body members their home and work telephone numbers. Such a minor regulation caused in practice a lot of problems to public associations while preparing documentation for registration. The practice of registering bodies to refuse registration of public associations was widespread when a mobile phone number was indicated instead of a home or work phone number, or when the absence of a connected landline phone number was indicated, but there was data from state bodies stating that there was an appropriate phone number. Now, the Law requires just contact phone numbers of founders and elected body members.

### **Entrepreneurial activity of public associations**

International standards are based on the principle of giving public associations as much access to resources as possible, including by engaging in economic activities. Thus, according to the Guidelines on Freedom of Association, associations should be free to engage in any lawful economic, business, or commercial activities in order to support their non-profit activities. The Law amendments have not eliminated the prohibition on conducting independent business activities by public associations. However, it is established that public associations may do work and provide services in the performance of state social procurement without forming and (or) participating in commercial organizations.

### **Reporting**

Some terms for submitting reports and other obligatory information to the registering body by public associations have been changed. Thus, the term for reporting to the registering body and for public reporting (mandatory publishing information on a public association's continued activity, as well as its incomes and expenses on its website or in the mass media or on the registering body website) increases for a month (from 1 March to 31 March). The term for submitting to the registering body the information on the changed composition of elected bodies of a public association raises from ten days to a month.

The documentation annually submitted by public associations to the registering body in order to prove the continuation of their activity are supplemented with a document to confirm a legal address.

Providing information and reporting to the registering body now may be made not only by personal or postal submission, but also in electronic form.

### **Appealing against decisions of registering body**

Cases over suspension of operation, liquidation, appeals against written warnings, and refusals to register international and republican public associations are excluded from the competence of the Supreme Court as the first instance. The Law prescribes that these cases and appeals are considered by regional and Minsk city courts, depending on the location of a public association's legal address, like those of local public associations. The Supreme Court decisions are not subject to appeal; accordingly, before having this provision introduced, republican and international NPOs were deprived of the right to appeal against decisions on their activity suspension, or their liquidation, or issuing written warnings. After this provision comes into force, national and international NPOs will be able to appeal against first instance decisions.

### **Grounds for liquidation of public associations**

The newly added grounds for liquidation of public associations are war propaganda, terrorist and other extremist activity, other activities prohibited by law, activity harming state and/or public interests; non-compliance of activity of a public association with the main lines in home and foreign policy and the national security concept approved by the All-Belarusian People's Assembly. Actually, similar grounds for liquidation of public associations are used in practice at present.

### **Bringing constituent documents in accordance with the law requirements**

Public associations registered before the amendments to the law to come into force must, within a year, bring their constituent documents into conformity with the new requirements. Considering that the Law does not essentially change the requirements to public association statutes, this should not affect all public associations. First of all, public associations registered in the Ministry of Justice - international and republican public associations – will face the problem. Republican public associations will have to either create organizational structures in all regions (oblasts) of the country and in Minsk, or change their status. It will also be necessary to bring the organizational structure of international public associations in conformity with the new law requirements.