

Andrzej Pogłódek

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Andrzej Pogłódek*

THE INSTITUTION OF THE NATIONWIDE REFERENDUM IN TURKMENISTAN

INTRODUCTION

Nowadays, the majority of countries supplement their representative political system with various direct democracy bodies or, according to some representatives of the doctrine – semi-direct democracy bodies¹. The institution of referendum plays a key role in the countries which undergo transition from non-democratic political systems towards the democratic system. The political significance of such mechanism results from a direct legitimization carried out by the people in regards

* Phd; Cardinal Stefan Wyszyński University in Warsaw.

¹ In 19th century L. Duguit recognized the referendum as purely representative governments, and plebiscites - as an act that delegates sovereignty to one person (Л. Дюги, *Конституционноправо: Общая теория государства*, Москва 1908, с. 397). In L. Dugit's opinion, laws should be discussed and voted on by the parliament, but "it does not have the force of a law until it is directly approved at the assembly of citizens" (Ibidem, с. 397).

to the political changes. It should be said that referendum is a crucial institution of any modern democratic country². Also in Turkmenistan, the referendum is seen as one of the ways in which, by voting, the citizens can participate in political matters of their country. The nationwide referendum takes place when important political and public matters are to be resolved³. It takes place throughout the entire country.

The history of the development of modern political institutions in Turkmenistan dates back to the second half of 19th century⁴, when the area was incorporated to the Russian Empire. At the beginning of the 20th century, a limited constitutional reform took place. The construction of the constitutional monarchy was interrupted by the collapse of the monarchy in February 1917, and later the Bolshevik revolution in October 1917 put an end to the hopes for any democratization of the political system. As a result, until 1991, the constitutional development of Turkmenistan took place within the so-called socialist constitutionalism. The latter, although appealed to democratic policies, it did not come close to direct democratic institutions⁵. Initially, the area of current Turkmenistan belonged mainly to the Turkestan ASRR ((Turkmen region) being part of the Russian FSRR. Some of the parts, as Turkmen autonomous regions, belonged to the Bukharan People's Soviet Republic and the Khorezm People's Soviet Republic. As a result of the Bolsheviks' implementation of the new national and territorial division of Central Asia, on 27 October 1924, the Turkmen SSR was established. Later, on 13 May 1925, it formally became a federal republic. The first constitution of the Turkmen SSR was enacted in 1927⁶. Further basic laws were adopted in 1927 and 1978⁷.

When it comes to legal regulations of the institution of referendum in Turkmen SSR, the basic law in 1937 incorporated the institution of referendum (general consultations)⁸, however no legal acts that would regulate such issue were introduced. The next basic act of the Soviet Turkmenistan of 1978, which was adopted after the adoption of the Con-

² В.В. Комарова, *Референдум в системе народовластия в Российской Федерации*, Москва 1995, с.15 (doctorate).

³ Art. 1 paragraphs 2-3 of the Election Code of Turkmenistan.

⁴ The final establishment of Russian rule in Turkmenistan did not take place until 1881.

⁵ The Soviet political model adopted the principle of state power homogeneity along with a hierarchical system of representative bodies. The highest national authority of the Turkmen SSR was the one-chamber Board of Governors. This body worked in session mode. In the period between the sessions, the functions of the Board of Governors were exercised by the Presidium, which was also formally a collegial head of the state. The deputies of a lower rank of the citizens were subjected to the Board of Governors.

⁶ Д.М. Абаева, *Конституция Туркменской ССР 1927 года: Автореферат диссертациисоискан иеученойстепени кандидата юридических наук*, Москва 1955, 16 с.

⁷ Б. Пирлиев, *Становление и развития высших органов государственной власти Туркменистан: Автореф. дис. канд. юрид. наук*, Москва 1994, с. 31.

⁸ This followed the USSR Constitution which took place in 1936, which defined the referendum as a folk consultation. In accordance with Art. 49 of the Constitution of the USSR of 1936, the Presidium of the Board of Governors of the USSR conducted a referendum on its own initiative or at the request of one of the union republics. It should be noted that this article only authorized the Presidium of the USSR Board of Governors to announce a referendum. The legislator did not specify in which cases a referendum may be held, which meant that the decision is to be made by the Presidium of the Board of Governors of the USSR.

stitution of the USSR of 1977, stipulated that the most important matters of state life are to be submitted to general consultations and submitted to the referendum. Nevertheless, until the collapse of the USSR in the Turkmen SSR, unlike some other Soviet republics, the law regarding referendum was not adopted, so it has not received any legal basis enabling the institution to be used at the republic level. The only referendum that took place in Turkmenistan during the Soviet period was the general referendum of March 1991. However, it hardly met any democratic standards.

After the collapse of the Soviet Union in Turkmenistan on 26 October 1991, the referendum was held in which citizens voted for the independence. Later, the referendum was neither used in the process of adopting the new Constitution of Turkmenistan in 1992 nor for introducing any changes to it⁹. Another referendum was held on 15 January 1994, which concerned the extension of the term of office of President Saparmurat Niyazov until 2002. Since 1994, no referendum took place in Turkmenistan, which distinguishes this country from other countries of Central Asia. The Constitution of Turkmenistan¹⁰ is the basic legal act referring to the nationwide referendum in Turkmenistan along with the Election Code¹¹. It should be mentioned that the Constitution of Turkmenistan refers to the issue of referendum in art. 125 - 129. However, the scope of constitutional regulation does not go beyond the generally accepted one. That is why the majority of key solutions are found in the Election Code and other sub-constitutional documents. The subject of the article is an attempt to present the Turkmen model of the institution of the nationwide referendum. In particular, it presents its legal basis, the subject scope, management mode, organization and course of the referendum, as well as the legal consequences of the referendum resolutions.

One of the reasons for choosing the topic is the practical lack of studies on the Turkmenistan system. Meanwhile, the country itself can play an important role in the Polish energy policy due to its natural resources, in particular gas. It should be noted that the gradual opening of Turkmenistan to more lively relations with the outside world may be an opportunity for Poland. This state of affairs justifies the need to create works contributing to the knowledge of Turkmen law.

SUBJECT OF THE REFERENDUM

The subject of the referendum in Turkmenistan can be:

- 1) adoption of an act;

⁹ Amendments to the Constitution of Turkmenistan were adopted in 1995, 1999, 2003, 2006, 2008 and 2016. Some of them meant the adoption of a new constitution editorial. However, the introduced changes did not affect the institution of the referendum.

¹⁰ Конституция Туркменистана (в редакции от 14 сентября 2016 года), http://www.base.spinform.ru/show_doc.fwx?rgn=89543 [access: 30.06.2017].

¹¹ Избирательный кодекс Туркменистана от 4 мая 2013 года, http://www.base.spinform.ru/show_doc.fwx?rgn=59796 [access: 30.06.2017].

- 2) change or repeal of the binding act or its individual provisions;
- 3) making a decision determining the basic content of acts and other normative legal acts.

At the same time, the Election Code states that the subject of the nationwide referendum can not be any of the following: changing of the Turkmenistan border and the borders of its administrative and territorial units; providing defensive measures to Turkmenistan; the adoption of emergency and urgent measures to protect the order, health and safety of the citizens; matters related to appointment and dismissal from office; performance of obligations resulting from international agreements of Turkmenistan¹².

THE MODE OF REFERENDUM MANAGEMENT

The right to make a decision on holding a nationwide referendum belongs to Majlis¹³. The initiative to conduct a referendum may come from the Majlis (required two-thirds of the total number of deputies) or from two hundred and fifty thousand citizens of Turkmenistan with electoral rights¹⁴. In the case of citizens, an initiative group is created for the referendum, and no later than three months from the day of its registration, it places sewn and numbered signature lists in the Central Election Commission which confirms the acceptance of the signatures with its seal and issues an act on the acceptance of signatures with a specification of the number of voters' signatures, date and time of admission. The act is signed by the chairman of the Central Election Commission and the initiative group. Request for a referendum and the final protocol of the Central Election Commission on the results of collecting signatures are sent to the Majlis within ten days from the date on which the initiative group receives the documents¹⁵.

Then the request for a referendum is considered at a meeting of the Majlis, which takes one of the following decisions:

- regarding holding a referendum and security measures connected with it;
- regarding the need of adopting a law or any other decision without holding a referendum.

Majlis is entitled to reject the initiative to hold a referendum if the initiative group breaches the provisions of the Election Code. The decision to hold a nationwide referendum is adopted when a two-thirds of the parliament members vote for it. The decision to hold a referendum indicates the formulation of a referendum question for the next inclusion in the voting card. The decision to hold a referen-

¹² Art. 53 Ibidem.

¹³ Art. 4 paragraph 2 Ibidem; On the Turkmen Parliament, see: B. Szmulik, A. Poglódek, *Pozycja ustrojowa Medżlisa Turkmenistanu*, [in:] *Człowiek-Prawo-Państwo. Księga Jubileuszowa dedykowana Stanisławowi Leszkowi Stadniczenko*, Warsaw 2017, p. 957-975.

¹⁴ Art. 55 with Art. 56 of the Election Code of Turkmenistan; The procedure for the collection of signatures is regulated in Art. 57 of the Election Code.

¹⁵ Art. 58 of the Election Code of Turkmenistan.

dum, draft bill, draft text of another decision to be voted on is published in the mass media no later than ten days after the decision to hold a referendum is made¹⁶.

The nationwide referendum takes place no earlier than two months and no later than four months after the decision of Mejlis has been adopted. In exceptional cases, Mejlis may set different dates for the referendum¹⁷. Referendums do not take place during the period of emergency¹⁸. The date of the nationwide referendum is determined by the President. The decision to order a referendum shall be officially published in the mass media not later than within five days of its adoption¹⁹.

REFERENDUM BODIES

The Election Code entrusts the preparation and holding of a referendum to commissions on elections and referendums²⁰. The status of such commissions are regulated in details by the Code itself²¹. The Code stipulates that during the preparation and conduct of referendums, the commissions within their competences are independent of state bodies and the local self-government. Therefore, interference of state authorities and local self-government, political parties, social associations, institutions, organizations, enterprises, as well as civil servants and citizens in the activities of commissions is unacceptable²². The referendum bodies are to be, as a rule, transparent and open in their operations. The commission, therefore, informs citizens about their composition, office and work, about questions raised during the referendum, the results of voting on matters brought up during the referendum and its results. In order to ensure transparency of the referendum process, it is planned to observe preparations for it and its course by foreign (international) observers²³ from other countries and from international organizations²⁴.

¹⁶ Art. 59 Ibidem.

¹⁷ Art. 60 Ibidem.

¹⁸ Art. 4 paragraph 7 Ibidem.

¹⁹ Art. 4 paragraphs 3-4 Ibidem.

²⁰ These are the Central Election Commission and electoral commissions: of vilayets, districts, cities with the laws of districts, constituency electoral commissions, electoral commissions of towns in districts, settlements and villages; district electoral commissions (Art. 17 paragraph 1 of the Election Code).

²¹ See Art. 18 - 37 the Election Code

²² Art. 5 Ibidem.

²³ Invitations to foreign (international) observers may be sent by the President or the Central Election Commission after the date of referendum. The official accreditation of foreign (international) observers holding an invitation is made by the Central Election Commission. It issues an accreditation certificate to the observer. Their activities are regulated by the Election Code and other normative legal acts of Turkmenistan, universally recognized norms of international law. Electoral commissions, organs of state power and local self-government, officials within the scope of their competence demonstrate the necessary assistance to foreign (international) observers. Foreign (international) observer conducts his activity individually and independently. The foreign (international) observer himself or the party that sends him bears the expenses related to running his activity. Foreign (international) observers have no right to conduct activities unrelated to observation of the preparation and conduct of the referendum.

²⁴ The powers of observers start from the date of their registration (accreditation) and end on the day of the official publication of the results of the referendum. The observer has no right:

The legislator also regulated the matter of mass-media representatives' participation in informing about the course of the referendum in Turkmenistan. The competent electoral commission may cancel the registration (accreditation) of an observer, representative of the mass-media if they violate the applicable law. The procedure for the appointment and registration (accreditation) of observers, mass-media representatives is established by the Central Election Commission²⁵.

THE RIGHT TO PARTICIPATE IN THE REFERENDUM

All citizens of Turkmenistan above are eighteen years old have the right to participate in the referendum. It is forbidden to directly or indirectly limit the electoral rights of citizens to participate in a referendum depending on nationality, race, sex, origin, property status and official status, place of residence, language, religion, political beliefs, party affiliation or lack of membership in any party. Citizens recognized by the court as incapacitated persons and persons serving punishment in prisons do not participate in referendums. Limiting electoral rights in other cases is unacceptable and entails liability under the legislation of Turkmenistan. Each participant of the referendum has one vote. Citizens of Turkmenistan vote on a subject (subjects) of the referendum directly. Citizens' participation in the referendum is free and voluntary. Voting in referendums is secret. Control over the will of voters is not allowed²⁶.

The lists of persons participating in the referendum in Turkmenistan are drawn up by the authorities from each referendum district. These lists are prepared by district election commissions based on data provided by executive bodies of local authorities and local self-government. In the case of units created in military units, hospitals, jails and other institutions - based on data provided by the person in charge of the given institution. The citizens of Turkmenistan abroad are included in the lists of participants of the referendum drawn up by diplomatic representations. The Election Code does not specify the order in which the citizens are listed. It only states that it is to be in a form that is "convenient for the organisation of the voting."²⁷

The list of participants of the referendum includes citizens who on the day of the referendum will be over eighteen years old, citizens that permanently or temporarily (for at least the last three months) live in the area of a given electoral district, and those who have electoral rights. A citizen entitled to participate in the referendum

¹⁾ to issue voting cards;

²⁾ to fill in voting card for the participant of the referendum;

³⁾ to perform actions that violate the secret of voting;

⁴⁾ to take part in the counting of voting cards;

⁵⁾ to perform actions that interfere with the work of the referendum commissions.

[†]The observer also has no right to conduct agitation prior to the referendum.

²⁵ Art. 6 of the Election Code of Turkmenistan.

²⁶ Art. 3 Ibidem.

²⁷ Art. 41 Ibidem.

who is not included in the referendum register is included by the district commission in an additional list. Every citizen can be included in one list only²⁸.

The prepared lists of referendum participants are made public at least 15 days before the day of the referendum, and in the case of constituencies created in sanatoria and holiday homes, medical institutions, detention centers and detention centers, diplomatic representations of Turkmenistan - at least five days before the referendum. Every citizen has the right to challenge non-inclusion, incorrect inclusion or deletion from the referendum list of participants, as well as any errors in the data regarding the participant of the referendum. Applications in these matters are considered by the district electoral commission which is obliged to examine the application not later than within two days, and on the day before and on the day of the referendum to immediately examine the application, make necessary changes to the list of participants or issue a refusal to the applicant with a proper justification²⁹.

THE REFERENDUM CAMPAIGN

According to the Election Code, the referendum campaign starts at least 70 days before the date of the referendum. This information is issued to the public through mass-media³⁰. The legislator, in a general way, guaranteed the freedom of conducting a referendum campaign by political parties, social associations, citizens, the initiative group in a manner consistent with the applicable law. At the same time, the legislator did not explicitly mention conducting of agitation against participation in a referendum, and the conscious boycotting of voting is also one of the possibilities for the citizens to express their opinion. Therefore, the question whether in the light of Turkmen law such a campaign would be legally permissible remains open. In the Election Code, the legislator explicitly considered agitation in the subject of the referendum a call to vote "for" or "against" the question being the subject of the referendum; spreading of reliable information regarding the subject of the referendum and, which is rarely a solution, forecasting the possible results of the referendum. The latter means that in Turkmenistan, surveys carried out before the vote were considered in the opinion of the author of this article, to be rightly one of the forms of running a referendum campaign³¹. Turkmen legislator requires that the content of the information material presented in the media or distributed in any other way is objective and credible³².

²⁸ Art. 42 Ibidem.

²⁹ Art. 43 Ibidem.

³⁰ Art. 4 paragraph 5 Ibidem.

³¹ At the same time, the legislator did not regulate more broadly the issue of carrying out surveys, which should be considered a certain shortcoming, which, however, is of no practical significance in the conditions of Turkmenistan.

³² Art. 61 sent. 2 of the Election Code.

Agitation when conducting a referendum can take place:

- 1) through the mass-media;
- 2) by organizing mass events (meetings with voters, public debates and discussions);
- 3) by issuing and distributing agitation materials;
- 4) in other forms not prohibited by law.

However, members of electoral commissions, observers, judges, members and representatives of charities, religious organizations, employees of law enforcement agencies, cannot participate in the agitation, nor can they publish and distribute the agitating materials related to the referendum. Persons who are younger than 18 are not allowed to participate in the agitation, along with foreign citizens, foreign countries and organizations, international organizations and international social movements. Persons who are employees of state or local government bodies may not conduct agitation in connection with the performance of their official duties, as well as use the resources of these bodies to conduct it.

The Election Code guarantees equal access to the mass media for the initiative groups. Each of these groups has the right to determine the form and nature of their agitation by means of mass media³³. To maintain equality, the legislator has granted all the initiative groups the right to free airtime on the national radio and television channels. According to the Election Code, free air time is from 19:00 to 23:00, excluding the time for official news programs. In the listed time spread, it is at least an hour every day, divided equally between the initiative groups. The legislator has prohibited the interruption of referendum programs, as well as providing them with other information than allowed by the Central Election Commission in consultation with the state body responsible for regulating the media. At the same time, it seems that the information sent should be limited to informing that it is an agitation in connection with the referendum.

In regards to the press, the Election Code states that press titles must give free printed spaces on equal terms to materials presented by the initiative groups. In the case of providing print space for payment, the same conditions must apply to all parties. The requirement to provide space for conducting agitation does not include official journals. Similarly, publishers of specialized press (e.g. children, technical, scientific and other) may refuse to post agitation material provided they do not participate in the referendum campaign³⁴.

Creating an equal chances is also facilitated by the obligation of the local executive authorities and local self-government bodies to designate places in which agitation materials can be placed, in each region within ten calendar days from the date

³³ Art. 62 Ibidem.

³⁴ Art. 65 Ibidem; The detailed mode of campaigning in printed mass-media establishes the Central Election Commission after consultation with the authorized state body of Turkmenistan.

of the referendum. At the same time, equal access to these places is required. It is forbidden to place agitation materials on monuments, obelisks and buildings having historical, cultural or architectural value, as well as on the premises of electoral commissions, at the entrance to them and at the premises for voting³⁵.

In addition, the initiative groups organize meetings with persons entitled to participate in the referendum. These meetings are organized in a manner convenient for the participants of the referendum who are previously informed about the place and time in which they will be carried out. The national authorities and the local self-government are obliged to assist the initiative groups in organizing meetings with the participants of the referendum and helping in providing proper security measures³⁶.

The Turkmen legislator finds the following unlawful:

- a) agitation to incite hatred and social, religious, racial and national hostility;
- b) calls to take over power, to forcefully change the constitutional system and violate the integrity of the state;
- c) other forms of abuse of the right to conduct agitation.

In addition, it is forbidden to bribe its participants by: giving cash, giving gifts and other material values, sale of goods, free distribution of any goods excluding agitation printed materials, and providing any services free of charge or under concessionary conditions. Members of initiative groups cannot, from the moment of ordering the referendum, deal with charity activities until the results are published.

There is also an obligation to post corrections or clarifications by the mass-media if false information related to the referendum campaign is published by the media. Such corrections are published in a special column either on the same page and in the same font as the information to which it is related, in periodicals - in the next edition, and a correction or explanation regarding the occurrence on television or radio is transmitted in the next edition after the day a rectification or clarification is issued. If this obligation is not met, there is a possibility to submit a complaint to a court.

In the course of the pre-referendum campaign, the referendum commission is to control the observance of the established mode of conducting agitation. If the initiative group violate any rules provided by the Election Code, the Central Election Commission has the right to present its call to stop violations, and in case of repeated violation of these rules by the initiative group - cancel the registration of the initiative group³⁷.

The legislator provided the possibility of challenging the acts and (or) inactivity of the referendum bodies, which can be a violation of the applicable law, and thus the rights of citizens to participate in the referendum, to the referendum commission of a higher rank. A referendum participant, an observer, an initiative group, a representative of the mass media, as well as a referendum commission, have the right to submit

³⁵ Art. 67 of the Election Code of Turkmenistan.

³⁶ Art. 66 Ibidem.

³⁷ Art. 68 Ibidem.

a complaint³⁸. The complaint must be properly justified and presented together with the evidence that supports it. Complaints submitted during the referendum preparation are subject to consideration by the referendum commissions within three days from the date on which they are received, unless they are received on the day preceding the day of the referendum or on the day of the referendum – then they undergo consideration immediately. If the facts contained in the complaints that were received during the preparation of the referendum require additional verification, such complaints shall be considered no later than within five days.

Interested parties, persons or their representatives whose actions (inactivity) have been challenged, are informed about the date and place of the electoral commission meeting at which the complaint is to be discussed. These persons have the right to provide explanations and provide evidence relating to the matter of the case. The electoral commission of a higher rank has the right to revoke the decision of the commission of a lower rank and make a decision in regards to the complaint³⁹.

In addition, acts and (or) actions (inactivity) of national authorities and local self-government, other bodies, their official representatives, referendum commissions, other referendum participants violating the electoral rights of citizens, as well as actions of initiative groups violating the Election Code may be appealed to the court⁴⁰. Voters, observers, initiative groups, mass media representatives as well as electoral commissions can file complaints⁴¹.

The courts are obliged to organize their work (including holiday periods) in a way that ensures timely consideration of complaints. If a complaint is received by a court and the citizen or other participants of the referendum process have filed an identical complaint with the electoral commission, the consideration of the new complaint is suspended until the court delivers its final decision regarding the complaint. The court notifies the competent electoral commission about the complaint. Complaints submitted during the preparation of the referendum are to be examined by the court within three days after receiving them. However, this is to be done immediately a day prior and on the day of the referendum. If the facts contained in complaints received during the preparation of the referendum require an additional check, these complaints are dealt with no later than within five days. If the applicant, the person whose actions (inaction) were challenged, their representatives, as well as representatives of referendum commissions, initiative groups, national authorities, local self-government, other interested persons properly informed about the

³⁸ Complaints on behalf of the electoral commission consist of the decision of the electoral commission, which is attached to the complaint.

³⁹ Art. 90 of the Election Code of Turkmenistan.

⁴⁰ Decisions and (or) actions (inactivity) of the Central Election Commission, its officials may be appealed to the Supreme Court.

⁴¹ A complaint filed on behalf of an electoral commission shall be accompanied by its decision to file a complaint.

time and place of the court meeting fail to appear in the court, this fact is not an obstacle in considering and terminating the case. In cases provided for by the Election Code and other legal acts, the court may revoke the decision of the given electoral commission. If the decision of the referendum commission is revoked by the court, a new decision on the merits of the matter is issued by that commission or by a commission of a higher rank on the basis of the court decision⁴².

As in other countries, also in Turkmenistan, offenses against elections and referendums are punishable by law⁴³. However, the presentation of this issue goes beyond the scope of this article.

Turkmen law also includes the institution of election silence. The referendum campaign which begins with the registration of the referendum question, ends a day before the day of the referendum. In the event of re-voting, the agitation begins as soon as the decision to order re-vote is made, and ends one day before the date of the second vote. The issue of the presence of agitation materials (leaflets, posters and other), which were previously placed outside the premises of the referendum commission, in the public space, was also regulated – they remain in the previous place on the day of voting⁴⁴.

FINANCING REFERENDUMS

Expenses for the preparation and conduct of a nationwide referendum are covered from the national budget⁴⁵. It is forbidden to fund referendums, in any form, by: national and local government bodies, natural and legal persons as well as foreign states, foreign state bodies, institutions and enterprises, other foreign legal entities, their branches and

⁴² Art. 91 of the Election Code of Turkmenistan.

⁴³ See Art. 92 of the Election Code of Turkmenistan, [Here is the Penal Code and the Code of Turkmen offenses].

⁴⁴ Art. 63 Ibidem.

⁴⁵ According to the Election Code, the following expenses are financed from the state budget:

- 1) preparation of printed production and publishing activities;
- 2) acquisition, supply and setting of equipment, other tangible items necessary to conduct a referendum and securing the activities of referendum commissions;
- 3) ensuring communication with referendum commissions (telephone, fax, postal, electronic), transport expenses related to the preparation and conduct of the referendum;
- 4) delivery, preservation of electoral documentation, preparation for its transfer to the archive or destruction;
- 5) publication of lists of referendum districts with an indication of their borders, place of residence, composition of district commissions;
- 6) granting free airtime, free space printed by an initiative referendum group;
- 7) publication of messages from the referendum commissions in the mass media;
- 8) organization of food on the day of the referendum for members of the referendum commissions (on a daily basis for one man);
- 9) other expenses related to the preparation and carrying out the referendum, as well as securing the activities of the commission.

The mode of referendum financing is determined by the Central Election Commission after it is agreed with the Ministry of Finance.

representations, foreign citizens, organizations international legal entities registered in Turkmenistan, participants who are foreign natural and legal persons⁴⁶. Turkmenistan's Election Code also regulated the disposal of budgetary funds transferred for the referendum by the referendum commissions⁴⁷ and controls concerning this matter⁴⁸. Commissions of districts and cities present in the vilayet electoral commission a report on spending the funds no later than 15 days after the day of the nationwide referendum. The vilayet electoral commissions present their reports regarding spent funds in the Central Election Commission not later than one month from the day of the nationwide referendum. After the referendum, the Central Election Commission presents to the Cabinet of Ministers and the Ministry of Finance information regarding spending of the funds for the nationwide referendum by the referendum commissions⁴⁹.

REFERENDUM VOTING CARDS

The text of the voting card used during the referendum is approved by the Central Election Commission no later than 30 days before the voting day. The voting card includes the questions discussed during the referendum and “for” or “against” answers that are to be selected by the participant. The voting cards are printed in the

⁴⁶ However, the financing of the programs aimed at improving electoral legislation, information, educational, scientific-research programs, technical programs for preparing elections, referenda, and enhancing the legal culture of the participants in the referendum process is not, in accordance with the Turkmen law, financing the referendum.

⁴⁷ The referendum commissions issue resources allocated for the preparation and carrying out the referendum in accordance with the approved spending schedule. The chairmen of the referendum commissions dispose of separate resources and are responsible for the compliance of financial documents with the decision of the commission on financial matters. The electoral commission of a higher rank may pay the expenses commissions of a lower rank in a centralized manner.

⁴⁸ In order to control the spending of funds that are allocated to the commissions from the national budget no later than within fifteen days from the day of the official publication of the decision on the referendum order, the Central Election Commission creates a control and audit group that consists of at least seven members. Members of this group may be persons employed in the Apparatus of Central Election Commission, as well as in other national authorities, in particular dealing with financial matters and legal protection. In such a case, the given authority is obliged to delegate its employee to work in the control and audit group. The Central Election Commission ensures the service of the group's work. The tasks of the group are the following:

1) control of referendum commission reports;

2) receiving from the commission of referendum, state bodies, natural and legal persons information and materials on all matters under their competences. Both the reply and the materials must be submitted within three days, and in the event that the date of the referendum is five days and less, the reply and materials must be submitted immediately;

3) control of compliance with the established mode of financing the execution of agitation during the referendum, performing other activities directly related to running the referendum campaign;

4) preparing documents on financial violations while financing referendums;

5) presenting the Central Election Commission requests for calling the initiative groups, natural and legal persons to the responsibility for the violations related to the financing of the referendum campaign;

6) engaging experts to carry out audits, preparing conclusions and expert evaluations.

⁷The detailed mode of organization and operation of the control and audit group is determined by the Central Election Commission (Art. 89 of the Election Code).

⁴⁹ Art. 88 *Ibidem*.

national language, but at the request of the district commission, names of the cities can also be printed in another language used by the majority of constituency voters. The total number of voting cards may not exceed the number of voters included in the electoral list by more than two per cent.

The voting card is delivered to the district electoral commission no later than five days before the day of the referendum. The voting cards for early voting at the request of a district electoral commission may be delivered 10 days before the date of the referendum. The voting card is signed and stamped by the chairman and the secretary of the district commission. The commissions are responsible for keeping the voting cards⁵⁰.

VOTING AND DETERMINING THE RESULTS OF THE REFERENDUM

Voting on the day of the referendum is carried out from 7:00 to 19:00⁵¹. In constituencies created in military units, in remote and hard to reach areas, sanatoria and holiday homes, stationary treatment units, in places where persons are subject to administrative coercive measures or punishment, near diplomatic representations of Turkmenistan – the district commission may announce the end of the vote at any time, if all voters from the list have cast their votes, and start counting votes earlier than the established time⁵². Voting takes place at referendum premises, which must be provided with enough cabins and pens, which can be used to fill out the voting card (excluding pencils). The voting cards are to have a specific place in which they are issued, along with the voting card boxes. The voting card box is set up in such a way that the voters must go through the voting cabin to approach the box, which at the same time, is visible for members of the commission and observers. On the day of the referendum, before voting commences, the voting card box is controlled and sealed by the chairman of the district commission and the commission members. The district commission is responsible for organizing the voting, ensuring that the voting is secret, furnishing the premises and maintaining the necessary order⁵³.

Each participant of the referendum votes in person, voting for others is unacceptable. The voting cards are issued to a participant by the district commission based on the list of referendum participants after the participant presents a passport or other document confirming their identity. The voter who received the voting card places his or her signature in the electoral register. The voter fills in the voting card in the cabin. No other persons may be in the cabin while the card is being filled.

⁵⁰ Art. 70 Ibidem.

⁵¹ Art. 69 Ibidem; The electoral commission informs voters about the time and place of voting no later than fifteen days prior the referendum.

⁵² Art. 75 item 2 Ibidem.

⁵³ Art. 71 Ibidem.

A voter who does not have the possibility to fill in the voting card himself/herself is entitled to invite another person of his/her to his cabin, excluding the members of the electoral commission, observers and members of the initiative groups. The voter marks “for” or “against” option in the proper place on the card. The referendum participant drops the completed and folded card to the voting card box. At his or her request, the voter may receive a new voting card in exchange for the one which is not valid due. Non-valid cards are counted, cancelled and stored separately⁵⁴.

In addition, pre-term voting is an option. The participant of the referendum, which on the day of the referendum will not be able to vote in his or her place of residence, has the right to vote in the constituency no earlier than 10 days before the referendum. Pre-term voting is carried out with the participation of at least two members of the district commission. The completed voting card is put in a pre-sealed voting card box⁵⁵.

Like in other Central Asian countries, the Turkmen legislator also predicted the possibility of voting using a portable voting box. The right to vote in this way was granted to those citizens of Turkmenistan, who due to important reasons (health condition, disability) can not come to the referendum site themselves. Voting outside the venue for voting takes place only on the day of the referendum, based on the voter’s request. The district commission registers the applications submitted in a special census⁵⁶. The application may be submitted orally or in writing. After the arrival of the electoral commission members to voters, the oral proposal is confirmed by a written statement. The application must be submitted on the day of the referendum, no later than six hours before the end of the voting. The application must indicate the reasons for which the voter cannot come to the polling station. However, the electoral commission may consider the given reason unjustified and, on that basis, refuse the voter the option to vote outside the polling station. In such a situation, the electoral commission immediately notifies the voter of such a decision. Voting outside the polling station is carried out with the participation of at least two members of the electoral commission. The members must have a pre-stamped voting box, confirmed by the chairman or secretary of the electoral commission, an excerpt from the general list of voters containing the data of the citizen asking for a vote off the premises of the polling station, the necessary number of cards and pens. Voting outside the premises of the polling station takes place in accordance with the provisions of the Election Code. Members of the constituency conducting voting outside the premises of the polling station have the right to issue voting cards only to voters whose applications have been registered. The fact of a voter voting outside the polling station is recorded in the general list of voters using

⁵⁴ Art. 72 Ibidem.

⁵⁵ Art. 73 Ibidem.

⁵⁶ When registering an application, the list shows the time of its entry, surname, first name, patronymic of the person who expressed the will to vote outside the venue for voting, his place of residence, surname, first name, patronymic and signature of the member of the district commission who accepted the application. If the application has been transferred with the help of another person, the list additionally indicates the surname, first name, patronymic and place of residence of that person.

the annotation: "Outside polling station". If the voter who asked to vote outside the polling station comes to the polling station after the members of the district commission are sent to that voter, the commission has no right to provide the voter with a voting card until the members of the commission return and until it is proven, that the voter did not cast a vote outside the polling station⁵⁷.

Voting card boxes, including those used for pre-term voting and voting outside the referendum premises, are opened by the district electoral commission after the chairman has announced the end of the voting. Opening the voting boxes before the end of voting is prohibited. Before opening the voting box, the district electoral commission counts and revokes unused voting cards.

After the vote counting starts, the district electoral commission, at the beginning, on the basis of the list of participants of the referendum, determines the general number of people entitled to vote in the referendum in the district, as well as the number of participants in the referendum who received the voting cards. On the basis of the voting cards in the voting card boxes, the district electoral commission determines: the total number of participants in the referendum who took part in the vote, including – the number of participants who cast a pre-term vote, and the number of participants who voted outside the polling station.

Then, the district electoral commission proceeds to counting the votes separately for each referendum question. For each question, the number of votes cast "for", the number of votes "against", and the number of voting cards deemed null and void is determined⁵⁸; the number of nullified voting cards.

All the above information is included in the protocol, signed by the chairman, the deputy chairman, the secretary and the members of the district electoral commission, who is announced by its chairman or deputy chairman, and immediately sent to the electoral commission of a higher rank. The protocol is accompanied by separate opinions of the members of the district commission, as well as complaints received by the commission regarding violations that occurred during voting or during the counting of votes. A copy of the protocol is presented to the general public in the premises of the district polling station. The observer and the representative of the initiative group of the referendum have the right to receive a certified copy of the protocol of the district electoral commission⁵⁹.

Then the results of the nationwide referendum in the district, city are determined by the electoral commission of a given district, city at its meeting on the basis of the protocols of the district electoral commissions. Next, a protocol regarding the results

⁵⁷ Art. 74 of the Election Code of Turkmenistan.

⁵⁸ Voting cards with an incorrect pattern are considered void or if more than one option has been marked in the card or no selection has been made. In the event of any doubts as to the validity of the voting card, the district electoral commission decides by voting.

⁵⁹ Art. 75 item 1, 3-7 of the Election Code of Turkmenistan.

of the referendum on the relevant administrative territory is drawn up, signed by the chairman, the deputy chairman, the secretary and the members of the electoral commission. The results of the referendum are announced by the electoral commission after the protocol has been drawn up⁶⁰. The vilayet referendum commission, on the basis of the protocols of the electoral commissions of districts, cities draws up a protocol on the results of the referendum in the vilayet. The observer and the representative of the initiative group of the referendum have the right to receive a certified copy of the protocol of the vilayet referendum commission. Then, the Central Election Commission, based on the protocols of the electoral commissions of vilayets, districts, cities, district electoral commissions, summarizes the results and draws up a protocol no later than seven days after the end of the referendum in Turkmenistan⁶¹. The results of the referendum are announced after the protocol has been drawn up. A referendum in individual districts may be considered invalid by the Central Election Commission due to a violation of the Election Code during a referendum or during counting votes, if they affected the result of the referendum. The complaint regarding the infringement is submitted by the competent body of the political party, social association, initiative group referendum no later than two months after the referendum day. The Central Election Commission examines complaints no later than within three days after they are submitted.

Decisions adopted during the referendum are considered accepted if more than half of voters who took part in the vote voted for them⁶². The Central Election Commission informs the public about the results of the referendum no later than seven days after the date of the referendum⁶³. Voting results can be appealed within three days of their recapitulation. Similarly, the results of the referendum may be appealed within three days after they are determined⁶⁴. The results of the voting may be challenged to the court within three days after the competent commission of a higher rank has dealt with the complaint regarding the results of the vote. In any case, the complaint must be justified and presented together with proper evidence⁶⁵.

⁶⁰ Copies of protocols are presented in the room of the electoral commission for the general election. The observer, representative of the initiative group, has the right to receive a certified copy of the protocol of the referendum commission.

⁶¹ The protocol of the Central Election Commission is signed by its chairman, deputy chairman, secretary and members of the commission. The results of the nationwide referendum are announced by the Central Election Commission after the protocol has been drawn up, the copy of the protocol is presented in the Central Election Commission room for general familiarization. The representative of the initiative group of the nationwide referendum has the right to receive a certified copy of the Central Election Commission's protocol.

⁶² Art. 76 of the Election Code of Turkmenistan.

⁶³ Art. 78 Ibidem; The notification of the results of the referendum specifies the following: the total number of citizens included in the electoral records; the number of voters who voted; the number of votes cast for each of the questions presented at the referendum, cast 'for', the number of votes cast 'against'; number of invalid voting cards; decision adopted through a referendum.

⁶⁴ Art. 90 item 4 of the Election Code of Turkmenistan.

⁶⁵ Art. 91 item 7 Ibidem.

EFFECTS OF THE REFERENDUM RESOLUTION

In order for a decision which is the subject of a referendum vote to be considered accepted, more than half of the voters participating in the vote must vote for it⁶⁶. Decisions adopted as a result of a referendum enter into force within 10 days after the official publication⁶⁷ and are final. They have universally binding force throughout the entire Turkmen area. At the same time, what is significant about the sustainability of the decisions taken in the referendum, it was decided in order to change or repeal them, it is necessary to carry out another referendum. In Turkmenistan, the possibility of an unreferendal way of changing the referendal resolution was ruled out, which differentiates it from neighbouring countries⁶⁸.

CONCLUSION

It seems that the evolution of modern democracy heads in the direction where combining representative democracy with various institutions of direct or semi-direct democracy⁶⁹. As a result of historical development, many forms of direct exercising of power by the citizens have developed⁷⁰. In Turkmenistan, the institution of referendum has no long traditions. Although it appeared for the first time in the Constitution of the Turkmen SSR of 1937, the first law regarding the referendum was adopted after Turkmenistan gained its independence in 1991. In Turkmenistan, there is only a legislative referendum at the national level. No constitutional referendum takes place in Turkmenistan. Currently, in addition to the Constitution of 1992, the most important legal act regulating the referendum issue is the Election Code of 2013. When assessing the legal regulation of a referendum institution in Turkmenistan, it should be noted that the legislator always faces the problem of choosing the optimal solution. The problem is so complex that the referendum in the system of the modern state has its specific political purpose, which, depending on the adopted model of government, may differ. Legal solutions relating to the referendum must ensure that the institution is not used to weaken democratic mechanisms and the role of parliament, or to circumvent the rule of law. In this regard, it seems that the legal solutions adopted in Turkmenistan can be assessed positively.

⁶⁶ Art. 76 item 3 Ibidem.

⁶⁷ Art. 83 item 1 Ibidem.

⁶⁸ Art. 84 Ibidem.

⁶⁹ On the concept of direct democracy, see more: J. Kuciński, *Z zagadnień współczesnej demokracji politycznej*, Warszawa 2005, p. 179-182; There, *Demokracja bezpośrednia i jej formy – zagadnienia prawno-polityczne*, "Cogitatus" 2002, no 1, p. 16 and next.

⁷⁰ On various forms of direct and indirect democracy, see more: S. Grabowska, *Formy demokracji bezpośredniej w wybranych państwach europejskich*, Rzeszów 2009.

However, it is difficult to assess their practice, because except the referendum held in March 1991 regarding the keeping of the Soviet Union, only two other referendums took place. The first of them, conducted on 26 October, 1991, concerned the independence of Turkmenistan, and the second, of 1994, the extension of the presidency until 2002. Since 1994, no referendum has been held in Turkmenistan, which distinguishes this country from other countries of Central Asia. It can be noticed, that in Turkmenistan, unlike in neighbouring countries, the authorities do not use the referendum to strengthen the legitimacy of the existing regime and personal power - until 2006, Saparmurata Nijazowa, currently Gurbangua Berdimuhamedowa. In the current political system, the institution of referendum has not been applied despite a certain democratization of the political regime in this country. This state of affairs is also an evidence of a significant consolidation of the political regime of Turkmenistan, which, in practice, does not have to use the legitimization of the people in regards to the political changes that are being introduced⁷¹. Unfortunately, the lack of real use of the referendum institution makes the principle of sovereignty of the people a fiction. In practice, the authorities are sovereign, including the President. It seems that in the case of Turkmenistan, reaching for the institution of a referendum would be an expression of the democratization of the existing model of government..

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⁷¹ It can be noted that the forecasts assessing the prospects for the development of a political regime in Turkmenistan proved successful in I. Prokółowa, see: И. Проклов, Современный политический процесс в Туркменистане, «Центральная Азия и Кавказ» 2008, № 2, с. 177-180. In Polish literature, see E. Kuźelewska, *Mechanizmy rządzenia w Turkmenistanie*, [in:] *Zagadnienia ustrojowe państw porządnieckich*, ed. J. Zalesny, Warszawa 2010, p. 178-194

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Summary: The institution of referendum in Turkmenistan did not have a long tradition although it first appeared in the Constitution of the Turkmen Soviet Socialist Republic from 1937, the first law on referendum was adopted after the State became independent in 1991. In Turkmenistan, on the national level, there is only legislative referendum. There is no provision for the constitutional referendum. Currently, in addition to the 1992 Constitution, the most important legal Act governing the issue of a referendum is an Electoral Code from 2013. In independent Turkmenistan, the authorities have conducted only two referenda (1991, 1994) so far. The first one concerned the independence of the State, the second renewal of the term of Office of the President-in-Office. Therefore, you may notice that in Turkmenistan, differently than in neighbouring countries, authorities have not used the referendum to strengthen the legitimacy of the existing regime and personal power until 2006 for Saparmurat Nizayov, and currently Gurbangul Berdymuchamedov. This state of affairs provides for a significant consolidation of the political regime of Turkmenistan which in political practice does not need not use democratic legitimacy for introduced political and system changes.

Keywords: Turkmenistan, referendum, direct democracy, political regime, Central Asia

INSTYTUCJA REFERENDUM OGÓLNOKRAJOWEGO W TURKMENISTANIE

Streszczenie: Instytucja referendum w Turkmenistanie nie ma długich tradycji. Mimo że po raz pierwszy pojawiła się w Konstytucji Turkmeńskiej SRR z 1937 roku, to pierwsza ustawa o referendum została przyjęta po uzyskaniu niepodległości w 1991 roku. W Turkmenistanie na poziomie ogólnokrajowym występuje jedynie referendum ustawodawcze, nie przewidziano referendum konstytucyjnego. Obecnie, oprócz Konstytucji z 1992 roku, najważniejszym aktem prawnym regulującym zagadnienie referendum jest Kodeks wyborczy z 2013 roku. W niepodległym Turkmenistanie przeprowadzono do tej pory jedynie dwa referenda (1991, 1994). Pierwsze z nich dotyczyło niepodległości państwa, drugie – przedłużenia kadencji urzędującego prezydenta. W związku z tym można zauważyć, że w Turkmenistanie, odmiennie niż w krajach sąsiednich, władze nie wykorzystują referendum do wzmocnienia legitymizacji istniejącego reżimu i osobistej władzy – do 2006 r. Saparmurata Nijazowa, a obecnie Gurbangułyego Berdymuchamedowa. Taki stan rzeczy świadczy o znaczącej konsolidacji reżimu politycznego Turkmenistanu, który w praktyce politycznej nie musi posługiwać się legitymizacją ludowładczą wprowadzanych zmian polityczno-ustrojowych.

Słowa kluczowe: Turkmenistan, referendum, demokracja bezpośrednia, ustrój polityczny, Azja Środkowa