

The “Russian Law” in Georgia: Human Rights, Legal Certainty, and the Passions of the Georgian Lawmakers


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Abstract: The article examines Georgia’s Law “On Transparency of Foreign Influence” (the “Russian Law”), analyzing its implications for fundamental rights and democratic governance within Georgia’s post-Soviet context. Through comparative analysis of the United States’ Foreign Agents Registration Act (FARA) and the Russian Federation’s Foreign Agents Laws (RFAL), the research demonstrates how Georgia’s legislation substantively aligns with the Russian rather than the American act, despite claims by its proponents. The study reveals how the Georgian legislation creates substantial barriers to civil society operations through mandatory registration requirements, intrusive monitoring mechanisms, and punitive financial sanctions. Drawing upon the European Court of Human Rights jurisprudence and the Venice Commission’s opinions, the analysis shows that while the law ostensibly pursues transparency

objectives, its practical effect significantly impedes democratic development and Euro-Atlantic integration aspirations, potentially constituting a regression in Georgia's post-Soviet democratic trajectory. The findings contribute to discourse on legal mechanisms for civil society regulation in emerging democracies, offering critical insights into how transparency frameworks can become instruments of institutional control. This investigation holds particular significance for understanding contemporary challenges to democratic consolidation in post-Soviet states and the complex interplay between legal frameworks and political transformation processes.

1. Introduction

Tolstoy said: “All happy families are alike, each unhappy family is unhappy in its own way.”¹ The same can be applied to nation-states – happy nations are typically democratic regimes based on the rule of law. In contrast, the history, social systems, and daily realities of hybrid democracies, authoritarian, and totalitarian countries are built and nourished by distinctly different tragedies. After regaining independence, Georgia's post-Soviet period persisted for a very long time, largely due to the fragility of hybrid democracy and the deviation of democratic processes from the rule of law. The democratic deterioration in Georgia stems from intensifying political antagonism manifested through several key mechanisms: electoral system distortions,² progressive media polarization, politically motivated judicial proceedings against opposition figures,³ and growing anti-Western rhetoric despite formal Euro-Atlantic commitments. This polarization reflects not ideological differences but rather elite power struggles, establishing a governance pattern where successive administrations systematically undermine institutional progress. Such dynamics have significantly impeded Georgia's

¹ Leo Tolstoy, *Anna Karenina*, trans. Rosamund Bartlett (Oxford: Oxford University Press, 2016), 3.

² “ISFED on Changes to Election Code: GD Uses Legislative Process to Maintain Power at All Costs,” Civil Georgia, December 20, 2024, accessed April 2, 2025, <https://civil.ge/archives/647009>.

³ Parliamentary Assembly of the Council of Europe, Doc. 13588 (September 5, 2014), paras. 91–5.

European integration prospects, as evidenced by its exclusion from EU candidate status consideration alongside Ukraine and Moldova in 2022.⁴

An initiative against civil society was first presented in the Georgian Parliament in 2017 in the form of a legislative proposal; however, at that time, this initiative was only listened to.⁵ In 2023, Georgia’s ruling political party – “Georgian Dream” – escalated its authoritarian tactics against civil society and free media⁶ and initiated a draft law “On Transparency of Foreign Influence,” which sparked significant public protest.⁷ The draft law, at first glance, aimed to regulate a seemingly simple matter and should not have caused intense agitation and protest, especially since its targets were NGOs and media companies, whose interests’ protection would not be a sensitive issue for the average voter. The initiators referenced the Foreign Agents Registration Act (FARA), which served as the model for the Georgian version, while the opposition, NGOs, and media companies pointed to similarities between the Georgian law and the Russian Federation’s “Foreign Agents Laws” (RFAL), particularly regarding their target groups, scope, and regulation. Consequently, the draft law was dubbed the “Agents Law” or “Russian Law” by the public and continues to be known as such.⁸

Following mass protests after the first reading vote,⁹ the Georgian Parliament discontinued the legislative procedure to prevent the draft from

⁴ Orcun Caliskan, “Democratic Backsliding in Georgia and the Role of the Rivalry between the Georgian Dream and the United National Movement,” *Journal of Liberty and International Affairs* 9, no. 2 (2023): 392.

⁵ “Parliament Deliberates on Initiative to Restrict Foreign-Funded NGOs,” *netgazeti.ge*, May 11, 2017, accessed April 2, 2025, <https://netgazeti.ge/news/193187>.

⁶ Salome Minesashvili and Erekle Gozalishvili, “The Politics of Euroscepticism in Georgia and Its Resonance in Society,” *Georgian Institute of Politics Policy Memo*, no. 82 (2025): 4, accessed May 16, 2025, <https://gip.ge/publication-post/the-politics-of-euroscepticism-in-georgia-and-its-resonance-in-society/>.

⁷ “International Reactions to Reintroduction of Draft Law on Foreign Agents,” *Civil Georgia*, April 17, 2024, accessed January 17, 2025, <https://civil.ge/archives/589823>.

⁸ See: Rayhan Demytrie and Emily Atkinson, “Georgia Approves Controversial ‘Foreign Agent’ Law, Sparking More Protests,” *BBC*, May 14, 2024, accessed January 17, 2025, <https://www.bbc.com/news/world-europe-69007465>.

⁹ Rayhan Demytrie and Emily Atkinson, “Georgia Passes the ‘Law on Agents,’ the Internal Crisis Escalates,” *BBC News*, May 14, 2024, accessed April 3, 2025, <https://www.osw.waw.pl/en/publikacje/analyses/2024-05-15/georgia-passes-law-agents-internal-crisis-escalates>.

becoming law.¹⁰ Despite the parliamentary majority's public promise, one year later, in 2024, the draft law was re-registered with minor changes, replacing the word "agent" with "foreign influence representative," though the essential content remained unchanged.¹¹ The Venice Commission critically assessed the draft law, directly urging Georgian authorities to withdraw it and reject the adoption of such a harmful normative act.¹² The second wave of mass protests against the draft law proved ineffective, and parliamentary majority approved it (without participation of opposition), then enacted it despite the Georgian President Salome Zurbishvili's veto.¹³

Beyond political consequences, the "Russian Law" carries severe legal implications in Georgia, directly affecting fundamental human rights and freedoms. The article analyses the main directions of the content of Georgia's law "On Transparency of Foreign Influence." It comparatively examines both FARA and RFAL to identify the legal characteristics of American and Russian Federation acts and their contextual influence on the "Russian Law" in Georgia. The paper reviews the "Russian Law" in the light of freedom of association and expression, as well as the right to privacy, and the legal dimension of stigmatization risk created by the law; it particularly emphasizes the context of legal certainty as one of the principal components of the rule of law and democratic state.

2. The "Russian Law" in Georgia

According to the explanatory note of the Law of Georgia "On Transparency of Foreign Influence," the law's objective is to ensure transparency of foreign influence. It establishes the legal definition of organizations advancing foreign power interests,¹⁴ regulates the matter of their registration

¹⁰ Paul Kirby, "Georgia Drops 'Foreign Agents' Law after Protests," BBC News, March 9, 2023, accessed January 17, 2025, <https://www.bbc.com/news/world-europe-64899041>.

¹¹ "BREAKING: GD Reintroduces the Draft Law on Foreign Agents," Civil Georgia, April 3, 2024, accessed January 17, 2025, <https://civil.ge/archives/589747>.

¹² See: Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence CDL-PI(2024)013, Strasbourg, May 21, 2024.

¹³ Felix Light, "Georgian Parliament Votes to Override Presidential Veto of 'Foreign Agent' Bill," Reuters, May 29, 2024, accessed January 17, 2025, <https://www.reuters.com/world/europe/georgian-parliament-votes-override-presidential-veto-foreign-agent-bill-2024-05-28/>.

¹⁴ Explanatory Note on Law of Georgia "On Transparency of Foreign Influence", par. "ს.ს.ს", accessed April 3, 2025 <https://info.parliament.ge/#law-drafting/28355>.

and monitoring, and stipulates sanctions in cases of non-compliance with the requirements prescribed by law. The act defines the legal concept of an organization advancing foreign power interests in Article 2, encompassing four primary categories: (1) non-entrepreneurial legal entities, (2) broadcasters, (3) print media owners, and (4) online media operators, where more than 20% of their non-commercial revenue originates from foreign sources. The law further elaborates on the definition of revenue and its acquisition criteria, while regulating the identification of foreign-sourced revenue in a manner that encompasses both direct and indirect funding scenarios. Notably, a foreign power includes foreign government entities, non-Georgian citizens, legal entities not established under Georgian law, and organizations based on foreign or international law.¹⁵

An organization meeting the statutorily prescribed criteria for entities advancing foreign power interests must be officially recorded in the registry as an organization advancing foreign power interests based on its own declaration. The organization must also submit a financial declaration disclosing not only the origin of funds, but also the purpose and amount of expended financial resources. The Ministry of Justice of Georgia is obligated to examine the submitted application within 30 working days and may request special categories of personal data and confidential information which, upon the Ministry’s request, should be immediately provided. Furthermore, the Ministry of Justice is empowered to conduct monitoring of organizations advancing foreign power interests, initiated by a decision from an authorized representative or a written statement from any person. The authorized official can obtain personal data, special categories of personal data, and confidential information, which must be provided immediately. Monitoring occurs every six months.¹⁶

For the effective enforcement of the law, the Ministry of justice of Georgia issued an order establishing procedure for identifying, registering, and supervising entities advancing foreign interests. The order creates a multi-layered legal mechanism encompassing both self-declaration and

¹⁵ Law N4194-XIVობ-Xოჰ of Georgia “On Transparency of Foreign Influence,” May 28, 2024, Articles 1, 2(1–4), 3, 4, 8, 9.

¹⁶ *Ibid.*, Articles 4(1)(3), 5(4), 8(1)(4).

state monitoring elements.¹⁷ The process includes two stages: access to the organization's website and mobile verification, and submission of a detailed financial declaration encompassing information about funding sources, intended purposes, and incurred expenditures.¹⁸

The monitoring system introduced by the order is an innovative development in Georgia's legal framework, incorporating both regular reporting requirements and special inspections. Simultaneously, the Minister may amend the system at any time through an individual decision-making power. The current monitoring mechanism balances interest with organizational autonomy, allowing the agency to initiate monitoring and request additional information while imposing clear restrictions including limits on monitoring frequency and a requirement for prior notice.¹⁹ Moreover, entities refusing to self-declare as advancing foreign interests are subject to a fine of 25,000 GEL, with the additional 20,000 GEL monthly fine for continued non-compliance. Entities that refuse to provide requested information are fined 10,000 GEL, and individuals failing to submit information face a 5000 GEL fine.²⁰

3. Comparative Analysis: FARA and RFAL

In the process of adopting legislation on “foreign agents” to discredit civil society, countries often refer to the United States model – FARA. For instance, amid intense criticism, Russian authorities claimed that their 2012 Law (RFAL) shared the same objectives²¹ as its American counterpart. Subsequently, Hungary employed similar argumentation to defend its 2017 Law on the Transparency of Organizations Funded from Abroad.²² Despite

¹⁷ Order №1019 of the Minister of Justice of Georgia, August 1, 2024, Articles 1(1), 2(1)(2).

¹⁸ *Ibid.*, Articles 3, 4.

¹⁹ *Ibid.*, Article 7(1–6).

²⁰ Law N4194-XIV0b-X03 of Georgia “On Transparency of Foreign Influence,” May 28, 2024, Article 9(1–2)(4).

²¹ Jacqueline Van De Velde, “The ‘Foreign Agent Problem’: An International Legal Solution to Domestic Restrictions on Non-Governmental Organizations,” *Cardozo Law Review* 40, no. 2 (2019): 701.

²² Nick Robinson, “Foreign Agents’ in an Interconnected World: FARA and the Weaponization of Transparency,” *Duke Law Journal* 69, no. 5 (2020): 1087, accessed May 16, 2025, <https://scholarship.law.duke.edu/dlj/vol69/iss5/2/>.

certain superficial similarities,²³ the Russian and U.S. laws differ substantially in both their objectives and substantive content.²⁴ Significantly, FARA was enacted in 1938 as a countermeasure against Nazi and Communist propaganda influence,²⁵ with its primary objective being to ensure transparency of foreign propaganda rather than its prohibition.²⁶ Under the current version of the U.S. law, a person or an entity must register as a foreign agent if it operates under the control of a foreign power and engages in political or related activities.²⁷ This implies that financial support represents one element in the principal-agent relationship, albeit not the decisive factor. The American legislation does not presume that an entity receiving external funding automatically qualifies as a foreign agent, which stands in clear contrast to the presumptive approach embedded in the Russian law or its derivative frameworks.²⁸

As a consequence of the 2017 and 2020 amendments to Russian legislation, media entities and individuals receiving foreign funding and engaged in “political activities” are now required to register as “foreign agents,”²⁹ regardless of any connection between the funding and political activity.³⁰ This registration is mandatory, and the Russian Ministry of Justice has authority to enforce compulsory registration, unlike the United States, where no such measure exists.³¹ Furthermore, in contrast to FARA, entities designated as agents in Russia are subject to additional reporting requirements and audit obligations.³² The broad application of the RFAL, which automatically

²³ Samuel Rebo, “FARA in Focus: What Can Russia’s Foreign Agent Law Tell Us About America’s?,” *Journal of National Security Law & Policy* 12, no. 2 (2022): 314.

²⁴ *Ibid.*, 314–5.

²⁵ Yuk K. Law, “The Foreign Agents Registration Act: A New Standard for Determining Agency,” *Fordham International Law Journal* 6, no. 2 (1982): 365.

²⁶ Randall H. Johnson, “The Foreign Agents Registration Act: When Is Registration Required?,” *South Carolina Law Review* 34, no. 3 (1983): 687.

²⁷ Law, “The Foreign Agents Registration Act,” 360.

²⁸ Rebo, “FARA in Focus,” 314.

²⁹ Mercedes Malcomson, “So Whose Agents Are We? Defining (International) Human Rights in the Shadow of the ‘Foreign Agents’ Law in Russia,” *Birkbeck Law Review* 7, no. 1 (2020): 123.

³⁰ Rebo, “FARA in Focus,” 301.

³¹ *Ibid.*, 309.

³² ECtHR Judgment of 16 June 2022, *Ecodefence and Others v. Russia*, application nos. 9988/13 and 60 others, hudoc.int., paras. 84–87; ECtHR Judgment of 22 October 2024, *Kobaliya and Others v. Russia*, applications nos. 39446/16 and 106 others, hudoc.int., para. 67.

stigmatizes anyone receiving foreign finance support as an agent, poses the risk of including people who post on social media about politics or receive gifts from relatives abroad. This contrasts with FARA's regulatory approach, which requires specific control and influence over the agent.³³ Furthermore, Russian law restricts foreign agents from having contractual arrangements, supporting them financially, and participating in referendums or elections. Such restrictions are not present under FARA.³⁴

Russia's implementation of its "foreign agent" law is unforeseeable and selective, whereas FARA is more consistent and predictable. Russia specifically targets NGOs, while FARA applies more broadly to lobbyists, PR companies and law firms. This leads to fundamental differences in the regulatory approach and enforcement of methodology between the two jurisdictions.³⁵ Russia actively employs this legislation as an instrument for suppressing dissenting voices, as evidenced by the increase in the number of closed organizations.³⁶ In contrast, freedom of association in the U.S. provides robust protections for civil society organizations, enabling them to function effectively as intermediaries between government and society while ensuring their engagement in political discourse and dialogue.³⁷

4. Legal Barriers and Stigmatization: The Impact on Freedom of Association and Expression

Freedom of association reinforces the concept of a person as both a free and social being, whose inherent need is to engage and connect with others.³⁸

³³ Ivan Davydov, "Why Does Russia Need a New 'Foreign Agent' Law?," openDemocracy, December 4, 2019, accessed January 16, 2025, <https://www.opendemocracy.net/en/odr/why-does-russia-need-a-new-foreign-agent-law/>.

³⁴ Rebo, "FARA in Focus," 314–5.

³⁵ Samantha Laufer, "A Difference in Approach: Comparing the US Foreign Agents Registration Act with Other Laws Targeting Internationally Funded Civil Society," *International Journal of Not-for-Profit Law* 19, no. 1 (2017): 5.

³⁶ Thibault Spirlet, "Top Russian Court Orders Shutdown of Human Rights Group Memorial," Politico, December 28, 2021, accessed January 1, 2025, <https://www.politico.eu/article/russia-supreme-court-dissolution-memorial-international-human-rights-ngo-foreign-agents/>.

³⁷ U.S. Supreme Court, Judgment of 30 June 1958, Case NAACP v. Alabama, 357 U.S. 449, 460 (1958).

³⁸ Carol C. Gould, *Rethinking Democracy: Freedom and Social Co-operation in Politics, Economy, and Society* (Cambridge: Cambridge University Press, 1990), 15.

The concept of freedom is fundamentally laid to the individual's liberty within the society (rather than the reverse), where diverse and often conflicting interests coexist.³⁹ It is important to emphasize that freedom of association carries a significant weight, not only in terms of individual self-realization, but also on the formation of a democratic and free society and state. For this reason, in the contemporary world – particularly in countries with developing democracies – civil society plays a crucial role,⁴⁰ often regarded as the “public watchdog.”⁴¹ According to the European Court of Human Rights (ECtHR), Article 11 of the European Convention on Human Rights (ECHR), in turn, provides the freedom to form associations and includes the creation of a legal entity for the purposes of collective action within the field of mutual interests.⁴² Without this, Article 11 would lose its very essence.⁴³ In recent years, several member states of the Council of Europe (CoE) have adopted laws aimed at obstructing the free functioning of non-governmental organizations.⁴⁴ One such example is the Law “On Transparency of Foreign Influence” in Georgia, which mandates registration and monitoring of organizations receiving over 20% of their funding from abroad. While Article 1 of the law aims for transparency, as also confirmed by the explanatory note, it is not recognized as one of limiting grounds for the rights under either the ECHR (Article 11(2)) or the International Covenant on Civil and Political Rights (ICCPR) (Article 22(2)), a point that the Venice Commission has also emphasized.⁴⁵ Transparency laws are often justified by their creators as a means to reduce foreign influence on internal affairs,

³⁹ Decision N2/2/439 of the Constitutional Court of Georgia, September 15, 2009, para. II-2.

⁴⁰ Ibid.

⁴¹ See: ECtHR Judgment of 14 April 2009, *Tarsasag a Szabadsagjogokert v. Hungary*, application no. 37374/05, hudoc.int; ECtHR Judgment of 22 April 2013, *Animal Defenders International v. the United Kingdom*, application no. 48876/08, hudoc.int.

⁴² ECtHR Judgment of 10 July 1998, *Sidiropoulos and Others v. Greece*, application no. 26695/95, hudoc.int., para. 40.

⁴³ ECtHR Judgment of 17 February 2004, *Gorzelik and Others v. Poland* [GC], application no. 44158/98, hudoc.int., para. 88.

⁴⁴ Nick Robinson, *Foreign Influence Registration Laws and Civil Society: An Analysis and Responses* (International Center for NON-Profit Law, 2024), <https://doi.org/10.13140/RG.2.2.20960.08966>.

⁴⁵ Venice Commission, *Urgent Opinion on the Law on Transparency of Foreign Influence*, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 59.

frequently citing national sovereignty.⁴⁶ However, national sovereignty, like transparency, is not explicitly recognized as a legitimate justification. The UN Special Rapporteur stated that national sovereignty is not considered a legitimate interest under the ICCPR and it was described as an “illegitimate justification” that fails to meet the “democratic society” standard.⁴⁷ While transparency could be legitimate for goals like national security, assuming all foreign financial support aims to strengthen political influence is difficult to justify.⁴⁸ The European Court of Justice (CJEU) also holds that transparency laws cannot justify legislation based on the presumption that any funding automatically poses a threat to the country.⁴⁹ Restrictions are permissible only for compelling and weighty reasons.⁵⁰ Therefore, even in a specific case where transparency may serve a legitimate aim, the law should not be based on vague assumptions,⁵¹ but on actual risks to fundamental societal interests.⁵²

The restriction should not be solely established by law; rather, the law must be clear and predictable to avoid absurd situations, such as when funding that is neither substantial nor linked to a specific action of an organization leads to the necessity of registering the organization as a foreign agent. In the case of Russia, the law also covered an organization to which a Norwegian hotel, where it had conducted a workshop, refunded the service fee.⁵³ Considering the importance of financial support for NGOs, the UN Special Rapporteur stated that freedom of association includes the

⁴⁶ Maina Kiai, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association,” UN G.A., A/HRC/23/39, April 24, 2013, 9, accessed January 16, 2025, <https://documents.un.org/doc/undoc/gen/g13/133/84/pdf/g1313384.pdf>.

⁴⁷ *Ibid.*, 10.

⁴⁸ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 63.

⁴⁹ CJEU Judgment of 18 June 2020, *Commission v. Hungary* (Transparency of associations), Case C78/18, ECLI:EU:C:2020:476.

⁵⁰ ECtHR Judgment of 10 July 1998, *Sidiropoulos and Others v. Greece*, application no. 26695/95, hudoc.int., para.40.

⁵¹ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para.53.

⁵² CJEU Judgment of 18 June 2020, *Commission v. Hungary*, Case C78/18, ECLI:EU:C:2020:476, para. 91.

⁵³ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 30.

right to access and use both internal and external resources, including funding from abroad.⁵⁴ In *Ecodefence and Others v. Russia*, although the ECtHR concluded that restrictions on foreign funding violates Article 11,⁵⁵ it only indirectly stated that organizations had the right to receive such financial support.⁵⁶ The court noted that the label of “Foreign Agent” was so stigmatizing for certain entities that, in order to avoid negative public perceptions,⁵⁷ they refused external funding, which ultimately led to the suspension of their specific programs.⁵⁸ The court made a similar observation in the *Kobaliya and Others v. Russia* case, stating that the law of the Russian Federation strictly stigmatizes the status of “foreign agent” because it carries a negative connotation and is associated with concepts such as “traitor,” “spies,” or “enemies of the people.”⁵⁹ Moreover, the ECtHR rejected Russia’s argument, as a signatory state of the convention, that protection of human rights and the rule of law is an internal matter of the state, and that external influence constitutes a potential threat to national interests. This approach is inconsistent with the Convention’s purpose as a foundation for European public order and collective security, as well as with its historic development and underlying values. The protection of human rights under the ECHR is an obligation of each signatory state.⁶⁰

Along with restricting the freedom of association, the “Russian Law” significantly limits freedom of expression in Georgia as it creates the possibility of requesting critical information, including sensitive personal data,

⁵⁴ Maina Kiai, “Report of the Special Rapporteur,” 4, accessed January 16, 2025, <https://documents.un.org/doc/undoc/gen/g13/133/84/pdf/g1313384.pdf>.

⁵⁵ See: ECtHR Judgment of 16 June 2022, *Ecodefence and Others v. Russia*, application nos. 9988/13 and 60 others, hudoc.int.

⁵⁶ Florian Kriener, “Ecodefence v. Russia: The ECtHR’s Stance on Foreign Funding of Civil Society,” EJIL:Talk!, June 21, 2022, accessed January 4, 2025, <https://www.ejiltalk.org/ecodefence-v-russia-the-ecthrs-stance-on-foreign-funding-of-civil-society/>.

⁵⁷ Polina Malkova, “Images and Perceptions of Human Rights Defenders in Russia: An examination of Public Opinion in the Age of the ‘Foreign Agent’ Law,” *Journal of Human Rights* 19, no. 2 (2020): 205.

⁵⁸ ECtHR Judgment of 16 June 2022, Case *Ecodefence and Others v. Russia*, application nos. 9988/13 and 60 others, para. 126.

⁵⁹ ECtHR Judgment of 22 October 2024, Case *Kobaliya and Others v. Russia*, application nos. 39446/16 and 106 others, hudoc.int., para.75.

⁶⁰ Kriener, “Ecodefence v. Russia,” accessed January 4, 2025, <https://www.ejiltalk.org/ecodefence-v-russia-the-ecthrs-stance-on-foreign-funding-of-civil-society/>.

upon written application,⁶¹ as well as imposing heavy financial penalties.⁶² Accordingly, the law gives the government a powerful leverage to interfere in the activities of NGOs and media organizations and suppress their independent voices.⁶³ The Venice Commission has noted, “the system of sanctions is too harsh” and “does not appear proportionate to the severity of the violations.” As a result, it has a potential to place these organizations in a difficult financial situation and, furthermore, it can serve as a *de facto* basis for their dissolution.⁶⁴

It is crucial to highlight the discriminatory nature of the law, as the differential treatment of an organization based on the source of their funding contradicts the principle of equality. For instance, the OSCE has addressed this issue, noting that entities receiving foreign financial support exceeding 20% are subject to stricter regulations than those with foreign funding below 20% which can be considered indirect discrimination.⁶⁵ Predominantly, NGOs working on sensitive issues like, human rights or anticorruption, are not prioritized by the state, and they require international support; thus, they are particularly affected by such regulation.⁶⁶

5. Foreign Agents Law and Right to Privacy

According to Article 4(4) of Georgia’s Law “On Transparency of Foreign Influence,” an authorized representative of the Ministry of Justice is entitled to request special categories of personal data. While Georgia’s Constitutional Court affirms that the constitution protects an individual’s right to prevent the disclosure of information related to their health, finances, or

⁶¹ Law N4194-XIVობ-Xო3 of Georgia “On Transparency of Foreign Influence,” May 28, 2024, Article 4(4).

⁶² ECtHR Judgment of 23 September 1994, *Jersild v. Denmark*, application no. 15890/89, hudoc.int., para. 31.

⁶³ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 65.

⁶⁴ ECtHR Judgment of 16 June 2022, *Ecodefence and Others v. Russia*, application nos. 9988/13 and 60 others, hudoc.int., para. 179.

⁶⁵ OSCE/ODIHR, Urgent Opinion on the Law “On Transparency of Foreign Influence” of Georgia, NGO-GEO/506/2024 [NR], May 30, 2024, para. 41.

⁶⁶ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 97.

other personal matters in official records,⁶⁷ the aforementioned law requires disclosure of information related to health and intimate life, racial or ethnic origin, political, philosophical, or religious beliefs, among others.⁶⁸ It’s noteworthy that the law grants the government wide discretion to intervene in the activities of NGOs, including the examination of their documentation.⁶⁹ This not only involves the regular submission of activity reports to the Ministry of Justice, but also grants access to confidential documents,⁷⁰ such as legal consultations and strategic papers, for the purposes of inspection. Given that the reports may contain sensitive information regarding victims of human rights violations or other vulnerable groups, the potential for breaching professional confidentiality increases. For instance, journalists, doctors and lawyers may be required to disclose confidential information, thereby increasing the risk of unauthorized access to such information. As the Venice Commission has noted, the law fails to provide adequate safeguards regarding the protection and use of the acquired data.⁷¹ This means that not only could personal data be misused, but the effective operation of human rights organizations may also be jeopardized. Such extensive interpretation and enforcement creates the risk of violating attorney-client privilege and other confidentiality guarantees.⁷² Under the conditions set forth by the law, organizations that support victims of domestic violence or LGBT+ community members will be unable to ensure the safety of their beneficiaries, as they will be forced to disclose information.⁷³ This could severely undermine trust within these groups, potentially deterring individuals from seeking assistance altogether. In other words, the law creates a “chilling effect.”

⁶⁷ Decision N2/3/406,408 of the Constitutional Court of Georgia, October 30, 2008, para. II-14.

⁶⁸ Law N5669-6b of Georgia on Personal Data Protection, June 14, 2023, Article 3(8).

⁶⁹ Françoise Daucé, “The Duality of Coercion in Russia: Cracking Down on ‘Foreign Agents,’” *Demokratizatsiya: The Journal of Post-Soviet Democratization* 23, no. 1 (2015): 64.

⁷⁰ Malcomson, “So Whose Agents Are We?,” 129.

⁷¹ Venice Commission, Opinion on Federal Law No. 121-fz on Non-commercial Organizations (“Law on Foreign Agents”), on Federal Laws No. 18-fz and No. 147-fz and on Federal Law No. 190-fz on Making Amendments to the Criminal Code (“Law on Treason”) of the Russian Federation (June 2014), June 27, 2014, para. 55.

⁷² Ibid.

⁷³ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 82.

It is remarkable that the Ministerial order regulating the administrative mechanism for implementation of the law contains unclear provisions. It does not establish any restrictions or guarantees for handling and protecting personal and confidential information, nor does it define storage periods, access rights, or security measures. For example, Article 7 enables the Ministry-authorized representative to initiate monitoring at any time and request any information from an organization.⁷⁴ Additionally, the order does not provide for judicial control over the monitoring process, increasing the chances of abuse of power.⁷⁵

6. Legal Certainty and Challenges for the Rule of Law

It is crucial that the national legislation protects Convention-guaranteed rights from unjust interference of the state. When the executive has unlimited power, it contradicts with the principle of the rule of law.⁷⁶ According to the Venice Commission, legislative procedure must be transparent, accountable and democratic, which implies justification of legislative proposals, public debates and, where necessary, ensuring public participation.⁷⁷ Law “On Transparency of Foreign Influence” in Georgia was adopted amid large-scale protest, with neither the local nor international organizations’ recommendations for withdrawing the bill being considered.

The principle of legal certainty originates from and is a fundamental element of the rule of law⁷⁸ and combines important elements including clarity, foreseeability, legitimate expectations, etc. Law “On Transparency of Foreign Influence” violates the principle of legal certainty as the language used in the law is vague and allows broad interpretations. For instance, unlike FARA, where the “foreign agent” label is tied to a very high degree of control between the foreign entity/individual and the agent,⁷⁹ in Georgia’s case, the term “foreign influence” is not defined; however it is equivalent

⁷⁴ Order №1019 of the Minister of Justice of Georgia, August 1, 2024, Article 7(1).

⁷⁵ Ibid., Article 7(2)(s).

⁷⁶ ECtHR Judgment of 15 November 2018, *Navalnyy v. Russia*, application no. 29580/12, hudoc.int., para. 115.

⁷⁷ Ibid., para. 44.

⁷⁸ Humberto Ávila, *Certainty in Law* (Switzerland: Springer, 2016), 1–3.

⁷⁹ Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 40.

to the concept of a foreign agent and undermines the activities of NGOs.⁸⁰ This serves to damage the reputation of the NGOs in the public perception,⁸¹ which is one of the methods of public delegitimization. Moreover, the rule of law implies that powers granted to public authorities must be specifically defined by law.⁸² Empowering the Ministry of Justice with extensive powers without clear guidelines violates this principle, as the discretion for the Ministry of Justice and its authorized personnel is unclear. This is problematic not only because it allows for subjective interpretations or political manipulations but also increases the reality of such risks, considering there is no transparent enforcement mechanism that would have public trust. Additionally, any type of restrictions must comply with the rule of law and international human rights standards and should not be specifically directed against the NGOs.⁸³ The negative effect of the “Russian Law” is strengthened in accordance with the political regimes in the country, especially when there is no separation of powers, no independent judiciary, and the media encourages propaganda and engages in campaigns to discredit individuals with different opinions.⁸⁴

In addition to Articles 3 and 4 of the Constitution of Georgia, which protect the principles of the democratic and legal state, Article 78 is significant as it expresses the country’s aspiration to European and Euro-Atlantic structures and obligates all constitutional bodies to take all measures within the scope of their competencies for Georgia’s full integration into the EU and NATO. According to the Constitutional Court of Georgia, “among the main directions of foreign policy, it can be said that integration into European and Euro-Atlantic structures is the most important direction, as taking all measures to achieve it is elevated to the rank of a constitutional obligation.”⁸⁵ Given these circumstances, it is noteworthy that the

⁸⁰ Ibid., paras. 71–72.

⁸¹ Council of Europe Commissioner for Human Rights, Third Party Intervention by the Council of Europe Commissioner for Human Rights, CommDH (2017)22, 2017, para. 33.

⁸² Venice Commission, Urgent Opinion on the Law on Transparency of Foreign Influence, CDL-PI(2024)013, Strasbourg, May 21, 2024, para. 57.

⁸³ OSCE/ODIHR, Urgent Opinion on the Law “On Transparency of Foreign Influence” of Georgia, NGO-GEO/506/2024 [NR], May 30, 2024, paras. 13–26.

⁸⁴ Maxim Krupskiy, “Russian ‘Foreign Agents’ Scenario: From the Weaponization of Transparency to Public Discrimination,” *Kennan Cable*, no. 92 (2024): 3.

⁸⁵ Conclusion N3/1/1797 of the Constitutional Court of Georgia, October 16, 2023, para. 59.

so-called “Transparency Law” creates significant obstacles to Georgia’s Euro-Atlantic integration as, according to the EU’s statement, this law goes against EU core principles and values and moves Georgia away from the European path;⁸⁶ in turn, NATO considered it a step backward on the path of NATO-Georgia relations.⁸⁷

President of Georgia Salome Zourabishvili, some members of the parliament of Georgia, and NGOs submitted a constitutional complaint to declare the adopted act unconstitutional and void, as it is the “Russian Law” that moves the country away from the European Union and brings it closer to Russia; plaintiffs also requested suspension of the operation of the law until the final judgment of the court.⁸⁸ Important *amicus curiae* briefs have been submitted to the Constitutional Court of Georgia by legal scholars who critically analyze the constitutionality of the disputed legislation.⁸⁹ The Constitutional Court of Georgia did not share the position of the President of Georgia and other plaintiffs, however two judges dissented.⁹⁰

7. Conclusion

The adoption of the “Russian Law” in Georgia further strained an already unstable political situation. The process transcended ordinary legislative activity and took on a real character, which the Georgian Parliament was trying to avoid, attempting instead to present the act as a routine product of ongoing legislative work. For this very reason, the initiators ideologically linked the Law “On Transparency of Foreign Influence” to FARA, aiming to enhance the reputation and credibility of the “Russian Law” by drawing an

⁸⁶ Alessio Dell’Anna, “Georgia’s EU Hopes Fade as Parliament Approves ‘Russian Law’ on Foreign Agents,” *euronews*, May 28, 2024, accessed June 1, 2024, <https://www.euronews.com/my-europe/2024/05/28/georgia-eu-hopes-fade-as-parliament-set-to-approve-russian-law-on-foreign-agents>.

⁸⁷ “NATO PA: The Law on Foreign Agents Must Now Be Withdrawn,” *Civil Georgia*, May 26, 2024, accessed June 1, 2024, <https://civil.ge/archives/609414>.

⁸⁸ Recording Notice N3/3/1828,1829,1834,1837 of the Constitutional Court of Georgia, October 4, 2024.

⁸⁹ *Amicus Curiae* Brief, Reference No. AC1828, 1829, 1834, Authors: Fernanda Nicola and Günter Frankenberg, August 28, 2024; *Amicus Curiae* Brief, Reference No. AC1828, 1829, Authors: Albrecht Weber and Wolfgang Babeck, August 2, 2024.

⁹⁰ Dissenting Opinion of Judges Giorgi Kverenchkhiladze and Teimuraz Tugushi on Recording Notice N3/3/1828, 1829, 1834, 1837 of the Constitutional Court of Georgia, October 4, 2024.

analogy with an act from a democratic and developed state. Both in terms of content and form, the law “On Transparency of Foreign Influence” of Georgia significantly differs from the FARA and directly shows similarities with the RFAL. The “Russian Law” in Georgia does not affect political actors or lobbyists, but NGOs and media companies, aiming to create an image of the public enemy. Moreover, it refers to “foreign power” not as the Russian Federation, which occupied part of Georgia’s territory, or terrorist organizations, but rather strategic partners, and authoritative international organizations.

The law stigmatizes people and organizations, creating an artificial sense of alienation. The use of terms like “foreign power,” “foreign influence,” and similar terminology contradicts human rights and the rule of law. The disintegration of community, separating and antagonizing its members, cannot lead to any fair outcome. In any case, the existence of such a goal deprives the law of its purpose and removes its substance from its main idea. Furthermore, giving broad discretion to the executive branch and equipping it with a greater ability to restrict human rights makes the legal act unpredictable and leaves individuals completely unprotected. This violates legal certainty and consequently the rule of law, of which it is an essential component.

The “Russian Law” violates the right to privacy by granting the state authority to access personal, professional, and commercial secrets of both individuals and legal entities, without any judicial supervision. Moreover, non-compliance with executive demands automatically triggers legal liability and leaves no room for preventive and subsequent effective means of rights protection. Additionally, the large fines imposed as sanctions are not only disproportionate, but carry such a heavy financial burden that their application would result in organizational liquidation. If financial transparency were the law’s genuine aim, it could be achieved much more simply through a single amendment to the Tax Code, requiring beneficiaries of foreign funding to complete additional financial declarations and indicate such funding. The existence of this alternative renders the means provided by the law disproportionate to achieving any legitimate aim.

Modern states and societies coexist and influence each other, regardless of their political regimes. Logically, their formula for happiness should be similar, encompassing, alongside economic and social welfare,

a well-functioning system of human rights and the rule of law. Conversely, so-called unhappy states, alluding to Tolstoy, must share an individual fate, as the causes of their failure or unhappiness may vary. However, when one adopts and implements the legislation – one cause of this unhappiness – from another country, one discovers an unfortunate reality: the resulting unhappiness resembles that of the state from which the specific rule was borrowed. The “Russian Law” is not merely a nickname; it may become a grave prospect of an inevitable future for Georgia, one that has already been “successfully” implemented and fulfilled by the Russian Federation and its imitating undemocratic regimes.

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