Public Defender's Opinion of the Friend of the Court

In accordance with subparagraph "e" of Article 21 of the Organic Law of Georgia on the Public Defender of Georgia and paragraph 1 of Article 21[4] of the Organic Law of Georgia on the Constitutional Court of Georgia, we are presenting the opinion of the friend of the court of the Public Defender of Georgia.

The opinion of the friend of the court concerns the constitutional lawsuits (registration No. 1828, No. 1829, No. 1834), which dispute the constitutionality of the Law of Georgia on Transparency of Foreign Influence.

The Public Defender, at the stage of discussions held around the disputed draft law, advised the Parliament of Georgia several times not to adopt any legal act that might endanger the implementation of the constitutional aspirations of Georgia. Pursuant to Article 78 of the Constitution of Georgia, the constitutional bodies shall take all measures within their powers to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization. After the introduction of the controversial draft law, a number of assessments were made by the highest officials and bodies of the European Union and the North Atlantic Treaty Organization regarding the law's incompliance with the main principles and values of the European Union, stressing that the adoption of the law would damage the Euro-Atlantic integration process of Georgia.[1]

Given the importance of the consideration of the case by the Constitutional Court in the process of democratic development of the country, the Public Defender, in the opinion of the friend of the court, is presenting his position on issues that are important to evaluate when checking the constitutionality of the law. In particular, the opinion of the friend of the court will address: 1) determination of the special status of an "organization pursuing the interests of a foreign power", 2) the broad and vague content of "foreign funding", 3) the necessity of adopting new legislation in a democratic society and 4) the issues of access to data within the framework of the publication of financial declarations and monitoring.

[1] Statement by the High Representative with the European Commission on the final adoption of the law on transparency of foreign influence in Georgia, 28 May 2024. Statement by High Representative Josep Borrell with the European Commission on the adoption of the "transparency of foreign influence" law in Georgia*, 15 May 2024, Statement by President von der Leyen on the situation in Georgia, 1 May 2024, ob.: https://neighbourhood-enlargement.ec.europa.eu/europeanneighbourhood-policy/countries-region/georgia_en ; Statement by NATO Secretary General Jens Stoltenberg, 04 Apr. 2024, ob.: https://www.nato.int/cps/en/natohq/opinions_224174.htm?selectedLocale=en;

I. Whether the creation of the special status of "an organization pursuing the interests of a foreign power" is necessary in a democratic society

Separating a certain group of organizations and giving them a new status should be evaluated in two directions: 1) whether this status leads to their stigmatization and hinders their activities; and 2) whether this status description is relevant/related to the activities of the organization.

1) Whether this status leads to stigmatization of organizations and hamper their activities

According to the practice established by the European Court of Human Rights, **even where measures taken by the authorities have not actually restricted the right of an association to carry out its activities, the use of stigmatising language to describe that association may have had adverse consequences for its operation. The use of hostile terms constitutes an interference with an association's rights, and needs to be justified as being necessary in a democratic society.**[2] The Court also notes the view of the Court of Justice of the European Union (CJEU) that the designation of civil society organisations as "organisations in receipt of support from abroad" is capable of creating a generalised climate of mistrust towards those organisations and of stigmatising them.[3] It is significant that the Law of Georgia on Transparency of Foreign Influence uses a term with an even more negative content - "an organization pursuing the interests of a foreign power" and refers not to the funding, but "pursuit of the interests" of the foreign power.

Regarding labelling obligations in general, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has also underlined that "the sweeping imposition of the label of 'foreign agent' on all civil society organizations […] cannot be deemed necessary in a democratic society in order to ensure a legitimate aim, including ensuring transparency of the civil society sector."[4]

According to the Law of Georgia on Transparency of Foreign Influence, organizations that receive foreign funding are assigned the status of "**pursuing the interests of a foreign power**", which carries negative content and serves to stigmatize these organizations. By granting such a status, these organizations are associated with **organizations under foreign control**, which leads to mistrust of the Georgian society and creates a stigmatizing effect.

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[2] Leela Förderkreis e.V. and Others, § 84-101, Aliyev v. Azerbaijan, no. 68762/14 and 71200/14, § 210, 20 September 2018;

[3] Ecodefence and others v. Russia, no. 9988/13, § 132, ECHR 14 June 2022;

[4] A/HRC/50/53, 10 May 2022, para. 28, see g2233782.pdf (un.org);

Once organizations are classified as "organizations pursuing the interests of a foreign power," not only are they subject to the additional financial and legal reporting requirements discussed below, but also to a number of negative risks that go beyond legal consequences. The European Court of Human Rights, in the case of *Ecodefence and Others v. Russia*, indicated that the organization, which was labelled as a "foreign agent," "is likely to face an environment of **mistrust, fear and hostility, which makes its work difficult**." The Court considered an example of homeless persons who refused an offer of shelter from the representatives of a non-governmental organization carrying out humanitarian activities, because they did not want an assistance from "foreign agents".[5]

The Court expressed particular concern about the fact that the "foreign agent" status severely limited the applicant organizations' ability to interact with state authorities, including those with whom they had worked for many years before registering as "foreign agents". The Commissioner and the Venice Commission noted that representatives of state institutions were reluctant to cooperate with "foreign agent" organizations, especially when discussing possible changes in legislation or public policy. For example, in the case of Yekaterinburg Memorial, the Ministry of Education issued a letter asking the heads of higher and general education institutions to prevent students and academic staff from participating in events organized by foreign agents. The Civil Education Center received a letter indicating that after registering as a foreign agent, state and municipal institutions no longer wanted to cooperate with it. Sakhalin Environment Watch, which had been previously successfully cooperating in preventing poaching, also received a letter with the same content.[6] The executive authorities tried to distance themselves from organizations with "foreign agent" status and cut ties with their directors and members. In the case of Woman's World, a decree of the governor of Kaliningrad region banned members of "foreign agent" organizations from membership in the governor's socio-political council and the director of the applicant organization was expelled from that council. The lawyer of the Perm Human Rights Center was not allowed to participate in the meeting of the Qualification Council of Judges due to his connection with the "foreign agent" organization.[7]

Restrictions on the participation of "foreign agent" organizations gradually found their way into federal legislation. A series of amendments to the electoral laws denied such organisations any form of involvement in any kind of election. Organizations that had been observing elections were denied the opportunity to continue their missions as independent election monitors, which effectively thwarted any monitoring efforts by Russian organisations once they had been listed as "foreign agents".[8]

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[5] Ecodefence and others v. Russia, no. 9988/13, § 50, 54, 141, ECHR 14 June 2022;
[6] Ecodefence and others v. Russia, no. 9988/13, § 142, ECHR 14 June 2022;
[7] Ecodefence and others v. Russia, no. 9988/13, § 143, ECHR 14 June 2022;
[8] Ecodefence and others v. Russia, no. 9988/13, § 30, 144, ECHR 14 June 2022;

The monitoring activities of these organizations were banned in other areas as well. The 2018 amendments withdrew the right of "foreign agent" organisations to nominate candidates to public monitoring bodies, which were the only civil society institutions with access to penal facilities and the authority to highlight issues concerning human rights compliance in places of detention.[9]

The Venice Commission, in its report on the disputed law, pointed out that the mere labelling of an organisation as "pursuing the interests of a foreign power" would inevitably jeopardise funding from domestic sources. This is in the Commission's view an obviously forseeable result of the stigmatisation of an organisation as subject to foreign influence, as domestic organisations may not themselves wish to be associated with such organisations for fear of adverse consequences. Article 4(d) requires that the organisation provide information about "the source, amount and purpose of any money and other material benefits" it receives. Granting such a negative status to organizations entails not only financial and legal obligations stipulated by the law (for example, submitting a declaration), but also damages their reputation and leads to their exclusion from public processes.

In the Ecodefence case, the Court also discussed the stigmatizing **term**. The Court notes that the Government did not corroborate their assertion with any evidence, while the findings of a major opinion poll of the Russian population appear to suggest otherwise.[10] Nor did the Government give any explanation as to why the term "foreign agent" had been chosen and whether the term's connotations had been taken into account.[11]

During the discussion of the controversial draft law on transparency of foreign influence, the addressee organizations of the draft law indicated that this status was insulting to their dignity and they did not intend to continue their activities with that status. However, when defining/choosing the status - term, the legislator did not take into account the negative perceptions of the society towards the status, the degree of independence of the organizations from the source of funding, and the attitude of the addressee organizations regarding this status as a negative and degrading label was neglected.

Therefore, with regard to similar regulations, the practice of other countries also suggests the risks that granting such a new status may severely limit the ability of organizations to carry out their activities, due to negative attitudes of their target groups and regulatory legislative restrictions. There is a high risk that the registration as an "organization pursuing the interests of a foreign power", which in its essence and terminological content is identical to the term (definition) of "foreign agent" established in the Georgian language, will limit their

[9] Ecodefence and others v. Russia, no. 9988/13, § 34, 145, ECHR 14 June 2022;
[10] Ecodefence and others v. Russia, no. 9988/13, § 126, ECHR 14 June 2022;
[11] Ecodefence and others v. Russia, no. 9988/13, § 131, ECHR 14 June 2022;

ability to continue to participate in public life and engage in various activities, which they had been carrying out prior to the creation of the new category of "foreign agent". The legislator has not been able to adduce "relevant and sufficient" reasons for creating that new category, or show that those measures furthered the declared goal of increasing transparency. The European Court of Human Rights, in the case against Russia, for the same reasons, explained that the creation of this status was not "necessary in a democratic society".[12]

2) Whether the description of this status is relevant/related to the activities of the organization

According to the Law of Georgia on Transparency of Foreign Influence, organizations "pursue the interests of a foreign power" if the source of more than 20% of their annual income is foreign funding. Accordingly, determination of whether the purpose and essence of the organization's activity is to pursue the interest of a foreign power is related only to the existence of the fact of funding.

In the aforementioned case, the European Court of Human Rights highlighted the fact that the definition of "foreign agent" in the Foreign Agents Act introduced a concept of agency in which the **control of the donor over the recipient of funds was effectively presumed rather than established on a case-by-case basis**, even in a situation where the recipient of funds retained full **managerial and operational independence** in terms of defining its programmes, policies and priorities. This presumption was moreover irrebuttable because any evidence of operational independence of the grantee from the donor was legally irrelevant for the designation of the targeted organisation as a "foreign agent", as the mere fact of receiving any amount of money from "foreign sources" sufficed.[13]

Legislation that treats a particular group of associations as a "risk" because they receive funding from abroad and operate under "foreign influence" or makes a general or abstract assumption that all funding of associations from abroad is questionable is "not compatible with the drafting history and underlying values of the Convention as an instrument of European public order and collective security".[14] In its judgment against Hungary, the Court of Justice of the European Union noted that Hungary appeared to have based its law not on the existence of a "genuine threat" but on presumption made on principle and applied indiscriminately that any financial support paid by a natural or legal person established in another Member State or in a third country and any civil society organisation receiving such financial support were intrinsically liable to jeopardise the political and economic interests of the former Member State and the

[12] Ecodefence and others v. Russia, no. 9988/13, § 146, ECHR 14 June 2022;
[13] Ecodefence and others v. Russia, no. 9988/13, § 134, ECHR 14 June 2022;
[14] Ecodefence and others v. Russia, no. 9988/13, § 139, ECHR 14 June 2022;

ability of its institutions to operate free from interference.[15] For this reason, the Court found that the existence of a genuine, present and sufficiently serious threat to a fundamental interest of society, which would enable the grounds of public policy and public security mentioned in Article 65(1)(b) TFEU to be relied upon, has not been established."[16] Regarding the draft law of the Republic of Serbia on the special registry and publicity of the work of non-profit organizations, the Joint Opinion of the ODIHR and the Venice Commission emphasized that "The reference to "agents of foreign influence" in Articles 1 and 16 of the draft law seems to imply that the mere receipt of funding by non-profit organisations or other forms of assistance from abroad triggers a presumption of some forms of influence or control of the work of the recipient by the donor, which is not justified.[17]

According to the Law of Georgia on Transparency of Foreign Influence, it is not considered necessary to prove that organizations act in accordance with the interests of foreign entities. It is automatically assumed that if an organization received foreign funding (which amounts to 20% of its annual income), this is sufficient to prove that they are "pursuing the interests of a foreign power". It is not necessary to prove that Georgian organizations act in accordance with the interests of foreign organizations or in accordance with their instructions/tasks, or whether they are independent actors in their field.

The law does not contain any rules relating to the **designation** of funding or any requirement to establish a connection between the funding and the pursuit of the interests of a foreign power, or any risk that may harm the national interest.

In the *case of Ecodefense and Others v. Russia*, the European Court of Human Rights explained that the Foreign Agents Act does not contain any rules as to the **purpose of foreign funding**, which led to absurd situations, such as the case of the Civil Education Centre, in which the Russian authorities and courts concluded that the organisation was financed by a foreign source because a hotel in Oslo had refunded it for paying too much to hire conference facilities and rooms.[18]

The Law of Georgia on Transparency of Foreign Influence also does not define the **purpose or designation** of foreign financing. Finances or other kind of material benefits received for any purpose, which amounts to more than 20% of the annual income of the organization, is

[15] Commission v. Hungary Case C-78/18, § 86, CJEU, 18 June 2020;
[16] Commission v. Hungary Case C-78/18, § 95, CJEU, 18 June 2020;
[17] ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 27;
[18] Ecodefence and others v. Russia, no. 9988/13, § 107, 259, ECHR 14 June 2022;

categorized as foreign funding and is a self-sufficient basis for registration as an organization pursuing the interests of a foreign power.

The European Court of Human Rights explained that labelling any applicant **organization that received funds from abroad as a "foreign agent" was unfair and harmful, and could also have a strong dissuasive and stigmatizing effect on the activities of the organizations**. This label christened them as organizations **under foreign control**, ignoring the fact that they saw themselves as members of the national civil society working on human rights, rule of law and personal development issues that benefited Russian society and its democratic system.[19]

At the same time, the granting of this status was not related to the content of the relationship between organizations and the funding source. Regardless of the degree of organizational independence, the mere receipt of funding directly or indirectly is sufficient grounds for granting such a stigmatizing status and subjecting an organization to other legal regimes.

II. Broad and vague content of "foreign funding"

In the case of *Ecodefence and Others v. Russia*, the Court held that the absence of clear and foreseeable criteria gave the authorities **unfettered discretion** to assert that the applicant organisations were in receipt of "foreign funding", no matter how **remote or tenuous their association** with a purported "**foreign source**" was. The Court considers that the applicant organisations could not reasonably foresee that the money they received would be considered tainted by its foreign origin regardless of **how many degrees of separation there were between the recipient organisation and the purported "foreign source".**[20]

In accordance with paragraph 1 of Article 2 of the Law of Georgia on Transparency of Foreign Influence, an organization pursuing the interests of a foreign power is a non-entrepreneurial (non-commercial) legal entity,[21] a broadcaster,[22] a legal entity that owns a printed mass media

[19] Ecodefence and others v. Russia, no. 9988/13, § 136, ECHR 14 June 2022;

[20] For example, Gagarin Park was registered as a "foreign agent" in the registry because it had received funds from the Russian charity fund, which in turn was financed from abroad. School of the Conscript, has been considered a "foreign agent" because their website was paid for by another organization with the "foreign agent" status, which has been considered foreign funding", Ecodefence and others v. Russia, no. 9988/13, § 110, 339, 624, ECHR 14 June 2022;

[21] Implies only a non-entrepreneurial (non-commercial) legal entity that is not founded by an administrative body, which is not a national sports federation of Georgia provided for by the Law of Georgia on Sports or a blood institution provided for by the Law of Georgia on Human Blood and the Quality and Safety of Its Components.

[22] Implies a "broadcaster" provided for by the Law of Georgia on Broadcasting;

outlet,[23] a legal entity that owns an Internet media outlet that disseminates mass information,[24] if the source of more than 20% of their total income during the calendar year is a foreign power.

"Income" implies **money** and **other material benefits of property value** (any movable or immovable property). The value of income that is not monetary shall be calculated at its market price for the purposes of this Article.[25]

It is considered that the subject has received income, if the said subject received money or became the **owner or beneficiary** of any other kind of material benefits of property value (any movable or immovable property).[26]

On the other hand, the source of income received by the above entities is a foreign power, if: a) the said entity **directly** or **indirectly** received an income from a foreign power; b) the said **entity directly or indirectly received an income from a legal entity that directly or indirectly received an income from a foreign power; c)** the source of the said income **is not identified.**[27]

Accordingly, the law considers, inter alia, the **use** of any movable or immovable property as a source of foreign financing. The entity is considered to have used the property even when it borrows or uses it just once.

In addition to the above, according to the law, foreign financing includes the cases when the above-mentioned entities 1) directly or indirectly receive an income from a foreign power or 2) the said entities directly or indirectly receive an income from the legal entities that directly or indirectly received an income from a foreign power. As a result, the entities, the history of material wealth or finances of which can in some way be associated with foreign finances, will be categorized as "organizations pursuing the interests of a foreign power". For example, if

- "A" - a legal entity under public law registered in Georgia receives funding from "B" - a legal entity under public law registered in Georgia, which is financed by a "foreign power", "A" will be categorized as an "organization pursuing the interests of a foreign power";
- "A" - a legal entity under public law registered in Georgia receives funding from "B" - a legal entity under public law registered in Georgia, which receives monetary or non-monetary benefits or uses non-monetary benefits from "C" - a legal entity under public

[23] Implies a legal entity that owns alone or jointly with others print mass media outlet operating in Georgia;
[24] Implies a legal entity that alone or together with others owns and/or uses internet domain and/or internet hosting for the Internet media outlet disseminating mass information in the state language of Georgia;
[25] Paragraph 2 of Article 2 of the Law of Georgia on Transparency of Foreign Influence;
[26] Paragraph 3 of Article 2 of the Law of Georgia on Transparency of Foreign Influence;
[27] Paragraph 4 of Article 2 of the Law of Georgia on Transparency of Foreign Influence;

law registered in Georgia, which has received monetary or non-monetary benefits from a "foreign power", "A" will be categorized as an "organization pursuing the interests of a foreign power," etc.

Under the regulation established by the law, **it becomes possible to continue such a chain of sources of financing indefinitely.** In addition, it is not necessary to receive money - even the use of other "kind of material benefits" by any link in the chain will be enough to establish the connection with the source of foreign financing.

In addition to the above, Article 2, paragraph 4, subparagraph "c" of the law considers money, or other material benefits of property value, the source of **which is not identified,** as foreign financing. For example, if any legal entity under public law in the above chain fails to indicate the source of any movable or immovable property or money it owns or uses, it will be automatically categorized as a recipient of foreign funding.

In addition, subparagraph "b" of Article 3 of the law defines a foreign power as a natural person who is not a citizen of Georgia. Accordingly, if, for example, a member of the organization or its employee is a stateless person living in Georgia, or a citizen of another state, and pays membership fees, or if the organization uses his movable or immovable property (the market value of which is more than 20% of the annual income of the organization), this organization must also be registered as an organization "pursuing the interests of a foreign power".

The abovementioned examples show that it is impossible to predict what source of funding will qualify as "foreign funding" under the Law of Georgia on Transparency of Foreign Influence for the purposes of registration in the register of "organizations pursuing the interests of a foreign power". The European Court of Human Rights found that the legal norm on foreign funding which allows for its overly broad and unpredictable interpretation in practice, as evident from the circumstances of the present cases, does not meet the “quality of law” requirement and deprives the applicants of the possibility to regulate their financial situation.[28]

III. The necessity of passing new legislation in a democratic society

- *Determination of the assessment standard*

It is important to note that the Law of Georgia on Transparency of Foreign Influence is a completely new legal regulation. Accordingly, it should be assessed how much the adoption of this law was necessary in a democratic society. In this regard, it is important to analyze whether the legal framework existing before the adoption of the law met the requirements of organizational funding and transparency of their data. Based on the above, this part of the

[28] Ecodefence and others v. Russia, no. 9988/13, § 112, ECHR 14 June 2022;

opinion of the friend of the court will review the legal framework of Georgia in terms of organizations' financial accountability.

The European Court of Human Rights noted in the **Ecodefence** case that it must be assessed whether the creation of a new category of non-profit organizations by introducing the label of a new category was "necessary in a democratic society".[29] According to the Court, the democratic process is an ongoing one which needs to be continuously supported by free and pluralistic public debate and carried forward by many actors of civil society, including individual activists and NGOs.

The Court says that where risks to that process have been identified, foreign involvement in some sensitive areas – **such as elections or funding of political movements** – may justify stricter regulation or restrictions by the State. In particular, the definition of "political activities" goes much further than what is customarily regarded as matters of national security or sensitive state interests.

In essence, the regulation appears to be based on a notion that matters such as respect for human rights and the rule of law are "internal affairs" of the State and that any external scrutiny of such matters is suspect and a potential threat to national interests. This notion is not compatible with the drafting history and underlying values of the Convention as an instrument of European public order and collective security.[30]

The reasoning developed in the mentioned case regarding the necessity of adopting new legislation represents an established standard. Accordingly, in order to assess whether the new legislation was "necessary" in our context, we must consider the circumstances that the Court in the Ecodefence case considered when setting the standard.

The evaluation by the European Court of Human Rights in the Ecodefence case focused primarily on whether the legislation on non-profit organizations contained mechanisms that allowed the State and society to control the receipt and expenditure of funds by non-profit organizations, including those received from foreign sources.

In this regard, the Court stated that in the mentioned case, there were no shortcomings or risks of abuse of the existing legal framework, which the creation of a new status of "foreign agents" sought to address.[31]

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[29] Ecodefence and others v. Russia, no. 9988/13, § 137, ECHR 14 June 2022;
[30] Ecodefence and others v. Russia, no. 9988/13, § 139, ECHR 14 June 2022;
[31] Ecodefence and others v. Russia, no. 9988/13, § 140, ECHR 14 June 2022;

According to the Court, States may establish certain requirements under national legislation and ensure compliance of legal entities with these requirements. However, when legislative changes impose new requirements on existing organizations, they must be justified.

"Necessary in a democratic society"

In the Ecodefence case, the Court noted that before the adoption of the legislation, non-profit organizations were required to produce an annual report on their activities and sources of funding, including information on the use of funds, and the existing legislation also required the information to be public. The second factor that the Court focused on was how argumentatively the State indicated that the existing legislation was ineffective. In the mentioned case, the Government did not claim that that legal framework had been lacking or deficient in any respect.[32]

In summary, the Court notes that the **Government failed to put forward "relevant and sufficient" reasons for imposing additional requirements on applicant organizations.** Adoption of new legislation imposed a **significant and excessive financial and organisational burden on the applicant organisations and their staff, and undermined their capacity to engage in their core activities.** The Court concludes that such **additional requirements as provided for by the Foreign Agents Act and subsequent legislation were not "necessary in a democratic society".**[33]

Accordingly, taking into account the mentioned standard, it is necessary to assess whether it was "necessary in a democratic society" to create a new legal framework and to determine whether the existing legal regulations provided the components of financial accountability and information publicity.

- *Overview of the regulation of non-entrepreneurial non-commercial legal entities*

The Law of Georgia on Transparency of Foreign Influence defines an organization pursuing the interest of a foreign power as a non-entrepreneurial (non-commercial) legal entity, which is not established by an administrative body, except for the national sports federation of Georgia provided for by the Law of Georgia on Sports or a blood institution provided for by the Law of Georgia on Human Blood and the Quality and Safety of Its Components, which receives more than 20% of its total annual income from a foreign power during the calendar year.[34]

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[32] Ecodefence and others v. Russia, no. 9988/13, § 153, ECHR 14 June 2022;
[33] Ecodefence and others v. Russia, no. 9988/13, § 159, ECHR 14 June 2022;
[34] Law on Transparency of Foreign Influence, Article 2, paragraph 1, subparagraph "a".

The procedure for registration of a non-entrepreneurial (non-commercial) legal entity, a branch (representative) of a foreign non-entrepreneurial (non-commercial) legal entity, is determined by the Civil Code of Georgia.[35] The registration of the aforementioned legal entities is carried out in the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities, which is maintained by a legal entity of public law - the National Agency of Public Registry.[36] In accordance with the terms of registration under the Code, the application for registration must comply with the requirements defined by the Code and the Law on Entrepreneurs".[37]

In addition, according to the Law of Georgia on Public Registry, pursuant to the principles of production of the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities,[38] data on the origin of entities determined by the Civil Code of Georgia and the Law of Georgia on Entrepreneurs, changes made to them or their revocation, as well as obligations related to the limitation of ownership rights on shares of partners of the limited liability company and limited partnership, as well as their origin, changes made to them or their revocation, shall be registered in the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities.

In addition, according to the Tax Code, non-entrepreneurial (non-commercial) legal entities, as well as branches of organizations established in accordance with the legislation of a foreign country and other similar sub-units in Georgia, through which they fully or partially carry out their activities (including the activities of a trustee), as well as budgetary organizations, legal entities under public law, corporations and institutions are considered to be organizations.[39]

The Code prescribes regulations for paying taxes, receiving income and funding, which fully applies to organizations that are taxpayers.[40] On the other hand, the fulfillment of tax obligations implies that the organization should be registered with the relevant tax authority

[35] Article 28 of the Civil Code of Georgia.
[36] Part 2 of Article 28 of the Civil Code of Georgia.
[37] Part 1 of Article 29 of the Civil Code of Georgia.
[38] Paragraph 1 of Article 20^1 of the Law on Public Registry
[39] Article 30, paragraph 1, subparagraph "a" of the Tax Code. According to paragraph 3 of the same article ,"If an organization carries out economic activities, part of its property and activities, which is directly related to its economic activity, is considered the property and activity of the enterprise, and in the part where it is impossible to separate the above, for the purpose of calculating the property and activity related to the economic activity, the share of income received by the organization from the economic activity is used."
[40] Tax Code, Article 37, part 5.

or registered in the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities.[41]

It is important that, in addition to general information, the Code directly prescribes the obligation to submit information, in case the organization opens bank accounts outside of Georgia.[42] If the organization does not fulfill the requirements established by the law, it shall be held responsible.

At the same time, according to the Tax Code, non-entrepreneurial entities are obliged to provide information about their hired employees to the register of hired persons administered by the Revenue Service.[43] It should be noted that failure to provide information about hired persons to the register of hired persons leads to the liability in the form of a fine.[44]

According to the Code, non-entrepreneurial entities must submit a monthly declaration to the Revenue Service regarding the salaries of their employees.[45] The list of information to be reflected in the register of hired persons and the manner of reflection of information shall be determined by the order of the Minister of Finance of Georgia.

It should be noted that the Revenue Service has created a **register of hired persons.**[46] It has become mandatory to fill out the register since February 1, 2021. The hiring person is obliged to fill in the register of hired persons from the personal authorized page before starting/terminating/suspending the employment relationship.

Order No. 996 of the Minister of Finance of Georgia of December 31, 2010 relating to tax administration provides for regulations of the register of hired persons, according to which, the following information must be indicated: personal number, first and last names, gender, citizenship, date of birth, telephone number, working hours and status (active, suspended, terminated). Incorrect reflection of information by the hiring person about hired persons leads to the responsibility provided for by the tax legislation.[47]

The mentioned order also specifies that in order to enjoy tax benefits (including VAT exemption) in accordance with the international treaty ratified by the Parliament of Georgia, the sponsoring (donor) party of the programme/project to be implemented in accordance with the treaty shall submit information about persons participating in the programme/project or

[41] Tax Code, Article 43, part 1, subparagraph "b".
[42] Article 43, part 2, Tax Code.
[43] Article 12, part 3, Tax Code.
[44] Article 288^5 of the Tax Code.
[45] Article 135 of the Tax Code.
[46] Order No. 996 of the Minister of Finance of Georgia of December 31, 2010, Article 11^2.
[47] Order No. 996 of the Minister of Finance of Georgia of December 31, 2010, Article 11^2.

implementing the programme/project to the Revenue Service, and in case of changes, information shall be updated.[48]

According to the mentioned information, the Revenue Service ensures that the data on persons implementing/participating in programmes/projects are included in the **unified electronic register** of persons enjoying tax benefits,[49] which is approved by the individual administrative-legal act of the head of the Revenue Service. The register will be placed on the official website of the Ministry of Finance of Georgia.[50]

In addition, the Revenue Service has created a **unified electronic register of persons enjoying tax benefits in accordance with international treaties,** which is **public** [51] and includes information on all those international treaties on the basis of which tax benefits can be enjoyed within the framework of projects. The register is available to everyone and provides information about the project, its implementing entity, start and end dates. More specifically, the following information shall be described in the register: the name of the specific international treaty, the name of the project implemented on the basis of the treaty, the name of the organization implementing the project, identification code, start and end dates of the project, VAT, excise, import tax, progress of the project. In addition, for the purposes of VAT refund, organizations are obliged to provide the tax office with relevant agreements on donor grants and financial plans of the project.

In addition, a special database, the **Foreign Aid Information Management System** (e-AIMS),[52] has been created and is being developed and operated by the Ministries of Finance and Foreign Affairs, and it contains information about the financed projects and information willingly submitted by grant-receiving organizations.

The mentioned database is available to all stakeholders on the website. It enables the stakeholder to obtain information about all donors, funding types, projects and thematic areas. On the same portal, it is possible to find information through the search system on the amount of expenses incurred by the organizations.[53] The projects implemented by the organization are publicly available on the mentioned platform and information specified in it includes the name

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[48] Order No. 996 of the Minister of Finance of Georgia of December 31, 2010, paragraph 1 of Article 71.
[49] Unified portal of electronic services, available at: https://www.my.gov.ge/ka-ge/services/10
[50] Order No. 996 of the Minister of Finance of Georgia of December 31, 2010, paragraph 3 of Article 71.
[51] Unified electronic register of persons enjoying tax benefits in accordance with international treaties, available at: https://www.rs.ge/TaxPrivileges
[52] Foreign Aid Information Management System, available at: https://eaims.ge/
[53] Statement of the Public Defender of Georgia, available at: https://www.ombudsman.ge/geo/akhaliambebi/sakartvelos-sakhalkho-damtsvelis-gantskhadeba-utskhouri-gavlenis-gamchvirvalobis-shesakheb-sakartveloskanonis-proekttan-dakavshirebit/

of the project, the amount of money, the status of the project, the source of financing and the implementing organization itself.[54]

It is important to emphasize that the State also has access to the information possessed by organizations within the scope of off-site,[55] on-site[56] and urgent[57] tax inspections. In particular, when conducting an off-site tax inspection, the tax authority has the right to request the submission of **accounting documentation**[58] and/or **information related to taxation**.[59] In addition to the above, an on-site tax inspection allows a full or thematic inspection of the taxpayer's activities. The on-site tax inspection may also include procedures for ongoing control of the taxpayer's activities.[60] The tax authority has the right to request a properly certified **copy of accounting documents related to tax liabilities and/or information related to taxation**, and in case the taxpayer fails to comply with the said request, to seize the **original document**.[61]

Based on the review of the existing legal regulations, it is possible to conclude that the State has access to the full financial activities of non-commercial legal entities.

The joint report of the OSCE/ODIHR and the Venice Commission emphasizes that it is not justified to impose new and extensive reporting obligations on all types of associations, unless they represent special areas.[62]

The special areas where strict regulations are permissible will be reviewed below, but organizations of the type mentioned above are not considered to belong to these areas.

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[54] Information about 54 projects is available at: https://eaims.ge/Project/

[55] Off-site tax inspection is carried out on the basis of information available in the tax authority regarding the taxation of a person, as well as explanations received from the taxpayer and accounting documentation;

[56] On-site tax inspection is carried out on the basis of the decision of the authorized person of the tax authority;

[57] Urgent on-site tax inspection is conducted without a written notification, on the basis of the court warrant, if: a) significant violations of tax obligations by the taxpayer were revealed during the last tax inspection; b) there is reliable information which makes the origin of a person's financial and material resources suspicious; c) there is reliable information about undocumented growth of property or other taxable objects; d) tax declarations or other documents submitted to the tax authority fail to prove the reality of taxation objects and calculated taxes; e) the tax declaration or documents required for the calculation and/or payment of taxes have not been submitted; f) the tax authority has information that a person plans to evade tax obligations by leaving Georgia, transferring assets to another person, destroying, hiding, correcting or changing documents proving the violations, or by taking other measures;

[58] Accounting documentation – primary documents (including primary tax documents), accounting registers and other documents, on the basis of which objects of taxation, objects related to taxation and tax obligations are determined.

[59] Part 2 of Article 263 of the Tax Code of Georgia;

[60] Parts 4-5 of Article 264 of the Tax Code of Georgia;

[61] Part 8 of Article 264 of the Tax Code of Georgia;

[62] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, para. 38.

- *Broadcasting regulations*

According to the Law of Georgia on Transparency of Foreign Influence, a broadcaster provided for by the Law of Georgia on Broadcasting, which receives more than 20% of its total non-commercial income from a foreign power during a calendar year, is a an organization pursuing the interests of a foreign power.[63]

The scope of regulation of the Law of Georgia on Broadcasting covers the service provision and implementation rules of media service and video sharing platform.[64]

Activities in the field of broadcasting shall be carried out on the basis of licensing and/or authorization of that activity.[65] According to the law, the license-issuing authority in the field of broadcasting shall be the National Communications Commission, which, following the principle of publicity: issues licenses and maintains the departmental license register; controls the compliance and control of license conditions.[66]

The register of financial transparency of broadcasters produced by the Communications Commission is public and available to stakeholders.[67]

The law specifies the procedure for issuing a license,[68] and it includes, among other things, the financing plan for the activities to be implemented and information about the sources of financing.[69] Not only does the broadcaster have the mentioned obligation when issuing the license, but it is also obliged to post the previous year's report, information about authorization/license conditions and compliance with the requirements of the Code of Conduct and sources of funding on the official website. In addition, the broadcaster must attach an audit document to the report.[70]

The law specifies that the license holder and/or authorized person in the field of broadcasting cannot be a legal entity registered in an offshore zone; a legal entity whose share or shares are

[63] Article 2, paragraph 1, subparagraph "b" of the Law on Transparency of Foreign Influence.
[64] Paragraph 1 of Article 1 of the Law on Broadcasting.
[65] Article 36 of the Law on Broadcasting.
[66] Article 36[1] of the Law on Broadcasting.
[67] Register on Financial Transparency of Broadcasters, available at: https://comcom.ge/ge/regulation/mediamomsaxureba/broadcasting/shesabamisobis-deklaracia-da-finansurigamchvirvaloba/broadcasters-financial-transparency
[68] Article 41 of the Law on Broadcasting.
[69] Article 41, paragraph 1, subparagraph "g" of the Law on Broadcasting.
[70] Paragraph 4 of Article 70 of the Law on Broadcasting.

directly or indirectly owned by a person registered in an offshore zone; a person whose beneficial owner is a political party of another state, an official of a political party.[71]

In addition, the law prescribes the obligation to submit the "declaration of compliance" on a person seeking a license/authorization,[72] which must indicate the applicant's identification data; data on relevant authorities; information on the identification data on the beneficial owners of the license seeker/authorization applicant and the shares owned by them.

- *Media regulations*

As mentioned, the Law on Broadcasting applies to media service and video-sharing platforms, field of services, but the law does not apply to print and online media. Activities carried out with electronic communication networks and related means are regulated by the Law of Georgia on Electronic Communications.

According to the mentioned law, an authorized person is any entrepreneurial entity registered by the National Communications Commission of Georgia, as well as any non-entrepreneurial legal entity that provides electronic communication networks.[73] Accordingly, it regulates media entities that provide paid services of both commercial and non-commercial nature through public electronic communication networks.

The law prescribes a unified authorization rule, according to which, the National Communications Commission authorizes the provision of electronic communication networks and means and/or the provision of services through electronic communication networks and means by registration in the departmental register of authorized persons.[74] In addition, authorized entities are obliged to provide the Commission with financial and economic documentation, despite its confidentiality.[75] The Commission must protect the confidentiality of the information provided, which is considered commercial secrets or personal data according to the General Administrative Code of Georgia and the Law of Georgia on Personal Data Protection.[76]

The abovementioned legal regulations, both regarding broadcasting and print and online media, make it clear that the **existing legal framework provides for the control and publicity of financial information.** Accordingly, imposing additional legal restrictions or regulations on

[71] Article 37 of the Law on Broadcasting.
[72] Article 37[1] of the Law on Broadcasting.
[73] Law on Electronic Communications, Article 2, subparagraph "f".
[74] Paragraph 2 of Article 18 of the Law on Electronic Communications.
[75] Paragraph 2 of Article 19 of the Law on Electronic Communications.
[76] Ibid.

the media harms media pluralism and limits the freedom of expression secured by the Constitution of Georgia.

According to the Venice Commission, freedom of expression, as secured in Article 10 § 1 of the ECHR, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress. This right is "a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights. While these principles equally apply to protect the rights of all individuals, whether acting as individuals or in concert with others in civil society organizations, they are especially pertinent and vital **in the field of the media, whether broadcast, print or online, or in any other form.**[77]

As already mentioned, associations and media providers may receive funding for their activities from public or private sources, including foreign and international funding. **"The right of associations to freely access human, material and financial resources – from domestic, foreign, and international sources – is inherent in the right to freedom of association and essential to the existence and effective operations of any association."**[78]

The European Court of Human Rights emphasized the importance of the media as a public watchdog in a democratic society.[79] In addition, where freedom of the media is at stake, the authorities have only a limited margin of appreciation to decide whether a "pressing social need" exists. The Court has repeatedly emphasized the importance of media pluralism, which the State should be the guarantor of.[80]

The Recommendation of the Committee of Ministers Rec(2018)1[1] states that any restrictions on media pluralism, including on foreign funding of the media, should be implemented non-arbitrarily and fully take into account the positive obligations of the State and the guarantees of international law.[81]

Taking into account the above-mentioned standards, the new legal regulations relating to the media should not be arbitrary and their adoption should represent a necessity in a democratic society.

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[77] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para 29.
[78] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para 35.
[79] "Public watchdog". ECtHR, OOO Informatsionnoye Agentstvo Tambov-Inform v Russia, no. 43351/12, § 84, 18 May 2021.
[80] ECtHR, Stoll v. Switzerland [GC], no. 69698/01, §105, 10 December 2007.
[81] Committee of Ministers, Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member states on media pluralism and transparency of media ownership, item 3.7 of the Annex, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13 .

• *Areas that are allowed to be regulated*

It should be noted that there are specific areas where the imposition of the obligation of "publicity" and the obligation to disclose financial information is justified at the legislative level, including by taking into account international standards.

The Venice Commission identifies "ensuring transparency in order to prevent foreign political influence" as one of the grounds for restrictions imposed on associations frequently advanced by States.[82] While seeking to prevent foreign political influence might fall under the legitimate aims of protecting the interests of national security or public safety, **the automatic presumption that any foreign funding, however limited and dispersed, equals foreign influence seems hard to sustain and is of itself insufficient to justify restrictive measures imposed on civil society organisations, online media and broadcasters.[83]**

In general, with regard to the rationality of justification for the introduction of the aforementioned legislative initiatives, as a rule, they do not indicate a **real, current or imminent, sufficiently serious threat** to national interests or democracy. In general, such initiatives should be justified by an assessment of civil society risk factors, and the assessment should document the specific involvement of civil society in the commission of a crime of the non-governmental sector, such as **corruption, terrorism financing, money laundering or related crimes.[84]**

The Venice Commission emphasized that freedom to seek, receive and use resources, including resources from foreign and international sources, belongs among the 11 guiding principles in the area of the right to freedom of association.[85] According to the Commission's assessment, "such a drastic measure, as "**public disclosure obligation**" (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of **political parties and entities formally engaging in remunerated lobbying activities."[86]**

Recommendation Rec(2007)14 of the Committee of Ministers of the Council of Europe refers to the legal status of non-governmental organizations operating in Europe, according to which, NGOs should be free to solicit and receive funding […] not only from public bodies in their

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[82] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para 63. Available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)013-e

[83] Venice Commission, Strasbourg, 21 May 2024, CDL-PI (2024)013 urgent opinion, para 63

[84] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, paras. 30; 35-36, 52; 56. Available at: https://legislationline.org/sites/default/files/2023-08/2023-07-25%20FINAL%20Note%20on%20foreign%20agents%20legislation_Georgia_ENGLISH%20%281%29.pdf

[85] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para 35.

[86] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para 31.

own state but also from institutional or individual donors, another state or multilateral agencies, subject **only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.**[87]

The European Court of Human Rights has acknowledged in principle, that the objective of increasing transparency with regard to the funding of civil society organisations may correspond to the legitimate aim of the protection of public order, it has also specifically referred to the receipt of "substantial foreign funding" in connection with identified risks of foreign involvement in some **"sensitive areas – such as elections or funding of political movements", and to the objective of preventing money laundering and terrorism financing.**[88]

In addition, the Human Rights Committee stressed that the reasons for which the authorities can restrict foreign funding **should be case-specific and evidence-based.**[89]

The above-mentioned "sensitive" areas and exceptional cases, where it is permissible to impose specific regulations in order to ensure financial transparency, are regulated by legislation of Georgia. These regulations will be reviewed in detail below.

- *Financing of political parties*

The Law of Georgia on Political Associations of Citizens defines the scope of political party regulation and issues related to the legality and transparency of the party's financial activities.[90]

It should be noted that the property of the party includes membership fees; donations; the funds allocated by the State in the cases established by law.[91] the law directly prohibits and declares inadmissible the acceptance of a donation, which is made by: a natural person without Georgian citizenship; a legal entity and/or other type of association of persons registered in Georgia or outside of Georgia, except for organizing a lecture, seminar or other similar public event free of charge; a public institution; a constituent entity of the government system of another state; anonymously.[92]

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[87] Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of nongovernmental organizations in Europe, paras. 68-71, available at: https://rm.coe.int/recommendation-of-the-committee-ofministers-to-member-states-on-the-l/1680a1f502

[88] ECHR, Ecodefence and Others v. Russia, no. 9988/13, 14 June 2022, para. 122

[89] UN Human Rights Committee, Mikhailovskaya and Volchek v. Belarus, July 2014, para. 7.3; Available at: https://documents.un.org/doc/undoc/gen/g14/147/74/pdf/g1414774.pdf

[90] Paragraph 3 of Article 1 of the Law on Political Associations of Citizens.

[91] Paragraph 1 of Article 25 of the Law on Political Associations of Citizens.

[92] Paragraph 1 of Article 26 of the Law on Political Associations of Citizens.

Information about party donations shall be public. The availability of the mentioned information shall be ensured by the Anti-Corruption Bureau, which shall update information and its accessibility every month.[93]

Submission of declarations by political parties is mandatory. Before February 1 of every year, the party shall send the previous year's financial declaration together with the audit report to the Anti-Corruption Bureau.[94] The declaration shall reflect the party's annual income[95] and expenses[96], as well as the property status.[97] The submitted declarations shall be public and available to any stakeholder.[98]

The law stipulates that if the party does not submit a financial declaration to the legal entity under public law - the Anti-Corruption Bureau - for two consecutive calendar years, the Public Registry shall cancel the registration of the mentioned party based on the request of the head of the Bureau. After the cancellation of the registration, the remaining property of the party shall be transferred to the state treasury.[99]

As mentioned, it is justified for the State to demand maximum transparency regarding foreign funding, moreover, to impose a ban in the case of political parties.[100]

In general, Recommendation Rec(2007)14 of the Committee of Ministers of the Council of Europe states that enhancing transparency and accountability is an essential component of good public governance applicable to the public sector but not to private associations, unless they are funded from public sources or performing essential democratic functions, as is the **case with political parties,** which may justify the imposition of specific reporting or disclosure requirements. **In any case, the reporting and transparency requirements that may be imposed on political parties may be justified in light of their specific role and status and should not be as such extended to apply to all associations.**

Taking into account the international standards mentioned above, the issue of financing of political parties should be strictly regulated, which is related to their special status. The Law on Political Associations of Citizens provides standard-compliant regulations, both regarding the sources of funding and the obligation to submit an annual financial declaration. But it

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[93] Paragraph 6 of Article 26 of the Law on Political Associations of Citizens.
[94] Paragraph 1 of Article 32 of the Law on Political Associations of Citizens.
[95] Amount of membership fees, amount of donations, identity of persons paying membership fees, data on entities making donations, funds allocated by the State.
[96] Expenses incurred for elections, financing of various events, wages and business trips, etc.
[97] Number and types of buildings and vehicles owned, their total value, amount of money deposited in banking institutions.
[98] Anti-Corruption Bureau, declarations, available at: https://declaration.acb.gov.ge/
[99] Article 24[1] of the Law on Political Associations of Citizens.
[100] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para. 35.

should be emphasized that the issue of financing of political parties is an exceptional field considering international standards and similar regulations should not be applied to the above-mentioned type of organizations.

• *Prevention of money laundering and terrorism*

Georgia has several laws related to the transparency of entrepreneurial and non-entrepreneurial organizations.[101]

The purpose of the Law of Georgia on Facilitating the Prevention of Money Laundering and Terrorism Financing is to create an effective legal mechanism for combating, detecting and preventing money laundering and terrorism financing, as well as the financing of proliferation of weapons of mass destruction in Georgia.[102]

According to the law, the Government of Georgia shall approve a national report and an action plan, the objectives of which shall be to identify, analyze and assess the risks of money laundering and terrorism financing at the national level and according to the relevant sectors of the economy; as well as to implement legislative, institutional and other measures necessary to ensure risk management.[103]

Article 3 of the law lists accountable persons, such as financial institutions, investment companies, audit firms, lawyers, notaries and public institutions. The mentioned persons are obliged to inspect customers, determine the basis and goals of the relevant operations and implement other preventive measures.[104] The law also defines the obligation to register and submit information.[105]

In order to take preventive measures, the law provides for the client identification and verification measures,[106] as well as the monitoring of specific relationships.[107]

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[101] Venice Commission, Strasbourg, 21 May 2024, CDL-PI(2024)013 urgent opinion, para. 25.
[102] Paragraph 1 of Article 1 of the Law on Facilitating the Prevention of Money Laundering and Terrorism Financing.
[103] Paragraph 2 of Article 5 of the Law on Facilitating the Prevention of Money Laundering and Terrorism Financing.
[104] Article 10 of the Law on Facilitating the Prevention of Money Laundering and Terrorism Financing.
[105] Article 7 of the Law on Facilitating the Prevention of Money Laundering and Terrorism Financing.
[106] Subparagraph "a" of Article 10 of the Law on Facilitating the Prevention of Money Laundering and Terrorism Financing.
[107] Subparagraph "d" of Article 10 of the Law on Facilitating the Prevention of Money Laundering and Terrorism Financing.

The law provides for the obligation to submit information. According to Article 25, accountable persons are required to report suspicious transactions to the relevant state bodies, such as the Financial Monitoring Service.

It is worth noting that the Government of Georgia, by Decree No. 1757 of October 3, 2023, approved the Assessment Report on Risks of Money Laundering and Terrorism Financing in Georgia.[108] The Appendix to the Decree describes the risk assessment factors and insurance mechanisms in detail. The mentioned measures shall be carried out by the Financial Monitoring Service of Georgia (LEPL),[109] to which reports on suspicious transactions and/or transactions above a certain amount of money shall be submitted. Preventive measures shall be implemented and reports shall be submitted, inter alia, relating to the transactions carried out by non-entrepreneurial (legal) persons and charitable organizations.

Accordingly, the mentioned law establishes mechanisms for achieving a valuable legitimate goal - prevention of money laundering and terrorism financing, reporting by institutions and organizations and implementation of various preventive measures.

In the OSCE/ODIHR report, it is noted that there may be circumstances allowing restrictions on this right, such as public order or the prevention of crimes such as corruption, embezzlement, **money-laundering or terrorism financing.**[110] But it is also specified that issues such as the prevention of money laundering or the fight against the terrorism financing **cannot justify the imposition of new reporting obligations on all associations without any specific indication of a specific threat or individual illegal activity.**[111]

Based on the above, the control of money laundering or terrorism financing is an important measure to achieve the legitimate goal of security. The Law on Facilitating the Prevention of Money Laundering and Terrorism Financing clearly prescribes the control mechanism of financial regulations. But like the political party funding, such automatic regulations and strict requirements should not apply to all types of organizations.

- *Lobbying activities*

The Law of Georgia on Lobbying Activities prescribes the procedure for registration as a lobbyist and regulates relations arising in the process of lobbying activities.[112]

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[108] Decree No. 1757 of the Government of Georgia of October 3, 2023, available at: https://matsne.gov.ge/ka/document/view/5948669?publication=1

[109] Financial Monitoring Service of Georgia, available at: https://www.fms.gov.ge/ka

[110] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, para. 52.

[111] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, para. 56.

[112] Paragraph 1 of Article 1 of the Law on Lobbying Activities.

According to the law, a "**lobbying activity**" is defined as the kind of influence of a person registered as a lobbyist (hereinafter - "lobbyist") on a representative[113] or executive body,[114] which is not prohibited by legislation of Georgia;[115] Accordingly, the main goal of lobbying activities is to implement a legislative change, to adopt a normative act or to change or reject a draft normative act.

It should be noted that the law provides for the obligation of **reporting**. Lobbyists are required to submit a monthly report on their activities, including to identify and provide the details of monetary and asset transfers related to specific lobbying.[116] It is also specified that lobbying activities shall be **public**. Any citizen of Georgia has the right to have access to the documents and reports submitted by the lobbyist to the representative body, executive body or the President of Georgia, and to make copies of them.[117]

The office of the Parliament of Georgia, the office of the supreme council of the autonomous republic, the office of the municipal council, the Administration of the President of Georgia, the Administration of the Government of Georgia maintain a **register** of lobbyists, which reflects the data stipulated by law, such as an application for registration as a lobbyist, which should indicate the first and last names, place of residence, workplace and position of the lobbyist, normative act (normative acts deriving from it), draft normative act (draft normative acts deriving from it), which the applicant is interested in passing, changing or rejecting, as well as his contact address and phone number; the register shall also include a notice on the termination of the lobbyist's legal status, indicating the form and basis of its termination.[118]

The Venice Commission recalls that "associations should not be under a general obligation to disclose the names and addresses of [their] members, since this would be incompatible with both their right to freedom of association and the right to respect for private life". It also recalls that "**such a drastic measure, as "public disclosure obligation**" (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of political parties and **entities formally engaging in remunerated lobbying activities".[119]**

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[113] Parliament of Georgia, supreme council of the autonomous republic, representative body of the municipality;
[114] President of Georgia, Government of Georgia, institution of executive authorities, executive body of the municipality;
[115] Subparagraph "a" of Article 2 of the Law on Lobbying Activities.
[116] Article 13 of the Law on Lobbying Activities.
[117] Article 14 of the Law on Lobbying Activities.
[118] Paragraph 6 of Article 5 of the Law on Lobbying Activities.
[119] Venice Commission, Strasbourg, 21 May 2024, CDL-PI (2024)013 urgent opinion, para. 79.

In summary, it should be noted that all three legislations discussed above represent special areas established by international standards, and it is necessary to ensure their financial transparency for security or other valuable legitimate goals, but as it appeared from the international standards reviewed, similar regulations should not be applied to other types of associations.

- ***Whether there was a need for passing new legislation***

Under the standard set by the European Court of Human Rights in the case of Ecodefence, when legislative changes impose new requirements on existing organizations, they must be "**necessary in a democratic society."**

When defining the standard, the Court focused on whether, taking into account the existing legal framework, the need to adopt new legislation was justified at the national level, and whether the need to adopt new legislation was substantiated by the State. The obligation to substantiate becomes especially important as the adoption of new legislation imposed an excessive financial and organizational burden on organizations.[120]

The review of the legislative framework of Georgia made it clear that the State has access to the financial information at the organizational level, and as for the part of information publicity, in this regard, it was possible to achieve the goal declared by the State with a simple modification. It should be noted that the ineffectiveness of the existing legal framework and the necessity of adopting new legislation has not been substantiated by the State.

The OSCE/ODIHR report, which is directly related to the evaluation of legislation of Georgia, analyzes two important issues. First, whether there was a demonstration of a real, true, current and sufficiently serious risk when introducing the legislative initiative and whether the State justified the ineffectiveness of the existing legislative framework.

Regarding the first, the report states that national authorities must provide relevant and sufficient reasons with concrete evidence of an imminent risk to democracy, as required by, for example, the European Court of Human Rights.[121] In addition, the European Court of Justice emphasized the need to establish "a real, present and sufficiently serious threat to the fundamental interests of society."[122] Taking into account the above requirements, in the OSCE/ODIHR assessment, the explanations of the draft legislative initiatives cannot reflect the

[120] Ecodefence and others v. Russia, no. 9988/13, § 140, 153, 159, ECHR 14 June 2022;
[121] ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 28.
[122] CJEU, Commission v. Hungary Case C-78/18, 18 June 2020, para. 91

existence of such existing or imminent serious threats and are not based on specific evidence or risk assessment.[123] Accordingly, in connection with the justification for the adoption of legislation, no real, true, current or sufficiently serious risk has been demonstrated.

And as for the justification of the ineffectiveness of the existing legal framework, according to the OSCE/ODIHR, the explanations attached to the legislative initiatives **cannot justify or reflect the shortcomings, ineffectiveness or flaws of the existing legal framework,** which would have justified the adoption of new legislation.[124] It should be noted that in the joint report of the Venice Commission and the OSCE/ODIHR on the legislative initiative of the Republic of Serbia, the public authorities justified the need to adopt the draft law by the inadequacy of the existing base,[125] while in the given case, the explanation card does not provide arguments as to why the existing reporting requirements at the legislative level are considered insufficient.

It is important for any new legislative initiative to be accompanied by a proper explanation of why the existing legal framework is insufficient and/or ineffective and how new legislation will address these inefficiencies.[126] Accordingly, the OSCE/ODIHR report explicitly states that the reasons adduced by national authorities to justify the law are generally not "**relevant and sufficient**", failing to demonstrate **why the existing legal framework and registration/reporting obligations are insufficient and/or ineffective.** They also fail to prove the adequacy of the proposed measures to achieve the set goal. The abstract assumption that all funding originating from abroad is a potential threat to national interests is incompatible with international human rights standards.[127]

In its 2021 report, the Venice Commission noted that in the explanatory documents, the authorities fail to indicate any specific threats to national security that might arise from foreign financial support for the activities of NCOs, unregistered public associations and individuals.[128] Neither do they explain how transparency concerning foreign financial support is supposed to avert these threats.[129] For this reason, the Venice Commission concluded that the legislative

[123] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, para. 36.
[124] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, para. 37.
[125] ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 30.
[126] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, para. 39.
[127] OSCE/ODIHR, 25 July 2023, Opinion-Nr.: NGO-GEO/465/2023, paras. 30, 36, 38-40; 59-60.
[128] Venice Commission, Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting "foreign agents", CDLAD (2021)027, para. 43.
[129] Ibid, para. 43

framework adopted by the Russian Foreign Agents Law served no legitimate purpose and could not justify the need to adopt new legislation.

Taking into account the abovementioned reasoning, when adopting the Law on Transparency of Foreign Influence, it was not substantiated whether there was a real, true, current or sufficiently serious risk, and the State failed to substantiate the ineffectiveness of the existing legal framework. Considering the reasoning mentioned above, the adoption of new legal regulations was not necessary in a democratic society.

IV. The volume of the financial declaration and access to data within the framework of the monitoring

The volume, content and category of information to be indicated in the financial declaration are problematic, as well as the broad authority to access personal data in organizations within the framework of the monitoring. Accordingly, we will review each issue separately in the following subchapters.

1) Whether the volume of information to be indicated in the declaration and the disclosure of personal data are necessary in a democratic society

In accordance with paragraph 4 of Article 4 and Article 6 of the Law of Georgia on Transparency of Foreign Influence, organizations are obliged to submit an annual declaration detailing the source, amount and purpose of any money received and spent, other material benefits of property value.

On the other hand, Order No. 1019 of the Minister of Justice of Georgia of August 1, 2024 approved the Rules for the Production of the Register of Organizations Pursuing the Interests of a Foreign Power, Submission of Declarations and Monitoring, which established the form of the financial declaration (Appendices No. 1.1-No. 1.12 to the said order). Declarations in the mentioned form shall be submitted to the register and publicly posted on the website.[130]

The declaration form is very voluminous and information provided in it is detailed and numerous. In addition, it contains personal data, the disclosure of which is not a useful means of transparency of the organization's finances.

[130] Paragraph 3 of Article 5 of the Rules for the Production of the Register of Organizations Pursuing the Interests of a Foreign Power, Submission of Declarations and Monitoring, approved by Order №1019 of the Minister of Justice of 1 August 2024.

Although the organization specifies detailed information on foreign funding in Appendix 1.1 to the Declaration, it is also required in Appendices 1.2-1.12 to disclose other types of extensive information, including personal data of individuals in various legal relationships with it.

For clarity, below is the list of information requested by the Appendices No. 1.1-1.12:

- *In Appendix No. 1.1, the organization must indicate the percentage of the total income received during the calendar year, the source of which is a foreign power. The date of the receipt of income, form of income, type of income,[131] type of the agreement,[132] purpose of the receipt of income, amount received in cash and non-cash form/market price of the object (in GEL),[133] name and surname of a natural person/name of a legal entity, body of state authorities, organizational entity, association of persons, [134] personal number or identification number of the source of income, the country of the source of income, type of the source of income,[135] the bank account number of the source of income, financial institution of the source of income, bank account number of the recipient of income, financial institution of the recipient of income, description of movable/immovable property.[136]*

  - *In Appendix No. 1.2, the organization must describe in detail information about the expenses incurred during the year, make a detailed list of expenses incurred in cash and non-cash form: labour remuneration (salaries, bonuses/supplements/other payments); goods and services (business trips within the country and outside the country, (in the case of business trips, the destination, place, period (in days) of the business trip should be additionally indicated in the purpose of expenses). Office expenses - expenses for the purchase, installation and maintenance of office equipment, inventory, stationery, office furniture, expenses of the repairs of premises, expenses of communications, postal services, utility expenses, electricity, water, natural and liquefied gas expenses, other utility expenses, office expenses that are not classified, food expenses, medical expenses, transportation and equipment operation and maintenance expenses, fuel and lubricant expenses, ongoing*

[131] The type of income (monetary amount, immovable property, movable property) shall be indicated in accordance with Article 2 of the Law of Georgia on Transparency of Foreign Influence;

[132] Data on the type of an agreement, by which the author of the application received an income (grant, credit, donation, membership fee, purchase, gift, lease, etc.) shall be indicated;

[133] In case of receiving an income in foreign currency, the amount should be indicated or the market price should be indicated according to the official exchange rate of the National Bank of Georgia on the day of the receipt of income;

[134] Data on the name, surname or title of the relevant source of income (natural person, legal person, constituent entity of the foreign government system or of an organizational formation founded on the basis of the foreign state law/international law (including foundation, association, corporation, union, other type of organization) or other type of association of persons);

[135] The source of income shall be indicated in accordance with Article 3 of the Law of Georgia on Transparency of Foreign Influence;

[136] Detailed information about the immovable property received as an income shall be specified (cadastral code, address, area, type, manufacturer, specifications, quantity, etc.);

repair expenses, bank service expenses, advertising expenses,[137] *TV advertising expenses, print advertising expenses, Internet advertising expenses, branded accessory advertising expenses, outdoor advertising expenses,* [138] *other advertising expenses, expenses for organizing sessions, conferences, meetings, seminars and other working meetings, expenses of consulting, notary, interpretation and translation services, expenses of audit services, expenses of the protection of security of buildings and structures, lease expenses - expenses for real estate/motor vehicles/other movable property. Cultural, sports, educational and exhibition events, other goods and services. Transfer of tangible and intangible assets to individuals - accessories of small value (t-shirts, caps, hats, flags, etc.), charitable activities, other valuables, expenses incurred for support activities, social security, other expenses, insurance expenses, taxes (except for income taxes and VAT indicated in the cost of goods), fees, various expenses, loss from exchange rate differences, increase in non-financial assets, buildings - construction in progress, land, vehicles, other machines and equipment, other fixed assets, other material stocks, other financial assets growth, decrease in liabilities, repayment of loans received from commercial banks, repayment of other loans, consumption of fixed capital. In relation to each listed expense, recipient's name, surname/title, legal form, **personal number**/identification number, **bank account number, financial institution**, as well as the bank account number of the person making the expense, financial institution of the person making the expense, actual expense, cash expense, income tax withheld at the source of payment, date of the expense incurred, **purpose of expenses** should be indicated. In relation to the purpose of the expenses, it is explained in the appendix that "information about the purpose of the expenses must be shown specifically, in detail with respect to each/any amount of money spent. For example: 1. In the case of the amount spent for the service, the type of service, a brief description, the subject of the contract should be indicated; 2. In the case of money spent on sessions, conferences, congresses, seminars and other work meetings, the specific purpose and topic of the event should be indicated."*

- *In Appendix No. 1.3, the organization must describe in detail the balance at the beginning and end of the period, detailed information about the complete assets, in particular: financial assets and other debits - cash in national currency, cash in foreign currency, settlement (current) account in the bank, foreign currency account in the bank, deposits in the bank in national currency, deposits in the bank in foreign currency, other accounts in the bank, other financial assets, receivables from supplies and services, receivables related to business trips, receivables with deficits, other receivables towards accountable persons, paid VAT, prepaid profit tax, other tax assets, rents paid in advance, receivables with other prepayments, interest receivable, dividends receivable, memberships and one-time fees receivable, other receivables. Total non-financial assets - buildings, machines and*

[137] In the case of advertising, the purpose of expenses shall indicate the performing company/person, ID number, the person that ordered the advertisement, circulation/duration, area (in the case of print or online advertising), advertised subject, unit type (sq.m; min...), cost (GEL);

[138] Billboards, light boxes, screens installed on the street, advertisements on vehicles, etc;

equipment, other fixed assets, construction in progress, other fixed assets, other tangible stocks, valuables, non-produced assets, as well as detailed information about liabilities and capital, in particular total financial liabilities and other creditor debts - financial liabilities, liabilities from supplies and services, profit taxes payable, income taxes payable, VAT payable, other obligations in relation to the budget, full-time employees' salaries payable, freelancers' salaries payable, liabilities related to business trips, social assistance liabilities provided by the employer in the form of cash and goods, money withheld in accordance with the decisions of the court and/or administrative bodies or other money withheld, rents received in advance, liabilities with other income received in advance, interest payable, membership and one-time fees payable, other creditor debts. Information about the capital - authorized capital, funds, uncovered deficit. The fixed assets taken under operating lease and their related costs, tangible assets received for safekeeping, written-off debts of insolvent debtors, written-off inventories, conditional demands, conditional liabilities, creation of capital with own funds, depreciated fixed assets, and overdue debts should also be indicated.

- *In Appendix No. 1.4, the organization must indicate information about the bank account - name of the bank, account number, currency, account opening date, balance at the beginning of the period, income during the period, expenditure during the period, balance at the end of the period, date of closing the account.*
- *In Appendix No. 1.5, the organization must indicate information about cash operations - transaction N, date of operation, cash income in GEL, cash expenditure in GEL, currency, purpose of operation, balance.*
- *In Appendix No. 1.6, the organization must indicate information on non-financial assets - fixed assets - buildings, residential buildings, non-residential buildings, other buildings, machinery and equipment, vehicles, other machinery and equipment, other fixed assets - cultivated assets, intangible fixed assets, licenses, other intangible fixed assets, unfinished construction, other fixed assets - material stocks, raw and other materials, unfinished production, finished products, goods purchased for further sale, cash documents, spare parts, other material stocks, valuables, jewelry and metals, works of art, other valuables, non-produced assets, land, minerals, other natural assets, license to use radio frequency spectrum, other natural assets, non-produced intangible assets.*
- *In Appendix No. 1.7, the organization must provide the description of real estate. Land plot (designation, category), type of buildings, legal address, cadastral code, area m2, book value, property registration date, description.*
- *In Appendix No. 1.8, the type of vehicle, make, model, year of production, state number, book value, property registration date, description must be provided.*
- *Description of other leased/rented movable property shall be indicated in Appendix No. 1.9. Type of the leased object, technical characteristics, monthly lease payment (in GEL), personal number of the lessee (natural person), name of the lessee, last name of the lessee, identification number of the lessee organization, name of the lessee organization.*

- *Appendix No. 1.10 refers to the description of liabilities - the date of signing the contract, name of the counterparty (legal entity)/name, surname (natural person), identification number/personal number of the counterparty, subject of the contract, amount of the contract (in GEL), value of the goods/services provided (in GEL), amount of money paid to the counterparty (in GEL), balance of liabilities (in GEL) at the end of the reporting period.*
- *In Appendix No. 1.11, information about loans/credits must be indicated. Date of the loan, lending bank, loan type, currency, loan amount, loan term (number of months), contractual annual interest rate, loan repayment terms, loan security, surety (yes/no), name, surname/title of the guarantor (natural/legal).*

It should be noted that the processing of information of this volume and the reflection of detailed information in appropriate forms represent an additional burden and expense for the time and resources of organizations. Because of this, the resources directed at the main activities of organizations with limited resources will be significantly reduced. Employees of organizations with foreign funding will spend much more time resources to fulfill obligations imposed by the State than other non-profit organizations. And for those organizations that are served by outsource companies on the basis of a service contract, the cost of this additional service will increase. Organizations with small budgets may not have the financial ability to pay for such services. Accordingly, the mentioned costs represent an additional burden for organizations with limited resources. There is also the constant risk of quite high fines in the form of legal liability, even for minor delays or superficial inaccuracies in the declarations.

The Venice Commission noted that reporting obligations must not be designed in such a way as to become a true burden on the relevant entity and prevent it in engaging in other activities.[139] "The required level of detail and the existence of unrealistically short and strict deadlines for submitting the information are other examples of onerous reporting obligations."[140] Secondly, the cumulative effect of all reporting obligations (the standard ones and the additional ones) also has to be considered to determine whether the legal regulation "is likely to create an environment of excessive state monitoring over the activities of NGOs, which could hardly be conducive to the effective enjoyment of freedom of association."[141] Not only may the reporting obligations contemplated by the law impose a significant financial and organisational burden on the organisations and their staff and undermine their capacity to engage in their core activities, but it is also unclear how such new requirements contribute to

[139] Urgent Opinion on the Law on Transparency of Foreign Influence, European Commission for Democracy through Law, CDL-PI(2024)013, Strasbourg, 21 May 2024, para. 83;
[140] CDL-AD(2019)002, Report on Funding of Associations, para. 110;
[141] CDL-AD(2019)002, Report on Funding of Associations, para. 111;

more transparent and complete information to the public, which is the alleged aim of the law, let alone serving a legitimate aim from the perspective of international standards.[142]

Accordingly, processing this volume of information and filling out the relevant form will **impose a significant and excessive financial and administrative burden on organizations and their staff, which in turn will weaken their ability to continue to effectively carry out their core activities.**

However, the most important thing is that in the **declaration, which shall be made public, it is mandatory to indicate the personal data of individuals in various legal relationships with the organization**. In particular, **personal data of persons employed in the organization**, such as first name, last name, personal number, amount of salary, bonus/supplement, bank account number, data on persons who went on business trips (see Appendix 1.2). If the organization leased/rented movable property, the name, surname, personal number of the lessee. In addition, personal number, first name, last name, and other personal data of the counterparty. In case of a loan, the identity of the guarantor. If the donor is a natural person, his personal number and bank account number shall also be published.

Publication of the said personal data does not constitute a means of achieving the declared goal of the law. Publication of personal data of employees cannot be related to the transparency of finances of the organization, since the goal of transparency of finances can be achieved without the disclosure of personal information listed above.

Disclosure of the mentioned data will be an obstacle for individuals to continue their activities or be employed in these organizations. Since their interest as data subjects to have their **personal data protected and not made public is neglected.** Consequently, this will be an additional impediment for organizations to attract, hire and retain staff to effectively carry out the activities they had been previously serving.

The Venice Commission noted in its report that the collection and publication of personal data in the registry of "foreign agent" individuals and entities amount to an infringement on the right to privacy of these individuals and entities, which cannot be justified as it does not seem to serve any legitimate aim. The Venice Commission also notes that due to the stigmatising nature of the "foreign agent" designation, the public register will likely tarnish the reputation of entities and individuals and seriously hamper their activities.[143]

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[142] Urgent Opinion on the Law on Transparency of Foreign Influence, European Commission for Democracy through Law, CDL-PI(2024)013, Strasbourg, 21 May 2024, para. 84;

[143] Venice Commission, Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting "foreign agents", CDLAD(2021)027, para. 62;

As we have already mentioned, the register is publicly available, like the application submitted by the entity, statements provided for in Article 4 of the law, the entity's charter or other founding documents, as well as the data on this entity provided for in the appendices, which shall also include a complete list of the entity's members and the list of financiers (internal or foreign). According to Article 5 of the law, the most sensitive documents of the organization are subject to publicity. As the Venice Commission points out in its 2024 report, **this could threaten the very existence of organisations of human rights defenders or media organisations covering, for instance, corruption**. Few would be willing or able to provide detailed documents that could lead their members, or the members of organisations that support them, to be identified and thereby subject to public stigma and harassment.[144]

The Venice Commission recalls that "associations should not be under a general obligation to disclose the names and addresses of [their] members, since this would be incompatible with both their right to freedom of association and the right to respect for private life."[145] It also recalls that "such a drastic measure, as "public disclosure obligation" (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of political parties and entities formally engaging in remunerated lobbying activities".[146] Thus, the more extensive the disclosure obligations are under the law, the more difficult it is in principle for the Georgian authorities to justify the necessity of such measures in light of the right to freedom of association, and the right to private and family life, encompassing the protection of personal data.[147]

In the context of personal data protection, the risk of violating the confidentiality of information about asylum seekers should also be emphasized. In particular, as it became known to the Public Defender's Office, non-governmental organizations in Georgia employ people who are persecuted in their own country because of their political views and are seeking asylum in Georgia. According to the legislation, the employer organization will be obliged to make their personal information public, and among them, to identify their whereabouts in a specific period of time (for example, when reflecting information about business trips).

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[144] Urgent Opinion on the Law on Transparency of Foreign Influence, European Commission for Democracy through Law, CDL-PI(2024)013, Strasbourg, 21 May 2024, para.78;

[145] CDL-AD(2019)002, Report on Funding of Associations, para. 167;

[146] CDL-AD(2014)046, Joint Guidelines on Freedom of Association, para. 165;

[147] As mentioned in the Report on Funding of Assocaitions, "Public disclosure obligations of receipt of foreign funding were often designed to subject associations receiving such funding to public opprobrium and to increase the difficulties for the organizations in achieving their intended work". CDL-AD(2019)002, Report on Funding of Assocaitions, para. 85;

According to paragraph 3 of Article 33 of the Constitution of Georgia, in accordance with the generally recognized norms of international law, Georgia provides asylum to citizens of other states and stateless persons in accordance with the rules established by law. An integral part of the right to asylum is the principle of confidentiality, which implies the confidentiality of information about asylum seekers and internationally protected persons, their application for international protection and other information, and non-disclosure of these data to other organizations, mass media, state agencies and citizens of the country of origin, as well as citizens of Georgia and stateless persons who have status in Georgia.[148] This principle can be considered a guarantee of safety for asylum seekers and internationally protected persons in Georgia. Asylum seekers and internationally protected persons have an expectation that their whereabouts, activities and other personal information will not be disclosed to the country of origin, which guarantees their safety. Disclosing the personal data of such individuals additionally sets a dangerous precedent in terms of violation of confidentiality, since this may make information about them public and available to the country from which they were persecuted.

2) Broad powers of access to personal data within the framework of the monitoring

The law determines the authority of a person designated by the Ministry of Justice of Georgia to search for the necessary information, including **special category data**, other **personal data** and **secret information** referred to in subparagraph "b" of Article 3 of the Law of Georgia on Personal Data Protection (except for state secrets provided for by legislation of Georgia). All those persons, bodies, organizations, institutions, which are requested by the person authorized by the Ministry of Justice of Georgia to submit this information, are obliged to immediately submit the mentioned information.

The law establishes such an authority for the purpose of examination and study of the application submitted to the agency,[149] the annual financial declaration,[150] the application for the cancellation of the registration of the entity registered as an organization pursuing the interests of a foreign power,[151] for the purpose of identifying the organization pursuing the interests of a foreign power or for the purpose of checking the fulfillment of any of the requirements of this law.[152]

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[148] Paragraph 1 of Article 5 of the Law of Georgia on International Protection;
[149] Paragraph 4 of Article 4 of the Law of Georgia on Transparency of Foreign Influence;
[150] Paragraph 1 of Article 6 of the Law of Georgia on Transparency of Foreign Influence;
[151] Paragraph 1 of Article 7 of the Law of Georgia on Transparency of Foreign Influence;
[152] Paragraph 3 of Article 8 of the Law of Georgia on Transparency of Foreign Influence;

Special categories of personal data are data related to a natural **person's race or ethnicity, political views, religious, philosophical or other beliefs, membership of a trade union, health, sex life**, the status of an accused, convicted, acquitted person or a victim in criminal proceedings, **conviction, criminal record, diversion**, **recognition as a victim** of human trafficking, as well as recognition as a victim, imprisonment and execution of a sentence against him for a crime provided for in the Law of Georgia on the Elimination of Violence against Women and/or Domestic Violence and the Protection and Support of Victims of Violence, as well as biometric and genetic data that are to be processed for the unique identification purposes of a natural person.[153]

Thus, the law grants the monitoring body the right to search for "necessary" information in organizations for the purpose of verification, including special categories of personal data, thereby setting wide scope for the monitoring body in terms of access to information.

The monitoring body is professionally interested in possessing as much information as possible, therefore the establishment of broad grounds by the law and access to a wide range of personal data **immeasurably increases the temptation and risks for unwarranted and unjustified interference with the right.**

Granting such broad powers and the possibility of access to large volumes of information also creates a factor of mistrust and will have a chilling effect on the beneficiaries of non-governmental organizations and media sources, in terms of making their personal data and special category data about them available to the state structures.

In addition, Article 8 of the law provides for the grounds for starting monitoring. In particular, the Ministry of Justice of Georgia is authorized to carry out appropriate research and study of the issue/monitoring at any time, in order to identify the organization pursuing the interests of a foreign power or to check the fulfillment of any of the requirements of the law. The grounds for starting monitoring may be: a) **the decision of the relevant authorized person** of the Ministry of Justice of Georgia; b) a written statement submitted to the Ministry of Justice of Georgia, which contains **appropriate information** related to the specific organization pursuing the interests of a foreign power.[154] It is allowed to monitor an organization **once every 6 months**.[155]

Thus, the law does not define any criterion, justification standard, which must be met by the decision of the authorized person, or the written statement submitted to the Ministry, as

[153] Subparagraph "b" of Article 3 of the Law of Georgia on Personal Data Protection;
[154] Paragraph 2 of Article 8 of the Law of Georgia on Transparency of Foreign Influence;
[155] Paragraph 4 of Article 8 of the Law of Georgia on Transparency of Foreign Influence;

grounds for the monitoring. Accordingly, **the monitoring mechanism can be activated in any case, regardless of whether there is an objective need for it or not.**

The Venice Commission recalls that the first guiding principle identified in the Joint Guidelines on Freedom of Association enshrines the presumption in favour of the lawful formation, objectives, and activities of associations.[156] The law seems to start from a very different standpoint, that of general mistrust towards legal entities and broadcasters. Article 8 of the law may easily be turned into a tool of harassment, through which anyone might, repeatedly, denounce certain entities, for instance their competitions and ask that these entities be monitored as often as twice a year. There is no doubt that such repeated monitoring may make the life of the entities quite difficult, both because it would require their cooperation, thus imposing additional obligations on them, and because it would undoubtedly have a negative effect on their reputation.[157] Moreover, as is the case in the course of registration and deregistration, the Ministry of Justice enjoys a broad discretion when carrying out "appropriate research and study". The Ministry also again has the right to seek the necessary information, including personal data. The comments applicable to this regulation made above are fully applicable here as well and the Commission considers the breadth of discretion in such a sensitive context to be incompatible with international standards.[158]

Apart from the mentioned, the law does not define the monitoring period, the maximum period of time during which the monitoring may continue in the organization. It is also not specified within what scopes monitoring can be carried out, whether the Ministry may conduct monitoring regarding the information of previous years.

Under such conditions, it becomes possible to conduct monitoring for an indefinite period, within the framework of verification of indefinite information.

The arbitrary nature of such a regulation is also indicated by the fact that similar requirements do not apply to other non-profit or commercial organizations, despite the fact that their budget may significantly exceed the financing of the organizations addressed by the law or their activities may be directly related to the pursuit of the interests of a foreign power.

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[156] CDL-AD(2014)046, Joint Guidelines on Freedom of Association, para. 26;

[157] Urgent Opinion on the Law on Transparency of Foreign Influence, European Commission for Democracy through Law, CDL-PI(2024)013, Strasbourg, 21 May 2024, para. 86;

[158] Urgent Opinion on the Law on Transparency of Foreign Influence, European Commission for Democracy through Law, CDL-PI(2024)013, Strasbourg, 21 May 2024, para. 87;

Summery

Based on all of the above, we believe that separating a certain group of organizations and giving them a new status by the regulations established by the Law of Georgia on Transparency of Foreign Influence leads to stigmatization of organizations due to foreign funding and hinders their activities. The mentioned does not represent a necessary means of achieving the declared goal, raises the possibility of broad interpretation of the regulations and does not meet the requirements of "the definiteness of the law". In addition, the monitoring mechanism, including access to personal data, creates a high risk of arbitrariness on the part of the State. Imposing additional reporting requirements will place a significant and excessive organizational burden on organizations and their staff, significantly hampering their ability to effectively carry out their core activities. Therefore, the additional requirements stipulated by the legislation are not necessary in a democratic society or proportionate to the declared legitimate goals.