

LAW ON AGENTS OF FOREIGN INFLUENCE: EUROPEAN PRACTICE AND GEORGIA



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Main Findings

- The So-called Law on Foreign Agents is incompatible with the European Union legal system and values. There is no legislation in any country of the EU that assigns the status of "foreign agent" to non-governmental organizations.
- According to the European Court of Justice, the so-called Foreign Agents Law (Hungary) violates Article 63 of the Treaty on the Functioning of the European Union (free movement of capital) and Article 12 of the Charter of Fundamental Rights of the European Union (freedom of association).
- Furthermore, the decision of ECJ and the infringement procedure launched by the European Commission to enforce it forced Hungary to abolish the mandatory registration and attach NGOs such a label.
- According to the European Court of Human Rights, the so-called Foreign Agents Law (of the Russian Federation) violates Article 11 of the European Convention on Human Rights, which protects freedom of association.
- The European courts have found it particularly problematic to assign the label of "foreign agent" to non-governmental organizations and to oblige them to register.
- Not only the adoption of the so-called Law on Foreign Agents, but even the serious parliamentary debates on this issue significantly harms the process of Georgia's integration into the European Union.
- The adoption of the so-called Law on Foreign Agents will directly put at risk the fulfillment of the 10th priority defined by the European Union.

1. The path taken by the members of the parliamentary majority before the so-called "Foreign Agents" draft law

During the last months, especially after Georgia was denied the status of a candidate for the European Union, the hostile attitude towards the non-governmental sector has significantly strengthened. In order to discredit the civil sector, accusations of various contents are spread. The authors are mainly members of the parliamentary majority and persons close to the ruling party, who actively use various methods of achieving the goal and traditional or non-traditional forms of communication with the public.

The course of the campaign to discredit the civil sector gradually approached the logical stage of instrumentalisation of the law. From September 12, 2022, the ruling party, in the background of active informational support, initiated the discussion on the transparency of the finances of civil sector organizations.¹ In one-sided discussion, the term "agents" soon began to be used, the activities of non-governmental organizations were linked to "a natural threat to the sovereignty of Georgia" and the call for the "necessity of regulating the civil sector with a strict legal framework" was made.² It is noteworthy that the mentioned statement was made in the background of the discussion on the decline of democracy in Georgia held in the Committee on Foreign Relations of the United States of America.³ At the end of 2022, on December 29, the members of the parliamentary majority (representatives of the "People's Power") at a specially held briefing announced that they would initiate the so-called Law on Foreign Agents in January 2023.⁴ According to their own statement, the draft law was prepared based on the best Western practices, including the US.

On February 14, 2023, the members of the parliamentary majority held a briefing again and informed the public that they initiated the so-called draft law on foreign agents (the draft law "On transparency of foreign influence").⁵

Mikheil Sarjveladze, the representative of the ruling party, the chairman of the human rights committee, responded to the briefing and noted that "the public has the right to see who is

¹ Chairman of the Georgian Dream faction, Mamuka Mdinardze - "The money with which non-governmental organizations are financed is used to plan the campaign of the "Technical Government" - the public should know from where the "NGOs" are financed", (September 12, 2022) <https://bit.ly/3Xhk6Hw>

Chairman of the Georgian Dream, Irakli Kobakhidze - "The financial income of several large non-governmental organizations raises questions", (September 13, 2022) <https://bit.ly/3ITLret>

² Statement of members of the parliamentary majority - "People's Power" (November 18, 2022) <https://civil.ge/archives/515348>

³ civil.ge, "The US Foreign Relations Committee talks about democratic backsliding in Georgia", (November 17, 2022) <https://civil.ge/archives/515196>

⁴ According to the "People's Power" draft law, a register of agents of foreign influence will be created, in which registration will be mandatory for all "NGOs" and entities that are financed from foreign sources <https://bit.ly/3CXJTMR>

⁵ Statement of the public movement "People's Power" <https://bit.ly/3HZhuHZ>

financed, how they are financed, with what funds they carry out their activities, therefore, the initiative implies that this space should also be subject to similar regulations."⁶

The draft law has not been submitted yet, but the initiators have disclosed some key details regarding the content of the draft law. Creation of the register of agents of foreign influence is one of the Critically important aspects, amongst others. It should be noted that neither the idea of fighting against the civil sector is innovative nor is the method chosen by the members of the parliamentary majority (the so-called "People's Power"). It is with a similar narrative and based on legitimate goals, including US practice, that Russia and Hungary justified the Adoption of the so-called Foreign Agents Law.

The abovementioned allows us to research the attitude of European institutions towards the civil organizations being referred to as so-called "agents of foreign influence". It is distinguishing that tackling the polarization in the country and the involvement of the civil society in decision-making processes at all levels are among the 12 priorities for obtaining the EU candidate status. Therefore, it is important to evaluate the impact of adoption of this draft law on the current process of the implementation of EU priorities.

2. Who is the initiator of the draft law?

The initiators of the draft law are the so-called "People's Power" deputies. "People's Power" is a so-called public movement founded by the deputies who left the ruling party. The members of "People's Power"⁷ are the deputies nominated under the "Georgian Dream" party list, who together with the members of the "Georgian Dream" faction **form the parliamentary majority**.

The history of the so-called "People's Power" began on June 28, 2022, when three deputies left the "Georgian Dream".⁸ They specified that the reason for leaving was not incompatibility with the views of the ruling party, or disagreements regarding the domestic or foreign policy of the country, but rather "to provide more information to the public".⁹ Deputies who left the "Georgian Dream" clearly stated from the beginning that they "have no differences with the values" of the ruling party.¹⁰

⁶ The public has the right to see who is financed and how - Sarjveladze on the draft law of "People's Power" <https://bit.ly/3InYlHm>

⁷ Sozar Subari, Dimitri Khundadze, Mikheil Kavelashvili, Guram Macharashvili, Zaal Mikeladze, Eka Sefashvili, Victor Japaridze, Davit Kacharava and Dachi Beraya.

⁸ "Sozar Subari, Mikheil Kavelashvili and Dimitri Khundadze are leaving "Georgian Dream" <https://bit.ly/3I079LD>.

⁹ Mikheil Kavelashvili - we are able to provide more information to the public so as not to damage the "Georgian Dream" <https://bit.ly/415qFzk>.

¹⁰ Dimitri Khundadze - we do not have any differences in values with "Georgian Dream", we agree on practically all topics, except for one, how much truth should be delivered to society <https://bit.ly/3IJoeBH>.

On July 28, 2022, another member of the parliament joined the deputies who left the "Georgian Dream".¹¹ And on August 2, 2022, they founded the so-called public movement - "people's power".¹² With its public statements, "people's power" accused Georgia's European and Euro-Atlantic partners of "opening a second front", organizing a revolution and undermining the country's sovereignty.¹³

On October 4, 2022, 5 more deputies who left the ruling party joined "People's Power".¹⁴ It should be noted that all nine deputies acting in the name of "people's power" are nominated under the "Georgian Dream" list and together with the Georgian Dream deputies, they form the parliamentary majority.

So called "People's Power" is neither a political party established under of the Organic Law of Georgia "On Political Unions of Citizens" nor a parliamentary entity regulated by the Rules of Procedure of The Parliament of Georgia. Furthermore, it does not have any legal form - it is not even registered as a non-entrepreneurial (non-commercial) legal entity. "People's Power" refers to itself as a "public movement", however, such a legal status is not provided for by Georgian legislation. Hence, "people's power" as a legal entity does not exist as such and the only way its members can be identified is **the members of the parliamentary majority**.

It should be noted that the current version of the Rules of Procedure of the Parliament of Georgia does not allow the members of the parliament elected by the nomination of one political party to create a political group, if the members of the parliament elected by the nomination of the same political party have created a faction. Since "Georgian Dream" exists as a faction, "people's power" was not able to create a political group in the parliament. A draft law initiated on February 8, 2023,¹⁵ aimed at amending the Parliament's Rules of Procedure, will remove the current restriction and allow "people's power" to form a political group. However, the chairman of the ruling party noted that if the public movement "people's power" creates a political group in the parliament, **they will still remain in the majority**.¹⁶

¹¹ Guram Macharashvili leaves "Georgian Dream" and joins Subari-Khundadze-Kavelashvili group <https://bit.ly/3XvYw1k>

¹² <https://bit.ly/3jPTUFz>

¹³ <https://bit.ly/3YtEBBv>

¹⁴ 5 more deputies of "Georgian Dream": Zaal Mikeladze, Eka Sefashvili, Davit Kacharava, Viktor Japaridze and Dachi Beraya are leaving and joining the so-called group of the four <https://bit.ly/3RWasbo>

¹⁵ <https://parliament.ge/legislation/25756>

¹⁶ <https://bit.ly/3l2fbnc>

3. FARA “Foreign Agents Registration Act” in America: Context and Jurisdiction

In the process of adopting laws on so-called "foreign agents" in order to discredit civil society, as the experience of other countries show, reference is often made to the US model - the "Foreign Agents Registration Act" (hereinafter - FARA).¹⁷ FARA was adopted by the US congress in 1938, in response to nazi and communist propaganda during the 1930's. The law was passed before the World War II period, where the state needed broad powers to combat propaganda. Under FARA requirements, any person or entity must register as a foreign agent if it conducts business under foreign control and engages in political or other related activities.¹⁸ In recent years, many countries have adopted the so-called Law on "Foreign Agents". The "domino effect" of adopting laws is worth mentioning. Russia was one of the first to adopt the law in 2012. Since then, a number of countries - including China, Azerbaijan, Mexico, Pakistan, Sudan, Uzbekistan and Hungary - have developed similar restrictions. It is noteworthy that the laws on "foreign agents" in different countries are very similar in content, in fact, identical.¹⁹ Non-democratic regimes manipulate valuable legitimate interests and populist methods, including by giving CSO's the label of "agent" they try to discredit civil society and the non-governmental sector in general. It is important to note that the so-called EU member states do not have the law regulating foreign agents. Hungary's attempt to establish a similar precedent ended in failure.

Georgia is a country that is a member of the Council of Europe, it has declared its will to become a member of the EU and has to accomplish priorities defined by the European Union. Therefore, for Georgia, as the country moving towards European space it is of crucial importance to rely on European standards. This standard is obvious - none of the EU countries' legislation refers to NGOs as "agents of foreign influence".

¹⁷ "Foreign Agents Registration Act", <https://bit.ly/3vWteFr>

¹⁸ FARA in Focus: What can Russia's Foreign Agent Law tell us about America's? Samuel Rebo. JOURNAL OF NATIONAL SECURITY LAW & POLICY. p.292

¹⁹ The "Foreign Agent Problem": An International Legal Solution to Domestic Restrictions on Non-Governmental Organizations <https://bit.ly/3k7kCJi> .

4. The attitude of the European Union and the Council of Europe to the so-called laws on foreign agents

4.1 The adoption of the so-called law on foreign agents by Russia and Hungary

The clearest example, when "foreign agents" legislation restricts civil society, is the case of Russia and Hungary. A law came into force in Russia in 2012, by which non-governmental organizations engaged in "political activity" and receiving funding from abroad must be registered as "foreign agents". Failure to comply with the provisions results in fines, imprisonment and other sanctions.²⁰ In Russia, "foreign agent" carries a stigmatizing label and is associated with "spy". Consequently, many non-governmental organizations have closed down, or have chosen to stop receiving foreign funding and, thus, dramatically limited their activities.²¹ **With regard to harsh criticism, the Russian government argued that the law was enacted to achieve the same goals as FARA.**²² Similarly, in Hungary, in 2017, the law "On Transparency of Foreign Funded Organizations" was adopted. In response to the criticism of the US State Department, Hungary also referred to FARA, noting that the US uses double standards.²³

Both Russian and Hungarian laws have been repeatedly criticized in international forums. In 2014, the Venice Commission²⁴ noted that Russian law violates freedom of association. According to the Venice Commission, registration as "foreign agents" of those organizations that receive foreign funding cannot be deemed to be necessary in a democratic society for ensuring transparency and this practice unfairly causes suspicion and distrust of the public towards these organizations. Similarly, in 2017, the Venice Commission noted²⁵ that Hungary's draft law "On the Transparency of Organisations receiving support from abroad" raises questions regarding Article 14 of the European Convention on Human Rights.

²⁰ Федеральный закон "О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента" от 20.07.2012 N 121-ФЗ <https://bit.ly/3CJyUpY>

²¹ "FOREIGN AGENTS" IN AN INTERCONNECTED WORLD: FARA AND THE WEAPONIZATION OF TRANSPARENCY. Nick Robinson 2020. DUKE LAW JOURNAL - p.1087

²² Id. - p.1087

²³ Hungary rejects US criticism of law on foreign-funded NGOs <https://bit.ly/3QPfzJY> .

²⁴ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) OPINION ON FEDERAL LAW N. 121-FZ ON NON-COMMERCIAL ORGANISATIONS ("LAW ON FOREIGN AGENTS"), ON FEDERAL LAWS N. 18-FZ and N. 147-FZ AND ON FEDERAL LAW N. 190-FZ ON MAKING AMENDMENTS TO THE CRIMINAL CODE ("LAW ON TREASON") OF THE RUSSIAN FEDERATION (Strasbourg, 27 June 2014) <https://bit.ly/3GW4ovA> .

²⁵ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) HUNGARY PRELIMINARY OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD (Strasbourg, 2 June 2017) <https://bit.ly/3VYRnWs> .

The experience of Hungary and Russia shows that while adopting laws on "foreign agents" references are made to the need for "transparency and accountability". The cases of Russia and Hungary also show that laws establishing "transparency" requirements have not led to the achievement of the declared legitimate goal, but have weakened the impartial civil society organizations monitoring the government and had a "chilling effect" on their activities in the field of human rights and strengthening of democracy.

4.2 Standard of Council of Europe: ECHR judgment ECODEFENCE and others v. Russia

In 2012, in response to mass protests in the country, Russia adopted the law "On Foreign Agents". The law labeled any non-governmental organization receiving foreign funding as a "foreign agent". According to the decision of the Constitutional Court of Russia in 2014, the norms of the law were considered to be in accordance with the Constitution.²⁶ The entry into force of the law on "Foreign Agents" soon led to the marginalization of non-governmental organizations and the delegitimization of their activities.

On June 14, 2022, the European Court of Human Rights, based on a total of 61 applications²⁷ from 73 organizations, reviewed the law's compliance with the European Convention on Human Rights. The European Court found a violation of the rights guaranteed by the Convention and ordered Russia to pay compensation in favor of the applicants. On the one hand, the court established important standards with the decision and, on the other hand, it expressed the position of the Council of Europe with regard to laws on "foreign agents" of such kind.

4.2.1. So-called Law of Foreign Agents in Russia: context and essence of the law

In December 2011, mass protests began in Russia due to the falsification of the 2011 parliamentary elections, in response to which in July 2012, the law "On Amendments to Certain Legislative Acts of the Russian Federation, in the Part of Regulation of Activities of Non-Profit Organizations Performing the Function of Foreign Agents" ("Law On Foreign Agents") came into force with the signature of the President of Russia.²⁸ According to the law, any non-governmental organization registered in Russia and receiving funding from abroad will be referred to as a "foreign agent" if they carry out "political activities. These non-

²⁶ Decision of the Constitutional Court of Russia dated April 8, 2014 N 10-П <https://bit.ly/3ZKmqID>

²⁷ The first complaint was submitted in 2013, and the last one in 2018. Application no. 9988/13 ECODEFENCE and others against Russia and 48 other applications - <https://bit.ly/3iHJebx> Application no. 16094/17 LEVADA CENTRE against Russia and 14 other applications - <https://bit.ly/3J0ijCj>

²⁸ FARA in Focus: What can Russia's Foreign Agent Law tell us about America's? Samuel Rebo. JOURNAL OF NATIONAL SECURITY LAW & POLICY. p.283

governmental organizations are included in the "Foreign Agents" register, which is administered by the Ministry of Justice.

If the organization is not registered as a "foreign agent", it leads to administrative and criminal sanctions. The possibility of both scheduled and unplanned inspections have been introduced. Also, all publications had to be accompanied by an indication that it was prepared by an organization that is a "foreign agent". The law also provides strict reporting rules and organizations are subject to an unlimited number of unscheduled audits. For years, Russia has been actively using the "Foreign Agents" law against local non-governmental organizations.²⁹ Consequently, the broad definitions of the law and the harshness of the established sanctions had a chilling effect on the activities of the civil sector. Due to the heaviness of the sanctions, a huge number of non-governmental organizations stopped their activities or imposed self-censorship, while those who continued their activities were burdened with the strict requirements of the law and the stigmatizing label of "foreign agent".³⁰

As a consequence of amendments, the scope of the law on "foreign agents" was expanded to include media as well.³¹ From 2020, any natural person can be entered in the register of "Foreign Agents". The 10-year operation of the Russian law is a clear example of how the authorities instrumentalized "transparency" against political opponents and what effect this has on the country's democratic development.

4.2.2. ECODEFENCE and other v. Russia: Decision of the European Court of Human Rights

On June 14, 2022, the European Court of Human Rights made a decision in the case ECODEFENCE AND OTHERS v. RUSSIA.³² In this decision, the court establishes the standards as well as demonstrates its attitude towards the Russian law on "foreign agents". The Court's standards are noteworthy as they are guiding rules in the Council of Europe to check the compatibility of so-called law on "foreign agents" with the requirements for the protection of basic human rights and freedoms.

The Court examined the compatibility of the provisions of the "Law on Foreign Agents" with the freedom of association guaranteed by the Convention. According to the court, burdensome requirements which have the effect of inhibiting an organization's activities

²⁹ In contrast, the American FARA has been considered an "underused" act for years. Between 1966 and 2015, the US Department of Justice prosecuted only seven criminal cases under FARA.

³⁰ Russia: Harsh Toll of 'Foreign Agents' Law <https://bit.ly/3VYwr1S>

³¹ FARA in Focus: What can Russia's Foreign Agent Law tell us about America's? Samuel Rebo. JOURNAL OF NATIONAL SECURITY LAW & POLICY. p.291.

³² CASE OF ECODEFENCE AND OTHERS v. RUSSIA (Applications nos. 9988/13). STRASBOURG 14 June, 2022 <https://bit.ly/3W5Sa7S>

may, in themselves, amount to interference with the right to freedom of association. Many non-governmental organizations were forced to close or to reduce funding which amounts to interference in the area protected by Article 11 of the Convention. The court considered the law's term "political activity" was too wide and noted that it failed to meet the requirements of foreseeability. It went so far as to include activities that were specifically excluded from the scope of the law. Exclusions (cultural and social activities) established by the law were rendered meaningless by the unforeseeable practice of the Act which has been endorsed by Russia.

The broad interpretation of the law created uncertainty for non-governmental organizations that wanted to engage in activities related to human rights or environmental protection or charity work.

The court stated that the term "foreign funding" was also used indiscriminately by the authorities to include any disbursements – not just those paid to the applicant organizations, but also those paid to its members or directors, even where they acted in a personal capacity without involving an organization. According to the court the absence of clear and foreseeable criteria has given the authorities unfettered discretion to assert that the applicant organizations were in receipt of "foreign funding", no matter how remote or tenuous their association with a purported "foreign source" was.

The court then discussed the extent to which it was necessary to use the term "foreign agent" and noted 60% of the respondents had negative associations with the term "foreign agent" in a public opinion survey. The Court considered that attaching the label of a "foreign agent" to a non-governmental organization, in addition to an opaque nature of the term, was unjustified and prejudicial and also liable to have a strong deterrent and stigmatizing effect on their operations. That label colored them as being under foreign control in disregard of the fact that they saw themselves as members of national civil society working to uphold respect for human rights, the rule of law, and human development for the benefit of society and democratic system.

Assigning this label severely restricted the ability of the organizations to continue their activities, because of the negative attitude of their target groups and because of the legislative restrictions. Their registration as "foreign agents" restricted their ability to participate in public life and engage in activities which they had been carrying out prior to the creation of the new status of "foreign agents".

The Government has not been able to present "relevant and sufficient" reasons or show that those measures contributed to the declared goal of increasing transparency. The court considered that the creation of the status of "foreign agent" was therefore not "necessary in a democratic society".

The court noted that the reporting and auditing obligations for NGOs were not "necessary in a democratic society". "the ability of an association to solicit, receive and use funding in

order to be able to promote and defend its aim constitutes an integral part of the right to freedom of association". The Court concurred the objective of increasing the transparency of the financing of associations, although stated that it "cannot justify legislation which is based on a presumption, made on principle that any financial support by a non-national entity and any civil society organization receiving such financial support are intrinsically liable to jeopardize the State's political and economic interests and the ability of its institutions to operate free from interference." According to the court, such provisions encourage non-governmental organizations to refuse to receive funding, which is why the restriction is unjustified and not necessary in a democratic society.

With regard to the sanctions imposed by the law, the court noted that the penalty must not amount to a form of censorship intended to discourage the non-governmental organizations from expressing criticism. The sanctions imposed by the law were disproportionate and undermined the important role of civil society in a democratic state. The Russian government has not presented to the court relevant and sufficient reasons to confirm the need for the adoption of the law.

Any restriction, which by its nature, imposes such requirements on non-governmental organizations, which undermines their effective activity, is against the basic principles of a democratic state. According to the court, the law formulated in such a manner that has a "chilling effect" on the activities of civil society in the country and creates fertile ground for its dishonest interpretation, contradicts the rights guaranteed by the Convention.

4.3. EU standard: judgment of the ECJ - European Commission v. Hungary

Following the Russian law, in 2017 Hungary also adopted a law "on the Transparency of Organizations Receiving Foreign Funds".³³ As in Russia, the law has become a weapon against non-governmental organizations. On June 18, 2020, based on the appeal of the European Commission, the European Court of Justice found the law incompatible with the fundamental principles of the European Union. As a result, due to the initiation of the European Commission's enforcement mechanism, Hungary was forced to repeal the law. The judgment of the ECJ and the actions of the European Union to ensure its enforcement, express the EU's unequivocal attitude towards such legislation, which directly or indirectly restricts the activities of civil society.

4.3.1. The law of so-called Foreign Agents in Hungary: the subject of evaluation by the European Court of Justice.

The 2017 law "on the Transparency of Organizations Receiving Foreign Funds" obliges associations and foundations that receive at least 7.2 million HUF (about 22 000 USD)

³³ Act LXXVI of 2017 on the Transparency of Organizations Receiving Foreign Funds <https://bit.ly/3GR2Rpy>

annually from foreign sources to register as an organization receiving foreign funding, to annually report about their foreign funding, and to indicate the label “organization receiving foreign funding” on their website and publications. The list of foreign funded NGOs is also published on a government’s website.³⁴ This law has been a part of a series of measures that began in 2013 designed to discredit and silence civil society organizations that were criticizing the government concerning anti-corruption, environmental protection, fundamental rights, democracy and the rule of law problems.³⁵

The Venice Commission also criticized the Hungarian law noting that the law would lead to unnecessary and disproportionate interference in the freedom of association and expression, as well as in the field protected by the right to privacy and the prohibition of discrimination.³⁶ The law repeated the Russian path and was aimed at weakening civil society by imposing an obligation of “transparency”. After the adoption of the law the European commission appealed to the European Court of Justice declaring that the law was discriminatory and disproportionately restricted receiving foreign donations. Finally, the European Court of Justice found the law incompatible with the basic principles of the European Union, which is why Hungary was forced to revoke it.

4.3.2. European Court of Justice: European Commission v. Hungary

On June 18, 2020, the European Court of Justice made an important decision,³⁷ by which the court considered Hungarian law “discriminatory and unjustified”.

In the beginning, the court discussed the concept of “Free movement of capital”. According to the law (1) NGOs were required to register as the organizations funded from abroad and (2) to publish information about donors (3) sanctions were provided for the violation of the mentioned obligations (fines and liquidation of the organization). The court noted that the combined effect of these measures leads to the restriction of the “free movement of capital”, furthermore, such measures create a generalized climate of mistrust of the non-government organizations and to stigmatize them. As a result, the probability of financing NGOs in Hungary is decreasing. Moreover, the court considered the difference established by the law between local and "foreign" donations to be discriminatory.

³⁴ What Is the Problem with the Hungarian Law on Foreign Funded NGOs? p.1 <https://bit.ly/3XkRwog>

³⁵ Id.

³⁶ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) HUNGARY PRELIMINARY OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD (Strasbourg, 2 June 2017) <https://bit.ly/3VYRnWs> .

³⁷ JUDGMENT OF THE COURT (Grand Chamber) 18 June 2020. In Case C- 78/18 <https://bit.ly/3krb8cb>

In order to restrict the "free movement of capital" according to EU legislation, it is necessary to justify a clear, tangible and serious risk in the field of public policy and state security.³⁸ The court noted that the attitude of the Hungarian government about the threat of any donation of money or other assets coming directly or indirectly from abroad cannot be considered proportionate to the aim of transparency.

According to the court, freedom of expression is one of the most important components of a democratic and pluralistic society. It encourages citizens to act collectively with common interests and assist in the proper functioning of public life. The court noted that the systemic obligations founded by Hungarian law lays obstacles to donors registered in the other states, which ruins the proper functioning of public life. The court found the law to be in conflict with freedom of association.

According to the court, the activities of non-governmental organizations, as one of the main guarantors of the rule of law, should be protected. This decision of the European Court of Justice is an important call that any law adopted by a member state that aims to restrict the activities of civil society will be subject to strict judicial scrutiny.

The process of enforcement of the judgment shows the strength of the EU's attitude to this issue. In particular, at first Hungarian authorities refused to abolish the law, moreover, the Prime Minister of Hungary commented that the ECJ's judgment was part of 'liberal imperialism'.³⁹ after this European Commission launched Infringement Procedure Against Hungary ⁴⁰ and **eventually government of Hungary backed off, revoked the law "on the Transparency of Organizations Receiving Foreign Funds" of 2017 ⁴¹ and instead, on April 20, 2021, adopted the new law⁴². Under the new law the stigmatizing label "organization receiving foreign funding" was abolished, moreover, the register of such organization was abolished. According to the new law there is only one obligation - to submit annual financial reports to the state audit service.**

4.4. Summary of standards of Council of Europe and EU in light of judgements against Russia and Hungary

Judgments of European courts are important as, from the perspective of European values, They express the strong attitude of the European Union and the Council of Europe towards the rule of law and democracy. European courts once again recognized the importance of

³⁸ THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION, Article 65. <https://bit.ly/2MC5UFO>

³⁹ Government Revokes Controversial NGO Law <https://bit.ly/3w3lpwF>

⁴⁰ EC Launches Infringement Procedure Against Hungary for Flouting CJEU Ruling on NGOs <https://bit.ly/3XqtSXx>

⁴¹ Government Revokes Controversial NGO Law <https://bit.ly/3w3lpwF>

⁴² law XLIX of 2021 on the transparency of civil organizations carrying out activities capable of influencing public life <https://bit.ly/3QzcHAR>

non-governmental organizations in a democratic society and emphasized the significance of protecting their free activity.

According to the ECHR and ECJ standards the registration of foreign-funded non-governmental organizations as “Foreign Agents” or “organizations receiving foreign funding” and attaching a stigmatizing label to them is an unjustified interference in the fundamental rights and is not proportionate to the legitimate aim of “transparency”. This kind of legislation contradicts not only the fundamental freedoms of association and expression, but also the fundamental principles of democracy and the rule of law.

Both the European Union and the Council of Europe once again highlighted the special role of the non-governmental organizations for the functioning of a democratic society. The positioning of the European structures is clear that any law that directly or indirectly restricts the free activity of non-governmental organizations and labels them as “foreign agent” and/or similar legal status is, by itself, against the fundamental European values.

5. Conclusion: The So-called Law on Foreign Agents and the 12 priorities of the European Union

The announcement of initiation of the “foreign agents” draft law by the members of the parliamentary majority (so-called “People’s Power”) and even a discussion on this issue will significantly hinder the process of Georgia’s integration in the EU. The European Union considers the effective functioning of civil society as an imminent element of a legal and democratic state. European Union pointed out the positive effect of the activities of non-governmental in Georgia in its documents numerous times. EU annual Association Implementation Report on Georgia published on August 8, 2022, mentioned that “Civil society remained very active and involved in monitoring the implementation of EU-Georgia Association Agreement, in policy formulation, and in holding the government accountable, including to some extent at local level.⁴³ According to the resolution of the European Parliament of December 14, 2022, the European Parliament once again emphasizes the crucial role of civil society organizations in democratic oversight. In the same document, the European Parliament calls on the Commission and the Member States to provide political, technical and financial support to civil society.⁴⁴

⁴³ Association Implementation Report on Georgia. European Commission Brussels, 10.8.2022
<https://bit.ly/3QGdGz9>

⁴⁴ European Parliament resolution of 14 December 2022 on the implementation of the EU Association Agreement with Georgia (2021/2236(INI)) <https://bit.ly/3CIW1B3>

According to the opinion of the European Commission of June 17, 2022, one of the 12 priorities⁴⁵ is related to the strengthening of non-governmental organizations and guaranteeing their involvement in all levels of decision-making process. **In the situation when the country is in "waiting mode" and recommendations of the European Commission have yet to be implemented, not only the adoption of the law on so-called Foreign Agents, but even public discussions about it (Especially when "Georgian Dream" has not made any comments after the announcement of initiating the draft law) is harmful to the process of integration in the European Union.**

The standards set by the European structures regarding the law on so-called Foreign Agents, especially the standards of the European Court of Human Rights and the European Court of Justice show that this kind of law is not compatible not only with fundamental human rights, especially freedom of expression and association, but also with the principles of a democratic and legal state and fundamental European values. **European courts have found registration of non-governmental organizations as "Foreign Agents" and attaching a stigmatizing label to them particularly problematic. Moreover, the judgment of ECJ and the infringement procedure launched by the European Commission forced Hungary to abolish the mandatory registration and labeling NGOs.** The initiative of the members of the parliamentary majority (so-called "People's Power"), according to their statements, considers the creation of a register of "foreign agents"⁴⁶, which directly contradicts the judgment of the European Court.

Even if the law initiated by members of the parliamentary majority (so-called "People's Power"), indicates the legitimate interest of "transparency", it is against the standards established by the European courts and undermines the fundamental European values regarding democracy, human rights and the rule of law. So-called Law on Foreign Agents is aimed at discrediting the civil sector. Taking into account the positioning of the European Union and the Council of Europe, it will receive a clearly negative assessment, especially in the context of implementation of the "12 priorities". The law will significantly reduce Georgia's chances to be granted the candidate status.

The above-mentioned legislative initiative directly contradicts the 10th priority of the European Commission (involvement of civil society in all decision-making processes at all levels) and instead of strengthening the non-governmental sector, it is aimed at damaging it. This tendency against civil society that has that has taken place during recent months is deeply concerning and poses a significant threat to Georgia's integration in the European Union.

⁴⁵ Commission Opinion on Georgia's application for membership of the European Union. Brussels, 17.6.2022 <https://bit.ly/3GZeTOQ>

⁴⁶ With the draft law initiated by "People's Power", a register of agents of foreign influence will be created. Registration will be mandatory for all "NGOs" and entities that are financed from foreign sources. <https://bit.ly/3CXJTMR>

