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FOREIGN AGENTS REGISTRATION ACT IN THE ABSENCE OF THE INDEPENDENT INSTITUTIONS



**FOREIGN AGENTS REGISTRATION ACT
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On 2 April 2025, the Law “Foreign Agents Registration Act”, which is a textual analogue of the American law of the same name, was published on the Legislative Herald.¹

According to the law, any person or organization that represents the interests of a foreign subject in accordance with the criteria specified by the law is obliged to register as a foreign agent. The head of the Anti-Corruption Bureau has the function of monitoring and controlling the fulfillment of these obligations. The law also establishes sanctions for those who refuse to register or fail to comply with the requirements specified by the law.

The American FARA (“Foreign Agents Registration Act”) is a law adopted in 1938, which, taking into account the historical context and in accordance with the interpretations of the United States (“US”) Department of Justice and the courts, aims not to restrict independent public and media organizations, but to expose the activities of the agents of hostile foreign powers.² The regulation is aimed at the cases where the foreign-funded persons do not act autonomously and are fully subject to the instructions of a principal.³

The real content of the legislation is not determined solely by its text, and the direct copying of legislation in force in other countries cannot ensure its identical functioning.⁴ The real content of the regulation is fully revealed in the process of its practical implementation. A legal norm, which may have the same formulation in different jurisdictions and at different times, may lead to completely different consequences, which is due to the structure of the legal system, the political environment and the institutional mechanisms.⁵

“To read and apply requires the intermediate step: to construe. The words of a constitution, like the words of any other document, may have several

¹ Georgian Law “Foreign Agents Registration Act”, available at: <https://matsne.gov.ge/ka/document/view/6461578?publication=0>, renewed on: 08.04.2025.

² Robinson, N., “foreign Agents” in an Interconnected World: FARA and the Weaponization of Transparency, *Duke Law Journal*, Vol. 69, 2020, 1095.

³ *Ibid.*

⁴ Dixon, Rosalind & Landau, David. *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy*. Oxford University Press, 2021.

⁵ *Ibid.*

meanings. Words can be applied on different levels of generality and abstraction. Which level should I choose?”⁶ Professor Aharon Barak advises: “Choose the level of generality and abstraction that fits the intent of the framers of the constitution”.⁷

It is hard to believe that the spirit of the American or Georgian constitutions is aimed at the disappearance of the autonomous civic space and the restriction of the freedom of association. Constitutional principles — democracy, pluralism, and the protection of human rights — suggest that legal interpretation should serve to protect and strengthen these very values, not to restrict them.

The Director of the OSCE Office for Democratic Institutions and Human Rights, Maria Telalian, drew attention to the threats posed by the law. According to her assessment, the adopted law poses a threat to the activities of the civil society and the protection of human rights.⁸ Also, the law will have a negative impact on the freedom of association, peaceful assembly and expression, which are critically important for democracy.⁹

The US “Foreign Agents Registration Act” operates under strong institutional safeguards that limit its potential abuse. However, implementing the same legislation in a country where independent institutions are subjugated by the ruling party could lead to the discrediting of the civil society and the persecution of critical groups disloyal to the government.

It is essential that the Georgian political system stands out by the lack of institutional and functional independence of its independent state institutions. This especially applies to the supervisory and judicial bodies, which should function outside the party influences and ensure a balance of power, but they are often subjugated by political interests.¹⁰

⁶ Barak A., *Hermeneutics and Constitutional Interpretation*, Cardozo Law Review Vol. 14, 1993, 767.

⁷ Ibid.

⁸ „Georgia’s foreign agents legislation raises concerns over negative impact on civil society, OSCE human rights office says“, available at: https://www.osce.org/odihr/588667?fbclid=IwY2xjaw-JaY6ZleHRuA2FibQlxMQABHWeEdwz5xmgGbO6x1XwvCY-4a-73cQokPkWFnJJ-aMSAbqyF0s-G5DRy4Tw_aem_ZLI_LCGyALfvcNYgE7P5oA, renewed on: 08.04.2025.

⁹ Ibid

¹⁰ “Independent Institutions at Risk: A Constant Challenge to Democracy in Georgia“, available at: <https://ge.boell.org/en/2022/07/15/independent-institutions-risk-constant-challenge-democracy-georgia>, renewed on: 08.04.2025.

In Georgia, the practical implementation of the law will depend on the by-laws adopted by the Anti-Corruption Bureau, as well as on the practice of its interpretation and application by the courts and the prosecutor's office.¹¹ Since these institutions are fully subject to the control of the ruling party - the "Georgian Dream" - the preconditions are created for the selective use of the legal mechanisms and in alignment with the political interests. In such a situation, the real purpose of the legislation may turn into an instrument for the persecution of the individuals critical of the government, which will further accelerate the process of consolidation of authoritarianism and significantly weaken the foundations of democratic governance.

1) THE ROLE OF THE ANTI-CORRUPTION BUREAU IN THE ENFORCEMENT OF THE "FOREIGN AGENTS REGISTRATION ACT"

The Anti-Corruption Bureau (the 'Bureau') is the main executive body responsible for implementing the „Foreign Agents Registration Act".. The law assigns it the main function of identifying and determining those subjects that must register as agents of the foreign principals. The Bureau receives registration applications, evaluates their content and, if necessary, takes measures - both in the form of imposing fines and applying to the court to ensure the enforced fulfillment of obligations. The Bureau has significant leverages in its hands, including the ability to request detailed financial documentation and initiate legal reaction.

The Anti-Corruption Bureau does not enjoy high levels of trust in the public. Its activities are often perceived as politically biased, which has become especially noticeable after the Bureau began taking active actions against the civil society organizations.¹²

According to the assessment of the European Commission for Democracy through Law (the "Venice Commission"), the existing institutional framework does not ensure a sufficient degree of independence for the Anti-Cor-

¹¹ The enforcement of the law will be entrusted to the Anti-Corruption Bureau, and if a subject deemed an agent by the Anti-Corruption Bureau fails to comply with the criteria of the law, the matter will transfer to the court. The head of the Anti-Corruption Bureau may apply to the court. The court will order that person to comply with any relevant regulations provided for by the law.

¹² "Decisions of the Anti-Corruption Bureau against the Civil Society Organizations", Odikadze N. et al., III Interim Report of the Long-Term Observation Mission to the 2024 Parliamentary Elections, Georgian Young Lawyers' Association.

ruption Bureau, as the appointment and dismissal of its head depends on the Prime Minister.¹³ According to the Commission's recommendation, the head of the bureau should have multi-party support and be elected by a qualified majority of the Parliament.¹⁴

A high degree of politicization of the Anti-Corruption Bureau was clearly evident during the 2024 pre-election period, when the Bureau granted "Transparency International Georgia" and its director the status of a "subject with declared electoral goals," with which it attempted to discredit the observing organization.¹⁵ On 1 October 2024, Prime Minister Irakli Kobakhidze called on the Bureau to reconsider its decision,¹⁶ to which the head of the Bureau, Razhden Kuprashvili, immediately responded by canceling the decision.¹⁷ This fact indicates the low institutional independence of the Bureau as an independent body and a high level of politicization.

In the conditions where the Anti-Corruption Bureau fails to operate impartially and transparently, and its actions often coincide with the interests of the ruling party, there is a real danger of politicizing "the Foreign Agents Registration Act" and turning it into an influential instrument.

2) THE ROLE OF THE COURT IN OVERSEEING THE ENFORCEMENT OF THE "FOREIGN AGENTS REGISTRATION ACT"

The second state institution that is in substantial contact with the law is the court. If a person who, by the decision of the head of the Anti-Corruption Bureau, is considered an agent of foreign influence, does not register in accordance with the procedure established by the law, the Bureau will request from the court to forcibly ensure the registration. The court decides whether

¹³ "Venice Commission: Anti-Corruption Bureau's Independence Insufficient in Current Design", Informational Portal "Civil.ge", available at: <https://civil.ge/archives/574938>, renewed on: 08.04.2025.

¹⁴ Ibid.

¹⁵ Decision №03/028-24 of the Head of the Anti-Corruption Bureau of 24 September 2024, available at: <https://acb.gov.ge/ka/news/antikoruftsili-biuros-ufrosis-2024tslis-24-sektembris-gadatsqveteleba>.

¹⁶ The official Facebook page of the Government of Georgia, 1 October 2024, available at: <https://www.facebook.com/GeorgianGovernment/posts/pfbid0ddgXjN36XYzTqVYig1eNC8t7B-fXqdfZ9kHQdqYKf1zZZbPXzt26hzVngudsaFszyl>, renewed on: 08.04.2025.

¹⁷ Briefing of the Head of the Anti-Corruption Bureau, Razhden Kuprashvili, official Facebook page of the Anti-Corruption Bureau, 2 October 2024, available at: <https://www.facebook.com/100090428315724/videos/3859307714285208>, renewed on: 08.04.2025.

to impose a fine on the subject for evading the submission of a registration application or for providing incorrect data.

Although formally the court should represent a neutral arbiter, in the Georgian reality it is only a formal legitimator of the process. Political corruption and the crisis of institutional independence in the judicial system have been the subject of criticism from both the civil society and the international partners for years.¹⁸ The loyalty of the judiciary to the ruling party is manifested in politically motivated decisions, control of the system by an influential group of judges (the “clan”), and a lack of transparency.¹⁹ Beside this, the staffing of the higher judicial instances is often carried out in an undemocratic manner, which causes a crisis of public trust.²⁰

It is noteworthy that on 2 April 2025, the United Kingdom imposed sanctions on the judges at the head of the judicial clan, Mikheil Chinchaladze and Levan Murusidze.²¹ Also, in April 2023, the US State Department imposed personal restrictions on the entry into the country on the current and former judges - Mikheil Chinchaladze, Levan Murusidze, Valerian Tsertsvadze, and Irakli Shengelia, due to their involvement in significant corruption.²²

For years, the court has been making politically motivated decisions that benefit the “Georgian Dream”, which ultimately hinders the country’s democratic progress. This further raises suspicions that any legal proceedings under or in connection with the “Foreign Agents Registration Act” will be directed against the NGOs and the critical media.

¹⁸ Coalition for an Independent and Transparent Judiciary, 10 Years of Judicial Reforms: Challenges and Prospects, 2023, available at: https://www.coalition-ge/files/reporma_170x240_geo_3.pdf.

¹⁹ Ibid.

²⁰ Nozadze N., “The Tight Circle – The Distribution of the Clan Members on Managerial Positions in the Court”, Georgian Young Lawyers’ Association, Tbilisi, 2021, available at: <https://cutt.ly/2ByqsRt>, renewed on: 08.04.2025.

²¹ “Great Britain imposes financial sanctions on Chinchaladze and Murusidze”, informational portal “Radio Tavisupleba”, available at: <https://www.radiotavisupleba.ge/a/33368718.html>, renewed on: 08.04.2025.

²² Public Designations of Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia, and Valerian Tsertsvadze, Due to Involvement in Significant Corruption, Press Statement, U.S. Department of State, 5 April 2023, available at: <https://www.state.gov/public-designations-of-mikheil-chinchaladze-levan-murusidze-irakli-shengelia-andvalerian-tsertsvadze-due-to-involvement-in-significant-corruption>.

3) THE ROLE OF THE PROSECUTOR'S OFFICE IN ENFORCING THE "FOREIGN AGENTS REGISTRATION ACT"

When a violation of the law goes beyond the administrative framework (e.g., evasion of registration, falsification of documents, interference with investigation, or other criminal acts), the Anti-Corruption Bureau may refer the case to the Prosecutor's Office for further action and initiation of a criminal investigation.

Despite the legislative amendments adopted over the years, which aimed at the strengthening of the independence of the prosecutor's office, under the wide societal perception, the prosecutor's office is still acting in the interests of the ruling power.²³ In its opinion on the application for the EU membership, published on 17 June 2022 by the European Commission (Eurocommis-sion), the Commission considered it important to ensure the independence, accountability and impartiality of the judiciary and the prosecutor's office.²⁴

Cases which concern the critical media, opposition figures, or civic activists²⁵ are often perceived as selective justice, which reinforced the narrative of its political engagement. International partners and local organizations have repeatedly expressed concerns about the lack of institutional independence of the prosecutor's office, which significantly undermines the trust in it and the legitimacy of the justice system as a whole.²⁶

²³ "The report of Venice Commission's indicates the need for fundamental reforms in the Prosecutor's Office and the Court", official webpage of GYLA, available at: <https://gyla.ge/post/veneciis-komisiis-daskvna-prokuraturasa-da-sasamartloshi-dzireuli-reforme-bis-satchiroebaze-miutitebs>, renewed on: 11.04.2025.

²⁴ "GYLA's clarification regarding the European Commission's opinion" is available at: <https://gyla.ge/post/saias-ganmarteba-evropuli-komisiis-mosazrebastan-dakavshirebit>, renewed on: 08.04.2025.

²⁵ "GYLA assesses the use of Criminal Justice Mechanisms against Protesters", available at: <https://gyla.ge/post/sixxlissamartlissaqmeta-monitoringi>, renewed on: 08.04.2025.

²⁶ "Turning down the New Rule for the Appointment of the Prosecutor General is a Wasted Opportunity to Reform the Judicial System", available at: <https://www.gyla.ge/post/general-uri-prokuroris-danishvnis-akhali-tsesze-uari-martlmsajulebis-sistemis-reformis-gashvebuli-she-sadzleblobaa>, renewed on: 08.04.2025; "Overview of the European Commission's assessment (Implementation of the 12 priorities and new reservations)", available at: https://idfi.ge/ge/review_of_the_european_commission_s_assessment_implementation_of_the_12_priorities_and_new_conditions, renewed on: 08.04.2025.

It is noteworthy that on 10 April 2025, the United Kingdom imposed sanctions on the General Prosecutor of Georgia, Giorgi Gabitashvili, for the reason of the human rights violations.²⁷

SUMMARY

The lack of institutional and functional independence of the state institutions responsible for interpreting and enforcing the law, the political context surrounding its adoption, and the clearly nefarious legislative motivation of the “Georgian Dream” demonstrate that the adoption of the law is not in the interest of transparency, but rather aims to restrict the independent civic spaces. In the absence of strict sanctions and available funding alternatives on the national level, enacting the law in accordance with the “Georgian Dream’s” interpretation effectively means banning the civil sector.

²⁷ “Update to the UK Sanctions List: Global Human Rights Sanctions Regime”, https://content.govdelivery.com/accounts/UKORGESO/bulletins/3db26a1?fbclid=IwY2xjawJkjaVleHRuA2Fl-bQIxMAABhtVC1nazGfGHe7MBfbdIQ5n51takY-58Jvq355gnVdLRlIxC4hMu-HruDge_aem_ule-Lp0xnpe9B40bE4PX2Dg.