



Georgian Dream's Grand Finale – Steps towards to Consolidated Authoritarianism

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Public discussion in the country is currently being completely dominated by the draft law “On the transparency of foreign financing” initiated by People Power, a satellite political group within the ruling party in Georgia’s Parliament, People's Power. This bill envisages the creation of a register of “agents of foreign influence” and the registration of all organizations receiving more than 20 per cent of their income from foreign funding (Civil.ge 2023a). According to the Office of the Public Defender of Georgia, the bill does not comply with international or national standards for human rights protection, and even its consideration is incompatible with the basic principles of a modern democratic state (Publika.ge 2023a). International partners (Jam-news.net 2023a, Jam-news.net. 2023b, Tabula.ge 2023a), as well as national and foreign experts (Joint statement of non-governmental organizations of Georgia) consider the draft law to be a radical departure for Georgia from its European course and threatens to do great damage to the reputation of the country's civil organizations 2023, GIP 2023).

Despite the sharply negative assessments of the bill, People's Power and Georgian Dream maintain strongly that the bill is based on the best Western practice (Tabula.ge 2023b, Publika.ge 2023b, 1TV.ge 2023a) and serves only to strengthen accountability and transparency of the civil society sector in Georgia. Due to the urgency of the issue, this policy memorandum proposes a comparative analysis of the existing regulations on foreign funding of non-governmental organizations in democratic states, as well as of the bill initiated by People's Power in the Georgian Parliament. Based

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on this discussion, the memorandum demonstrates important factual and contextual differences between the draft law “On Transparency of Foreign Funding” and Western practice. In addition, the memorandum analyzes possible real motives behind the initiation of the draft law and consequences for the democratic future of Georgia.

The US law on the Registration of Foreign Agents: what makes it different from the bill initiated in the Parliament of Georgia?

National non-governmental organizations and international partners recommend that Georgian Dream should refrain from considering the bill (On.ge 2023, Civil.ge 2023b), however, according to the representatives of the political movement People's Voice, the Georgian bill is a much more liberal version of the US law Registration of Foreign Agents (FARA) and does not include non-democratic mechanisms for limiting non-governmental organizations (ITV.ge.2023b). Regarding this issue, the approach of the Georgian Dream party is in line with the position of People's Power – adopting the argument that the bill is based on the best Western practices, the speakers of Georgian Dream consider it completely appropriate to review it in Parliament (Netgazeti.ge 2023a). Although, despite this rhetoric, a comparison of the US law (FARA) and other “Western practices” with the bill initiated in the Parliament of Georgia reveals significant factual and contextual differences.

- ***The United States Foreign Agents Registration Act (FARA) does not target non-governmental organizations, but rather regulates lobbying and consulting activities.*** In particular, a foreign agent is considered to be any person whose work with a subject² of foreign influence includes political or public affairs consulting (if this involves involvement in politics), or representation of subjects of foreign influence before US official bodies (Congressional Research Service 2017). According to FARA, foreign agents are obliged to provide the state with information about their source of financing, the purpose of the financing and the services provided. It is worth noting that the amendments made to FARA were several times about clarifying lobbying activities (Congressional Research Service 2017). Meanwhile, the

² Under FARA, the following entities qualify as foreign-influenced entities::

- *Foreign state*
- *Foreign political party*
- *A person who is not a citizen of the United States of America*
- *A legal entity created on the basis of foreign legislation.*

enforcement mechanisms for violations of FARA regulations also primarily apply to individuals engaged in lobbying activities (Justice.gov 2023a). However, due to the fact that FARA is a rather outdated law, fundamental amendments have not been implemented in it for a long time, and the lack of clarity of terms, there is additionally some ambiguity regarding whether the regulations defined by it also cover non-governmental organizations. (Federal Register 2023). In this regard, the International Journal of Not-for-Profit-Law has also published a special clarification, according to which FARA does not require non-governmental organizations to register as “foreign agents” and the registration requirement applies only to those individuals/organizations that comply to the “foreign agent” criteria (Laufer 2017). Precisely because of the vagueness of the law, according to the US NGO Alliance, it is now necessary to modernize FARA and officially include civil society organizations in the exceptions defined by the law (Wanko 2019).

Compared to the US law, the draft law “on Transparency of Foreign Funding” initiated in the Parliament of Georgia is aimed at the civil society sector and, according to the criteria defined by it, concerns the vast majority of civil society organizations and the media operating in Georgia. In particular, according to the draft law, agents of foreign influence are considered to be all those organizations established in accordance with the “Law on “Broadcasting” - such a legal entity, which alone or together with others owns printed means of mass information operating in Georgia and a legal entity that alone or jointly owns and/or uses the Internet domain intended for disseminating Internet media mass information in the state language of Georgia with more than 20 per cent of its annual income coming from a foreign power (Civil.ge 2023a). In this case, the fundamental difference between the mentioned laws is purpose. Lobbying or consulting activities include serving private interests of a foreign-influenced entity, and this may include obtaining tax benefits for a foreign state/company in US representative bodies. In this regard, the aim of the activities of non-governmental organizations exclude the seeking of exclusive benefits for persons/entities’ private interests and serve instead the universal welfare through the strengthening of democratic principles.

- *The United States Foreign Agents Registration Act (FARA) was developed based on national security objectives.* The United States of America passed the Foreign Agent Registration law in 1938, and the reason for its initiation was the growth of Nazi propaganda in the United States. According to the Congressional Record, it was necessary for the American people to know the truth about specific unions and interests behind their propaganda messages (House of Representatives 1937). After the Cold War era, FARA significantly lost its relevance.

However, after Russian interference in the 2016 US presidential election, its active use was again on the agenda (Congressional Research Service 2017). Consequently, information on enforcement mechanisms envisaged by the law has only been available since 2017. Identified behind the lobbyists who were fined or imprisoned were found to be the interests of various states, including Sri Lanka, Malaysia, and Russia (Justice.gov 2023a). Importantly, FARA allows for an exception to the qualification of a foreign-influenced entity - in particular this is for a foreign government, the defense of which is vital for the defense of the United States (Justice.gov 2023b). The decision on the exception is made by the President of the United States of America (Justice.gov 2023b).

Unlike the United States of America, *the reason for initiating the draft law “on Transparency of Foreign Funding” in Georgia is not directly related to national security goals.* According to the main narrative cultivated by People's Voice before the initiation of this bill, one of the main problems for Georgia's sovereignty is the presence of the American secret service in the country, along with the Russian secret service presence. According to this opinion, the American Embassy in Georgia uses its agents to polarize society and change the government in Georgia against the will of the Georgian people, trying to open a so-called “second front”. The presence of the agents of a partner state, it maintains, is just as damaging to the country as the presence of the Russian agents in Georgia (AdjaraTV.ge 2023). According to the statement of the People’s Voice “funding of non-governmental organizations by the US creates a natural threat to the sovereignty of Georgia,” therefore, in their opinion, this funding “must be included in a strict legal framework” (RF/RL 2022). From the point of view of national security, Georgia faces an existential threat from the Russian Federation, while the object of the People’s Power attack is the most important strategic partner of the country - the United States of America, which has been funding the Georgian civil society sector for more than two decades, regardless of the ruling power in the country, in order to promote democracy and good governance in Georgia. These factors are of decisive importance for the country's integration into Euro-Atlantic structures, which the state bodies of Georgia are obliged by the Constitution to ensure, (Legislative Gazette of Georgia 1995). Considering that the standard of financial reporting of non-entrepreneurial legal entities (non-governmental organizations) has already been established by the Revenue Service of Georgia (Legislative Gazette of Georgia 2018), information about Western donors and projects financed by them, is openly provided, and publicized by Georgian civil society organizations.

In this regard, the only exceptions are Russian-funded anti-Western, anti-liberal and homophobic organizations, and information about their financial sources are not publicly available (DemocracyResearch.org 2022, Estonian Foreign Intelligence Service 2020.). Taking into account the official arguments of the People's Voice, the bill puts Russian and American influences in Georgia on the same level and calls into question the main national interest of the country - Georgia's pro-Western foreign policy course. However, in reality, it seems that organizations funded by Russia will be an exception: this is evidenced by the statement of the founder of the pro-Russian television channel Alt-Info, according to which they do not have {foreign funding} and, therefore, they will not have to register as foreign agents (Netgazeti.ge 2023b).

Accordingly, the draft law "on Transparency of Foreign Funding" does not contribute to ensuring the country's national security. Furthermore, it is a direct attack on Georgia's strategic partners and the national organizations that contribute to the dissemination of Western values in Georgia. This, in the long run, will significantly damage the country's national interest.

Best Practices: what distinguishes them from the Georgian bill?

In parallel with the sharply negative assessments on the bill initiated in the Parliament of Georgia by various stakeholders, including national and foreign experts, the ruling party states emphatically that the bill is fully compatible with democracy (ITV.ge 2023b). At the same time, to justify the necessity of enacting the bill in Georgia, pro-government television has started naming specific countries where, according to spokespersons, transparency of the activities of non-governmental organizations is regulated in case of foreign funding (Imedinews.ge 2023a, Imedinews.ge 2023b).

In this case, the Western practice, to which the ruling party and its supporters draw parallels, is not in line with the bill initiated in the Georgian Parliament. In particular, *the European Union opposes regulations to increase the transparency and accountability of foreign funding for civil society organizations, as such regulations limit civic space* (European Parliament 2023.). In this regard, the only exception among EU member states is Hungary, which adopted the law on foreign-funded organizations in 2017 (Peace Research Institute Frankfurt 2019). However, in this case, the European Commission referred the case to the European Court (European Commission 2017), which imposed disciplinary measures on Hungary for violating EU principles (Court of Justice of the European Union 2020), and, in September 2022, the European parliamentarians announced that Hungary was no longer considered a "fully democratic country" (European Parliament 2022). In addition, due to the restriction of freedom of information, Hungary has a significantly low rate of

civil liberties (Freedom House 2021). Therefore, the case of Hungary cannot be considered as the “best practice” for Georgia. In other EU member states, specific laws that limit or regulate foreign funding in a certain way apply only to electoral entities, lobbying activities or religious organizations (European Parliament 2023). At the same time, none of these laws contain the concepts of a “foreign agent” or an “agent of foreign influence” (European Parliament 2023).

One of the countries that is mentioned in the broadcasts of the pro-government TV channel to justify the bill initiated in Georgia is Israel. In this respect, Israel is truly a democratic state where organizations (including civil society organizations) are obliged to provide information to the state about their foreign income and the purpose and the description of the work performed by them (The Association for Civil Rights in Israel 2016). However, it should be noted that due to its harmful effect on the country's democratic environment, the adoption of the Law on Non-Governmental Organizations was significantly opposed by Israel's opposition parties (The Knesset 2016). Also, the law was negatively assessed by Israeli human rights organizations, who considered it a step towards limiting the democratic sphere (OHCHR 2016, International Federation for Human Rights 2016). At the same time, for the sake of accuracy, a fundamental difference can be distinguished between the case of Israel and Georgia. Due to historical experience and difficult relations with neighboring states, special security measures are generally practiced in the State of Israel. In the case of Georgia, despite the constant threat from the Russian Federation, the basic conditions of defense and security are also subject to criticism from the relevant circles (Mtavari Arkhi 2022). Consequently, Israel's experience, which can explain the need to limit fundamental freedom based on special security norms, is completely irrelevant for Georgia.

The second country, which was also cited as the best example by the pro-government media, is Australia (Imedinevs.ge 2023b). In Australia, the transparency of the foreign income is regulated by the 2018 Foreign Influence Transparency Act (Australian Government 2018), however, this act does not apply to non-governmental organizations. In particular, according to the 2018 Foreign Influence Transparency Act, the main criterion for the registration of a person or an organization is acting according to the interest of a foreign entity. By definition of this criterion, this regulation applies to lobbying and advisory activities (Australian Government 2018), as in other democracies. Moreover, in relation to non-governmental organizations, the 2018 Foreign Influence Transparency Act makes an exception - even in the case of foreign funding, organizations whose activities comply with the goals defined by the Charitable Organizations Act are exempted from the obligation to register (Australian Government 2018). The Charitable Organizations Act considers as such organizations

that not only promote education, human rights, social and public welfare, religion, culture, security, etc., but also oppose legislative or political changes that may not be in line with the interests of Australian citizens (Australian Government 2013). Against the background of the discussion of such cases, it can be said that the references to Western practice by the supporters of the bill initiated by People's Voice is only a part of a propaganda program to provide appropriate public legitimacy for the bill for the ruling elite.

Georgian Dream's Grand Finale - why now and why non-governmental organizations?

In its first two terms in power *Georgian Dream*, positioned itself as a relatively constructive player in front of domestic actors and international partners. During this time, the ruling party at least formally left open a space for reforms necessary for the democratic development of the country while using negative political campaigning and a rough demonstration of political power against the main opposition political party and small opposition parties in alliance with it.

With this strategy, Georgian Dream cleared the opposition from the political field and was able to strengthen its positions in a non-competitive environment in such a way that at the end of its second term in power, signs of state capture, which had been relatively ignored, became apparent in the country. After winning parliamentary elections for the third time, the ruling party shed light on the real, non-democratic model of their rule, and accordingly their actions and rhetoric underwent significant regression: they refused to implement reforms according to the specific obligations of the country and at the same time strengthened their confrontational rhetoric towards Georgia's strategic international partners.

However, the dramatic change in the governance model of Georgian Dream is uniquely related to Russia's invasion of Ukraine, which allows Georgian Dream to capitalize on the still unhealed wounds of the country's citizens from the 2008 Russia-Georgia war, and position itself as a guarantor of peace, using the current war in the region for maintaining power and strengthening authoritarianism. At this stage, against the background of the Russia-Ukraine war, Georgians feel threatened and , maintaining stability is important for them, so in part of the population there is readiness at this stage to be less critical of the government (NDI 2022).Therefore, for final formalization of consolidation of autocracy, neutralizing civil society organizations is a well-

thought-out move by the ruling party. Under conditions of state capture, against the background of a disrupted parliamentary and judicial oversight mechanisms and marginalized opposition political parties, only the civil society sector remains as an effective controlling force on the Georgian government. Accordingly, along with visible democratic backsliding, the government and its propaganda TV channels have gradually increased their open attacks on influential non-governmental organizations (Imedi Week 2022) and the classification of these organizations into acceptable and unacceptable categories for the ruling party (1tv.ge. 2023c).

On the other hand, the reason for the radicalism demonstrated by the government towards non-governmental organizations is perhaps related to the idea of a “technocratic government” proposed by the civil society sector (Netgazeti.ge 2023g). In this the ruling power saw prospects for the emergence of new political leaders (Rustavi2.ge 2023) who could fill the already virtually empty political field for the upcoming 2024 elections. Therefore, the efforts of Georgian Dream aimed at discrediting influential NGOs have been especially strengthened by the ruling party’s satellite political movement, People's Power, which split from the ruling party to deliver “the truth” to the people without harming the reputation of the Georgian Dream (Tabula.ge 2022c).

People's Power, as soon as it appeared in the political arena, has been characterized by populist, conspiratorial and anti-Western messages (Kakachia and Samkharadze 2023). The very first letters published by this political force also contained clear messages aimed at discrediting the civil society sector. In particular, letters focused on the non-national motives of the foreign funding of civil society organizations, and the parts of the non-governmental sector that were critical of the government were declared “America’s agents” (Rustavi2.ge 2022).

Taking into account the existing circumstances at this stage, the goal of Georgian Dream is to damage the reputation of the civil society sector in the eyes of the Georgian population, which, in the end, will allow them to move the country further away from Western democratic standards. The purpose of inflicting reputational damage on the civil organizations is indicated by the decision of People's Voice to build the bill initiated in the Parliament terminologically on US FARA law, which is the only law in democratic countries where the term “foreign agent” exists, and which indirectly applies to a number of non-governmental organizations due to the unspecified terminology.

It is true that the representatives of Georgian Dream admit that the term “agent” defined by the bill does not mean a person engaged in intelligence activities (RF/RL 2023), however, due to the multifaceted connotation of this term, it is easy to assign a damaging stigma to non-governmental

organizations, especially in such a polarized political environment as in Georgia. With reputational damage, it is much easier to reduce the ability of potential political leaders to get support from citizens, and to relax public opinion so that, if the ruling party decides in the future to implement very strict repressive measures against critical non-governmental organizations, citizens will not protest. This very much resembles the approach of the authoritarian Russian and Belarusian governments, which attacked the last bastions of free speech based on local interpretations of the US FARA law.

Conclusion

To sum up, it should be noted that the appeal of the supporters of the bill “on Transparency of Foreign Funding” to the best Western practices is fundamentally wrong due to the factual and contextual differences. The US law on which the bill “on Transparency of Foreign Funding” is based does not target non-governmental organizations and covers mainly lobbying and consulting activities, while the People Power-initiated bill targets the non-governmental sector of Georgia. There is a fundamental difference between lobbying/consulting activities and activities of non-governmental organizations because the results of the activities of non-governmental organizations exclude exclusive benefits for entities with private interests. In addition, unlike in the United States of America, the motive for initiating the draft law “on Transparency of Foreign Funding” does not correspond to the goals of Georgia’s national security: The bill does not contribute to ensuring the country's national security and is directed against Georgia's strategic partners and those national non-governmental organizations that contribute to the country's main national interests, the integration into European and North Atlantic structures.

At the same time, the “best Western practices” emphasized by the ruling party and the pro-government media fundamentally differ fundamentally from the goals of the bill under the discussion in the Georgian Parliament. If existing regulations to increase the transparency and accountability of foreign funding to civil society organizations limit civil space, the European Union does not recognize such legal practices. Accordingly, the regulation of foreign funding in consolidated democracies outside the EU and beyond is only related to lobbying/consulting activities, political entities, or religious organizations (which is a measure to prevent religious extremism). The experience of Hungary cannot be considered as the best example for Georgia- due to the lack of democratic governance in that country. At the same time, Georgia still has a long way

to go before developing defense and security norms tested in Israel. Accordingly, while the country often fails to meet basic needs in this regard, ensuring national security by regulating the funding of non-governmental organizations receive from abroad is irrelevant and unconvincing.

Therefore, all these essential points indicate that the draft law “on Transparency of Foreign Funding,” if adopted, will provide significant assistance to the authorities in damaging the reputation of the critical non-governmental organizations. On their route to a consolidated autocracy, the destruction of the last mechanism controlling the government's activities is an important gamble for *Georgian Dream*. By damaging the reputation of non-governmental organizations, on the one hand the last democratic oversight mechanism in the country will be destroyed, and on the other hand this will ensure a guaranteed non-competitive political environment for the upcoming 2024 parliamentary elections. The fulfillment of this ruling party goal will impede Georgia’s democratic development and its integration into Western structures for a long time.

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