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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Summary of the joint Hearing between the Monitoring Committee and the Committee on Legal Affairs and Human Rights on Regulating foreign influence: best practices and European standards (Thursday, 27 June 2024)

Joint hearing with the participation of:

- **Ms Veronika Bílková, Vice-President of the European Commission for Democracy through Law (Venice Commission)**
- **Ms Tanya Lokshina, Associate Director, Europe and Central Asia Division, Human Rights Watch**

1. Statement by Ms Veronika Bílková, Vice-President of the European Commission for Democracy through Law (Venice Commission)

This presentation on foreign agents laws will be based on several general studies from the Venice Commission, especially the 2014 [Joint Guidelines](#) of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association and the 2019 report on the funding of associations ([CDL-AD\(2019\)002](#)), as well as on some country specific opinions related to the legislation on foreign agents that the Venice Commission has adopted over the years, especially the opinions related to the Russian Federation, Hungary, Kyrgyzstan, and the most recently to Georgia.

The first part of this presentation will explain the nature and typology of these laws, and the second part will detail the elements of these laws that the Venice Commission has found problematic in the country specific opinions.

Nature and typology of foreign agent's laws

Foreign agents' laws can be defined as any laws applicable to different entities, mostly non-commercial organisations, broadcasters, social media, or individuals who or which receive a part of their funding from abroad. This very broad definition covers two very different types of entities.

The first type are entities which act under the direction or control of a foreign principal. In these situations, there is a special link between them. Laws applicable to those entities are actually laws on lobbying. The US FARA or the Australian FITSA provide good such examples. The EU directive which is being negotiated at the moment seems to be going in this direction.

¹ Document declassified by the Monitoring Committee on 11 September 2024.

A second category of laws can be labelled as foreign agents' laws in the narrow sense. Those are legal acts which apply to any entity just because they receive a part of their funding from abroad, even if there is no specific direction or control between them and the foreign funder. The funding can be very dispersed and even quite minimal. Even though organisations receive a minimal portion of their funding from abroad, they still get labelled as "foreign agents".

Over the past thirteen years, several countries have adopted such legislation. These laws are not the same in their content and are not similarly problematic, but they fall under the same kind of scheme. Such laws have been adopted in Belarus, India, the Russian Federation, Israel, Egypt, Kazakhstan, Nicaragua, and this year in Kyrgyzstan and Georgia. Some countries also adopted such laws, but then abolished them for different reasons: that was the case of Ukraine in 2014 or Hungary, which abolished the legislation after the CJEU found it problematic.

On their content, these laws differ widely. A minority prohibit foreign funding altogether, as in Egypt. Most of the laws regulate foreign funding, introducing specific elements, and usually rely on four pillars.

The first pillar is the introduction of a certain definition and a label for the organisations, the best-known example being the label of "foreign agents", but other denominations exist such as "entities pursuing the interests of a foreign power". The common point is that these labels are not neutral, they have pejorative connotations in the specific linguistic community.

The second pillar is the introduction of various additional obligations for these entities. The obligation to enter a specific register, the obligation to present and submit specific reports to the state authorities, the obligation to disclose to the public various information, sometimes even very internal and personal information. Additional obligations or prohibitions in some countries may prohibit entities labelled as foreign agents to run in elections or play any role with respect to elections.

The third pillar is that powers of certain state bodies, often the Ministry of Justice, are strengthened with respect to these entities. The specific powers with respect to those entities are usually very blurred, vaguely defined, and often encompass the obligation of enhanced monitoring, checking, and regular controls.

The fourth pillar are sanctions: different criminal or administrative sanctions are introduced specifically for the failure to abide by this legislation. It is very often left to administrative bodies to decide on these sanctions.

Problematic elements

The relevant legal standards are contained in the European Convention on Human Rights for the Council of Europe member States, and in the International Covenant on Civil and Political Rights for the non-European countries. The most relevant are the right to freedom of association, right to freedom of expression, and the right to privacy. Prohibition of discrimination is also sometimes at stake.

These rights are not absolute and can be lawfully limited. Prohibiting foreign funding is not necessarily unlawful, but such restrictions need to meet a three-part test common to all human rights instruments: legality, legitimacy, and necessity/proportionality. The foreign agents' laws that the Venice Commission had the opportunity to assess so far have mostly failed in all the three parts of this test.

The first test is the element of legality: the restrictions imposed on foreign funding need to be foreseen by law. The law has to exist and to be specific, precise enough, without vague or imprecise formulation. It should grant limited discretion to state organs. Often, the situation is the opposite: the law is very vague and contains very general undefined formulations such as "foreign influence", "political activities", etc. And very broad discretion is granted to state organs. For these reasons, the condition of legality is often not met.

The second test is the condition of legitimacy. Under this condition, the restriction imposed on foreign funding needs to pursue one of the legitimate aims explicitly mentioned in the human rights instruments. It is, for instance, the protection of national security or the protection of public order. In most cases, other aims are put forward by the governments. The most common one is the aim of transparency, which does not feature in human rights instruments. And in many cases, there might be a doubt that transparency – whatever it means – is the true aim of the legislation, rather than some ulterior purpose such as silencing certain entities in the society. Therefore, the condition of legitimacy is often not met.

Eventually, the element of necessity and proportionality impose to establish that there is a pressing social need to adopt such a legislation, supported by some evaluation. Most of the time, there is just a presumption that

these entities, if they receive even a tiny amount of money from abroad, serve foreign purpose. Moreover, it has to be established that the restriction adopted is the least intrusive one and does more good than harm, both to the entities concerned and to the society at large. Often, these legislations do more harm because they are clearly destructive for these entities and for the society as such.

As a conclusion, the foreign agents' laws which have recently been adopted in various countries are different from the laws on lobbying, such as the US FARA. They serve different purposes and use different scheme.

Secondly, many of those foreign agent laws fail to meet the test of legitimate restrictions of human rights, the test of legality, legitimacy, necessity, and proportionality, and as such, are not compatible with European and international standards.

Thirdly, these foreign agents' laws establish a trap model for entities concerned: these entities are doomed whether they comply with the laws or not. If they do, their reputation will be tarnished because of the label they receive and might not be able to abide by all the obligations. But if they don't register, they will also not be able to operate because they will be ruined by the fines or sometimes by dissolution. There is no good way out of it for these entities.

Lastly, the foreign agents' laws are destructive not only for the entities targeted by them, but also for the societies because they impoverish the public debate. They have a chilling effect on the society because they target civil society or media.

2. Statement by Ms Tanya Lokshina, Associate Director, Europe and Central Asia Division, Human Rights Watch

Governments can have systems in place to identify when specific actors are paid to promote the interests of another government. Tracking the influence of money in politics is a legitimate aim to promote democracy. However, the autocrats pervert it for non-democratic purposes. It is all the more important for governments who are using foreign influence tracking systems to make sure that those measures are absolutely necessary, narrowly drawn, and closely monitored by an independent body to identify and address any pernicious impact or chilling effect on civil society. Such measures in democratic countries adopted in good faith are cynically used by autocratic governments to justify their own abusive foreign agents' law, which definitely do not meet the three-part test that Ms Bílková was referring to.

In the Russian Federation, the way foreign agent's legislation evolved and is implemented is a stark example of the damage that a foreign agent law, adopted for repressive purposes, could do.

Russia's "foreign agents" legislation is a signature weapon in the government's anti-rights arsenal. Aimed at stifling civil society, it seeks to smear anyone or anything that is independent and critical of the government as "foreign" and therefore suspicious, subversive, or even traitorous. Enacted first in 2012 and repeatedly boosted since, Russia's foreign agent provisions have been used to harass a wide range of activists and critical voices and as a pretext for shutting down some of the country's leading human rights groups.

Every few years, amendments harshened and expanded this toxic law. In 2022, a new law created a consolidated, simplified, but drastically broad definition of foreign agent: now it could be any person, Russian or foreign; any legal entity, either domestic or international; or any group that received foreign support, which could be even a training held abroad, and/or is "under foreign influence."

The 2022 law, among other things, imposed serious and wide-ranging restrictions on activities of foreign agents to exclude them from public life. These include bans on civil service, access to official secrets, participating in electoral commissions, participating in political parties, donating to political parties, running for public office, holding public service positions, participating in advisory or expert bodies that advise the state, public commissions that monitor places of detention; state or public environmental impact assessments; independent anti-corruption expertise of draft laws and by-laws; or electoral campaigns or donating to such campaigns or to political parties.

Foreign agents are also banned from organising public assemblies or supporting them through donations, teaching, conducting or organising education activities for children, or producing information materials for them. They are also banned from participating in procurement tenders, receiving state grants or other financial support, including for creative work, and benefiting from simplified accounting or taxation procedures. Their

funds cannot be insured (except personal funds). They cannot operate “critical information infrastructure,” including telecommunication networks.

The legislation also explicitly stipulated that violation of the foreign agents’ regulations by foreigners or stateless persons would entail deportation from the Russian Federation.

A large number of civic groups and activists, including those that work on human rights, the environment, election monitoring, and anti-corruption have already been designated “foreign agents.” These provisions allow authorities to bar them from their work and prevent them from directly engaging on these critical issues. The ban on producing information materials for children resulted in several bookstores in the Russian Federation putting books, whose authors were designated as foreign agents, into special wrapping and marking them as adult content.

By 2023, penalties also extended to third parties who provide “assistance” to people designated foreign agents. Sanctions for noncompliance with foreign agent legislation start with hefty fines, but also include up to six years in prison for “malicious incomppliance.”

The Ministry of Justice used to maintain four separate “foreign agent” registers: for NGOs, for unregistered public associations, for media, and for physical persons. As of spring 2024, they merged them into a single register that includes over 800 persons and entities.

Among other information, the registry contains information about dates of birth, taxpayer numbers, and personalised pension insurance numbers (an analogue of social security number in other countries) for individual “foreign agents,” and registration numbers, lists of members, web addresses and locations for organisations and public associations.

The by-laws that the Ministry of Justice developed in 2022 list the following categories to be included on the foreign agent registry:

- Individuals intending to act as foreign agents;
- Foreign nationals residing abroad who intend to act as foreign agent upon arrival in the Russian Federation;
- Foreign journalists accredited in the Russian Federation and conducting foreign agent activities not related to journalistic activities;
- Legal entities incorporated in the Russian Federation by foreign agents;
- Foreign agents who failed to apply to be added to the registry.

In addition to the “foreign agents registry,” a separate registry of persons and entities “affiliated with foreign agents” was created. Presently, it is not available in public domain. But according to the Justice Ministry, at the end of 2022, it contained information on about 861 individuals affiliated with foreign agents, thus considerably exceeding the number of foreign agents. Now this number is probably much higher.

Since Russia’s full-scale invasion of Ukraine, “foreign agent” designations have drastically increased, and the list includes numerous well-known public figures, such as opposition politicians, journalists, entertainers, and bloggers vocal in their opposition to the war.

When commenting on the “foreign agents” legislation, Mr Ilya Shablinskiy said that Russian authorities aim “to turn foreign agents into a caste of untouchables or create for them something like a virtual leper colony.” I cannot but agree with his eloquent assessment.

When the Russian law was getting adopted in 2012, Human Rights Watch knew it would have a stifling effect on civil society and Russian human rights organisations were of course appalled. The proponents of the law kept saying loud and clear that it would not have any chilling effect on civil society and was done only to ensure transparency. It became clear very quickly that it was not about transparency at all, but about silencing critical voices. It took the government about one year to designate five organisations as foreign agents, those were deemed by the government to have something to do with peaceful public protests in 2011 and 2012. Those organisations spent a lot of money, effort, and time on litigation and lost. They ended up on the list. Then the Ministry of Justice got the power to proactively designate “foreign agents”, and dozens and dozens of prominent human rights organisations and environmentalist groups got on the list. Organisations and then individuals had to label each and every of their publication and even correspondence as authored by a foreign

agent. As a result, the civil society simply cannot operate any longer. This is a great threat that has to be kept in mind.

3. Discussion

In the following discussion, **Mr Hispan** asked what the clearest cases of Russian interference were. **Ms Lokshina** noted that Russian propaganda had been very active in influencing public policy across Europe. It was no secret that they had been funding far right political parties. **Lord Keen** asked Ms Bílková about the recent opinion of the Venice Commission on the Georgian legislation, regarding deficits in the legislative process. **Ms Bílková** stated that as in a number of other opinions on foreign influence, the Venice Commission found that the legislation had been adopted very quickly, without respecting the need for a broad public consultation. **Mr Mikanadze** stated that transparency was important, quoting the decision of the European Court of Justice (ECJ) Grand Chamber about NGOs having great influence on domestic politics. He recalled that in Georgia, more than 20% of the territory was occupied by the Russian Federation and soft power was playing an important role. Therefore, it was necessary to counter Russian false narratives. All the legislation had been discussed in presence of NGO representatives under a two-month process and some opposition parties have created NGOs that received foreign funding to effectively fund political activities. **Ms Bílková** expressed her satisfaction to hear that Georgia was still committed to the standards of the Council of Europe, noting that the concept of transparency was not a legitimate aim listed in human rights instruments. It was necessary to justify a listed legitimate purpose with transparency, transparency must be balanced with other elements such as privacy, which is very much violated under some foreign agents' laws. **Lord Keen** noted that the Georgian Parliament had passed its legislation before the Venice Commission released its opinion. **Mr Mikanadze** explained that the Venice Commission's opinion had not been requested by the Georgian Parliament, but that there would normally be an opportunity to amend the law following the Venice Commission's opinion. **Ms Prammer** said that there was a legitimate concern about authoritarian influence, but we were reluctant to state this openly in debates about foreign agents' laws. She asked whether the vacuum in the Russian Federation had been filled by fake human rights organisations. **Ms Lokshina** explained that genuine human rights organisations in the Russian Federation had been shut down for non-compliance with foreign agents' legislation, including the Moscow Helsinki group, Memorial, the Sakharov Center. Remaining NGOs are either government controlled or cannot engage with the government. Foreign agent's legislation could be two-fold: either it was simply about transparency in foreign lobbying, or it was about any amount of foreign funding or a very broad range of activities. It was then a totally different case that should not be put in the same category.