



PARLIAMENT OF GEORGIA
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16-04-2024

Mr. Michael O'Flaherty

Commissioner for Human Rights
Strasbourg

Tbilisi

Dear Commissioner O'Flaherty,

Thank you for your letter regarding the draft law 'On Transparency of Foreign Influence' in which you provide several arguments to express your concern. The major thrust of the spirit and the letter of this draft law is to improve transparency, which is one of the pillars on which the Council of Europe and, with it, Georgian democracy stand.

Given this simple, yet important function of the draft law, let me respond to several of your suggestions to ensure that you are fully informed on the peculiarities of the draft law. Overall, the draft law is compatible with the European human rights standards; it duly possesses both clarity and foreseeability; it does not restrict the freedom of association; and it is proportionate to its legitimate aims, seeking to address foreign influence in a proportionate way, fully respecting fundamental rights.

We have duly studied the practice of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union. The draft law 'On Transparency of Foreign Influence' is based on these very principles. The judicial practice also strengthened our determination to introduce minimal and non-cumbersome obligation of an annual financial declaration (if their foreign funding is more than 20% of their income), which some NPOs already voluntarily do via their web-pages.

Dear Commissioner,

As you rightly quote the ECHR decision, transparency can be a legitimate aim. We also agree that the interference must be proportionate to the legitimate aim pursued. Therefore, the draft law introduces the only obligation of an annual declaration of funding. Thus, the proposed legislation does not ban any type of activity, and does not and cannot seek to limit the civic space. Instead, it provides for transparency and accountability requirement applicable to non-profit organisations (NPOs) with considerable foreign funding. No natural persons, no sports federations, no students, no scientists, no emigrants, no individual entrepreneurs, no commercial entities are subject to the law. This is the absolute minimal and proportionate interference, even compared to similar American, British, French or EU (draft) legislations on transparency and lobbying. There

is no other lesser obligation on transparency in any other legal jurisdiction across the globe.

You also refer to the requirement of non-discrimination in restrictions. Major risks are related to nontransparent and illegal foreign funding, therefore, much like in case of other similar foreign legislations, the field of regulation is naturally a foreign power. The issue of stigmatisation was also addressed by dropping the 'foreign agent' in favor of 'organisation pursuing the interest of a foreign influence'. It resembles the EU's wording 'organisation carrying interest representation on behalf of third countries' suggested in European Commission's proposal for a Directive (COM[2023] 637).

Your quote from the ECHR case does corroborate Georgian draft law's purpose. The law, by no means, restricts NPOs from performing their role as the 'watchdogs of society'. In Georgia, they, indeed, are free and will be free after the adoption of this Law. They will be free to 'solicit and receive funding from a variety of sources', and the diversity of their funding will not be put under any restriction either. Once again, the only obligation for NPOs will be to provide their financial declaration annually.

Dear Commissioner,

You rightly mention the scope of legitimate restrictions of the operation of NPOs or other entities, which are approved by the Committee of Ministers and which mention the application of laws to 'the funding of elections and political processes'. Indeed, achieving greater transparency of the funding of elections and political processes is one of the merits of the proposed legislation.

Georgia has been subject to foreign invasion and manipulation of its politics for decades now. In the era of rising hybrid and informational warfare and geopolitical challenges, the lack of transparency of foreign interference leaves my country and society vulnerable. Foreign funding of political parties is, as in other European countries, against the law in Georgia. However, on numerous occasions, shadow schemes of political party financing via NPO funding were identified that were not known to the state and the general public. The proposed legislation has certain mechanisms to expose and avoid such illegal linkages between the political parties and NPOs. This is especially relevant ahead of upcoming elections in Autumn 2024.

Overall, the public can receive information on possible foreign funding of elections and political processes, which will become more readily available to the public, for their informed political decision. Security of the state is not an abstraction but a tangible right of every citizen.

Dear Commissioner,

The draft law, in terms of its future consequences, will certainly have a positive effect on Georgian NPOs. The draft law will raise the level of responsibility and accountability of NPOs. Thus, their legitimacy, which was shaken due to scandals with meddling in politics, will increase. So will do the trust towards them among the public. Overall, these improvements will ameliorate the integrity of the political and electoral system in Georgia and allow more inclusive participation of non-profit organisations in public policy-making.

This being said, since the annual financial declaration is the only suggested obligation, I cannot share your concerns about NPOs being subject to additional cumbersome reporting requirements, as the requirements by the draft law are virtually minimal and non-cumbersome. These requirements, together with the introduction of fines only, in case of violations of the law, demonstrate that the state's interference will be proportionate and minimal to the legitimate aim, especially compared to other similar foreign legislations.

Dear Commissioner,

One of the main reasons we repealed this law last year was an agreement and understanding that both Georgian as well as foreign organisations would open up their funding and provide this information proactively. We tried to partner with major donor organisations on voluntary basis, but, despite our attempts, the situation worsened. The unfortunate reality in Georgia is that certain non-profit organisations continue to evade transparency requirements and covertly influence political, economic and security processes.

Dear Commissioner O'Flaherty,

We are open to inclusive and substantive discussion, whereas we can draw meaningful inferences from arguments, not throw meaningless epithets and labels around. Let me also re-assure you that the legislative process will go through the weeks-long regular procedure. We shall make sure that the parliamentary discussions outline concrete modalities of the law.

Transparency of the organisations engaged in public policy-making is always good and can only solidify democratic pillars of Georgia. The draft law is essential, not optional, for increasing transparency, and making economic, political, and security processes more open.

Sincerely,

Chairman of the Parliament
Shalva Papuashvili

A handwritten signature in black ink, appearing to be 'S. Papuashvili', written in a cursive style.