

Ref: CommHR/DM/sf 016-2024

Mr Shalva PAPUASHVILI
Chairman of the Parliament of Georgia

Strasbourg, 11 April 2024

Dear Chairman,

My mandate is to foster the effective observance of human rights in all 46 member states of the Council of Europe. An important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices. In this context, I am writing in relation to the draft law “On transparency of foreign influence” (N 07-3/433/10) which was registered in the Parliament on 3 April 2024.

This legislative initiative appears to be similar to the draft law which was on the Parliament’s agenda in February last year (N 07-3/293/10) and was then withdrawn from consideration several weeks after it was introduced. My predecessor sent you a letter in connection with that legislative initiative, in which she stressed that it raised a number of concerns in the light of human rights standards and called on members of the Parliament to reject it or any similar draft laws.

I would like to reiterate these preoccupations in connection with the newly introduced draft legislation which, if adopted, would provide for the registration of non-commercial legal entities and media outlets as “organisations pursuing the interest of a foreign influence” if they receive directly or indirectly more than 20% of their total yearly funding from a “foreign power”. I understand that it would set a separate legal regime for such entities, subjecting them to additional and cumbersome reporting requirements, giving vaguely defined and broad inspection (monitoring) powers to the authorities to identify such entities, and introducing heavy administrative fines (amounting to up to 25000 GEL, approximately 8700 EUR) in case of non-compliance.

I am concerned about the compatibility of this legislative initiative with the human rights standards in the field of freedom of association and expression, including the chilling effect its adoption may have on the work of media outlets and civil society organisations, in particular those working on human rights, democracy and the rule of law in Georgia.

I note that the European Court of Human Rights (the Court) stressed in the case of *Ecodefence and others v Russia* that “in order to ensure that NGOs are able to perform their role as the “watchdogs of society”, they should be free to solicit and receive funding from a variety of sources. The diversity of these sources may enhance the independence of the recipients of such funding in a democratic society”. The Committee of Ministers Recommendation Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe provides in Article 50 that “NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties”.

Furthermore, under Article 11(2) of the European Convention on Human Rights (ECHR), any restriction of the freedom of association should be prescribed by law, which entails the test of clarity and foreseeability. It should also be necessary in a democratic society. The notion of necessity includes two conditions: any interference must correspond to a “pressing social need”, and the interference must be proportionate to the legitimate aim pursued. In addition, under Article 14 of the ECHR, the restriction must be non-discriminatory.

Concerning the necessity aspect, the objective of increasing transparency with regard to the funding of civil society organisations may correspond to the legitimate aim of the prevention of disorder in Article 11 (2) of the ECHR as noted by the Court in the aforementioned judgment. However, it should not be sought through disproportionate means, and to the detriment of the effective enjoyment of human rights and freedoms. In particular, according to the OSCE-ODIHR and Venice Commission Guidelines on Freedom of Association, “(e)nsuring that an interference by the state in the exercise of a fundamental freedom does not exceed the boundaries of necessity in a democratic society requires striking a reasonable balance between all countervailing interests and ensuring that the means chosen be the least restrictive means for serving those interests. At the legislative stage, this should be done by assessing whether a planned interference in the exercise of the right to freedom of association is justified in a democratic society, and whether it is the least intrusive of all possible means that could have been adopted.”

As regards non-discrimination, the legal framework governing the legitimate work of non-commercial organisations should contain provisions which are non discriminatory and should always be based on clear and non-biased standards of transparency and reporting, irrespective of the sources of their funding. I note that the legislative initiative provides for a difference in treatment of the non-commercial legal entities and media outlets solely on the basis of the foreign origin of some of the funding. I also find that the term “organisation pursuing the interest of a foreign influence” – which is used in the draft law - implies a high level of dependence and control between the organisation which receives foreign funding and the donor organisation. This does not seem to correspond to the requirement of receiving - directly or even indirectly - only over 20% of the total yearly income from abroad. This designation should also be seen against the background of an increasing stigmatisation of human rights and other NGOs in political discourse in Georgia. I would like to stress in this context that, instead of restricting the freedoms of NGOs, national authorities should foster a safe and enabling environment for their work, in line with the Council of Europe’s Committee of Ministers Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe.

If adopted, the implementation of this law is likely to result in the stigmatisation and discreditation of the civil society organisations and media outlets who receive foreign funding and their activities, including in the eyes of the general public and state institutions, which will consequently render their activities difficult or impossible to carry out.

In the light of the above, I respectfully ask members of the Parliament to refrain from adopting the draft law “On transparency of foreign influence” as tabled and engage with national and international partners, including the Council of Europe, on how best to ensure an enabling environment for the legitimate work of non-commercial organisations and media outlets in the country.

I would be grateful if you could ensure that all members of the Parliament receive a copy of this letter. I stand ready to continue our constructive dialogue on this and other human rights issues in Georgia.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Flaherty". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael O'Flaherty