



Tbilisi, Georgia-20 April, 2024: Georgian women protest on Rustaveli Avenue against the law adopted in parliament (k_samurkas / Shutterstock)

Russian “Foreign Agents” Scenario: From the Weaponization of Transparency to Public Discrimination

by Maxim Krupskiy

Over the last two months, the world has seen mass protests on the streets of the Georgian city of Tbilisi against the so-called “Russian law.” Debated in Georgia’s parliament as “On Transparency of Foreign Influence,” this bill would give the Georgian government the power to designate noncommercial nongovernmental organizations and media receiving more than 20 percent of their income (in the form of money and other property) from a so-called “foreign power” during the year as representing

the interest of such a power. A “foreign power,” according to the law, is an entity belonging to a foreign state system, foreign citizens, organizations established on the basis of non-Georgian legislation, and any other associations established on the basis of foreign or international legal norms. The citizens protesting on Georgian streets do not want to see their government follow in the steps of Putin’s Russia, with the stigmatization of civil society, and they are not alone. Russia’s Foreign Agents Law is

inspiring similar legislation in other countries around the world. And while the United States has had its own version of the law (the Foreign Agents Registry Act—(FARA)) since 1938 and the EU is developing a variant of it, activists around the world consider the spread of the “Russian law” as a threat to civil society and human rights.

This dichotomy between the reactions to the Russian and Western approach to controlling foreign influence often leads to accusations of double standards and hypocrisy on the part of activists and analysts alike—or at least, accusations from Russian officials and proponents of the “Russian law” abroad. A deeper analysis of the history and development of the Russian law on foreign agents, as well as the consequences of its implementation, shows that those accusations have little basis. Although the laws on foreign agents and similar legislation intended to increase transparency surrounding foreign influence are far from ideal in the United States or in other democratic countries, the goal of the Kremlin is discrimination against civil society and dissenters rather than transparency.

The rapid spread of similar legislation in Georgia, Kazakhstan, and Kyrgyzstan (all states that Russia considers within a zone where its geopolitical interests should be privileged) requires a close analysis of how legal mechanisms ostensibly intended to ensure transparency can, given the appropriate political will and implementation, degenerate into instruments of state discrimination.¹

The original legislation on foreign agents that came in the form of amendments to the law “On Non-Profit Organizations” emerged in Russia in 2012 in response to the mass protests that started in December 2011. They were prompted by

the results of the Russian State Duma elections, which many citizens considered fraudulent, and the subsequent presidential election that re-elected Vladimir Putin to a third term.² Officially, the purpose of these amendments controlling foreign agents was to ensure greater transparency of foreign-funded nonprofit legal entities that, according to the authorities, were engaged in political activities.³ Supporters of these amendments repeatedly referred to the American FARA law as a model.⁴ Critics at the time spoke about the fallacies of comparing the Russian law with the FARA law from the outset, and warned that this law would be aimed solely at stigmatizing Russian civil society and suppressing the activity of nonprofit organizations.⁵

Over the past 12 years, the Russian law on foreign agents has been repeatedly toughened. The Russian Ministry of Justice began to label not just nonprofit organizations, but also public associations, journalists, and individuals as foreign agents. At the same time, grounds for registration as a foreign agent grew increasingly vague.⁶ After the launch of Russia’s full-scale invasion of Ukraine on February 24, 2022, the law on foreign agents was repurposed from a supposed mechanism to ensure transparency into an instrument of public discrimination against dissenters.⁷ Over the past two years, Russian authorities have imposed increasingly stringent restrictions on foreign agents and have openly declared their intent to deprive them of all sources of income, both inside and outside of the country.⁸ The Kremlin also sought to intimidate Russian society through legislative amendments that criminalize either support for or interaction with declared foreign agents.⁹

An Agent of Nobody

Both the legal term *foreign agent* and the stated objectives of the relevant legislation against foreign agents imply the need for a clear description of what constitutes the actions of said individuals or groups. What are the activities conducted in the interests of the foreign principal? Having text in the law that links conscious activity of the “agent” to the specific interests of the foreign principal is a *conditio sine qua non*, a “necessary condition” for a quality bill. This or any law within a rule of law system requires *legal certainty*, which means that the legislation must be clear and unambiguous, thereby reducing the risk of arbitrary decisions by public authorities. The importance of this principle has, for example, been emphasized by the Venice Commission, the Council of Europe’s advisory body on constitutional matters.¹⁰ Yet at no point did any of the versions of the Russian law on foreign agents ever contain such precise language, nor did any version of this law require the Russian Ministry of Justice to provide evidence that any individual or group registered as a foreign agent had acted in the interests of an entity or a person outside Russia.¹¹

In the current version of the law, which went into effect on December 1, 2022, even the concept of activity in the interests of a foreign source has completely disappeared.¹² It was replaced by a new phrase: *being under foreign influence*. Unlike true agency activities, being “under influence” does not imply activity conducted on behalf of foreign interests. Thus, it is now possible to become a foreign agent in Russia simply by holding and publicly declaring views that differ from the Kremlin’s official agenda, primarily regarding the invasion of Ukraine.¹³ The Russian concept of applying the legislation on foreign agents is unique, because an

individual or legal entity in Russia can be labeled an *agent of nobody*. No activity conducted in the interests of any principal is required. This approach has given the Russian Ministry of Justice the widest possible discretionary powers. That empowerment, among other things, was reflected in the rapid growth of the number of foreign agents designated between 2022 and 2023 with 188 and 227 new agents respectively. In comparison, there were 113 new foreign agents in 2021 and only 16 in 2020.¹⁴

Weaponizing Transparency

The legal structure of the “foreign agents” concept is generally imperfect. For example, while analyzing the practice and the implementation of the American and Russian versions of this legislation, researchers have identified gaps of the comparable legal nature in terms of stigmatization, broad wording, and other shortcomings.¹⁵ However, under certain political conditions, the negative effect of the legislation on foreign agents is multiplied. These conditions include the absence of real separation of powers, the lack of an independent court, and deliberate propaganda smear campaigns against dissenters. These are precisely the conditions present in Russia today. Officials are co-opting the rhetoric of transparency from democratic countries and exploiting legal gaps within the borrowed concept of “foreign agents.” The objective is to convert this legislation with Western origins into a weapon in their fight against civil society and retain unchallenged power.¹⁶

During the Russian-Ukrainian war, Russian authorities began considering nonprofit organizations receiving foreign funding as “the main instrument of the information and propaganda campaign to discredit the actions of the state

bodies of the Russian Federation and its Armed Forces,” deployed “in the interests of the states of the collective West.”¹⁷ Guided by this approach, the Russian Ministry of Justice declared the need to further develop national legislation on foreign agents, meaning to tighten it even more. This stigmatization of nonprofit organizations of so-called “pro-Western orientation” at the legislative level fulfills the provisions of the Concept of Foreign Policy of the Russian Federation (paragraph 47-4), approved by President Putin on March 31, 2023. According to this Concept, Russia is countering “the use of human rights issues as a tool for external pressure, interference in the internal affairs of states.”¹⁸ The Kremlin’s description of human rights activities is a clear sign of further repression of civil society, one that current lawmakers are working to enshrine in law.

From Stigmatization to Public Discrimination

Shortly after the new law on foreign agents came into effect, Russian government officials began to publicly advocate various repressive initiatives against those individuals and groups receiving this designation. The label no longer had anything to do with ensuring transparency or controlling foreign influence but was instead aimed solely at discriminating against those receiving the label. Minister of Justice Konstantin Chuichenko proposed designating as foreign agents any persons or groups whose activities were “directed against Russian spiritual and moral values.”¹⁹ Foreign agents would also be deprived of any material support from the state.²⁰ In addition, the deputies of the State Duma of the Russian Federation proposed that foreign agents should be required to report on income, property, expenses, and

obligations of close relatives.²¹ Any foreign agents located outside the country should be prohibited from making real estate transactions with a notarized power of attorney.²² This would force any designated individual to come to Russia to make such transactions, obviously putting them at risk of immediate arrest.

Recently, several new discriminatory initiatives directed against foreign agents have come to light. The State Duma of the Russian Federation is discussing the introduction of a ban on royalties to foreign agents for copyright and related rights.²³ This initiative is obviously aimed at worsening the financial situation of people like musicians, artists, and writers; in essence, it is an attempt to seize their legally earned money as punishment for political disloyalty. Similarly, the parliament of Bashkiria, one of Russia’s republics, proposed prohibiting foreign agents from receiving more than the minimum wage (about \$200 per month) from transactions, with the remainder to go to the state budget.²⁴ One of the latest initiatives was a proposal by a group of deputies of the Russian State Duma to restrict access to books written by foreign agents in libraries in order to prevent propaganda of authors “whose activities are directed against the security of the Russian Federation.”²⁵

New Discrimination Techniques

Despite the fact that the legislation on foreign agents has been applied in Russia for more than a decade, the state has not been able to completely suppress dissent. Regardless of the serious restrictions associated with this status, nonprofit organizations and human rights projects continue their work both inside and outside the country. Many independent media and journalists who

have been included in the foreign agent register find new formats for their work by creating YouTube and Telegram channels to communicate with their audiences. Civil activists, musicians, writers, and other public figures continue to express their anti-war views and engage in creative work outside of Russia. Obviously, public access to information that challenges the Kremlin's agenda does not suit the Russian authorities, so they continue to look for new methods to silence these voices.

One such development is the concept of penalizing certain forms of interaction with foreign agents. This initiative would encourage Russian people to personally discriminate against designated foreign agents. To date, this has found expression in two new legislative initiatives.

The first, which came into effect last year, provides for liability for individuals and legal entities who assisting foreign agents in violating the law.²⁶ For example, Russian schools must now carefully screen all their current and potential teachers or guest lecturers for foreign agent status, since foreign agents are prohibited from conducting pedagogical activities with minors or creating informational products for them. Any staff members with a foreign agent designation must be dismissed.

The second law bans advertising of any resources of foreign agents, including their information platforms (social media accounts and channels, websites, etc.), and bans companies from advertising on their platforms. This legislation has already endangered a number of independent Russian media projects.²⁷ In addition to the obvious legal consequences of administrative and criminal liability for violating these restrictions,

the advertising ban quickly led to a wave of self-censorship among advertisers against designated foreign agents.²⁸ Some advertising agencies and companies are already introducing additional policies and procedures to guard against advertising with foreign agents in order to protect themselves. For example, they refuse to sign contracts with foreign agents and demand that they be removed from materials presented by them. They also want to get out of advertising contracts that were made before the law went into effect.²⁹ According to Vyacheslav Volodin, the speaker of the State Duma of the Russian Federation and one of the proponents of property repression against foreign agents, the law will mean these "agents" will likely lose up to 80 percent of their advertising revenues.³⁰

Conclusion

The official rhetoric about the need to ensure transparency in the activities of foreign-funded nonprofit organizations, which accompanied the development of the Russian law on foreign agents 12 years ago, has lost all relevance, even for Russian authorities. Today, Russian legislation is not aimed at transparency, but discrimination and repression. The authorities have a legal tool to designate any citizen or group that disagrees with the Kremlin's policy a foreign agent. Once the label is applied, there is virtually no recourse for those so designated. The penalties applied only increase, as does the uncertainty over what exact violation can draw that unalterable designation.

With the rapid spread of foreign influence transparency legislation around the world, the Russian example of manipulating this rhetoric to suppress civil rights and freedoms becomes a

very tempting blueprint for other nondemocratic regimes. Borrowing the Russian experience will contribute to democratic backsliding in other countries. This makes the voices of civil society and ordinary citizens who seek, as in Georgia, to prevent such a scenario and to urge the international community not to fall for the temptation to use repressive legal tools in the name of transparency all the more important.

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