

IN THE EUROPEAN COURT OF HUMAN RIGHTS

App No. 31069/24

BETWEEN:

GEORGIAN YOUNG LAWYERS' ASSOCIATION and Others

Applicant

and

Georgia

Respondent

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WRITTEN COMMENTS OF THE THIRD-PARTY INTERVENER

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2 September 2025

## Introduction

1. These written comments are filed by Media Defence (the ‘Intervener’), pursuant to leave granted by the President of the Court in accordance with Rule 44 of the Rules of Court.<sup>1</sup>
2. This case concerns a challenge to the Law on Transparency of Foreign Influence (the ‘TFI Law’) which requires non-governmental organisations and print, online, and broadcast media that receive a certain percentage of their annual income from abroad to register with the Ministry of Justice as “organisations pursuing the interests of a foreign power”. Registered entities will be subject to extensive reporting requirements and to highly intrusive supervision by the authorities. Restrictive laws of this type have been introduced and applied with increasing frequency in recent years within the territory of the Council of Europe. Vague and imprecise legal provisions allow state authorities exercise their discretion to interfere with a range of Convention rights, including Article 10 and Article 14.
3. Media outlets and journalists operating in Georgia affected by the TFI Law are well known for their work reporting on issues relating to human rights, and on public interest matters more generally, including political speech. Imposing restrictions of the type provided for by the TFI Law interferes with their ability to engage in public debate, participate in civil society, and continue their work as ‘public watchdogs’. It will stigmatise their work and have a chilling effect. This Court has emphasised that the state has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism.<sup>2</sup> In combination with other repressive measures, these types of laws have the capacity to lead to the eventual extinguishment of independent media and reporting. The outcome of this case is therefore of critical importance for media outlets and journalists in Georgia.
4. These written comments will focus on the following issues, with reference to relevant international and comparative law and commentary -
  - (i) the impact of ‘foreign agent’ type laws on the Article 10 rights of journalists and media outlets in other jurisdictions;
  - (ii) the factors the Court should take into account when assessing victim status in cases involving ‘foreign agent’ type laws;
  - (iii) the extent to which discrimination is central to the application by state authorities of these laws.

### Impact of ‘foreign agent’ type laws on journalists in other jurisdictions

5. According to the United Nations Human Rights Council, “no law should criminalise or delegitimise activities in defence of human rights on account of the origin of funding”.<sup>3</sup> While states are entitled to introduce laws that reflect legitimate concerns

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<sup>1</sup> Letter dated 12 August 2025 received from the Court granting Media Defence leave to intervene. As stipulated in that letter, these submissions are confined to the factual and legal aspects of the case relevant to our own specific interest in it.

<sup>2</sup> ECtHR, *Manole and others v Moldova*, no. 13936/02, 17 September 2009, §107.

<sup>3</sup> Human Rights Council, *Protecting Human Rights Defenders*, HRC Res. 22/6, UN Doc. A/HRC/22/6, 2 April 2013, §9.

about foreign influence in their state, the TFI Law, the Russian ‘foreign agent’ laws, and those of the other states described below, all share a common focus on stigmatising and discrediting civil society organisations that promote human rights and independent media that report critically on the government.<sup>4</sup>

6. In its case law on the use of these laws by Russia, the Court held that a legal requirement of labelling as a ‘foreign agent’ creates “an environment of forced self-stigmatisation while severely restricting the ability of the applicant media organisations and individual journalists to participate in public discourse and carry out their professional activities”.<sup>5</sup> For its part, the TFI Law has been described as “Kremlin-inspired”,<sup>6</sup> and as “a facsimile of the Russian legislation that inspired it”.<sup>7</sup> The devastating impact of that legislation to NGOs and media outlets was described in the *Ecodefence* judgment.<sup>8</sup> The impact of the TFI Law is likely to be similar, not least in the sense that “the only way for the applicant organisations to avoid the application of the ‘foreign agent’ label and restrictions and continue their activities [is] to forego ‘foreign funding’ altogether”.<sup>9</sup>
7. According to section 2 of the TFI Law, of the four categories of legal entity that may be deemed ‘pursuing the interests of a foreign power’, three directly refer to media outlets. Individuals and organisations that come within that definition are required to register as such.<sup>10</sup> The provisions of the law are vague and overbroad, for example defining a ‘foreign power’ in a way that potentially implicates an enormous number of organisations.<sup>11</sup> The legislation mandates that this register will be fully accessible to the public.<sup>12</sup> This public disclosure requirement will discredit the media in the eyes of the public.<sup>13</sup> The administrative requirements imposed on them will inevitably “undermine their ability to engage in their core activities”.<sup>14</sup>
8. The impact of the foreign agent laws in Russia has been documented extensively. This Court in *Kobaliya* identified examples,<sup>15</sup> and since that judgment was handed down media outlets in particular continue to be prosecuted and sanctioned. According to

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<sup>4</sup> See *Ecodefence* where the Court distinguishes between the US ‘foreign agent’ law and the Russian one – ECtHR, *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, §§113-116.

<sup>5</sup> ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, §86.

<sup>6</sup> Politico, *US slams Georgia’s ‘Kremlin – inspired’ foreign agent bill*, 18 April 2024, available at: <https://www.politico.eu/article/us-slams-georgia-controversial-kremlin-inspired-foreign-agent-law/>

<sup>7</sup> Commission on Security and Cooperation in Europe, *Helsinki Commission Senate Leadership Statement on Reintroducing of Foreign Agent Bill in Georgia*, 5 April 2024, available at: <https://www.csce.gov/statements/helsinki-commission-senate-leadership-statement-on-reintroduction-of-foreign-agent-bill-in-georgia/>

<sup>8</sup> ECtHR, *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, §§83-87

<sup>9</sup> *Ibid.*, §168.

<sup>10</sup> S.4 of the TFI Law.

<sup>11</sup> See Section 3 of the TFI Law. According to the Venice Commission the TFI Act “lacks precision and is of very wide scope as well as leaving excessive discretion to state organs, especially the Ministry of Justice.” Council of Europe, Venice Commission, *Urgent Opinion on the Law on Transparency of Foreign Influence*, Opinion No. 1190/2024, 21 May 2024, §53.

<sup>12</sup> Section 5 of the TFI Law.

<sup>13</sup> See Global Investigative Journalism Network, *How Georgia Is Following a Russian Legal Blueprint to Suppress Independent Journalism*, 13 May 2024, available at: <https://gijn.org/stories/georgia-russian-legal-blueprint-foreign-agent-law-suppress-journalism/>

<sup>14</sup> ECtHR, *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, §159

<sup>15</sup> See for example ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, §§ 82-83

Human Rights Watch, under Russia's 'undesirable activities' law<sup>16</sup> in the last year at least 185 penalties have been imposed by courts for 'participating' in the activities of 'undesirable' organisations. At least 125 of these cases related to people connected to prominent media outlets such as Meduza, TV Rain, the Insider and Radio Free Europe.<sup>17</sup>

9. Although there is no specific law on this topic, Azerbaijan state practice and its legal framework have many of the attributes of a 'foreign agent' law and have caused significant harm to independent media.<sup>18</sup> The 2014 amendments to the Law on NGOs tightened registration, reporting, and approval requirements for organisations receiving external funding.<sup>19</sup> The Law on Media, introduced at the beginning of 2022, created a media register for media outlets and journalists and provides the authorities with powers to restrict who may lawfully "engage in media activity."<sup>20</sup> The stated purpose of the media register is "to systematise information on media entities, including their editorial boards, as well as journalists".<sup>21</sup> Even if the media register is nothing more than a data-gathering exercise resulting in a notification requirement for media outlets, it would still be difficult to discern which of the Article 10(2) legitimate aims the imposition of such a formality could serve, considering the extensive and excessive amount of information on media outlets' internal workings that must be submitted to the register, including requiring the names, private addresses, identity document numbers, and contact details of all journalists working at a media entity.<sup>22</sup>
10. Alongside the implementation of this law, scores of journalists have recently been arrested and prosecuted for 'foreign currency smuggling'.<sup>23</sup> The government has defended these measures as necessary to prevent 'negative external influences', underscoring the connection between relations with foreign entities and restrictions on press freedom.<sup>24</sup> The Council of Europe has raised concerns that restricting journalism only to those admitted to the state register and imposing onerous

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<sup>16</sup> Russian Federation, Federal Law of 23.05.2015 N 129-FZ – Federal Law on Undesirable Activities of Foreign and International Non-Governmental Organisations.

<sup>17</sup> Human Rights Watch *Briefing Paper on the Human Rights Situation in the Russian Federation*, 20 August 2025, available at: <https://www.hrw.org/news/2025/08/20/human-rights-watch-briefing-paper-on-the-human-rights-situation-in-the-russian>

<sup>18</sup> See generally – HRW, *Foreign Agent Laws in the Authoritarian Playbook*, 19 September 2024, available at: <https://www.hrw.org/news/2024/09/19/foreign-agent-laws-authoritarian-playbook>; Cardozo Law Review, *The "Foreign Agent Problem": An International Legal Solution to Domestic Restrictions on Non-Governmental Organizations*, available at: <https://cardozolawreview.com/the-foreign-agent-problem-an-international-legal-solution-to-domestic-restrictions-on-non-governmental-organizations/>

<sup>19</sup> Council of Europe, Venice Commission, *Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds As Amended)* Opinion 787/2014, 15 December 2014, §94

<sup>20</sup> The Law on Media, available at <https://acra.gov.az/en/news/838>

<sup>21</sup> Article 73.1 of the Law on Media. See – Council of Europe, Venice Commission, *Azerbaijan Law on Media*, 7 April 2022, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2022\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2022)011-e)

<sup>22</sup> As per Article 73.7.6 of the Law on Media. See – Council of Europe, Venice Commission, *Azerbaijan Law on Media*, 7 April 2022, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2022\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2022)011-e)

<sup>23</sup> RSF, *Azerbaijan: Up to nine years in prison for Sevini Vagifgizi and her colleagues, RSF condemns outrageous sentencing*, 20 June 2025, available at: <https://rsf.org/en/azerbaijan-nine-years-prison-sevinj-vagifgizi-and-her-colleagues-rsf-condemns-outrageous-sentencing>

<sup>24</sup> Reuters, *Azerbaijan's Aliyev rejects criticism over journalists' arrests*, 26 April 2024, available at: <https://www.reuters.com/world/azerbaijans-aliyev-rejects-criticism-over-journalists-arrests-2024-04-26/>

conditions with respect to activities that require funding amount to *de facto* 'foreign agent' style controls over media pluralism and critical reporting.<sup>25</sup>

11. A 'foreign agent' type law was adopted in Kyrgyzstan in 2024.<sup>26</sup> The law introduced regulations that concern the registration of non-profit organisations (NPOs) established in the state and funded by foreign legal entities or states - "performing functions of a foreign representative" - as well as a system whereby the Ministry of Justice can control the activities of those organisations. The way in which the law was adopted was criticised by international institutions and NGOs.<sup>27</sup> The impact of the law was immediate, with one prominent civil society organisation deciding to terminate the organisation to avoid putting staff at risk and incurring further stigmatisation and discrimination.<sup>28</sup>
12. The introduction of the law took place against the backdrop of increased pressure on independent media, with the leading investigative news site, Kloop.kg, ordered to be shut down, a decision that was confirmed by a Kyrgyz appeal court.<sup>29</sup> Many independent journalists and media outlets have now left the country.<sup>30</sup> The Venice Commission stated that the law "entails the serious and real risk of stigmatising, silencing and eventually eliminating NPOs in the country receiving even a low part of their funds from abroad. In particular, a real risk exists that NPOs critical of the government will be affected and this will adversely affect open and informed public debate, democracy and the rule of law."<sup>31</sup>
13. The 'foreign agent' type bill recently submitted to the National Assembly of Hungary targets independent journalism.<sup>32</sup> The relevant authority can propose that a media outlet receiving foreign funding be placed on a list where they are considered to pose a threat to the country's sovereignty. Once on the list the media outlet would be prohibited from receiving funding from any foreign entity or state.<sup>33</sup>

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<sup>25</sup> Safety of Journalist Platform, *Azerbaijan Adopts New Media Restrictions*, created 19 January 2022, Updated 25 July 2023, available at: <https://fom.coe.int/en/alerte/detail/107636954>

<sup>26</sup> Kyrgyzstan - Law No. 72 of 2 April 2024 amending the Law "On Non-Profit Organisations"

<sup>27</sup> United Nations, *UN Special Rapporteurs have urged the Government of the Kyrgyz Republic to reconsider and withdraw the draft law "On Foreign Representatives"*, 6 October 2023, available at:

<https://kyrgyzstan.un.org/en/248422-un-special-rapporteurs-have-urged-government-kyrgyz-republic-reconsider-and-withdraw-draft>; Council of Europe, Venice Commission, *Opinion on Law no. 72 of 2 April 2024 Amending the Law "On Non-Profit Organisations"* Opinion No. 1162/2023, 11-12 October 2024, §§48-52

<sup>28</sup> According to the head of the organisation that decided to liquidate itself, "The term 'political activities' can be applied to anything -- it can be applied to research, public polling, and activities that are enshrined as rights under the constitution. My organization informs citizens how to appeal to lawmakers, so that is a political activity. Training also qualifies as a political activity." – Radio Free Europe/ Radio Liberty, *Law Targeting Foreign – Funded NGOs Sends Chill Through Kyrgyz Civil Society*, 5 April 2024, available at:

<https://www.rferl.org/a/kyrgyzstan-foreign-agents-chill/32893000.html>

<sup>29</sup> CPJ, *Kyrgyzstan court rejects investigative outlet Kloop's appeal against liquidation*, 20 May 2024, available at: <https://cpj.org/2024/05/kyrgyzstan-court-rejects-investigative-outlet-kloops-appeal-against-liquidation/>

<sup>30</sup> Al Jazeera, *In Kyrgyzstan, an 'unprecedented crackdown' on free press raises alarm*, 18 July 2024, available at: <https://www.aljazeera.com/features/2024/7/18/in-kyrgyzstan-an-unprecedented-crackdown-on-free-press-raises-alarm>

<sup>31</sup> See Council of Europe, Venice Commission, *Opinion on Law no. 72 of 2 April 2024 Amending the Law "On Non-Profit Organisations"* Opinion No. 1162/2023, 11-12 October 2024, §§108 - 110

<sup>32</sup> The bill entitled 'On the Transparency of Public Life', available at - chrome-extension://efaidnbmninnibpcapjpcgclefindmkaj/https://www.parlament.hu/irom42/11923/11923.pdf

<sup>33</sup> See Human Rights Watch, *Open Letter on the Hungarian Bill entitled "Transparency of Public Life"* available at <https://www.hrw.org/news/2025/05/23/open-letter-hungarian-bill-entitled-transparency-public-life>

14. Failure to comply with the rules results in a fine that is 25 times the amount of funding they received, and which is payable within 15 days. New powers allow for searches of newsrooms and access to documents and computer files, with the assistance of the police. Banks would be obliged to monitor the financial activity of media outlets on the list and provide information on their activities.<sup>34</sup> According to a Council of Europe report, the bill, if enacted, would cause “grave and unjustified damage to civil society in Hungary.”<sup>35</sup> Although not yet enacted, the bill is referred to here because it is illustrative of the proliferation of different types of ‘foreign agent’ type measures, all seeking to harm, among other rights, press freedom. One of the consequences of these measures, even before enactment, is their chilling effect. The previous attempt by the Hungarian government to introduce a ‘foreign agent’ type law was held to violate several provisions of EU primary law in the case of *Commission v Hungary*.<sup>36</sup> The CJEU considered that the ‘content and combined effects’ of the relevant laws created a stigmatising effect on the affected organisations,<sup>37</sup> as well as having a ‘dissuasive effect’ on their operations.<sup>38</sup> The CJEU placed particular emphasis on the overall ‘deterrent effect’ of the impugned law.<sup>39</sup>
15. The rationale provided by states for these restrictions is remarkably consistent: transparency, the prevention of foreign interference in domestic affairs, and national security. This approach has been adopted elsewhere. In the Inter American system the Nicaraguan ‘Foreign Agents Law’ was described as follows - “...with the excuse of branding as a ‘foreign agent any individual or organisation who is a beneficiary of international cooperation or has ties with institutions who promote international cooperation, the new law seeks to silence individuals and organizations who are deemed to oppose the Nicaraguan government and to prevent the exercise of civil liberties, including freedom of expression and association.”<sup>40</sup> In Peru, the government has recently introduced a ‘foreign agent’ law that is primarily targeted at independent media and which the government claims is required in order to ensure transparency in how international funding is used.<sup>41</sup>

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<sup>34</sup> *Ibid.*

<sup>35</sup> Council of Europe, *Expert Council on NGO Law – Opinion on the Bill on the Transparency of Public Life Submitted to the National Assembly of Hungary on 13 May 2025*, 5 June 2025, §115, available at: <https://rm.coe.int/expert-council-opinion-on-hungary-s-bill-on-the-transparency-of-public/1680b6372d> The Opinion, at §114, lists why the bill is fundamentally an attack on freedom of expression and other rights - “... *preclusion of foreign support for objectives consistent with European standards, the excessive obligations to disclose personal data, the misuse of the anti-money laundering and terrorist requirements, the overbreadth of the inspection powers, the excessive nature of the penalties proposed, the absence of an effective remedy in respect of the use of the powers that would be conferred and the loss of income for which there would at least be a legitimate expectation of receiving, the measures contained in the Bill are not ones that could be considered necessary in a democratic society.*”

<sup>36</sup> CJEU, *European Commission v Hungary Judgment of the Grand Chamber*, (Case C-78/18), Document No. 62018CJ0078, 18 June 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0078>

<sup>37</sup> *Ibid.*, §58

<sup>38</sup> *Ibid.*, §116

<sup>39</sup> *Ibid.*, §118

<sup>40</sup> The IACHR also noted that “This act is being implemented alongside others that have recently been passed and that are also a source of concern for the IACHR. The Commission believes that these pieces of legislation ([the Special Cybercrime Act](#), [the Act to Defend the Rights of the People](#), and [the Reform of the Code of Criminal Procedure](#)) all seek to scare Nicaraguans, with a view to restricting freedom of expression, in violation of inter-American human rights standards” See OAS, *IACHR Rejects Nicaragua’s Foreign Agents Act and Calls on the State to Repeal It* (26 February 2021), available at: [http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/043.asp](http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/043.asp)

<sup>41</sup> LatAm Journalism Review, Knight Center, *Peru tightens grip on foreign-funded NGOs and media under new law*, 30 April 2025, available at: <https://latamjournalismreview.org/articles/peruvian-law-demands-official-clearance-for-foreign-funded-ngos-and-news-outlets/>; UN Office of the High Commission, *Peru: Impact of*

## Victim status in cases involving foreign agent type laws

16. The status of direct victim implies that the individual or entity has been “directly affected” by the measure at issue.<sup>42</sup> They do not need to have been directly targeted by the impugned act so long as it personally and directly affects them.<sup>43</sup> The Court has identified exceptions to this general rule, in consideration of the particular factual and legal circumstances of the cases that have come before it. The underlying rationale for these exceptions is to ensure the rules of admissibility are applied with some degree of flexibility and without excessive formalism,<sup>44</sup> as well as ensuring that the Convention is ‘practical and effective’.<sup>45</sup>
17. Within these exceptions, the Court has identified two types of potential victim status. First, where there is a claim to be presently affected by a particular general legislative measure. Victim status may be established where an applicant claims that a law violates their rights, absent implementation of that law, “if they belong to a class of people who risk being directly affected by the legislation, or if they are required either to modify their conduct or risk being prosecuted”.<sup>46</sup> Second, where it is argued the individual or entity may be affected at some future point in time. The relevant test applied is that in order to be considered a victim the party “must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect.”<sup>47</sup> The Court has noted that “in some instances, these two types of situations may coexist or may not be easily distinguishable”.<sup>48</sup>
18. In the present case, for the purposes of assessing victim status in relation to Articles 10 and 14,<sup>49</sup> where provisions of the TFI Law have been applied to the applicants they can be considered to be direct victims of that law. Even in circumstances where those provisions have not been applied to media outlets and journalists, the Court has confirmed in *Ecodefence* that they may claim to be victims of a violation “if they are members of a group at risk of being directly affected by legislation.”<sup>50</sup> As noted above, according to this Court’s case-law, even absent enforcement, if the party claiming to be affected has had to modify their conduct as a consequence of that legislation they can be considered to have victim status.<sup>51</sup>
19. In this instance the modification of conduct arises due to the constraints and obligations imposed by the TFI Law. In *Ecodefence*, the Court noted the theoretical choice organisations had between “accepting the label of ‘foreign agent’ or continuing their work outside the confines of the Foreign Agents Act by rejecting any donations

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*international cooperation law on NGOs*, 16 April 2025, available at: <https://www.ohchr.org/en/press-releases/2025/04/peru-impact-international-cooperation-law-ngos>

<sup>42</sup> ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024, §465

<sup>43</sup> *Ibid.*, §466

<sup>44</sup> *Ibid.*, §461; ECtHR, *Cardot v. France*, 19 March 1991, §34, Series A no. 200

<sup>45</sup> ECtHR, *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, 15 October 2020, §122

<sup>46</sup> ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024, §465.

<sup>47</sup> ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, 17 July 2014, §101.

<sup>48</sup> ECtHR, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, 25 June 2019, §108.

<sup>49</sup> The Intervener’s mandate extends to media freedom, and for that reason references Articles 10 and 14, and not the other violations claimed by the applicants in the present case.

<sup>50</sup> ECtHR, *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, §80; see also ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, §57.

<sup>51</sup> *Ibid.*

considered to be ‘foreign financing’”.<sup>52</sup> The TFI Law, due to its retrospectivity, does not even provide that choice to organisations that received funding in 2023.<sup>53</sup> They cannot avoid registration, which, in and of itself, constitutes a compulsory modification in behaviour.

20. The focus of individuals and organisations registered as a ‘foreign agent’, either voluntarily or by the Ministry of Justice, would, to a significant extent, be taken up with compulsory administrative tasks that would have a substantial impact on their ability to carry out their journalistic role. The practical reality is that media outlets and journalists, many of whom are already struggling to maintain their operations, will have to allocate resources to comply with new financial reporting requirements,<sup>54</sup> submit to investigations by the Ministry of Justice,<sup>55</sup> disclose sensitive personal data to that Ministry, and run the risk of repeat fines for transgressing provisions of the law that are inherently vague.<sup>56</sup> There is also a likelihood that those outlets will conduct internal monitoring in order to avoid being deemed non-compliant thereby incurring fines.<sup>57</sup> That can be seen as one consequence of the chilling effect of this legislation.
21. Because the legislative requirements raise the prospect of a significant ‘chill’ being imposed on the media outlets and journalists, this inherently results in a change in behaviour. For example, the monitoring aspect of the legislation will almost certainly mean a change in the way interactions with journalistic sources takes place. Editorial autonomy is eroded by the threat of sanctions being imposed for failing to comply with the legislation. The Court in *Ecodefence* noted the ‘chilling effect’ of the ‘foreign agent’ designation on public discourse and civic engagement.<sup>58</sup> This chilling effect represents an interference not only with the right to freedom of expression of the media, but also with the right of the media’s audience to freely receive information that would normally be disseminated in the course of their work.
22. Measures that impose a chilling effect on public interest speech should be avoided unless necessary. The approach of this Court has been to examine whether the measure is capable of causing a chilling effect.<sup>59</sup> The principled position is that the most careful scrutiny is called for when measures imposed by the national authority are capable of discouraging participation in debates by the media on matters of public interest.<sup>60</sup> The Court recently confirmed that this principle extends beyond the media to anyone communicating on a matter of legitimate public interest.<sup>61</sup>
23. In *Commission v Hungary* the CJEU placed particular emphasis on the chilling effect of the legislation in issue, noting that “the obligations of declaration and publicity implemented by those provisions are such as to limit the capacity of the associations and foundations at issue to receive financial support sent from other Member States

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<sup>52</sup> ECtHR, *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, §84.

<sup>53</sup> TFI Act Article 10(2).

<sup>54</sup> Section 6.

<sup>55</sup> Section 8.

<sup>56</sup> Section 9.

<sup>57</sup> See the Court’s analysis of the effect of the legislation in *Ecodefence* at §84 - *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, §84.

<sup>58</sup> *Ibid.* §86.

<sup>59</sup> ECtHR, *Tonsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, 1 March 2007, §102.

<sup>60</sup> ECtHR, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, 20 May 1999, §64.

<sup>61</sup> ECtHR, *OOO Memo v Russia*, no. 2840/10, 15 March 2022, §23.

or third countries, having regard to the dissuasive effect of such obligations and the penalties attached to any failure to comply with them”.<sup>62</sup>

### Unlawful discrimination against the press is a core aspect of ‘foreign agent’ type laws

24. Political speech receives heightened protection under the Convention on the basis it is the foundation of any democratic system.<sup>63</sup> The Court has repeatedly emphasised that there was “little scope [...] for restrictions on political speech or debates on questions of public interest.”<sup>64</sup>
25. The present case concerns the differential treatment of independent media, one of the primary targets of the ‘foreign agent’ type laws that have been spreading across Europe.<sup>65</sup> In the jurisdictions identified above, those laws are invariably aimed at stifling critical reporting of the government and suppressing political speech and opinion.<sup>66</sup> They stigmatise media outlets and journalists that provide an alternative political viewpoint and present a misleading impression of their activities.<sup>67</sup> In the present case, the stigmatisation arises from the connotation applied to the phrase ‘organisation pursuing the interests of a foreign power’.<sup>68</sup> This problem was described by the Court as follows –

*New restrictions on ‘foreign agents’, progressively excluding them from various aspects of public life and civil activities ... have reinforced the perception that ‘foreign agent’ organisations and individuals pose a threat to society and should be viewed with suspicion and kept away from sensitive areas”.*<sup>69</sup>

26. The issue of discrimination arises because of the difference in treatment between media outlets and journalists that receive ‘foreign funding’ above a certain level, and those that don’t receive that funding or do, but are under the 20% cut-off point. The difference in treatment includes all of the requirements that come from the designation of “pursuing the interests of a foreign power”, and the registration, reporting and monitoring regime described above in addition to the potential for the imposition of disproportionate sanctions.<sup>70</sup> The ‘foreign agent’ type designation is not based on the content of their reporting or, more specifically, on whether they are in fact “pursuing the interests of a foreign power”. It doesn’t account for organisations that are in fact

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<sup>62</sup> CJEU, *European Commission v Hungary Judgment of the Grand Chamber*, (Case C-78/18), Document No. 62018CJ0078, 18 June 2020, §116, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0078>

<sup>63</sup> See for e.g. Council of Europe, *Freedom of political speech: an imperative for democracy*, 6 October 2022, available at: <https://rm.coe.int/0900001680a86af5>

<sup>64</sup> ECtHR, *Dichand and Others v. Austria*, no. 29271, 26 February 2002, §39.

<sup>65</sup> Thomson Reuters Foundation, *How ‘foreign agent’ laws are silencing independent media*, 1 April 2025, available at: <https://www.trust.org/2025/04/01/how-foreign-agent-laws-are-silencing-independent-media/>; RSF, *Russia: Independent media are the primary targets of Kremlin laws against “foreign agents and “undesirable organisations”* available at: <https://rsf.org/en/russia-independent-media-are-primary-targets-kremlin-laws-against-foreign-agents-and-undesirable>; and Global Investigative Journalism Network, *Silencing the Press: The Case of Alsu Kurmasheva and the Growing Threat of ‘Foreign Agent’ Laws*, 6 May 2025, available at <https://gijn.org/stories/silencing-press-growing-threat-foreign-agent-laws/>

<sup>66</sup> *Ibid.*

<sup>67</sup> See Court’s analysis in Kobaliya §§75-77 – ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024.

<sup>68</sup> Council of Europe, Venice Commission, *Urgent Opinion on the Law on Transparency of Foreign Influence*, Opinion No. 1190/2024, 21 May 2024, §76.

<sup>69</sup> ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, §75.

<sup>70</sup> See §29 above.

engaged in that pursuit but don't come within the arbitrary 20% funding mark. In addition, leaving aside media organisations, the law does not account for non-commercial legal entities that might be seeking to pursue the interests of a foreign power, which it expressly exempts.<sup>71</sup>

27. To comply with Article 14, the state is required to identify an objective and reasonable justification for this difference in treatment. That justification can be established if the measure in question has a legitimate aim and there is “a reasonable relationship of proportionality between the means employed and the aim sought to be realised”.<sup>72</sup> Even taking the state's explanation at face value, and assuming that a causal link between the restrictions imposed and the aim of greater transparency could be established, there has been no examination to establish whether less restrictive alternatives are available. In situations like in the present case, the Intervener submits that the question of whether a legitimate aim exists requires the strictest scrutiny, given the fundamental rights at stake.
28. In its analysis of the Russian ‘foreign agent’ type laws the Venice Commission noted that the extensive requirements introduced by those laws “lay a heavy administrative burden (and additional costs) on the NCOs exercising the function of a so-called ‘foreign agent’” but were “not imposed on other non-commercial organisations”. The Venice Commission found that it was unclear on what grounds the laws could be deemed to be necessary in a democratic society, and how they could be justified “in the light of the principle of non-discrimination”.<sup>73</sup> In referencing the case law of this Court it recalled that in circumstances where it had been held that the foreign origin of an NCO was not a legitimate reason for a differentiated treatment,<sup>74</sup> this approach “would *a fortiori* be in place in case of mere foreign funding”.<sup>75</sup>
29. In its analysis of the TFI Law, the Venice Commission said the following –

*the restrictions set by the Law to the rights to freedom of expression, freedom of association and privacy are incompatible with the strict test set out in Articles 8(2), 10(2), and 11(2) of the ECHR and Article 17(2), 19(2) and 22(2) of the ICCPR as they do not meet the requirements of legality, legitimacy, necessity in a democratic society and proportionality, as well as with the principle of non-discrimination set out in Article 14 of the ECHR.*<sup>76</sup>

30. In *Kobaliya* the Court, in holding that the labelling system imposed on media outlets in Russia amounted to a restriction on ‘expressive conduct’, noted that it “bears an ominous resemblance to the discriminatory and segregationist labelling practices imposed on certain groups by authoritarian regimes of the past”.<sup>77</sup> The Court concluded that this requirement created “an environment of forced self-

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<sup>71</sup> TFI Law S.2 (ii).

<sup>72</sup> ECtHR, *Rasmussen v. Denmark*, 28 November 1984, §38 Series A no. 87.

<sup>73</sup> Council of Europe, Venice Commission, *Opinion on Federal Law N. 121-FZ on non-commercial organisations (“Law on Foreign Agents”) on Federal Laws N.18-FZ and N. 147-FZ and on Federal Law N.190-FZ on making amendments to the Criminal Code (“Law on Treason”)*, 27 June 2014, Opinion No. CDL-AD(2014)025, §§90-92

<sup>74</sup> ECtHR, *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006, §§81-86.

<sup>75</sup> Council of Europe, Venice Commission, *Opinion on Federal Law N. 121-FZ on non-commercial organisations (“Law on Foreign Agents”) on Federal Laws N.18-FZ and N. 147-FZ and on Federal Law N.190-FZ on making amendments to the Criminal Code (“Law on Treason”)*, 27 June 2014, Opinion No. CDL-AD(2014)025, §92.

<sup>76</sup> Council of Europe, Venice Commission, *Urgent Opinion on the Law on Transparency of Foreign Influence*, Opinion No. 1190/2024, 21 May 2024, §96.

<sup>77</sup> ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, §85.

stigmatisation” with a chilling effect “fundamentally at odds with the notion of a democratic society”.<sup>78</sup> Although not directly related to the media, in the case concerning Hungarian legislation referred to above, the CJEU concluded that “differences in treatment depending on the national or ‘foreign’ origin of the financial support [...], constitute indirect discrimination on the basis of nationality”.<sup>79</sup>

31. Unless there is an objective and reasonable justification, which is difficult to locate in respect of any of the aforementioned ‘foreign agent’ type laws, the difference in treatment outlined above amounts to unlawful discrimination. In circumstances where the Court is provided with evidence to show the existence of an ‘ulterior purpose’, as that phrase is understood in the context of Article 18 complaints, this should also be applied to its analysis of whether there is a violation of the prohibition on discrimination. According to the Special Rapporteur on the situation of human rights defenders, following their analysis of the TFI Law, evidence exists to –

*indicate the strategic development of a negative narrative around the exercise of fundamental freedoms for the defence of human rights in the country. Despite the State’s affirmation of support for human rights defenders in meetings with the Special Rapporteur, other clear examples of attempts to stigmatise and delegitimize human rights defenders raise further questions as to this stated commitment. These include public statements by ruling party members against independent journalists and defenders of the environment, similar statements against defenders working against corruption and monitoring elections...<sup>80</sup>*

32. In *Campeanu*, the Grand Chamber noted that there was no requirement to consider other violations raised by the applicant, including the claim of discrimination, because it had considered “the main legal questions raised” under Articles 2 and 13.<sup>81</sup> In the Russian ‘foreign agent’ cases to date, the Court has found the complaints under Article 14 admissible but held they “do not require a separate examination”.<sup>82</sup> The Intervener submits that unlawful discrimination is a core feature of ‘foreign agent’ type cases to the extent that such cases cannot really be properly understood unless they are thoroughly examined from that perspective. The Court, to a certain extent, recognised this in its *Kobaliya* judgment, noting that, in addition to the reference to discrimination, that the new ‘foreign agent’ type law went even further than that considered in *Ecodefence*, and now “bears the hallmarks of a totalitarian regime”.<sup>83</sup>
33. The complaints in the present case rest to a significant extent on the claim that media outlets and journalists are subjected to a difference in treatment because of their activities relating to the promotion of democratic principles and human rights, that is, political opinion. These complaints are, the Intervener submits, a “fundamental aspect of the case” to the extent that the Article 14 claim should be examined on that basis, and in order to counter the stigmatisation resulting from the TFI Law.

Padraig Hughes

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<sup>78</sup> *Ibid.*, §86.

<sup>79</sup> CJEU, *European Commission v Hungary* (Case C-78/18), Judgment (GC), 18 June 2020, §62.

<sup>80</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, Doc No. A/HRC/55/50/Add.2, 19 March 2023, §35-36.

<sup>81</sup> ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, 17 July 2014, §156.

<sup>82</sup> ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, §117.

<sup>83</sup> *Ibid.*, §86.

