

AMICUS CURIAE BRIEF FOR GEORGIAN CONSTITUTIONAL COURT

By Professors Fernanda G. Nicola and Günter Frankenberg

In Cases:

1. Constitutional Complaint # 1828
The President of Georgia v. the Parliament of Georgia
2. Constitutional Complaint #1829
NNLE The Institute for Development of Freedom of Information , NNLE Rights Georgia ,
NNLE Civil Society Foundation and others (122 complainants) v. The Parliament of
Georgia
3. Constitutional Complaint #1834
Members of the Parliament of Georgia: Tamar Kordzaia, Ana Natsvlishvili, Levan Bezashvili
and others (38 Member) v. the Parliament of Georgia

TABLE OF CONTENTS

1. Identity and Interest	2
2. Introduction.....	4
3. Reasons for Annuling the Law	7
3.1 Constitutional Law Arguments based on the Georgian Constitution	7
3.2 International Law Arguments	9
3.3 Membership of the Council of Europe & European Convention of Human Rights.....	10
3.4 The Transfer of Unconstitutional Laws on Foreign Influence	13
4. Conclusion	18
5. Summary	

1. Identity and Interest

Professor Fernanda G. Nicola is a tenured Professor at American University Washington College of Law, and she is the Director of the Program for International Organizations, Law and Development. As an independent scholar and an expert in Comparative law and European Union Law, she works as a consultant for several International and Civil society organizations committed to the advancement of the rule of law and the protection of human rights in countries in transition. Her interest in Freedom of Expression and Media Pluralism stems from her expertise in litigation before the European Court of Justice and the European Court of Human Rights, where she has worked to protect these fundamental rights. She has utilized her comparative law expertise to analyze the implementation of various Foreign Agents Registration Laws across different countries and how to challenge them before European courts. Her research highlights that, beyond the purported goals of promoting transparency and protecting national sovereignty, these laws often create chilling effects on free speech for individuals and civil society organizations in violation of their fundamental and due process rights.

Professor Günter Frankenberg is an Emeritus Professor of Public Law, Philosophy of Law and Comparative Law, Institute for Public Law; Goethe University Frankfurt am Main, Germany. He holds two doctorates in law and political science. As a scholar and expert, he has published numerous books and articles. As a visiting professor he taught at several law schools, among them Harvard Law School, Tulane Law School (New Orleans), University of Pennsylvania, University of Cape Town, American University College of Law (Washington DC), and the École de Droit of Sciences Po (Paris). Since 1992 he has been working as a legal (a)4(ti)-3(ons,)-50(L 612 79

individuals and civil society organizations from unlawful governmental interference and the chilling effects caused thereby.

2. Introduction

The Law on Transparency of Foreign Influence is an overt transfer from the Russian law, the Kyrgyzstan and Hungarian laws targeting civil society members with chilling effects for freedom of speech, information and association.¹ The law requires organizations receiving more than 20% of their funding from other countries must register as organizations serving the interests of a foreign power. This very low threshold stigmatizes and imposes a disproportionate and burdensome registration requirement on civil society and media organizations. The law is not only in violation of the fundamental rights of free speech, association and privacy protected by International and European conventions to which Georgia is a signatory member but more fundamentally in violation of Georgian constitutional law provisions affecting civil s

Constitution is to ensure the creation and functioning of free social groups by persons with a sense of civic responsibility in a democratic society.⁹ Freedom of association is given great importance not only as a fundamental human right. In terms of guaranteeing, but also in terms of forming a democratic and free society and state. Freedom of association has an important function for the integration of a person in a democratic society and the formation of his awareness of civil responsibility. Not only the process of creating and joining the association is protected, but also various aspects related to the existence and functioning of the association, such as choosing the purpose, organizing activities, making decisions, remaining a member of the association, association liquidation, etc.¹⁰

Article 78 of the Constitution of Georgia declares that [t]he constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia

3. Reasons for Annuling the Law

3.1 Constitutional Law Arguments based on the Georgian Constitution

The President of Georgia, the 38 members of Georgian Parliament and 122 organizations, including media, separately applied to the Constitutional Court of Georgia. The plaintiffs are asking the court to declare the law unconstitutional.

In the first case, the plaintiff, the President of Georgia, has challenged the Law, declaring that it violates Articles 12, 15, 17, 22, and 78.¹¹ According to the complaint, the disputed law includes an obligation for the civil society and media to register in the registry of organizations carrying the interests of a foreign power forces organizations and media to register in the registry only because 20% of their income comes from international donor organizations. The law labels and stigmatizes civil society organizations and media, naming them as organizations carrying the interests of a foreign power and forcing them to register, which violates the Freedom of Expression (Article 17) and Freedom of Association (Article 22). The President of Georgia has declared that the disputed law allows the Ministry of Justice to inspect and monitor organizations and media, request, use, and share all information they have without contest, including information about individuals

They believe that the Law's legal process, which involves forced registration in a stigmatizing registry and operating under an offensive label, does not eliminate associated risks, thereby violating the Freedom of Expression and Freedom of Association. The monitoring mechanism, frequency of monitoring, and broad rights of the Ministry of Justice violates human rights. The law also requires the immediate provision of information requested by the Ministry of Justice during inspections without protecting specific groups or types of information or setting content limits. Additionally, the Law does not ensu8(l)2612 792 reW*nBT/F2 12 Tf1 0 0 1 226.61 584.86 Tm0 g

3.2 International Law Arguments

The recently adopted Georgian Law on Transparency of Foreign Investment¹⁴ represents a clear violation of the fundamental rights enshrined in international human rights Convention to which Georgia is a signatory state. Specifically, this law infringes upon Article 19 of the Universal Declaration of Human Rights (UDHR), which guarantees everyone the right to freedom of opinion and expression.¹⁵ This right enshrined in Article 19 includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media, regardless of frontiers. By imposing restrictive measures on non-governmental organizations (NGOs) and media outlets, the Georgian law poses significant challenges to these freedoms, thereby undermining democratic principles.

Georgia's commitment to international human rights obligations is further solidified by its

operating in the fields of human rights, democracy, and the rule of law, and called for a reconsideration of the special regime established by the law.²⁰

More recently, the European Court of Human Rights (ECHR) held in 2024 that the Russian Foreign Agents Act failed to meet foreseeability requirements and provided inadequate safeguards against arbitrary and discriminatory enforcement.²¹ The Court emphasized that the law's vague definitions and broad interpretations by the authorities resulted in a negative effect on the activities of NGOs, forcing them to choose between accepting foreign funding with

free speech, the right to receive information, and

receive Support from Abroad,²⁸ this law immediately raised international concerns and this law was s 709.06 Tm0 g0 G[(re)7(c)4(e)4(iv)-11(e)] TJETQ0.00000912 TJETQ0.00000912 0 612 792 reW*

On April 2, 2024, Kyrgyz

some of the concerns raised in the interim opinion, the law remains incompatible with international human rights standards and OSCE commitments.

On July 13, 2023, the European

based participatory democracy characterized by that kind of active participation,
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