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## Authoritarianism and civil society: Legal restrictions on human rights CSOs

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### Abstract

New types of authoritarian regimes attempt to create the illusion of democracy. They therefore seek to restrict the establishment and activities of civil society organisations (CSOs) not through outright bans, but through the adoption of laws and regulations designed to systematically and methodically impede the operation of human rights CSOs. This paper, based on empirical research, classifies and analyses the registration and re-registration procedures that restrict the freedom of association of human rights CSOs, as well as the legislation that imposes registration or re-registration requirements on organisations designated ‘foreign agents.’ Additionally, it assesses the proportion to which democratic and authoritarian regimes use these restrictive mechanisms. The results show that the restrictions that are examined are predominantly used in authoritarian regimes.

**Keywords:** human rights CSOs; freedom of association; registration and re-registration procedure; authoritarian regimes

## 1 Introduction

The purpose of this study is to contribute to the body of research on the functioning of the new types of authoritarian regimes from the perspective of civil society organisations that advocate for human rights (hereinafter: CSOs). In these systems, there is no prohibition of association, but at the same time, states adopt discriminatory, bureaucratic and costly legislation (Chaudhry, 2022; Kövér et al., 2021; Tóth, 2019; Heiss, 2019; Rutzen, 2016) and/or ostensibly democratic laws are applied by the authorities in contradiction with democratic principles, making it difficult and often impossible for CSOs to register or re-register.

This paper classifies and analyses registration and re-registration procedures that limit the freedom of association of human rights CSOs, as well as legislation that mandates registration or re-registration requirements for organisations designated ‘foreign agents.’ My aim was to identify the specific restrictions imposed by the laws in force during the research period between September 2022 and July 2023. The framework is intended

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to assist in the identification of types of restrictions and to complement the references for specific cases in different countries and regions. The study, therefore, provides a snapshot of the types of restrictions imposed on human rights CSOs in each country during this period and highlights restrictive trends related to the establishment or renewal of the legal personalities of the organisations concerned. Additionally, it assesses the proportion to which democratic and authoritarian regimes employ these restrictive mechanisms. The application of restrictions against CSOs is part of an alarming trend that is intensifying as the number of authoritarian governments increases. The hypothesis of the study relies on the assumption that the new types of authoritarian regimes while trying to maintain the appearance of democracy regularly and systematically impose registration restrictions on human rights CSOs.

The study was conducted using a legal and political survey method. To identify restrictive legislation, the study analysed reports from CIVICUS Monitor, Freedom House's Freedom in the World, ICNL's Civic Freedom Monitor, and USAID's CSO Sustainability Index Explorer, as well as annual reports from Amnesty International and Human Rights Watch.<sup>1</sup> The data was then cross-checked with the relevant legislation. Therefore, primary and secondary sources were analysed to examine the mechanisms that limit the registration and re-registration of CSOs.

The chosen method aims to provide a comprehensive overview of the restrictions in place and helps to identify authoritarian trends by comparing democracy index scores compiled by international organisations and research institutes during monitoring processes. The purpose of using the three democracy indices, which have similar scales, is to shed light on which countries fall between the two extremes (true democracy, true autocracy) and what restrictive mechanisms the countries in question use to prevent the establishment of CSOs or the renewal of their legal status. To present the research findings, a database<sup>2</sup> has been compiled of the countries with laws that impose restrictions on CSOs, leading to their dysfunctionality. The database also shows each country's scores for 2022 on V-Dem's Regimes of the World Index, Bertelsmann Stiftung's Transformation Index, and the Economist Intelligence Unit Democracy Index.<sup>3</sup> These indices assess the extent to which constitutional rights are guaranteed and whether state institutions effectively safeguard and facilitate their exercise. They focus in particular on governments, states and legal institutions (Krever, 2013; Botero et al., 2011). This means that they examine very similar key categories (e.g. legal certainty, independence of the judiciary, freedom of civil society, safeguarding fundamental rights). The data show, for example, how countries

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<sup>1</sup> The study excludes microstates that are not covered by V-Dem's World Regimes Index, as well as the Maldives because two of the three indices do not assess the country.

<sup>2</sup> Restrictions on CSOs: <https://airtable.com/shrfd7opRCIsy3CkX>.

<sup>3</sup> I excluded both Freedom House reports from the analysis because Freedom in the World classifies countries into only three categories, while the other three indices I analysed use at least four categories. Although the indices' country classifications overlap, the differences in the categories would make it difficult to compare the respective data with Freedom in the World's data. The Nations in Transit report provides a general assessment of the degree of democracy or authoritarianism in a country and allows a comparative analysis of reforms in the countries under survey. However, its data cover only a limited number of countries, so it cannot provide a complete picture of all the countries I have analysed. It would, therefore, be misleading to rely on its data for only 29 countries.

treat CSOs and what legal restrictions they impose on them. For this reason, the countries' index scores are important for my analysis, as I look specifically at restrictions imposed by or indirectly referenced in legislation and, thus, whether or not states provide an adequate legal environment and support the effective exercise of rights.

## 2 Landscape of restrictions on CSOs

Human rights CSOs provide a platform for the expression of social opinion that may counter the self-serving agendas of political authorities, economic forces and individual groups. They play a vital role in promoting human rights across multiple levels of governance. In other words, they act as social control agents.

CSOs dedicated to safeguarding human rights include watchdog organisations, advocacy organisations, and groups focused on the promotion and defence of human rights. Their activities have an impact on public policy (Kimberlin, 2010; Andrews & Edwards, 2004), they protect human rights (Marcinkutė, 2021; Haddad, 2012), represent the interests of marginalised and minority groups (Forbat & Atkinson, 2005; Boris & Mosher-Williams, 1998), and seek to create economic, social and political capital and redistribute it to underprivileged communities (Feldman et al., 2016).

Human rights CSOs also include CSOs active in areas where services are closely linked to advocacy on behalf of the target groups, such as the poor, the disadvantaged, and the homeless (Young, 2000), or where cultural activities are inherently linked to the struggle for the recognition of minorities (Mosley, 2010). In the latter two cases, even if CSOs are not directly engaged in advocacy or the protection of rights, they have a role to play in shaping government policy (Kövéř et al., 2021).

In democratic systems, where those in power try to address civil society's grievances, promote their transparency and strengthen their legitimacy through the social control function in a self-correcting manner, civil society actors are able to achieve their goals and contribute to the formation of democratic public opinion. Under such conditions, human rights organisations can act as a check (control function) on the authoritarian tendencies of the state (Keane, 2022). While there are democratic countries where regulations can have some impact on the operation and activities of CSOs, such cases are rather rare and are typically not aimed at preventing the operation of politically inconvenient human rights CSOs. In such cases, the restrictions do not go beyond what is necessary in a democratic society to achieve the objectives of the legislation and are proportionate and in line with the fundamental principles of human rights, including non-discrimination.

In traditional autocracies,<sup>4</sup> the state strives to control all aspects of life, including the personal lives of individuals and their most intimate matters, such as having children, family life, sexual preferences, and religious beliefs, and thereby intrudes into every dimension of life (Kornai, 2017, p. 266). The ban on the establishment of independent CSOs is

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<sup>4</sup> For further examples of totalitarianism and traditional authoritarian systems, see Tóth (2019, pp. 47–50).

part of this comprehensive control mechanism. The reason for this is that citizens' plans to form associations can lead to the creation of a parallel society that undermines the legitimacy of authoritarian power (Linz, 2000, p. 91). In this context, it is unthinkable for citizens to form and operate human rights CSOs, as the state has zero tolerance for any form of criticism.

Unlike traditional autocracies, an important feature of novel authoritarian regimes<sup>5</sup> is that they portray themselves as pluralistic but retain only a façade of democracy (Schedler, 2013, pp. 54–61). In these circumstances, civil society freedoms are curtailed as the arena for public debate where citizens can challenge the actions of the state is severely limited (Arato & Cohen, 2022; Lewis, 2013). In other words, there is an authoritarian ambition to exclude alternative perspectives and dissenting voices from public discourse (O'Donnell et al., 1986). The purpose of state repression is to impose costs on CSOs and discourage them from engaging in certain activities. The relationship between governments and civil society is characterised by a power asymmetry in which state actors exert increasing pressure on CSOs that publicly criticise government decisions (Buyse, 2018). This is reflected, among other things, in the adoption of laws that restrict the establishment, operation, and activities of human rights CSOs. These laws grant state actors a higher degree of control and monitoring power over civil society, which can ultimately limit the internal and external freedom of association of CSOs.

A considerable number of restrictive mechanisms are used by authoritarian regimes. The literature on the subject focuses mainly on restrictions on foreign aid. To control the politically inconvenient CSO sector, authoritarian governments around the world have leveraged the influence of international funding, often passing laws that restrict CSOs' access to foreign funding (Deák, 2021; Deák, 2022; Bromley et al., 2020; Dupuy & Prakash, 2020; Hamlet, 2017; Oleinikova, 2017) on the grounds of combatting terrorism, safeguarding state sovereignty, due to the necessity of a more unified financing programme or increasing accountability (Rutzen, 2016, pp. 163–166). In addition, governments often openly accuse human rights CSOs of serving the interests of foreign entities by accepting foreign funds and using them, for example, for strategic litigation. They are right that the CSOs in question often engage in strategic litigation to achieve legal and social change (Barber, 2012, p. 412), but empirical research on the subject does not confirm governments' fears that foreign interests are behind strategic litigation (Haddad & McIntosh Sundstrom, 2023).

However, it is increasingly common for CSOs to encounter obstacles at the registration or re-registration stage. Restrictive mechanisms that include bureaucratic hurdles and complicated registration and re-registration processes become tools used to gather intelligence, deter organisations deemed undesirable, silence critical voices, and exclude those who cannot afford legal procedures. The laws in question not only increase the complexity and difficulty of the registration process but also give the state wide discretionary powers to deny licences and prevent appeals.

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<sup>5</sup> For a description of the concepts used to categorise new types of authoritarian systems, see Tóth (2020, pp. 325–327) and Schedler (2013, pp. 21–53).

### 3 Hindering and obstructing the registration procedure

#### 3.1 Direct restrictions

The first category includes restrictions that are explicitly designed to render the social control function of human rights CSOs infeasible in a way that is likely to prevent the formation of such organisations.

Restrictions include those that enable the authorities to reject registration applications on vague grounds, with the intention of curtailing the ability of human rights CSOs to pursue political objectives and engage in political activities. Vague justifications for restricting human rights activities often include safeguarding the public interest, national values, morals, and public order (e.g. Algeria<sup>6</sup>), national decency, national interests (e.g. Turkey<sup>7</sup>), national unity (e.g. South Sudan<sup>8</sup>), peace, prosperity (e.g. Malaysia<sup>9</sup>), the integrity of national territory (e.g. Morocco<sup>10</sup>), national security (e.g. China<sup>11</sup>) or the prohibition of interference in internal affairs (e.g. Sudan<sup>12</sup>).

Another form of restriction occurs when a country's regulations explicitly state which particular activities make CSOs completely ineligible for registration. For instance, in Nigeria, the Same Sex Marriage (Prohibition) Act<sup>13</sup> prohibits the registration of CSOs advocating for LGBTQ rights, and individuals who register, operate or participate in such CSOs can face penalties of up to 10 years in prison.<sup>14</sup> As a result, human rights CSOs that wish to carry out activities specifically prohibited by law are forced to do so informally.

Another problem arises when legislation grants authorities excessive discretion and the power to reject applications. In Bangladesh, the body responsible for registering CSOs retains the power to refuse registration if it is not satisfied with the objectives, constitution, or operational plans of the applicant CSO (ICNL, 2023b).

A similar form of restriction occurs when the law prohibits the registration of a CSO if there is already an organisation working on the same issue in the same geographical area. For instance, in Vietnam, CSOs are prohibited from engaging in the same primary activities as associations already legally established in the same municipality.<sup>15</sup>

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<sup>6</sup> 2012: Article 2 of the Law on Associations.

<sup>7</sup> 1926: Article 101 of the Civil Code.

<sup>8</sup> 2016: Section 12 of the NGO Act.

<sup>9</sup> 1966: Article 7(3) of the Societies Act.

<sup>10</sup> 1958: Article 3 of Decree No. 1-58-376 on the Right to Establish Associations (amended in 1973, 2002).

<sup>11</sup> 2016: Article 4 of the Chinese Charity Law.

<sup>12</sup> 2006: Article 5 of the Voluntary and Humanitarian Work (Organization) Act.

<sup>13</sup> 2014: Article 4(1) of the Same Sex Marriage (Prohibition) Act.

<sup>14</sup> *Ibid.*, Article 5(2).

<sup>15</sup> 2010: Article 5(1) of Decree No. 45/2010/ND-CP on the establishment, operation, and management of associations.

### 3.2 Indirect restrictions

The second category encompasses restrictions that cannot be conclusively proven to be specifically aimed at preventing the establishment of human rights CSOs. In theory, they can impose restrictions on other types of CSOs as well, which is why they are classified separately.

#### 3.2.1 Mandatory registration

In many countries, registration is mandated by law, and informal groups are unable to operate legally without it. As a result, the lack of formal registration often prevents CSOs from attaining legal recognition.

It is not uncommon that a criminal code penalises a group for operating without registration. This is the case in Belarus, where an amendment to the Criminal Code came into force on 22 January 2022, reclassifying individual activities conducted under the umbrella of unregistered CSOs as criminal offences. This amendment makes participation in unregistered or dissolved CSOs punishable by a fine, arrest or imprisonment for up to two years.<sup>16</sup> The Jordanian Penal Code also considers unregistered organisations to be illegal and imposes a penalty of up to two years of imprisonment for individuals who are involved in activities within or have membership in an unregistered group.<sup>17</sup>

Another even more common scenario is when CSO laws criminalise the operation of unregistered groups. In Algeria, for example, the 2012 Law on Associations provides for penalties of three to six months' imprisonment or a fine of 100,000 to 300,000 Algerian dinars for individuals involved in a 'not yet registered' CSO.<sup>18</sup> A similar provision is included in Egypt's Law No. 149 of 2019, which explicitly prohibits anyone from engaging in 'civil activity' without proper registration.<sup>19</sup> This law also imposes fines of up to 100,000 to 1 million Egyptian pounds on individuals who establish or work for an unregistered or unlicensed organisation.<sup>20</sup>

Compulsory registration procedures prevent informal groups from organising themselves. As a result, these groups are unable to express their views on human rights issues in the public sphere, which ultimately impedes their ability to exercise social control.

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<sup>16</sup> 1961: Article 193-1 of the Criminal Code (amended in 2022).

<sup>17</sup> 1960: Article 160 of the Penal Code (and its amendments).

<sup>18</sup> 2012: Article 46 of the Law on Associations.

<sup>19</sup> 2019: Article 3-4 of the Preamble to Law No. 149/2019 on NGOs.

<sup>20</sup> *Ibid.*, Article 94.

### 3.2.2 Lack of substantive legal remedy

The next category includes cases where there is a lack of effective legal remedies in CSO registration procedures. The measures deny CSOs the opportunity to appeal a denial of registration to the courts or to reapply for registration, effectively leaving them in legal limbo and making the registration process practically inaccessible to them.

This is the case when CSOs are not guaranteed the right to challenge an adverse decision by the authority before an impartial and independent court. For instance, in Sudan, while a decision to deny registration can be appealed to the Minister of Humanitarian Affairs within a fifteen-day window, the law does not specify a time frame for responding to such appeals, and there is no provision for a subsequent appeal to an impartial body.<sup>21</sup> In Algeria, legal remedies are available to a certain extent, but the final decision is not subject to appeal and is not made by an impartial court.<sup>22</sup> And although Belarusian law provides for the right to appeal to a court, no court has allowed a claim of this kind since 2001 (ICNL, 2023c).

### 3.3 Bureaucratic barriers to registration

The third category includes restrictive techniques, specifically bureaucratic requirements, which are frequently employed in conjunction with each other or are often used in addition to the restrictions described in the previous two categories.

In certain instances, legislation mandates the registration of CSOs at multiple levels, including at the national level, with one or more ministries, and, depending on the structure of the state, at the local administrative level where the CSO operates. In China, for example, CSOs typically initiate the registration process by securing the endorsement of a government ministry or provincial government office. They then apply for registration and approval from the Ministry of Civil Affairs or a local civil affairs office.<sup>23</sup>

Legislations vary in terms of the time allowed for the authorities to make a decision. In Azerbaijan, for example, it is set at 70 days,<sup>24</sup> in Egypt, it is 90 days,<sup>25</sup> and the Zimbabwean law does not set a specific time limit for authorities to make a decision.<sup>26</sup> It is also common for authorities to ignore the time limits set by law. For example, the Algerian authorities frequently do not respond to registration requests from human rights CSOs (ICNL, 2023a).

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<sup>21</sup> 2006: Article 13(3) of the Voluntary and Humanitarian Work (Organization) Act.

<sup>22</sup> 2012: Article 9-10 of the Law on Associations.

<sup>23</sup> 2016: Article 6 and 9 of the Chinese Charity Law

<sup>24</sup> 2003: Article 8(1)(2) of the Law on the State Registration and State Register of Legal Entities

<sup>25</sup> 2019: Article 9 of the NGO Act

<sup>26</sup> 2001: Private Voluntary Organizations Act

In some cases, authorities automatically refuse to register CSOs on the basis of technical deficiencies, such as missing personal information or signatures, grammatical errors, or spelling mistakes. The cases against Azerbaijan before the European Court of Human Rights clearly demonstrate this practice. The Court regularly combines the complaints of multiple CSOs and condemns the country for refusing to register them.<sup>27</sup>

A similar trend can be seen in Uzbekistan, where groups working on human rights issues are consistently denied registration. The registration authority only evaluates one or two pages of the submitted documentation for each new application. As a result, several groups, such as the Humanitarian Legal Centre and Human Rights House, have had their registration applications rejected at least six times on technical grounds (Human Rights Watch, 2021).

Difficulties can arise when authorities make successful registration conditional on CSOs agreeing to sign post-registration service-level agreements with relevant line ministries. This practice has the potential to limit the range of activities in which CSOs can engage and can also undermine their ability to exercise social control by making them vulnerable to co-optation (e.g. Sierra Leone<sup>28</sup>).

In some cases, the law requires the authorities to issue a certificate when the CSO submits its registration documents and a final certificate of registration if the specified period has passed without the government rejecting the registration. In practice, however, the authorities often neglect these obligations and withhold the certificates.<sup>29</sup> In Algeria, for example, CSOs are often left without evidence of their legal existence and unable to carry out activities such as opening a bank account or renting property (ICNL, 2023a).

Further difficulties arise when a law initially allows only temporary registration for CSOs, with CSOs eligible to apply for permanent legal status after a certain waiting period. For instance, in Rwanda, CSOs receive a temporary registration certificate that is valid for one year, and they can apply for permanent legal status nine months after receiving the temporary certificate.<sup>30</sup>

A burdensome registration requirement is found in Turkey, where CSOs looking for office space must obtain permission from all building occupants.<sup>31</sup> The inability to secure office space can be a significant obstacle during the registration process for CSOs. In addition, CSOs are not allowed to share office space with any other legal or natural person (ICNL, 2023d).

It is problematic when a law imposes an overly bureaucratic and burdensome registration procedure, and it can be seen as discriminatory if CSOs are subject to stricter registration requirements while other types of organisations enjoy a simplified registration procedure. For instance, in Tajikistan, CSOs are registered under the Law on Public Asso-

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<sup>27</sup> E.g. *Mehman Aliyev and others v. Azerbaijan*, Judgment of 20 May 2021; *Abdullayev and others v. Azerbaijan*, Judgment of 7 of June 2019.

<sup>28</sup> 2009: Article 2.4.3 of the Revised Non-Governmental Organizations Policy Regulations.

<sup>29</sup> 2012: Article 7 of the Law on Associations.

<sup>30</sup> 2012: Article 17 of the Law Governing the Organization and Functioning of National Non-Governmental Organizations.

<sup>31</sup> 2004: Article 58(c) of the Law on Associations (amended in 2018).



ciations, which is excessively bureaucratic and includes a long list of documents that must be submitted to the Ministry of Justice.<sup>32</sup> In contrast, other organisations are registered by the tax authority through a streamlined, one-stop-shop process.<sup>33</sup>

It is restrictive when new legislation, especially in the case of a CSO focusing on a specific issue, imposes additional burdensome requirements for registration in a discriminatory manner compared to CSOs dealing with other issues. For example, in Greece, CSOs working on asylum and migration issues are required to provide additional certificates during the registration process. These include documents demonstrating the financial and tax status of CSO members,<sup>34</sup> and they are required to publish the details of individual donors and supporters on their website.<sup>35</sup>

CSOs can face obstacles in the registration process if the law mandates a significant minimum number of founding members. In Belarus, for example, fifty founding members are required to establish a national CSO.<sup>36</sup> Similarly, in China, CSOs are also required to have a high number of founding members, with a minimum of fifty individual members or thirty institutional members.<sup>37</sup> In Turkmenistan, 400 founding members are needed to establish a CSO at the national level.<sup>38</sup>

#### 4 Bureaucratic barriers to re-registration

This category pertains to CSOs that were previously established in accordance with the country's legal framework and have remained compliant during their operation. However, the enactment of a new law strips these CSOs of their previous status and imposes new requirements for successful re-registration. Even if they manage to fulfil these conditions, the authorities often ignore the documentation that is submitted. Without formal feedback from the authorities, these CSOs cannot be recognised as legitimate organisations.

While in some countries this re-registration requirement is specifically targeted at CSOs working in the fields of human rights and charity, in many countries it applies uniformly to the entire CSO sector, including human rights CSOs. Only legislation that mandates CSOs to re-register at specified intervals is included in this category. Each periodic re-registration procedure carries the risk that the authority will refuse to grant a licence and register the CSO concerned. Therefore, the more frequent the re-registration requirement is, the more precarious the situation becomes for CSOs. It is common practice for authorities to attempt to hinder the social control function of CSOs through annual re-registration procedures (e.g. UAE).<sup>39</sup> Regardless of how often re-registration is required,

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<sup>32</sup> 2007: Article 21(5) of Law on Public Associations (amended in 2021).

<sup>33</sup> 2009: Article 4 of the Law on State Registration of Legal Entities and Individual Entrepreneurs.

<sup>34</sup> 2020: Article 58 of Joint Ministerial Decision No. 3063.

<sup>35</sup> 2020: Article 2 and 5 of Ministerial Decision No. 10616.

<sup>36</sup> 1994: Article 8 of the Law on Public Associations (amended in 2013).

<sup>37</sup> 1999: Article 10 of the Regulations on the Registration and Management of Social Associations.

<sup>38</sup> 2014: Article 9(4) of Law on Public Associations (amended in 2017).

<sup>39</sup> 2017: Article 17 of Law No. 12 Regulating NGOs in the Emirate of Dubai.

it always imposes a significant financial burden on CSOs, as well as administrative burdens associated with meeting the re-registration requirements.

While CSOs need to rush to start the re-registration process, authorities often leave CSOs in a state of uncertainty by not responding to their requests for registration. This may be motivated by their intention to obstruct the activities of CSOs that focus on specific issues, such as human rights or watchdog groups (Sidel, 2010).

In cases where registration is denied, authorities frequently rely on the vague terminology used in re-registration legislation. For example, in Zambia, the law requires the authorities to reject applications for the re-registration of CSOs if they engage in activities that are considered contrary to the public interest.<sup>40</sup> Similarly, in Belarus, the authorities can reject CSO re-registration applications on the grounds of the presence of ‘extremist activity.’<sup>41</sup> The two examples of legislation have in common that, on the one hand, they do not clearly define what activity is meant by the terms, and, on the other hand, they leave the interpretation of the terms to the government officials responsible for the registration of CSOs.

The requirement to re-register not only creates bureaucratic hurdles for CSOs but also exposes them to uncertainty regarding the renewal of their registration. This uncertainty may discourage them from expressing independent views on contentious policy issues, thereby hindering their ability to contribute meaningfully to public debate.

## 5 Registration or re-registration procedures of organisations designated ‘foreign agents’

‘Foreign agent’ status is linked to regulations that require CSOs to report foreign donations if they accept them or if they are ‘under foreign influence.’ The notification obligation requires CSOs that have already acquired legal personality to undergo a re-registration procedure and newly established CSOs that have not yet acquired legal personality before the law’s entry into force to undergo a registration procedure.

Authoritarian countries and countries with authoritarian tendencies often cite the United States’ Foreign Agents Registration Act (FARA) as a template for their own ‘foreign agent’ laws, making it a notable example in this category. However, FARA was enacted in the United States in 1938 on the recommendation of the House Un-American Activities Committee and used against fascist and communist propaganda during the Second World War. By the 1960s, the law was amended to include lobbyists and public relations firms representing foreign governments, specifically with the aim of preventing their influence in economic matters. In the wake of the 2016 presidential election, the application of the law once again signals the registration of a wider range of actors, as it has become increasingly popular among policymakers and prosecutors as a tool that can be used specifically to counter growing political propaganda tied to foreign interests (Robinson, 2020, pp. 1092–1096).

<sup>40</sup> 2009: Article 15(1)(a) of Act No. 16 on NGOs.

<sup>41</sup> 1994: Article 7 of the Law on Public Associations (amended in 2013).

FARA mandates that any person or organisation acting as an agent for a foreign principal must register with the Department of Justice and disclose the identity of the foreign principal they are representing (Mayer, 2018, p. 1218). Foreign principals, as defined by FARA, can include governments, political parties, individuals and organisations located outside the United States, and entities organised under the laws of a foreign country or having their primary place of business in a foreign country (Van De Velde, 2019, pp. 699–700). It is important to recognise that FARA is not intended to target a particular group, such as CSOs, but rather to regulate a specific type of activity, namely that which seeks to influence politicians.

However, non-profit and philanthropic work may involve activities such as the collection and disbursement of funds, advocacy, or the publication of material relating to a foreign country that serves the interests of a foreign principal. In practice, its scope is not limited to lobbying or electoral activities, which means that occasionally, non-profit organisations may also need to register as foreign agents due to their activities.<sup>42</sup> It is worth noting that the restrictions resulting from the legislation are rather anomalies and do not correspond to the deliberate intent of the legislators, as they do not lead to the CSOs' loss of status.

In Australia, the Foreign Influence Transparency Scheme (FITS) came into force in 2018 and is considered an 'enhanced version' of FARA. FITS also has the potential to require a wide range of actors to register under the Act. However, exemptions apply to non-profit organisations undertaking specific activities.<sup>43</sup> In addition, the definition of 'foreign principal' has been significantly narrowed<sup>44</sup> to avoid anomalies that may result from the application of FARA.

Conversely, some foreign agent laws are designed to create a false appearance of transparency when, in fact, they are intended to stigmatise CSOs. These laws specifically target CSOs, and it does not matter where the latter get their funding or what they do as long as the funding comes from a foreign source. The laws in authoritarian and authoritarian-leaning states only take into account whether a CSO receives foreign funding for its activities and do not evaluate the nature of the activities.

In Israel, CSOs must register with the state and publish on their websites any grants from foreign governments exceeding 20,000 Israeli shekels.<sup>45</sup> Registered CSOs that receive at least 50 per cent of their funding from foreign government agencies are mandated to submit a report to the Ministry of Justice, which is required to publish a list of such organisations on its website. CSOs that receive more than half of their funding from foreign governments or political parties must disclose this information in all official publications as well as in the reports they publish.<sup>46</sup> Additionally, they are required to disclose that they are foreign-funded when sending letters to elected officials or state employees and when representatives of the organisation register to participate in Knesset debates.<sup>47</sup>

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<sup>42</sup> See recent advisory opinion of the U.S. Department of Justice (2020).

<sup>43</sup> 2018: Article 24-30 of the Foreign Influence Transparency Scheme.

<sup>44</sup> *Ibid.*, Article 11.

<sup>45</sup> 2016: Article 5a(b) of the NGO Law ('Transparency Bill').

<sup>46</sup> *Ibid.*, Article 5a(b)(1) and 5a(b)(3).

<sup>47</sup> *Ibid.*, Article 5a(b)(2) and 5a(d).

In Kazakhstan, foreign-funded CSOs must report to the tax authorities about the receipt and expenditure of funds and/or other assets received from foreign sources,<sup>48</sup> and any publications produced with foreign funding must also be declared as foreign-funded.<sup>49</sup>

Nicaraguan CSOs that receive foreign aid are required to register as foreign agents with the Registry of Foreign Agents.<sup>50</sup> Following registration, these CSOs must regularly report any transfers of funds or assets from abroad and submit monthly reports detailing the use and origin of these funds.<sup>51</sup>

Under Russian law, CSOs are required to register as foreign agents if they meet certain criteria. However, the definition of a foreign agent under the new law is so broad that almost any person or organisation, regardless of nationality or place of residence, who engages in civic activism or even expresses an opinion on Russian politics or the conduct of officials could be labelled as a foreign agent if the authorities allege that they are under 'foreign influence'.<sup>52</sup> It applies to anyone deemed to have received foreign aid or to be under 'foreign influence' and who engages in activities perceived by the Russian authorities as 'political'. We can see that in Russia, a CSO can be labelled a 'foreign agent' even if it has not received foreign aid. In Russia, CSOs designated as 'foreign agents' are obliged to disclose their status when publishing on political issues.<sup>53</sup> 'Foreign agents' are excluded from key areas of public life.<sup>54</sup>

In practice, being labelled a 'foreign agent' also requires CSOs to use a pejorative label. With the exception of the United States and Australia, the laws mandating the use of a pejorative label for CSOs do not require a principal-agent relationship or a direct link between the foreign donor and the CSO's advocacy activities. Instead, the mere presence of 'foreign influence' or support is often enough to justify the label. However, the obligation to use the label forces the position of CSOs into the category of political opinion, and when they express their views on certain issues, their messages contain a discrediting text that implies that their opinion serves foreign interests rather than those of the society of the country in question.

It is also worth noting that a similar law was recently in force in Hungary.<sup>55</sup> According to the judgment of the Court of Justice of the European Union (CJEU) in Case C-78/18 on 18 June 2020, the law discriminated against certain CSOs by imposing registration, notification and disclosure obligations, and violated the principle of free movement of capital, the right of association, the right to respect for private and family life, and the right to the protection of personal data.<sup>56</sup>

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<sup>48</sup> 2016: Article 460-1 of The Administrative Code.

<sup>49</sup> *Ibid.*, Article 460-2.

<sup>50</sup> 2020: Article 6 of the Foreign Agent Law.

<sup>51</sup> *Ibid.*, Article 9-10.

<sup>52</sup> 2022: Article 1 of the Law on Control Over the Activities of Persons Being Under Foreign Influence.

<sup>53</sup> *Ibid.*, Article 9.

<sup>54</sup> *Ibid.*, Article 11.

<sup>55</sup> Further information: Kövér et al. (2021), pp. 101–102).

<sup>56</sup> Judgment of the Court of Justice in Case C-78/18 *European Commission v Hungary* (18 June 2020), ECLI:EU:C:2020:476.

In Georgia, despite protests from civil society, a law was passed by the Georgian parliament on 24 May 2024. Under the law, CSOs and independent press/media that receive more than 20 per cent of their funding from foreign donors must register as organisations ‘bearing the interests of a foreign power’. They are also subject to the supervision of the Ministry of Justice and must share sensitive information with it; otherwise, they face a heavy fine of up to GEL 25,000 (€8,300).<sup>57</sup>

Recent developments indicate that the European Union is considering adopting similar legislation. In December 2023, the European Commission adopted the Defence of Democracy package, which includes a proposal<sup>58</sup> that, in the pursuit of greater transparency, may lead to the stigmatisation of CSOs that receive foreign funding. The objective of the proposal is to increase transparency and democratic accountability in relation to the advocacy activities of organisations acting on behalf of non-EU governments.<sup>59</sup> To achieve this, the creation of national registers is proposed. The draft attempts to define as precisely as possible who should register, why and with what data. The draft explicitly states that it applies to advocacy activities and establishes a link between these activities and the issue of influencing public life and democratic processes in the EU. In doing so, it follows the American model as a correlation must be established between the source of foreign funding and the lobbying activities undertaken.<sup>60</sup> However, it is contradictory that the proposal leaves it up to Member States to control this.<sup>61</sup> If the EU wants to increase transparency, it should commit to setting up a single body at the EU level. In the absence of such a body, it is important to recognise that the Commission has limited control over how Member States apply and enforce their national laws. Furthermore, non-democratic countries are provided with a template and, therefore, a point of reference on how to use regulations against those who are inconvenient to those in power. Should a Member State adopt a similar law in the future that requires for the imposition of sanctions a weaker link between foreign funding and the advocacy activities carried out, the EU – in light of its proposal – would not be able to make a convincing argument against such laws, thus limiting its ability to exert international pressure.

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<sup>57</sup> For more information on the road to the law, see Zedelashvili (2023). The Hungarian (repealed) and Georgian laws (adopted in 2024) are not included in the empirical analysis.

<sup>58</sup> See Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937.

<sup>59</sup> *Ibid.*, 1–3.

<sup>60</sup> *Ibid.*, 4–5.

<sup>61</sup> *Ibid.*, 11–12.

## 6 Restrictive legislation and a comparison of countries' index scores

I have analysed the correlation between the categories I have developed and the rankings of countries in the three indices. The database contains the following categories:

- 1 – Direct restrictions
- 2a – Mandatory registration procedure
- 2b – Lack of substantive legal remedy
- 3 – Bureaucratic barriers to registration
- 4 – Bureaucratic barriers to re-registration
- 5 – Registration or re-registration procedures of organisations designated 'foreign agents'

Table 1 Restrictions of CSOs<sup>62</sup>

Table 2 Classification of countries applying the examined restrictions

<b>V-Dem</b> <i>Regimes of the World Index 2022</i>	<b>EU Unit</b> <i>Democracy Index 2022</i>	<b>BTI</b> <i>Political Transformation Index 2022</i>
Closed autocracy 24	Authoritarian regime 45	Hard-line autocracy 32
Electoral autocracy 37	Hybrid regime 21	Moderate autocracy 23 Highly defective democracy 5
Electoral democracy 15	Flawed democracy 12	Defective democracy 13
Liberal democracy 6	Full democracy 2	Democracy in consolidation 2

Source: data collected by author

There is one single country (Costa Rica) classified as a liberal democracy, a full democracy or a democracy in consolidation that applies the compulsory registration procedure in question that violates the right of association and does not provide CSOs with a meaningful remedy against a decision to refuse registration. This is not typical, as this restrictive mechanism is mainly in use by authoritarian regimes.

It is also apparent that the vast majority of the 16 countries (Afghanistan, Bahrain, Chad, China, Cuba, Eritrea, Laos, Libya, Myanmar, Oman, Saudi Arabia, Syria, Sudan, Uzbekistan, Vietnam, and Yemen) that were classified as the most authoritarian (closed autocracy, hard-line autocracy, authoritarian regime) by all three indices enforce restrictions of the first category that are specifically designed to completely obstruct the social control function of human rights CSOs.

<sup>62</sup> Linked under Footnote 2.

Looking at the countries classified as the most authoritarian on at least two of the indices, the use of restrictive measures varies. Of the 19 countries concerned, 10 (Belarus, Cambodia, Egypt, Jordan, Kazakhstan, Kuwait, Morocco, Rwanda, South Sudan, and Turkmenistan) have first and second-category restrictive mechanisms. In six of these ten countries, bureaucratic instruments are also used in addition to the more severe restrictions. Restrictions in the remaining nine countries (Azerbaijan, Burundi, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Mali, Tajikistan, United Arab Emirates, and Venezuela) are of the third and/or fourth category.

There are countries located between the two extremes (hard-line autocracy – full democracy) in the grey zone that obtain equal scores on at least two indices. If we look at the countries classified as electoral democracy, hybrid regime, moderate autocracy and highly defective democracy,<sup>63</sup> we see that 16 of them (Algeria, Bangladesh, El Salvador, Fiji, Kenya, Malaysia, Mozambique, Nepal, Nigeria, Pakistan, Russia, Singapore, Togo, Turkey, Uganda, and Zambia) apply restrictive mechanisms associated with the first or second category, and in addition to these restrictions, 11 of these 16 countries apply further restrictive bureaucratic instruments. Nine countries (Angola, Benin, Côte d'Ivoire, Gabon, Guatemala, Iraq, Lebanon, Tanzania, and Zimbabwe) apply only restrictions defined by the third and/or fourth category.

When we examine the countries in the categories of electoral democracy, flawed democracy and defective democracy, we see that eight countries (Ecuador, Indonesia, Lesotho, Malawi, Senegal, Sierra Leone, South Africa, and Timor Leste) apply restrictive mechanisms from the first and second category, and in four of these eight countries, we find further bureaucratic instruments in force. Four countries (Ghana, Liberia, Panama, and Sri Lanka) apply only third and fourth-category restrictions. It is clear that compared to the previous category, significantly fewer countries apply these restrictions. However, it is precisely because of such measures that countries receive lower ratings in monitoring processes over time and are downgraded, for example, from electoral democracy to electoral autocracy. Consequently, countries can be upgraded and downgraded as well. The question is whether, within a more 'democratic' framework, these mechanisms are well-defined provisions against which CSOs have real recourse or whether such restrictions are, in fact, coupled with additional measures that further erode the foundations of the democratic system. In the latter case, the country's categorisation is likely to shift towards a less democratic classification in the near future.<sup>64</sup>

Finally, a specific aspect to be examined is the procedure for registering or re-registering as a 'foreign agent'. This restriction is applied by six countries (Australia, Israel, Kazakhstan, Nicaragua, Russia, and the United States). Four of these countries apply only this restriction among those examined. However, it is important to note that it is not applied uniformly, as in the case of the United States and Australia, there is no deliberate attempt to obstruct human rights CSOs. In Israel, however, the law specifically applies to human rights CSOs, CSOs run by Israeli-Palestinian citizens, or organisations linked to

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<sup>63</sup> I have included highly defective democracies because the category description best fits here.

<sup>64</sup> The categorisation of Bhutan, Greece and Niger is inconsistent, so they have not been included in any of the classifications and are not included in the evaluation.

the political opposition. In Nicaragua, if a CSO registers as a foreign agent, it is prohibited from providing financial support to any organisation, movement, political party, coalition, political association, or association engaged in the internal politics of the country.

The other two countries in question, Kazakhstan and Russia, impose the disadvantages associated with the 'foreign agent' status in addition to the first and second-category restrictions. These additional restrictions clearly impede the ability of human rights CSOs to exercise their social control function. This is evidenced, on the one hand, by the deprivation of rights – the basis of the *Ecodefence and Others v. Russia* case – affecting Russian CSOs working in the fields of human rights, environmental and cultural heritage protection, education, social security and migration, and led to the dissolution of, among others, the International Memorial and Memorial Human Rights Centre by the Russian authorities.<sup>65</sup> On the other hand, the Russian Helsinki Committee was dissolved because the CSO was registered to defend human rights only in Moscow and not in other parts of the country, despite the CSO's extensive work throughout the country (Armstrong, 2023).

It can be observed that there is a difference in the way the three indices categorise the countries that apply restrictions. Based on the analysis, it can be established that there are no clear differences in which categories of restrictions are more frequently applied by the different types of autocratic regimes. Nevertheless, in terms of proportions, it is evident that 81 countries apply the restrictive mechanisms examined, with the overwhelming majority being authoritarian. Regardless of the index used to assess the proportions, we see that three-quarters (61/81) of the countries in question are characterised as closed autocracies and electoral autocracies, authoritarian and hybrid regimes, hard-line autocracies, moderate autocracies and highly defective democracies. In addition, at least two democracy indices classify 13 countries as not fully democratic, meaning that they operate in a grey zone.

## 7 Concluding thoughts

In democratic systems, human rights CSOs are free to engage in activities that align with democratic principles, shape public opinion, and monitor the authoritarian tendencies of the state. As our empirical research has shown, CSOs can be subject to restrictive legislation even in a full democracy because democracy is not a perfect system, but these restrictions can be seen as an anomaly or a limitation on the autonomy of CSOs. In a democracy, it is possible to correct the system itself, for example, if the countries concerned provide CSOs with meaningful legal remedies against restrictive laws.

In recent decades, however, many countries can be described as operating in a grey zone with increasingly authoritarian governments. Human rights CSOs with a social control function are perceived as a threat to the autocratic aspirations of their governments. While outright bans on the formation of associations are not common in many countries, bureaucratic tactics are increasingly being employed to obstruct the operation of CSOs.

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<sup>65</sup> *Ecodefence and Others v. Russia*, Judgment of 14 June 2022.



The laws in question not only increase the complexity and difficulty of the registration process but also give states wide discretionary powers to deny licences and prevent appeals. The registration process has been turned into a bureaucratic tool for government oversight and control. As a result, the fundamental rights necessary for the establishment of CSOs and the maintenance of their legal status are undermined by legislation and its enforcement.

In sum, authoritarian regimes seek to eliminate the autonomy of human rights CSOs. This conclusion is supported both by an analysis of existing restrictions and a statistical comparison of restrictive legislation and countries' performance on democracy indices. As a consequence, these CSOs are increasingly compelled to stand their ground and carry out their activities in a shrinking space, as such frameworks reduce the effective scope of their work and limit their ability to act.

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