Passive Suffrage and "Hidden" Electoral Qualifications

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The people constitute the source of state power. When this principle is interpreted narrowly, the focus shifts exclusively to the procedural dimension of democracy, wherein popular sovereignty is exercised solely through periodic elections, and the government is perceived as an abstract entity detached from the populace, or as a privileged elite distanced from its citizens. However, such a restrictive view overlooks its substantive dimension, which implies not merely popular participation in elections but, crucially, the sustained engagement of citizens in the governance process through both representative and participatory mechanisms.

Furthermore, it is critical to recognize that the populace operates at both ends of the democratic process: on one side stands the electorate, composed of private citizens who vote, and on the other, public officials temporarily drawn from that very populace to exercise the representative mandate conferred upon them by the people, to whom they remain accountable.

Therefore, in a representative democracy, passive suffrage (a citizen's right to be elected to bodies of public authority) is much more than the realization of individual political ambition. It constitutes the foundation of democracy, ensuring that the governance of the country does not become the exclusive privilege of narrow elites. For this, it is crucial that holding office through elections is fully entrusted to the political process: a candidate's suitability for the mandate is decided from the bottom-up (by the will of the voter) rather than being preempted from the top down by criteria predetermined by the legislature.[2] The uncontrolled introduction of administrative filters in this process allows the legislator to exclude specific groups of citizens from the political arena through artificial barriers, thereby undermining popular legitimacy and transforming the government into an agent that serves only a factional interest.

That is why, when discussing free elections predicated upon the free expression of the will of the people, our concern must extend beyond the procedures of election day itself to encompass the entire

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[2] The dissenting opinion of the members of the Constitutional Court of Georgia Teimuraz Tughushi and Irine Imerlishvili regarding the judgment N2/2/702 dated June 14, 2024, of the Second Chamber of the Constitutional Court of Georgia, para. 82. https://www.constcourt.ge/ka/judicial-acts?legal=16602

pre-electoral phase. This critical stage is precisely when candidates are nominated, vetted, and formally admitted into the political arena.[3]

In this regard, it is critical to examine the cumulative operation of the amendments enacted to the Organic Law of Georgia on Political Associations of Citizens in March 2026 and the restrictions introduced by the new Electoral Code adopted at the end of 2025. This statutory interplay effectively deprives any individual employed under an ongoing or past labor contract with an "organization pursuing the interests of a foreign power" of the capacity to secure a parliamentary mandate for an uninterrupted period of eight years.

Namely, the new Electoral Code, which entered into force on December 29, 2025,[4] explicitly prohibits the inclusion of non-party members in a party list for parliamentary elections. Prior to this enactment, such a restriction applied exclusively to members of other political parties.[5] Given that Georgia transitioned to a fully proportional electoral system in 2024, a political party list serves as the sole institutional pathway for a citizen to enter parliament. Consequently, this newly introduced prohibition bears a direct, determinative impact on the very core and exercise of passive suffrage.

In parallel, according to the amendment to the Organic Law of Georgia on Political Associations of Citizens that entered into force on March 4, 2026,[6] it is impermissible for a person to be a party member if they have received income (fully or partially) based on a labor contract concluded with an "organization pursuing the interests of a foreign power". Such a person is prohibited from party membership for eight years from the date of receiving their last income. This restriction unlocks the logic behind the aforementioned cumulative effect and demonstrates how a so-called "foreign agent" is removed from parliamentary activity for a duration of two legislative terms.

The use of the term "foreign agent" is not accidental. For the purposes of this specific restriction, the law meticulously mirrors the definitions of a foreign power (the so-called principal) and an organization

[3] Ibid

[4] Organic Law of Georgia "Electoral Code of Georgia", N1253-IVms-XImp, 17/12/2025, Website, 29/12/2025, Article 129, Part 4. https://matsne.gov.ge/ka/document/view/6720607?publication=0

[5] Until October 6, 2023, the restriction applied if that party was participating in the elections. By the amendment of October 6, the restriction was expanded to include any person registered as a party member in a party registered in accordance with the Organic Law of Georgia "on Political Associations of Citizens". Organic Law of Georgia on Amending the Organic Law of Georgia "Electoral Code of Georgia", N3560-XIIms-Xmp, 06/20/2023, Article 1, Paragraph 30.
https://matsne.gov.ge/ka/document/view/5931684?publication=0#DOCUMENT:1;

[6] Organic Law of Georgia "on Amending the Organic Law of Georgia on Political Associations of Citizens", N1384-Vms-XImp, 04/03/2026, Article 1, Paragraph 3.
https://matsne.gov.ge/ka/document/view/6802958?publication=0#DOCUMENT:1

pursuing the interests of a foreign power (the so-called agent),[7] which first appeared[8] in the Georgian legislative space via the Law of Georgia on Transparency of Foreign Influence adopted on May 28, 2024.[9]

Moreover, it is interesting to note that originally, the declared objective for introducing these legal entities was the creation of an appropriate, transparent registry. At the time, public interpretations and assumptions regarding the implementation of other types of measures against these organizations and their affiliated individuals, or any restriction of their rights, were dismissed by state actors as merer speculative alarmism.

However, the explanatory note of the bill adopted in March of this year (regarding political associations of citizens) effectively dismantles this narrative, revealing that these organizations and the individuals bound to them via employment contracts are now conceptualized as “entities posing an inherent threat” to democratic processes. Consequently, the legislator deemed it appropriate to restrict political rights on this basis (the existence of a labor contract with “agent” organizations and receiving funds in exchange for fulfilling any type of obligation).

“A political party, as an association of citizens established on a common worldview and organizational basis, must importantly consist of individuals who are not driven by external interests that take precedence over Georgian statehood and lie beyond its borders. Therefore, it is necessary to implement a legislative amendment that defines an excluding circumstance for political party membership, which points to their financial dependence on a foreign power" - reads the explanatory note.[10]

During the oral hearings of the bill, its authors explained that foreign money carries foreign interest, and individuals who have received foreign money (in this form) even once become carriers of this

[7] For the purposes of the restriction imposed by the Law “on Political Associations of Citizens”, a foreign power is considered to be both a foreign natural or legal person, organizational entities established on the basis of the law of a foreign state and/or international law, or entities forming part of the governmental system of a foreign state. An agent of influence can be a non-entrepreneurial (non-commercial) legal entity (with certain exceptions), a broadcaster, or a legal entity that owns a print mass media outlet, or owns an internet domain and/or internet hosting intended for an online platform, if: a) it receives funding from a foreign power and b) such income constitutes more than 20% of the total non-commercial income received by it during a calendar year.

[8] Although this law does not use the term “foreign agent”, due to the law adopted shortly after its entry into force - the “Foreign Agents Registration Act” - which serves a stricter regulation of the same relations, the terms discussed in public (“organization pursuing the interests of foreign forces” and “foreign agent”) are often referred to as synonyms.

[9] Law of Georgia "on Transparency of Foreign Influence", N4194-XIVms-Xmp, 28/05/2024. https://matsne.gov.ge/ka/document/view/6171895?publication=0

[10] Explanatory Note - Organic Law of Georgia "on Amending the Organic Law of Georgia 'on Political Associations of Citizens'", N1384-Vms-XImp, 04/03/2026, https://info.parliament.ge/file/1/BillReviewContent/413810

interest. For such a person to be freed from this influence, they require a so-called “cooling-off period”. It is worth noting that the legislator deemed precisely eight years to be a reasonable and necessary timeframe to achieve its stated goal, the so-called “cooling off”.

According to the what’s mentioned above, a distinct group of individuals has emerged whose passive suffrage - the opportunity to be elected as a member of parliament - is restricted for eight years, and an officially declared objective for which this restriction is imposed has been identified. Consequently, it is interesting to examine what restrictions the Constitution itself imposes, whether or not it allows for the introduction of such an indirect qualification, and if it does, what objective such a restriction must serve.

Subject and Restrictions of the Passive Electoral Right in Parliamentary Elections

By the first paragraph of Article 24 of the Constitution of Georgia, every citizen of Georgia from the age of 18 has the right to participate in elections. According to the established practice of the Constitutional Court, by this provision of the Constitution, the right to participate in elections is protected, which, among them, guarantees an individual’s capacity to exercise passive suffrage.[11]

Constitutional norms establishing basic rights, as a rule, themselves indicate the scopes and grounds of their restriction. The mentioned norm only determines the subjects having the electoral right (citizen of Georgia, from 18 years of age) and does not indicate the scopes and grounds of the restriction of this right. Along with this, the second paragraph of this article determines those subjects who are excluded from the circle of persons having the electoral right (persons being in an execution of punishment institution for an especially grave crime by a court sentence, or persons recognized as support recipients by a court decision who are placed in a corresponding stationary medical institution).

Moreover, the fourth paragraph of Article 37 of the Constitution establishes special requirements for a candidate for membership of Parliament: age requirement (25 years), residency requirement (10 years), and negative requirement (deprivation of liberty by court sentence). The Constitution of Georgia does not provide for any other direct restriction.

[11] Judgment N 3/2/588 of April 14, 2016, of the Constitutional Court of Georgia on the case “Citizens of Georgia – Salome Kinkladze, Nino Kvetenadze, Nino Odisharia, Dachi Janelidze, Tamar Khitarishvili and Salome Sebiskveradze against the Parliament of Georgia”, II-13.

The Venice Commission's "Code of Good Practice in Electoral Matters" closely aligns with and reinforces the glimpses of this domestic standard, dictating that while the disenfranchisement, restriction, or suspension of passive suffrage is conventionally permissible, such measures must be strictly predicated upon the criteria of age, nationality, or residency. Beyond these traditional parameters, any further statutory derogation from this fundamental right is tightly circumscribed and remains conditional upon the cumulative satisfaction of the following criteria:[12]

- It must be provided for by law;
- The principle of proportionality must be observed;
- Deprivation of the right must be based on mental incapacity or a criminal conviction for a serious offence;
- Furthermore, the withdrawal of political rights can occur only by a direct (clearly expressed) decision of the court. However, in the case of deprivation of the right on the ground of mental incapacity (Georgian legislation recognizes the support recipient person), such a direct decision may concern the incapacity directly and automatically cause the deprivation of civic rights.

Furthermore, given that under the prevailing electoral architecture political parties constitute the exclusive entities entitled to contest parliamentary elections, it is critical to address the constitutional principle of "militant democracy" (defensive democracy). This constitutional doctrine provides for specific, stringent mechanisms that, as a measure of last resort, permit the outright prohibition of a political party's activities.

Specifically, Article 23, paragraph 3 of the Constitution of Georgia explicitly deems impermissible the creation and activity of any political party whose aims are directed toward the subversion or violent overthrow of the constitutional order of Georgia, encroachment upon national independence, or the violation of the country's territorial integrity. Furthermore, it proscribes parties that engage in the propaganda of war or violence, or those that incite national, ethnic, regional, religious, or social strife. Additionally, the establishment of political parties structured along territorial lines is strictly prohibited.

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[12] Venice Commission, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, CDL-AD (2002)023rev2-cor, adopted at the 51st and 52nd plenary sessions of the Venice Commission. Venice, July 5-6 and October 18-19, 2002, pp. 5 and 14.
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e

Accordingly, a citizen may be legitimately disqualified from obtaining a parliamentary mandate only if they utilize a political party established with unconstitutional aims, or operating with such aims, as their electoral platform. Specifically, pursuant to the judicial review power vested in the Constitutional Court by the Constitution of Georgia, the Court holds the exclusive authority to dissolve such an anti-democratic party. Concurrently, the Court is empowered to terminate the mandate of any representative elected under the nomination of a prohibited political party.[13]

Moreover, the amendments enacted on October 16, 2025, to the Organic Law of Georgia on the Constitutional Court of Georgia[14] effectively expand the constitutional boundaries of the Court's jurisdiction. Specifically, upon a plaintiff's explicit motion during proceedings to declare a political party unconstitutional, the revised statutory framework provides for accompanying sanctions. These include the individual political disenfranchisement of a proper person connected with the corresponding political party (for an indefinite duration). Under this mechanism, affected individuals face an absolute ban on political party membership, the forfeiture of passive suffrage in general elections, disqualification from holding state-political office, and their mandatory removal from registered electoral party lists.

Within this context, from the perspective of the principle of legal certainty, the theoretical implications embedded in the Organic Law on the Constitutional Court of Georgia are deeply problematic. Specifically, the conspicuous absence of a statutory definition for the term - *a proper person connected with an unconstitutional political party* - engenders a severe risk of an overbroad and arbitrary interpretation. The introduction of such a vague legal construct is highly contentious, particularly given that the Constitution establishes a strict restrictive framework - it restricts the scopes of the request for persons having the right of lawsuit (prohibition of the party and termination of the current mandate of a person gone by the list of a prohibited party) and accordingly, by the scopes of the lawsuit request, restricts the Constitutional Court. At the same time, the Constitution explicitly determines the authority of the Constitutional Court in both cases, be it the abolition of a party or termination of the mandate for an elected member. The text of the Constitution provides absolutely no normative basis authorizing the Constitutional Court to strip any individual of their passive suffrage under the guise of classifying them as a "proper person" affiliated with a prohibited party.

[13] Constitution of Georgia, Article 60(4(f)).
https://matsne.gov.ge/ka/document/view/30346?publication=36

[14] Organic Law of Georgia "on Amending the Organic Law of Georgia "on the Constitutional Court of Georgia", N988-IVms-XImp, 16/10/2025, Article 1(1).
https://matsne.gov.ge/ka/document/view/6647832?publication=0

The only guarantee that a citizen may have in this case is the fact that the deprivation of their right is in the hands of the Constitutional Court, which represents the "guardian of the Constitution" institution in a democratic state. Therefore, precisely upon it is the possibility of refusing that authority which, by its assessment, does not stem directly from the Constitution. Whether the Constitutional Court will choose to embrace this legislative expansion or, conversely, strike it down as fundamentally incompatible with its own constitutional mandate, remains to be seen either through future judicial practice or through a direct abstract review mechanism (a constitutional lawsuit challenging the constitutionality of this statutory authority).

Considering the above-mentioned, it is interesting to analyze what the vision of the Constitutional Court regarding passive suffrage is until this point and what standard of assessment (test) it uses in the case when it assesses the constitutionality of qualifications established by ordinary legislation, different from the Constitution.

Passive Suffrage and Electoral Qualifications in the Jurisprudence of the Constitutional Court

The Constitutional Court of Georgia discussed the barriers established when using the passive electoral right in the Judgment 1/1/539 of April 11, 2013. In that case, where the plaintiffs challenged the statutory requirement to post a 5,000 GEL electoral deposit for majoritarian candidates nominated by initiative groups, the Court held that the measure was incompatible with the constitutional principle of equality. Crucially, the Court formulated a foundational doctrine: while the state enjoys a wide margin of appreciation in regulating electoral processes, the mechanisms it institutes must not render the exercise of a fundamental right impossible. By extension, the Court explicitly ruled that such mechanisms "must not be of such content that essentially, tangibly, and significantly distances individuals from equal opportunities to exercise the right."

According to the Court's reasoning, any qualification (whether a financial deposit or an administrative condition) must not function as an artificially erected, disproportionate barrier that risks "transforming the electoral right into a mere privilege."[15] The court clearly indicates that "ensuring the democraticity of elections as a direct way of citizens' participation in managing the state should not itself turn into a

[15] Judgment N1/1/539 of April 11, 2013, of the Constitutional Court of Georgia on the case of citizen of Georgia Besik Adamia v. the Parliament of Georgia, II-36. https://www.constcourt.ge/ka/judicial-acts?legal=902

negator, excluder of this right of citizens. Caring for the democratic elections will have no sense and justification if the possibility of participation in elections is placed under a question mark".[16]

Unlike the abovementioned court decision, the Constitutional Court of Georgia had to discuss the constitutionally permissible scopes of the restriction of the electoral right itself by the Judgment 3/3/600 of May 17, 2017. The Constitutional Court declared unconstitutional the restriction established by the Electoral Code of Georgia, according to which a person could not participate in the elections of a Sakrebulo (the representative body of local government) if they did not reside permanently on the territory of Georgia during the last two years before the appointment of elections. The Court reasoned that although the constitutional provision safeguarding the right to vote remains silent on the explicit legitimate aims for its limitation, this textual silence does not render the right absolute. Moreover, a restriction is possible only by the steadfast observation of the principle of proportionality and in such a way that the essence of the right protected by the mentioned article is not violated.[17] In this case, the court considered that the goal of the restriction exceeded the prevention of those threats of democratic governance which could have been created by the election of this or that person to a position. Realistically, the restriction was conditioned by the political expediency of choosing the candidate. This, however, cannot be a legitimate goal for restricting this right by ordinary legislation.[18]

Apart from the abovementioned cases, the Ruling of the Constitutional Court of February 12, 2026, 3/1/1900 is quite interesting, by which (although the court did not accept the lawsuit for consideration) the court offered the plaintiff a kind of test by which it would assess the violation of the right to be elected. Namely, the court explained that to substantiate the unconstitutionality of the disputed norm, it must be demonstrated that the restriction places an asymmetrical burden on the electoral candidate, is inherently partisan or self-serving, and fails to directly address or mitigate genuine institutional threats arising from an individual's assumption of public office. Consequently, in the absence of such a defensive justification, the measure operates to unjustifiably infringe upon the core realization of passive suffrage.[19]

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[16] Ibid.

[17] Judgment N3/3/600 of May 17, 2017, of the Constitutional Court of Georgia on the case of citizen of Georgia Kakha Kukava v. the Parliament of Georgia, II-27. https://www.constcourt.ge/ka/judicial-acts?legal=571

[18] Ibid., II-36-40.

[19] Ruling N3/1/1900 of February 12, 2026, of the Constitutional Court of Georgia on the case of political association of citizens "Free Georgia" v. the Parliament of Georgia, II 12. https://www.constcourt.ge/ka/judicial-acts?legal=19283

Although the court's approach to restricting passive suffrage is somewhat understandable, in an important case involving the statutory deprivation of this right, the court "avoided" a substantive analysis of whether the restriction complies with that constitutional right. The case challenges the constitutionality of automatically stripping individuals convicted of drug crimes of their right to stand for election.

Specifically, the challenged norm of the Law of Georgia on Combating Drug-Related Crime provided for the deprivation of the right to passive suffrage based on a court's judgment of convition: for a term of 3 years in the case of a drug user, and for a term of 5 years in the case of a person facilitating drug activity or the distribution of drugs.[20]

The dissenting opinion of Judges Irine Imerlishvili and Teimuraz Tughushi serves to fill the significant gap left in this regard.[21] Relying precisely on the court's established jurisprudence, they substantiated the inconsistency of this restriction with the Constitution.

Namely, according to the dissenting judges, the principle of a democratic state generally dictates that a candidate's suitability should be determined by the will of the electorate. However, in exceptional cases, to safeguard democratic governance and its core values, the legislator may establish additional requirements for candidates. Furthermore, it is essential that these requirements are narrowly tailored to neutralize only those actions that pose a risk to democratic governance and its core values. Unfortunately, a clearer discussion of these exceptional cases is lacking even in the dissenting opinion itself; in this instance, the judges found it readily apparent that the disputed norms posed no such existential threats - a fact which, in their view, the defendant had also failed to disprove.

The dissenting judges maintained that in this case, the purpose of restricting passive suffrage was directed solely toward ensuring a candidate's fitness for the office to be held. Citing the court's own established jurisprudence - *that "the legislator is not authorized to restrict the exercise of passive suffrage based on the general expediency of choosing a more suitable or qualified candidate for a position, as this matter is governed by the Constitution, which entrusts the holding of elected office*

[20] According to the same law, the flow of the term of the operation of the restriction started: upon conviction by deprivation of liberty – immediately upon serving the sentence assigned by the sentence, upon using conditional sentence – from the moment of starting by probation term, and upon using non-prison sentence – from the moment of taking the final decision on the case).

[21] The dissenting opinion of the members of the Constitutional Court of Georgia Teimuraz Tughushi and Irine Imerlishvili regarding the judgment N2/2/702 dated June 14, 2024, of the Second Chamber of the Constitutional Court of Georgia, para. 82. https://www.constcourt.ge/ka/judicial-acts?legal=16602

exclusively to the political process and the free will of the voter" - they concluded that the Constitutional Court erred in failing to even consider this issue.

Crucially, after the court left this issue unresolved (open) - thereby indirectly recognizing the wide discretion of the legislator - the statutory restrictions were further tightened. Specifically, following the filing of the lawsuit in December 2015, the grounds for deprivation of passive suffrage under the Law on Combating Drug Crime became increasingly stringent, thereby escalating the severity of the interference with this constitutional right.

While the deprivation of this right was previously merely an automatic consequence of a criminal conviction, subsequent amendments extended the sanction to administrative offenses as well (initially targeting the consumption of small quantities of cannabis and marijuana).[22] In these administrative cases, the imposition of the "punishment" was left to judicial discretion, allowing for the deprivation of the right for a term of up to three years.

The tendency of legislative tightening was further reinforced by amendments enacted in April[23] and July[24] of 2025: the duration of rights deprivation for drug consumption was increased to five years, while the catalogue of administrative offenses serving as grounds for this restriction was expanded.[25] As a result, the upper threshold of the deprivation of the right determined by the judge reached five years. Despite the fact that, in this context, the judge can assess each case individually - meaning this approach does not imply the automatic deprivation of the right to be elected - a crucial circumstance must be considered: the adjudication of administrative offenses lacks the high standard of proof and stringent procedural guarantees characteristic of criminal proceedings. Consequently, despite the availability of judicial individualization of punishment, the protection of this constitutional right remains devoid of proper safeguards.

[22] Law of Georgia on Amending the Law of Georgia "on Combating Drug-Related Crime" 3776-Is, 30/11/2018. https://matsne.gov.ge/ka/document/view/4383819?publication=0

[23] Law of Georgia on Amending the Law of Georgia "on Combating Drug-Related Crime", 504-IIms-XImp, 16/04/2025. https://matsne.gov.ge/ka/document/view/6475936?publication=0

[24] Law of Georgia on Amending the Law of Georgia "on Combating Drug-Related Crime", 927-IIIrs-XImp, 02/07/2025. https://matsne.gov.ge/ka/document/view/6560345?publication=0

[25] As a ground was added committing the violation provided for by Article 45 of the Code of Administrative Offenses: "illegal manufacture, purchase, storage, transport, sending of a drug, its analogue or precursor in small amount and/or consumption of a drug, new psychoactive substance without a doctor's prescription and/or avoiding checking for establishing the fact of consumption of a drug, new psychoactive substance". Also the offense provided for by Article 100(2): "illegal sowing, growing or cultivation of a plant containing a drug in small amount and/or illegal purchase, storage, transport, sending, transfer without material benefit and/or realization of seed fit for growing a plant containing a drug".

Given the gravity of the issue and the clear trajectory of these statutory restrictions, a substantive ruling on this matter by the Constitutional Court was clearly of paramount importance. By neglecting or ignoring this significance, the court arguably compromised the very standard of protection that it had consistently formulated over the years regarding passive suffrage - a jurisprudence which, despite its own problematic aspects, was nonetheless on a steady developmental trajectory.

At this stage, two primary aspects can be identified within the framework outlined by the Constitutional Court, which will serve as the basis for the subsequent analysis:

1. The standard governing eligibility criteria in relation to passive suffrage - the legislator is authorized to establish additional requirements for candidates; however, these requirements must be narrowly tailored to neutralize only those actions that pose a risk to democratic governance and its core values. Furthermore, it must be readily apparent that such regulations serve to prevent specific threats to the constitutional order arising from individual conduct. At the same time, any restriction is permissible only through the steadfast application of the principle of proportionality, ensuring that the very essence of the protected right is not violated.
2. The standard governing eligibility criteria in relation to the principle of equality - any differential treatment of electoral subjects must constitute a proportionate means of achieving a legitimate statutory goal, rather than being arbitrary or counterproductive to the realization of that declared objective. The legislator must not permit the creation of barriers that would effectively transform a constitutional right into an inaccessible privilege reserved for a specific group.

The 2026 legislative amendments, which strip a specific group of citizens of their passive suffrage for eight years - disqualifying them from election to the national legislature solely on the basis of an employment relationship - present a complex legal problem. Accordingly, the purpose of the following sub-chapter is to demonstrate, through the prism of the standards established by the Constitutional Court, the systemic risks that these types of hidden eligibility requirements pose to the principles of democratic governance, equality, and national sovereignty.

Constitutional Risks of the Eight-Year “Cooling-Off Period”

According to the arguments of the initiators of the bill, the eight-year “cooling-off period” serves as an instrument to distance individuals from “foreign interests,” thereby safeguarding democratic processes

from potential external influence. Notably, mechanisms of this nature are not entirely unprecedented in comparative legal systems (an argument heavily relied upon by the ruling majority). Similar temporary restrictions are commonly utilized within public administration, where post-employment regulations limit the immediate transition of former public servants into the private sector.

As a rule, the objective of such restrictions is to prevent the misuse of confidential information, institutional influence, and resources acquired by an individual by virtue of their office. In these scenarios, the restriction targets real, objectively determinable, and directly demonstrable risks that stem from the person's former public duties and are directly linked to their prospective activities.

In contrast, the justification for the “cooling-off period” offered by the initiators appears to rest on two underlying premises, neither of which is substantiated in the text of the law or its explanatory note: 1. Any employment-based remuneration, regardless of its nature or volume, automatically generates political loyalty toward a foreign power; and 2. The will of a foreign power necessarily conflicts with national interests.

Such an approach departs from the classic understanding of a conflict of interest, resting instead on a generalized assumption of potential loyalty, the existence of which is neither subject to individualized assessment nor substantiated by objective criteria.

Furthermore, even if one accepts this assumption as valid, the statutory restrictions still raise numerous logical inconsistencies. For instance, why is an employment contract singled out as the primary vehicle for this alleged loyalty, and why does the same logic not extend to service contracts? Moreover, where is the constitutional boundary between actual institutional influence and mere arbitrary figures?

Consider a theoretically permissible scenario: an organization that receives hundreds of thousands in foreign funding in absolute terms, but constitutes only 19.9% of its non-commercial income, is not deemed an entity pursuing foreign interests under the law. Conversely, an organization that supports vulnerable groups through a modest foreign grant, but where this funding accounts for 20.1% of its non-commercial income, is branded as an entity posing a political threat. The legislation thus purports to measure the degree of foreign influence with mathematical precision. Crucially, the fundamental flaw lies not in the volume of funding itself (which, in any event, originates from a legitimate source) but in the arbitrary logic used to establish this threshold, a mechanism that raises profound constitutional questions.

Regarding revenue thresholds, a critical issue emerges. Under the relevant legislation enacted in 2024, if an organization meets the criteria to be designated as an entity "pursuing the interests of a foreign power," it is legally mandated to register in the corresponding registry. Crucially, if an organization fails to comply with this registration requirement, an employee is deprived of any objective capability to access comprehensive financial data or monitor their employer's revenue to determine exactly when it crosses the 20% threshold. Yet, the 2026 regulation does not exempt the employee from liability; it automatically applies the eight-year disqualification to them, completely ignoring whether the individual had actual knowledge of their employer's shifting financial sources or its underlying legal status.

Furthermore, the law fails to differentiate based on the nature of the individual's activities. The regulation mandates an identical legal outcome for a person actively engaged in political processes and an individual performing narrow professional, humanitarian, or technical functions. By this logic, a technical employee who may be entirely unaware of the objectives and scope of a foreign grant, and who is in no way involved in implementing those specific projects, is branded as an entity "pursuing foreign interests" for eight years. The law forecloses any inquiry into the individual's actual conduct; instead, the mere fact of formal affiliation is dispositive, effectively replacing the principle of individual responsibility with a regime of blanket, collective suspicion.

Moreover, this amendment constitutes merely one component of a broader, systemic legislative reform aimed at consolidating government control over foreign funding. Specifically, under recent amendments to the Law of Georgia on Grants,[26] any activity falling within the vague and all-encompassing definition of "political activity" is subjected to strict state oversight and prior authorization by the government. This mechanism creates a stark paradox: the government preliminarily assesses the risks of foreign funding and explicitly authorizes it, yet subsequently restricts the fundamental political rights of individuals for receiving those very same funds - all under the sweeping guise of neutralizing existential threats to the state. Such a legal construction raises a substantiated suspicion that the true objective extends beyond merely excluding specific individuals from the political process. Rather, it creates a profound "chilling effect" that ultimately stifles the functioning of a vibrant civil society.

To evaluate the purported legitimate objective of this restriction and to assess whether the mechanism is tailored to achieve that stated goal, it is crucial to draw parallels with other forms of foreign

[26] Law of Georgia on Amending the Law of Georgia "on Grants", N1379-Vms-XImp, 04/03/2026. https://matsne.gov.ge/ka/document/view/6803542?publication=0

“influence”. Tellingly, the statutory restriction does not extend to individuals who, prior to joining a political party, worked for years within the state apparatus of a foreign country (including adversarial regimes hostile to Georgia) or within entities established under the laws of such states, whose explicit mandate may have been to intervene in Georgian politics.

In light of the foregoing, it is profoundly difficult to discern any legitimate interest that this cascade of statutory restrictions (imposed exclusively on a specific group through the dual mechanism of banning party membership and foreclosing passive suffrage) could plausibly serve. Even if one accepts that safeguarding national security and mitigating existential threats constitute a legitimate state interest, this regulatory scheme not only suffers from the logical inconsistencies detailed above, but fundamentally fails to meet established constitutional standards.

The Constitution of Georgia, relying on the doctrine of “defensive democracy,” permits the prohibition of a political association, as an organized political entity, only to neutralize active, objectively foreseeable, and identifiable threats. The constitutional standard does not tolerate the restriction of political rights based on an individual's internal dispositions, undeclared intentions, or hypothetical interests that have not manifested in overt political action. Conversely, penalizing potential intent and, moreover, declaring a lawful employment history as an a priori threat is fundamentally antithetical to the principle of the rule of law.

Particularly problematic is the legislator's choice to presume such risks exclusively in relation to a specific group of individuals - under the blanket assumption that foreign interests invariably follow foreign funding - without providing any clear rationale as to the principle governing the differentiation between distinct sources of foreign revenue. Under these conditions, the regulation ceases to function as a legitimate state security mechanism; instead, it operates as a tool for the targeted selection of citizens based on their professional activities, sources of income, and modes of civic engagement.

When legislation abolishes the mechanism for including non-party candidates on electoral lists and, simultaneously, prohibits party membership on the basis of an employment relationship, the combined effect creates an insurmountable, artificial barrier that completely forecloses specific groups from participating in the electoral process at all. Consequently, this regulatory intersection strips passive suffrage of its universal character, degrading a fundamental constitutional right into a mere privilege.

Proportionality of the Eight-Year Period and the Point of Calculation of the Term

Beyond the questions surrounding the legitimate objective and the suitability of the restrictive mechanism, the central inquiry concerns the duration of the restriction itself. Specifically, it remains entirely unclear by what principle a rigid eight-year term was selected, and why a less restrictive alternative could not suffice to achieve the stated legislative goal. The justification for this specific duration was neither articulated during the legislative deliberations nor reflected in the bill's explanatory note.

Prohibiting a citizen from full political participation and activity for eight years amounts to a “political punishment”, effectively removing them from two consecutive electoral cycles solely based on their past, lawful contractual labor ties. Paradoxically, an individual who has committed no crime is subjected to a restriction more severe than many criminal offenders (including those convicted of abuse of official power or offenses against the state) who, upon serving their sentences, have their passive suffrage fully reinstated.

According to the opinion adopted by the Council of Experts on NGO Law of the Council of Europe on March 18, 2026, this restriction cannot be regarded as responding to a “pressing social need” in a democratic society that would justify limiting freedom of association and the right to stand for election, as no such urgent necessity has been established. Furthermore, the Council considers that even if a legitimate objective did exist, the eight-year blanket prohibition would be deemed unequivocally excessive by the European Court of Human Rights - particularly given that the restriction applies without requiring any overt hostile act by the individual against the interests of Georgia.[27]

Even more critical is the ambiguity surrounding the temporal scope of the restriction. Since this mechanism has not yet been applied in practice, it remains uncertain whether the prohibition will apply exclusively to employment contracts concluded after the enactment of the law, or to all past relationships involving the “receipt of remuneration from an organization pursuing the interests of a foreign power” from the termination of which the eight-year “cooling-off” period has not yet elapsed.

Judging by the declared objectives of the law and the specific threats invoked by its initiators, it can be inferred that the starting point for calculating this term is not intended to be tied to the law's entry into force. This assumption is grounded in the fact that, were the restriction purely prospective,

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[27] Council of Experts on NGO Law of the Conference of International Non-Governmental Organizations (INGO) of the Council of Europe, “Conclusion on changes to be entered in the Law of Georgia ‘on Grants’, the Organic Law of Georgia ‘on Political Associations of Citizens’ and several other connected laws”, CONF/EXP (2026)2, March 18, 2026, para. 163. https://rm.coe.int/coe-expert-council-georgia-opinion-march-2026/48802affaa

numerous individuals who have been recipients of foreign funding up to this point - and who, according to the authors' own logic, were “pursuing foreign interests”- would be permitted to join political parties unimpeded, thereby retaining their capacity to influence the electoral process.

Moreover, the cumulative effect of this legislative package leaves an extremely narrow scope for foreign-funded activities, all of which are already subjected to rigorous state oversight and prior authorization by the government. Consequently, since any future foreign funding must invariably pass through a strict state filter, an additional restriction of this magnitude - namely, an eight-year ban on meaningful political participation through party membership - utterly fails to withstand the strict scrutiny of the proportionality test.

Therefore, it can be assumed that the primary targets of the legislature are precisely those individuals who already possess this specific professional background. However, if the termination of past employment, rather than the law's entry into force, is utilized as the temporal trigger for the restriction, it creates a textbook case of retrospective application, which fundamentally violates the core principles of legal certainty and the protection of legitimate expectations.

Namely, when an individual entered into an employment relationship years ago, they acted in reliance on the state, operating under the assumption that their lawful labor would not subsequently serve as the basis for a restriction of rights, much less a political disqualification. Moreover, prior to 2024, the statutory definition of an “organization pursuing the interests of a foreign power” did not exist, nor did the corresponding registry. Consequently, citizens could have had no foresight that the state would later introduce such a status, or that labor performed within these entities would be construed as posing any form of national security threat.

Therefore, the citizen did not have and could not even have the possibility to preliminarily foresee such a strict legal result of their own action. The Georgian context should also be considered, where for years, similar organizations represented one of the leading platforms for employing those persons who were interested in various spheres of the country's politics. Disqualifying individuals on this ground effectively deprives the representative body of a highly qualified talent pool that has accumulated deep expertise and institutional knowledge in critical sectors.

The state does not have the right to set a “legal trap” to a human and declare a legitimate action committed in the past as the ground for taking away rights in the future. If the enforcement of the law starts in this form, it will be “hidden retroactivity”. Specifically, as the ground for deprivation of the right, an action finished in the past, completely legal at that time, is used. Such an approach destroys

the principle of legal trust - the citizen is deprived of the possibility to foresee the legal consequences of their actions and to rely on the stability of the legal order.

Thus, the temporal trigger for calculating this restriction is of paramount constitutional significance. The explicit assurance within the explanatory note, stating that the bill precludes retroactive effect, provides a compelling argument for strategic litigation; it demonstrates that even the subjective legislative intent did not encompass a retroactive interpretation of the norm. Crucially, however, the authority to impose this restriction rests with the State Audit Office, and a subsequent judicial appeal does not automatically suspend its enforcement. This procedural gap creates a profound danger, as the restriction can be weaponized at a critical juncture, such as on the eve of an election, thereby rendering the constitutional right to judicial review an empty, ineffective remedy.

Summary

The present analysis demonstrates that the discussed legislative changes create a complex, multi-layered mechanism restricting passive suffrage. Under this framework, an individual formally retains the status guaranteed by the Constitution, yet in practice, is denied access to the very legal platform indispensable for the realization of this right.

Counterarguments suggesting that these amendments constitute mere internal regulations of party activity rather than the imposition of an electoral disqualification are purely formalistic. In this context, paramount importance attaches not to the nominal classification of the norm, but to its material effect. When the tangible outcome of a regulation is the systematic exclusion of an individual from the electoral process, it must, in substance, be evaluated as a restriction on passive suffrage, regardless of its nominal statutory framing.

The effective protection of passive suffrage dictates that no artificial obstacles be erected against individuals seeking to register as electoral subjects, unless such restrictions are explicitly enshrined within the supreme law of the state. Furthermore, pursuant to the established jurisprudence of the Constitutional Court, statutory restrictions on electoral rights are permissible only if they serve to mitigate real, identifiable, and existential threats to democratic governance, and provided that the restriction itself is designed in strict adherence to the principle of proportionality.

In light of the aforementioned criteria, profound questions arise regarding both the clarity of the legitimate objective and the proportionality of the measures employed under the proposed

regulations. Crucially, the restriction is predicated upon unduly broad and abstract prerequisites that fail to account for individual circumstances or require the substantiation of concrete, individualized risks. Under such conditions, there is an imminent threat that the practical enjoyment of passive suffrage will become contingent upon an individual's professional background or source of income, thereby transforming a universal constitutional right into a mere privilege. Such a practice is fundamentally destructive to the principle of legal certainty and heightens the risk of expanding similar restrictions to other categories of citizens in the future, based on their employment history or other arbitrary grounds.

Consequently, the proposed regulations raise profound constitutional questions that strike at the very essence of passive suffrage and the meaningful exercise of popular sovereignty. To prevent constitutional guarantees from degenerating into empty programmatic declarations, the rigorous exercise of judicial review by the Constitutional Court is of paramount importance. The Court must avoid judicial abdication or passivity, as was observed to some degree in the jurisprudence concerning the restriction of passive electoral rights for individuals convicted of drug-related offenses.