THE 2021 AMENDMENTS TO THE GEORGIAN ORGANIC LAW ON COMMON COURTS THROUGH THE LENS OF INTERNATIONAL LAW AND BEST PRACTICES

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OVERVIEW OF THE 2021 AMENDMENTS TO THE ORGANIC LAW ON COMMON COURTS

On December 27, 2021, six Georgian Dream members of parliament introduced the Amendments in the Georgian legislature, which proposed several major alterations to the text of the country's Organic Law on Common Courts.[1] The proposed amendments were adopted just a few days later on December 30, 2021,through an accelerated mechanism.[2] Opposition MPs as well as members of civil society were quick to condemn the process, objecting to the ruling party's baseless use of the expedited vote mechanism at the end of the parliamentary session.[3] Such a hasty process, opponents of the Amendments argued, meant that the amendments were not sufficiently subjected to meaningful public involvement and consultation.[4]

Civil society and opposition parties also objected to the content of the 2021 Amendments, which brought about sweeping changes to the regulations that govern the appointment, recusal, and formal sanctioning of judges.[5] More specifically, the legislation lifted the ban on back-to-back term limits for members of the country's High Council of Justice (HCoJ), lowered the quorum necessary for the HCoJ to make decisions on disciplinary proceedings to just a simple majority, introduced several new kinds of disciplinary misconduct grounds and penalties for judges, etc.[6] The latter alterations to the Organic Law on Common Courts – the formal and de facto changes to grounds and disciplinary punishments involved in judicial misconduct proceedings – that are the primary focus of the present analysis.

Civil society organizations (CSOs) and multilateral organizations' concerns regarding the lack of judicial independence in Georgia predate the intro-

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[1] "The Coalition Responds to the ad hoc Hearing of the Amendments to the Organic Law on Common Courts", the official website of the "Coalition for an Independent and Transparent Judiciary", 8 December 2021, available at: http://coalition.ge/, accessed: 26.09.22.

[2] "Parliament Adopts Amendments to Organic Law on Common Courts", Information portal -''Interpress News ", 31.12.2021, available at: https://www.interpressnews.ge/en/article/, accessed: 26.09.22; The accelerated vote procedure is outlined in Article 117 of the Rules of Procedure of the Georgian Parliament.

[3] "U.S. Slams Georgia's Ruling Party For 'Undermining' Government Accountability, Judiciary", Information portal RFE/RL, 4 January 2022, available at: https://www.rferl.org/, accessed: 26.09.22.

[4] "The Appeal to the President to Veto the Amendment", Transparency International Georgia – official website, 13 January, 2022 available at: https://transparency.ge/, accessed: 26.09.22.

[5] Ibid.

[6] "On Amendments (of December 2021) to the Organic Law on Common Courts", Venice Commission - official website, 8 April 2022, available at: https://www.venice.coe.int, accessed: 26.09.22.

duction of the 2021 Amendments.[7] For over a decade, there has been widespread consensus among non-partisan proponents of democratic reform that governance based on the rule of law in Georgia has long been faced with challenges of self-interested, clan-like group of judges who wield outsized control over judicial processes and decisions in the country. This group of judges hold such powers that make them able to control the judiciary as a whole. [8]

The amendments have seriously worsened certain aspects of the Organic Law on Common Courts. Among the multiple major changes to the law, one directly affects the disciplinary punishment procedures, while the other, while not directly included in norms on disciplinary action, is in practice, indirectly may be used for punishment of non-conforming Judges.

These changes are as follows:

1. *Transfer of Judges without their Consent*: The legislation empowers the HCoJ to send any judge, without their consent, to any court in the country for up to four years.[9] The HCoJ's decision to send a judge, on secondment, may occur without consideration of the judge's present position, court location, or professional background.[10] While not technically cited as a kind of formal punishment for judges found guilty of misconduct, the use of consent-less transfers as a politically motivated tool is well documented in certain democratically backsliding countries.[11] This addition to the Organic Law should therefore be understood as a form of punishment.[12]

2. *Vague New Grounds for Disciplinary Misconduct*: The legislation explicitly includes the "expression of opinion by a judge in violation of the principle of political neutrality" to the list of activities that can be grounds

[7] "Georgian Civil Society Organization's Address to the International Community", Grass Reformanda – official website, 9 September 2019, available at: https://grass.org.ge/, accessed: 26.09.22.
[8] "Evolution of Clan-based Governance in Georgian Judiciary since 2007", Democracy and Freedom Watch: https://dfwatch.net/. accessed: 26.09.22.
[9] As a general rule, transfer of judges lasts 2 years and may be extended by an additional 2 years.
[10] "On Amendments (of December 2021) to the Organic Law on Common Courts", Art. 37, Venice Commission.
[11] "The Rule of Law Checklist, 2016", Venice Commission – official website, 12 March 2016, para. 80, available at: https://www.venice.coe.int/, accessed: 26.09.22.
[12] "High Council of Justice monitoring reports" – Georgian Young Lawyers Association / Transparency International Georgia, 2017, available at: http://ewmi-prolog.org, accessed: 26.09.22.

for judicial misconduct penalties. The 2021 Amendments do not specify how the term "principle of political neutrality" should be interpreted or applied in practice; moreover, "principle of political neutrality" is not a well-defined concept in international law, nor in Georgian law.[13]

Perhaps unsurprisingly, many of the criticism leveled at the hasty adoption of the 2021 amendments along with expanded powers awarded to "clan" members in judicial misconduct proceedings analyzed the legislative changes against the background of Georgia's unique political context. For example, the Coalition for an Independent and Transparent Judiciary (Coalition)as well as the Venice Commission both published detailed responses in the wake of the 2021 Amendments.[14] These publications analyze why, due to discrete socio-political factors unique to Georgia, the 2021 legislative changes to the Organic Law on Common Courts stand to further erode the independence of the country's judiciary and constitute yet another instance of democratic backsliding.

The 2021 Amendments have not yet been analyzed in the context of international law and international best practice with regard to the language, scope, and specificity of judicial sanction procedures. While prior analysis that explicitly considers Georgia's law and recent socio-political context is no doubt useful (such as the report from the Venice Commission), it is likewise necessary to consider whether the 2021 Amendments adhere to relevant judicial best practices promulgated by organizations like the UN or the International Bar Association. The present analysis, therefore, aims to fill this research gap by providing a comparatively context-blind review of the 2021 Amendments that assesses the extent to which the 2021 Amendments align with international law and/or international best practices vis-à-vis judicial disciplinary misconduct proceedings and punishments. Such context-independent analysis of the 2021 amendments provides insight about how Georgian policymakers can best enhance the rule of law and independence of the judiciary in the short to medium term. Put another way, the present analysis can provide insight into whether further amendments to the Organic Law on Common Courts may be necessary to bring the law (back) into line with

[13] "On Amendments (of December 2021) to the Organic Law on Common Courts" Art. 75, para. 8.
[14] "The Appeal to the President to Veto the Amendment", Transparency International Georgia; Opinion on the December 2021 Amendments to the Organic Law on Common Courts, Venice Commission – official website, 20 June 2022, available at: https://www.venice.coe.int, accessed: 26.09.22.

internationally accepted best practice. These potential future amendments to the Organic Law on Common Courts could, for instance, comprise one component of the "transparent and effective judicial reform strategy and action plan post-2021" required by the EU Commission before Georgia may attain formal EU candidate status.[15]

INTERNATIONAL LAW AND BEST PRACTICES REGARDING JUDICIAL MISCONDUCT GROUNDS AND DISCIPLINARY PROCEEDINGS

Various multilateral bodies such as the UN, International Bar Association, and Venice Commission routinely publish guidelines regarding how a state's judiciary can most effectively be structured, governed, and reformed.[16]

The present analysis considering the degree to which the 2021 amendments, as a whole, adhere to the general guidelines for judicial independence set forth in judicial standards documents, both in terms of their content and legislative adoption. The analysis subsequently reviews each of the three identified alterations to the grounds and functional punishments involved in judicial misconduct proceedings in Georgia, outlining whether (and to what extent) each change aligns with or deviates from international norms.

Balancing Judicial Misconduct Proceedings and Judicial Independence

Both the rushed adoption and the aggregate reforms of the 2021 Amendments appear to violate internationally recognized best practice *vis-à-vis* judicial independence in three main ways:

First, most recent literature concerning the maintenance of a healthy and independent judiciary emphasizes the importance of public perception with regard to legislative alterations to judicial operations. For example, in their 'Standards for Disciplinary Proceedings and Liability of Judges,' the European Network of Councils for the Judiciary stresses the need for caution and public deliberation in developing changes to "the administration of the disciplinary procedure relating to judges",[17] Experts have further noted that,

[15] "Opinion on the EU Membership Application by Georgia", European Commission – official website, 17 June 2022**,** available: https://ec.europa.eu/, accessed: 26.09.22.
[16] "International Standards", UN OHCHR – official website, available at: https://www.ohchr.org, accessed: 26.09.22; "IBA Judicial Integrity Initiative", International Bar Association, May 2016, available at: https://www.ibanet.org/, accessed: 26.09.22.
[17] "Disciplinary Proceedings and Liability of Judges", Section 8.1, European Network of Councils for the Judiciary, 5 June 2015, available at: www.encj.eu/, accessed: 26.09.22.

without meaningful public deliberation, it is likely that the citizenry will perceive members of the judiciary as both above the law and controlled by other branches of government.[18]

Public faith in the independence and accountability of the judiciary is necessary for the democratic legitimacy of the system of government as a whole.[19] Consequently, eroded public faith stands to diminish the public's willingness to respect judicial decisions and risks undermining governance based on the rule of law.[20] Given the expedited nature of their adoption and the as-of-yet unaddressed public objections, the 2021 Amendments in aggregate appear out of step with international best practice regarding legislative changes to judicial misconduct codes.

The 2021 Amendments also reprimand criticism in relation to disciplinary due process. Control of judicial misconduct proceedings is in the hands of the HCoJ while providing no legitimate oversight mechanism. In June 2020, the UN Human Rights Council acknowledged that decisions about disciplinary measures for members of the judiciary should be made by a body comprised of judges and non-judges alike.[21] International organizations had likewise highlighted the key role that individuals "from outside the judicial profession" should play in misconduct proceedings, particularly in the post-Soviet space.[22] By reducing the quorum required for HCoJ decisions in judicial misconduct proceedings, the 2021 Amendments serve to re-entrench the current judge-only composition of the HCoJ, which has lacked the statutorily required five non-judge members for over a year.[23]

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[18] "June 2014: Some Procedural Aspects of Transferring Judges", USAID FAIR Judiciary Program, Juna 2014, available at: https://pdf.usaid.gov/, accessed: 26.09.22; Dinh, Viet, "Threats to Judicial Independence, Real & Imagined", Daedalus, FALL 2008, available at: https://www.amacad.org/, accessed: 26.09.22.

[19] Frans Van Dijk, "Judicial Independence and Perceptions of Judicial Independence", Perceptions of the Independence of Judges in Europe, 15 December 2020, available at: https://doi.org/, accessed: 26.09.22.

[20] "Judicial Independence and the Rule of Law in the EU", Global Europe, 13 July 2021, available at: https://www.iiea.com, accessed: 26.09.22.

[21] "Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers", UN Human Rights Council, available at: https://documents-dds-ny.un.org/, accessed: 26.09.22.

[22] "Kyiv Recommendation on Judicial Independence in Eastern Europe, South Caucasus and Central Asia", OSCE, 25 June 2010, para. 1.9, available at: https://www.osce.org/, accessed: 26.09.22.

[23] Opinion on the December 2021 Amendments to the Organic Law on Common Courts, Venice Commission

Third, the 2021 Amendments lengthen the Georgian Organic Law on Common Courts, in part by increasing the specificity of the individual grounds and punishments involved in judicial misconduct proceedings. Further specification breaks from the internationally accepted practice by which States avoid proactively "defining all such potential reasons (for the initiation of judicial misconduct proceedings) in advance in terms other than general formulations",[24] Most recent literature on judicial sanctions asserts that while precise reasons must be given for any disciplinary action undertaken against a judge, States should not seek to define or codify into law all possible behaviors that might lead to disciplinary proceedings or punishments.[25] The European Court of Human Rights (ECHR) has likewise concluded that it would not be possible nor preferable to draw up an exhaustive list of sanction-worthy behaviors for judges in detail.[26] Rather, the ECHR maintains that States' laws related to judicial misconduct should remain broad in their language but "consistent and restrictive" in their practical interpretation and application.[27]

Transfer of Judges without their Consent:

As outlined in Section I, the 2021 Amendments empower the HCoJ to send any judge, without their consent, to any court in the country for up to four years; this decision may be taken regardless of a judge's position, location, or background.[28] Though technically an alteration to the article concerning judicial appointments, this transfer-related amendment is understood here as an unofficial form of sanction that could be applied as a political tool to punish independent judges.[29]

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[24] "Opinion No. 3", Consultative Council of European Judges, 19 November 2002, para. 64, available at: https://rm.coe.int/, accessed: 26.09.22.

[25] "Opinion No. 3", Consultative Council of European Judges; "Model Rules for Judicial Disciplinary Enforcement", American Bar Association, 13 August 2018, para. 63, available at: https://www.americanbar.org/, accessed: 26.09.22.

[26] "Case of Vereinigung Demokratischer Soldaten Osterreichs & Gubi v. Austria", European Court of Human Rights, 19 December 1994, available at: https://jurinfo.jep.gov.co/, accessed: 26.09.22.

[27] "Further Support for the Execution by Ukraine of Judgments in respect of Article 6 of the European Convention on Human Rights", Council of Europe, August 2020, available at: https://rm.coe.int, accessed: 26.09.22.

[28] "On Amendments (of December 2021) to the Organic Law on Common Courts", Venice Commission, Art. 37.

[29] Ibid.

There does not appear to be a consensus among legal scholars regarding whether (and under what conditions) judges may be transferred to other courts without their consent. For instance, the International Commission of Jurists asserts that the transfer of a judge without consent is a legitimate form of disciplinary sanction, provided that the duration of the assignment is limited by statute.[30] Others, however, including the EU's Court of Justice, have argued that transfers without the consent of a judge are likely to undermine judicial independence and should be avoided at all costs, particularly when such a transfer constitutes a demotion for a given judge.[31]

Most European countries that are seen as strong proponents of the rule of law, prohibit the transfer of judges without their consent outright, or otherwise restrict transfers based upon defined factors (i.e., geography, status, expertise).[32] In France, Germany, and Poland, judges cannot be transferred to a new court without their consent, though in France they can be demoted to a prior posting as the result of disciplinary sanction.[33] Similarly in Sweden, permanent judges can only be transferred against their will if it is necessary due to a reorganization of the court, if their responsibilities remain generally comparable, and if their transfer is approved by the National Disciplinary Offence Board.[34] Lithuania is one of the only European countries that allows the consent-less transfer of a judge to a lower court as a form of judicial punishment, but such a transfer requires presidential approval.[35] It is therefore clear that the HCoJ's newfound power to transfer Georgian judges without their consent and without regard for their status, location, or credentials breaks significantly from European judicial norms and international best practices.

To conclude, it may be the case that the transfer of judges to different courts is sometimes necessary. Alas, this does not in any way, allow for use of the procedure for disciplinary purposes. The transfer of judges, as a means mea-

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[30] "International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors", International Commission of Jurists, 2007, para. 3.4, available at: https://www.refworld.org, accessed: 26.09.22.

[31] "Press Release No. 173/21", Court of Justice of the European Union, 6 October 2021, available at: https://curia.europa.eu/, accessed: 26.09.22.

[32] "June 2014: Some Procedural Aspects of Transferring Judges", USAID FAIR Judiciary Program.

[33] Nais et al., "A Comparative Analysis of Disciplinary Systems for European Judges and Prosecutors", EJTN, 2012, available at: https://www.ejtn.eu/, accessed: 26.09.22.

[34] "June 2014: Some Procedural Aspects of Transferring Judges", USAID FAIR Judiciary Program.

[35] "Lithuania: Questionnaire of the Special Rapporteur on the Independence of Judges and Lawyers", UN OHCHR, available at: https://www.ohchr.org, accessed: 26.09.22.

sure for disciplinary action, is not present in Georgian law. As per the analysis provided, there exists precedent of using the above-mentioned actions for punishment of Judges, but the informal imposition of such measures is a blatant violation of Judicial principles and negatively impacts the independence of judges.[36]

Vague New Grounds for Disciplinary Misconduct

As per the 2021 changes to the Organic Law on Common Courts, a new ground for disciplinary penal measures was added in the form of a restriction on expression by judges of political opinion.[37] This would, as per the changes, go against the Judicial principle of political neutrality. It is rather interesting what necessitated the changes when judges were already required to conform to the general principle of judicial neutrality and there exists a legal basis with which risks of political affiliation are insured against: membership of judges in political organizations, engaging in political affairs, supporting in any public form, candidatures in elections or expression of political opinions were all, already, prohibited.[38] It is highly likely that these changes to the law were directed against particular judges, whom have expressed differing opinions.[39]

In general, there is a broad consensus among legal scholars that in democratic societies judges remain citizens who are entitled to freedoms of expression, belief, and association.[40] That said, most scholars and legal systems alike recognize that judges should be expected to exercise their individual rights in a way that does not negatively impact the court or the independence of the judiciary.[41]

To this end, most legal codes of judicial conduct in countries that are widely viewed as strong proponents of the rule of law tend to guarantee judges'

[36] "High Council of Justice Monitoring Report №2", Georgian Young Lawyer's Association Official Website, 2014, available at: https://gyla.ge/, accessed: 06.12.2022.
[37] "The Coalition responds to the ad hoc hearing of the amendments to the Organic Law on Common Courts", Coalition for an independent and Transparent Judiciary – official website, 28 December 2021, available at: http://coalition.ge/, accessed: 26.09.22.
[38] Georgian Organic Law "On Common Courts", Art. 75^1 (8) (b. e).
[39] Ibid.
[40] "Basic Principles on the Independence of the Judiciary", UN OHCHR, 06 September 1985, para. 8, available at: https://www.ohchr.org, accessed: 26.09.22.
[41] "The Public Opinion of Judges: Between Freedom of Expression and the Judicial Duty of Independence", Konrad Adenauer Stiftung, 28 September 2021, available: https://www.kas.de/en/, accessed: 26.09.22.

individual rights, while leaving open the possibility of misconduct proceedings in the event of extreme, obvious, and public breaches of appropriate conduct.[42] As in the ECHR ruling previously mentioned, internationally respected legal systems do not generally codify detailed descriptions of all potential forms of misconduct into law; instead, effective legal systems develop "consistent and restrictive" norms for appropriate behavior for judges by gradually setting precedent through prior misconduct proceedings and rulings.[43] In practice, the ECHR and comparable judicial authorities only consider judges' public expressions to rise to the level of formal misconduct if they violate criminal codes (i.e., prohibited hate speech) or if they are made on behalf of an explicitly political organization or a candidate for public office.[44]

Volkov v Ukraine

To better assess the extent to which the 2021 Amendments' inclusion of vague, new grounds for judicial misconduct proceedings adheres to international law and European norms, it is worthwhile to consider the ECHR's 2013 ruling in the case of Oleksandr Volkov v. Ukraine.[45]

Mr. Volkov was elected to the Supreme Court of Ukraine in 2003, but was dismissed from his post in 2010 via a vote in the Ukrainian Parliament following allegations about an undefined "breach of oath" he had committed.[46] The ECHR ruled in favor of Mr. Volkov in the case, finding that his dismissal had violated Articles 6 and 8 of the of the European Convention on Human Rights.[47] The ECHR's ruling largely depended upon their conclusion that there was lack of "guidelines or practice establishing a consistent and restrictive interpretation of the notion of 'breach of oath'" at the time of Mr. Volkov's

[42] "Opinion No. 3", Consultative Council of European Judges, 19 November 2002, paras. 27 – 34, available at: https://rm.coe.int, accessed: 26.09.22.

[43] "Case of Vereinigung Demokratischer Soldaten Osterreichs & Gubi v. Austria", European Court of Human Rights; Copple, Robert, "From the Cloister to the Street: Judicial Ethics and Public Expression", Denver Law Review, January 1988, available at: https://digitalcommons.du.edu, accessed: 26.09.22.

[44] "Report on the Freedom of Expression of Judges", Venice Commission, 23 June 2015, available at: https://www.venice.coe.int, accessed: 26.09.22; Canon 5, "Code of Conduct for United States Judges", U.S. Courts, 12 March 2019 available at,: https://www.uscourts.gov, accessed: 26.09.22.

[45] "Case of Oleksandr Volkov v. Ukraine", European Court of Human Rights, 9 January 2013, available at: https://hudoc.echr.coe.int, accessed: 26.09.22.

[46] "Volkov v. Ukraine", European Human Rights Advocacy Centre, 2 February 2018, available at: https://ehrac.org.uk, accessed: 26.09.22.

[47] "Case of Oleksandr Volkov v. Ukraine", European Court of Human Rights, paragraph 208.

dismissal.[48] Moreover, while general language was preferrable in order for the norm to deal with the issue comprehensively, it was necessary to consider other factors and regulations and determine the adequacy of the legal protection against arbitrariness, while applying the said norm.[49] The Court ruled that there was the lack of "appropriate legal safeguards [which] resulted in the relevant provisions of domestic law being unforeseeable as to their effects" .[50] As a result, almost any behavior could have been interpreted "as a sufficient factual basis for a disciplinary charge of 'breach of oath'", suggesting that Mr. Volkov could not reasonably have been expected to avoid such a breach when going about his professional duties.[51] Also, domestic law did not put in place safeguards for a proportional application of the norm.[52]

The ECHR's ruling in the Volkov v. Ukraine case has important implications for interpreting the 2021 Amendments' adherence to international law and judicial best practices *vis-à-vis* its restriction of judges' public expression. The lack of a "consistent and restricted" interpretation of the "principle of neutrality" in the Organic Law on Common Courts – or elsewhere in Georgian law – suggests that it is a limitless, catch-all phrase that baselessly impedes Georgian judges' constitutionally protected right to expression.[53]

CONCLUSION

Various Georgian CSOs and international observers have expressed deep-seated concerns about further degradation of judicial independence in Georgia following the expedited adoption of the 2021 Amendments to the Georgian Organic Law on Common Courts.[54] Contextualizing the legislation within the recent history of anti-democratic measures in Georgia, many have argued that the amendments serve to punish truly independent judges while further consolidating the power of the judiciary into the hands of a small, influential group of judges.[55]

[48] Ibid., para. 180.
[49] Ibid., para. 178.
[50] Ibid., paras. 180, 182, 185.
[51] Ibid., para. 185.
[52] Ibid., para. 182.
[53] Constitution of Georgia, Article 17.1, available at: https://matsne.gov.ge/en/document/view/30346?publication=36.
[54] "The Coalition Responds to the ad hoc Hearing of the Amendments to the Organic Law on Common Courts", Coalition for an Independent and Transparent Judiciary, 28 December 2021, available at: http://coalition.ge/, accessed: 26.09.22; On Amendments (of December 2021) to the Organic Law on Common Courts, Venice Commission.
[55] "The Appeal to the President to Veto the Amendment", Transparency International Georgia.

This analysis has likewise critically considered the 2021 Amendments, both in terms of their expedited adoption and the specific changes they make to judicial misconduct proceedings in Georgia, both formally and functionally. However, rather than contextualizing the amendments to Georgia's unique socio-political conditions, this paper has sought to determine whether the amendments are in line with international best practice and international law related to judicial misconduct grounds, punishments, and proceedings.

This report has shown that the 2021 amendments conflict significantly with international standards for the maintenance of an independent judiciary. In terms of process, the amendments break with internationally accepted best practice because their adoption was baselessly rushed and lacked meaningful public involvement and consultation. In aggregate, the amendments collectively are out of step with judicial best practice because they award further control over judicial operations and misconduct proceedings to the HCoJ, a de facto judge-only entity that lacks accountability, oversight, and transparency. The very act of adding greater detail to the State's judicial misconduct codes is in and of itself discouraged in judicial best practice guidelines.

At a more granular level, many of the individual amendments also break with internationally accepted judicial standards. For instance, the legislation empowers the HCoJ to transfer a judge to any court in the country without their consent for up to four years, regardless of their current position, location, or area of expertise. While not technically listed as a form of punishment in the revised Organic Law, consent-less transfers have been regularly used in practice as an informal sanction to punish independent judges.[56] It is reasonable to expect consent-less transfers to likewise be employed as an unofficial form of punishment in Georgia, as well. Such a context-free transfer of a judge to any other court without their consent is vehemently discouraged in the theoretical literature and appears to not exist as a punishment in practice (to this degree, at least) in any other European country. Similarly, the newly introduced restriction on Georgian judges' freedom of expression is also out of line with internationally accepted judicial standards, which tend to err on the side of protecting judges' individual rights, except for in extreme and obvious cases (i.e., prohibiting judges from running for public office or endorsing a specific candidate). Prohibiting any public expression from judges that violates the undefined "principle of neutrality" likewise appears to violate European law and judicial norms, as evident in the ECHR rulings.

[56] "The Rule of Law Checklist, 2016" Venice Commission, paragraph 80.

The present analysis has revealed significant points of departure between the revised Georgian Organic Law on Common Courts and internationally recognized judicial best practice. The 2021 amendments are therefore not merely concerning due to their position within a larger context of democratic backsliding in the country, but are objectively concerning and anti-democratic, as they are written due to their misalignment with international standards. Attempts to revise the Organic Law on Common Courts, to bring the text (back) into line with international judicial norms would be commendable, assuming these attempts involve robust engagement with the public and all members of parliament. Such a process of revision with regard to the Organic Law on Common Courts should be considered as a pre-requisite to fulfilling the EU Commission's candidacy status condition concerning judicial reform.