

**NEW TEXTS**

Yulia Khalikova

**Constitutional Review and Dissenting Opinions in Nondemocracies: An Empirical Analysis of the Russian Constitutional Court, 1998–2018**

**KHALIKOVA, Yulia**—PhD student, Bremen International Graduate School of Social Sciences, University of Bremen and Jacobs University Bremen. Address: Mary-Somerville Str., 9, 28359, Bremen, Germany.

**Email:** [ykhalikova@bigsss-bremen.de](mailto:ykhalikova@bigsss-bremen.de)

Whereas constitutional courts are associated with democracy and the rule of law, today, they these courts exist in nondemocracies, where they face direct threats to their existence or backlash from domestic actors. For a court to survive, it has to constantly strike a balance between performing the functions imposed by the ruler and trying not to lose its legitimacy. What is the role of constitutional courts in nondemocracies? When do they rule against the government, and when do they side with it? To what extent can regional governments, citizens, or political activists succeed in challenging the state? Given the higher risks judges in nondemocracies face, when do they author dissenting opinions? To answer these questions, I use a novel dataset on all final judgments issued by the Russian Constitutional Court (RCC) between 1998 and 2018 (N = 502). Using a regression analysis, I show how the outcomes of cases depend on who petitions the court and about what. First, the results show that the political regime and institutional settings matter—applications about the government’s structure have the lowest probabilities of being nullified but have higher probabilities of carrying a dissenting opinion. Additionally, judges dissent more when cases are brought by high-level political actors, such as the president, federal parliament, and government. Second, social rights are an area of consensus among judges—the court is more likely to strike down laws that violate social rights, including social welfare and cases on antidiscrimination, and judges are less likely to dissent in such cases. When higher courts in nondemocracies exist—and as long as they benefit the ruler or ruling party—they tend to (1) avoid confrontation with the ruler and (2) shift their focus toward “safer” areas, which, in the Russian case, became advancing and protecting social rights.

**Keywords:** judicial politics; constitutional courts; authoritarian regimes; Russia; quantitative methods; dissenting opinions.

**Introduction**

Compared with the other branches of government, the judiciary operates in a slightly different paradigm because of it lacking the mechanisms for enforcing its judgments, yet it still must be concerned about their implementation because it directly influences their legitimacy among the general population [Kelemen 2001: 623]. To overcome this problem, the judiciary constantly must rely on other branches of the government for the implementation of their judgments [Epstein, Knight 1998; Alter 2011; Staton, Moore 2011; Hafner-Burton 2013: 112] and invest in an increasing level of monitoring the functions of their bodies.

For higher and, more specifically, constitutional courts (CCs), this problem is intensified given their role vis-a-vis lower courts and a need to ensure that the latter follow the guidelines outlined in their judgments [Hume 2006; Lupu, Voeten 2012]. Additionally, higher courts can make a difference in the political arena—for instance, after WWII, domestic higher courts were the ones that pushed for further promotion of democratic values in Europe instead of sustaining the existing system [Stone Sweet 2000], and several decades later, they played a vital role in significantly advancing lesbian, gay, bisexual, and transgender (LGBT) rights [Gallo, Winkler 2017].

In the 1990s, many states of the former Soviet Union adopted constitutions, joined international organizations, and established CCs, signaling the commitment of new leaders toward democratization and the rule of law. However, since then, many of these countries have moved toward less democratic regimes and reformed independent courts, oftentimes undermining their independence.

Russia provides one of the most striking examples of these developments. Some changes only connected to the judiciary include the amendment of the constitution to extend the terms of the president and the state duma, the dissolution of the Higher Arbitrazh Court, and giving the Russian Constitutional Court (RCC) powers to decide whether the country will or will not enforce judgments issued by the European Court of Human Rights, undermining the principle of the supremacy of international law.

This phenomenon is not restricted to the post-Soviet region—today, there is backlash against international courts [Madsen, Cebulak, Wiebusch 2018], where national states question the legitimacy and supremacy of international law. In the domestic arena, there has been a backsliding of judicial reforms that is undermining the rule of law and judicial independence, including in two countries of the EU—Poland and Hungary, where the rulers have resorted to court-packing and changes of tenure for judges [Morijn, Grabowska-Moroz 2019; Szabo 2019].

The current paper focuses on the role of CCs in nondemocracies. Whereas such courts are associated with democracy and the rule of law, what is their function in nondemocratic regimes? Until recently, judicial politics have been mostly focused on studying higher courts in the US [Pritchett 1948; Danelski 1986; Epstein, Knight 1998]. These studies examine how the content of law, individual preferences of judges, and larger socio-political context affect judicial behavior. These three factors are the basis of the major theories developed to study the US Supreme Court—looking at the legal, attitudinal, and strategic models of judicial behavior [Herron, Randazzo 2003]—which later have been transferred to study courts outside of the US. Slowly, the empirical focus of judicial politics has expanded to nondemocratic countries in other parts of the world—be it Latin America [Helmke 2002; Helmke, Rios-Figueroa 2011; Hilbink 2012], Egypt [Moustafa 2009], or Asia [Ginsburg 2012].

Although these studies provide excellent insights into how courts in nondemocracies operate, they still represent a very specific context relevant only for countries or regions that suffered through revolutions, coups, or military intervention. Thus, we still do not know enough about courts in nondemocratic but peaceful and more stable regimes. What happens to CCs that function under regimes that gradually move toward authoritarianism? More importantly, do such courts and individual judges start to behave differently, and if so, can we track such changes?

One important feature that many CCs enjoy is the possibility for their judges to issue separate dissenting opinions when disagreeing with the majority decision. Cases that have dissenting opinions point to a possible conflict within the bench and the importance of legal issues under consideration because the judges are unable to convince each other of a unified interpretation on the debated legal issue [Pritchett 1948]. In nondemocratic regimes, dissenting opinions can signal to even stronger conflicts within the court or a strategic behavior of specific judges to signal their views on specific issues for external audiences. However, less is known about dissenting opinions in countries with authoritarian regimes, where, in addition to the usual costs of

authoring such an opinion, such as time and intellectual resources, judges also put their reputation and possible tenure on the line.

Thus, I am interested in how CCs exercise constitutional reviews in nondemocracies, where judicial independence and the rule of law are constantly undermined by the ruler. Under which circumstances do such CCs rule against the government? To what extent can regional governments, ordinary citizens, or political activists succeed in challenging the state? Additionally, given the higher risks of issuing dissenting opinions, when, and in which cases, will a judge author a dissenting opinion?

To answer these questions, I build on the existing models of judicial behavior and expand them to study one of such court, the RCC. Using a novel self-collected dataset on all final judgments (*postanovlenie*) issued by the RCC between 1998 and 2018 (N = 502), the current paper shows which factors influence (1) the decision making of the RCC and (2) the presence of dissenting opinions.

The RCC is a good case to test these assumptions empirically for several reasons. First, it provides an example of a CC existing in a nondemocratic political regime over a long period. During this time, the RCC has undergone many changes, ranging from temporary dissolution in 1993, changes in tenure, court-packing, and moving from Moscow to Saint Petersburg to expanding its review powers, including the possibility to decide on the supremacy of international law [Brownlee 2007; Trochev 2008; Thorson 2012; Grigoriev 2017]. Second, the RCC follows many European CCs in its institutional design, operating based on the constitution, which resembles the European Charter of Human Rights. Third, judgments issued by the RCC and dissenting opinions authored by judges are publicly accessible online, which has allowed me to construct a database of all judgments and dissents issued from 1998 to 2018.

The current paper contributes to the growing field of comparative judicial politics. Focusing on Russia, it shows how CCs outside of the US and Western Europe function over a long period. It also expands on previous studies of the RCC [Thorson 2012; Trochev 2008] that have focused on the time period until the end of the 2000s. Today, other CCs, especially in Eastern Europe, are undergoing reforms undermining judicial independence, similar to the ones that the RCC has faced, albeit at a much faster pace. In such circumstances, it is necessary to analyze how CCs function in countries that are no longer democratic and whether their functions change over time.

## **State-of-the-Art**

### *Courts in Nondemocratic Regimes*

Previous research has mostly focused on the role of parliaments in nondemocratic settings, asking whether they act merely as “rubber stamp” bodies for legislation proposed by the autocrat or not. Similarly, when it comes to courts, the ruler needs a parliament to be able to fight opponents, but this can also lead to constraining the ruler’s decision making when not all laws are passed, so the ruler has an incentive to maintain a parliament, albeit with limited power [Wilson, Woldense 2019]. Despite common assumptions that parliaments in such regimes function at the discretion of the ruler and, hence, would always back up the government and act as “rubber stamps” for legislation that is favorable to the given political regime, this is not always the case. Based on an analysis of parliaments in ten nondemocracies, Allmark [2012] finds that parliaments can indeed act in the opposite manner—be it to serve citizens, strengthen opposition groups and, ultimately, weaken the regime. Noble [2018: 27] analyzes clashes within the parliament when adopting new bills and concludes that such clashes occur as a result of the intraexecutive policy-making process that was unresolved during the prelegislative stage.

Whether these findings can be transferred to the judiciary in nondemocracies is another question. Unlike legislatures, CCs are often created during transition processes as new institutions and continue to function even when these regimes fail to democratize. Nevertheless, Ríos-Figueroa and Aguilar [2018] write that, just like other institutions in nondemocracies, be it parties, legislatures, or elections, courts can have the same function—mainly in exercising power-sharing functions between the rulers and their coalition and functions of control between the rulers and the masses. Moreover, there is evidence that strong CCs can develop even under authoritarian regimes, ultimately promoting democratization by slowly but gradually building support for the rule of law [Chandler 2014: 745].

Apart from the problem of noncompliance that courts worldwide face, courts in nondemocracies face additional problems. The rulers establish and maintain independent courts, especially at a higher level, as long as these courts provide important benefits to them and do not intervene too much with public policies [Trochev 2008]. These benefits can include legitimizing the political regime, sidelining political opponents, and improving foreign trade and investments [Trochev 2008; Moustafa 2009]. At the same time, such courts are useful only when they enjoy at least some levels of public support because otherwise, their existence is useless to the ruler.

Another important function of courts in nondemocratic political regimes is to provide insurance for the ruling elite in case of a possible loss of power [Moustafa, Ginsburg 2008]. Additionally, having an even partially independent judiciary decreases the levels of possible violence. First, autocrats use courts to sideline political opponents coming from inside of the ruling elite compared with extra-judicial violence used to punish political opposition [Shen-Bayh 2018]. Second, these courts decrease the likelihood of civil war [Sievert 2018] by providing an arena to solve intraelite conflicts [Ríos-Figueroa, Aguilar 2018].

Hence, rulers sustain at least a partially independent judiciary to (1) outsource to them specific functions; (2) receive insurance against a possible loss of power; and (3) decrease the levels of possible violence. However, at the same time, the existence of such courts paradoxically opens up new opportunities to challenge the state [Moustafa 2009]. Contrary to the assumption that higher courts would act as “rubber stamps” for the rulers, such courts overturn preferred policies of the regime, especially at the end of the regime, before electoral loss of the ruling party, or before coups against them [Helmke 2002]; in addition, these courts can advance individual rights when organized civil society groups mobilize the courts for specific issues [Ginsburg 2012].

### *Dissenting Opinions*

A large part of the literature is focused on the party affiliations of judges, explaining dissenting opinions via political preferences and partisan positions among justices—for the US [Epstein, Landes, Posner 2011], but also for the CCs in Europe, for instance, Spain [Garoupa, Gomez-Pomar, Grembi 2011] and Portugal [Amaral-Garcia, Garoupa, Veronica 2009]. In studies of the German Constitutional Court, Sternberg, Shikano, and Sieberer [2016] identify policy preferences for each judge based on the data on party manifestos to assign points to each of the judges according to the party they were nominated by. However, these metrics also transform quite badly into the Russian context, because neither partisan division is connected to political preferences nor political parties are involved in judicial appointments.

The existence of dissenting or separate opinions is necessary for the functioning of a democratic society, where not only are courts independent and the rule of law is promoted, but also where minorities can express their views on any issue, even when the majority of justices have different opinions [Hicks 2002]. However, unanimous judgments provide a stronger background for lower courts to follow the judgments and represent the court as a unified front on a specific issue [Burns 2010].

From the perspective of a judge, authoring a dissenting opinion requires investing additional resources in terms of time, intellectual resources, and workload. For tenured judges, this can create a situation of “dissent

aversion” [Posner 2008: 31–34], which makes judges refrain from offering dissenting opinions even when disagreeing with the majority [Epstein, Landes, Posner 2011]. Additionally, issuing a dissenting opinion requires a judge to be willing to voice his or her disagreement with the majority of the bench and (at least) to try to persuade his or her colleagues.

When it comes to CCs in nondemocracies, assuming that in many cases such courts exist as long as they are tolerated by an autocrat, issuing a dissenting opinion entails higher risks for an authoring judge. If higher courts indeed act as “rubber stamps” for the rulers, then why do judges author dissenting opinions by not only investing their time and efforts, but also by putting their reputation and tenure, at risk? Some judges can use this as an opportunity to signal their additional commitment to the regime by strategically dissenting in specific cases, depending on their career or policy goals. Judges at the RCC enjoy tenure<sup>1</sup> and do not change careers at this point. Hence, another more plausible explanation is that some judges author dissenting opinions to show their disagreement with the majority opinion, and authoring dissents for them is a matter of principle and freeing their conscience. In that sense, some judges take pride in their dissenting opinions. For instance, Justice Kononov, who writes dissenting opinions more frequently than other judges (22 dissents for 98 hearings), issued a book containing all of his dissenting opinions [Kononov 2017].

## Empirical Case: the Russian Constitutional Court

### *Political Regime*

For the past twenty years, the political regime Russia has been characterized in three ways. First and foremost, there is a consensus that Russia belongs to competitive authoritarian regimes with the existence of formal democratic institutions that are considered the primary means of gaining power; yet in this system, the competition for power is unfair [Levitsky, Way 2010: 5]. Second, researchers note the importance of informal institutions, organizations, and rules in domestic settings, such as legislative norms, clientelism, or patrimonialism, that influence political processes [Helmke, Levitsky 2004]. In the case of Russia, such informality ranges from informal exchanges in the Russian economy [Clarke 1995; Ledeneva 1998], reliance on personal networks among elites in the late USSR [Easter 2000], to institutions in general [Borocz 2000] and courts and law enforcement in particular [Hendley 2007; 2015].

Finally, Sakwa [2010; 2011] develops a concept of the duality of the state in Russia, where two governance regimes—constitutional and administrative—coexist in one paradigm. Such duality exists in all institutions, but when applied to the judiciary, it produces a legal system performing well for routine cases but not for high-stakes or politically sensitive ones [Frye 2017: 102]. However, such dualism between mundane and political cases is not unique and has existed long before—both in different periods of Russia in the early twentieth century [Burbank 2004] and much later in the 1940–1960s under the rules of Stalin [Sharlet 1977] or Khrushchev [Feifer 1964; Gorlizki 1997], not to mention outside of it, for instance, in China [Peerenboom 2002].

Referring to Holmes [2003], it may be possible that the rulers themselves favor such legal dualism because it achieves two important functions of courts in nondemocracies—selectively intervening with the judiciary either to reward loyalty or punish the disloyalty of other actors while also providing general citizens with a feeling that their rights will be protected. An analysis of survey responses of both ordinary Russians and legal experts confirms this assumption—people believe that there are some cases that are decided according to the “telephone law” (i. e., directives from the above, but these cases do not constitute the majority) [Ledeneva 2008; Hendley 2009; 2015]. Similar views exist among businesspeople, who perceive Arbitrazh courts as better functioning compared with the ones of general jurisdiction that handle criminal cases and mundane

<sup>1</sup> As a rule, they are appointed for life, until the retirement age of 70 years, except the Chief Justice, who can stay in the court even after reaching this age.

business cases to be solved according to the rule of law compared with politically salient cases involving political or economic elites [Frye 2017].

## The Russian Constitutional Court: Context

The RCC was established in 1991 as a high court exercising constitutional control by hearing cases on the alleged contradiction of legal acts to the Constitution of Russia. Since 1991, it has undergone numerous changes. These include changes of tenure and age requirements for judges, their appointment procedures, the move of the court from Moscow to Saint Petersburg, its temporary suspension in 1993, and a more recent judgment on the possibility of not enforcing judgments issued by international courts issued in 2015 [Trochev 2008; Grigoriev 2017: 19].

Today, the RCC is said to operate under what Trochev and Solomon [2018] call an authoritarian constitutionalism, where there are still some debates within the court and where the main division goes between politically salient and mundane cases. Even in today's context, high-profile political cases in Russia constitute less than one percent of all cases [Paneyakh, Rosenberg 2018: 221], but most of the image of the judiciary is affected by such high-profile cases, while the rest of the caseload is simply ignored. Thus, in cases where political pressure is less evident, the courts are guided by the rule of law, and judges resolve cases according to the law and without interference if the case does not involve the interests of the political or economic elites [Hendley 2007].

Brown and Waller [2016] show that CCs can indeed become critical actors and act boldly during periods of constitutional uncertainty and rupture. Applying this to the Russian context, this was the case for the first "wave" of the RCC (1991–1992), which was created with broad judicial review powers, operated in times of great divide between the legislature and the executive, and was headed by Valery Zorkin, who, at that time, had strong political views and saw the RCC as an activist court [Brown, Waller 2016: 825; Trochev 2008]. However, the RCC's activist position failed when some regions of the federation refused to comply with its judgments, and the federal center suspended the court because of its interventions into politics [Brown, Waller 2016: 825]. When the RCC was reinstated in 1995, even though most judges on the bench remained the same, the court's collective behavior changed.

Compared with ordinary courts, the RCC indeed considers much more politically salient cases, but even despite this, it does not always act as a court backing up the government. Of course, there are examples when the RCC has shown deference toward the executive, especially on politically salient issues, for instance, backing up the use of military force in Chechnya in the 1990s or supporting the abolition of regional elections in 2004. However, there are also cases when the RCC went against the interests of the government [Paneyakh, Rosenberg 2018: 234]. Two recent examples include the ruling on the unconstitutionality of both federal and regional laws outlining additional requirements for state compensation of housing for victims of the Stalin mass repressions and the unconstitutionality of legislation banning individuals to register religious organizations on their property<sup>2</sup>. For more politically salient issues, however, it ruled according to the governmental wills, thereby approving the merge of the Supreme Court and the Higher Arbitrazh Court, the right of the president to appoint ten percent of the Russian Parliament's upper chamber for life, the annexation of Crimea, and the laws requiring non-governmental organizations (NGOs) that receive foreign funding to register as "foreign agents" or declaring LGBT issues as antiminor propaganda [Paneyakh, Rosenberg 2018: 236].

## Hypotheses: What Influences Outcomes of Cases?

The current paper focuses on how CCs function in nondemocratic political regimes. Narrowing it down, I aim to explain what influences the outcomes of cases heard at the RCC and dissenting opinions authored by judges

<sup>2</sup> Meduza (2019). Available at: <https://meduza.io/en/news/2019/12/10/russian-constitutional-court-affirms-that-children-of-soviet-repression-victims-have-the-right-to-receive-housing-in-their-parents-cities> (accessed 13 May 2020).

but only for two broad categories. In that sense, I am interested in only whether *who* goes to the court and *with what matter* and whether these patterns are changing over time.

My main assumption is that the RCC's decision-making patterns are changing over time, being influenced both by within-court reforms and changes in the Russian political regime. As presidential power increases, courts are less likely to exercise their judicial authority [Herron, Randazzo 2003]. Russia is a country with strong presidential power, which has increased over the past couple of decades by granting additional power to the presidency via laws, decrees, and RCC rulings [Trochev 2008: 120; Burkhardt 2017]. Hereby, I largely assume that the decision-making patterns of the RCC have changed as presidential power has increased and the political regime has changed. The first hypothesis is as follows:

**Hypothesis 1 (H 1):** *As a political regime in the country becomes less democratic, a CC is less likely to strike down laws and legal acts as unconstitutional, and individual judges are less likely to author dissenting opinions.*

Looking at nondemocratic countries, one question arises: why do politicians in nondemocracies decide to invest in the independent judiciary, either by establishing new bodies with broad judicial review powers or joining the jurisdiction of international courts, here focusing on the development of the rule of law?

International relations scholars largely follow the socialization theory [Risse, Ropp, Sikkink 1999], which states that joining international prodemocratic institutions would provide socialization and outside legal support to implement liberal reforms. Another explanation is purely strategic—politicians create an independent judiciary with broad review powers out of fear of losing elections during democratic changes, mostly to protect themselves from the arbitrariness of future leaders [Magalhães 1999; Ginsburg 2002]. According to institutionalists, these courts are created out of the need to govern with the separation of powers and possibility to resolve disputes in a peaceful way [Trochev 2008]. However, even the most prodemocratically institutionally designed institutions are impacted by the political regime and are changed by the ruler to serve specific needs in a specific manner.

When it comes to the establishment of CCs, Trochev [2008: 6] explains that even authoritarian rulers “create and tolerate new CCs as long as the latter: (a) provide important benefits for the new rulers, and (b) do not interfere too much with public policies.” In general, courts in nondemocratic regimes are used to establish social control and sideline political opponents; strengthen compliance with the state's bureaucracy; improve trade and attract investors; and boost regime legitimacy [Moustafa 2014: 283].

For politicians in nondemocracies, there is an ongoing choice between improving the business climate and attracting investors, thus loosening the control over the judiciary, on the one hand, and a possibility to refer political cases to the courts to ensure sure they would decide in a needed manner, on the other hand. For the Russian case, the balance moves toward having an ability to refer to the courts whenever needed and rely on their loyalty [Paneyakh, Rosenberg 2018: 230].

However, the costs of such behavior can be too high for the court, which stops being independent to the extent that it is obvious for outsiders, as well as for the state, which cannot use the higher courts as a legitimizer of the regime anymore [Kelemen 2001]. Moreover, despite operating in a nondemocratic context, judges still cherish their reputation, at times even higher than their relations with the regime itself. For the Russian case, this is obvious in the 2014 Crimea ruling, where for the first time in 20 years, the RCC adopted a ruling in favor of the government without a preliminary report by a judge, because no judge wanted to take responsibility for that decision [Grigoriev 2018].

In most cases, higher courts in nondemocracies exist as long as they are beneficial for the ruler and do not intervene with public policies or controversial issues. However, even under these circumstances, some judges will be more inclined to voice their disagreement with the majority on the bench. Explaining why judges dissent is beyond the scope of the current paper, but one reason is that judges signal their disagreement with the decision to judge, other political actors, and the public. Such signaling could go either way—be it to show the government that this judge supports their policies, which becomes especially important when judges at higher courts do not hold tenured positions or to show the public that this judge disagrees with the majority and would vote to rule in favor of another party.

I assume that this variation between the outcomes of cases and dissenting opinions will be the most visible when focusing on a very specific subset of cases—those connected with the federal government. On the sample of post-Communist CCs, Herron and Randazzo [2003] show that the CC is less likely to declare a piece of legislation under consideration as unconstitutional if it was petitioned by the president. In the present paper, I unite the applications petitioned by the president and federal levels of the parliament and the executive branch to check if the court indeed rules more in favor of these categories.

Here, I expect that the RCC is more likely to rule in favor of the federal government when these actors petition the court or when a case touches upon governmental powers. Under the same circumstances, I assume that individual judges will be more inclined to issue dissenting opinions. Thus, the hypothesis goes as follows:

**Hypothesis 2 (H 2):** *CCs in nondemocracies are less likely to declare an act as unconstitutional if it is petitioned by federal levels of the government, but judges are more likely to issue dissenting opinions in such cases.*

One possible way out of this could be choosing a specific, nonpolitical focus for the court. In most cases, higher courts opt to focus on advancing social rights, which are relatively safe compared with political cases. Following the constitutional crisis in 1993, the RCC shifted its focus to the social rights area and started to consider more cases in this area. This has brought the court closer to citizens and increased its public support [Trochev 2008: 158], while also allowing it to rule more freely compared with other types of cases [Chandler 2014]. Thus, my first hypothesis is closely connected to what we already know about the RCC from other research—namely, that following the court's temporary suspension in the 1993, it is more focused on the social rights cases. Thus, I expect the following:

**Hypothesis 3 (H 3):** *The RCC is more likely to declare an act as unconstitutional if a case lies within the social rights protection area, and judges are less likely to dissent in such cases.*

Apart from satisfying individual claims, courts' rulings can also influence legal and policy change [Conant 2002], especially when individual applications are backed up by public interest groups or NGOs [Epp 1998]. Thus, various groups, such as civil society or minority actors, refer to the courts through repeat litigation and legal mobilization [Anagnostou 2010]. Moreover, NGOs have access to better resources in terms of time, finances, and expertise, which could influence the quality of their applications. Thereby, I expect the following:

**Hypothesis 4 (H 4):** *CCs are more likely to declare an act as unconstitutional if it is petitioned by civil society groups or NGOs.*

Following other studies on courts in nondemocracies, I expect two legal categories to influence the decision making of the RCC. First, the rulers want to attract foreign trade and investments in the country to finance state bureaucracy and public policies [Moustafa 2014]. To achieve this, many of the rulers establish independent courts or create special jurisdictions dealing exclusively with economic disputes. Second, the rulers use



courts to sideline their political opponents, both from inside and outside of the ruling elites [Rios-Figueroa, Aguilar 2018; Shen-Bayh 2018; Sievert 2018]. My last two hypotheses are as follows:

**Hypothesis 5 (H 5):** *CCs in nondemocracies are more likely to declare an act as unconstitutional if it is connected to business or commercial activities and/or petitioned by commercial companies.*

**Hypothesis 6 (H 6):** *CCs in nondemocracies are less likely to declare an act as unconstitutional if a case is about electoral disputes.*

## Data and Variables

The data consist of final judgments (*postanovlenie*) heard by the RCC from 1998 to 2018 (N = 502). The time frame is chosen to provide enough variation in years and number of cases decided by the court. For the period between 1992 and 1997, the RCC issued 86 judgments that are not in my sample.

Apart from final judgments, the RCC receives thousands of applications, which then are reduced to a few final judgments (*postanovlenie*); for my sample, this ranges from 9 to 47 judgments per year (or a yearly average of 24). Applications (*obrashenie*) are all types of petitions submitted to the RCC in a given year, which, in most cases, are declined by the secretariat of the court. The rest are given to judges who determine whether the application would result in a final judgment, or in orders dismissing (*opredelenie*), where judges do not decide on the constitutionality of the law but still can issue their interpretation of it (see [Dzmitryieva 2017] for more details).

Keeping in mind time constraints to analyze all applications (N = 319,218) or just orders to dismiss (N = 31,720), I focus only on final judgments (N = 502) because these are the cases where the RCC rules on the constitutionality of legal acts directly and provides the legal grounds for its decision. Table 1 provides an overview of final judgments from 1998 to 2018, including information on the distributions of cases found unconstitutional and cases with dissenting opinions.

Table 1

**Final Judgments of the Russian Constitutional Court, 1998–2018 (N and %), N = 502**

Year	Final Judgments	Cases Found Unconstitutional		Cases with Dissent opinions	
		N	%	N	%
1998	28	23	82.14	11	39.29
1999	19	13	68.42	4	21.05
2000	15	14	93.33	5	33.33
2001	17	11	64.71	6	35.29
2002	17	13	76.47	5	29.41
2003	20	7	35	4	20
2004	19	8	42.11	7	36.84
2005	14	8	57.14	7	50
2006	10	3	30	3	30
2007	14	9	64.29	5	35.71
2008	11	8	72.73	1	9.09
2009	20	12	60	2	10
2010	22	8	36.36	5	22.73
2011	30	17	56.67	9	30
2012	34	18	52.94	10	29.41

Table 1.

Year	Final Judgments	Cases Found Unconstitutional		Cases with Dissent opinions	
		N	%	N	%
2013	30	25	83.33	9	30
2014	33	20	60.61	3	9.09
2015	34	19	55.88	7	20.59
2016	28	19	67.86	6	21.43
2017	40	15	37.5	5	12.5
2018	47	20	42.55	4	8.51
<b>Total:</b>	502	290	—	118	—
<b>Year average:</b>	23.9	13.81	59.05	5.61	25.44

These data have been drawn from the RCC's website<sup>3</sup> using web-scraping, resulting in a database containing two columns—a unique number for each case and a full text of each judgment. Federal legislation specifies which information should be contained in final judgments<sup>4</sup>. Final judgments should include information on case number, date of a hearings, names of judges hearing the case, information on applicants, rephrasing of an issue by consideration and legal grounds, legal reasoning, outcome of the case, and others. Following this structure, I employed automated text extraction methods to build my database, as well as manual review and coding. An overview of variables, their operationalization, and summary statistics are provided in Table 2.

For different models, I use three dependent variables, all of which are coded at the case level. First, the outcome is a binary variable measuring whether the court found a legal act under consideration as constitutional (0) or unconstitutional (1). Because each judgment can contain several legal provisions under consideration, the RCC decides on each of them separately. However, I consider a judgment to be found unconstitutional when the court declared even one part of a legal provision as unconstitutional. This is in line with other studies on the US Supreme Court and the German Constitutional Court that employ a similar strategy [Hönnige 2009; Sternberg 2017].

Two other dependent variables show the presence of a dissent opinion (*dissent: yes*) and *dissent rate*, which is calculated as a ratio of unique dissent opinions to the total number of judges who took part in the hearing (*judicial panel*), thus providing information on whether there was a publicly and officially voiced disagreement and how many judges disagreed.

Table 2

### Operationalization of Variables and Summary Statistics, N = 502

Variable	Operationalization	N	Mean	SD
<b>Dependent variables:</b>				
Outcome	0 — constitutional; 1 — unconstitutional	212 290	0.578	0.494
Dissent Opinion	Dummy for a presence of a dissent opinion	118	0.235	0.424
Dissent Rate	Ratio of a number of dissent opinions to a number of judges hearing a case (ranges from 0 to 0.375)		0.030	0.062
<b>Independent variables:</b>				
Time	1998–2008	184		
	2009–2013	136		
	2014–2018	182		

<sup>3</sup> Available at: ksrf.ru (accessed 13 May 2020).

<sup>4</sup> Federal Constitutional Law “On the Russian Constitutional Court”, 21.07.1994.

Table 2.

Variable	Operationalization	N	Mean	SD
<i>Type of applicant(s)</i>				
Citizens	Citizens, groups of citizens, and aliens	319	0.635	0.482
Federal	Federal legislative and executive bodies: State Duma, Federal Council, deputies of State Duma, Government of Russia, President, Ministry of Justice, Human Rights Ombudsman of Russia	49	0.098	0.297
Courts	All types of courts: Supreme Court of Russia, Supreme Arbitrazh Court of Russia, courts of general jurisdiction, justices of peace, military courts, courts on intellectual property, Arbitrazh courts	93	0.185	0.389
Regional	Regional legislative and executive bodies: regional parliaments, heads of regions, and executive branches of regional government	50	0.100	0.300
Companies	All types of commercial companies as specified in the Civil Code (incl. previous versions)	68	0.135	0.343
NGOs	Nongovernmental organizations	15	0.030	0.170
Political Parties	Political parties	5	0.010	0.099
<i>Legal categories</i>				
Elections	Legislation on elections and referendums	29	0.058	0.234
Civil Law	All matters related to civil law, incl. articles of Civil Code, Civil Procedural Code	48	0.096	0.294
Criminal Law	All matters related to criminal law, incl. articles of Criminal Code, Criminal Procedural Code, Criminal Enforcement Code	83	0.165	0.372
Social Welfare	Everything related to social welfare (pensions, social benefits to specific groups – military or law enforcement officers, civil servants, Chernobyl victims, veterans, housing benefits)	72	0.143	0.351
Military	Everything related to military officers	33	0.066	0.248
Property	Property rights	27	0.054	0.226
Economics	Everything related to business and commercial activities	24	0.048	0.214
Courts	Legal acts on courts, their functioning, status of judges, as well as rights to a free trial	33	0.066	0.248
Administrative Law	All matters related to administrative (public) offenses	33	0.066	0.248
Law Enforcement	Acts on law enforcement agencies (police, investigators, prosecution)	25	0.050	0.218
Government Structure	Disputes on jurisdiction between different branches or levels of the government	42	0.084	0.277
<b>Control variables:</b>				
Caseload	Ratio of all final judgments divided by the yearly average of all final judgments from 1998 to 2018, standardized (ranges from 0.442 to 2.078).	–	1.2335	0.447
# of petitioners	Number of petitioners in each case (ranges from 1 to 177)	–	3.308	9.578
Proportion of judges	Number of judges hearing each case to a total number of judges at the court (19) (ranges from 0.316 to 1)	–	0.721	0.232

To test my hypotheses, I employ a regression model with these variables and use a logistic regression for the binary dependent variables (*outcome* and *dissent: yes*) and ordinary least squares (OLS) regression for a continuous one (*dissent rate*). All models except the ones using dissenting rate as a dependent variable report log odds ratios.

Additionally, I control for the court's caseload in a given year, number of petitioners in each case, and a proportion of judges hearing each case, assuming that all of them could have an effect on the outcomes of cases

and dissenting opinions. The independent variables include: (1) time period; (2) type of applicant(s); and (3) category of a legal act under consideration.

All cases in my sample are divided into three larger groups based on the years they were heard: from 1998 to 2008, from 2009 to 2013, and from 2014 to 2018. I use these three large categories instead of analyzing the effects of each year because they allow me to have more cases in each of the groups and interpret them in connection with events occurring in different years. To check for robustness, I run models with year-fixed effects instead of separating the cases by the time period, and this provide similar results.

The first time period is from 1998 to 2008, with the end of Vladimir Putin's second presidential term and a move of the RCC from Moscow to Saint Petersburg. The second cut-off point is 2014, the year where the RCC upheld constitutionality the treaty on the admission of the Republic of Crimea to Russia. One year later, the RCC received powers to decide compliance with the judgments issued by the European Court of Human Rights. The third cut-off point is 2018, the last year for which I have available data.

To account for the types of applicants, I have created seven dummy variables for different types—citizens, federal or regional governmental bodies, courts, companies, NGOs, and political parties. For legal categories, I have constructed eleven dummy variables: elections, civil law, criminal law, social welfare, military, property, economics, courts, administrative law, law enforcement, and government structure. These categories are not mutually exclusive—hence, a case with both citizens and regional parliament as applicants is coded as “1” for both of them and “0” for the other five dummy variables. The same goes for legal categories, which I coded as detailed as possible, but also without assigning more than three categories to each case.

## Empirical Analysis

To begin with, I run models to test for the connections between my dependent variables (Table 3). In line with my hypothesis, over time, there are, first, fewer chances of an act to be declared as unconstitutional and, second, fewer chances of having a dissenting opinion. This result is not statistically significant for the first model that estimates the likelihood of declaring an act as unconstitutional but still has a negative sign. The results are statistically significant both for the presence of dissenting opinions and their quality for the periods between 2009 and 2013 and between 2014 and 2018 compared with the first period (1998–2008).

Additionally, the dissent rate decreases when the RCC finds a legal act in contradiction to the Constitution of Russia, which is quite straightforward to explain because dissenting opinions show a disagreement on a panel, which is more likely to occur when the rest of the panel decides in favor of the unconstitutionality of a legal act. Models testing the type of applicant and legal act also include the time period as one of independent variables, which show similar patterns. Thus, H 1 about variation in decision making over time can be accepted.

The presence of a dissenting opinion significantly lowers the probability of an act to be declared as unconstitutional (log odds—0.441\*), which might be explained by the fact that judges have higher incentives to author a dissenting opinion when they disagree with the decision reached by the whole judicial panel. When such a decision already declares legal acts as unconstitutional, an individual judge has fewer reasons to author an opinion—unless, of course, he or she disagrees with the unconstitutional outcome.

Over time, there are fewer dissenting opinions, and judges are more likely to side with the majority. However, changing the political regime might not be the main explaining factor here. In his analysis of dissenting opinions at the RCC, Vereschagin [2012] refers to four possible causes for this tendency: increased caseload; change in types of laws, which became less political with time; change in publication of dissenting opinions, which are published in only one journal; and no stable tradition.

Table 3

## Regression Results for Main Variables Used as the Dependent Variable

Independent Variables	Dependent Variable		
	Unconstitutional (1)	Dissent: Yes (2)	Dissent Rate (3)
Period: 2009–2013	– 0.171 (0.324)	– 1.099*** (0.415)	– 0.020** (0.009)
Period: 2014–2018	– 0.451 (0.418)	– 1.997*** (0.531)	– 0.032*** (0.011)
Dissent Opinion: Yes	– 0.465** (0.225)		
Unconstitutional		– 0.441* (0.226)	– 0.011** (0.005)
Controls	+	+	+
Constant	0.559 (0.378)	– 2.321*** (0.488)	0.031*** (0.010)
Observations	502	502	502
R2			0.058
Adjusted R2			0.047
Log Likelihood	– 336.419	– 248.257	
Akaike Inf. Crit.	686.837	510.513	
Residual Std. Error			0.053 (df = 495)
F Statistic			5.103*** (df = 6; 495)

Note: \*p < 0.1; \*\*p < 0.05; \*\*\*p < 0.01; standard errors in parentheses.

Next, I test for the influence of the type of petitioner (Table 4). When citizens and courts petition the RCC, the estimated amount by which the log odds of declaring an act as unconstitutional increase, and a similar effect is when the court is being petitioned by regional parliaments and government, as well as companies. Additionally, when courts petition the RCC, not only is the RCC more likely to declare an act as unconstitutional, but the dissenting rate is also significantly lower.

First, the RCC is known to deal with many individual applications submitted by citizens, many of which are about social rights. In line with H3, albeit not yet measured directly, we can confirm this trend—when citizens petition the RCC, they have higher chances of getting a judgment in their favor.

Second, a statistically significant effect for cases petitioned by companies goes in line with Hypothesis 5. Courts in nondemocracies are expected to show the existence of an independent judiciary, thus ensuring the protection of property rights and enforcement of contracts for possible foreign investors. For Russia, it is partially true—when companies or legal entities in general petition the court, the latter is more likely to strike down this piece of legislation.

Following this, cases made by the federal parliament or government increase the probability of issuing a dissenting opinion, as well as the number of dissenting opinions. Usually, cases submitted by the federal government are about a politically important issue that has larger implications for the public. In addition, keeping in mind functions of courts in nondemocracies, it is of no surprise that there are fewer chances of declaring an act as unconstitutional when it is submitted by federal bodies (log odds 0.204, which are not significant at any level), but the probabilities of issuing several dissenting opinions are significantly higher (H2). Issuing

dissenting opinions on cases brought by the federal government provides a way for judges to voice their disagreement, and it is the only category in this model with significant positive results, expect for when cases are submitted by courts of various levels.

The RCC is more likely to declare an act as unconstitutional if it is submitted by courts or judicial institutions. This could be explained by the following—either a judge at a district court was about to apply a legal act that she or he thinks contradicts the Constitution of Russia, or the law under consideration of the RCC is about the structure and functioning of the judiciary. In the former, that case would be similar to the one petitioned by citizens, and as such, the judges in most cases consider cases submitted by citizens, and in the latter case, this would entail high-level legal acts to be considered, usually intervening with judicial independence and functioning of courts. In this sense, it may be that judges on the RCC side more with their colleagues at other levels of the judiciary or that judges, being professional lawyers themselves, are able to draft better applications and convince the judges on the RCC.

Table 4

## Regression Results for Types of Applicants

Independent Variables	Dependent Variable		
	Unconstitutional (1)	Dissent: Yes (2)	Dissent Rate (3)
Period: 2009–2013	– 0.223 (0.344)	– 0.893** (0.427)	– 0.016* (0.008)
Period: 2014–2018	– 0.458 (0.441)	– 1.790*** (0.540)	– 0.027** (0.011)
Citizens	1.186*** (0.326)	– 0.231 (0.307)	– 0.006 (0.007)
Federal Parl & Govt	0.204 (0.407)	0.462 (0.386)	0.017* (0.009)
Courts	1.477*** (0.345)	– 0.417 (0.340)	– 0.014** (0.007)
Regional Parl & Govt	1.024** (0.414)	0.440 (0.382)	0.004 (0.009)
Companies	0.941** (0.372)	0.041 (0.376)	0.007 (0.008)
NGOs	1.512** (0.658)	0.062 (0.619)	0.004 (0.014)
Dissent: Yes	– 0.376 (0.236)		
Unconstitutional		– 0.354 (0.235)	0.008 (0.005)
Controls	+	+	+
Constant	– 0.138 (0.169)	– 2.141*** (0.571)	0.037*** (0.012)
Observations	502	502	502
R <sup>2</sup>			0.083
Adjusted R <sup>2</sup>			0.061
Log Likelihood	– 319.910	– 244.484	
Akaike Inf. Crit.	665.820	514.968	
Residual Std. Error			0.053 (df = 489)
F Statistic			3.710*** (df = 12; 489)

Note: \*p < 0.1; \*\*p < 0.05; \*\*\*p < 0.01; standard errors in parentheses.

However, one has to be extra cautious when interpreting these results and claiming that who petitions the court can accurately predict patterns of judicial behavior. To mitigate this uncertainty, I am testing whether the category of legal act under consideration influences the outcome of the case or the presence and rates of the dissenting opinions (Table 5).

Despite my data supporting Hypothesis 5 about petitions by companies, I do not find support for cases about business or economic activities when distinguishing between legal categories. Applications questioning legal acts about economics or business have higher chances of getting several dissenting opinions, which could point to a disagreement between judges. This effect's size is relatively small (0.024), albeit statistically significant at the five percent level.

When it comes to elections (H 6), the number of issued dissenting opinions is higher, but the estimated amount by which log odds of declaring an act as unconstitutional increases. This result contradicts my hypothesis (H 6), which states that the RCC will be less likely to strike down electoral laws because courts are needed by the ruler to punish or neutralize political opponents. Besides the RCC, there is the Supreme Court of Russia, which considers cases outside of constitutional review, including many electoral disputes, and I would argue that it is the Supreme Court that primarily deals with neutralizing political opposition, while the RCC hears cases submitted not only by the opposition, but also from other actors as well—thus, I need to redefine this category and distinguish between these types more clearly in future research.

Another large category that I expect to influence dissenting rates and outcomes of cases is social welfare. Just as predicted (H 3), the RCC is more likely to declare an act as unconstitutional if it is about social welfare. This category includes a broad range of issues from pension, labor standards, social and housing benefits to military and law enforcement officers, people with children, Chernobyl victims, and veterans of WWII; I ran models with these subcategories separately but found no significant results, mostly because of the small sample (whole social welfare category contains 72 cases out of 502). When a case is about social welfare, there are fewer dissenting opinions, mostly because (presumably) the RCC already decides “in favor” of the petitioner, and there is a consensus between judges on social issues.

Finally, as predicted, the RCC will stay away from politically salient cases or those involving the government. When the case is about the division of responsibilities and disputes between different levels of the government—federal vs. regional and executive vs. legislature—the RCC is less likely to declare an act as unconstitutional (H 2). However, this is exactly the type of case that shows the differences between collective (at the court level) and individual (at the judge level) decision making—when cases are about the structure of the government, individual judges are more likely to issue dissenting opinions.

Table 5

### Regression Results for the Categories of Legal Act under Consideration

Independent Variables	Dependent Variable		
	Unconstitutional (1)	Dissent: Yes (2)	Dissent Rate (3)
Period: 2009–2013	– 0.284 (0.245)	– 0.062 (0.268)	– 0.012* (0.006)
Period: 2014–2018	– 0.684*** (0.233)	– 0.960*** (0.292)	– 0.023*** (0.006)
Elections	1.029** (0.459)	0.423 (0.436)	0.019* (0.010)
Civil Law	– 0.178 (0.330)	0.057 (0.381)	– 0.002 (0.008)

Table 5.

Independent Variables	Dependent Variable		
	Unconstitutional (1)	Dissent: Yes (2)	Dissent Rate (3)
Criminal Law	0.393 (0.277)	0.047 (0.324)	0.007 (0.007)
Social Welfare	0.552* (0.301)	- 1.056** (0.471)	- 0.010 (0.007)
Military	0.179 (0.398)	- 0.725 (0.647)	- 0.006 (0.010)
Property	0.402 (0.426)	0.074 (0.501)	- 0.005 (0.011)
Economics	- 0.293 (0.444)	0.282 (0.479)	0.024** (0.012)
Courts	- 0.349 (0.376)	0.069 (0.463)	0.008 (0.010)
Govt Structure	- 0.573* (0.361)	0.669* (0.370)	0.013 (0.009)
Dissent: Yes	- 0.372 (0.228)		
Unconstitutional		- 0.389* (0.229)	- 0.010** (0.005)
Controls	+	+	+
Constant	0.596** (0.216)	- 0.671** (0.263)	0.039*** (0.006)
Observations	502	502	502
R <sup>2</sup>			0.084
Adjusted R <sup>2</sup>			0.058
Log Likelihood	- 328.129	- 250.585	
Akaike Inf. Crit.	686.259	531.171	
Residual Std. Error			0.053 (df = 487)
F Statistic			3.205*** (df = 14; 487)

Note: \*p < 0.1; \*\*p < 0.05; \*\*\*p < 0.01; standard errors in parentheses.

## Conclusion

How do CCs operate under nondemocratic regimes, where a developed rule of law and independent judiciary are absent? Given that the higher courts in such settings also have to be tolerated by an autocrat, what is their strategy in decision making? Do judges voice their disagreement publicly via authoring dissenting opinions, and when does this happen?

The current paper provides answers to these questions based on the empirical analysis of the RCC's case law. Using a novel database of the RCC's final judgments and dissenting opinions (1998–2018), I show that it is who petitions the court and on which topics that influences the outcomes of cases and dissenting opinions.

First, the political regime and institutional settings matter for the RCC. Following the common assumption that courts in nondemocracies exist as long as they benefit the ruler and rarely rule against the government,



we find that it is indeed the case in Russia. Cases about the structure of the government have the lowest (but significant) probabilities of being nullified while also having the highest probabilities of having a dissenting opinion authored by one of the judges. Additionally, judges dissent more when cases are brought by high-level political actors, such as federal parliament or the government. Even in today's Russia, judges author dissenting opinions, hence investing their time and intellectual resources, but also risking job promotions or tenure; they do this in potentially salient issues related to the federal government.

Second, after the constitutional crisis in 1993, the RCC began to focus more on social rights. There seems to be a consensus of advancing social rights and striking down laws that narrow them down or violate the constitutional principles of social rights and benefits. Empirically, we can see it in higher probabilities of laws being declared unconstitutional when citizens petition the court, as well as when applications are about social welfare. Additionally, the only significant and stable results for not issuing a dissenting opinion are social welfare, which shows that judges more or less agree with each other in these cases.

Next, the RCC is more likely to strike down laws connected to economics or business activities or when the case is petitioned by commercial companies. This is in line with previous findings on courts in authoritarian regimes being concerned with foreign trade and investment and wanting to signal them that property rights will be respected and contracts enforced [Moustafa 2009].

Next, cases questioning the constitutionality of electoral legislation are more likely to be found unconstitutional but are also more likely to have several dissenting opinions. Going back to the fact that courts in nondemocracies are used to sidelining political opponents, this result seems surprising. However, this can be explained by the fact that the RCC resolves electoral disputes, because nondemocratic rulers prefer to solve disputes with the opposition by legal measures with courts of ordinary jurisdiction, especially by considering such cases in another higher court, the Supreme Court of Russia.

As for limitations, the current paper is based on the data collected by the author, and extending the sample to the cases heard before 1998 would provide additional insights into how the court evolved over time. Additionally, it is naive to assume that only these factors influence the cases' outcomes, and it is specifically not true in nondemocracies, where other actors come into play. However, it is almost impossible to track quasi-judicial or political factors that impact the RCC's decision making, and this is why I have opted to completely exclude these factors from the analysis. Future research could focus on adding year-level data on public trust to the judiciary and indexes of the rule of law or democracy, as well as exploring the judges' backgrounds and their previous occupation (academia, law enforcement, courts, and others) to get a better idea of what motivates judges to issue dissenting opinions.

## References

- Allmark L. (2012) More than Rubber-Stamps: The Consequences Produced by Legislatures in Non-Democratic States beyond Latent Legitimation. *Journal of Legislative Studies*, vol. 18, no 2, pp. 184–202.
- Alter K. (2011) The Evolving International Judiciary. *Annual Review of Law and Social Science*, vol. 7, pp. 387–415.
- Amaral-Garcia S., Garoupa N., Veronica N. (2009) Judicial Independence and Party Politics in the Kelsenian Constitutional Courts: The Case of Portugal. *Journal of Empirical Legal Studies*, vol. 6, no 2, pp. 381–404.

- Anagnostou D. (2010) Does European Human Rights Law Matter? Implementation and Domestic Impact of Strasbourg Court Judgments on Minority-Related Policies. *International Journal of Human Rights*, vol. 14, no 5, pp. 721–743.
- Borocz J. (2000) Informality Rules. *East European Politics & Societies*, vol. 14, no 2, pp. 348–380.
- Brown N., Waller J. (2016) Constitutional Courts and Political Uncertainty: Constitutional Ruptures and the Rule of Judges. *International Journal of Constitutional Law*, vol. 14, no 4, pp. 817–850.
- Brownlee J. (2007) *Authoritarianism in the Age of Democratization*, Cambridge: Cambridge University Press.
- Burbank J. (2004) *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905–1917*, Bloomington, Indianapolis: Indiana University Press.
- Burkhardt F. (2017) The Institutionalization of Relative Advantage: Formal Institutions, Subconstitutional Presidential Powers, and the Rise of Authoritarian Politics in Russia, 1994–2012. *Post-Soviet Affairs*, vol. 33, no 6, pp. 472–495.
- Burns J. (2010) *Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court*, London: Penguin Books.
- Chandler A. (2014) Citizenship, Social Rights and Judicial Review in Regime Transition: The Case of Russia. *Democratization*, vol. 21, no 4, pp. 743–766.
- Clarke S. (1995) *Management and Industry in Russia: Formal and Informal Relations in the Period of Transition*, Cheltenham: Edward Elgar Publishing Limited.
- Conant L. (2002) *Justice Contained: Law and Politics in the European Union*, Ithaca: Cornell University Press.
- Danelski D. (1986) Causes and Consequences of Conflict and its Resolution in the Supreme Court. *Judicial Conflict and Consensus: Behavioral Studies of American Appellate Courts* (eds. C. Lamb, S. Goldman), Lexington: University of Kentucky Press, pp. 21–49.
- Dzmitryieva A. (2017) Case Selection in the Russian Constitutional Court: The Role of Legal Assistants. *Laws*, vol. 6, no 4, pp. 1–23.
- Easter G. (2000) *Reconstructing the State: Personal Networks and Elite Identity in Soviet Russia* (Cambridge Studies in Comparative Politics), Cambridge: Cambridge University Press. doi:10.1017/CBO9780511571527
- Epp C. (1998) *The Rights Revolution: Lawyers, Activists and Supreme Court in Comparative Perspective*, Chicago: University of Chicago Press.
- Epstein L., Knight L. (1998) *The Choices Justices Make*, Washington DC: CQ Press.
- Epstein L., Landes W., Posner R. (2011) Why (and When) Judges Dissent: A Theoretical and Empirical Analysis. *Journal of Legal Analysis*, vol. 3, no 1, pp. 101–137.

- Feifer G. (1964) *Justice in Moscow*, New York: Simon and Schuster.
- Frye T. (2017) *Property Rights and Property Wrongs: How Power, Institutions and Norm Shape Economic Conflict in Russia*, Cambridge: Cambridge University Press.
- Gallo D., Winkler M. (2017) The Construction of Same-Sex Families in Western Europe through Legislative and Judicial Dialogues. The Role of National Legislatures and Supranational Courts. *Judicial Dialogue and Human Rights* (eds. Müller A., Kjos H. E.), Cambridge: Cambridge University Press. pp. 216–250.
- Garoupa N., Gomez-Pomar F., Grembi F. (2011) Judging Under Political Pressure: An Empirical Analysis of Constitutional Review Voting in the Spanish Constitutional Court. *Journal of Law, Economics and Organization*, vol. 29, no 3, pp. 513–534.
- Ginsburg T. (2012) Courts and New Democracies: Recent Works. *Law and Social Inquiry*, vol. 37, no 3, pp. 720–742.
- Gorlizki Y. (1997) Political Reform and Local Party Interventions Under Khrushchev. *Reforming Justice in Russia: Power, Culture, and the Limits of Legal Order* (ed. P. H. Solomon, Jr.), Armonk, N. Y.: ME Sharpe, pp. 256–281.
- Grigoriev I. (2017) *Transformatsia institutov sudebnoy vlasti v protsesse konsolidatsii gybridnogo politicheskogo reghima (na primere rossiskogo Konstitutsionnogo suda)* [Transformations of the Judiciary in the Process of Consolidation of the Hybrid Political Regime (Case Study of the Russian Constitutional Court)] (PhD thesis), Saint Petersburg State University (in Russian).
- Grigoriev I. (2018) Why Dismiss a Good Case? Dual-Purpose Judicial Institutions in Constitutional Courts Under Autocracy: Evidence from Russia. *Higher School of Economics Research Paper No. WP BRP 60/PS/2018*, Moscow: HSE Publishing House.
- Hafner-Burton E. (2013) *Making Human Rights a Reality*, Princeton: Princeton University Press.
- Helmke G. (2002) The Logic of Strategic Defection: Court-executive Relations in Argentina under Dictatorship and Democracy. *American Political Science Review*, vol. 96, no 2, pp. 291–303.
- Helmke G., Levitsky S. (2004) Informal Institutions and Comparative Politics: A Research Agenda. *Perspectives on Politics*, vol. 2, no 4, pp. 725–740.
- Helmke G., Rios-Figueroa J. (eds) (2011) *Courts in Latin America*, Cambridge: Cambridge University Press.
- Hendley K. (2007) Are Russian Judges Still Soviet? *Post-Soviet Affairs*, vol. 23, no 3, pp. 240–274.
- Hendley K. (2009) ‘Telephone Law’ and the ‘Rule of Law’: The Russian Case. *Hague Journal on the Rule of Law*, vol. 1, no 2, pp. 241–262.
- Hendley K. (2015) Resisting Multiple Narratives of Law in Transition Countries: Russia and Beyond. *Law & Social Inquiry*, vol. 40, no 2, pp. 531–552.
- Herron E., Randazzo K. (2003) The Relationship between Independence and Judicial Review in Post-Communist Courts. *Journal of Politics*, vol. 65, no 2, pp. 422–438.

- Hicks D. (2002) The Promise(s) of Deliberative Democracy. *Rhetoric & Public Affairs*, vol. 5, no 2, pp. 223–260.
- Hilbink L. (2012) The Origins of Positive Judicial Independence. *World Politics*, vol. 64, no 4, pp. 587–621.
- Holmes S. (2003) Lineages of the Rule of Law. *Democracy and the Rule of Law* (eds. J. A. Maravall, A. Przeworski), New York: Cambridge University Press, pp. 19–61.
- Hönnige C. (2009) The Electoral Connection: How the Pivotal Judge Affects Oppositional Success at European Constitutional Courts. *West European Politics*, vol. 32, no 5, pp. 963–984.
- Hume R. (2006) The Use of Rhetorical Sources by the U.S. Supreme Court. *Law & Society Review*, vol. 40, no 4, pp. 817–844.
- Kelemen R. (2001) The Limits of Judicial Power: Trade-Environment Disputes in the GATT/WTO and the EU. *Comparative Political Studies*, vol. 34, no 6, pp. 622–650.
- Kononov A. (2017) *Osoboe mnenie sudyi Kononova: Osobie mnenia sudyi Konstitutsionnogo suda Rossiyskoy Federatsii 1992–2009* [Dissenting Opinions of the Judge Kononov: Dissenting Opinions of the Russian Constitutional Court's Judge 1992–2009], Moscow: Kuchkovo Pole (in Russian).
- Ledeneva A. (1998) *Russia's Economy of Favours: Blat, Networking and Informal Exchange*, Cambridge: Cambridge University Press.
- Ledeneva A. (2008) Telephone Justice in Russia. *Post-Soviet Affairs*, vol. 24, no 4, pp. 324–350.
- Levitsky S., Way L. (2010) *Competitive Authoritarianism: Hybrid Regimes after the Cold War*, Cambridge: Cambridge University Press.
- Lupu Y., Voeten E. (2012) Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights. *British Journal of Political Science*, vol. 42, no 2, pp. 413–439.
- Madsen M., Cebulak P., Wiebusch M. (2018) Special Issue — Resistance to International Courts Introduction and Conclusion. *International Journal of Law in Context*, vol. 14, no 2, pp. 193–196.
- Magalhães P. (1999) The Politics of Judicial Reform in Eastern Europe. *Comparative Politics*, vol. 32, no 1, pp. 43–62.
- Morijn J., Grabowska-Moroz B. (2019) Supporting Wojciech Sadurski in a Warsaw Courtroom. *Verfassungsblog*. Available at: <https://verfassungsblog.de/supporting-wojciech-sadurski-in-a-warsaw-courtroom/> (accessed 13 May 2020).
- Moustafa T. (2009) *The Struggle for Constitutional Power. Law, Politics, and Economic Development in Egypt*, Cambridge: Cambridge University Press.
- Moustafa T. (2014) Law and Courts in Authoritarian Regimes. *Annual Review of Law and Social Sciences*, vol. 10, pp. 281–299.

- Moustafa T., Ginsburg T. (2008) Introduction: The Functions of Courts in Authoritarian Politics. *Rule by Law: The Politics of Courts in Authoritarian Regimes* (eds. T. Ginsburg, T. Moustafa), Cambridge: Cambridge University Press. pp. 1–22.
- Noble B. (2018) Authoritarian Amendments: Legislative Institutions as Intraexecutive Constraints in Post-Soviet Russia. *Comparative Political Studies*, Available at: <https://doi.org/10.1177/0010414018797941> (accessed 13 May 2020).
- Paneyakh E., Rosenberg D. (2018) The Courts, Law Enforcement, and Politics in Russia. *The New Autocracy: Information, Politics and Policy in Putin's Russia* (ed. D. Treisman), Washington: Brookings Institution Press, pp. 217–48.
- Peerenboom R. (2002) *China's Long March toward Rule of Law*, Cambridge: Cambridge University Press.
- Posner R. (2008) *How Judges Think*, Cambridge: Harvard University Press.
- Pritchett C. (1948) *The Roosevelt Court*, New York: Macmillan.
- Ríos-Figueroa J., Aguilar P. (2018) Justice Institutions in Autocracies: A Framework for Analysis. *Democratization*, vol. 25, no 1, pp. 1–18.
- Risse T., Ropp S., Sikkink K. (eds). (1999) *The Power of Human Rights: International Norms and Domestic Change* (Cambridge Studies in International Relations), Cambridge: Cambridge University Press. doi:10.1017/CBO9780511598777
- Sakwa R. (2010) The Dual State in Russia. *Post-Soviet Affairs*, vol. 26, no 3, pp. 185–206.
- Sakwa R. (2011) *The Crisis of Russian Democracy: The Dual State, Factionalism and the Medvedev Succession*, Cambridge: Cambridge University Press.
- Sharlet R. (1977) Stalinism and Soviet Legal Culture. *Stalinism: Essays in Historical Interpretation* (ed. R. Tucker), New York: Routledge.
- Shen-Bayh F. (2018) Strategies of Repression. *World Politics*, vol. 70, no 3, pp. 321–357.
- Sievert J. (2018) The Case for Courts: Resolving Information Problems in Authoritarian Regimes. *Journal of Peace Research*, vol. 55, no 6, pp. 774–786.
- Sternberg S. (2017) *How to Forecast Constitutional Court Decisions? Legal Context and Political Context in a Machine Learning Framework* (Conference paper), Available at: [https://sebastiansternberg.github.io/pdf/epsa19\\_sternberg\\_forecastingdecisions.pdf](https://sebastiansternberg.github.io/pdf/epsa19_sternberg_forecastingdecisions.pdf) (accessed 13 May 2020).
- Sternberg S., Shikano S., Sieberer U. (2016) *Ideology, Law and Professional Background. Explaining Dissenting Opinions in the German Federal Constitutional Court*. ECPR Conference 2016 Proceedings. ECPR General Conference Charles University in Prague, Prague, 2016, 7–10 September. Available at: <https://ecpr.eu/Events/PaperDetails.aspx?PaperID=31083&EventID=95> (accessed 12 May 2020).
- Staton J., Moore W. (2011) Judicial Power in Domestic and International Politics. *International Organization*, vol. 65, no 3, pp. 553–587.

- Stone Sweet A. (2000) *Governing with Judges: Constitutional Politics in Europe*, Oxford: Oxford University Press.
- Szabo D. (2019) A Hungarian Judge Seeks Protection from the CJEU — Part I. *Verfassungsblog*. Available at: <https://verfassungsblog.de/a-hungarian-judge-seeks-protection-from-the-cjeu-part-i/> (accessed 13 May 2020).
- Thorson C. (2012) *Politics, Judicial Review and the Russian Constitutional Court*, Basingstoke: Palgrave.
- Trochev A. (2008) *Judging Russia: The Role of the Constitutional Court in Russian Politics 1990–2006*, Cambridge: Cambridge University Press.
- Trochev A. (2018) Patronal Politics, Judicial Networks and Collective Judicial Autonomy in Post-Soviet Ukraine. *International Political Science Review*, vol. 39, no 5, pp. 662–678.
- Trochev A, Solomon P. H., Jr. (2018) Authoritarian Constitutionalism in Putin’s Russia: A Pragmatic Constitutional Court in a Dual State. *Communist and Post-Communist Studies*, vol. 51, no 3, pp. 201–214
- Vereschagin A. (2012) Osobyie mnenia v Konstitutsionnom sude Rossii [Dissenting Opinions in the Russian Constitutional Court]. *Kak sudiy prinimaut reshenia. Empiricheskie issledovaniya prava* [How Judges Come to their Decisions. Empirical Legal Research] (ed. V. Volkov), Moscow: Statut, pp. 250–256 (in Russian).
- Wilson M., Woldense J. (2019) Contested or Established? A Comparison of Legislative Powers across Regimes. *Democratization*, vol. 26, no 4, pp. 585–605.

**Received:** September 3, 2019

**Citation:** Khalikova Y. (2020) Constitutional Review and Dissenting Opinions in Nondemocracies: An Empirical Analysis of the Russian Constitutional Court, 1998–2018. *Journal of Economic Sociology = Ekonomicheskaya sotsiologiya*, vol. 21, no 3, pp. 129–150. doi: [10.17323/1726-3247-2020-3-129-150](https://doi.org/10.17323/1726-3247-2020-3-129-150) (in English).