Courts in Conflict?

RUSSIA AND THE EUROPEAN COURT OF HUMAN RIGHTS

Cody Giddings   *February 13, 2020*

The following is an excerpt from a longer methodological paper that examines the plausibility of a broader research design plan.

1 Assessing Judicial Independence's Effect on Human Rights Cases in Russia via Text Analysis

In order to study how the ECHR impacts the decisions of Russian judges on human rights cases, I also need to collect data on domestic human rights cases in Russia. In order to fill this gap in the data, I intend to collect information on Russian human rights cases from a public Russian database known as "*SudAct*," which contains a comprehensive set of over 100,000 Russian legal cases from all levels of the Russian judicial system. From these legal case files on human rights issues, I will extract information on individual judges, case rulings, case types, as well as some information about the legal justifications the presiding judges used to come to their respective decisions. In Table 1 below, I demonstrate the basic structure of the Sud Act data.

Note: All Data above was obtained directly from the Sud Act Database.

Variable	
Case	Решение № 2А-141/2016 2А-141/2016˜М-95/2016 М-95/2016 от 9 марта 2016 г. по делу № 2А-141/2016
ID	Шишелова Т.Л. (судья)_1
Text	решение по делу а прилузский районный суд республика коми гражданское дело а решениеименем российской федерации- прилузский районный суд республики коми в составепредседательствующего судьи шишеловой т л при секретаре кныш е а рассмотрев в открытом судебном заседании в с объячево марта года
Judge	Шишелова Т.Л. (судья)
Court	Прилузский районный суд (Республика Коми)
Decision For State	0

Table 1: Sample Data Frame

Using the body of text in these case decisions, I will be able to analyze general trends in how first instance court judges are approaching the European Court of Human Rights and its growing body of case law. Using a sample of thirty cases from March 9, 2016, I conduct some preliminary text analysis that provides suggestive evidence that these judges are focusing predominantly on Russian law despite their citations of the ECHR in their decisions. In Table 1 below I provide the

top 10 most frequently used words, stems, and lemmas by Russian judges in first instance courts in the thirty cases sampled from the Sud Act database.[1]

Ranking	Word	№	Stem	№	Lemma	№
1	дела	196	вред	394	россии	194
2	россии	194	соответств	390	закона	193
3	закона	193	судебн	319	требований	176
4	требований	176	ответчик	317	размере	173
5	размере	173	решен	298	права	170
6	права	170	гражданск	292	рублей	169
7	рублей	169	административн	289	законом	166
8	законом	166	содержан	277	требования	159
9	требования	159	размер	274	ответчика	151
10	ответчика	151	основан	269	морального	149

Table 2: Most Frequent Word Usages

In total mentions of the "RF," "Russian," and "Federation" are among the most frequently used terms by judges in these human rights cases. Excluding these terms, others such as "decision" and "rubles" also round out the top ten terms in the preliminary analysis. While it is not surprising these words are the most frequently used words by Russian judges, it demonstrates the plausibility of the exercise and should be able to be narrowed down to include more informative terms that further the analysis.

Using a "Term Frequency–Inverse Document Frequency" or "TF-IDF" approach to assess which words in a document are most important relative to its usages in an entire corpus of documents, we start to get more fine grained detail. For example, as shown in Figure 1 on the following page, when examining the words used in one of Judge Ятченко Елена Алексеевна's case decision from March of 2016, relative to the words used in all the case documents in the sample, uses of the terms "cabale", "produce" and "use" were relatively important. While the context and sentiments these words were associated with remains unclear, by using supervised machine learning and crafting a Russian legal sentiment lexicon, it will be possible to create a clearer and more systematic picture of exactly how these first instance court judges in Russia view the ECHR as a source of case law.

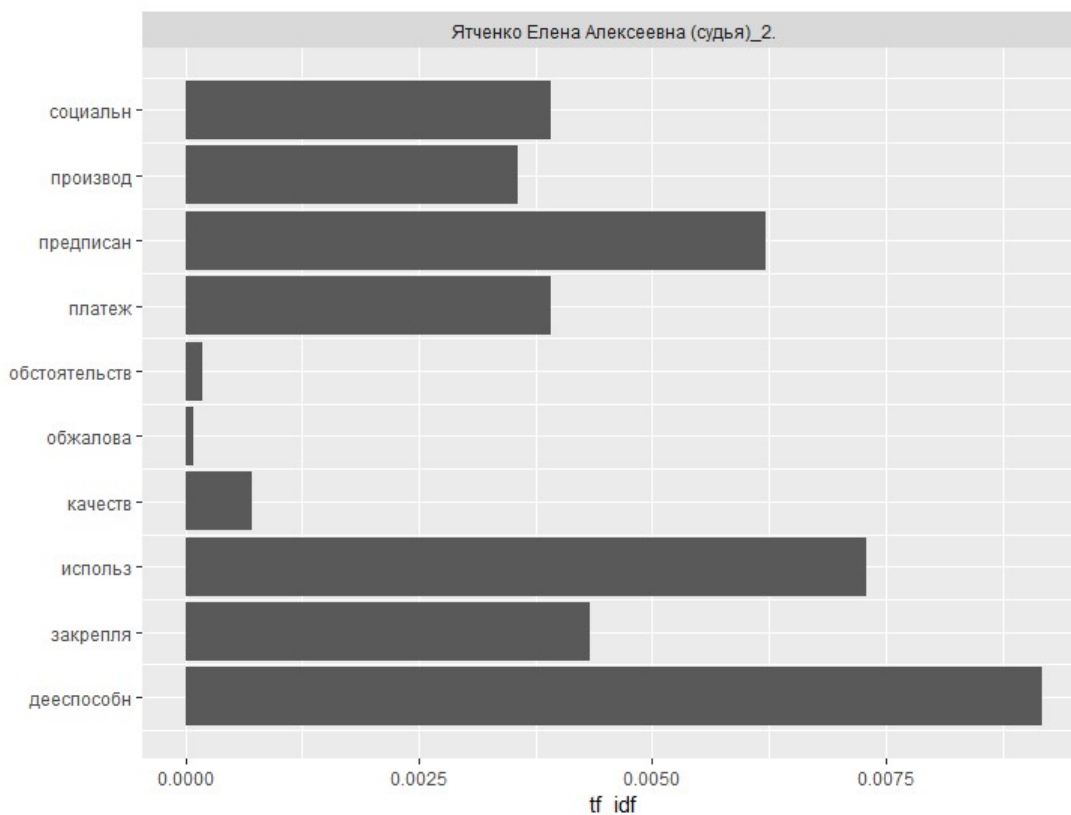[1]Lemmatization was conducted using UDpipe Package

Figure 1: TF-IDF for Judicial Case

2 Examining Geographical Proximity and Judicial Decisions in ECHR Cited Cases

With methods similar to the ones shown above, I plan to assess the effect of various aspects of individual judges characteristics – such as age, appointment year, and foreign legal education that might serve as indicators for their independence from the executive – on their legal decisions and propensities to cite and side with ECHR case law. Using information that can be found on the Russian State University of Justice, I will obtain data on individual judge characteristics such as age, legal education, and federal government work experience that might be strong indicators of less independent judges. Such judge specific traits may act as good proxies for quantifying levels of independence from the executive because they either reflect closer relationships with government, more reliance upon state incomes, or propensities to rule on cases using more internationally recognized legal principles rather than domestic ones shaped by the state. With this information in mind, I can assess the various ways in which judicial independence from the executive may impact

decision-making on cases that could potentially escape the domestic courts jurisdiction.[2]

However, in order to measure other key indicators of judicial independence from the executive – such as physical proximity to regional capitals – and assess their impact on Russian judges' decisions on human rights cases, I will use Google Map's API to calculate the geographical distance between the locations of each judges' Court House and the Russian Federation's capital of Moscow. Geographical distance is one useful quantitative indicator of independence between state leaders and judges because greater distances between these actors are often accompanied by more different bases of political support, resources, and protection. In Figure 2, I demonstrate the plausibility of such an approach by mapping the locations of a subset of the 24 different courts that are featured in the sample of 30 case files and depict their geographical distance from the capital of Russia: Moscow.
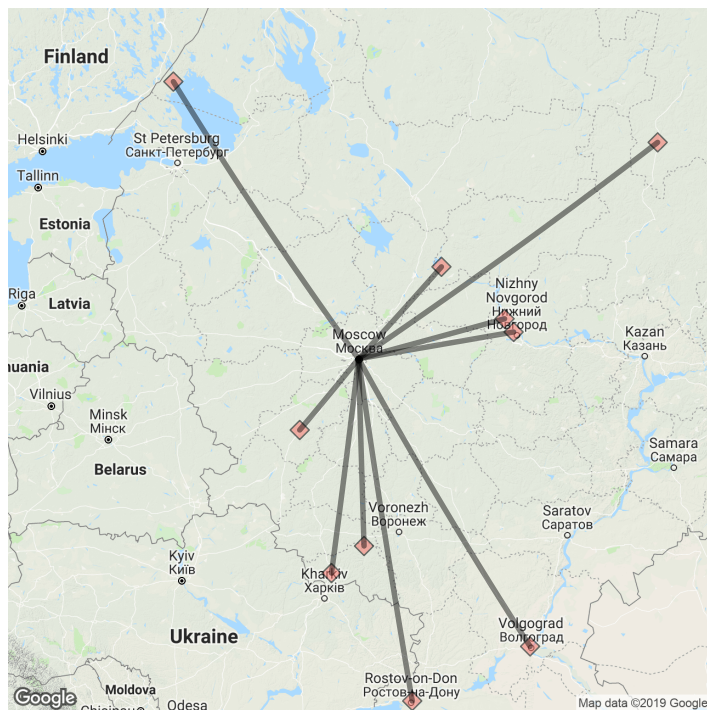
Russian District Courts of First Instance

Figure 2: Physical Proximity to Moscow

While most of the courts from the subset that are depicted in Figure 2 are somewhat close to Moscow, the sample as a whole is diverse in terms of its geographical variation. Figure 3, which

[2]Similar research on American judges has been done by Huber and Sanford (2007).

depicts the locations of 23 of the 24 courts identified in our sample of thirty cases, demonstrates the wide range of geographical differences between courts that could be leveraged to better assess the effect of judicial independence on human rights court decisions involving the ECHR.

Russian District Courts of First Instance

Figure 3: Geographical Diversity in Court Locations

Ultimately, I find suggestive evidence that decreases in physical proximity to the executive are significantly associated with decreases in the propensity for Russian domestic judges to side with the state on human rights cases that mention to the ECHR. While the finding is robust to alternative model specifications (bivariate logit, probit, with $HC2$ clustered standard errors), it lacks some regional-specific controls such as income, population sizes, and bureaucratic capacities. The addition of unit and time fixed effects could also help better indicate the robustness of the finding. However, as a preliminary test, these results are promising and demonstrate the viability of expanding the analysis to include the more than 100,000 human rights cases available in the Sud Act database.