

# Judicial Behavior & Politics (PLSC 569X) Research Paper

## Dissent and Anti-government Voting of the USSR-born Judges on the ECHR

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*The paper examines behavior of the judges on the European Court of Human Rights. I posit that the Soviet-born judges on the court carry that same characteristic traits typical for Soviet citizen, which are the distrust towards the authority (the government) and the need to conform to the group. To examine this I look into the difference between the votes against governments between Soviet-born judges of the ECHR and others, as well as into how conforming to the majority vote their own votes are. I find that the USSR-born judges vote, on average, more against the government on any given case in the ECHR and this difference is statistically significant. These judges are also more conforming to the general vote, compared to other judges.*

Word Count: 1903

## INTRODUCTION

Life under a regime that the USSR has left marks even on people who have survived it or were born after the regime collapsed. The collective psychological and cultural effect is difficult to measure, but can be traced in individual stories quite easily. Arguably, some of the main traits the actual 'homo soveticus' possessed, and not the fictional character that was being molded, were the instilled sense of distrust to the authority and paranoia of being singled out. In a Kafkaesque manner, one of the most renowned Soviet dissidents, Lev Razgon, recalls how he was arrested for the possession of an 'anti-soviet' author's book, while the main Moscow university that was located between the police station and the place of his arrest bore the name of that very same author - for a Soviet citizen the relationship with the authority and people around them is a walk on the knife's edge.

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This is a manuscript submitted for review.

As in any totalitarian regime, in the USSR the group dominates the individual, which leads to the second feature I've singled out - de-individualization [https://www.jstor.org/stable/23611469?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/23611469?seq=1#page_scan_tab_contents) ( will include proper citations)

I believe that a court's institutional setting is perfect for analyzing these traits. It enables us to see the individual judge's, cast (as I assume) in accordance to their preferences. The European Court of Human Rights is as good an institution as any to examine my hypotheses. It is quite flexible - a certain degree of deference is granted to each judge, as they can vote acting as activists, rather than simply follow the precedent rule, for example. And the issues at stake are those that are, supposedly, salient to each judge - a violation of the human rights must evoke more of a 'personal' vote, than a court case regarding any minor dispute.

## EUROPEAN COURT OF HUMAN RIGHTS BACKGROUND

The court has been established in 1959 to include (currently) 47 nations and hear cases on breaches of the European Convention on Human Rights. All the judges are elected for a non-renewable nine-year term and each participating state delegates 1 judge and they must be appointed by a majority vote in the Parliamentary Assembly of the Council of Europe.

Literature of the subject is plentiful and can be even divided into several categories.

**Attitudinal analysis** A whole body of literature is dedicated to behavioral or attitudinal analysis of judicial decisions.

Tate. 1981. "Personal Attribute Models of the Voting Behavior of US Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978." *American Political Science Review* 75: 355.

**Socialist heritage** I am partially expanding on the paper by Erik Voeten 'The Impartiality of International Judges: Evidence from the European Court of Human Rights'. The paper examines voting patterns of judges that come from socialist backgrounds in regard to cases, where the responding country has been socialist. The author finds that there is indeed support for the claim that these judges manifest the common socialist heritage kinship and vote, on average, more against socialist or ex-socialist governments.

**Activism** Activism is one of the controlling variables that I use, as well as an indicator of the ECHR being a perfect examining tool to see judges preferences. There has been plenty of research into how activist the ECHR is, among others -

<http://booksandjournals.brillonline.com/content/books/b9789004271685s003>

## HYPOTHESES

- **Hypothesis 1** : Judges from former Soviet republics will be more likely to vote against a government in any given case.
- **Hypothesis 2** : Judges from former Soviet republics will be less likely to dissent from the majority vote, particularly on the issues of higher importance.

## Operationalization

I have chosen the USSR-born judges on the European Court of Human Rights as my object. Obviously, this is not the ‘general public’, yet I believe, that despite the screening process of selecting individuals who are highly intelligent, professional and, most probably, more aware of the Soviet legacy than others, the study will be able to showcase their biases and patterns in voting in support of my hypotheses.

My two main characteristics of interest are the distrust towards the authority and the in-group mentality. I choose the mean number of votes cast against the government in any given case as a proxy for the authority mistrust. As for the ‘in-group mentality’ - I have decided to operationalize it as a mean value of dissenting votes, further categorizing these by the level of case importance.

- **DV**: Pro-government vote on the ECHR
- **IV**: USSR as a country of origin of the judge, activism, case importance, Freedom House scores, dissent.

## Data

I have used the data collected by the Georgetown University on the International Courts. I am looking at the time period from 1991 (from the USSR disintegration) to 2004, the latest in the dataset.

I have created a dummy variable for the Soviet-born judges, which is binary - ‘1’ for those born in one of the 15 Soviet republics and ‘0’ otherwise.

Below is a breakdown of the main variables used in my model.

**Activism** Judicial activism and restraint are similar to a left-right political scale we're used to. This is a 7-point unidimensional scale that goes from -3 (Activist) to +3 (Restraint) where the degrees reflect judges' 'deference granted to the government'.

**Dissent** is a binary variable that is coded 0 when the judge voted with the majority and 1, when the judge voted against the majority.

**Pro-government vote** is a binary variable that is 0 if the judge voted against the government and 1 if the judge voted in favor of the government.

**Importance** is a 3-level variable, that renders issues from least important ones - 1 (however, those important enough to be considered by the ECHR) to the most important ones - 3.

**Political rights** as measured by the Freedom House political rights score from 1972 to 2004 in regard to the respondent country, with 1 being the most free country, 6 being the least free ones.

**Civil liberties** as measured by the Freedom House civil liberties score from 1972 to 2004 in regard to the respondent country, with 1 being the most free country, 6 being the least free ones.

## RESULTS

### Hypothesis 1

I have run 2 regressions with a nested model and the unconstrained one. (I will run the test comparing the two)

I use logit regression due to the binary nature of my variable of interest. I am controlling for 5 variables - whether the judge was born in the USSR and I control for 'activism', that is whether a judge views their role (or is perceived to vote) in the court as an activist or restrained.

```
logit govvote easternbloc activism
```

**TABLE 1. Nested**

	Vote in favor of the government
Ex-USSR Judges	-0.227***
Activism	0.416***
N	14288

*Note:* This is a note for this table.

In the unconstrained model I control for the importance of the issue, and the respondent country's score on the political rights and civil liberties, as measured by Freedom House. The effect of being born in the USSR on the voting for the government decreases in the 2nd model, yet stays statistically significant.

```
logit govvote easternbloc activism importance fh_prr fh_clr
```

Being a judge from ex-USSR republic is decreasing the log likelihood of judges' voting in favor of the government on any given issue, as the tables show. This is interesting because not only does it suggest, that there is a certain 'partisanship', when it comes to other ex-Soviet republics, that the judges typically hold (as Voeten's paper suggest). They are in general more inclined to vote against **any** government. Coefficients from both models are statistically significant.

Activism, surprisingly, increases the log likelihood of a judge to vote in favor of the government. Importance of the court case has a positive direction and increases the log likelihood of a pro-government

**TABLE 2. Unconstrained**

	Vote in favor of the government
Ex-USSR Judges	-0.15
Activism	0.40
Importance	0.32
Political Rights	-0.32
Civil Liberties	0.09
N	13560

*Note:* This is a note for this table.

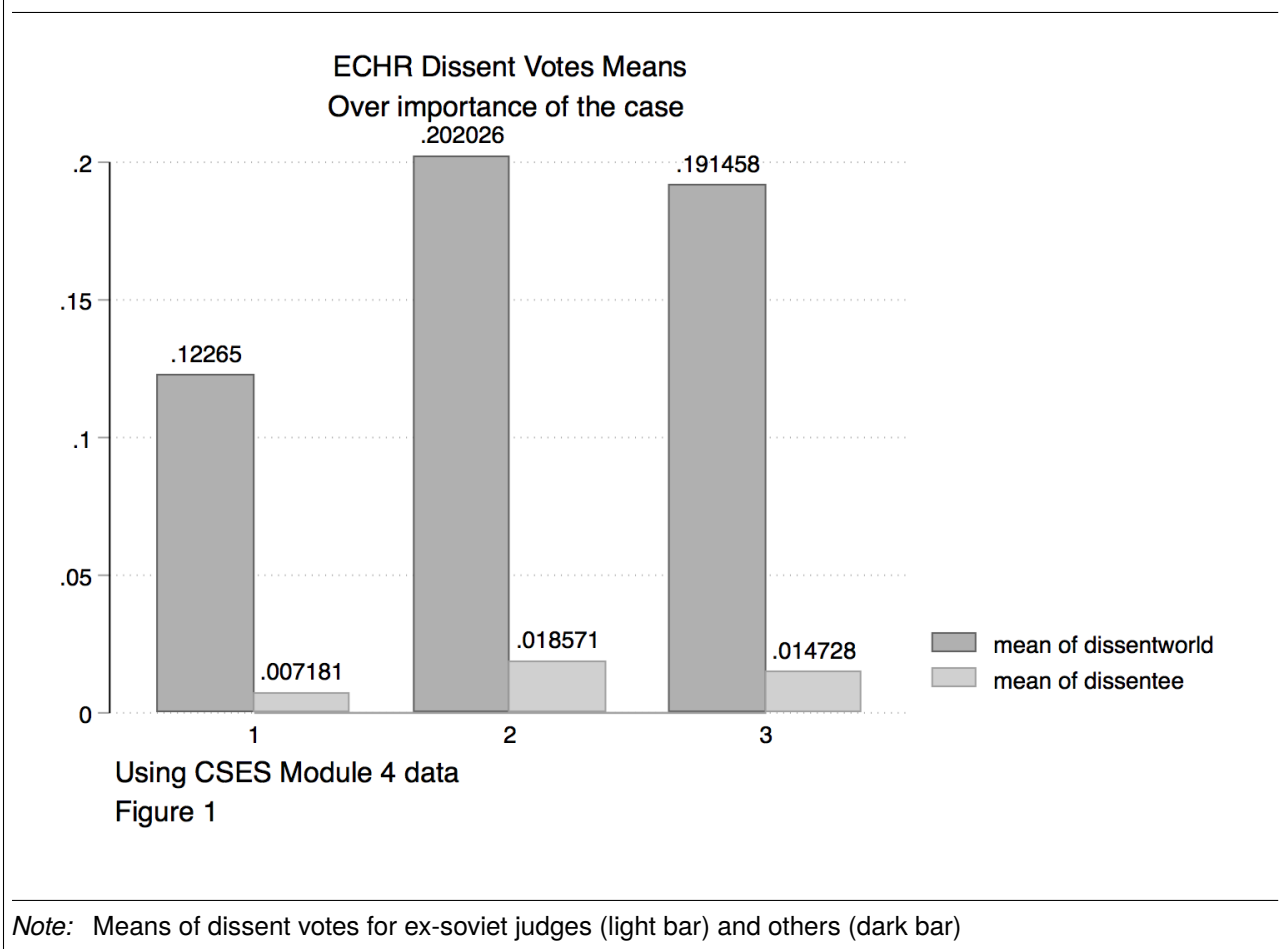
vote. As one would expect, the deterioration of political rights has a negative direction on the likelihood of a pro-government vote, civil rights score increase (which means the level of civil right is worsen) has a .09 log likelihood of a pro-government vote.

## Hypothesis 2

I have aggregated the means of dissent votes by the judges from the ex-Soviet countries and others across the levels of importance of the issue at vote. There seems to be a propensity to conform to the majority exhibited by ex-Soviet judges, when compared to the rest of the judges. However, the relationship between the issue importance and conformity isn't linear, as I expected. The distribution of dissent votes across issue importance is similar for ex-soviet and other judges, yet the baseline is lower for the ex-Soviet ones, meaning, they have a lower probability of casting a dissenting vote on average.

USSR-born judges are less likely to dissent as the means of the votes show: .09 vs .14 compared to the rest of the judges on the court. USSR-born judges also have a smaller standard deviation level .29 vs .35 for the rest of the judges, showing that the USSR judges showed more uniformity in their voting patterns, something that was posited by the second hypothesis.

The pattern of the distribution of dissent across the importance of the case resembles the one from non-USSR born judges, which negates part of my hypothesis, where I expected that the more notoriety is given to the case - the more ex-USSR judges will feel the need and pressure to conform.

**FIGURE 1**

## CONCLUSION

While scholars have found support for the claim that judges from former socialist states vote against the governments of similar socialist states on a higher rate, than other judges, I have focused specifically on countries of the former Soviet Union and expanded the range of votes to all the cases, not only those considering former socialist states. I have found support, that ex-USSR judges do vote against the government on any given case more, than other judges and the difference is statistically significant.

I have also looked into judges' propensity to dissent on major issues, positing, that ex-soviet judges will have a higher probability of conforming to the majority.

While my second hypothesis was supported by the general results of dissenting votes, the claim that the dissent in ex-soviet judges will decrease as the importance of the issue increases wasn't supported.



## DISCUSSION

I believe that the intersectional approach to questions of judicial behavior ( the name itself supposes intersectionality - biology/psychology and law/political science) will enable scholars to find more refined answers and I hope that more research(2) will be focused on this area.

## REFERENCES

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