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Why Dismiss a Good Case? Origins of the "Positive Inadmissibility" Practice and its Rationale in the Russian Constitutional Court

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Abstract

The Russian Constitutional Court (RCC) has over time developed a practice of adopting so-called "Positive inadmissibility decisions" (*Pozitivnoe Opredelenie*) which complements (but also undermines) the existent formal procedure of only delivering decisions on merits with Judgments (*Postanovlenie*). The paper explores the uses of this peculiar practice. I show that the Positive inadmissibility doctrine is used by the Court to overcome the rigidity of the formal procedure where this is necessary for reasons of inter- or intra-organizational expediency. To do that I construct and analyze quantitatively a unique comprehensive dataset of all decisions handed down by the RCC in 1995–2015. I show that "Positive inadmissibility decisions" are handed whenever a subpar case is deemed too important to be simply dismissed: in particular, if it is submitted by a powerful petitioner, or when the case is assigned to a longer serving member of the Court for judicial report.

Keywords

Russian Constitutional Court – informal institutions – authoritarianism – case selection

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1 Introduction

There are three types (or *genres*) of decisions, each used in the Russian Constitutional Court (RCC) for a specific purpose. When the Court intends to review the case on its merits, it adopts a Judgment (*Postanovlenie*). In theory, the only way the Court should communicate any substantial position concerning the legal controversy it is presented with, is with a Judgment. *Zakliuchenie* (Conclusion) is a genre devised specifically for the impeachment proceedings whereby the Constitutional Court has to give its conclusion as to whether the legal procedure of bringing accusations against the President has been complied with.[1] Finally, there is an *Opredelenie* (Inadmissibility decision or *ID*)—technically, a residual genre that the Court should use for all other purposes, but more specifically—for dismissing petitions when the Court finds them inadmissible (and therefore cannot evaluate their merits).[2]

Article 71 of the Russian Constitutional Court Act which covers the types of court decisions, is rather strict in distinguishing between these three genres and provides for adopting "*final* rulings on the merits of a case only with a Judgment" (which means the residual genre of Inadmissibility decisions should be reserved for "non-final" non-merit decisions only). Surprisingly, the Court itself is not as strict. The more exotic genre of Conclusion aside, in practice the boundary between a Judgment and an ID can sometimes become blurry, especially on the ID's side. In particular, this is the case with the

1 Such a Conclusion proves to be a relatively rare genre. The only time there was even a remote possibility of impeaching the president in Russia (in 1998–1999) the motion came to a standstill on an earlier stage in the State Duma (the lower chamber of the Russian parliament), so the Court was never even asked to give its Conclusion.

2 Whereas translating *Postanovlenie* as Judgment should not be controversial, there is no ready equivalent for the Russian *Opredelenie*. This poses a linguistic issue, especially since *Opredelenie* has no intuitive legal meaning in Russian either. The distinction comes from the structure of court decisions. If the decision is negative, the wording that precedes the operative part is "The court has determined." As technically there is no Judgment in this case—just the number of circumstances determined by the court, this type of decision should probably be called a Determination, but this translation is obviously clumsy. In his authoritative treatment of the subject Trochev faces the same problem and prefers not to translate *opredelenie* at all, instead referring to it as an "unpublished decision, which dismisses a case without hearing," see Alexei Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006* (Cambridge University Press, 2008), 94. In view of these difficulties in this paper I will both use the Russian "*Opredelenie*" and its closest English-language equivalent—*Inadmissibility decision*. Notice that this is also the translation that would be used for this type of court decisions at the European Court of Human Rights, see e.g. Janneke Gerards, "Inadmissibility Decisions of the European Court of Human Rights: A Critique of the Lack of Reasoning," *Human Rights Law Review*, no. 1 (14) (2014): 148–58.

so-called "Inadmissibility decisions with positive content" (*Opredeleniia s pozitivnym soderzhaniem*)—a legal innovation the Court came up with in the 1990s and has been using extensively ever since. As the name implies, while using this subgenre the judges would find any given petition inadmissible and therefore dismiss it with an *Opredelenie*. At the same time, this *Opredelenie* would be charged by the Court with certain "positive content" (that is, essentially, a statement on the merits of the case[3]), which would elevate such "Positive" ID substance-wise almost to the level of a Judgment.

This confusing practice is well-known in the Russian legal milieu and has been a cause for much criticism.[4] As is often the case with legal criticism, mostly the critiques focus on the very fact that this practice contradicts the formal distinction between the so-called "final" and "non-final" types of ruling imposed by the article 71 of the Constitutional Court Act.[5] A narrow and even formalist grounds for criticism though it may seem, the problem with

3 Notice that, strictly speaking, there would be no "merits" here to talk about since, as I explain below, IDs are adopted without hearing and there is no presentation of the argument by the sides. In most instances then the "merits" of the case are those inferred by the judges themselves from the case materials and, occasionally, the amicus briefs. Also notice that the same logic should apply to the Judgments proper whenever they are adopted without a formal hearing (according to the written procedure introduced by the 2010 reform, described in more detail below), where parties have no opportunity to present their arguments, but where the decision is still taken on the merits—those of the case rather than the parties' argumentation. I wish to thank one of the reviewers for noticing this.

4 See e.g. Vyacheslav Vitushkin, "Opredeleniya Kak Vid Resheniy Konstitutsionnogo Suda Rossiyskoy Federatsii" [Inadmissibility Decisions as a type of rulings at the Russian Constitutional Court], *Zhurnal Rossiyskogo Prava*, no. 3 (99) (2005); Elena Ershova, "Pravovaya Priroda Postanovleniy i Opredeleniy Konstitutsionnogo Suda Rossiyskoy Federatsii" [The legal nature of the Russian Constitutional Court's Judgments and Inadmissibility Decisions], *Trudovoe Pravo*, no. 3 (2009): 79–94; Aleksey Petrov, "Vidy resheniy Konstitutsionnogo Suda Rossiyskoy Federatsii, prinimaemykh v khode osushchestvleniya konstitutsionnogo sudoproizvodstva: osnovaniya i nekotorye problemy klassifikatsii" [Types of ruling that the Russian Constitutional Court adopts as part of its constitutional adjudication: the grounds for and issues related to classification], *Akademicheskiy yuridicheskiy zhurnal*, no. 1 (39) (2010): 22–27; Aleksey Petrov, "Opredeleniya 's pozitivnym soderzhaniem' v sisteme resheniy Konstitutsionnogo Suda Rossiyskoy Federatsii" [Positive' inadmissibility decisions within the Russian Constitutional Court's ruling framework], *Akademicheskiy yuridicheskiy zhurnal* 41, no. 3, (2010): 17–24.

5 As Alexei Mazurov notes in his authoritative commentary to the RCC Act, article 71 simply "does not seem to restrain the RCC in any way" as the Court keeps delivering "final" rulings in the form of Inadmissibility decisions with positive content (which makes these "Positive" IDs "identical to the regular Judgments, especially since neither are appealable"). See Aleksey Mazurov, *Kommentariy k Federal'nomu Konstitutsionnomu Zakonu "O Konstitutsionnom Sude Rossiyskoy Federatsii"* [Commentary on the Federal constitutional law "On Constitutional Court of the Russian Federation"] (Chastnoe pravo, 2009).

this practice is not merely technical. First, by using IDs instead of Judgments to deliver rulings on the merits, the Court deprives litigants of their procedural right for an open trial (as the RCC Act does not oblige it to conduct hearings to adopt an Inadmissibility decision). Second, and more importantly, Russian general courts tend to read the RCC Act literally and thus do not accept the Positive IDs as belonging to the category of "final" rulings of the Court, and it is only with the final rulings that they have to comply. Arguably, this leads the general courts to ignore the Positive IDs altogether,[6] which only aggravates the compliance issues, already quite serious in Russia.[7]

All of this should make adopting Positive IDs rather impractical for the RCC. Yet despite all the criticism and the attempts to rectify it through the reform of the RCC legal procedure in 2010, the practice pertains—as if the judges found this somewhat awkward instrument useful, and for some reason did not want to let it go. The question I ask is why they did not. To answer this question I describe the origins and development of Positive Inadmissibility decisions as a legal instrument, and show how this instrument is used in practice (and which tasks it serves) by analyzing quantitatively the universe of decisions passed by the RCC in 1995–2015 (N=22334).

Theoretically, the main focus of the article lies with the interplay between a problematic formal institution (rigid procedure of genre assignment at the RCC), and a divergent informal one (practice of delivering rulings on the merits with Inadmissibility decisions) developed as a workaround to the formal institution's deficiency.[8] The curious effect I record is of an informal "workaround" institution's persistence even after the formal procedure is fixed (thus taking away the informal institution's very raison d'être), and despite deliberate attempts to get rid of it. I show that this is due to the fact that with a lapse of time the informal institution acquires additional uses and starts to perform additional latent functions.[9] As a result, even if the formal institution is set right, so that the informal institution is no longer needed to perform the function it was initially developed to perform, it proves impossible to get rid of

6 Petrov, "Vidy resheniy Konstitutsionnogo Suda Rossiyskoy Federatsii, prinimaemykh v khode osushchestvleniya konstitutsionnogo sudoproizvodstva," 26.

7 William Burnham and Alexei Trochev, "Russia's War between the Courts: The Struggle over the Jurisdictional Boundary between the Constitutional Court and Regular Courts," *The American Journal of Comparative Law*, 2007, 381–452; Alexei Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006*, 207–57.

8 Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda," *Perspectives on Politics* 2, no. 4 (2004): 725–40, https://doi.org/10.2307/3688540.

9 Robert King Merton, *On Theoretical Sociology: Five Essays, Old and New* (New York: Free Press, 1967).

since it has managed to take new functional roots. The informal institution persists because it performs these additional newly acquired functions.

The first section below describes how, originally developed as an adjustment to circumvent the dysfunctional formal procedure of genre assignment, Positive IDs proved persistent even after the procedure was repaired and made fully functional in 2010.[10] I argue that the 2010 reforms did not render Positive IDs obsolete because overcoming the preexistent rigid and unworkable institutional structure was not their only function. The second section then advances two largely data-driven hypotheses that the Positive IDs' additional functions are, first, keeping a better relationship with the plaintiffs that the Court considers strategically important by not rejecting their petitions with regular IDs and giving them Positive Inadmissibility decisions instead; and, second, maintaining informal internal judicial hierarchy by giving the more experienced members of the RCC Positive IDs instead of the regular ones more often. To test these hypotheses, I construct a unique comprehensive dataset covering the universe of all RCC decisions adopted in 1995–2015. The second section also describes the data collection. The third section then discusses the method used to analyze the data and presents the results.

2 Dynamic Interplay of Formal and Informal Institutions of Genre Selection in the RCC

The focus of this study is on how and why a stricter formal institutionalization of genre selection (which the Court is provided with exogenously through the RCC Act) is undermined by a divergent informal practice of genre assignment developed by the judges endogenously. Helmke and Levitsky suggest that the interplay between formal and informal institutions can result in four distinct ideal-typical outcomes whereby the informal institutions may prove *complementary*, *substitutive*, *accommodating*, or *competing* in terms of the effects they have on the formal institutions.[11] The two factors that determine which outcome is observed are, first, whether the formal institutions as such are effective in constraining the actors' behavior and determining the outcome; and,

10 This description is informed by a series of in-depth interviews conducted in the RCC in 2012, supplemented with on-site observation from within the Court. The number of interviews is thirty three (thirty five hours in total), including eleven interviews with the RCC judges (two of them in retirement at the time of the interview), six with high-ranking officials of the RCC legal service (generally referred to as the RCC Secretariat), five with judicial clerks, and eleven with the legal service clerks.

11 Helmke and Levitsky, "Informal Institutions and Comparative Politics."

second, how divergent the informal institutions are from the formal ones in the outcomes they advance.[12] It is in terms of these ideal types that I conceptualize the institutional development in the RCC.

The formal procedure regulating the choice of genre for a Court decision in the RCC happened to be ineffective. The importance of genres stems from the fact they essentially serve as labels indicating whether a decision has some significant "constitutional substance" (and is therefore handed on the merits), or if it is merely something more technical—most probably, a dismissal of an inadmissible petition.[13] The choice of genre is therefore very consequential: choosing to deliver an Inadmissibility decision largely means that it will not get any attention within the legal system at large. So unless the Court wishes the case to go unnoticed, it should give it a Judgment.

At the same time, Judgment and Inadmissibility decision as genres also imply using completely different procedures. IDs are delivered in closed judicial deliberation, without engaging the petitioner, and as easily and promptly as possible, thus allowing to adopt as many IDs as the Court needs. Judgments, to the contrary, required (according to the original procedure prescribed by the 1994 RCC Act, only reformed in 2010) a full-blown public hearing to allow the parties to present their positions. To guarantee this, *openness* and *adversary nature* are listed as fundamental principles of the trial (Article 5 of the RCC Act). Furthermore, to ensure that the members of the Court take a careful account of the positions presented by the parties, the Act originally supplemented these principles with a principle of *continuity* of the trial (Article 34) which would not allow the Court to take up another case before it hands down its Judgment on the pending one.

The principles of publicity and continuity obviously limited the throughput capacity of the Court, and indeed the judges began to feel this as soon as in the late 1990s as the Court started to accumulate a backlog of cases it accepted but could not deal with.[14] Dismissing these cases was not an option as, indeed, they contained a "constitutional controversy" and were worthy of a consider-

12 Helmke and Levitsky, 728.

13 In this latter case it can be safely assumed that the case lacked any merits because the RCC has a non-discretionary docket and therefore cannot dismiss a case as long as it complies with certain legal criteria established by the RCC Act. See Ivan S. Grigoriev, "Law Clerks as an Instrument of Court–government Accommodation under Autocracy: The Case of the Russian Constitutional Court," *Post-Soviet Affairs* 34, no. 1 (January 2, 2018): 17–34, https://doi.org/10.1080/1060586X.2018.1408927.

14 Mikhail Mityukov and Stanislav Stanskikh, "Problema Pis'mennogo Razbiratel'stva v Konstitutsionnom Sudoproizvodstve Rossii v Kontekste Zarubezhnogo Opyta" [The problem of using the written procedure in Russia's constitutional adjudication against the background of the foreign experience], *Vestnik Tomskogo Gosudarstvennogo Universiteta*, no. 292 (2006).

ation. At the same time, Inadmissibility decision *as a genre* clearly presented some benefits as it did not necessitate a lengthy oral procedure and, moreover, allowed to deal with as many cases at a time as the Court needed to because the *continuity* principle did not apply to IDs (as it still does not). Given the fact that the Court was anyway forced to choose what cases it could handle physically, and then would have to dismiss all the others (since there would be no way to produce enough Judgments given the procedural constraints), the Court gradually inclined to give article 71 (which describes types of decisions and their purposes) a broader interpretation and find a way to distinguish between the ordinary, or Negative (*Otkaznye*) IDs, and the Positive ones, and to use the latter as quasi-Judgments. This semi-official explanation for this new subgenre's mysterious genesis was fully corroborated in our interviews with the RCC judges (conducted in 2012), and was also spelled out by the then Court chairman Valery Zorkin in an interview he gave in 2003.[15]

In Helmke and Levitsky's terms Positive IDs would therefore have to be classified as a *substitutive* informal institution since their primary purpose was to substitute the ineffective formal procedure of genre assignment with a working informal mechanism to allow the Court to pursue its mission.[16] This however would not necessarily preclude further institutional development whereby the practice of giving Positive IDs would assume additional functions—this time not as much out of operational necessity, but rather as a matter of organizational or political expediency. If that were the case, this would mean that the relationship between the formal and informal institutions is not only that of *substitution*, but also of *competition*: whereas the existent formal procedure would not allow to achieve the goals of the Court effectively, the substituting informal one would not only be a workaround, but also an extension to the goals pursued by the Court.

One clear indication that this might have been the case is the fate of the 2010 reform which aimed at providing the Court with an alternative formal solution to enhance its throughput capacity—the one which would not have the drawbacks of the informal solution used by the Court already.[17] In

15 Valeriy Zor'kin, "Internet-Konferentsiya Predsedatelya Konstitutsionnogo Suda Rossiyskoy Federatsii Zor'kina Valeriya Dmitrievicha 'K 10-Letiyu Konstitutsii Rossiyskoy Federatsii'" [The online Q&A session with the chairman of the Russian Constitutional Court Valeriy Dmitrievich Zor'kin "On the occasion of the Russian Constitution's tenth anniversary"], *Garant*, November 26, 2003, http://www.garweb.ru/conf/ks/20031126/index.htm.

16 Helmke and Levitsky, "Informal Institutions and Comparative Politics," 729.

17 One such adverse effect worth mentioning is that as Positive IDs proliferated in the 2000s the Court started to hold back from issuing Judgments. Initially a formal justification for Positive IDs was that they allowed to avoid wasting time when there already existed an applicable legal position established by the Court in an earlier Judgment which

particular, for the Court the major substantive problem with the Positive IDs is that they are neglected in the regular courts (which, unlike the Constitutional Court, tend to read article 71 of the RCC Act literally and refuse to comply with anything short of a Judgment). Seeking to make the Positive IDs more visible, the Court devised a special labeling scheme and started to tag the Positive IDs with letters "O-P" in 2007 (which stands for *opredelenie pozitivnoe*, a Positive ID).[18] This however did not seem to change the way the regular courts operated, so the judges were also lobbying to legalize the Positive IDs as a binding source of constitutional law (on an equal footing with the Judgments). The draft amendments to achieve that have been prepared at the Court as early as in 2004,[19] but it was only at the 2009 annual meeting with the then President Dmitry Medvedev that a group of the judges officially proposed to amend the RCC Act.

Yet when the Presidential Administration brought its amendments to the Duma in 2010, it took a different approach and introduced a whole new simplified written procedure for adopting Judgments without hearings, while also relaxing the principle of *continuity* to allow processing more than one Judgment at a time. Thus, instead of legalizing the solution already used by the Court, the 2010 amendments gave it an alternative (though maybe even a more straightforward) route to deal with the procedural issue it faced. To use the Helmke and Levitsky terminology, the reform rendered the previously ineffective formal institution of genre assignment effective—the artificial throughput constraints were lifted allowing the Court to adopt Judgments as easily as IDs. As this happened, Positive IDs, if they were a substitutive informal institution

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could be transposed to the case at hand (thus relieving the Court of the burdensome need to hold the full-blown hearings with the more trivial cases). This justification was supposed to serve as a restraint not to abuse Positive IDs to the Judgments' detriment. But then the Court has "acquired a taste" for Positive IDs and sometimes, when handing down a Positive Inadmissibility decision, even did not bother to refer to any of its earlier Judgments (the only possible source of a pre-existing legal position), one of the judges we interviewed confided. As an understanding evolved at the Court that Positive Inadmissibility decisions could be issued simply for their own sake—essentially as a full-fledged genre of its own—they started to crowd out the Judgments as a means of taking decisions on the merits, and in 2006 the number of Judgments hit an all-time low of 10, while the number of Positive IDs skyrocketed to 95.

18 The O-P Inadmissibility decisions entered the RCC lingo as "*opochki*" (a play on words with the OP letters used to label such decisions) which can be reasonably accurately translated as "oopsies".

19 Venice Commission, "*Projet de Loi Constitutionnelle Fédérale Sur Les Modifications et Les Compléments à Apporter à La Loi Constitutionnelle Fédérale Sur La Cour Constitutionnelle de La Fédération de Russie*" (Strasbourg: Commission de Venice, 2004), http://www.venice.coe.int/webforms/documents/?pdf=CDL(2004)077-f.

only intended as a workaround, should have fallen away as useless, especially given the noncompliance issues associated with them.

Curiously, this did not happen as the Court did not quite accept the reform. For sure, it stopped tagging the Positive IDs separately from the regular Negative ones (the O-P tags were gone from the case numbering in the early 2011), and it also began using the written procedure to hand down some Judgments. Yet it did not abandon Positive IDs. Thus, when observing the new post-reform typology of the Court decisions the then deputy head of the Court legal service (generally referred to as the Secretariat) Vladimir Sivitskiy notes that although the old Positive IDs were gone, the new subgenre of what he calls "quasi-Positive IDs" is now used at the Court.[20] Moreover, the Court's official commentary to Article 43 of the RCC Act (written by judge Sergey Knyazev) stated that introducing the new Article 47.1 written procedure would not mean that "the practice of adopting Positive IDs should be dropped".[21] Our interviews conducted in 2012 showed that this was not an idle theoretical speculation: both the judges and their clerks still perceived adopting Positive IDs as a totally viable and relevant case trajectory, and in fact, after a brief period of moderation in 2010 (when only 22 Positive IDs were adopted) this subgenre saw a full-scale renaissance with 42 Positive IDs adopted on average every year in the 2010s (and a whopping 76 in 2014).

In the absence of the technical problem that supposedly gave rise to and justified them, why are Positive IDs still in use? My argument is that in practice Positive IDs were not only a substitutive institution devised to amend the ineffective formal procedure of genre assignment, but also a competing/accommodating institution aiming at achieving some other goals not provided for by the existing formal procedure, and strictly speaking extralegal in their rationale. As the procedure was rendered effective in terms of its overall workability in 2010 (thus presumably making Positive IDs obsolete), the judges still had to

20 Vladimir Sivitskiy, "O Dinamike Tipologii Resheniy Konstitutsionnogo Suda Rossiyskoy Federatsii" [Concerning the dynamics in the Russian Constitutional Court's types of rulings], *Pravo. Zhurnal Vysshey Shkoly Ekonomiki*, no. 2 (2012): 66. Sivitskiy explains that the main difference between a regular Positive ID and a quasi-Positive one is that the latter "contains no instruction [to a regular court] to review the case [brought by the petitioner], and does not imply that the very adoption of such quasi-Positive Inadmissibility decision by the RCC can be used as a grounds for such review [in a regular court]" (p. 67). Overall, this seems more like an instance of the Court diversifying and further institutionalizing the uses it puts Positive IDs to, than a renunciation of the old, and invention of a new practice.

21 Gadis Gadzhiev, ed., *Kommentariy k Federal'nomu Konstitutsionnomu Zakonu "O Konstitutsionnom Sude Rossiyskoy Federatsii"* [Commentary on the Federal constitutional law "On Constitutional Court of the Russian Federation"] (Moskva: Norma, 2012).

rely on Positive IDs to achieve some of their other goals not related directly to circumventing the formal procedure to deal with the caseload more efficiently, but rather rooted in their practices of dealing with each other within the Court, and dealing with other organizations outside it.

3 Hypotheses and Data

Building hypotheses about such additional informal uses the judges could put the subgenre of Positive IDs to, is necessarily grounded in the specifics of the Russian case. The question we have to answer is, its sheer unpracticality in terms of dealing with the caseload aside, what are some other conditions when the judges could want to circumvent the existent rigid procedure of genre selection they were provided with according to the RCC Act, and opt for a hybrid genre of a Positive ID instead? Two easily observable properties of the case that such conditions could relate to are the petitioner and the reporting judge.

Who brings the case should obviously matter for the judges. On the one hand, the judges might want to show greater respect for certain figures (such as the president or members of the parliament as compared to the regular citizens, for instance) simply out of political tactfulness. On the other hand, certain class of petitioners (such as the regular courts) might prove systematically better at bringing the cases of better quality. In both cases the figure of a petitioner should prove a significant predictor of whether a Positive ID is adopted instead of a usual (negative) *Opredelenie*.

Who frames the case for the Court is another important property. According to the procedure, cases that pass the preliminary examination by the clerks are then assigned to a reporting judge who examines the case in more detail and advises the rest of the Court about it. We could expect some judges to prove more authoritative or skillful at persuading their colleagues that the case they examine merits review. The Court would then be inclined to take more cases from certain judges (out of respect for them, or because they manage to push the cases they review more effectively).

The two general hypotheses I will test are therefore that a Positive ID is likelier to be handed down when the case is brought by a more important and influential petitioner; and when it is examined preliminarily by a more authoritative or skillful reporting judge. Note that since the RCC has only gradually developed the instrument of Positive IDs, the effects we observe could also be moderated by time: the way the Court uses Positive IDs to deal with cases promoted by different reporting judges and brought by different petitioners should follow a learning curve.

To test these hypotheses, I construct a unique dataset covering all decisions (both Judgments and Inadmissibility decisions) adopted by the RCC in 1995–2015 (N=22334). Two major sources of data are used. One is the online case catalogue provided by the RCC on its official website. The catalogue lists all the cases along with their full titles and dates of adoption.[22] Most of the time the data on the catalogue alone suffice to establish certain features of the cases, such as the *case number*, *date of adoption*, *genre of the decision* (Judgment or Inadmissibility decision), *type of the ID* (Negative or Positive), *category of the petitioner*, and the *legal norm* she contests. The catalogue tables were downloaded from the RCC Website using the *iMacros* software. All the data needed for analysis were extracted from the tables using automated queries in *Microsoft Excel* software.

The second source of data is the texts of decisions themselves (also available on the RCC website). These were downloaded from the website using the *iMacros* software, converted into the *txt* format using *Xpdf*, and then queried using *grep* command. The main reason the full texts of the decisions were used is that the name of the *reporting judge* (and whether there is in fact one assigned to any given case) can only be found out there. The full-text database was also used to fill in the voids when it came to other information which normally should have been listed on the catalogues but for some reason was omitted. (Thus, for instance, prior to 1998 the case titling practice has not yet settled down, and the information needed for our analysis would not always be supplied in the titles of the cases. This is why all the cases adopted before 1999 were also cross-checked through the full-text database.)

Using these two sources I construct the variables used in the analysis. A number of binary variables are built to describe the genre of each case. *Judgment* is coded 1 if the case ends up with a Judgment and 0 otherwise. Similarly, *Positive ID* variable is coded 1 if the case ends up with a Positive ID. Following the existent understanding that both Judgments and Positive IDs are charged with certain "positive content" (*pozitivnoe soderzhanie*), a composite *Positive Content* variable is constructed which is coded 0 if neither *Judgment* nor *Positive ID* is 1 (this means that the case ended up with a regular "Negative" ID), and 1 otherwise. These are used as dependent variables in the analysis below.

Petitioner is a categorical variable which is assigned integer values from one to seven: 1 = natural persons (Russian or foreign citizens); 2 = organizations; 3 = courts; 4 = regional authorities; 5 = federal or regional ombudsmen (*upolnomochennye po pravam cheloveka*); 6 = federal authorities; 7 = local authorities.

22 These tables are available on the RCC Website here: http://www.ksrf.ru/ru/Decision/Pages/default.aspx (accessed December 19, 2019).

These categories are mutually exclusive and comprehensive.[23] The only issue with this classification is that cases brought by petitioners belonging to different categories are sometimes merged by the Court. *Petitioner* is then coded according to the first petitioner mentioned in the case title. To check if introducing the merged cases into the analysis influences the results I also construct a binary control variable (*Multiple petitioners*) coded 1 when the petitioners bringing the case belong to more than one category and 0 otherwise. Note that these cases are few (N = 138), and omitting them from the analysis proved not to affect the results.

Reporting judge is a categorical variable which takes values from one to 32 (that is the number of judges to ever serve on the Court: 15 of these are still on the bench as of November 2019, while the other 17 have retired). This variable is coded N/A when no reporting judge is assigned to the case.

To test hypotheses about the influence/skillfulness of the reporting judge I also construct two additional variables used in the analysis as proxies for the judge's influence or skill: the first one is the reporting judge's *Length of service* calculated as the difference between the year any given decision (Judgment or Inadmissibility decision) is handed down and the year the judge assigned to report on the case joined the bench. The *Length of service* is therefore the number of full years served by each reporting judge by the time of submitting her report on the given case.

I also divide all the judges into four *Cohorts* depending on the year they joined the bench: 1 for judges nominated in 1991; 2 for judges nominated in 1994–1999; 3 for the Putin judges (nominated in 2000–2007) and 4 for the Medvedev judges (2008–2012).[24] It must be admitted that no empirical

23 An important procedural difference which may apply to different types of petitioners is that Article 125 of the Constitution provides for separate avenues for them to bring their cases to the RCC, depending on the substance of the case and the power of the Court it invokes, and contains different locus standi provisions (and different scope for action for the Court) for different situations. These differences make it significantly easier for the petitioners listed in Article 125(2) (that is, the President, the two chambers of the parliament, groups of Duma deputies or senators totaling at least one fifth of either of the chambers, the federal government, the Supreme Court, and the regional legislative and executive authorities) to get their cases examined by the Court as compared, for instance, to regular citizens (whose complaints are routinely dismissed by the legal service). One might perceive these important differences as pertaining more to the earlier stages of the review process and to "catching the Court's attention" than to the actual way the Court will handle the case after it is assigned to a reporting judge, and, more specifically, which genre the Court will choose for its decision—the question addressed in this article.

24 As of December 2019 no more judges were nominated, even though there are four vacancies on the bench.

research into differences between the judges in different cohorts, and into cohesion within individual cohorts, exists. The importance of the cohorts is therefore merely an assumption. This assumption, however, is informed by two factors.

The first one is the difference between the procedures and actual political processes of nominating judges in different cohorts: the first cohort was entirely nominated by the parliament of the first Russian republic in late 1991 through a politicized multi-round election process. This made the 13 first-cohort judges more ideologically diverse, but also more pronouncedly ideological (which ultimately brought the Court to a shutdown in 1993[25]); the second cohort (1994–1999) was already nominated according to the 1994 RCC Act jointly by the President and the Federation Council, the upper chamber of the Russian parliament, which at the time was composed of the regional governors and heads of the regional legislatures, and heavily oppositional to the then president Boris Yeltsin. The Federation Council has put a lot of effort into not allowing Yeltsin bring into the Court his supporters, and instead only settled on the most neutral compromise candidates[26]—hence a very depoliticized second cohort. Then, although the nomination procedure did not change in 2000, following Vladimir Putin's federal reforms the composition of the Federation Council did. The Council was vacated of the regional governors (the governors and the regional legislatures now send their delegates instead), and the members of the Council grew much less powerful politically and, importantly, lost their independence from the federal executive. As a result, the judges nominated during Putin and Medvedev presidential terms were effectively appointed by the president himself, and only formally rubber-stamped by the Federation Council.

As the pressure to neutralize the presidential connection vanished, the candidates appointed to the Court after 2000 often prove to either have previously worked with, or to have studied law together with the nominating president, which is especially visible with the Medvedev judges—Knyazev, Aranovskiy, Kokotov and Boytsov (all but Kokotov studied and/or worked together with Medvedev in the Leningrad State University). This "personalization" also makes up for the second factor informing the emphasis on cohorts—that the third and, especially, the fourth cohorts prove markedly stronger connected to

25 Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006*; Ivan Grigoriev, "Prichiny Provala Pervogo Proekta Konstitutsionnogo Pravosudiya v Postsovetskoy Rossii" [Why Russia's first post-Soviet attempt at establishing constitutional review failed?], *Politiya. Analiz. Khronika. Prognoz* 69, no. 2 (2013): 39–49.

26 Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006*.

the two most influential political figures of Russia, and might therefore also be more cohesive within.

A special effort was devoted to constructing a variable which would categorize the legal norm contested in each case. This was accomplished through querying the full titles of the cases (which should specify the contested norm) for keywords referring to specific legislation. As a result a set of 40 dummy variables was built each indicating whether the given thematic keywords are present in the case title. The strategy chosen to generate the keywords was first to attribute all the cases as belonging to the "Other" category, and then to sift cases out of this category by picking the keywords characteristic of any next case within the category, querying for these keywords in all the case titles, ascribing all cases containing these keywords to a new category, and then repeating the procedure with the next case within the "Other" category. This way the number of uncategorized cases (belonging to the "Other" category) was reduced to just 11.4% of all cases when the procedure was stopped as no more keywords common for a significantly large number of cases remained visible at this point. It is fair to assume that the "Other" category does indeed contain a number of other smaller categories.

The resulting categorization is rather uneven: along with some relatively big categories (such as the "criminal" cases which made up more than 27% of the docket) there are very small ones (such as those pertaining to international agreements—8 cases in 1995–2015, and only 0.04% of the docket), and reflects the actual thematic unevenness of the RCC docket. The categories also do overlap. To eliminate the overlaps an additional integrated categorical variable *Legal subject matter* is constructed which assigns values from 1 to 40 to different "pure" categories as specified above (including the "Other" category), but also singles out a separate "Multiple" category for cases belonging to more than just one category, and also contains five additional categories describing the existent stable overlaps (such as the "pensions" + "military" overlap—these are the cases apparently brought by the military pensioners). I expect the legal subject matter of a case to affect the decisions taken by the Court and use the *Legal subject matter* as a control variable in the analysis below. It should be admitted though that the variable, given the number of categories in it, is rather bulky and would be hard to interpret as such.

One last variable I construct is *Year*. When used as an interval variable it allows to establish linear time effects. Yet, when we do not expect the effect to be linear the *Year* variable may also be used as a control categorical variable fixing the unobservable effects characteristic of any particular year. I specify whether *Year* is used as an interval or categorical variable when reporting the results of the analysis below.

4 Analysis and Interpretation

Any petition that eventually gets a Judgment should first go through these four stages: it has to be accepted by the legal service as formally admissible;[27] it should be picked by an interested judge for a judicial report (for otherwise it is rejected out of hand with a Negative ID); following the report, it should be decided to proceed with towards a full merit review (alternatively, if the reporting judge sees no controversy in the case, it is simply dismissed); and then it should be decided that the case actually "deserves" a Judgment[28] (or else be given a Positive ID).

To establish how and when the Court invokes Positive IDs I focus on the last two stages of this process. What happens during these two stages is the judge assigned to examine the case in more detail (the *reporting judge*) presents her findings to the rest of the Court and can either recommend simply dismissing the case, or proceeding with it and giving it some form of a "positive" decision (that is, a decision which deals with the substantive issue raised by the petitioner). In the latter scenario, and if the reporting judge is convincing enough, the Court agrees to proceed with the case, but it still remains unclear at this stage what specific genre the "positive" decision will take: only after the Court examines the case in more detail it decides to either give it a Judgment or a Positive ID.

What this means substantively is that there really exists no moment in this procedure when the Court decides to hand down a Positive ID specifically. This decision is never taken. Instead, the Court first forms a more general pool of potentially "meritorious" (or "good") cases, and then decides to take some of these "into hearings", while leaving out the rest as Positive IDs. The latter thus essentially appear to be a residual subgenre, and whether a case ends up with a Positive ID is therefore a combination of these two factors:

27 Grigoriev, "Law Clerks as an Instrument of Court–government Accommodation under Autocracy."

28 It should be admitted that normatively whether a case should be decided with a Judgment is a simple question of whether it contains a constitutional question that falls within the Court's jurisdiction. However, in practice, the judges may differ in their evaluation of whether there is such a question in the case, and other considerations can also muddle this process, making its outcome less obvious and predictable. (On politicization and strategic considerations in the RCC, see e.g. Alexei Trochev and Peter H. Solomon Jr., "Authoritarian constitutionalism in Putin's Russia: A pragmatic constitutional court in a dual state," *Communist and Post-Communist Studies 51*, no. 3 (2018): 201–214.) It is to reflect these practical peculiarities of the review process that the terms "good," or "meritorious," or "deserving a Judgment" are used in this article.

– first, if the case is considered *good enough* to enter the "meritorious" pool (either because the reporting judge finds it genuinely good and manages to communicate this to the Court, or because some other features of the petition intervene and affect the Court's preliminary judgement about the potential merits of the case);
– and, second, if at the same time it is then found *not good enough* to be given a Judgment (probably because the Court has overrated its value initially, and put it on the "positive" pool by mistake).

The strategy I use to observe the correlates of these two events is to test pairs of logistical models predicting, first, if the case is considered "good" by the Court preliminarily (this model can be tested on all cases with a reporting judge assigned, the predicted outcome being if the case ends up with a "positive" decision rather than an ordinary Negative ID); and then if it is found to merit a Judgment (this is tested on the narrower set of all "good" cases—the ones which were assigned a judicial report, and were not then dismissed with a regular Negative ID).

In the further exposition I will focus on predictors related to the reporting judge and the petitioner (as specified in the *Hypotheses and data* section above). The Legal subject matter of the petition is included in all models as a control variable. Time variables are also introduced in all models as controls, but sometimes also within interaction terms. The interpretation of each pair of models (one predicting that the case is considered "good" after the judicial report, and not dismissed; another—that it is ultimately given a Judgment) is that the same determinants may first work towards encouraging the Court to "promote" any given case, but then lose significance at the next stage as we model adopting Judgments (meaning that their effect is only limited and, importantly, does not extend to determine the Court's inclination to hand down Judgments), or even contribute to "demoting" the case during this latter stage by urging the Court to adopt a Positive ID (instead of a Judgment).

4.1 *Older Reporting Judges Get Their Cases into "meritorious" Pool, but Not "into hearings"*

I start by modeling the effects of the reporting judge on the trajectory of the case she reports on. The two effects I expect to observe are, first, that the longer she stays on the Court, the more authority she enjoys among her peers, and consequently the higher her chances of moving the case into the pool of "good" cases should be (but not necessarily of landing up a Judgment); and, secondly, that these effects should differ by cohort, with the earlier cohorts probably being more powerful (the old-timer effect). The models presented in Table 1 test this expectation.

TABLE 1 Effects of the Reporting Judge on Case Outcome

	Dependent variable:	
	(1)	**(2)**
	Case enters the "meritorious" pool	**Case gets a Judgment**
Reporting judge's cohort:		
2nd cohort (1994–1999)	−0.557**	−0.808*
	(0.278)	(0.487)
3rd cohort (2000–2007)	−1.260***	−0.604
	(0.420)	(0.753)
4th cohort (2008–2012)	−1.472**	0.509
	(0.627)	(1.139)
Reporting judge, years on bench	−0.036	0.001
	(0.030)	(0.054)
Cohort x Years on bench:		
2nd cohort	0.038**	0.043
	(0.018)	(0.033)
3rd cohort	0.105***	0.120***
	(0.026)	(0.045)
4th cohort	0.265***	−0.045
	(0.086)	(0.154)
Intercept	0.181	−0.630*
	(0.222)	(0.368)
Observations	2,953	1,224
Log Likelihood	−1,833.775	−673.049
Akaike Inf. Crit.	3,797.551	1,472.098

Note: Generalized linear model (logit). Standard errors in parentheses. Besides the variables reported in the models, all models include as control variables: *Year* (interval, normalized to 0–1 range), *Petitioner, Multiple petitioners* and *Legal subject area*. Significance levels: *p<0.1; **p<0.05; ***p<0.01.

Model 1 shows that both being nominated with an earlier cohort, and having a longer experience on the Court do increase the reporting judge's capacity of landing her cases in the "meritorious" pool, if one takes into account the possibility that a reporting judge belonging to any given cohort could gradually "strengthen" her positions as she spends more time on the Court, even despite possibly being "weaker" in the very beginning. And indeed, in Model 1, the *Cohort* variable's negative coefficients indicate that despite all cohorts starting off significantly weaker than the base category (the first cohort judges, nominated in 1991) when only arriving at the Court, they do get "stronger" with every other year of experience (as the significantly positive interaction term coefficients suggest). The results in Model 1 are robust for model respecification, for introducing additional control variables and, importantly, for year fixed effects. I also plot these effects on Figure 1 below.

But compare these results to Model 2 (predicting whether a case is eventually given a Judgment) where introducing the same interaction term does not seem to produce that effect. Although the model suggests a negative effect of belonging to the second cohort (significant at 90%), and a positive effect of longer experience for the third cohort specifically (the "Putin judges"), none of these prove robust to model respecification, and especially to introducing year fixed effects into the model. Thus, although belonging to an older cohort,

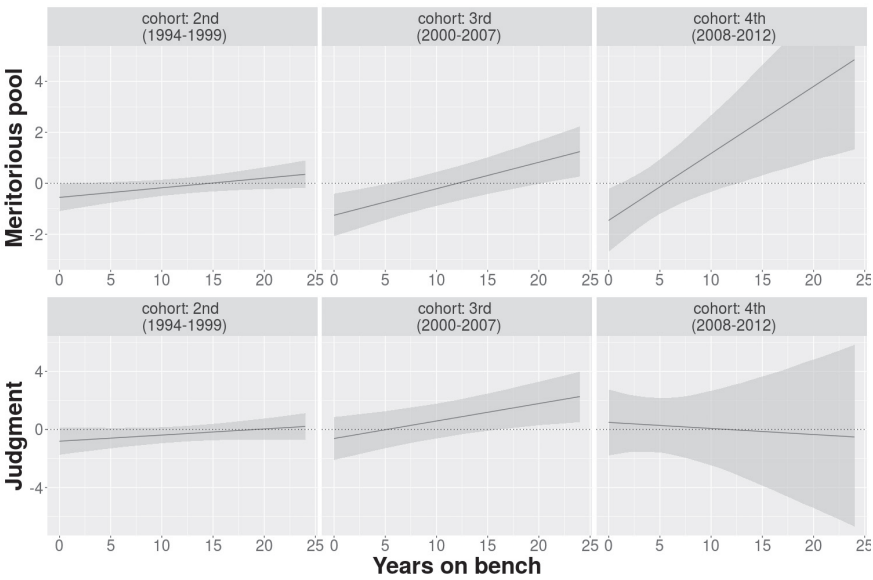

FIGURE 1 Effects of reporting judge on case outcome: interaction terms
Note: Interaction effect estimates with 95% confidence intervals (based on Table 1).

and having a longer experience on the bench does increase the chances of pushing the case into the "meritorious" pool, it does not matter when it comes to deciding whether the case should be given a Judgment.

4.2 *Privileged Petitioners Get Their Cases into "meritorious" Pool, but Not into Hearings*

Just like the more experienced judges nominated within an older cohort seem to have more influence in making the cases they report on get into the "meritorious" pool (but not necessarily "into hearings"), so should the more authoritative petitioner categories: the *Federal* and *Regional authorities*, regular *Courts* and the *Ombudsman*. As Figure 2 attests, this is in fact the case: these four "privileged" categories do have better chances of their cases getting a merit review and not being discarded with a regular Negative ID immediately after the judicial report.

At the same time, *Local authorities* (admittedly, the least powerful level of government in Russia)[29] fare as good as *Citizens*—the base category in this analysis; while *Organizations* actually prove to even have significantly less chances of getting their cases accepted into the "meritorious" pool. This is instructive: the reason why *Organizations* prove to have even worse chances at

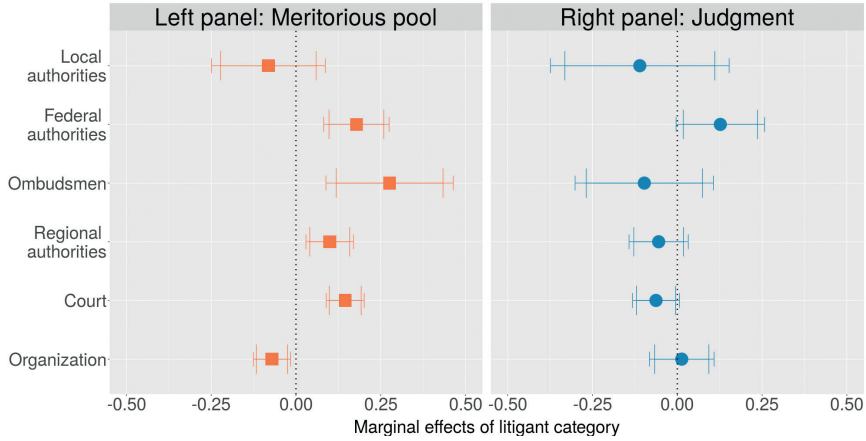

FIGURE 2 Estimates of effect of petitioner on case outcome (marginal effects)
Note: Effect estimates with 95% (thin) and 90% (bold) confidence intervals based on the logit regression models. Control variables include: *Multiple petitioners, Year, Legal subject matter*.

29 Vladimir Gel'man and Sergei Ryzhenkov, "Local Regimes, Sub-National Governance and the 'Power Vertical' in Contemporary Russia," *Europe-Asia Studies* 63, no. 3 (May 1, 2011): 449–65, https://doi.org/10.1080/09668136.2011.557538.

this stage than *Citizens* is that there exists a systematic bias in their favor on the earlier stage—when judges pick cases for reports. Additional statistical analysis (not reported in this article) shows that judges are significantly more interested in preparing judicial reports on cases brought by *Organizations* (maybe expecting these cases to be better quality since they are often prepared by professional lawyers), so they tend to pick too many of these. This systematic generosity means the likelihood of mistakenly accepting a case brought by an *Organization* for judicial report is higher. And indeed, as the judges delve into the cases while preparing their reports, they will sometimes discover that their earlier enthusiasm is premature, and will systematically get rid of the cases falling short of their expectations, with Negative IDs.

Note, however, that *Organizations* are not the only petitioner category privileged during the earlier stage of picking cases for judicial reports—the cases brought by the *Courts*, *Federal*/*Regional authorities*, and *Ombudsmen* also have significantly better chances of getting a judicial report assigned to them. And yet, as Figure 2 attests, unlike the *Organizations*, the earlier systematic generosity towards these categories is not corrected after the judicial reports are submitted. This can mean either that the judges are so much more perceptive towards these categories when choosing to report on the cases brought by them, and hence make no mistakes (in which case one wonders why not do the same with the cases brought by *Organizations*); or that the Court has a policy not to correct earlier mistakes in relation to petitions brought by those petitioners by simply rejecting them with a regular Negative ID, and instead moves them up into the next level.

Importantly, at the next level (when the Court is only left with the "good" cases it did not reject with a Negative ID), and as follows from the right-hand side panel in Figure 2, the only privileged petitioner category to still get the status premium is the *Federal authorities*, while all other categories at this last stage prove indistinguishable from the *Citizens*, and *Courts* actually fare worse, this variable's significantly negative coefficient indicating that the cases submitted by the regular courts end up with Positive IDs (rather than Judgments) systematically. This reflects the fact the RCC routinely uses Positive IDs to draw attention to all cases brought by the regular courts and falling short of qualifying for a full-blown Judgment.

Overall, this means that the Court uses the subgenre of Positive IDs as a backup option for the cases brought by the privileged petitioners (*Courts*, *Federal*/*Regional authorities*, and the *Ombudsmen*). Even already after the judicial reports elucidate the actual value of each petition to the Court, the judges still prove biased against dismissing these cases with regular Negative IDs (as they do when a subpar petition is brought by an *Organization*). On the

one hand, they know they will still retain the option to dismiss the case later on when deciding whether the case merits a Judgment, and do not want to act hastily. On the other, since Positive IDs are insistently characterized by the Court as equipotent to Judgments, using them instead of the regular Negative IDs might be considered as more respectful—a factor worth reckoning when dealing with the privileged petitioners.

4.3 *Using Positive Inadmissibility decisions to reward privileged petitioners evolves over time*

We also expect that, since Positive IDs as a genre (and the very practice of first discarding "bad" petitions with Negative Inadmissibility decisions, forming a pool of all "good" petitions, and then separating this pool into Judgments and Positive IDs) only evolved incrementally, the petitioner effects we observe in Figure 2 might have strengthened over time. I test this hypothesis by complementing the models above with interaction terms which show whether the relationship between petitioner category and likelihood of the Court putting the case into the "meritorious" pool (and later handing down a Judgment) is moderated by time variables. The results are presented in Figure 3 below.

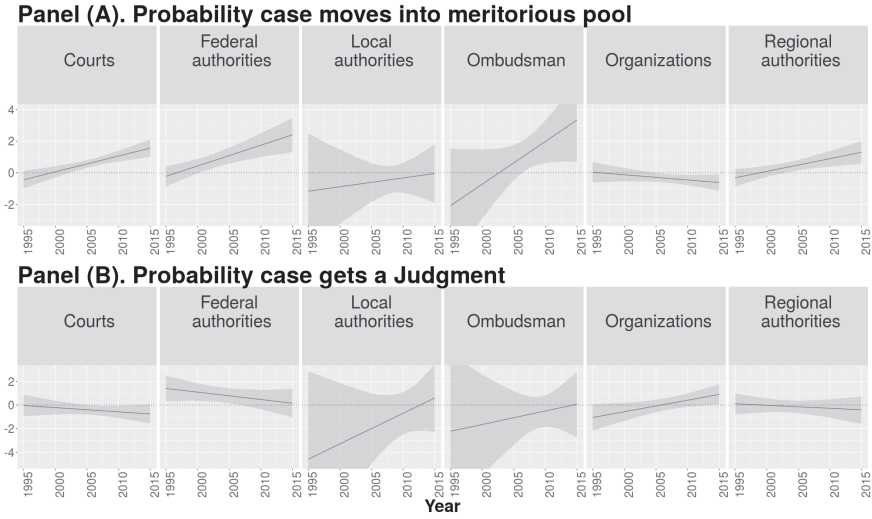

FIGURE 3 Change in case outcome over time by petitioner category
Note: Interaction effect estimates with 95% confidence intervals. The estimates (both panel A and B) calculated based on logit regression models. Covariates in both models include: *Petitioner, Year, Multiple petitioners, and Legal subject area*.

The moderator variable here is *Year*. This reflects our assumption that the variation over time should be linear. As we can see in Figure 3.A, the four privileged categories (*Courts, Federal authorities, Regional authorities*, and *Ombudsmen*) started off on an equal footing with the *Citizens* (the base petitioner category), but have over time significantly improved their chances of getting into the "meritorious" pool. Just like in the models presented in Figure 2, the *Local authorities* appear to be no different from *Citizens*, and *Organizations* become less likely to get into the "meritorious" pool over time. (Importantly, this actually happened against the background of *Citizens*, the base category, also having their chances of getting into the pool deteriorate between 1995 and 2015, which can be inferred from the significantly negative coefficient of the *Year* variable in the model plotted on Figure 3.A, not represented on the graph.)

That the petitioner categories seem to have achieved such a separation between the privileged and non-privileged categories only with the lapse of time is indicative of the evolutionary nature of this process. This dynamics is also visible in the similar model which uses time-petitioner interaction terms to predict the likelihood of a Judgment (Figure 3.B). Although here we observe no clear-cut distinction between the "privileged" and "non-privileged" petitioner categories, there is a visible diminishing trend with the cases brought by the two most important interlocutors of the RCC: the *Courts* and *Federal authorities*.[30] Indeed, as the practice of giving Positive IDs consolidates, the

30 Relating to the federal authorities and to regular courts is important for different reasons. The relationship with the federal authorities is important because they can amend the RCC Act, and, moreover, there has been attempts to do that against the Court's will. For instance, in 2001 amendments were discussed and even approved by the Duma committee to only allow the Court to register whether a contested legal norm conforms to or contradicts the Constitution, without providing its binding interpretation or giving any prescriptions to other courts, citizens or state authorities. It took quite some effort by the Court to fence off this attack (see Alexei Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006*, 88). Before that, in 1993, also on the level of the federal authorities it was debated briefly if the Court should be shut down for good, its powers transferred to the Supreme Court (see Alexei Trochev, *Judging Russia: Constitutional Court in Russian Politics, 1990–2006*, 75). Both instances are of course well known. The federal authorities are also the Court's major interlocutor in its capacity of the "negative legislator," and the Court relies on the federal authorities both in introducing new legislation in compliance with its earlier decisions, but also for signaling whenever a piece of legislation is discussed in the parliament and the Court can, following a request from a group of deputies, strike it down or give a binding interpretation of it *before* it becomes a law. This makes even the less significant opposition deputies important for the Court. With the regular courts, their usefulness for the RCC comes from the fact the regular judges could refer cases to the Court thus providing it with information about the state of the legal

courts' chances of receiving a Judgment (initially no different from the base category) decrease, and by 2015 the *Courts* appear to be significantly more likely than *Citizens* to get a Positive ID (rather than a Judgment). Similarly, the *Federal authorities* which initially have significantly better chances of getting a Judgment, with a lapse of time become no different from *Citizens*. Both of these transformations are attributable to the evolution of Positive IDs as a distinct subgenre: as the RCC developed understanding that Positive IDs are equivalent to Judgments in their value, it felt it could start using them routinely to hand down decisions on the cases brought by the courts while still signaling their importance to the rest of the judiciary; and it stopped shying away from giving IDs to Federal authorities (since these would be marked as Positive, and therefore, in the judges' opinion, equivalent to a Judgment).

Another notable trend is how, as the practice of giving Positive IDs to cases not good enough for a Judgment, but coming from a privileged petitioner, took roots; and consequently as the chances of getting into the ultimate stage deteriorated for the *Organizations*—how the *Organizations*' chances of getting a Judgment actually increased over time. One reason that happened is that, as the Positive Inadmissibility decision subgenre evolved, it was more and more the case that when a case brought by an organization was decided to be good enough not to be dismissed with a Negative ID after a judicial report, there was no hidden agenda to this decision: the case actually had merits and a constitutional controversy to be resolved. Its chances of getting a Judgment therefore increased over time.[31] Curiously, this did not happen to the privileged petitioner categories that have higher chances of getting into the meritorious pool. For these categories, getting into the meritorious pool does not seem to serve as a guarantee of getting a Judgment in the future the way it does for Organizations, because too many petitions brought by the privileged petitioners are drawn into the meritorious pool in the first place.

field, but also effectively giving it a power of deciding concrete cases (which it does not have) and thus setting quasi-precedents for the judicial branch. This makes regular courts an important interlocutor for the RCC.

31 The fact the likelihood increases significantly over that of the base category (*Citizens*) is probably also reflective of yet another learning process—the one within the Russian legal profession. As the lawyers learned to work with the RCC, and the quality of the cases they brought gradually increased (both as they were framing their cases better, and as the practice of the RCC accumulated and it became clearer which cases were more likely to be accepted by the Court), so did their chances of getting a Judgment.

5 Conclusion and Discussion

Conventional wisdom has it that the Positive IDs' only rationale was to overcome the rigidity of the formal judgment procedure that the RCC was provided with originally and allow the Court to hand down more decisions on merits, even though its capacity to produce Judgments specifically was inhibited by procedural constraints. Yet, even despite the fact the procedure was reformed to facilitate processing the cases and adopting Judgments, the Court still has not dropped its practice of handing down Positive IDs.

My analysis shows the organizational inertia is not the only reason the Court clings onto Positive IDs. Indeed, a neat mechanism to circumvent the existent rigid genre structure as they are, they prove to have many more clever applications the Court could take benefit of. In particular, the RCC uses Positive IDs to pay tribute to the older and more celebrated judges when they are assigned a case for report, and to reward more respected and powerful petitioners when they bring subpar cases that fall short of being given a Judgment. Positive IDs are therefore used by the Court for structuring its internal deliberations and maintaining the informal hierarchy within the Court, but also for maintaining good working relationship with the "privileged" petitioners: regular courts, the ombudsmen, federal and regional authorities. This is particularly important as it allows the Court to secure better access to information about the state of the legal field and law enforcement practices, to enhance compliance with its decisions, but also generally to be in these petitioners' good books.

Importantly, the more general temporal dynamic we observe in the Russian case is for the Court to find and develop new uses to such informal instruments *gradually*: if originally the justification for Positive IDs quite plausibly could have only been overcoming the dysfunctionality of the formal genre assignment procedure in terms of the Court's throughput capacity, the range of uses the Positive IDs are put to extended over time. This means more generally that some informal institutions of that kind developed by the courts internally could in fact be multipurpose institutional devises performing a number of latent functions besides their manifest ones.[32] Positive IDs therefore are not only interesting as a curious feature of the Russian constitutional justice, but also as a more general example of an institutional invention developed by a court informally to apprehend the institutional environment it is embedded in, and to modify it to serve goals beyond the court's mission as specified in the legal acts.

32 Merton, *On Theoretical Sociology: Five Essays, Old and New*, 114.

The answer to the question I ask in the title is therefore that ultimately the good cases are dismissed because they prove not good enough. Curiously, some of these subpar cases are given Positive IDs instead of regular ones in order to elevate their status for extrajudicial reasons. The Court thus proves rather versatile in the uses it puts Positive Inadmissibility decisions to. At the same time, since the hypotheses tested in this article were necessarily grounded in the knowledge of the case, it was impossible to reveal and test all potential applications of the Positive IDs here. One logical possibility, however, is that just as the Court uses Positive IDs to "promote" some of the more important yet subpar cases from the category of regular Negative IDs, so, too, it could sometimes use them to "demote" some of the perfectly good cases that merit a Judgment, down into a Positive ID—either in order to avoid being too conspicuous about the way it treats certain legal issues, or possibly to avoid confrontation with the government on cases where it finds a legal norm it examines unconstitutional. Positive Inadmissibility decisions (as a subgenre both deemed equipotent to a Judgment by the Court and, strictly speaking, still formally remaining an Inadmissibility decision) could in principle allow the Court to keep a lower profile like that, concealing some of its merit rulings under the guise of technicality, but still allowing the judges to consider resolved the ticklish or possibly dangerously politicized issues they would rather avoid tackling.

One particular institutional environment specific of modern day Russia that should in principle amplify the Court's propensity to use the Positive IDs this way—as an instrument to avoid deciding on politically or otherwise controversial cases—is electoral authoritarianism, a type of political regime "that permits certain institutions normally associated with democracy, such as elections and political parties, to exist, while remaining authoritarian in the basic patterns of power distribution and reproduction",[33] thus putting such institutions (including courts) into a difficult situation where they are supposed to act independently while still keeping in mind that the powerful executive can exert some pressure or punish them for misconduct. As an instrument that could in principle allow the RCC to avoid dealing with such "hard cases",[34] Positive IDs could be considered one tool used by the Court for "tactical balancing" under conditions of electoral authoritarianism.[35] Studying Positive

33 Grigorii V Golosov, "Authoritarian Party Systems: Patterns of Emergence, Sustainability and Survival," *Comparative Sociology* 12, no. 5 (2013): 618.

34 Ronald Dworkin, "Hard Cases," *Harvard Law Review* 88 (1975): 1057.

35 Diana Kapiszewski, "Tactical Balancing: High Court Decision Making on Politically Crucial Cases," *Law & Society Review* 45, no. 2 (June 1, 2011): 471–506, https://doi.org/10.1111/j.1540-5893.2011.00437.x.

IDs more closely could therefore also further our understanding of judicial survival under autocracy.[36] This, however, remains a subject for future research.

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36 Tom Ginsburg and Tamir Moustafa, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008); Tamir Moustafa, "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science* 10, no. 1 (2014): 281–99, https://doi.org/10.1146/annurev-lawsocsci-110413-030532.