

INSTITUTIONAL VIABILITY AND HIGH COURTS: A COMPARATIVE ANALYSIS

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Abstract

Theory: The development of judicial viability involves a process by which constitutional courts attain institutional stability and value as an end in itself. Institutional stability denotes the courts' capacity to withstand environmental shocks, while value involves entities acquiring a distinctive mission and identity in the newly-democratized governmental system. More precisely, we argue that constitutional courts attain functional (substantive) viability when they attain high levels of three features: differentiation (unique character and mission), autonomy (functional insularity), and durability (institutional resilience and adaptability). The emergence of judicial viability, therefore, lies in the interplay of these features over time.

Hypotheses: Courts with greater degrees of differentiation, autonomy, and durability will possess higher levels of viability.

Methods: We choose several indicators of the component features of viability, measure them across twenty-eight post-communist courts on an annual basis, and then employ factor analysis to reduce the eleven variables of our judicial viability model to their underlying dimension. To produce the judicial viability score, we use the Bartlett weighted least squares method to produce factor scores. Additionally, we follow the same procedure and create two uncorrelated variables using the first two eigenvalue and eigenvector pairs that are linearly related to the original judicial viability models.

Results: Factor analyzing the eleven indicators of judicial differentiation, autonomy, and durability presents strong support for the stated hypotheses. Our results indicate that constitutional courts operate as viable institutions when all three components (differentiation, autonomy and durability) are attained at meaningful levels. A single factor score representing judicial viability explains 89% of the sample variance and accounts for all three component dimensions. Therefore, our results demonstrate that a single underlying dimension of judicial viability exists and that it is possible to examine the extent of institutional development in the judicial through a systematic analysis of formal provisions over time.

Conventional wisdom acknowledges that an effective judiciary is important to the development and consolidation of democratic governments. This is due, in part, to the judiciary's institutional responsibility to ensure the rule of law and establish a check on the political branches of government. Yet, as Gibson, Caldeira and Baird (1998) recognize, since courts do not possess the power of the 'purse' or the 'sword' they are dependent on the goodwill of other actors for support and compliance. This dependence begs the question of how observers can determine when the judiciary becomes a distinct force within governments. Stated another way, when can we confidently claim that the judiciary has emerged as a viable institutional actor in democratic politics?

Many scholars have approached similar questions by examining the guarantees of judicial independence located within constitutions (Smithey and Ishiyama 2000; Epstein, Knight and Shvetsova 2001). Additionally, other scholars have relied on single case studies to address questions of judicial behavior (Tate and Haynie 1993; Haynie 1994; Sabalinus 1996; Iaryczower, Spiller, and Tommasi, 2002). While these analyses provide rich and detailed information, they are limited in their ability to generate explanations based on temporal changes. Consequently, important factors are neglected by cross-sectional designs. For example, in Slovenia the post-communist government adopted a constitution in 1991, which included provisions that defined the power of the Constitutional Court. However, the Court itself was not established until 1994, with the passage of the Constitutional Court Act. Thus, scholars relying on commonly used indicators of judicial power (based on constitutional guarantees) would conclude incorrectly that the Slovene Constitutional Court possessed some functional ability to affect policy almost three years before the Court existed. This is not a random phenomenon, since a large proportion of states establish a 'political space' for constitutional courts within their constitutions, and then

enact laws at a later point in time to create the court itself. Unless researchers delve deeper, and look beyond specific constitutional provisions to the dates of implementation, our inferences about the nature of judicial power will remain incomplete. Stated another way, if we wish to understand the variation across courts in terms of their authority, we must examine how they develop over time.

Our paper attempts to fill this gap by examining the institutional development of the judiciary in the post-communist states of Eastern Europe, former Soviet Union and Mongolia. Specifically, we examine the viability of judicial institutions by focusing on temporal differences between the establishment and implementation of the judicial infrastructure. We argue that in order for judiciaries to play a significant role in democratizing states, they must develop certain levels of organizational sophistication and autonomy that enable the institutions to withstand exogenous influences and/or pressures. Thus, we attempt to determine the point at which institutional mechanisms converge at a sufficiently high level to allow the judiciary to play a role in the performance of the new democratic regime. By focusing on the degree of judicial institutionalization across a number of post-communist states, our paper attempts to discern the favorable conditions under which viable judiciaries emerge.

A FRAMEWORK FOR JUDICIAL INSTITUTIONALIZATION

Despite an almost universal consensus regarding the importance of judicial independence, no single definition of this concept exists. Larkins (1996) argues that judicial independence is contingent on three factors: impartiality, political insularity and institutional stability. Though the first two components pertain to individual judges, the final aspect places an emphasis on the courts' functional relationship with other political actors within the system. Thus, "significant levels of independence [are] contingent on the degree to which the judicial institution has a distinct and discrete role... to regulate the legality of state acts, enact justice, and

determine general constitutional and legal values” (1996: 611). Courts, if they are legitimate and viable institutions, must be able to operate freely, uninhibited from other branches of government. As an example, he examines the Costa Rican Supreme Court whose judges display some features of impartiality and insularity. Yet, the additional trait that has contributed to the Court’s substantial political power is its considerable institutional structure, “which is respected by other actors as a separate, autonomous entity whose rightful and legitimate purpose in the determination of what is legally acceptable” (1996: 610). This suggests the importance of institutionalization as a significant factor in determining judicial effectiveness.

A majority of research focuses on the development of an institution over a considerable period of time (Schmidhauser 1973; McGuire 2004). This makes intuitive sense because the greater an organization’s age, the more likely it develops distinguishing structures and capabilities that allow it to exercise substantive political influence. Yet, the physical age of an institution does not capture completely its viability. As Huntington (1968: 12) acknowledges, institutionalization is a process by which an organization “acquires stability and value as an end in itself.” Though the acquisition of stability (as Huntington describes) increases over time, it is also possible to instill stability within more recent institutions; and several governments in recently transitioning democracies encounter choices over the viability of the judiciary. It is therefore necessary for scholars to develop a theoretical framework to examine this phenomenon.

McGuire (2004) measures the underlying concept of judicial institutionalization using indicators that he subsumes under three important qualities of a “viable” institution: differentiation, durability, and autonomy. According to McGuire’s operationalization, *differentiation* of the judiciary from the political environment is the principal indicator of an institutionalized political organization (2004: 130). Differentiation is the establishment of clear boundary lines that mark and define the judiciary’s unique role (2004: 130). Without a clear

identity, distinct from other political organizations, it is difficult for citizens to perceive the judiciary as a viable and/or effective institution. Thus, our first hypothesis states that courts possessing greater levels of differentiation will operate as viable institutions more than courts possessing low levels of differentiation.

Institutional growth and sophistication can also be expressed in terms of *durability*—an ability to persist and to adapt to change (Gurr 1974). Resilience and flexibility, therefore, are marks of a stable policy maker. If the judiciary can maintain its role in the ebb and flow of democratization, this serves as a measure of its integration into the political system. Our second hypothesis therefore argues that courts with greater levels of durability will possess higher levels of institutional viability.

Finally, an institutionalized court should be appropriately insulated from the other branches of the national government. McGuire (2004: 132) argues that *autonomy* is operationally indicated by the “presence of procedures protecting independence of the institution vis-à-vis other political actors and institutions.” Calibrating judicial capacity and institutional objectives thus hinges on some measure of the court’s ability to chart its own policy course, independent of the legislature or the executive. Our final hypothesis therefore states that courts with greater autonomy will possess higher levels of judicial viability.

McGuire’s results – derived from an analysis of the levels of differentiation, durability, and autonomy in the U.S. Supreme Court – suggest that institutional arrangements have considerable implications for the historic role of a nation’s high court. His principal argument is that step-by-step institutional growth and sophistication of the Court serves as a primary determinant of the justices’ political power in the United States (2004: 129). This suggests that judicial institutionalization is most appropriately conceptualized as an ongoing, dynamic process.

We build upon McGuire's work by examining the judicial institutionalization across several newly democratic states. Over time, some transitioning societies may empower their courts; others may continue to look at them with apprehension and distrust. We expect constitutional courts to operate as viable institutions when all three component indicators (differentiation, durability, and autonomy) are attained at meaningful levels. Larkins (1996) and Garro (1993) argue that this is likely to happen only if other state actors recognize that the legal bounds of the system cannot be transgressed for the achievement of partisan political gains and if they willingly empower the high court to monitor the submission of the state to constitutional law.

Following McGuire's framework, we offer our conceptual judicial viability model; based on aspects of differentiation, durability, and autonomy. Each of these three aspects should contribute positively to judicial viability. Differentiation is operationalized as *physical location*, *voluntary judicial association*, and *qualification requirements*. The initial aspect is a common measure of differentiation (Schwartz 1993: 33). A constitutional court that has its own independent facility provides evidence that the other political actors recognize the unique importance of the court's mission and are consequently committed financially to its success.¹

Voluntary judicial association is the second aspect of a court's distinct identity.² Because judicial associations in many countries have been primarily employee unions – established to lobby for better compensation and other benefits – judicial scholars rarely treat them as agents for judicial reform. Yet, voluntary judicial associations contribute to the institutional identity of

¹ Alternatives to an independent facility include housing the court with the Ministry of Justice, another court building, or within the Parliament.

² A judges' association is defined broadly to refer to organizations formed by judges to represent their interests, promote their professional training, and protect their judicial independence. Such organizations include judges' unions and professional associations.

constitutional courts by enhancing judicial professionalism, developing and advocating for a code of judicial conduct, and developing judicial leadership.

The final aspect of differentiation involves the *qualification requirements* for positions on the constitutional (high) court. This aspect includes the extent to which court members are recruited from among the legal scholars and judicial experts within a country. Those qualifications provisions that require potential judicial candidates to undergo rigorous legal exams and possess extensive judicial experience should contribute to the perception that the court is part of a unique epistemic community, with clearly delineated entry requirements.

We operationalize judicial durability through four variables: financial commitment to the court, the relative term-length of judges, control over internal procedures, and the court's age. Given the absence of reliable data on the budgets of constitutional courts, we rely on the proxy measures *adequacy of equipment* and *availability of support staff* to serve as surrogate measures for the level of institutional infrastructure, which tap the same underlying concept as a court's budget. The second aspect of durability examines the *relative term* of judges. Those individuals without life tenure and/or with relatively short terms of office will likely be more susceptible to outside influences, and generally more constrained by political pressures than judges with life tenure.³ Institutionally, those courts containing judges who do not possess life tenure are less resilient to change and more open to external pressures.

Selznick (1957) identifies another related aspect of an organization's durability: the presence of internally-established norms and regularized procedures for decision-making. We thus use the variable *rules of procedure* to gauge whether the internal court norms are determined exogenously or endogenously. Since a number of courts in civil law countries must submit their rules of procedure for legislative approval – or have their rules directly determined

³ Several scholars make similar arguments about the importance of life tenure (see Tate and Vallinder 1995; Larkins 1996; Schwartz 2000; Smithey and Ishiyama 2000, 2002; and Helmke 2002).

by the legislature or ministry of justice – this aspect measures the extent to which courts are able to adjust to changing legal and political circumstances. The final aspect of institutional durability focuses on the physical age of the court. This aspect measures classical institutionalist insights that older institutions are more resistant to environmental shocks than their younger counterparts.

We operationalize autonomy across four aspects: the extent of the court's judicial review powers, budget control and allocations, nominating procedures, and rules of access. Becker (1970) suggests that independence may be highly contingent on a court's *powers of judicial review*. Though Herron and Randazzo (2003) discover no direct connection between the power of judicial review and independence, they note that constitutionally-embedded powers of judicial review may indirectly enhance the perception of the judiciary as an independent institution.⁴ Thus, we include a measure which captures the extent of judicial review powers given to the constitutional court.

The second aspect of institutional autonomy focuses on the *budget allocation process*. This is a commonly used measure of judicial independence, which examines the extent to which the constitutional court has direct control over its budget allocations. Our third aspect of institutional autonomy examines the *nomination procedure* for judges. Generally, countries that allow multiple actors to participate in the nomination and/or appointment process increase their constitutional court's independence relative to those countries that provide limited opportunities for political contestation of judicial nominees (see Holland 1991 and Smithey and Ishiyama 2000). We therefore include a measure that captures how many institutional actors participate in the nomination process.

The final aspect of autonomy involves the *rules of access* to the judiciary. These rules (often referred to as provisions for standing), affect the jurisdiction courts possess over litigants.

⁴ Furthermore, Rogers and Vanberg (2002) and Vanberg (1998, 2001) note the informational advantage gained by judicial institutions through the possession of abstract and concrete judicial review.

More flexible standing provisions, allowing for direct appeals by individuals and minority parties in the legislature, often facilitate decisions which provide for expansions of rights sometimes contrary to governmental positions (Schwartz 2000: 34). We expect courts which possess greater jurisdictional flexibility to be more likely to act in a fashion that promotes their institutional objectives. Simply put, as access increases the autonomy of the court should also increase.

RESEARCH DESIGN

We examine the constitutional courts of twenty-eight states in Eastern Europe and Central Asia;⁵ tracing their institutional development through 2005. These states offer an excellent opportunity to test the emergence of viable judicial institutional for three important reasons. First, there is a clearly marked break with the previous political system – all of the states transitioned to electoral democracies rather abruptly, between 1989 and 1992. Second, due to their common totalitarian experiences and direct/indirect control by the Soviet Union, these legal systems were considered an instrument of government and, subsequently, the courts were often utilized and perceived as an extension of the Communist Party (Schwartz 2000). Finally, by limiting the sample to post-communist states we are able to control for the potentially unique combination of elements in the legal culture that are not present in other regions.

Data are compiled from country websites, the American Bar Association Judicial Reform Index, the Inter-American Development Bank, Amnesty International, Transparency International, the Law Library Resource Xchange, the Conference of European Constitutional Courts, and the EU's Open Society Institute. To ensure we measure the dynamic changes within judicial institutions, we code all of the component variables for each country on an annual basis. Thus, each country was coded during each year after its transition to democracy; the data

⁵ Specifically, we look at following post-communist states: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Mongolia, Poland, Romania, Russia, Serbia and Montenegro, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

collected capture any changes in the formal provisions or legal rules pertaining to the organization and function of constitutional (high) courts.⁶

METHODOLOGY

We argue that a combination of factors contributes to the institutional viability of the judiciary. Accordingly, we employ factor analysis to reduce the eleven variables in our theoretical model to a single statistical measure, “that is linearly related to the original variables” in the model (Agresti and Finaly 1997: 630). We label this underlying, unobservable random variable the *judicial viability factor score*. Since this measure is calculated based on annual changes to the courts, we are able to capture the dynamic evolutionary process judicial institutions undergo during democratic transitions.

We rely on the principal factor approach offered by Johnson and Wichern (1998). While some reservations remain over the appropriateness of factor analysis, both Agresti and Finlau (1997) and Johnson and Wichern (1998) argue that part of these reservations originate from the initial development of the procedure and are not caused by any deficiencies in its application.⁷ This principal factor approach is a modification of principal components analysis. The main difference is that one does not assume the communalities equal one in the principal factor approach. Instead, we rely on the squared multiple correlations as estimates of the communality to compute factor loading. Therefore, in the model we hypothesize that a single common factor accounts for all of the elements in the sample correlation matrix \mathbf{R}_r . In this view, \mathbf{R}_r is factored as

$$\mathbf{R}_r = \mathbf{L}_r^*$$

Where $\mathbf{L}_r^* = \{\ell_{ij}^*\}$ are the estimated loadings.

⁶ See Appendix I for specific coding rules for each variable.

⁷ Additionally, the lack of powerful computing resources slowed the development of factor analysis as a statistical method.

The principal factor approach then uses the estimates

$$\mathbf{L}_r^* = [\sqrt{\lambda_1^*} \hat{\mathbf{e}}_1^*]$$

$$\Psi_i^* = 1 - \sum_{j=1}^m \ell_{ij}^{*2}$$

where $(\lambda_1^* \text{-hat}, \hat{\mathbf{e}}_1^*)$, are the eigenvalue-eigenvector pairs for \mathbf{R}_r .

To produce our judicial viability score variable, we use the Bartlett weighted least squares method to produce factor scores. This procedure produces a new variable based on the eigenvalues. In other words, the scores are a linear transformation of the original variables that are centered at 0. Factor scores are obtained for the j th case by the following computation using estimates \mathbf{L} -hat, $\mathbf{\Psi}$ -hat, and $\boldsymbol{\mu}$ -hat = \mathbf{x} -bar as the true values:

$$\mathbf{f}_j\text{-hat} = (\mathbf{L}'\text{-hat} \mathbf{\Psi}^{-1}\text{-hat} \mathbf{L}\text{-hat})^{-1} \mathbf{L}'\text{-hat} \mathbf{\Psi}\text{-hat} (\mathbf{x}_j - \mathbf{x}\text{-bar})$$

Using this procedure, we produce *judicial viability factor scores* for each of our 428 court-year observations. Since the measure is calculated based on annual changes to the courts, we capture the dynamic evolutionary process that judicial institutions undergo during democratic transitions. The single factor score explains 89 percent of the sample variance. Additionally, we follow the same procedure and create two uncorrelated variables using the first two eigenvalue and eigenvector pairs that are linearly related to our original judicial viability models. This results in a set of two factor scores that explain 99.8 percent of the sample variance. We combine the two scores by the proportion of variance they explain individually and create *combined judicial viability scores* for our 428 court-year observations. This variable is formed in the following manner:

$$\textit{combined judicial viability scores} = [(\text{proportion of 89\% sample variance explained by factor 1})(\text{factor score1}) + (\text{proportion of 99.8\% sample variance explained factor2})(\text{factor score2})]$$

$$\textit{combined judicial viability scores} = [(.892)(\text{factor score1}) + (.109)(\text{factor score2})]$$

RESULTS AND DISCUSSION

Using the theoretical and methodological framework explained above, we examine annual data related to twenty-eight constitutional courts in post-communist Eastern Europe and Central Asia. Table 1 provides the results from the factor analysis.

Insert Table 1 Here

Our first hypothesis argues that a principal component of a viable court is its *differentiation* from other political units (i.e. the establishment of clear boundary lines which mark its distinctiveness). Examining the results in Table 1 indicates the three operational measures load heavily onto one communality (i.e. a single factor score).⁸ This single, underlying dimension explains approximately 52% of the variance in the *physical location* of the court, 64% of the variance in *professional qualifications* and also explains approximately 63% of the variance in *judicial association*. These results suggest that the *differentiation* of the court from its institutional environment represents one of the dominant sub-dimensions of judicial viability.

The second hypothesis suggests that *durability* is an important component of viability; and is operationalized as a function of the *relative terms* of office for judges, control over their internal *rules of procedure*, the adequacy of their *equipment and staff* (to measure financial support for the court), and the *court's age*. The results of the factor analysis provide support for this hypothesis. The single communality explains a relatively large proportion of the variance for the four aspects: 76% for *equipment and staff*, 65% for *court age*, 61% for *rules of procedure*, and 81% for *relative term*. This indicates that an extensive and adequate administrative

⁸ From hereon, we focus on the results obtained from the single factor model and refer our readers to Table I for the results of the two factor model. We believe that such focus is appropriate both theoretically (since we argue that judicial viability represents a single underlying dimension of judicial institutional growth) and methodologically (since our single factor model explains almost 90 percent of the total variance and none of our variables load significantly on the second factor).

framework, with modern equipment and a reasonable ratio of support staff per judge⁹ contribute considerably to the institutional viability of the judiciary. Additionally, it should not be surprising that the aspect *court age* led heavily on the single factor score, since the oldest post-communist judicial institutions (both the Hungarian and Polish courts are 16 years old) are twice as old as the youngest (the Azeri court is eight years old). This result reinforces the conventional wisdom that institutional viability increases over time.¹⁰ Yet, a relatively short lifespan does not automatically hinder the attainment of judicial viability; the Russian and Latvian constitutional courts perform quite well despite their youth (see Figure 1 below). In sum, the data indicate overall that the viability of judicial institutions is highly contingent (but not entirely dependent) upon their institutional durability.

Insert Figure 1 Here

Our third hypothesis, that the viability of constitutional courts is enhanced by higher degrees of institutional *autonomy*, also receives strong empirical support. The first factor loadings for *judicial review*, *rules of access* (standing), *nominating procedures*, and *budget control* are .747, .655, .608, and .705 respectively. Furthermore, these variables all load minimally or negatively on the second factor, indicating that a single factor score captures the essential commonality among the four components of *autonomy*.

It is interesting to note that *relative term* (an aspect of institutional durability) exhibits the largest coefficient in the single factor model (.808), indicating the importance of stability (or volatility) in the internal composition of the judiciary. Additionally, the impact of *equipment and staff* (also an indicator of durability) is substantial (.759). This supports Huntington's (1968)

⁹ At least two support personnel per judge.

¹⁰ However, it is important to note that by the end of 2005 the mean age for the post-communist constitutional courts is 12 years, and a vast majority of courts cluster in the ten- to fourteen-year-old range. We thus caution our readers in interpreting these results and reiterate that the physical age of the institution is a necessary but not a sufficient condition for institutionalization.

argument that organizations which are poorly staffed and equipped cannot manage their workloads efficiently and are consequently unable to perform in the characteristic manner of institutional entities. Similarly, the factor analysis confirms that the breadth of *judicial review* (which loads at .747) is one of the most significant contributions to the institutional development of courts. If courts possess extensive jurisdiction over constitutional issues (i.e. abstract and concrete judicial review), the process of institutionalization is greatly facilitated.

Finally, it is worth noting that the measure of *physical location* (an aspect of differentiation) possesses the lowest scoring coefficient in the model (.521). While separate judicial buildings provide some degree of differentiation between the courts and other governmental institutions, their relative importance is marginal. Stated another way, the data reveal that a court building is simply a hollow shell unless it houses a capable and professional institution.

To summarize, the factor analysis of various indicators of judicial differentiation, autonomy, and durability presents support for the hypotheses stated earlier in this paper. We hypothesize that constitutional courts operate as viable institutions when all three component indicators (differentiation, durability, and autonomy) are attained at meaningful levels. According to our analysis of annual court data across several countries, the myriad of aspects pertaining to these three components represent a single, underlying dimension of viability which explains 89 percent of the variance in judicial institutions. These results offer a more substantive implications as well; with the identification of a single dimension, it is possible to measure the extent of institutional development within courts through a systematic analysis of formal provisions over time.

DEVELOPMENT OF CONSTITUTIONAL COURTS: AN ILLUSTRATION

While the findings reported above are interesting in themselves, an important question remains: how well does the substantive interpretation of the judicial viability score fit the empirical data? In other words, do we observe that those countries possessing high judicial viability scores are more institutionally stable (and potentially more functionally independent) than those countries possessing lower scores? The scope of this paper does not allow us to directly test whether judicial viability affects the rate at which courts strike down laws, or the extent to which the public perceives the courts as more “trustworthy”. However, we select three individual cases – Albania, Ukraine, and Uzbekistan – to illustrate how the process of institutional development unfolds and to demonstrate the utility of our approach for a more systematic analysis of judicial institutionalization and its impact.

To the extent that judicial viability is adequately measured, the levels of institutional development of a constitutional court should correspond favorably with its ability to become a distinctive and respectable force within a fledgling post-communist regime. By this logic, modest levels of judicial viability should constrain the court while greater degrees should enhance its impact on the legal and political environment. To illustrate this point, we select one case (Albania) in which the constitutional court attains a significant degree of institutional development by the end of 2005, one in which the court oscillates at modest level of institutional development (Ukraine), and one where the institutional framework remains undeveloped (Uzbekistan).¹¹

Insert Figure 2 Here

Albania

Following the collapse of communist rule in 1991, Albania operated on the basis of a packet of interim constitutional provisions, passed in sections by a two-thirds vote of the

¹¹ Also see Appendix II, Table 2 for a full list of judicial viability scores and ranks by country.

Assembly (Albania's legislature). The constitutional laws passed in 1991 and 1992, which set up the Constitutional Court, required the issuance of other acts in order to regulate its activity and organization. It took the Assembly almost six years to finally adopt the law "On the Organization and Functioning of the Constitutional Court of the Republic of Albania" (nr. 8373; promulgated July 15, 1998), which established a legal base for issues regarding the activity of the Constitutional Court. More important, the 1998 law clarified provisions concerning the appointment of constitutional judges, the Court's judicial review competencies, and the subjects that may put the Constitutional Court into motion.

It is fair to say that until 1998 the Court operated under a variety of constraints, including Albania's civil unrest of January 1997 which led to a significant destruction of its infrastructure and the closing of the Court for several months.¹² Since 1998, however, the situation for the Court has improved significantly. The Court became considerably more confident in exercising its authority, rendering one of its most important decisions to date in 1999, in which it declared the death penalty provided by the Criminal Code as incompatible with the Constitution (V-65/99). Figure 3 provides a useful illustration of this dynamic.

Insert Figure 3 here

Yet, despite the fact that the 1998 law solidified the Court's role in the Albanian political system, it also required the passage of additional legal acts for its implementation. Consequently, in February 2000, the Assembly adopted the law which regulates issues such as the submission of the applications, the preliminary review, and the adjudicating procedures. Although the 2000 law reduced the Court's authority to review certain types of individual constitutional complaints

¹² See Scott Carlson, "A Study of the Judicial System in the Republic of Albania," prepared for the World Bank 21 (1997). Since then, the government has renovated the building of the Constitutional Court several times and updated its network capabilities in 2003.

(compared to authorities foreseen by the 1998 provisions), the role of the Court has become more evident to citizens as indicated by a steadily increasing workload (see Figure 4 below)

Insert Figure 4 here

At the end of the observation period (2005), it is apparent that the Constitutional Court has attained significant institutional stability and commitment from the lawmakers. Figure 3 shows that the late 1990s and beyond constitute a new era in the Court's development. It now has vast constitutional jurisdiction over cases, issues, and litigants. The Council of Europe Venice Commission and other monitoring agencies agree that guaranteed terms of office for judges are respected in practice and none of the former Constitutional Court judges were pressured into early retirement. In practice, all appointments to the Constitutional Court, as envisaged by the original law, are made from among highly qualified professionals (scholars with a degree in "higher legal studies") with at least fifteen years of experience in the legal profession.¹³ Additionally, the Constitutional Court administers its own budget, although the Assembly can modify the draft budget submitted annually by the Court's President. Table 3 shows that the level of funding for the Constitutional Court has been stable in recent years.

Insert Table 3 here

Most important for the purposes of this illustration is that the constitutional court design and institutional infrastructure outlined by the constitution-drafters were ultimately promulgated by the Assembly, albeit with significant delays in the first years of the Court's existence and in a piecemeal fashion. The fact that the Court commenced its activities in 1992, but institutionalization did not follow until several years later (from 1997 to 2000, with a more incremental pattern emerging thereafter) reinforces our argument that unless researchers delve deeper, and look beyond specific constitutional provisions to the dates of implementation, our

¹³ Law on the Organization and Functioning of the Constitutional Court of the Republic of Albania, art. 7.1, Law No. 8577, 4 FLET. ZYRT. 101-22 (2000)

inferences about the development of judicial institutions will remain incomplete. Stated another way, if we wish to understand the variation across courts in terms of their authority, we must examine how they develop over time.

Ukraine

The Constitutional Court of Ukraine (CCU) scores in the middle range of our judicial viability index (16th out of 28 countries, with a score of 0.82 on our single factor judicial viability score in 2005). The Court's institutional development remained at relatively low levels until the late 1990s and its progress since then has been incremental and modest. Notably, it is one of the youngest courts in our sample (9 years of operation), which may in part explain its modest levels of institutionalization. Figure 5 highlights the process of institutional development of the CCU. It also illustrates our earlier argument—unless we look beyond constitutional provisions to the dates of their implementation, we would incorrectly conclude that the CCU attained some functional ability as early as 1996, while in reality it existed only on paper.

Insert Figure 5 here

Prior to the adoption of its first post-Soviet constitution on June 28, 1996, Ukraine functioned under a series of interim constitutional provisions. The 1996 Constitution guarantees basic human rights and mandates the separation of powers into legislative, executive, and an independent judiciary.¹⁴ As Figure 5 shows, it is no surprise that the major upswing in the Court's institutional development corresponds with the implementation of relevant provisions of 1996 Constitution. The CCU consists of 18 justices (one of the largest courts in our sample), with the President, the Verkhovna Rada of Ukraine (VRU; legislature), and the Congress of

¹⁴ The Constitution was amended in December 2004 (see BVR, No. 2/2005, art. 44) as part of a compromise with the outgoing government. These amendments do not affect the judiciary, but they attempt to transform Ukraine into a parliamentary form of government, providing for a stronger Verkhovna Rada of Ukraine (which will appoint and dismiss the Prime Minister and most other ministers) while significantly reducing the authority of the President. Due to their perceived controversial nature and alleged violations of procedural guidelines during their adoption, the President, on a number of occasions, had hinted at a possibility of appealing the constitutionality of these amendments before the Constitutional Court of Ukraine.

Judges¹⁵ each appointing six of them for a single 9-year term.¹⁶ Requirements for the CCU justices include having attained the age of 40, professional experience of no less than 10 years, and residence in Ukraine for the past 20 years. Regional experts, however, voice concerns regarding the qualification requirement of “work experience in the sphere of law,” which is apparently not limited to having practiced before the court. No legal definition of what constitutes such experience exists, and it is often interpreted loosely.

The CCU is responsible for drafting its own budget and administering the funds once they are approved by the legislature.¹⁷ Table 4 shows that in practice the budget of the Court has been steadily increasing. It seems that the Ukrainian government is at least financially committed to the creation of a viable constitutional court.

Insert Table 4 here

Additionally, each justice of the CCU has a judicial assistant and a research consultant, who must be citizens of Ukraine and have higher legal education.¹⁸ The justices may independently select their assistants and research consultants, who may not be hired or removed without a justice’s consent.¹⁹ Notably, while these staffing provisions came into force in 1997, they were not fully implemented until late 1998. Furthermore, as of 2001, the CCU appears to be fully equipped with the computers and other necessary equipment, in large part due to the continuing external funding by the American Bar Association and the Council of Europe. These factors contribute to the institutional development of the CCU, but tell only part of the story.

¹⁵ Ukraine’s judicial administration system is extremely convoluted, with numerous bodies sharing the responsibilities for different aspects of court administration. The highest bodies in this system are the Congress of Judges of Ukraine and the Council of Judges of Ukraine (COJ), its executive arm.

¹⁶ Const., art. 148.

¹⁷ LJS arts. 41(11), 50(11); LCC art. 31.

¹⁸ Const., arts. 40.2, 49.2; LCC arts. 25., 49.2.

¹⁹ See CCU Procedural Regulations § 74.3. It is interesting to note that no other judge or court in Ukraine is given this level of administrative control.

One of the traits of an institutionalized organization is its active participation in the relevant policy-making arenas. The annual changes in the total number of cases adjudicated by the court, therefore, should be outward reflections of its level of institutional development. How has the Ukrainian Constitutional Court fared in this regard and how well does its level of activity correspond to our judicial viability scores? One can readily observe in Figure 6 that the CCU has not emerged as an active, viable policy-maker.

Insert Figure 6 here

We believe that this low level of activity is partly rooted in the fact that although anyone has the right to file a petition with the CCU requesting the official interpretation of the law, only the President, at least 45 VRU members, the Supreme Court, the Ombudsmen, and regional legislatures may file a constitutional appeal regarding the constitutionality of a legal act.²⁰ There is also a higher threshold of admissibility for requests for official interpretation of legislation submitted by individuals as opposed to the government entities. Individuals must demonstrate “a practical necessity” in having an official interpretation of a law which may result in violation of their rights.²¹ This lack of individual standing to petition the CCU directly means that it is not a fully effective mechanism for protecting individual rights. Additionally, many individuals mistakenly believe that the CCU is the highest appellate jurisdiction in the country and have filed 3,497 “appeals” against general court judgments with it since 1997.²² It is thus also possible that the Court has been burdened by a number of “frivolous” petitions, which contributes to its low number of adjudicated cases.

Furthermore, while the CCU is typically perceived as acting fairly and independently when issuing its decisions, it has been criticized sharply in a number of notorious decisions

²⁰ Constitution, art. 150; Law on the Constitutional Court, art. 40.

²¹ Law on the Constitutional Court, arts. 93-94.

²² See Mykola Selivon (CCU Chairman), *The Constitutional Court of Ukraine: 9th Anniversary*, 4 BULLETIN OF THE CONSTITUTIONAL COURT OF UKRAINE (2005).

issued in late 2003. These included affirming constitutionality of draft constitutional amendments that were supported by the Presidential Administration but regarded by independent domestic and international experts as a significant step backwards in the establishment of the rule of law; and interpreting the Constitution as allowing then-President Leonid Kuchma to run for office for the third time. Finally, although the CCU's decisions are usually respected in practice, the government has been able to find ways around some decisions on unconstitutionality of certain laws, complying only with those decisions it deems favorable and disregarding the others.²³ As a result of these instances of non-compliance by the government and CCU's own controversial decisions, therefore, it is likely that the CCU is not viewed as a fully viable forum for constitutional adjudication. As we have argued earlier, high levels of institutionalization should lend both legitimacy and potency to judicial decisions, whereas low or modest levels of development should indicate limited impact.

The year 2005 was crucial year for the CCU and Ukraine more generally. The new democratic government that came to power following the 2004 Orange Revolution has been unable and at times unwilling to address the numerous systemic deficiencies in the administration of constitutional justice. For instance, when the constitutionally prescribed tenure of nine justices expired in late 2005 and the CCU was left with only 5 justices (there were 4 pre-existing vacancies), the VRU's commitment to the Court was tested and proven to be lacking. The remaining number of justices was insufficient to constitute a quorum for either instituting new proceedings or for adjudicating pending cases (see Table 5 below). The President and the Congress of Judges promptly appointed nine additional justices, but the Verkhovna Rada, for

²³ For instance, American Bar Association's *Ukraine 2006 JRI* report mentions that the CCU has issued a number of essentially repetitive decisions on partial unconstitutionality of annual budget laws, including those related to the judicial budgets. Nevertheless, every subsequent budget law includes the same language as that which was deemed unconstitutional. In another example, the government, in a matter that was pending before the European Court of Human Rights, failed to inform it about a relevant decision by the CCU. Unfortunately, no legally specified mechanisms are available to the CCU to compel the government to comply with its decisions.

purely political reasons, has stalled the mandatory swearing-in ceremony for these justices for almost nine months.²⁴ The Court was thus paralyzed and unable to perform its functions from October 2005 until August 2006.²⁵

Insert Table 5 here

In sum, we believe that the Court's partial institutional sophistication and continuous institutional volatility corresponds quite favorably to our theoretical predictions. Empirically, it also appears that our judicial viability index for CCU does a good job at approximating its institutional development and impact. To reiterate, we are not ready to claim at this point that court's institutional development is causally related to its impact on society and its activity levels; we merely note that anecdotal evidence seems to support our assertions and invite further research to address the causality issue.

Uzbekistan

Since its proclamation of independence from the former Soviet Union, Uzbekistan has made little progress towards institutional development of its constitutional court. The 1992 Constitution provides for a presidential system with separation of powers between the executive, legislative, and judicial branches, but in practice, president Islam Karimov dominates Uzbek political life. Karimov, the former First Secretary of the Communist Party of Uzbekistan, has held power since he was first elected in December 1991. He has reportedly used a variety of devices, including suppression of the media and of opposing political parties, referenda that were

²⁴ Apparently, the VRU was interpreting its right to control swearing-in of the justices as a veto power against appointees of the President and the Congress of Judges. Most observers agree that this was constitutionally impermissible. Interestingly, the possibility of such a situation was forewarned of as early as two months prior to its occurrence. See Bohdan A. Futey, *Crisis in the Constitutional Court of Ukraine: A Court Without Judges?*, 34 YURYDYCHNY VISNYK UKRAINY (2005).

²⁵ As of August 4, 2006, Verkhovna Rada appointed Holovin, Kolos, Markush, and Ovcharenko as Constitutional Court judges. President expects the Court to resume work on August 7, 2006. (Source: Unian News Agency; <http://www.unian.net/eng/lastnews/>).

considered neither free nor fair by international observers, and violations of human rights, to retain control. Uzbekistan has received consistently low democracy and rule of law ratings from Freedom House and Polity Project, and the 2005 U.S. Department of State *Country Report on Human Rights Practices* concluded that, “Uzbekistan is an authoritarian state... with limited civil rights.”²⁶ The most recent parliamentary elections in 2004 (for the seats in the lower chamber of the parliament), fell significantly short of international standards.

The Constitutional Court (CC) was established in December 1995 pursuant to “The Law on the Constitutional Court” enacted in April of that year. The Court is self-managing and funded directly by the Ministry of Finance, but does not have its own line-item in the national budget.²⁷ It has 22 staff members, a well-maintained building, and has been sufficiently equipped since 2000. The existing interviews with CC judges seem to point to the fact that the regime has lived up to its financial commitment to the Court.

The Court consists of seven members, one of whom must be from Karakalpakstan region. The CC judges must either be lawyers or political figures. Historically, however, all judges appointed to the CC have been lawyers. Judges are selected for a five-year term, subject to re-appointment. Judges are nominated by the President and then “confirmed” by parliament. In practice, all of the candidates nominated by the President were appointed. Notably, an ex-President becomes a member of the court for life.²⁸ While this situation has not presented itself, this provision circumvents the appointment process established for the other candidates.

²⁶ U.S. Department of State *Country Report on Human Rights Practices 2005 - Uzbekistan* (released by the Bureau of Democracy, Human Rights, and Labor, March 2006). Available at: <http://www.unhcr.org>.

²⁷ Questions concerning the percentage of the national budget allocated to the court system cannot be addressed because the national budget is not a publicly available document. During his interview with the JRI assessment team in 2002, the CC representative was unwilling to divulge the exact amount of salary, noting that salaries in Uzbekistan are generally quite low, but at least the salaries CC judges are paid are comparable to those paid to other high level government officials.

²⁸ Constitution of the Republic of Uzbekistan, 8 December 1992, Art. 97.

Parliament (and various leaders and subgroups), the President, the chair of the Supreme Court, the chair of the High Economic Court, the procurator general, and three judges of the CC may present cases for consideration to the court, but individual citizens cannot.²⁹ Citizens have reportedly applied to the court for review of decisions by the regional and district level procuracies, but the CC has declined those cases, citing a lack of jurisdiction. The CC representative who met with the *Uzbekistan 2002 JRI* assessment team recognized that the CC has not been a very active organization, rendering only 10-15 decisions per year.³⁰ Unfortunately, official statistics are not readily available so it is impossible to trace the changes in the Court's caseload over time as we have done with Albanian and Ukrainian caseloads. Furthermore, although the CC publishes its decisions and guiding opinions in their magazine or newsletters, international experts point out that the opinions are usually brief, superficial, and provide little basis for academic or public scrutiny. Thus, despite financial security and sufficient staff and equipment (variables that loaded highly on our single factor judicial viability score), the Court remains weakly institutionalized as Figure 7 indicates. This finding reinforces our argument that judicial viability is contingent upon the totality of individual components of autonomy, durability, and differentiation (rather than the presence of any one individual aspect).

Insert Figure 7 here

We are sure that by now the readers are questioning whether judicial institutional development is simply a function of the country's experience with democracy—the more democratic a country, the more likely it is to develop a viable constitutional tribunal. This may

²⁹ Law on the Constitutional Court, 1995, Art. 19.

³⁰ Some experts believed that the CC caseload would increase in 2002 because it was given authority to review decisions and instructions of the Prosecutor General to ensure they comply with the constitution (pursuant to Art. 13 of the new Law on the Procuracy, NO. 257-II, 21 August 2001). Despite this enhanced jurisdiction, however, no cases of this type have made it to the CC. Furthermore, neither lawyers nor lower court judges could cite one key CC decision that had an important influence on civil rights or liberties. Nor could they cite one decision that had arguably been made against the interests of the executive power. Several referred to the CC as a “dead” organization (see *Uzbekistan 2002 JRI* report, available at <http://www.abanet.org/ceeli/>)

occur because extensive political and civil rights (typically associated with liberal democratic regimes) signify support for the idea that the constitutional court has a particular role in enforcing them (Smithey and Ishiyama 2002; Tate 1995; Ginsburg 2003). Additionally, regime's recognition of extensive political and civil rights may provide greater opportunities for citizens and politicians to bring cases to the court, enhancing and solidifying its role in the country's political system (e.g., Epp 1998; Tarrow 1999). Thus it is possible that as a general rule viable constitutional courts emerge in an environment characterized by extensive protection of political rights and civil liberties. Fairly high judicial viability scores for Slovenia, Poland, Lithuania, Latvia, and Hungary—all considered consolidated democratic regimes using conventional criteria—seem to support this possibility. In closing, therefore, we briefly address this question.

Figures 8 and 9 provide some answers regarding democracy-judicial viability relationship. We use Freedom House's 2005 cross-national data from the *Freedom in the World* dataset which measures political rights and civil liberties to proxy the level of democratic freedoms for countries in our sample.³¹ These figures indicate that although there is a weak linear trend between judicial institutionalization and democracy, the existence of viable constitutional courts is not limited to countries with consolidated democratic regimes.

Insert Figures 8 and 9 here

The most-viable constitutional courts in our sample—courts of Slovenia, Albania, Russian Federation, Poland, and Georgia—vary significantly in their protection of political rights and civil liberties, yet all five exhibit very high relative levels of institutional development. This suggests that the nature of the political regime alone has a very modest role in facilitating the

³¹ Freedom House measures democratic freedoms according to two broad categories: political rights and civil liberties. These categories contain numerical ratings between 1 and 7 for each country, with 1 representing the most free and 7 the least free. To facilitate interpretation, we invert the scales; using the inverted scale, 1 represents least free and seven represents most free rating. (FH data and methodology is available at www.freedomhouse.org.)

development of viable constitutional tribunals and that other factors must be considered to derive a more nuanced understanding of the process of judicial institutionalization.

While it is simply impossible to address all of the potential uses and limitations of our measure of judicial viability in such a short overview, it is clear that—at least on the surface—the judicial viability factor score can provide a useful tool to judicial researchers in identifying the underlying dimension of judicial institutionalization. In future analyses, we plan to use the judicial viability scores to directly test the extent to which formal provisions of autonomy and durability affect the institutional stability and performance of high courts over time.

Additionally, we plan to evaluate a number of factors that could help explain variations in the levels of institutional development which we find here. Given the potential benefits of comparative cross-sectional and temporal data illustrated here, our approach should help explain lingering questions on the precise nature of judicial independence and behavior.

Table 1. Factor Loadings for Judicial Viability Models

Variables	<i>One Factor Model</i>		<i>Two Factor Model</i>		
	Factor 1	Uniqueness	Factor1	Factor2	Uniqueness
Physical Location	0.521	0.729	0.521	0.024	0.728
Professional Qualifications	0.637	0.595	0.637	0.089	0.587
Voluntary Association	0.629	0.604	0.629	-0.119	0.590
Relative Term	0.808	0.348	0.808	0.186	0.313
Court's Age	0.654	0.572	0.654	-0.341	0.456
Equipment and Staff	0.759	0.425	0.759	-0.429	0.241
Rules of Procedure	0.609	0.630	0.609	0.253	0.566
Judicial Review	0.747	0.442	0.747	0.133	0.425
Nominating Procedures	0.608	0.630	0.608	0.146	0.609
Budget Control	0.705	0.503	0.705	-0.206	0.461
Rules of access (standing)	0.655	0.571	0.655	0.316	0.471
Eigenvalue	4.951		4.951	0.603	
Proportion explained	0.890		0.890	0.1083	
Cumulative Proportion Explained	0.890			0.9983	

Table 2. Judicial Viability Factor Scores by Country (2005)

Country	Court's Age	Judicial Viability Single Factor Score	Country Rank
Albania	14	1.241618	2
Armenia	10	0.5352716	23
Azerbaijan	8	1.012508	12
Belarus	11	0.3722482	24
Bosnia-Herzegovina	9	0.8210006	15
Bulgaria*	14	1.122196	6
Croatia	14	1.023971	11
Czech Republic**	13	0.6329863	20
Estonia**	13	0.6347734	19
Georgia	11	1.163984	5
Hungary**	16	1.112321	7
Kazakhstan	10	0.1132943	25
Kyrgyz Republic	11	0.6924847	17
Latvia**	9	1.07954	10
Lithuania**	13	1.096318	9
Macedonia	14	0.9529772	14
Moldova	11	0.6223841	21
Mongolia	13	0.6623628	18
Poland**	16	1.169066	4
Romania*	14	0.9916757	13
Russian Federation	11	1.229261	3
Slovakia**	13	1.109212	8
Slovenia**	14	1.306895	1
Tajikistan	10	0.1092363	26
Turkmenistan	13	-0.4898041	28
Ukraine	9	0.8210006	16
Uzbekistan	10	-0.2631566	27
Serbia-Montenegro	11	0.57873398	22

Note: For Serbia-Montenegro, 2003 data is used

Country ranks range from 1 (highest) to 28 (lowest)

* = EU candidate

** = EU member

Table 3. The Budget of the Constitutional Court of Albania, 2001-2004

Year	Amount in Lekë	Amount in USD	Percentage of State Budget
2001	68,181,000	649,343	0.04%
2003	97,000,000	923,809	0.07%
2004	91,030,000	866,952	0.06%

Sources: Law on the State Budget for 2001, Law No. 8718, 46 FLET. ZYRT. 2049-53 (2000); Law on the State Budget for 2003, Law No. 8983, 88 FLET. ZYRT. 2597-601 (2002); Law on the State Budget for 2004, Law No. 9165, 108 FLET. ZYRT. 4631-34 (2003).

Table 4. The Budget of the Constitutional Court of Ukraine, 2003-2006.

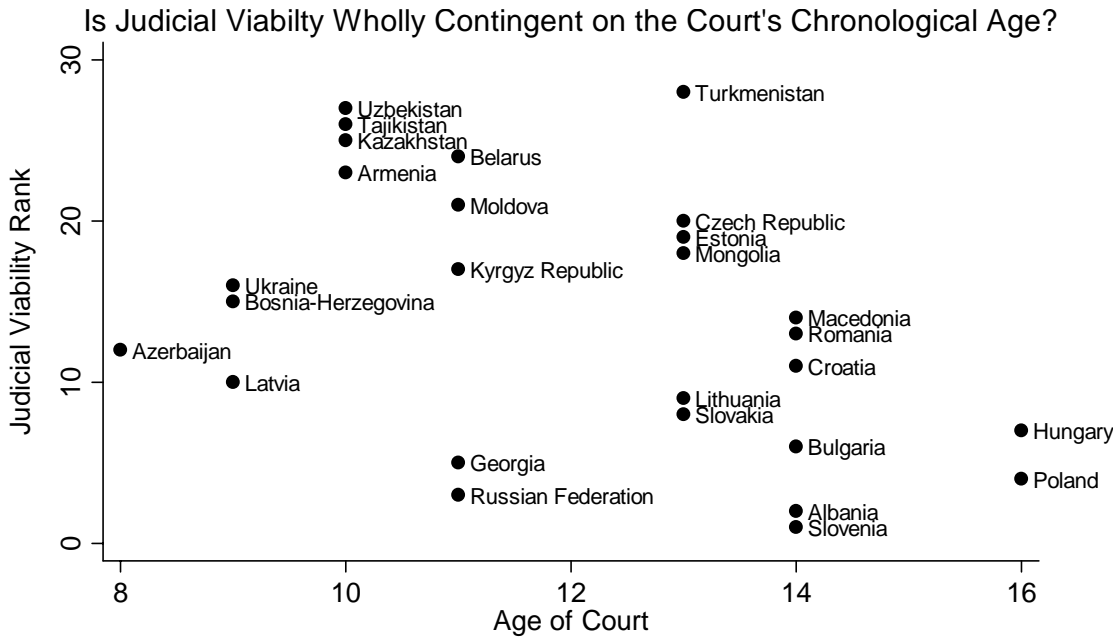
	2003	2004	2005	2006	2006/2005, % increase
Constitutional Court budget (million UAH)	14.8	19.4	29.6	37.8	27.7
Total judicial system budget (million UAH)	461.4	689.2	1,195.10	1,608.00	34.5
Total judicial system budget (million US\$)	87.7	130.9	239	321.6	--

Sources: Law on the State Budget for 2003, Annex 3 (BVR, No. 10-11/2003, art. 86; *last amended* BVR, No. 16/20054, art. 236); Law on the State Budget for 2004, Annex 3 (BVR, No. 17-18/2004, art. 243; *last amended* BVR, No. 5/2005, art. 122); Law on the State Budget for 2005, Annex 3 (BVR, No. 7-8/2005, art. 162; *last amended* BVR, No. 7/2006, art. 85); Law on the State Budget for 2006, Annex 3 (BVR, No. 9-11/2006, art. 96).

Table 5. Vacancies on the Constitutional Court of Ukraine, 2005-2006.

Statutory number of judges	Vacancies	
	2005 (Oct.)	2005 vacancies as %
18	13	72.2

Figure 1



Note: 2005 data presented. Judicial viability ranks range from 1 (high) to 28 (low).

Figure 2

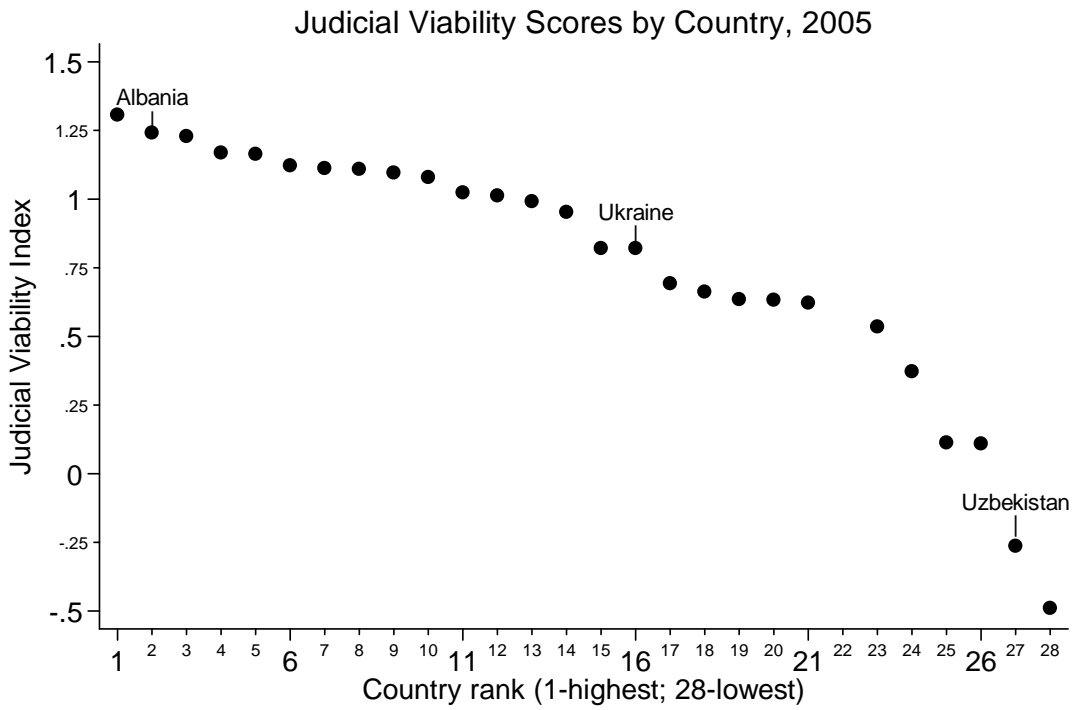


Figure 3

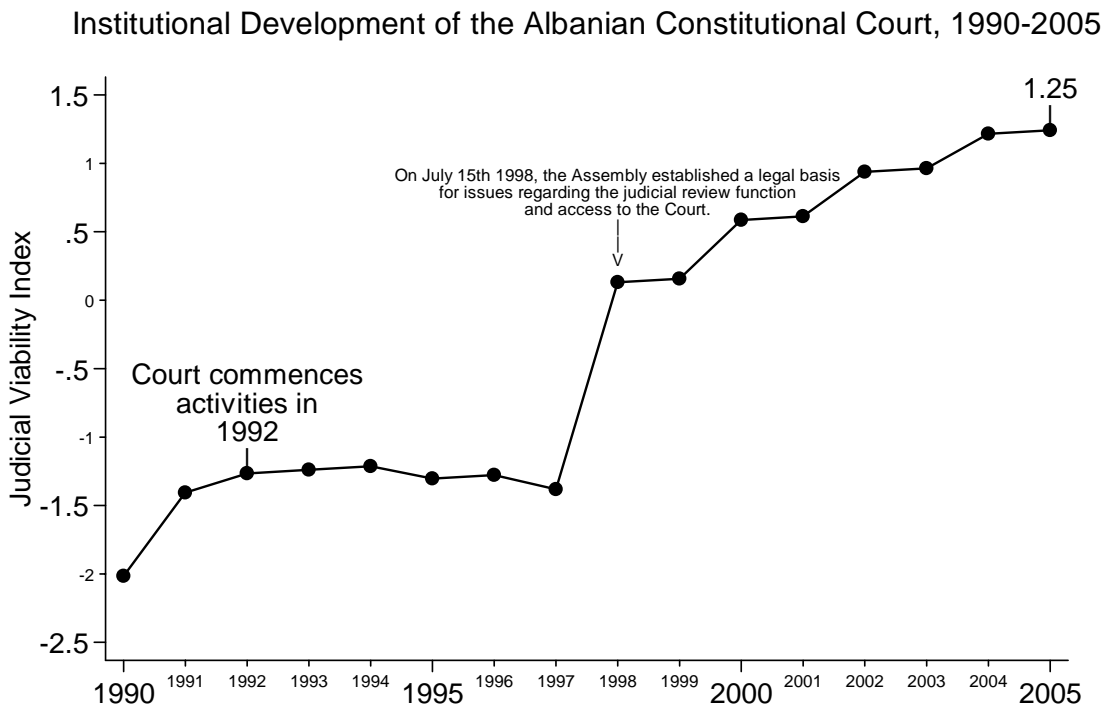
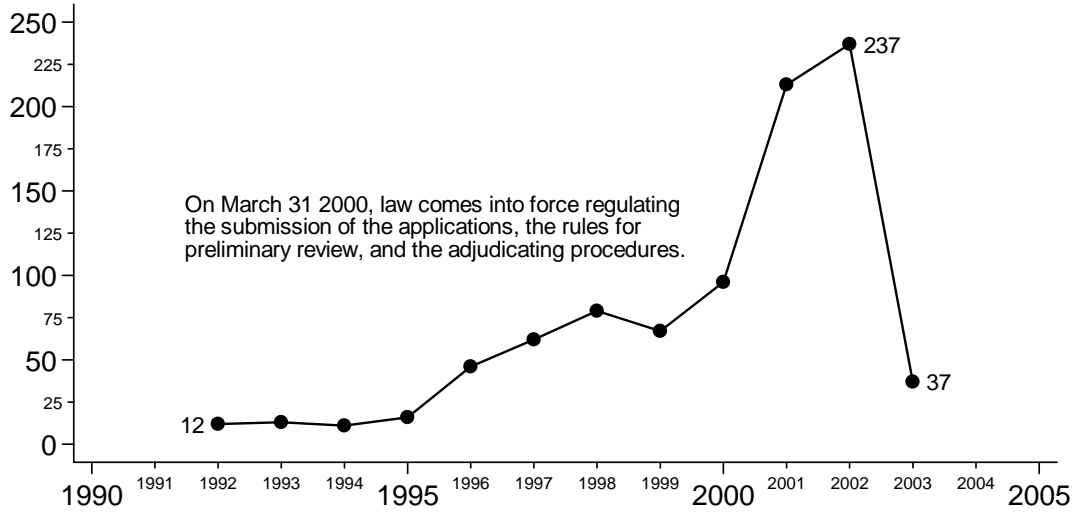


Figure 4

**Number of Adjudicated Cases by the Albanian Constitutional Court
1992-2003**



Note: Caseload data is not available for 2004-2005 period

Figure 5

**Institutional Development of the Ukrainian Constitutional Court
1991-2005**

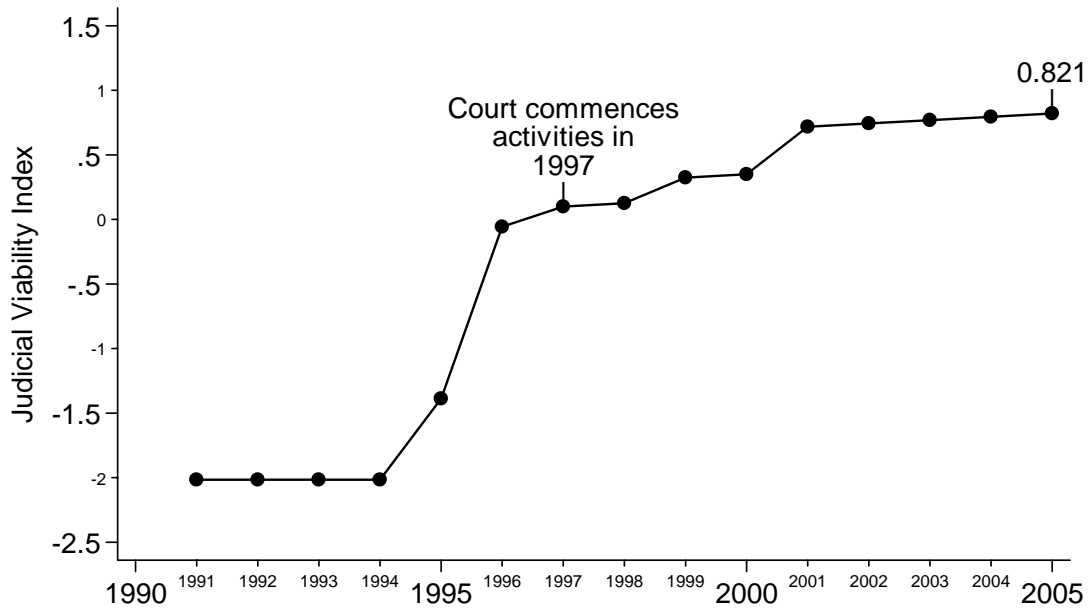


Figure 6



Note: Data is available at the Constitutional Court website (<http://www.ccu.gov.ua>)

Figure 7

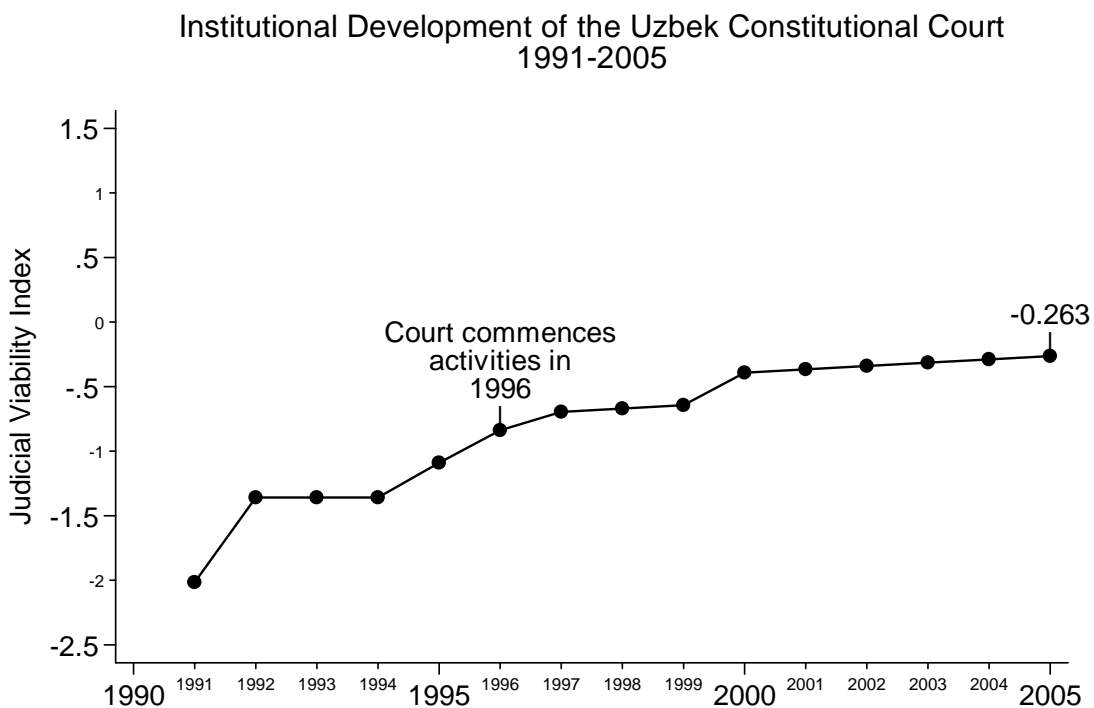


Figure 8

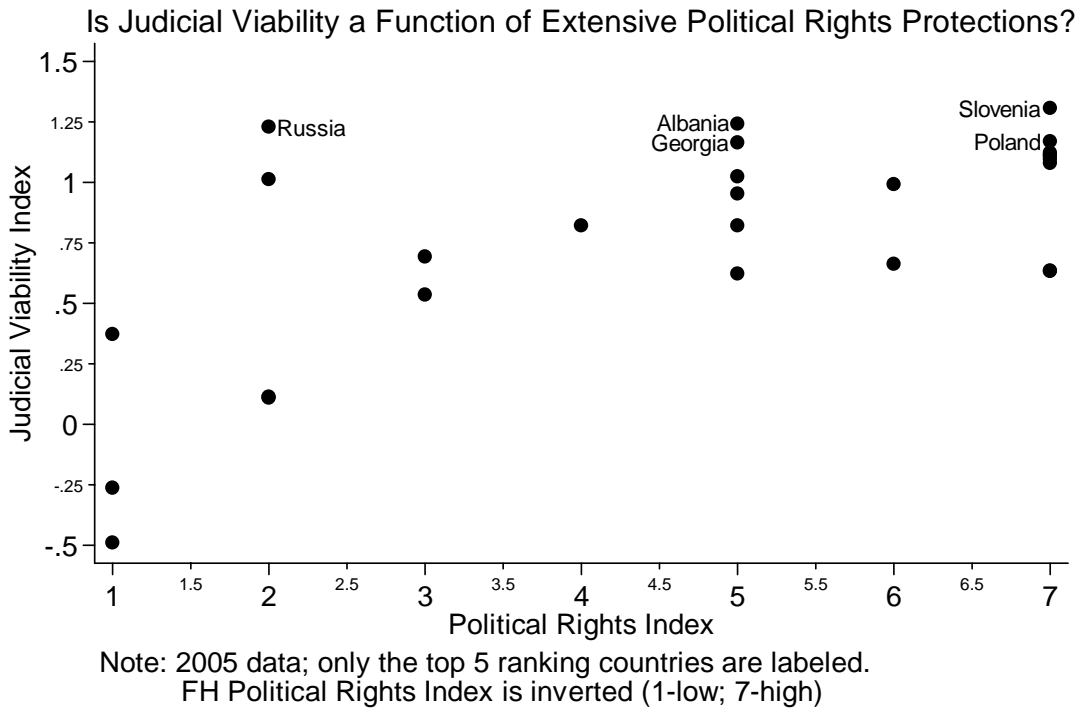
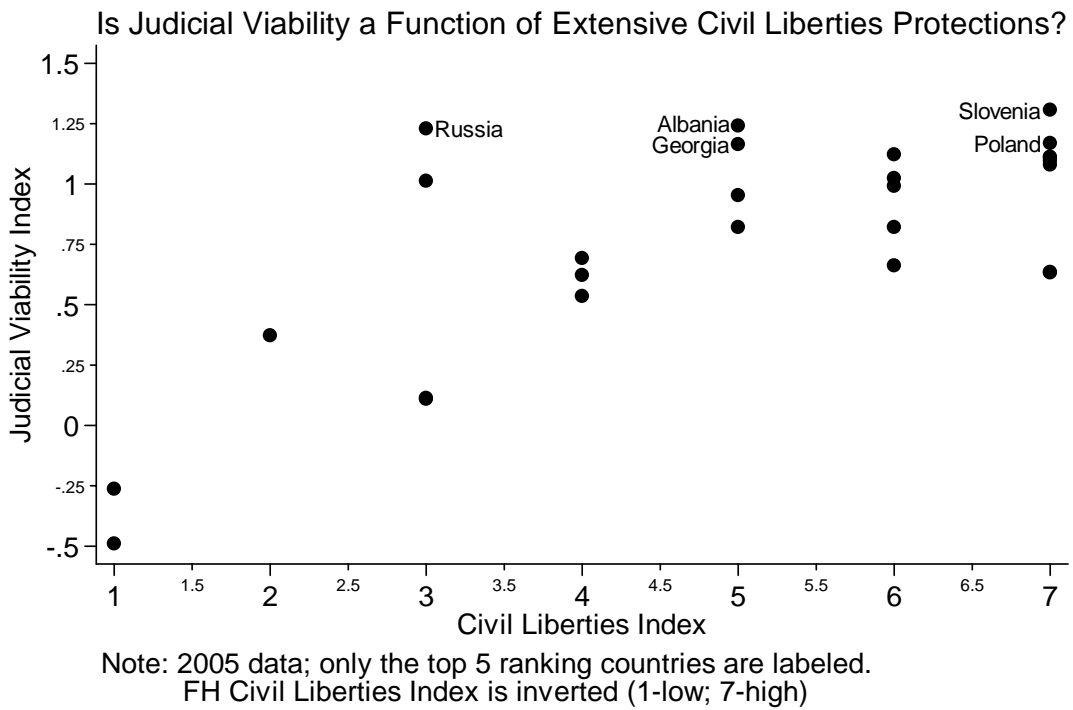


Figure 9



APPENDIX I: Variable Descriptions and Coding Procedure

DIFFERENTIATION

- **Physical Location** Does the constitutional court have its own building? Coded zero for years in which the constitutional court resided in Ministry of Justice (or simply cease to exist for a period of time; e.g. Russian court), Supreme Court, or had to share a building with another organizational entity; coded 1 for years in which the court resides in a structure that is allocated exclusively to that court and no other organizational entity.
- **Professional Qualifications** Do specific guidelines for judicial qualification to the constitutional court exist? Coded zero for lack of specific provisions that detail judicial qualifications; 0.5 for vague provisions that refer only to "formal legal training" and age requirements; 1 for detailed and highly selective guidelines.
- **Voluntary Association** Does a national judicial association exist, the sole aim of which is to protect and promote the interests of the judiciary? This variable is coded based on the information collected by American Bar Association's Judicial Reform Index (JRI) Database: 0 for lack of a representative association; 0.5 for state-regulated association OR one that requires mandatory membership for all judges; and 1 for an independent, voluntary judicial association

DURABILITY

- **Relative Term** The extent of formal judicial insularity, as codified in the constitution and/or subsequent amendments. Coded 0.25 when the term of the constitutional court judge was less than or equal to one term of the actor with the longest constitutional term; 0.5 when it was less than or equal to two parliamentary sessions; 0.75 when it was more than two parliamentary sessions, but had a constitutionally specified limit on the number of terms and/or compulsory retirement based on age; and 1 when the term was life tenure or until voluntary retirement.
- **Equipment and Staff** Does the Constitutional or High Court operate with a sufficient number of computers, equipment and staff to enable it to handle its caseload in a reasonably efficient manner? This variable is coded based on the same methodology as used by the American Bar Association's *Judicial Reform Index* (JRI) Database for post-communist states. We code zero to represent lack of equipment and staff; 0.5 for presence of only one of the two components; and 1 for observations were judges of the Constitutional or High Court are staffed (with two or more support staff per judge) and have adequate computers..
- **Rules of procedure** Does the Court define its own procedures? Coded 0 if procedures were established outside of the court and 1 if procedures were established by the court itself.
- **Court Age** Coded as a continuous measure of the raw number of years the court remains in existence.

AUTONOMY

- **Judicial Review Doctrine** The scope of constitutional review powers formally assigned to the court. Coded zero for lack of final constitutional review authority; 0.5 for abstract review only; 1 for dual/mixed review powers (concrete review and abstract review).
- **Standing** provisions for access to the constitutional courts. 0= no laws to specify standing; .33 limited range of litigants (i.e. national-level institutions only); .67 for states that provided access to both national and local institutions; and 1 for if individuals also allowed to directly petition the court.
- **Budget Control** Who determines the constitutional court's budget and supervises its allocation? Coded 0 for national assembly, president, Ministry of Justice/Finance, Supreme Court, High Judicial Council of Courts (i.e., lack of allocation of budget power); 0.5 was assigned where judiciary had partial control in the budgetary process; 1 for those courts that allocated their own budget.
- **Nominating Procedure** Number of nominating actors. Coded based on the raw number of nominating actors (zero was assigned for years after transition but prior to establishing the procedure). The variable was then recoded from zero to one based on the following conditions: 0.25= 1 actor; 0.5= 2 actors; 0.75 = 3 actors; and 1= 4 or more actors.

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