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CONSTITUTIONAL COURT JUDGES AS LEGAL ELITES IN AUTHORITARIAN REGIMES: COMPARATIVE EXPERIENCES OF GEORGIA AND RUSSIA

1. INTRODUCTION

The role of apex (constitutional) courts in modern legal systems has traditionally been understood through their function as guardians of higher law and as instrumental institutions in democratic transitions. These courts, whether specialized or diffuse, have amassed significant powers, often on par with political branches, leading to their description as chief institutions of “juristocracy”¹.

However, when examining these institutions within illiberal and authoritarian regimes, their record is far more complex and contradictory. In such contexts, the very courts designed to expose and prevent legal circumvention become actively involved in its perpetration and constitutional sanctioning. This involvement is critical for illiberal regimes, which constitutionalize a system of legal cheating². As these regimes transition toward more entrenched authoritarianism, the paradigm of mere cheating is no longer sufficient. Justification of the regime’s official ideology and active legitimization of its measures become routine, and apex courts are central to this evolution.

While ideally, illiberal regimes operating within the framework of plebiscitarian democracy seek both unilateral amendment power and a subservient judiciary, the latter often becomes indispensable when supermajorities for constitutional amendments are not yet secured. The fundamental contradiction here is that institutions ostensibly dedicated to upholding the rule of law are structurally transformed under the illiberal system to maintain a veneer of legality while systemically

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1 RAN HIRSCHL, TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM (2004).

2 ANDRÁS SAJÓ, RULING BY CHEATING: GOVERNANCE IN ILLIBERAL DEMOCRACY. (2021).

undermining its foundational principles. As a result, judicial oversight turns into a mechanism for systemic legal manipulation.

This article examines the distinct, yet instructive, autocratization trajectories of Georgia and Russian Federation, two post-Soviet states where constitutional courts have played crucial, albeit differing, roles. The article traces the transformation of the Russian Constitutional Court (RCC) within an illiberal, Plebiscitarian Leader Democracy (PLD) during the Yeltsin's tenure³, through its role under hegemonic electoral authoritarianism⁴, and later within the personalist dictatorship of the Putin era⁵. Concurrently, it analyzes the Georgian Constitutional Court's (GCC) transformation from the PLD regimes of the Shevardnadze, Saakashvili, and early Ivanishvili periods, to its place within the electoral authoritarianism of the late Ivanishvili rule⁶.

This analysis argues that while the RCC and GCC responded divergently to the autocratization of their political regimes, a critical distinction lies in the proactive adaptation of Russian judges with rapid authoritarian consolidation avoiding a hostile institutional takeover during Putin's first presidency. This early adaptation was profoundly shaped by the entrepreneurial leadership of RCC's Chairman Valeriy Zorkin, who successfully carved out a prominent place for the RCC among the regime's legal elites.

In stark contrast, Georgian constitutional judges pursued a belated adaptation to their autocratizing regime and lacked a comparable entrepreneurial leader. Instead, at a decisive moment of accelerating state capture under Ivanishvili, the GCC leadership at the time chose to remain faithful to the constitution by confronting the power grabs. This triggered a regime backlash that culminated in the court's hostile institutional capture. Although the new, post-capture leaders attempted an entrepreneurial turn, the upper echelons of the Ivanishvili regime's legal elites were already filled.

Consequently, following institutional capture GCC judges found themselves co-opted into the legal elites of the Ivanishvili regime at lower and more subordinate positions. This comparative study demonstrates that despite the inherent importance of apex courts in the operation of illiberal and authoritarian legal systems, their judges do not automatically secure a high hierarchical standing among the regime's legal elites; rather, contingent factors, such as the entrepreneurial skill of apex court leaders, play a decisive role.

The subsequent sections of this article will first establish the theoretical framework for understanding constitutional courts in illiberal and non-democratic contexts, detailing the spectrum of judicial autonomy and the inherent vulnerabilities of apex court designs. Following this, a detailed comparative analysis of the historical trajectories and operational modes of the RCC and GCC will be presented, highlighting their struggles for autonomy and adaptation within their evolving political landscapes. Finally, the article will examine the critical role of entrepreneurial leadership of apex

3 Maria Snegovaya, *Why Russia's Democracy Never Began*, 34 *J. Democracy* 105 (2023).

4 Regina Smyth, *Elections, Protest, and Authoritarian Regime Stability: Russia 2008–2020* (2020).

5 Nikolai Petrov, *The Putin Regime in Russia*, in *Personalism and Personalist Regimes* 154 (2024).

6 V-Dem Inst., *Democracy Report 2025: 25 Years of Autocratization – Democracy Trumped?* (2025).

court chiefs, particularly that of Valeriy Zorkin, in shaping the distinct outcomes for judges in both countries regarding their standing within the regime's legal elites.

2. CONSTITUTIONAL COURTS IN ILLIBERAL AND AUTHORITARIAN REGIMES

The global proliferation of constitutional judicial review⁷ has cemented its status as a central institutional feature of legal constitutionalism, closely interwoven to the efficacy and supremacy of higher law⁸. Apex courts have consequently assumed an expanded role in constitutional democracies, amassing significant powers that often rival those of political branches.

In the wake of the post-cold war wave of democratization constitutional courts were widely perceived as instrumental in facilitating democratic transitions⁹. However, contemporary scholarship has introduced important nuances to this understanding, revealing that independent and relatively strong constitutional courts can emerge and operate even in contexts of weak political pluralism, outside established constitutional democracies.

Theoretical perspectives on courts in authoritarian and illiberal regimes have evolved significantly. Tom Ginsburg's "insurance theory,"¹⁰ for instance, initially connected the emergence of constitutional judiciaries in new democracies to conditions of political pluralism, positing that political elites seek insurance against various risks—to their power, person, and policies—and that these different forms of insurance imply distinct constitutional choices regarding court jurisdiction, staffing, and access.

This framework has proven valuable in understanding the utility of courts even within authoritarian states. Further developing this line of inquiry, Ginsburg and Tamir Moustafa's seminal work provides a functional explanation for constitutional judiciaries in authoritarian regimes, outlining a typology of functions that includes establishing social control, sidelining political opponents, bolstering regime legitimacy, strengthening administrative compliance, facilitating trade and investment, and implementing controversial policies¹¹.

7 Steven G. Calabresi, *The Global Rise of Judicial Review Since 1945*, 69 *Cath. U. L. Rev.* 401 (2020).

8 ANDRÁS SAJÓ & RENÁTA UITZ, *THE CONSTITUTION OF FREEDOM: AN INTRODUCTION TO LEGAL CONSTITUTIONALISM* (2017)

9 Paul Blokker, *The (Re-)Emergence of Constitutionalism in East Central Europe*, in *THINKING THROUGH TRANSITION: LIBERAL DEMOCRACY, AUTHORITARIAN PASTS, AND INTELLECTUAL HISTORY IN EAST CENTRAL EUROPE AFTER 1989* 139 (2015).

10 TOM GINSBURG, *JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES* (2003)

11 *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES*, (Tom Ginsburg & Tamir Moustafa eds., 2008), <https://www.cambridge.org/core/product/64D05AB3BEAFEE4C86E01883B9A143DC>.

This scholarship demonstrates that courts in authoritarian settings are not mere pawns of their rulers; they can, in fact, enjoy considerable degrees of autonomy¹² within the “red lines” drawn by the regime, provided they contribute to the system’s smooth functioning. The concept of judicial autonomy in these contexts is not a binary concept but rather exists on a spectrum. Even courts that are captured can carve out a degree of operational space.

This allows them to rationalize their covert subversion on the regime’s behalf through pragmatic or entrepreneurial considerations. In contrast, under an authoritarian regime, the red lines demarcating judicial autonomy tighten significantly, reaching a point where pretending fidelity to constitutional norms while undermining them is no longer practicable. Here, nothing short of open endorsement of the official regime ideology and ends suffices, and autonomy, while still present, stabilizes through deeper substantive and ideological alignment with the regime.

Judicial behavior in such environments is often driven by institutional and career choices that render cooperation with the regime rationally comprehensible, if not justifiable. Experience consistently shows that judges, contrary to some normative expectations, are not particularly prone to moral heroism¹³. This characteristic, which is not unique to authoritarian contexts, is actively exploited by illiberal regimes during their consolidation and daily operation.

The observation that judges are generally not inclined to heroic resistance means that when faced with situations that could lead to fatal clashes with the regime or severe threats to one’s life and liberty, the rational and professionally conditioned response for many is to adapt or cooperate rather than to defy. This predisposition creates a systemic vulnerability that regimes can exploit, making the mere threat of punitive measures, combined with incentives, often sufficient to secure compliance.

Beyond individual judicial character, apex courts possess inherent structural vulnerabilities that expose them to manipulation and capture. These design flaws, present even in constitutional democracies, compromise their systemic impartiality¹⁴ and contribute to their instrumentalization in the service of personalist power.

One set of flaws relates to the lack of systemic impartiality, which can arise not only from overt court-packing but also from regular judicial appointment rules that, even without explicit abuse, can produce systemically biased courts over time. Another critical vulnerability is the excessive centralization¹⁵ of constitutional review power in specialized bodies. This concentration of formal pow-

12 NATHAN BROWN ET AL., *AUTOCRATS CAN’T ALWAYS GET WHAT THEY WANT: STATE INSTITUTIONS AND AUTONOMY UNDER AUTHORITARIANISM* (2024).

13 András Sajó, *On the Difficulties of Rule of Law Restoration*, CEU Democracy Institute Working Papers No. 9, 2023, <https://democracy-institute.ceu.edu/articles/andras-sajo-difficulties-rule-law-restoration>

14 Gertrude Lübbe Wolff, *One-sidedly Staffed Courts: A Problem of Impartiality – not only in Poland*, *VerfBlog*, 2024/1/08, <https://verfassungsblog.de/onesidedlystaffedcourts/> DOI: 10.59704/6808508fe66e5698.

15 Zdeněk Kühn, *Centralized Judicial Review and the Problem of its ‘Over-Centralization,’* in *TRANSITION 2.0: RE-ESTABLISHING CONSTITUTIONAL DEMOCRACY IN EU MEMBER STATES* 277 (Michal Bobek et al. eds., 2023), <https://doi.org/10.5771/9783748914938-277>

ers, even if initially unexercised, makes apex courts attractive targets for illiberal capture due to their broad abusive potential.

Entrepreneurial judges can leverage this potential utility to convince regime leaders of the benefits of cooperation, as leaders may initially keep courts weak and irrelevant if they do not perceive their exploitable utility. However, this marginalization can paradoxically trigger pragmatic and entrepreneurial behavior from judicial leadership, who seek to increase the court's institutional standing and secure its place among the regime's legal elites. This suggests that initial judicial weakness can become a strategic asset for the regime, as it incentivizes the judiciary to proactively offer its services and demonstrate its utility, transforming a potential obstacle into a resource for legitimation.

Another path for a weak apex court during autocratization is the self-assertion of its constitutional functions. While the RCC and Zorkin chose to impress Putin with their utility to the regime, the GCC leadership under Ivanishvili's early rule, which coincided with rapid state capture, opted for self-assertion. This ended in a quick, hostile takeover of the GCC.

Zorkin's behavior under Putin's regime could also be explained by his bitter lesson from the assertive court under Yeltsin, which cost him the chairmanship and exile from the court. Additionally, Zorkin appears to have internalized the nationalist imperialist brand, which became the prominent ideological foundation of Putin's regime. However, neither of these factors negates the instrumentality of his entrepreneurial approach. They only bolstered one another.

In the next section, we will examine the modalities of the unfolding of these two distinctive scenarios.

3. POST-SOVIET GEORGIAN AND RUSSIAN CONSTITUTIONAL COURTS: STRUGGLES FOR AUTONOMY AND ADAPTATION WITH THE REGIME

The trajectories of the Russian Constitutional Court (RCC) and the Georgian Constitutional Court (GCC) offer a compelling comparative study of judicial adaptation and the struggle for autonomy within evolving illiberal and authoritarian political landscapes. The following table provides an overview of their key comparative features:

Feature	Russian Constitutional Court (RCC)	Georgian Constitutional Court (GCC)
Political Regime Type	Hegemonic Electoral Authoritarianism and Personalist Dictatorship (Putin)	Plebiscitary Leader Democracy and Electoral Authoritarianism (Shevardnadze, Saakashvili and Ivanishvili)
Adaptation Timing	Early/Proactive	Belated/Reactive
Leadership Style	Entrepreneurial (Zorkin)	Principled/assertive, Pragmatic without entrepreneurial leader
Autonomy Type (Qualitative)	Ideological Alignment	Pragmatic Maneuvering
Primary Operational Mode	Open Endorsement/Justification	Cheating/Inaction
Judicial Dissent (Minority)	Disappears	Tolerated (within limits)
Elite Standing of Judges	High/Direct Access	Lower/Subordinate
Compliance with Rulings	Increased	Under-enforced

The Russian Constitutional Court (RCC): Proactive Adaptation and Integration

RCC’s history is marked by a progression from an initially assertive, yet vulnerable, institution to a deeply integrated pillar of an authoritarian state. Its early years were tumultuous; famously, President Yeltsin suspended the court in 1993 after it ruled his actions unconstitutional following the dissolution of parliament. Yeltsin only agreed to reinstate the court after sidelining its chairman, Zorkin, reducing its jurisdiction, and expanding the bench from 13 to 19 judges—a classic court-packing maneuver designed to secure a loyal judiciary. In this initial phase, RCC judgments frequently lacked enforcement by other state institutions, including ordinary courts, underscoring its early weakness¹⁶.

Under Vladimir Putin’s rule, the RCC underwent a profound transformation characterized by gradual institutional cooptation and centralization around the loyal chief justice¹⁷. Putin iteratively reduced the size of the RCC bench from 19 to 11 justices over nearly a decade through a series of legislative measures and presidential inaction, culminating in a 2020 constitutional amendment that ratified this modified *status quo*.¹⁸

¹⁶ ALEXEI TROCHEV, *JUDGING RUSSIA: CONSTITUTIONAL COURT IN RUSSIAN POLITICS, 1990-2006*. (2008).

¹⁷ Alexei Trochev & Peter H. Solomon, *Authoritarian Constitutionalism in Putin’s Russia*, 51 *COMMUNIST AND POST-COMMUNIST STUDIES* 201 (2018).

¹⁸ Ivan S Grigoriev, *What Changes for the Constitutional Court with the New Russian Constitution?*, 6 *RUSSIAN POLITICS* 27 (2021).

This strategy, while gradual, effectively constituted a covert court-packing scheme. Simultaneously, critical justices were forced into retirement or dismissed, while loyal Chief Justice Zorkin was awarded indefinite tenure, with mandatory retirement requirements for his position being removed. The strategic relocation of the RCC to St. Petersburg, accompanied by generous relocation packages negotiated by Zorkin, served as a significant incentive for judicial loyalty, illustrating the use of “carrots” in securing compliance.

Procedural and organizational changes further centralized power around Zorkin. Amendments to the RCC Act were tailored to ensure his continued stay in office and shifted the appointment rules for the chief justice and deputies from election by fellow justices to selection by political branches, namely the President and the Federation Council. This solidified the accountability of the RCC leadership to the President, with impeachment and removal powers also transferred from the court to the executive and legislative branches. The abolition of internal chambers within the RCC further bolstered Zorkin’s control, centralizing decision-making authority around his figure¹⁹.

As the RCC became increasingly integrated and perceived as harmless to Putin’s personal rule, a notable shift occurred: its judgments began to receive significantly higher compliance rates. Legislative amendments in the early 2010s made RCC judgments mandatory for ordinary courts and granted the RCC the power to issue specific instructions for re-examining cases.

The regime strategically expanded the RCC’s jurisdiction to serve its legitimation needs, particularly as Russia transitioned into consolidated authoritarian regime. Prominent examples include granting the RCC the power to deny the enforcement of European Court of Human Rights (ECtHR) or other international tribunal judgments deemed incompatible with the Russian constitution. This move was framed by the Putin regime as a measure to ensure better compliance with RCC decisions, highlighting a strategic instrumentalization of the court.

Furthermore, the 2020 constitutional amendments, which notably nullified and reset Putin’s presidential term limits, introduced the power for the RCC to certify the constitutionality of constitutional amendments. The Zorkin court readily obliged, confidently reasoning that nullifying previous terms and resetting the clock “served constitutional principles of democracy and represented the ultimate realization of popular sovereignty”²⁰.

19 Ibid.

20 Заключение Конституционного Суда Российской Федерации о соответствии положениям глав 1, 2 и 9 Конституции Российской Федерации не вступивших в силу положений Закона Российской Федерации о поправке к Конституции Российской Федерации «О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти», а также о соответствии Конституции Российской Федерации порядка вступления в силу статьи 1 данного Закона в связи с запросом Президента Российской Федерации от 16 марта 2020 г. N 1-3, 6., 17.03.2020. (Opinion of the Constitutional Court of the Russian Federation on the conformity with chapters 1,2 and 9 of the Constitution of Russian Federation of the provisions of the Constitutional law of Russian Federation amending the Constitution of Russian Federation “On the Improved Regulation of Specific Questions of the Organization of Public Power,” not yet in force, and also on the conformity with the Constitution of Russian Federation of the conditions of the entry into force of article 1 of that law, in relation to the referral from the President of the Russian Federation of 16 March 2020, adopted on 17.03.2020. paragraph 6). <https://rg.ru/documents/2020/03/17/ks-rf-popravki-dok.html>

This demonstrated a qualitative shift in the court's role, moving beyond mere cheating or maintaining a facade of adherence to actively endorsing and justifying the regime's core ideological tenets. Additional expansions empowered the RCC to examine the constitutionality of bills where presidential vetoes were overridden, constitutional amendment bills before their entry into force, and regional laws prior to publication, thereby extending presidential reach through the court. The RCC also acquired a crucial role in presidential impeachment proceedings, providing a mandatory opinion without which impeachment could not proceed.

This trajectory illustrates a shift from legal cheating to open endorsement. The RCC under Zorkin moved beyond merely pretending fidelity to constitutional norms; it openly and proudly served the regime, volunteering to uphold, justify, and expound its official ideology²¹. This qualitative transformation in autonomy meant that even passive forms of dissent became untenable²².

The resignation of Judge Aranovsky in 2022²³, prior to the court's ruling on the constitutionality of the annexation of four Ukrainian regions, starkly exemplifies how even a harmless minority position could no longer disagree with the official ideology and ends, a marked contrast to his earlier ability to file dissenting opinions or recuse himself on health grounds.

This demonstrates that as a regime transitions to a personalist dictatorship, the need for a democratic facade diminishes, and the pretense of constitutional fidelity becomes burdensome. The court's utility shifts from covert subversion to overt legitimation and ideological endorsement, demanding active justification and propagation of the regime's ideology.

The Georgian Constitutional Court (GCC): Belated Adaptation and Subordination

The Georgian Constitutional Court (GCC) presents a different narrative of adaptation, operating within a plebiscitary leader democracy (PLD) context for a longer duration than the RCC, yet failing to achieve meaningfully broader autonomy. Its operational code has largely remained cheating.

Control over the GCC was primarily achieved through the abuse of regular appointment processes and strategic defections²⁴ during leadership turnovers. The number of GCC judges remained constant. The 2004 crisis saw a brief attempt to abolish the constitutional court, which was ultimately abandoned. The court's survival was largely attributed to the strategic defection of its then-

21 Scott Reid, On Zorkin's Court and Russian Foreign Policy, 5 CURRENT RES. J. SOC. SCI. & HUMAN. 96 (2022).

Caroline von Gall, from "Living Constitutionalism" to "Zombie Apocalypse". Valery Zorkin, the Constitutional Court and Russian Authoritarianism, 50 RUSSIAN HISTORY 89 (2024).

William Partlett, Putin's Artful Jurisprudence, THE NATIONAL INTEREST 35 (2013).

22 Alexandra V Orlova, The Soft Power of Dissent: The Impact of Dissenting Opinions from the Russian Constitutional Court, 52 VAND. J. TRANSNAT'L L. 611 (2019).

23 Judge known for dissenting opinions resigns from Russian Constitutional Court, Meduza (Sept. 27, 2022), <https://meduza.io/en/news/2022/09/27/judge-known-for-dissenting-opinions-resigns-from-russian-constitutional-court>.

24 Gretchen Helmke, The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy, 96 AMERICAN POLITICAL SCIENCE REVIEW 291 (2002).

president, Khetsuriani, and his judges, who negotiated relocation benefits, including the court's move to the coastal city of Batumi. The Venice Commission also played a role in mobilizing critical pressure during this period²⁵.

A more complex transition unfolded during the 2012-2016 political leadership turnover, where some judges refused to strategically defect. This resistance led to a legislative scheme, reportedly borrowed from Poland, that briefly incapacitated the court until new loyal appointees and strategic defectors could form a new majority.

Procedural manipulations and jurisdictional curtailments were also instrumental in shaping the GCC's role. The method of appointing the constitutional court president and chamber presidents underwent changes, including a 2011 amendment that required consensus nomination by the President, Parliament Chairman, and Supreme Court Chief Justice. However, in 2016, the new political leadership reverted to independent election by judges, a move that, while appearing to enhance judicial autonomy, strategically enabled defected judges to elect loyal leadership, thus maintaining political control.

Ad hominem procedural amendments were also employed, such as the June 2016 legislation empowering a single judge to refer cases to the full court²⁶. This was immediately utilized by a regime-appointed minority judge to refer politically sensitive cases to the loyal plenary court, delaying their examination until disobedient judges left the bench.

Despite this experience, the Georgian regime retained the chamber system but curtailed its powers, notably stripping the ability to suspend the enforcement of challenged rules as an interim measure, thereby mitigating risks from potentially disobedient judges. The GCC's jurisdiction was also gradually decimated, particularly its power to rule on the constitutionality of elections and referenda, through constitutional amendments in 2005 and 2018. These exclusions significantly curtailed the court's ability to check electoral constitutionality and resolve conflicts surrounding contested elections²⁷.

A persistent feature of the GCC's operation has been the under-enforcement of its judgments and a reliance on the strategic indecision of sensitive cases. Unlike the RCC, GCC judgments never acquired binding force for ordinary courts. For successive Georgian rulers, the primary mode of the apex court's utilization has been its inaction rather than proactive intervention.

25 ქეთევან ერემაძე, „თავისუფლების დამცველნი თავისუფლების ძიებაში: საკონსტიტუციო კონტროლის 20 წელი საქართველოში“ ქეთევან ერემაძე, „თავისუფლების დამცველნი თავისუფლების ძიებაში: საკონსტიტუციო კონტროლის 20 წელი საქართველოში“ (2018) (Ketevan Eremadze, „Tavisuflebis damtsvelni tavisuflebis dziebashi:sakonstitutsio kontrolis 20 tseli sakartveloshi“-Dependers of Liberty in Search of Freedom: 20 years of Constitutional Judicial Review in Georgia“)

26 Venice Comm'n, Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings, CDL-AD (2016)017-e (June 10-11, 2016).

27 Nino Tsereteli, Georgian Dream as a Nightmare for Democracy: Public Resistance and External Pressure as Substitutes for Effective Judicial Oversight, *VerfBlog* (Nov. 21, 2024), <https://verfassungsblog.de/georgia-electoral-fraud-civic-resistance/>, <https://doi.org/10.59704/2819f7faf30fff94>.

The court frequently resorts to strategic indecision by dodging cases or indefinitely delaying their final resolution, effectively allowing constitutionally suspect regulations to remain in force²⁸. A compelling illustration is the legislative “black hole” that has enabled mass digital surveillance since 2017, where the GCC refused to strike down legislation overruling its prior judgment²⁹ and has been deliberating without rendering a final judgment for years.

Similarly, politically sensitive cases, such as the targeted prosecution of opposition figures, faced examination delays, with the GCC only ruling on one of these cases in 2024³⁰, long after the applicants had been released. This strategic indecision in resolving constitutional disputes enables the regime to refine legal tools and achieve arbitrary goals with enhanced legal cover, even if these solutions might not withstand scrutiny by international bodies like the ECtHR³¹. This inaction is not merely a failure to act, but a deliberate choice to avoid confrontation and implicitly allow the regime’s arbitrary actions to proceed without judicial scrutiny.

By strategically refusing to decide or enforce, the court provides a form of implicit legitimization—it doesn’t explicitly sanction the regime’s actions, but it removes judicial obstacles, allowing the regime to operate in a legal grey area. This represents a low-risk strategy for judges, as they avoid the appearance of being directly implicated while still serving the regime’s interests.

Despite these pressures, GCC minority judges regularly dissent, even on matters within the regime’s red lines. This perpetuates the perception that a proper constitutional order is not yet lost, benefiting the regime by maintaining a facade of constitutional legitimacy. However, this relative tolerance for dissent has not translated into stable institutional autonomy for the GCC.

4. CLIMBING THE LADDER OF LEGAL ELITES: GEORGIAN AND RUSSIAN CONSTITUTIONAL JUDGES AND THE ROLE OF ENTREPRENEURSHIP

The distinct outcomes for the Russian and Georgian constitutional courts, particularly regarding their standing within their respective political regimes’ legal elites, are profoundly shaped by the presence or absence of entrepreneurial leadership.

28 Mariam Mkhatvari, *The Strategies of the Subdued Constitutional Courts for Advancing the Goals of the Rulers (Russian, Kyrgyz, and Georgian Stories)* (2020) (LL.M. thesis, CEU Legal Studies).

29 Notice of Judicial Record on the Admissibility to Hear on Merits of the Constitutional Court of Georgia N3/4/N885-924, 928-929, 931-1207, 1213, 1220-1224, 1231 (Dec. 29, 2017).

30 Decision of Constitutional Court of Georgia, N3/1/740,764 (June 7, 2024).

31 CASE OF GLONTI AND OTHERS v. GEORGIA, App. No. 13708/18, Eur. Ct. H.R. (Feb. 11, 2025).

Valeriy Zorkin's Entrepreneurial Acumen at the RCC

Valeriy Zorkin stands as a pivotal figure whose entrepreneurial skills enabled the Russian Constitutional Court to carve out a significant and influential place among Putin's legal elites. His long tenure as chairman and direct access to the leader³² underscore his unique and indispensable position within the regime's institutional infrastructure.

Zorkin's motives are characterized as predominantly entrepreneurial, focusing on pragmatic maneuvering in the regime's service to secure a sought-after position and enhance the court's institutional utility. This entrepreneurial approach yielded tangible benefits, including adequate perks for judges, such as generous relocation packages when the RCC was moved to St. Petersburg. This demonstrates how judicial leadership, driven by self-preservation and career advancement, can actively seek integration, making the institutional cooptation process under authoritarian regime more organic and less overtly coercive.

Under Putin's personalist dictatorship, Zorkin's autonomy underwent a qualitative transformation, characterized by a complete integration within the regime's infrastructure to the point of profound internalization of the regime's ideology and objectives. This deep ideological identification meant that Zorkin's autonomy was primarily reduced to entrepreneurial dimensions, granting him discretion in *how* to serve the regime's ends, which he fully endorsed.

This indicates that in the context of personalist dictatorship, traditional notions of judicial independence are lost. However, a shrewd, entrepreneurial leader can leverage the court's utility to the regime (e.g., for legitimation, policy implementation) to negotiate a form of autonomy that is not about checking power but about discretion in *how* to serve power. This discretion, while constrained, provides a stable and beneficial role for the court and its leader. This suggests that entrepreneurship transforms a court from a potential check on power into an active partner in authoritarian governance, where its autonomy is derived from its indispensable service to the regime's goals, rather than its independence from them.

Crucially, Zorkin's court moved beyond operational mode of cheating typical of PLD apex courts. It openly and proudly served the regime, volunteering to uphold, justify, and expound its official ideology. This was starkly evident in the court's justification of the nullification of Putin's term limits, where it reasoned that such actions served constitutional principles of democracy and popular sovereignty. This illustrates that as a regime autocratizes and its "red lines" tighten, the utility of mere cheating diminishes.

The regime no longer needs a facade of adherence but demands active justification and propagation of its ideology. The role of the constitutional court thus evolves from a subtle enabler of legal

32 In Putin's own public admission: "Valery Dmitrievich [Zorkin] knows that from time to time I phone and ask him how this or that rule will look, when it is being prepared for adoption either in the Parliament or in the Cabinet." Cited in *Trochev & Solomon*.

ambiguity to an active ideological arm of the state, where its autonomy is about discretion in *how* to best serve and articulate the regime’s fully endorsed ends.

The GCC’s Leadership: From Institutional Self-Assertion to Pragmatism Lacking Entrepreneurial Drive

In contrast to the RCC, the Georgian Constitutional Court’s leadership did not produce a “judicial strongman” comparable to Zorkin. While political control of the apex court president’s office was consistently a key factor, successive GCC leaders failed to match Zorkin’s entrepreneurial achievements with their political rulers. In contrast, the GCC leadership in the early years of Ivanishvili sought to establish its institutional standing through assertive and principled decision-making, challenging the ongoing state capture and ultimately becoming captured itself.

Georgian judges adapted belatedly to the autocratizing regime, after its hostile institutional capture in 2016, and lacked an entrepreneurial leader like Zorkin. Consequently, they were co-opted into the Ivanishvili regime’s legal elite in subordinate roles, failing to achieve the high standing and influence seen in Russia.

The motives driving GCC judges to enable rulers through cheating were primarily pragmatic: to secure institutional survival and avoid open identification with the regime’s ends. This contrasts with Zorkin’s active pursuit of high standing and influence through cooptation.

The GCC’s more reactive and less strategically driven adaptation, often relying on inaction and strategic indecision, meant it could not secure the same level of stable institutional autonomy or influence within the regime. The continued reliance on manipulation and maintaining the appearance of constitutional adherence, without fully embracing the regime’s ideology, limited its ability to achieve the same level of integration and influence as the RCC under Zorkin.

In conclusion, the presence of a highly entrepreneurial leader like Valeriy Zorkin allowed the RCC to proactively integrate itself into the evolving Russian regime, transforming it into an indispensable ideological pillar and securing a high hierarchical standing for its judges among the legal elites.

This contrasts sharply with the GCC, where the absence of such leadership led to a more reactive, pragmatic, and ultimately subordinate role. Nothing illustrates this point more brightly than the post-presidency career of Merab Turava, a judge who was instrumental in the institutional capture and co-optation of the court between 2015-2025 and served as its President from 2020-2025. The Ivanishvili regime rewarded him with a Deputy Minister of Justice position after ending his judicial tenure³³. The fact that he agreed to this position as a reward, considering it a type of promotion from his previous role, best indicates how low apex court judges stand among the Ivanishvili’s legal

³³ Merab Turava Appointed Deputy of GD Justice Minister, CIVIL.GE (Apr. 29, 2025, 3:32 PM), <https://civil.ge/archives/678477>.

elite. In this regard, it is also worth noting the subsequent careers of two judges who “strategically defected” in 2016—Otar Sichinava and Lali Papiashvili—after their time at the Constitutional Court. The former took up a position as a judge at the Tbilisi Court of Appeal, while the latter, as part of the Supreme Court packing, became a judge of that court.³⁴ Their choices, too, clearly indicate the low standing of constitutional judges within the regime’s legal elite.

While judicial character, with its disinclination towards heroism, creates a fertile ground for such entrepreneurial adaptation, the decisive contingent factor for achieving elite status and influence within authoritarian legal systems is indeed the entrepreneurial skill of apex court leaders.

5. CONCLUSION

This comparative analysis of the Constitutional Courts of Russia and Georgia reveals a crucial insight into the dynamics of judicial power within authoritarian and autocratizing regimes. It demonstrates that the position of apex court judges within a regime’s legal elite is not a predetermined outcome of institutional design but is profoundly shaped by contingent factors, most notably the entrepreneurial skill of judicial leaders. The trajectories of the two courts offer a stark contrast in strategy and outcome, ultimately affirming the crucial role of judicial agency in navigating and integrating into autocratic power structures.

The Russian Constitutional Court, under the leadership of Valeriy Zorkin, exemplifies a path of proactive and entrepreneurial adaptation. By anticipating the needs of the consolidating Putin regime, Zorkin successfully transformed the RCC from a potential check on power into an indispensable instrument of ideological legitimation. This strategic maneuvering, which saw the court evolve from a mode of legal cheating to one of open endorsement, secured not only the court’s institutional relevance but also a high and influential standing for its leaders and judges within the Kremlin’s legal elites. Zorkin’s venture illustrates how a judicial leader can leverage the court’s potential utility to negotiate a privileged and stable position, effectively becoming a partner in authoritarian governance.

Conversely, the Georgian Constitutional Court’s experience highlights the consequences of belated adaptation and the absence of a comparable entrepreneurial leader. The GCC leadership’s initial, principled stand against state capture provoked a hostile takeover, and subsequent attempts at co-optation were reactive and lacked strategic vision.

³⁴ Malkhaz Nakashidze, *Constitutional Court and Politics: The Case of Georgia*, 17 *ICL J.* 337 (2023).

As a result, GCC judges were absorbed into the ruling legal elite at a subordinate level, their utility to the regime defined primarily by inaction and strategic indecision rather than active endorsement. The post-judicial career of a former GCC president, rewarded with a deputy ministerial role, starkly illustrates this lower hierarchical standing, signifying a promotion from a position viewed as secondary within the regime's power structure.

In conclusion, while the inherent structural vulnerabilities of apex courts and the general disinclination of judges toward heroism create a fertile ground for co-optation in autocratizing states, these factors alone do not determine the outcome. The cases of Russia and Georgia compellingly demonstrate that the important variable is entrepreneurial leadership. The presence of a judicial entrepreneur like Zorkin can elevate himself and a court to the apex of the legal elite.