

Gender and judging revisited: Voting patterns of male and female judges under different judicial constraints

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November 29, 2024

Abstract

Decades of research have investigated: 1) whether female judges decide cases differently from their male counterparts, and 2) how judicial constraints influence judicial decision-making. However, we know less about how judicial constraints impacts the decision-making of female and male judges. I argue that the gender-based selection bias (aspiring) female judges face during their careers make them more inclined to support those in charge of their appointment. I examine this claim in the context of the European Court of Human Rights and exploit a sudden change in judicial terms to demonstrate that it is not "female traits", but rather institutional structures that make female judges less independent in their rulings. My findings show that fe-

male judges are more likely, than their male counterparts, to support their appointing authority when rendering decisions, but only when they can be reappointed to court, suggesting that it is institutional structures that undermine judicial independence.

Introduction

The consequences of ideological differences between men and women have been studied for several decades, both among voters and officeholders. In the context of courts, research has found that male and female judges reach different decisions as a result of attitudinal factors (Songer et al., 1994; Stribopoulos & Yahya, 2007; Boyd et al., 2010; Voeten, 2021; Weinshall, 2021). Yet, judges decisions are also influenced by the political context in which they operate (Segal & Spaeth, 2002; Epstein & Knight, 1997, 2000, 2004). For example, judges may be incentivized to render decisions congruent with the preferences of those in charge of appointing them (Dunoff & Pollack, 2017; Larsson et al., 2023). These incentives may be especially pertinent for judges whose terms are renewable or who depend on their appointing body for a job upon the conclusion of their term (Stiansen, 2022; Gray, 2019; Hall, 1992, 2014). Those in charge of appointing judges can use career incentives as a means of influencing judges' behavior and research shows that judges tend to favor those in control of their (re)appointment when rendering decisions (Posner & De Figueiredo, 2005; Voeten, 2008).

Yet, research also report that women are often held to a different standard than their male counterparts (Esarey & Schwindt-Bayer, 2018; Hermansen, 2022), and that they have a harder time getting (s)elected to political institutions (Ashworth et al., 2024; Anzia & Berry, 2011; Collins Jr et al., 2023), and getting promoted and gaining the same amount of influence as their male counterparts within those institutions (Boulaziz, 2024; Szmer et al., 2024). Fear of losing their current position and possible future positions, women might alter their behavior to be considered more favorably by those in charge of their (s)election. Although, both women and men may fear losing their position and fear missing out on future promotions, I expect this fear to be more severe for women given that they have a harder time getting (s)elected to begin with. This is especially pertinent in a judicial setting, given that judges frequently adjudicate cases with immediate political consequences for those in charge of their appointment. Judges may thus face repercussions if their decisions are perceived as unfavorable to those who selects them. This may compel female judges, more so than male judges, to temper their judgments in fear for their current position and possible promotions. This may manifest as an observable gender-based disparity in judicial decision-making, not stemming from divergent attitudes, but rather attributed to gender-specific responses to judicial constraints.

To probe this hypothesis, I leverage variation in individual judges' voting patterns vis-à-vis their government within the context of the European Court of Human Rights (ECtHR). Governments that have signed the European

Convention of Human Rights (ECHR) are in charge of appointing judges to the Court and judges are tasked with adjudicating cases that have immediate effect in their countries and for their governments. Using data from Stiansen (2022) containing 108949 judicial votes in the time period 1999-2016, I run two logistic regressions where I estimate judges propensity to support the governments accused of committing human rights violations.

In the first analysis I estimate the likelihood that a judge decides a case against his or her government, while controlling for the gender of the judge and whether the judge voted against their own government. In the second analysis, I estimate whether this likelihood changes when judges can no longer be reappointed to the court.

Unlike much of the research on women in political institutions, which often focuses on female traits, like for example that women systematically underestimate their own qualifications (Anzia & Berry, 2011; Ashworth et al., 2024) or are more risk-averse than men (Esarey & Schwindt-Bayer, 2018; Swamy et al., 2001; Bauhr & Charron, 2021), I examine how institutional contexts may influence men and women differently. To demonstrate that it is not a 'female trait' that makes female judges more likely to support those responsible for their re(appointment), but rather the judicial constraints they face, I take advantage of a sudden shift from renewable to non-renewable terms. This enables me to show how changes in career incentives, rather than gender alone, shape support for the appointing authority.

My findings reveal that female judges are more likely to support their

government compared to their male counterparts, but only when they can be reappointed to court. By exploiting a sudden change in judicial terms, I demonstrate that judicial constraints impact female judges differently than male judges, and that it is institutional structures that undermine judicial independence.

Attitudinal effects vs strategic considerations in judicial decision-making

Gender differences in judicial decision-making have been explained as a result of non-legal individual factors (Songer et al., 1994; Boyd et al., 2010; Voeten, 2021). Informational accounts explain gender differences in judicial decision-making as a result of different life experiences. For instance, women's encounters with sex discrimination may make female judges more inclined to sympathize with female litigants in cases related to sex discrimination. This account may also generate panel effects, as the insights of female judges may be passed on to male colleagues. Boyd et al. (2010) finds that male judges are more likely to rule in favor of a plaintiff in sex discrimination cases when a female judge sits on the panel. Representational accounts, explain gender difference in judicial decision-making as a result of female judges viewing themselves as representatives of their gender, which may make female judges feel an obligation to advocate for women's interests. Attitudinal accounts explain gender differences in judicial decision-making as a result

of gender disparities in personal values, predispositions, attitudes, and ideology. Existing research provides support for the informational, attitudinal, and representational accounts, albeit with some variations in findings (Songer et al., 1994; Stribopoulos & Yahya, 2007; Boyd et al., 2010; Voeten, 2021; Weinshall, 2021).

In contrast to the aforementioned approaches, strategic accounts emphasize that judges decisions are influenced by the context in which they operate (Epstein & Knight, 1997, 2000, 2004) This theory contends that judges' decisions are shaped not only by their personal beliefs and values, but also by the political context that surrounds the judicial system. According to the strategic model, judges are strategic actors that aim to achieve their objectives and advance their interests within the confines of the legal system and the broader political environment. Judges may adapt their behavior to achieve different goals, such as securing reappointment or a favorable post-judicial position. (Epstein et al., 2012, p. 35) explain, in the context of United States Federal Courts, that there are many constraints even for judges who "cannot be fired", as well as carrots for judges who already have a very prestigious position.

Research on judicial constraints have shed light on how different designs of courts may impact judicial decision-making. For instance, Dunoff & Pollack (2017) highlights that one way to shield judges from accountability from the appointing authority is to have fixed terms or life-time appointments.¹ More

¹Research shows that, even in cases like the United States Supreme Court, where

empirical work reveals that judges vote more sincerely against those in charge of their appointment when they cannot be reappointed (Gray, 2019; Stiansen, 2022). Elected judges are shown to vote more sincerely when they are in their last term, not allowing voters preferences to influence their decision-making to the same extent as when they are up for re-election (Hall, 2014).

While on one the hand, scholars recognize that differences between judges, such as their career profiles or ambitions, may influence both the extent and type of strategic behavior, strategic accounts of judicial behavior has so far not considered whether judicial constraints effect male and female judges differently. On the other hand, scholarship on gender and judging has explained differences in judicial decision-making between male and female judges as a result of diverging attitudes, and have not considered gender differences in judicial decision-making as a result of institutional contexts and different judicial constraints.

Gender difference in career trajectories and how it may affect judicial voting patterns

It is commonly assumed that judges, given their role, strive to maintain independence from their personal convictions, identities and career ambitions when ruling on cases. Yet decades of research indicates that judges' decisions

judges have life tenure, they are still more likely to align their decisions with the political preferences of the party of the President who appointed them. See Segal & Spaeth (2002).

are not free from influence of their ideological beliefs (Songer et al., 1994; Striopoulos & Yahya, 2007; Boyd et al., 2010; Voeten, 2021; Weinshall, 2021), nor the political context in which they operate (Posner & De Figueiredo, 2005; Voeten, 2008; Stiansen, 2022; Gray, 2019; Hall, 1992, 2014). On the one hand, judges frequently adjudicate cases with direct political implications for those in charge of appointing them. On the other hand, the appointing authorities control a range of career opportunities that are attractive for judges, both reappointment but also appointment to other prestigious international and domestic courts (Stiansen, 2022). Judges seeking to maintain their positions or advance their career may feel pressured to align their decisions with the interest of their appointing authority, allowing career aspirations to influence their decision-making. Research on voting patterns reveals that judges are in fact, more likely to favor those in charge of appointing them (Gray, 2019; Hall, 1992, 2014). The same studies, also show that when judicial constraints change, judges decision-making patterns change. For instance, Stiansen (2022) finds that when judicial terms changes from being renewable to non-renewable, judges inclination to support the appointing authority significantly decreases. Another study reports that elected judges vote more sincerely when they are in their last term, not career incentives to influence their decision-making to the same extent as when they are up for re-election (Hall, 2014).

However, the tendency to favor appointing authorities may differ between male and female judges. First, female judges often face more significant chal-

lenges securing appointments in the first place. International and domestic courts remain largely male-dominated (Grossman, 2016; Boulaziz, 2024), and research shows that women have a harder time gaining a seat on the bench (Collins Jr et al., 2023). This could make female judges more inclined to support their appointing authority, fearing that a failure to do so may result in differentiated treatment when pursuing future career opportunities. Moreover, having worked harder to secure their appointments, female judges may feel they have more to lose if they are not awarded with a new appointment or another favorable position. This may also lead them to support their appointing authority more frequently, than their male counterparts in the decision-making process.

Second, female judges in male dominated courts feel pressured to prove that they deserve a place on the bench, once appointed (Haire & Moyer, 2015). This may especially be the case for female judges who entered the court on a quota (Hermansen, 2022). Evidence suggests that female judges write longer opinions with more citations than their male counterparts, possibly as a part of an effort to demonstrate their competence (Moyer et al., 2021). Female judges may also feel compelled to prove their value to their appointing authority, which could increase their likelihood of supporting them in cases where the appointing authority is a party to the case. This tendency may be especially pronounced in courts where judicial decisions are transparent and appointing authorities can directly observe how judges vote in cases that involve them (Dunoff & Pollack, 2017). In such settings, female judges

may anticipate being held to a different standard than their male colleagues, given the gender-based discrimination they often face during the appointment process (Collins Jr et al., 2023), in work assignments within the court (Boulaziz, 2024; Christensen et al., 2012), and in getting recognition for the work they do (Szmer et al., 2024). This may ultimately affect female judges reappointment opportunities (Hermansen & Naurin, 2022).

While, both male and female judges may perceive a risk in rendering too many unfavorable decisions against those who appointed them and those in charge of their career trajectory, I expect that this risk will be more pronounced for female judges. Having worked harder to secure their initial appointment, I expect that they may be more likely than their male counterparts to favor their appointing authority when rendering decisions.

Hypothesis 1 *Female judges are more likely to vote in support of those in charge of their of their appointment when making decisions in court, compared to their male counterparts.*

Although I argue that both male and female judges may perceive a potential risk in future career opportunities to their future career opportunities when issuing unfavorable decisions against those who influence their career trajectory, I expect female judges to perceive this risk to a greater extent. As a result, I anticipate that female judges are more likely to favor the appointing authority in the decision-making process, compared to their male counterparts.

Research from psychology and economics finds that women are more risk averse than men (Bernasek & Shwiff, 2001; Sunden & Surette, 1998; Watson & McNaughton, 2007; Croson & Gneezy, 2009). Studies from political science suggests that female officeholders tend to be less corrupt than men, partly due to higher levels of risk aversion (Bauhr & Charron, 2021; Esarey & Schwindt-Bayer, 2018; Chaudhuri et al., 2024). In contrast to these studies, I argue that the nature of the risks involved in rendering unfavorable decisions against appointing authorities differ for male and female judges. This difference stems from the fact that female judges may have faced additional challenges in securing their appointment to court in the first place. As a result, the gender difference in responding to this potential risk, may not result from a gender difference in risk aversion, because the potential situation that male and female judges face are different.

In other words, to properly assess gender differences in risk aversion, and to claim that a gender difference in risk aversion may lead female judges to support those in charge of their appointment to a higher degree than their male counterparts, both female and male judges must face the same set of circumstances. Yet, I argue that the situation faced by male and female judges are not equivalent. For many courts, there are formal or informal gender quotas (Petkova, 2015), which may make women over-compensate to prove that they deserve a place in the institution (Hermansen, 2022); women remain largely underrepresented (Grossman, 2016) and find themselves outnumbered by male candidates; and they may also experience gender-based selection bias

in court appointment processes (Collins Jr et al., 2023). These factors create a different context between aspiring male and female judges, which may make female and male judges respond differently in judicial decision-making processes once appointed.

Political context or female traits?

The political infrastructure may undermine judicial independence and create incentives for less sincere voting behavior among judges. I argue that this is particularly true for female judges, who often face greater challenges in securing appointments. However, research suggests that once selected, women tend to outperform their male counterparts across various performance measures. For example, studies show that female politicians are more successful in delivering federal program spending to their districts (Anzia & Berry, 2011), sponsoring new legislation (Volden et al., 2013), and handling high-impact legislation (Hermansen, 2022). Similarly, research on the judiciary finds that female judges often overcompensate by writing longer opinions with more citations (Moyer et al., 2021) and resolving cases more quickly when they serve as case managers (Boulaziz, 2024).

These studies suggest that women who remain in the pool of candidates may be higher performers partly due to a selection effect – e.g. there is ‘something’ about the women who end up in these political institutions. Furthermore, another set of studies on political corruption, also highlight that there is something about women that make them less corrupt (Bauhr

& Charron, 2021; Esarey & Schwindt-Bayer, 2018; Swamy et al., 2001) – e.g. “women really are the fairer sex.” While several of these studies suggest that institutional features undoubtedly shape women’s behavior, they also suggest that there is something about these women that makes them behave differently compared to their male counterparts, like for example women’s own low self-assessment (Fox & Lawless, 2004, 2011; Nguyen, 2019), or that women are more risk-averse (Bauhr & Charron, 2021; Esarey & Schwindt-Bayer, 2018; Swamy et al., 2001). In short, these studies suggest that women who end up in these positions have certain ‘female’ traits. Yet, I argue that female judges being more inclined to support their appointing authority is not a ‘female’ trait. Rather it is the political infrastructure and process that undermines judicial independence and that creates incentives for less sincere voting. In order to show this, I have to demonstrate that it is not something about female judges that makes them more likely to support those in charge of their (re)appointment, but instead the political infrastructure around them.

To address this potential self-selection affect, I first, show that both male and female judges tend to favor their appointing authorities, but that this effect is stronger for female judges. Second, I will show that when judicial constraints change, and reappointment is no longer possible, female judges alter their voting behavior more significantly than male judges. Allowing me to show that it is not something about the judges in themselves, but that it is the political infrastructure around the judges that leads to less sincere

voting. This leads to my second hypothesis:

Hypothesis 2 *Female judges are less likely to support those in charge of their appointment when they can no longer be appointed, compared to their male counterparts.*

Research have so far not investigated whether female and male judges have the same incentives to support those in charge of their appointment to begin with. Furthermore, research have not explored whether female and male judges respond to changes in judicial constraints differently. Yet, research from several different context suggests that judges overall are more likely to favor those in charge of appointing them (Gray, 2019; Hall, 1992, 2014; Stiansen & Voeten, 2020). The same studies, also show that when judicial constraints change, judges decision-making patterns change. Building on this research, I argue that both male and female judges will change their voting behavior when judicial constraints change, but female judges more so than male judges, given that female judges may be more likely to support those in charge of their appointment to begin with.

The European Court of Human Rights

To explore how female and male judges decide cases under different judicial constraints, I investigate judicial voting patterns of judges in the ECtHR. The ECtHR renowned as one of the influential international courts, adjudicates

cases originating from 46 different member states (Russia recently abandoned the Convention, thus making the number of member states 46 instead of 47).

The ECtHR is an ideal case to study in order to answer the two hypothesis outlined in the theory section. First, the court has had and has a relative high number of female judges on its bench, compared to other international courts (see Figure 1). The relative high number of female judges on the ECtHR can be attributed to the formal gender quota in the nomination process. Countries nominate three judges to the ECtHR, and the formal gender quota states that countries have to at least nominate one woman out of the three nominees. One of the three nominees are subsequently selected to the court. The gender quota in the nomination process was introduced in 2004 and also stated that the sub-committee selection judges should select the under-represented sex if candidates are equal in merit. This gender-quota on the nominating list increased the number of female judges in the ECtHR and ultimately eliminated 'manels' – decision-making processes where the entire panel consists of only male judges (Voeten, 2021).

Second, judges in the ECtHR vote in all cases stemming from their member state as the government is the defendant in all ECtHR proceedings. Furthermore, how judges vote in the different cases are and always has been transparent. This judicial setup offers an ideal context for analyzing how female and male judges vote under different judicial constraints: Judges are tasked with adjudicating cases against governments, and governments in charge of nominating judges to court can monitor judges' voting patterns.

Due to this judicial setup, judges may feel incentivized to vote in favor of their governments due to career incentives.

Third, judicial terms in the ECtHR went from being 6 years renewable to 9 years nonrenewable in 2010. This allows me, to test how the institutional context influences female and male judges' voting behavior, and demonstrate that it is the institutional context and not something inherent about female judges that makes them more prone to support those in charge of their (re)appointment. Stiansen (2022) and Molbæk-Steensig & Quemy (2023) has already explored how this sudden change in judicial terms affected judges voting behavior, and found that judges propensity to support their government significantly drops when they can no longer be reappointed. However, his study did not look into whether 1) female judges are more likely to favor the government to begin with and 2) whether female and male judges respond differently to sudden changes in judicial constraints.

Note that judges who were serving their first term in the ECtHR in 2010 when judicial terms became non-renewable had their term extended to 9 years. Judges serving their second term had their term extended by two years.²

²For a longer discussion on the introduction of non-renewable terms see Stiansen (2022).

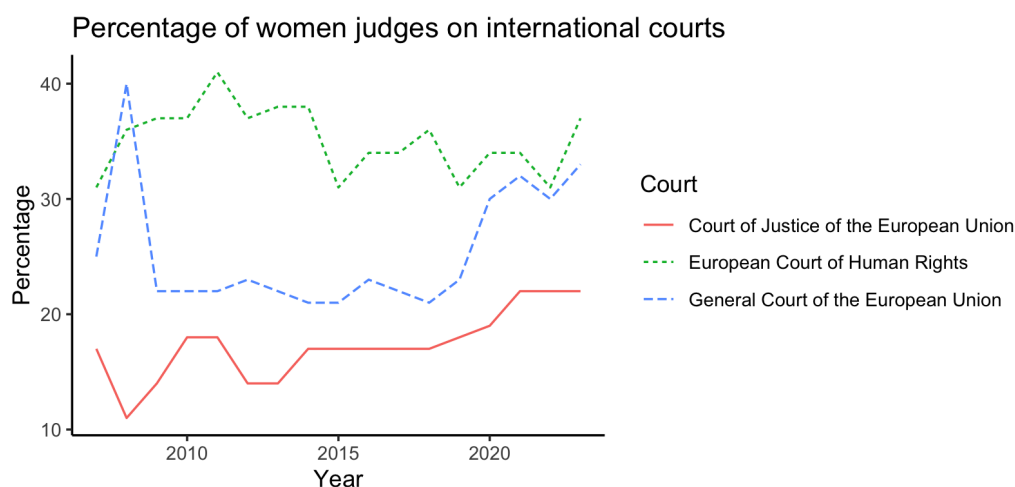


Figure 1: Percentage of women serving on three different international courts in Europe from 2008 to 2023. Data from European Institute of Gender Equality (EIGE).

Empirical strategy

To investigate how gender and strategic considerations interacts and their subsequent effects on judicial voting behavior I use data from Stiansen (2022). The dataset encompasses all ECtHR judgments spanning from 1999 to 2016, comprising of 15262 cases and 108949 judicial votes. For all judges in the dataset, I coded the gender. The dependent variable measures whether or not a judge voted in favor of the government. In all cases in the ECtHR a government is on trial for having committed one or several human rights violations against a private party (individual person, company or non-governmental organization). Given the binary nature of the dependent variable I estimate logistic regression models, looking at individual judges propensity to vote in

favor of the government in each individual case. Overall, judges vote in favor of the government in approximately 9.9% of the votes they cast. This suggests that governments accused of committing human rights violations have a small chance of leaving the court cleared of that accusation.

In the models I include three main independent variables. First, I control for the gender of the judge to capture voting differences between male and female judges. Female judges constitute approximately 30% of all the judges in my data and account for a similar proportion of the votes (see Appendix A2). Female judges vote in support of the government in approximately 10% of their votes, whereas male judges vote in support of the government in approximately 9% of their votes.

Second, I control for whether or not a judge is voting against his or her own country. Judges voting in cases against their own country are hereafter referred to as 'same nation' judges. In order to account for both female and male 'same nation' judges, I include an interaction effect between female and 'same nation' judges. Thus, in the models I distinguish between 4 different groups of judges, there are as follows: 1) male 'same nation' judges; 2) female 'same nation' judges; 3) male 'international' judges and 4) female 'international' judges. Note that 'international' judges, both male and female, refer to the other judges on the panel who are voting in a case that is not against their government. Bivariate analysis show that female 'same nation' judges support their government in approximately 15% of all the votes they cast. In comparison, male 'same nation' judges support their government in approx-

imately 9% of the votes they cast. This suggests there is a large difference in voting behavior between male and female judges, when they vote in cases against their government.

Third, I include a variable that distinguishes between votes being cast when judges could be reappointed and votes being cast when judges can no longer be reappointed. The sudden introduction of non-renewable terms in 2010 reduced judges propensity support the government (Stiansen, 2022). In order to demonstrate that female judges are not inherently more likely to support the government, and this propensity to support the government can be attributed to judicial constraints, I include a triple interaction term between female judges, 'same nation' judges and a variable distinguishing between the time period when judges could be reappointed and when they could no longer be reappointed. This variable estimates the *effect of non-renewable terms* on judicial decision-making. In the data, 72083 votes were cast by judges who could still be reappointed and 36866 votes were cast by judges who can no longer be reappointed. This variable allows for a difference-in-difference approach, with a triple interaction term. Thus, my second model in the results section is triple difference-in-difference (DID) model.

I estimate the DID between how judges vote when they could be reappointed and when they could not be reappointed, following Stiansen (2022). However, I estimate a 'triple' DID, as I have a triple interaction term ('same nation judge' x Female judge x Effect of non-renewable terms). In other

words I am estimating the average treatment of the treated (ATT) on casting a vote in favor of the government for female 'same nation' judges when they can be reappointed and when they can no longer be reappointed and comparing it to the average treatment of the treated: male 'same nation' judges when they can be reappointed and when they can no longer be reappointed. A triple DID may seem complicated, however, the model gives more convincing results compared to the standard DID by adding an "additional" control group (Angrist & Pischke, 2009; Olden & Møen, 2022).

I further include several control variables in all the models I estimate. Research finds that gender matters in specific cases due to ideological factors (Boyd et al., 2010; Voeten, 2021), thus in order to account for those ideological differences, I control for the most frequent human rights violations committed by governments. These encompass the right to life (Article 2); the prohibition of torture (Article 3); the right to liberty (Article 5); the right to a fair trial (Article 6); the right to respect for private and family life (Article 8); freedom of expression (Article 10); the right to an effective remedy (Article 13); the prohibition of discrimination (Article 14); and the right to private property (Article 1 of Protocol 1). It is worth noting that a single case may involve allegations of violations pertaining to multiple articles, making these categories non-exclusive.

In order to show that judges are more supportive of their government regardless of the importance of the case, I control for the case importance. In the ECtHR, there are 4 different levels of case importance. Cases that are suf-

ficiently important to be selected for publication in the court’s official reports (case report judgments); judgments that make a significant contribution to the development of clarification or modification of case law (importance level 1); judgments that do not make a significant contribution but still go beyond “merely applying the existing case law” (importance level 2); and judgments that just apply existing case law (importance level 3). I include a set of dummy variables to measure case importance where case report judgments are the reference category. This measure of case importance is the Courts’ own way of distinguishing between cases.³

Grand Chamber judgments are often considered more significant. Cases reach the Grand Chamber either through an appeal by the ‘ordinary’ chamber or when the judges on the ‘ordinary’ chamber deem the case particularly important. ‘Same nation’ judges may feel more inclined to support their government due to the case’s significance. To account for this, I include a control variable, flagging cases that was decided in the Grand Chamber, ensuring that ‘same nation’ judges’ support for their government is not solely driven by the higher profile of these particular cases.

Research suggests that judges nearing retirement age have less incentives to support those in charge of their appointment (Hall, 2014). As they can no longer be reappointed (for judges before 2010), nor are they likely to seek another job after their term ends (for judges after 2010), their decisions may be

³European Court of Human Rights. 2021. “Document Collections.” [https:// hudoc.echr.coe.int/eng](https://hudoc.echr.coe.int/eng)

less influenced by career incentives and reappointment concerns. Therefore, I also control for judges' age at the time the decision was made.

Additionally, I further include a variable that measures the number of years judges have served on the court. For judges eligible for reappointment, I expect that the likelihood of supporting their government to increase as they approach six years of service, reflecting reappointment incentives. In contrast, for judge who cannot be reappointed, I expect tenure to have little effect on their decisions.

Finally, I include fixed effects at the country level. This addresses the potential bias introduced by for instance female judges from countries with fewer human rights violations or countries where applicants have weak claims. In these cases, the support for the government may not reflect strategic career incentives, but rather the weaker claims of applicants from such countries. Including member state fixed effects ensures that these contextual factors are controlled for in the analysis.

The results are reported in Table 1 and 2. I have excluded the extensive list of variables from the tables in the results section, but in the appendix I have included tables with all variables (Appendix B). Note that in these models I compare 'same nation' judges to 'international' judges, whilst at the same time comparing male and female judges to each other within those two groups. The constant represents the likelihood that a male 'international' judge will vote in favor of the the government, when all the other variables are at 0.

Results

Table 1 reports the results from two models. Model 1 show how female and male 'same nation' judges vote in cases against their government. Model 2 estimates how female and male 'same nation' judges change their voting behavior when non-renewable terms were introduced.

In model 1, I find that male 'same nation' judges are more likely to vote in favor of the government, compared to the other male judges on the panel, by approximately 41%. The intercept in the model represents a male judge, that is under the age of 65, in his first year in court. Female 'same nation' judges are more likely to vote in favor of the government, compared to the other male judges on the panel, by approximately 51%. Thus, the difference between male and female 'same nation' judges' propensity to support the government is approximately 10 percentage points. These results suggests that female 'same nation' judges are more likely to support the government compared to male 'same nation' judges, supporting hypothesis 1. The overall results for both male and female 'same nation' judges corroborates earlier findings, that judges are more inclined to vote in favor of those in charge of their reappointment (Posner & De Figueiredo, 2005; Voeten, 2008; Stiansen, 2022; Gray, 2019; Hall, 1992, 2014).

Importantly, the gender composition of the other judges on the panel does not appear to significantly influence a judge's voting behavior in favor of the applicant or the government, as the coefficient is not statistically sig-

nificant. This implies that gender only seems to play a substantial role when judges are presiding over cases involving their government. My results seem to support the theory that female judges are more likely to support their government compared to their male counterparts. This finding could potentially be attributed to various factors, such as the perception that rendering unfavorable decisions against their government may result in more punitive actors for female than for male judges. In this explanation, female judges may feel like that have more to lose, because they may have worked harder to gain the position to begin with.

Turning to the other variables in model 1, I find that in line with my expectations that the more time a judge has spent in court, the more likely he or she is to vote in favor of the government. Furthermore, I find that as judges get older they are less likely to support the government.

Turning to the second model in Table 1, where I include a triple interaction term for 'same nation' female judges after the introduction of non-renewable terms, I find that both female and male 'same nation' judges are more likely to support their government when they can be reappointed (see coefficients for 'Same nation judge' and 'Same nation judge x Female judge'). Also in this model, I find that female 'same nation' judges are more likely to support their government compared to male 'same nation' judges (43% vs 58%). This is in line with my first model, and with the expectation that female judges are more likely to support those in charge of their appointment compared to male judges. Looking at the effect of introducing

non-renewable terms, the model suggests that this made judges overall more likely to support the government. This is quite surprising given that judges are less accountable to their governments, when they can no longer be reappointed. However, note that this is the effect for all judges, not just 'same nation' judges. Upon close inspection of this, I found that after 2010, governments won approximately 14% of the cases in the ECtHR, whilst before 2010, governments only won 5% cases.

Looking at how different groups judges altered their behavior after they could no longer be reappointed to court, I find that the coefficient for male 'same nation' judges is not significant, suggesting that they are not more or less likely to vote in favor of the government when they can no longer be reappointed, compared to when they could be reappointed ('Same nation' judge x Non-renewable term). Yet, I find that female 'same nation judges' are approximately 29% less likely to vote in favor of the government when they cannot be reappointed, compared to when they could be reappointed. Note, that this coefficient though, is only significant at the 0.1 level, indicating that it is less precisely measured. However, this offers suggestive evidence in support for hypothesis 2, given that I find that female 'same nation' judges do alter their behavior more than their male counterparts. Thus, I find that it is not something with 'these' female judges that makes them more likely to support the government, but that it is tied to the political context in which they operate. My results suggests on one hand that women fear more over their career trajectories due to having struggled more to get to where

they are. On the other hand, my results suggest that this finding is not the result of a female trait, where female judges are 'inherently' different than male judges. Instead, my findings suggests that when judicial constraints change, female judges alter their voting behavior more significantly than their male counterparts, demonstrating that it is the political infrastructure that undermines judicial independence.

In this model, I also find that female 'international' judges, are more likely to support the applicant, compared to the male 'international' judges (when they can be reappointed). This is in line with previous research on judicial voting behavior in the ECtHR, where one study reports that female judges are more likely to support the applicant in all cases, compared to their male counterparts (Voeten, 2021). However, the gender difference between male and female 'international' judges is not significant, and the coefficient for female 'international' judges' is also not significant when judicial terms are non-renewable (Female judge x Non-renewable term). This may be due to statistical power.

In this model, I further find no effect of years since appointment, but as judges age they are less likely to support the government, in line with the results from the first model, the theoretical expectations outlined above, and previous research. Results are illustrated in Figure 2 for model 1, and Figure 3 and 4 for model 2. Comparing Figure 3 and 4, we see that the gender difference between judicial voting behavior and between 'international' and 'national' judges decreases from when they can be reappointed (Figure 3)

to when they cannot be reappointed (Figure 4). Also note that the governments propensity to win between the two time periods also significantly increases, while at the same time, the voting behavior between different groups of judges becomes more similar. Stiansen & Voeten (2020) argues that governments win rates increased sharply as a result of governments appointing more government friendly judges, while at the same time the court became more reluctant to decide cases against democratically critical governments.

Table 1: Judicial voting behavior of male and female judges under different judicial constraints.

	Vote in favor of government (against the applicant)	
	All votes	Reform model
	(1)	(2)
Same nation judge	0.102** (0.042)	0.144*** (0.054)
Female judge	-0.065 (0.050)	-0.240*** (0.060)
Non-renewable term		0.715*** (0.031)
Years since appointment	0.012*** (0.004)	0.002 (0.004)
Age	-0.009*** (0.003)	-0.008*** (0.003)
Same nation judge x Female judge	0.334*** (0.074)	0.455*** (0.110)
Same nation judge x Non-renewable term		-0.105 (0.080)
Female judge x Non-renewable term		-0.046 (0.056)
Same nation judge x Female judge x Non-renewable term		-0.242* (0.145)
Constant	-0.346** (0.144)	-0.597*** (0.144)
Case clustered SE	Yes	Yes
Appointing state FE	Yes	Yes
Article dummies	Yes	Yes
Observations	108,949	108,949
Log Likelihood	-29,745.550	-29,363.140
Akaike Inf. Crit.	59,621.100	58,864.280
Note:	*p<0.1; **p<0.05; ***p<0.01	

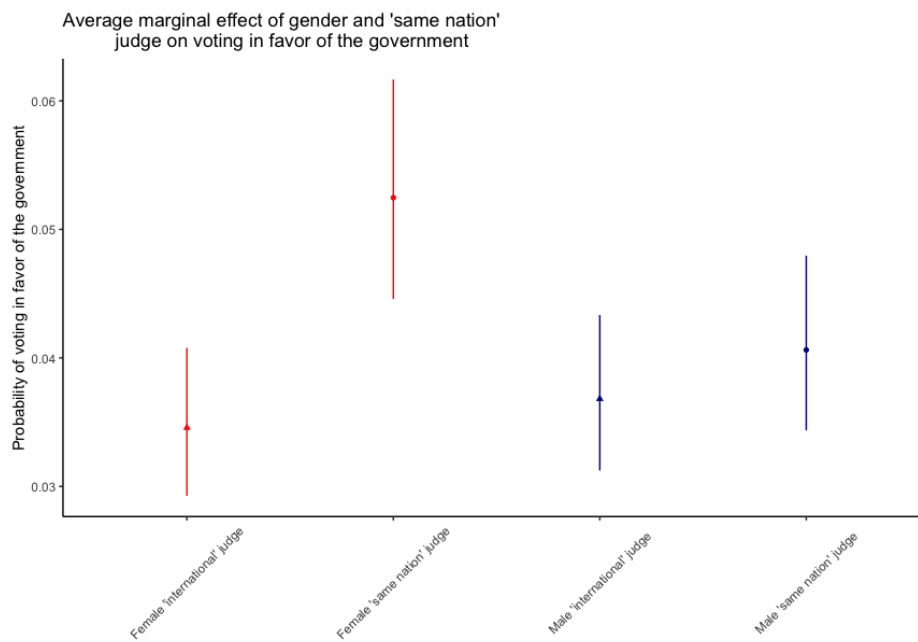


Figure 2: Results from model 1 in Table 1: The average marginal effect of gender and 'same nation' judge on voting in favor of the government.

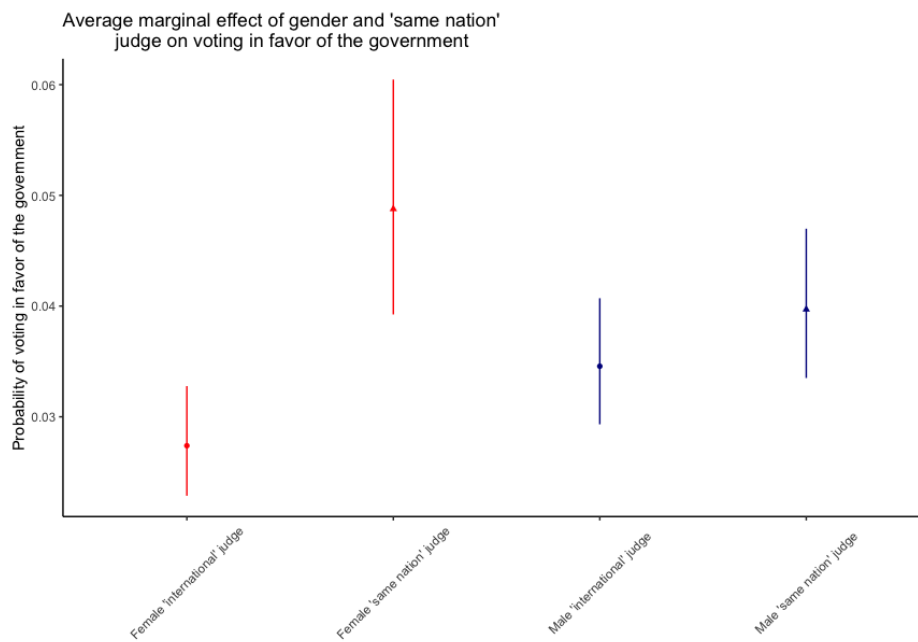


Figure 3: Results from model 2 in Table 1: The average marginal effect of gender and 'same nation' judge on voting in favor of the government when judges can be reappointed

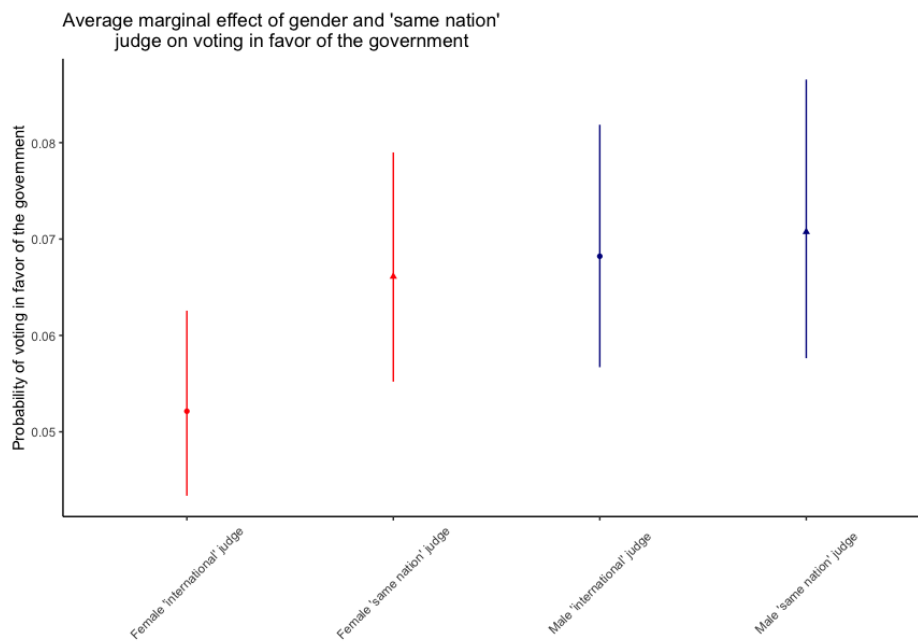


Figure 4: Results from model 2 in Table 1: The average marginal effect of gender and 'same nation' judge on voting in favor of the government when judges cannot be reappointed

Summary

While an extensive body of research has examined gender and judicial decision-making through an attitudinal lens (Songer et al., 1994; Stribopoulos & Yahya, 2007; Boyd et al., 2010; Voeten, 2021; Weinshall, 2021), little attention has been given to how gender differences in strategic behavior may explain gender disparities in judicial rulings. Yet, research has consistently shown how that judges operate within institutional frameworks that may incentivize them to act strategically – especially when career opportunities are at stake (Epstein & Knight, 1997, 2000, 2004; Dunoff & Pollack, 2017; Larsson et al., 2023; Stiansen, 2022; Gray, 2019; Hall, 1992, 2014). However, whether strategic constraints impacts male and female judges differently has remained largely unexplored.

This oversight is surprising given the significant differences in career trajectories between male and female judges. National and international courts remain male-dominated (Boulaziz, 2024; Grossman, 2016), and female judges may face gender-based selection biases during the appointment process (Collins Jr et al., 2023). Moreover, gender quotas aimed and increasing representation in courts (Petkova, 2015), may also influence the behavior of female judges once appointed (Hermansen, 2022). Female judges often face additional biases after their appointment (Christensen et al., 2012), and they tend to wield less influence than their male counterparts during their term (Boulaziz, 2024), which ultimately affects their reappointment prospects

(Hermansen & Naurin, 2022). Furthermore, research suggests that female judges receive less credit for the work they do (Szmer et al., 2024), despite evidence showing that they often outperform men while on the bench (Moyer et al., 2021). These challenges highlight the unique and unfair obstacles faced by female (aspiring) judges and may shape their behavior in court.

Drawing on these various strands of literatures, I hypothesize that female judges may be more inclined than male judges to vote in alignment with those responsible for their appointment and reappointment, driven by concerns over job security. While both male and female judges may produce more favorable rulings toward their appointing authority due to career incentives I argue that female judges are more likely to be responsive to these pressures compared to their male counterparts.

Unlike much of the research on women in political institutions, which often focuses on specific female traits, like for example ideological differences (Voeten, 2021; Boyd et al., 2010), women systematically undermining their own qualifications (Ashworth et al., 2024; Anzia & Berry, 2011) or risk-aversion (Bauhr & Charron, 2021; Esarey & Schwindt-Bayer, 2018; Chaudhuri et al., 2024), my approach examines how institutional contexts shape behavior. By exploiting a sudden change in judicial terms, I demonstrate that it is not female traits, but rather institutional structures that undermine judicial independence.

My findings show that, on the one hand, female judges are more likely than male judges to support their appointing authority when rendering de-

cisions. However, I also find suggestive evidence that when reappointment is no longer possible, female judges are less likely than their male counterparts to align their decisions with their appointing authority.

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