The Politics of Compliance with International Human Rights Court Judgments

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Abbreviations

ACHR American Convention on Human Rights

ACtHPR African Court of Human and Peoples' Rights

CoE Council of Europe

CoM Committee of Ministers

ECHR European Convention on Human Rights

ECmHR European Commission for Human Rights

ECtHR European Court of Human Rights

IACmHR Inter-American Commission for Human Rights

IACtHR Inter-American Court of Human Rights

IHRC International Human Rights Court

OAS Organization of American States

1 Introduction

On December 4, 2008, the European Court of Human Rights (ECtHR) ruled that the United Kingdom had violated the human rights of two applicants, Mr. S. and Mr. Michael Marper. The violations concerned the indefinite retention of DNA profiles and fingerprints taken from the applicants during the investigation of crimes for which they were never convicted. The British government had argued that having a comprehensive DNA register was of vital importance to law enforcement and had been of great value in the investigation of serious crimes. Yet, the ECtHR found that the retention of such evidence constituted interference with the private life of the persons affected. The ECtHR further held that the indiscriminate nature of the retention regime failed to "strike a fair balance between the competing public and private interests" and that the United Kingdom had "overstepped any acceptable margin of appreciation in this regard."

The ECtHR ruling in the *S. and Marper v. United Kingdom* case had several important consequences. The two applicants were awarded financial compensation and the physical evidence collected from them was destroyed. The effects of the ruling were even more profound as the United Kingdom also destroyed DNA samples and fingerprints retrieved from other individuals in similar circumstances and amended the relevant legislation. Despite the strong objections initially expressed by the United Kingdom, the judgment thus led to important restrictions on law enforcement's access to physical evidence collected from individuals.

The case of *S. and Marper v. United Kingdom* illustrates how judgments from an international human rights judiciary can affect domestic politics in significant ways. The *S. and Marper v. United Kingdom* ruling is not unique in this respect. The ECtHR's jurisdiction now covers 47 member states with a combined population of more than 800 million, and it has rendered thousands of rulings condemning respondent states for their human rights violations. In the Americas, the Inter-American Court of Human Rights (IACtHR) has similarly ruled on highly contentious issues affecting the domestic politics of 22 Latin-American and Caribbean states that are, or have been, subject to its jurisdiction.

The interventions of International Human Rights Courts (IHRCs) in the do-

mestic sphere may be seen as part of a broader trend towards increasing legalization and judicialization of both domestic and international politics (Goldstein et al. 2000, Ferejohn 2002, Hirschl 2008, Alter 2014, Sieder, Schjolden and Angell 2005). At the domestic level, more than 80 per cent of the world's constitutions did in 2011 allow domestic courts to set aside legislation found to be unconstitutional, compared to less than 40 per cent in the 1950s (Ginsburg and Versteeg 2014: 587). At the international level, states have increasingly established international courts to interpret and adjudicate alleged violations of international treaties (Alter 2014). In the case of IHRCs, this shift also transfers decision-making authority from the domestic to the international level, as the IHRCs typically rule on domestic issues in the respondent states. These are important political developments.

However, the *S. and Marper v. United Kingdom* case also illustrates that the changes that result from IHRC judgments ultimately depend on actions taken by the respondent state. It was not the ECtHR that paid out monetary compensation for the applicants, destroyed physical evidence, or enacted legislative changes. These actions were taken by the United Kingdom after it had lost the case. Moreover, the United Kingdom's implementation of *S. and Marper v. United Kingdom* has not been without challenges. Notably, the British Association of Chief Police Officers is reported to have urged police officers to ignore the ruling (Hillebrecht 2014*a*: 109). Moreover, the process of enacting the necessary legislative changes was delayed due to disagreement between the government and the Parliament's committee on human rights concerning the content of the legislative changes. The necessary legislative changes were not enacted in Northern Ireland until 2015 and have yet to enter into force. Thus, despite considerable progress, the United Kingdom's implementation of this judgment is still not considered complete.

The practical consequences of IHRC rulings thus depend on actions taken within the political and legal systems of respondent states and prompt implementation cannot be taken for granted. While the United Kingdom has, eventually, implemented several measures to comply with the *S. and Marper v. United Kingdom*, implementation has been delayed for Northern Ireland. Moreover, other judgments – both against the United Kingdom and against other respondent states – have remained unimplemented for years or even decades. For instance, in 2005 the ECtHR ruled, in the case of *Hirst v. United Kingdom (No. 2)*, that the United Kingdom's blanket ban on prisoner voting violated the right to free elections.

However, in contrast to the *S. and Marper v. United Kingdom* case, the United Kingdom has for several years blatantly refused to make the necessary legislative changes to comply with the *Hirst v. United Kingdom (No. 2)* judgment. Instead, the British parliament decided in February 2011 to uphold the current practice of not allowing prisoners to vote (Horne and White 2012: 1). Reports emerged in late 2017 that the United Kingdom would finally take steps to implement the *Hirst* ruling (Maidment 2017, Travis 2017) and the ruling was finally implemented through a series of administrative measures completed in September 2018 (Committee of Ministers, Department of Execution of ECtHR Judgments N.d.*a*). Yet, the United Kingdom defiantly refused to comply with this ruling for more than a decade (e.g. de Londras and Dzehtsiarou 2017: 476) and the relevant legislation was never amended.

The policy influence of IHRCs is thus limited by a compliance problem similar to the one faced by other domestic and international courts that rely on other actors to implement their rulings (McCubbins, Noll and Weingast 2006: 109, Staton and Moore 2011: 579-562). IHRCs are therefore examples of what Hall (2011: 16) calls implementer-dependent institutions. Whether domestic legislatures, executives, or domestic courts, these other actors will often be the same as those responsible for the human rights violation identified in the relevant IHRC judgments. They may therefore be expected to have an interest in preserving the *status quo* rather than implementing rulings rendered against them. An important question is under what conditions they will promptly implement IHRC decisions and under what circumstances they will delay implementation or outright defy the IHRC. This question is important not only to understand the importance of IHRCs to contemporary politics, but also more broadly for understanding the conditions under which political actors will adhere to the decisions of independent courts (Staton and Moore 2011: 561-562). The overarching research question for this dissertation is thus:

Research Question: *Why are some IHRC judgments promptly complied with while others are not?*

I argue that the answer to this question is found both in the politics of respondent states and in aspects of the judgments that influence their reception by domestic political actors. How implementation processes unfold will ultimately

depend on the political preferences of the actors responsible for compliance and on political costs these actors expect to face under different compliance outcomes.

An important contribution of this dissertation is to consider how judgment characteristics influence compliance politics. Extant scholarship has tended to explain compliance in terms of relatively slow-changing country characteristics, such as the quality of democratic institutions and bureaucratic capacity in the respondent state (Anagnostou and Mungiu-Pippidi 2014, Hillebrecht 2014*a*;*b*, Voeten 2014, Grewal and Voeten 2015). Although valuable, these studies provide limited leverage concerning within-country variation in compliance performance. I argue that judgment characteristics help explain such variation. Judgment characteristics determine the actors that will be responsible for compliance, influence how the judgment is perceived by important audiences, and affect the transparency of the compliance process. Importantly, such judgment characteristics may be influenced by the actions of the judges sitting on the case. An important implication is that although compliance is an "inherently domestic affair" (Hillebrecht 2014*a*: 39), judges can influence compliance politics.

I show that three types of judgment characteristics affect the likelihood of prompt compliance. Firstly, Chapter 2 analyzes how implementation processes are influenced by the need to enact legislative changes. Although the ECtHR has faced strong criticism for interfering too much with the will of elected parliaments (Gerards 2016: 333, Reiersten 2016: 366-367, Stiansen and Voeten 2018), judgments requiring legislative changes are not more at risk of long-term defiance than other judgments. However, the process of negotiating agreement among the broader set of veto-players (Tsebelis 1995; 2002, Binder 1999) involved in law-making tends to delay compliance with judgments that require legislative changes. Compared to judgments only requiring other types of measures, such as executive action or jurisprudential changes, judgments requiring legislative changes are therefore implemented at a slower rate. As discussed, the process of amending the legislation to comply with the ruling in the case of *S. and Marper v. the United Kingdom* lasted for several years. The length of the implementation process was in part due to disagreement between different actors involved in the legislative process. I show that need for legislative changes generally tends to delay compliance. However, just as in the case of *S. and Marper v. the United Kingdom*, the necessary legislative measures are often enacted after respondent states have

had time to identify and enact legislative amendments that are acceptable to all relevant veto players. Thus, although need for legislative changes tends to delay implementation, states are not necessarily more likely to resist legislative changes than other measures in the long run.

Secondly, Chapter 3 shows that the courts can influence compliance with judgments through their remedial strategy. The ECtHR traditionally refrains from specifying what (non-monetary) measures respondent states should take to implement its judgments. However, in response to its compliance problem, the ECtHR has developed a strategy of indicating expected remedies in selected judgments where compliance is expected to be particularly challenging (Keller and Marti 2015). I argue that such remedial indications can facilitate compliance by making it easier to monitor whether appropriate remedies are being implemented. Remedial indications can also increase the political cover (Allee and Huth 2006) for actors responsible for implementing controversial measures. Consider the group of ECtHR judgments rendered against Romania concerning inefficiencies in the mechanism set up to compensate for property expropriated by the communist regime. Although the first judgment in this group, *Strain and Others v. Romania*, was rendered in 2005, little progress was made towards compliance until the ECtHR in 2010 rendered a judgment in a follow-up case, *Maria Atanasiu and Others*. In contrast to previous rulings, this follow-up judgment outlined specific changes Romania needed to make to the compensation mechanism. Civil-society actors are reported to have used the ECtHR guidelines to evaluate Romania's implementation efforts and legislation was finally amended in 2013.[1] The remedial indications thus appear to have influenced both the monitoring of the implementation process and Romania's response. Although the large number of compensation claims has meant that full compliance has not yet been achieved, the ECtHR has ruled that the reformed mechanism Romania has set up is consistent with its human rights obligations (see *Preda and Others v. Romania*). This case is illustrative for the type of cases in which the ECtHR has offered remedial indications. These are cases in which prompt compliance is unlikely. Yet, remedial indications tend to contribute to quicker compliance, suggesting that judicial strategies can influence how compliance politics unfold.

[1] Detailed information is available from Committee of Ministers, Department of Execution of ECtHR Judgments (N.d.*c*)

Thirdly, I argue that judgment characteristics that influence the perceived legal quality and social legitimacy of the judgment can influence compliance politics. Specifically, Chapter 4 suggests that the likelihood of prompt compliance can be influenced by open judicial dissent. Visible disagreement on the bench can impact negatively on the authority of judicial decisions, and in this way provide justifications for non-compliance. It can be more challenging for pro-compliance constituencies to win domestic debates over whether a decision should be implemented if one of more of the judges involved in the case argue that the decision was incorrect than when the ruling is unanimous. Consider for instance the question posed by one member of the House of Lords, Baron Scott of Foscote, during a debate concerning whether the United Kingdom should comply with the aforementioned *Hirst v. United Kingdom* judgment:

> Is the Minister aware also that the Hirst (No. 2) judgment contained a dissenting opinion from five of the 17 judges, including Judge Costa, and that in the opinion of many, including myself, the dissenting opinions are far more convincing than those of the majority? (quoted by Wagner 2010).

Although judicial dissent was not the main reason for defiance of the *Hirst* ruling, the disagreement on the bench was invoked to sow doubt concerning the legal authority of the judgment. Such strategies can be effective because they make it more difficult for pro-compliance actors to argue that they have "the law" on their side. Data concerning both IACtHR remedial orders and ECtHR judgments suggest that judicial dissent more generally contributes to greater compliance challenges. This finding shows that opting for consensus decisions is an advisable strategy for judges seeking to promote compliance with their rulings. More broadly, the finding suggests that judgment characteristics that affect the perceived legal quality of IHRC judgments can influence compliance politics.

Another important contribution of this dissertation is to provide a richer and more nuanced understanding of how the political situation in respondent states influences compliance with IHRC judgments. Previous research has tended to view compliance politics primarily as a struggle between reluctant executives and pro-compliance actors in other state institutions and civil society. For instance, Hillebrecht (2014*b*: 1107) considers that ECtHR rulings are implemented because they

> arm judiciaries, legislatures, and civil society actors with an externally legitimated blueprint for human rights reform that might be counter to executives' own policy preferences or domestically unpopular.

Haglund (2014: 27-35) similarly argues that because executives have the primary responsibility for human rights policy, adherence to IHRC decisions will depend on the ability of other actors to pressure the executive to comply.

I argue that although such accountability politics are often important, implementation processes are also affected by the ability of different domestic veto players to reach consensus and by the incentives political competition provides for sustaining international judicial review. The relationship between the politics and institutions of the respondent state and compliance with IHRCs is therefore more complex than what is suggested by existing scholarship in two important ways.

Firstly, Chapter 2 demonstrates that the checks and balances expected to contribute to compliance by facilitating accountability politics (Hillebrecht 2014*a*;*b*, Voeten 2014) can also delay compliance when implementation requires agreement among multiple political actors. As discussed, such veto-player problems tend to delay compliance with judgments that require legislative changes. The delays associated with legislative changes are affected by the number of veto players with diverging preferences and on whether the electoral system tends to produce clear legislative majorities. Thus, although domestic institutions may be important for holding decision-makers responsible if failing to comply with IHRC judgments, I argue that such institutions also explain why compliance with judgments requiring legislative change often takes a long time to achieve. When legislative changes are needed, the influence of domestic veto-players is thus similar to what has been observed for compliance with other types of international obligations where veto-player problems are often invoked as an explanation for implementation challenges (e.g. Conrad and Moore 2010, Börzel, Hofmann and Panke 2012, Peritz 2018).

Secondly, Chapter 5 argues that electoral uncertainty creates incentives for politicians to comply with IHRC judgments they disagree with even when the immediate costs of defiance appear minimal. As long as office holders are uncertain about their ability to win future elections, they have reasons to sustain

international judicial review as a constraint on future governments. Even if political actors do not necessarily have reasons to fear that their civil liberties will be threatened by their political adversaries, strong judicial review provides a valuable avenue for challenging policies they dislike (Landes and Posner 1975: 177, Dixon and Ginsburg 2018: 42-43). Electoral uncertainty therefore increases the value placed on judicial review, including the review provided by IHRCs. Since defying adverse decisions will undermine judicial review, electoral uncertainty can promote compliance even with unpopular judgments (Staton and Vanberg 2008: 507, Vanberg 2015: 173-174). In support of this argument, I show that the degree of electoral uncertainty in respondent states correlates with compliance with ECtHR and IACtHR rulings. This finding holds also when controlling for other characteristics of the respondent state, such as the degree of democratic consolidation and the strength of checks and balances. While electoral uncertainty has previously been found to explain the introduction of judicial review in domestic constitutions (Ginsburg and Versteeg 2014) and cross-national variation in judicial independence (Stephenson 2003, Epperly 2017), I am the first to show that political competition promotes compliance with adverse judgments and to apply the political-competition theory of judicial review to the context of international courts. Importantly, political competition may explain why political criticism of IHRCs in several respondent states has not necessarily reduced the level of compliance (Lambrecht 2016*a*: 513-514). For instance, the United Kingdom which is one of the countries where the ECtHR has faced the strongest criticism has continued to promptly implement most ECtHR judgments (Hillebrecht 2014*a*: 101-102). This mechanism can also explain why states where a single political party becomes dominant turn away from the constraints provided by IHRCs. For instance, Venezuela withdraw from the jurisdiction of IACtHR in 2012 after having blatantly defied a number of IACtHR rulings.[2]

The remainder of this introductory chapter proceeds as follows. Section 1.1 briefly introduces the IHRCs, defines compliance with IHRC judgments, and explains why such compliance can be difficult to achieve. Section 1.2 discusses the general theoretical framework employed for explaining compliance with IHRC judgments. Section 1.3 describes the data used for the empirical analysis and the

[2]Venezuela announced its withdrawal in 2012. The withdrawal went into effect in 2013, one year after this declaration had been made.

strategies for measuring and modelling compliance with ECtHR and IACtHR rulings. Section 1.4 discusses the approaches taken to statistical and causal inference. Section 1.5 summarizes the four articles included in the dissertation. Finally, section 1.6 concludes and proposes avenues for further research.

1.1 IHRCs and the Problem of Compliance

In this section, I briefly introduce the type of institutions I refer to as IHRCs, describe how I conceptualize compliance, and explain why compliance – as I conceptualize it – can be challenging for IHRCs to achieve.

1.1.1 IHRCs

By IHRCs, I refer to three international courts that have been established in Europe, in the Americas, and most recently in Africa. The ECtHR is the oldest and most prolific of the IHRCs and was established in 1959 to interpret and adjudicate alleged violations of the European Convention on Human Rights (ECHR).[3] In 1979,[4] the IACtHR was similarly established as part of the Organization of American States to interpret and adjudicate alleged violations of the American Convention on Human Rights (ACHR). Most recently, the African Court of Human and Peoples' Rights (ACtHPR) was established in 2007.[5]

These institutions are examples of international tribunals, which Romano (1998) defines as permanent institutions set up by international treaties to resolve cases based on international law and pre-existing procedures, and which have the authority to render legally binding judgments (see also Alter 2014). It is particularly the ability to render legally binding judgments that distinguishes IHRCs from the

[3]The ECHR entered into force already in 1953, but the first ECtHR judges were not elected until 1959.

[4]The American Convention on Human Rights was adopted already in 1969, but did not enter into force until 1978 when it had been ratified by the required number of states. The IACtHR was established the following year (Posner and Yoo 2005: 41).

[5]In addition, some international courts established for other purposes may also adjudicate alleged human rights violations. Most notably, the ECOWAS Community Court of Justice set up as part of the West-African project of economic integration has also taken on human rights claims (Alter, Helfer and McAllister 2013).

broader set of international human rights institutions, some of which have quasi-judicial elements (Voeten 2017*a*: 120). A striking feature of IHRCs compared to many other international courts is that their primary purpose is not to adjudicate inter-state disputes (although cases may be brought by states), but to hold states accountable for how they treat their own citizens and other individuals within their jurisdictions (Føllesdal 2017: 488). This aspect of IHRCs makes them different from many other international courts that are set up to overcome prisoner dilemma problems related to international trade and economic integration (Carrubba and Gabel 2015).

While the ACtHPR rendered its first judgment in 2013 and thus has had only a limited influence on its member states (Sandholtz 2017: 156), both the ECtHR and the IACtHR have become important institutions in their respective regions. I therefore focus on these two relatively well-established IHRCs.[6]

The political importance of these courts is related to the opportunities they provide for private litigants to challenge perceived injustices committed by their own states. Private access is important because private actors are numerous and may be willing to pursue cases considered "either too politically 'hot' or a low priority" for states to pursue (Alter 2006: 24, see also Keohane, Moravcsik and Slaughter 2000: 458). While human rights violations typically concern domestic matters of limited importance to other states (Simmons 2009), various domestic groups may find it useful to litigate before IHRCs to achieve redress for individual violations and push for broader reforms. For instance, in 2001, twelve Costa Rican couples brought a case to the Inter-American human rights system to challenge Costa Ricas' ban on *in vitro* fertilization (see e.g Lemaitre and Sieder 2017). In 2012, this litigation was rewarded by an IACtHR judgment in case of *Artavia Murillo et al. v. Costa Rica* ordering Costa Rica to remove its ban on *in vitro* fertilization. Although Costa Rica was the only country on the Western hemisphere with a blanket ban on *in vitro* fertilization, other states had few reasons to interfere with Costa Rica's ban. Litigation by affected individuals was therefore crucial for bringing this case to an international court.

In Europe, there have been significant developments both concerning the access to the ECtHR and regarding the number of states subject to its jurisdiction.

[6]See Daly and Wiebusch 2018 for a review of the challenges the ACtHPR has faced in achieving compliance with its first judgments.

When the ECtHR was established in 1959, there were only 15 Council of Europe (CoE) members. Moreover, accepting the right to individual petition was optional and the European Commission for Human Rights (ECmHR) functioned as a first instance that applications would have to clear before reaching the ECtHR. The ECmHR had the ability to decide whether to refer cases to the ECtHR and could in this way exercise considerable control over the issues the ECtHR would be able to influence (Madsen 2016: 149).

Although important states such as the United Kingdom and France were initially reluctant to accept the ECtHR's jurisdiction over individual applications, in 1990 all member states had accepted the right to individual petition and the compulsory jurisdiction of the ECtHR (Helfer and Slaughter 1997: 294, von Staden 2018: 12). In 1998, it was made compulsory for all ECHR signatories to accept ECtHR jurisdiction over individual applications and the ECmHR was abolished. Individuals in all CoE states may therefore bring applications directly to the ECtHR after exhausting domestic remedies. During the same period, the importance of the ECtHR has also increased due to the expansion of the CoE following the end of the Cold War. Individuals in 47 states[7] may now bring their human rights complaints to the ECtHR.

The Inter-American system remains similar to European system prior to the reforms of the 1990s. Recognition of the IACtHR's jurisdiction is voluntary for the ACHR signatories. To date, 22 states have made blanket recognitions of the IACtHR's jurisdiction.[8] However, Trinidad and Tobago (1998) and Venezuela (2012) have withdrawn from the ACHR and the jurisdiction of the IACtHR.

Moreover, individual applicants do not enjoy direct access to the IACtHR. The Inter-American Commission for Human Rights (IACmHR) acts as a first instance for individuals submitting complaints to the Inter-American human rights system. Individual petitions are first addressed by the IACmHR, which may carry out in-

[7]These are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, The Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Moldova, Romania, Russia, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom

[8]These are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

dependent investigations and hold hearings (Cavallaro and Brewer 2008: 779). Having decided that a case reveals a human rights violation, the IACmHR will provide its own recommendations to the respondent state. Only if these recommendations are not implemented may the IACmHR decide to submit the case to the IACtHR (Hillebrecht 2012*a*: 961). Moreover, and similarly to the early years of the European human rights system, the IACmHR was initially relatively reluctant in its submission of cases to the IACtHR. However, a 2001 change in the Rules of Procedures made a submission to the IACtHR the default action in cases where the respondent state failed to comply with the IACmHR's recommendations. The result was a marked increase in the number of cases that reached the IACtHR (Cavallaro and Brewer 2008: 780).

When ruling on the merits of an individual application, the IHRC decides whether any of the human rights enshrined in the relevant human rights convention have been violated. Although the European and American conventions provide an enumerated catalogue of rights, the content of these rights is the subject of interpretation by the IHRC. Both the ECtHR and the IACtHR have developed doctrines of dynamic interpretation, which means legal obligations states need to conform to may change as the result of successful litigation. Consider for instance article 8 of the ECHR, which states that

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Relying on this article, Jeffrey Dudgeon, chairman of the Committee for Homosexual Law Reform in Northern Ireland, was able to successfully challenge the 1861 anti-sodomy law (Goldhaber 2007: Chapter 3). In its 1981 *Dudgeon v. United Kingdom* judgment, the ECtHR found that due to changing views on homosexuality across Europe, this restriction on the right to private life could no longer be justified as "necessary in a democratic society". It is at least plausible

that the British government had not anticipated that article 8 would be used in this way when they agreed to be bound by the ECHR. After the judgment, the British parliament finally decriminalized gay sex in Northern Ireland. Through private litigation and judicial interpretation of the relevant human rights provisions, IHRC thus offer an avenue for expanding the scope of human rights obligations states are subject to.

Similar to what has been observed in domestic contexts (e.g. Keck 2014), cases may be brought both by organized groups[9] who view litigation as an avenue for political change and by individual "wild cats" motivated primarily by the circumstances of their own case. For individual victims of human rights violations, a favorable judgment can be important in its own right. Such a judgment may provide a right to monetary compensation, new legal proceedings at the domestic level, or symbolic acts of state responsibility. The consequences are, however, often broader, as the judgment may reveal a need for domestic courts to change their jurisprudence, for legislation to be amended, or for other types of state reform.

For these consequences to be realized, action is required by the respondent states. Whether the concern is with the obligations to the individual applicant or the broader reforms that the ruling may require, an important question is therefore under what conditions IHRC rulings are promptly complied with.

1.1.2 Conceptualizing Compliance

Studying patterns in state compliance with IHRC rulings requires a precise definition of what compliance is (and what it is not). I understand compliance with judicial decisions as the "full execution of the action (or complete avoidance of the action) called for (or prohibited)" by the ruling (Kapiszewski and Taylor 2013: 806, see also Huneeus 2013). This definition of compliance with judicial decisions is consistent with a broader understanding of compliance with legal obligations as correspondence between legal requirements and the behavior of actors subject to these requirements (Raustiala 2000).

This definition of compliance raises further questions concerning which actors are required to comply and what such compliance should entail. For both

[9] See in particular Hodson (2011) for an overview of non-governmental organizations participating in ECtHR litigation.

the ECtHR and the IACtHR, compliance only requires action by the respondent state. In the European system, Article 46(1) of the ECHR states that "[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties." It is thus only the respondent state that is required to comply. Concerning what compliance should entail, the ECtHR has further held that compliance requires the respondent state not only to pay any monetary compensation awarded by the Court, but also, if necessary, to implement other measures necessary for remedying the situation of the individual applicant and to implement general measures necessary for avoiding new violations of a similar kind (Barkhuysen and van Emmerik 2005: 3).

Article 68(1) of the ACHR similarly states that "[t]he State Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The IACtHR will in its rulings indicate a set of measures it considers necessary for the respondent state to implement (Hawkins and Jacoby 2010: 44). These remedial orders clarify the direct consequences the judgment is intended to have in the respondent state and for the successful applicants.

Thus, following ECtHR and IACtHR rulings, compliance does not require behavioral change by other actors than the respondent state. Compliance requirements are therefore more specific than in some national contexts where legal decisions have broader law-making consequences (Huneeus 2013). For instance the 1954 judgment of the Supreme Court of the United States in the case of *Brown v. Board of Education of Topeka* created obligations for school districts across segregated South – not only the Board of Education of Topeka – to desegregate. Assessing the compliance with this ruling of the Supreme Court of the United States therefore needs to account for differences in the response of different school districts (see e.g Rosenberg 2008: 42). By contrast there is no legal obligation for states to confirm with other IHRC judgments than those they are parties to (Huneeus 2013). Such conformity is therefore not required for compliance. As shown by Helfer and Voeten (2014), IHRC judgments can generate action also by states not party to the case, but such broader effects of a ruling are not necessary for compliance and therefore fall outside the scope of this dissertation.

Compliance also does not require that respondent states "accept" the decisions as legally or morally valid, as appears to be suggested for instance by Caldeira and Gibson (1995: 460). All that is needed is that the respondent state implement the

required measures. I thus leave open the possibility that states publicly criticise a legal decision while still complying with it. For example, the British government has been highly critical of ECtHR judgments that have interfered with counter-terrorism measures. In 2012, the ECtHR ruled that the United Kingdom could not extradite an Islamic preacher and suspected terrorist, Abu Qatada, to Jordan without getting credible assurances that he would not be tortured. Although then home secretary Theresa May reacted to the judgment by suggesting that the United Kingdom ought to withdraw from the ECHR (Stiansen and Voeten 2018), the ruling was complied with.[10]

A common objection to studying compliance raised by scholars concerned with the effectiveness of international institutions is that compliance with a legal obligation does not necessarily mean that the legal obligation affected behavior (Downs, Rocke and Barsoom 1996, Raustiala 2000: 388, Martin 2012). In some cases, compliance may be achieved because the judgment required few and inexpensive measures. In other cases, compliance may be achieved because the respondent state was already in a process of enacting the necessary legislative changes or other reforms prior to the IHRC judgment. Compliance therefore does not necessarily mean that the IHRC has altered state behavior (Huneeus 2013). It is thus important to distinguish the concept of compliance and other concepts such as "effectiveness" and "judicial impact".

Although not the same as judicial impact, compliance is, however, an important outcome in the context of IHRC judgments. The lack of compliance significantly hampers the effectiveness of IHRCs (Cavallaro and Brewer 2008, de Londras and Dzehtsiarou 2017: 469) and risks undermining their authority and legitimacy (von Staden 2018: 3). Thus, although one cannot infer effectiveness or judicial power simply from observing high levels of compliance, compliance ought not be ignored (Staton and Moore 2011: 572). Understanding the political importance of IHRCs and other courts require an understanding of the conditions under which their judgments will be adhered to. Studying compliance is therefore important even if one possible finding would be that compliance is more likely to be achieved if it requires little behavioral change.

There are, moreover, differences between IHRC (and other court) judgments

[10] Abu Qatada was deported to Jordan in 2013 after a treaty had been signed with Jordan that protected him from torture. He was ultimately cleared by the Jordanian justice system.

and other types of legal obligations that makes compliance a more useful dependent variable for the former than for the latter. Compliance with international treaties may result simply from states only committing to those treaties they can easily comply with (Downs, Rocke and Barsoom 1996). By contrast, judgments by IHRCs (and other courts) are typically rendered at the end of lengthy judicial proceedings and after the respondent states has repeatedly refused to alter its behavior (von Staden 2018: 49-50). Compliance with IHRC judgments is therefore a type of "second-order compliance" after the state had initially failed to comply with the relevant human rights provisions (Simmons 1998: 78). In the case of such "second-order compliance", it is typically unlikely that the same behavioral changes would have been achieved (at the same pace) in the absence of an IHRC judgment (Huneeus 2013, Hillebrecht 2014*b*: 60). Compliance with IHRC judgment can in such circumstances present an important puzzle for scholars of judicial politics. This dissertation contributes to solving this puzzle in the context of IHRC judgments.

1.1.3 IHRC's Compliance Problem

Like many other courts, the IHRCs face compliance problems because they cannot give force to their own decisions (McCubbins, Noll and Weingast 2006: 109). Whether compliance requires monetary compensation or constitutional change, it cannot be achieved by the IHRC, but only by the respondent state. Should actors within the respondent state refuse to give effect to an IHRC judgment, there is little the IHRC can do about it.

This compliance problem is exacerbated by the fact that it will often be same institutions responsible for the human rights violation identified in the judgment that are also responsible for implementation (Staton and Moore 2011: 579-562). Actors responsible for implementation will often have demonstrated their opposition to the ruling and may be expected to prefer avoiding compliance. Not only were actors within these institutions responsible for the initial violation, but they have also refused to remedy it during the often lengthy legal proceedings at the domestic and international levels prior to a final IHRC judgment. For instance, a large number of ECtHR judgments against Ukraine and Russia concern the failure to enforce the judgments of domestic courts (Leach, Hardman and Stephenson

2010). Compliance with the these judgments typically require that the domestic judgments finally are enforced. It is not obvious why the presence of another binding judgment – albeit from an international court – would make this outcome more likely.

Contributing to the compliance problem facing IHRCs is also the domestic character of the human rights issues they rule on. Other states will typically have few incentives for enforcing compliance with IHRC judgments (Simmons 2009). For example, the ECtHR's finding in the 2012 judgment in case of *Lindheim v. Norway* that the Norwegian Ground Lease Act violated the right to private property has important financial implications for large number of Norwegian lessors and lessees. The implications for other states are, however, small. As a result, compliance will tend to depend on the domestic politics of respondent states (Hillebrecht 2012*b*). This situation is different from some other international courts that too a greater extent may rely on inter-state enforcement (e.g. Carrubba 2005).

The problem facing IHRCs is not only that judgments are not complied with, but also that compliance may be significantly delayed (Keller and Marti 2015: 844). While long implementation processes may be due to the challenging nature of the violation concerned, delayed compliance may also be explained by the IHRCs' compliance problem. Just as actors responsible for implementation control whether they will comply with a judgment, they can also control how quickly they will do so. Delaying implementation can be a useful strategy for limiting the effects of a judgment without blatantly defying it (Staton 2004). Anagnostou and Mungiu-Pippidi (2014: 213) therefore posit that

> [l]onger periods of implementation, taken together with the number of pending judgments that a state has executed, are generally symptomatic of domestic resistance on the part of at least some of the actors involved in implementation, or of other kinds of hurdles that can stand in the way even when government will or judicial acceptance is there.

Delays in the compliance may have important consequences both for the applicants in a case and for other victims of the identified human rights violation. Considering not only the outcomes of compliance processes, but also their duration is therefore of significant interest. Particularly for the ECtHR, which suffers

from considerable challenges in handling its case load, delayed implementation is also a problem because it often contributes to the influx of repetitive applications that the ECtHR will need to rule on (Keller and Marti 2015: 844). Where the data allow such analysis, my concern is therefore not only whether compliance is eventually achieved but also what explains variation in the duration of the implementation process.

1.2 Explaining Compliance with IHRC Judgments

I argue that compliance with IHRC rulings depends on the interplay between the politics of the respondent state and the judgment characteristics that influence the reception of the ruling in the domestic political system. This argument is grounded in the compliance problem as outlined above. In this section, I briefly present the main assumptions I make concerning the actors of the implementation processes and how I expect these actors to make compliance decisions. I then discuss my overarching theoretical argument concerning how the political situation in the respondent state and judgment characteristics influence compliance. Finally, I discuss how this argument motivates a set of expectations that are further investigated in the subsequent chapters (without repeating the theoretical discussions of those chapters).

1.2.1 Assumptions

The compliance problem facing IHRCs makes them "implementer-dependent" institutions (Hall 2011: 16). This dependence is a property they share with other courts as well as with other actors that design policies they are not themselves responsible for implementing (Hall 2017: 8).

The actors responsible for implementation are thus of primary interest when studying compliance. Factors influencing the likelihood of compliance or the duration of the implementation process should be related in some way to the actors that are responsible for implementation. This concern with the actors responsible for implementation does not mean that the IHRCs or other societal actors cannot influence compliance (I suggest that they do), but it means that to influence compliance they must influence the decision-making calculus of the actors responsible

for implementation.

I further assume that the actors responsible for implementation are utility maximizing in the sense that they will comply with IHRC judgments if their expected costs of defiance exceed their expected costs of compliance (Johnson 1979, Brinks 2017: 476). This assumption requires that the actors are at least *thinly* rational, meaning they have complete and transitive preferences (McCarty and Meirowitz 2007: 6).

A first step towards understanding compliance politics requires an understanding of which actors are responsible for implementation and how these actors are motivated. The primary actors responsible for implementation of IHRC judgments are domestic executives, legislatures and domestic courts (Huneeus 2011). The executive branch will be involved in most compliance processes (Hillebrecht 2014*a*). Legislatures and courts will be involved if needed to implement specific remedies, such as amending legislation or changing domestic jurisprudence. These actors can all be expected to be motivated (at least in part) by their own policy preferences. For instance, the politicians holding executive or legislative office may be motivated by various political ideologies. Judges may similarly hold preferences over legal doctrine or the outcomes of specific legal disputes. Their willingness to comply may be expected to depend on the fit between the actions required by the judgment and these actors' own policy preferences.

Achieving their own policy preferences in any given case are, however, not the only motives likely to be important to the actors of the policy-making process. Actors may also be expected to consider how compliance will affect a broader set of outcomes, such as their own career prospects. Particularly for politicians holding executive or legislative office, retaining such office is central for their ability to achieve their other goals (Strøm 1997, de Mesquita et al. 2003: 7-8). Such concerns can influence their willingness to diverge from their policy preference in any specific case. Thus, although constraints such as the need to ensure political survival is not of primary interest in any of the chapters, such constraints motivate a concern for the political costs of different compliance decisions (Vanberg 2005). How compliance is influenced by the political costs of (non-)compliance is particularly important for the analysis in chapters 3 and 4.

1.2.2 Main Argument

Based on these assumptions, I argue that the both the respondent state's political situation and judgment characteristics will influence compliance with IHRC judgments. The political situation in the respondent state influence the interests of decision-makers responsible for implementation and the degree of alignment between different decisions-makers. Judgment characteristics influence which actors will be involved in the implementation process, how a judgment is perceived by important audiences, and the ability of pro-compliance actors to effectively monitor the implementation process and raise the costs of non-compliance.

Decision-makers are assumed to pursue their own policy preferences. What these preferences are and the extent to which the preferences of different decision-makers align will depend on the political situation in the respondent state. Consider the implementation of the 2007 ECtHR judgment in *Folgerø and others v. Norway*, which held that the favorable treatment of protestantism in primary and secondary education constituted a violation of the freedom of religion. This judgment was quickly implemented in part because the responsible minister of education, Bård Vegard Solhjell, was from Socialist Left Party, which already favored the necessary reform.[11] Making the curriculum concerning religion more neutral was consistent with his policy preferences. In this particular case, the preference for compliance was related to Norwegian party politics. The connection between IHRC judgments and party politics will not always be as clear. However, I argue that prompt compliance will generally be more likely when the politics of the respondent state means that compliance are in the interests of responsible decision-makers.

How power is divided among different political parties can also influence compliance. Several opposition parties expressed strong opposition to the legislative changes introduced by the Norwegian government to comply with the *Folgerø* judgment (Odelstinget 2008). Yet, the Norwegian government succeeded in quickly implementing the judgment because it controlled a legislative majority. As a result the necessary legislative measures were enacted already in 2008. The

[11] When the judgment was rendered on June 29, 2007, Øystein Djupedal was minister of education. Djupedal was, however, replaced by Solhjell on October 18, 2007 and Solhjell thus ended up being responsible for the implementation of the *Folgerø* judgment. Both ministers were from the Socialist Left Party.

political situation in Norway at the time when the judgment was implemented was thus important not only for whether the government had a preference for compliance, but also for whether this preference was shared by a legislative majority. I argue that prompt compliance is generally more likely when the political situation in the respondent state means that important political actors will see compliance as beneficial and when there are fewer veto-players that have diverging preferences (Tsebelis 1995; 2002, Henisz 2000; 2002).

The expectation that the presence of multiple actors with the ability to block compliance is likely to make compliance more difficult has so far received insufficient attention in scholarship on compliance with IHRC judgments. This scholarship has instead conjectured that effective checks and balances help hold governments accountable for implementation (Hillebrecht 2014*a*;*b*). I do not challenge the claim that accountability mechanisms can be important for making delayed implementation or non-compliance costly. However, where the separation of powers means that more actors with diverging preferences will have to agree the process of negotiating compliance will be challenging. Just as has been observed for compliance with other types of international legal obligations (Conrad and Moore 2010, Peritz 2018), political constraints due to domestic veto players can significantly delay compliance with IHRC judgments.

So far, I have argued that the political situation in the respondent state can influence compliance with the IHRC judgments. How specific compliance processes unfold will, however, also depend on judgment characteristics. Judgment characteristics can condition how the political situation in the respondent will influence the compliance process. For instance, the *Folgerø* case illustrates how the specifics of a case will influence which domestic actors will be involved in the implementation process: The ability to secure a legislative majority to comply with the *Folgerø* judgment was only necessary because legislative changes were needed. For judgments that only require other types of measures, the political situation within a respondent state's legislature will be less important for compliance than when legislative changes are needed.

Judgment characteristics can also affect compliance politics by influencing the political costs associated with different compliance outcomes. Decision-makers are assumed to be constrained in their pursuit of their own policy preferences in part by the need to retain political office. Compliance performance does not nec-

essarily need to be a concern to a very large section of the electorate, as electoral outcomes will often turn on shifts in support at the margin (Vanberg 2005: 20). As shown by Vanberg (2005: 28), compliance decisions are therefore affected by the "joint probability that the court enjoys sufficient support and that the [compliance] environment is transparent." Aspects of the judgment that may sway public support for or against compliance, as well as judgment characteristics that influence the transparency of the implementation process will therefore influence compliance politics.

Although Norwegian party politics led to prompt compliance with the *Folgerø* judgment, the debates concerning its implementation provides illustrations of how judgment characteristics can be used strategically by opponents of necessary measures. One such strategy is to exploit ambiguities in the judgment to create doubts concerning what the judgment require. For instance, opposition politicians contested whether the proposed legislative changes were indeed required by the *Folgerø* judgment. Dagrun Eriksen from the Christian Democratic Party argued that neither reducing the number of hours devoted to Christianity nor changing the name of the religious education subject was explicitly required by the judgment (Odelstinget 2008). Although the legislative majority for compliance meant that the *Folgerø* judgment was promptly implemented, a different legislative majority could have been able to use such arguments to avoid changing legislation. In such a case, ambiguities concerning what the judgment required would likely have made it more difficult to hold the responsible decision-makers accountable for the lack of compliance.

Opposition parties similarly used the presence of dissent in the judgment to suggest that the conclusions of the *Folgerø* judgment were associated with legal uncertainty. Anders Anundsen from the Progress Party and Ine Marie Søreide from the Conservative party, noted that eight of the seventeen judges on the case had dissented. They argued that the high level of dissent suggested considerable uncertainty concerning whether Norwegian religious education had in fact violated Norway's human rights obligations (Odelstinget 2008). By contrast, advocates for the government position and pro-compliance civil-society groups such as the Norwegian Humanist Association (Bergh 2007) stressed that the ECtHR had "established" that Norway had violated human rights and needed to correct this violation. Again, even if prompt compliance was achieved in this case, the debate

concerning the implementation process illustrates how judgment characteristics are important for compliance politics.

To summarize, I argue that the domestic situation in the respondent state will influence policy makers' interests in compliance with IHRC judgments and the extent to which such interests will be shared between different potential veto players. Judgment characteristics will influence the compliance process both because they determine which actors are needed for compliance and because variation concerning the ability of pro-compliance actors to monitor the implementation process and in how the judgment is perceived by domestic audiences will affect the political costs associated with different compliance outcomes.

1.2.3 Expectations

The above argument motivates a set of expectations that are investigated in the different chapters of the dissertation.

Firstly, judgment characteristics and political circumstances that make it necessary for more actors with different policy preferences to agree to necessary remedies will make prompt compliance more challenging to achieve. Compliance requires that the expected costs of compliance are smaller than the costs of defiance for all the involved actors. If the relevant veto players have diverging policy references, achieving agreement concerning whether and, if so, how to implement a judgment will be more challenging than when a single actor is responsible for implementation or when there is agreement among the relevant actors (Tsebelis 1995; 2002, Henisz 2000; 2002). As discussed in Chapter 2, such veto-player problems are particularly relevant when legislative changes are needed and different political parties need to agree to enact such changes.

Secondly, there will be a greater likelihood of prompt compliance when the implementation process is relatively transparent. Somewhat surprisingly, given the role transparency plays in the scholarship concerning compliance with domestic court judgments (e.g. Vanberg 2001; 2005, Krehbiel 2016*a*), factors influencing the transparency of the compliance process have received limited attention in the scholarship on compliance with IHRC judgments (but see Staton and Romero forthcoming). One strategy judges may pursue to increase the transparency of the implementation process is to provide greater specificity concerning the mea-

sures the respondent state is expected to implement. Such specificity increases the ability of pro-compliance actors to monitor the implementation process and to credible call out non-compliance. Chapter 3 provides a novel test of this expectation by examining how selective indications of remedies by the ECtHR has influenced compliance with some of the ECtHR's most challenging judgments.

Thirdly, IHRC decisions that are perceived to be of high legal quality might provide political cover for reforms that would otherwise be unpopular (Allee and Huth 2006). If the legal quality of a judgment is perceived as weaker, the political costs associated with non-compliance may be lower. An important expectation is therefore that judgment characteristics that influence whether the ruling is perceived as legitimate by domestic audiences will influence the likelihood of prompt compliance. Chapter 4 investigates the influence of one such factor – judicial dissent.

Finally, prompt compliance will be more likely if perceived as beneficial by relevant decision makers. Whether there is a preference for compliance with any particular judgment will to large extent depend on idiosyncratic aspects of the case at hand. When deciding whether compliance is beneficial, the actors responsible for implementation are, however, likely to consider not only their policy preferences concerning the matter at hand, but also how their compliance performance will affect future political outcomes. I argue that considerations about the long-term benefits of preserving the judicial constraints provided by IHRCs can promote compliance with IHRC judgments. Judicial review constrains the policies pursued by alternating elected majorities (Ramseyer 1994, Ginsburg 2003, Stephenson 2003, Ginsburg and Versteeg 2014). Political leaders facing greater political competition may therefore have greater incentives for preserving judicial review also by IHRCs, something that requires adhering to adverse decisions (Vanberg 2001: 174). The degree of electoral uncertainty is therefore one factor that might promote compliance with IHRC judgments. This expectation is investigated further in Chapter 5.

1.2.4 Summary

To summarize, I assume that compliance with IHRC judgments depends on the expected net costs of compliance for the actors responsible for implementation.

These actors are further assumed to seek to achieve their own policy preferences under the constraint of ensuring political survival. Based on these assumptions, I argue that compliance is more likely when the political situation in the respondent state means that policymakers have a preference for compliance and this preference is shared among different veto players. Judgment characteristics influence implementation politics both by determining which domestic actors will need to agree to compliance and by affecting the political costs associated with different compliance outcomes. This argument helps motivate a number of testable expectations that are further developed and evaluated in each of the different chapters of this dissertation.

1.3 Methodological Approach

In each chapter, I evaluate one or more hypotheses concerning the factors that influence compliance with IHRC judgments. These evaluations require systematically collected data, valid measurement of compliance, and a commitment to a methodological and philosophical framework for making valid inferences. In this section, I discuss the data collection that provides the basis for the discussion and my strategies for measuring and modelling compliance with the ECtHR and IACtHR rulings. The next section proceeds to discuss the approaches I take concerning statistical and causal inference.

1.3.1 Data collection

For the empirical analysis, I employ two novel databases concerning ECtHR and IACtHR judgments and their implementation by respondent states (Stiansen and Voeten 2017, Bøyum, Naurin and Stiansen 2017). These databases have been developed in connection with this dissertation project. They provide better coverage both in terms of variables and included cases than existing datasets concerning compliance with IHRC judgments.

Data concerning the ECtHR have been collected in collaboration with Professor Erik Voeten at Georgetown University and include information concerning all

ECtHR judgments rendered until June 1, 2016.[12] The database contains information on different stages of ECtHR proceedings from the admissibility decisions to the implementation by the respondent state. The variables are coded based on the case information available from the ECtHR's own database (HUDOC),[13] from the Execution of ECtHR judgments database (HUDOC-EXEC),[14] and from original documents that for the most part are available from these sources.

In addition to information about compliance (discussed in more detail below), the implementation data contain information about all measures respondent states have implemented or still need to implement to comply with the judgments. This information has been coded for all implementation processes based on reports submitted to the Committee of Ministers (CoM) by the respondent states and assessments made by the CoM's secretariat (discussed in more detail below). The coding of required measures is more disaggregated than in previous datasets. For instance, the type of actions that are categorized as non-repetition measures by Hillebrecht (2014*a*) are disaggregated to distinguish between legislative changes, jurisprudential changes, executive or administrative measures, and practical measures. This data thus enable studying whether implementation processes that involve legislative changes unfold differently from those that only involve action by the executive or domestic courts. Figure 1.1 displays the number of ECtHR implementation processes involving different types of remedies. As the figure shows, there is considerable variation concerning how often different types of remedies are needed for compliance. Such differences are likely to influence the compliance process (see also Chapter 2).

Data concerning IACtHR judgments have been collected in collaboration with Live Standal Bøyum and Professor Daniel Naurin at PluriCourts, University of Oslo. Similarly to the ECtHR database, the IACtHR database contains information about different aspects of the proceedings before the IACtHR. The IACtHR data have been coded primarily based on the case summaries prepared by the IACHR project at Loyola Law School, Los Angeles, led by Professor Cesare Romano.[15] The highly detailed case summaries from this project made it possible

[12] Dongpeng Xia, Olja Busbaher, Ella Adler, and Gianinna Romero provided valuable research assistance for this data collection.

[13] `http://hudoc.echr.coe.int/`

[14] `http://hudoc.exec.coe.int/`

[15] `https://iachr.lls.edu/`

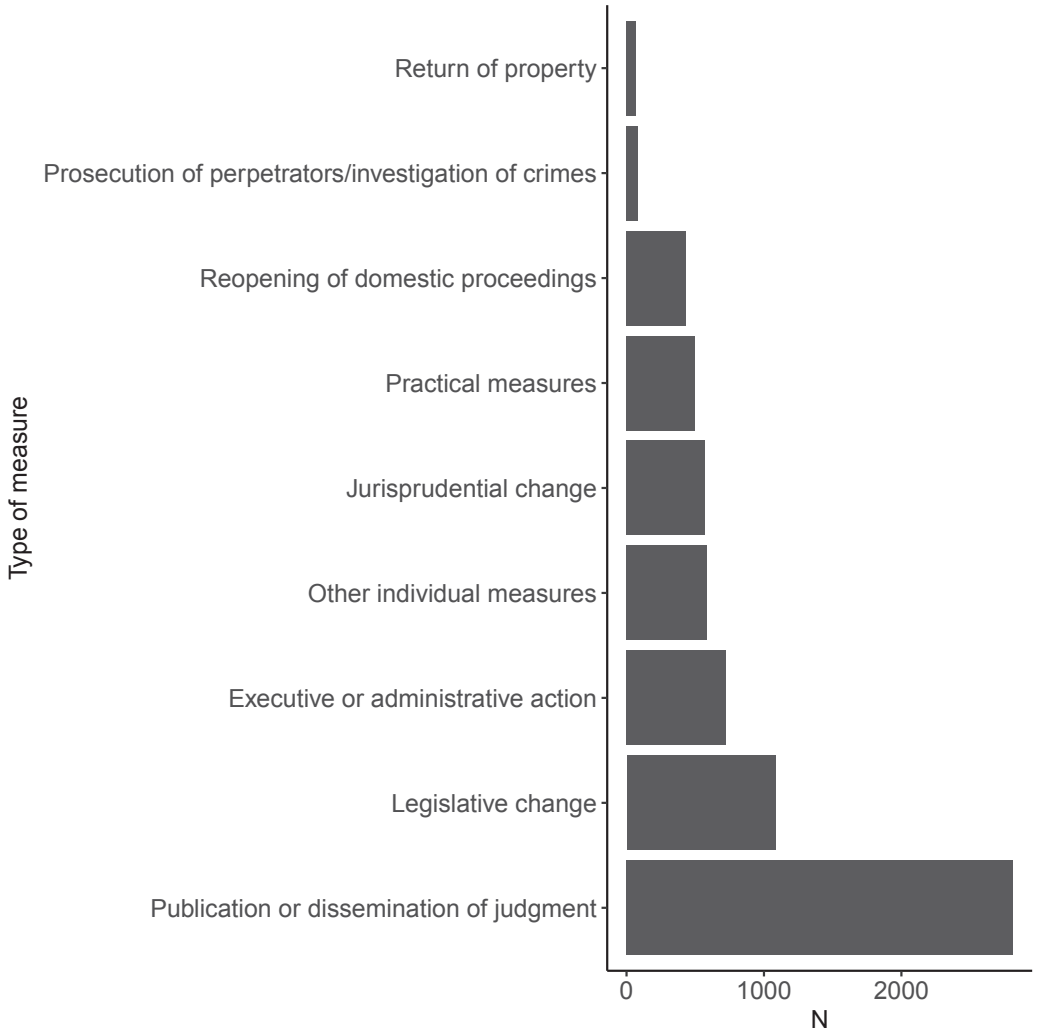

Figure 1.1: Remedies needed in ECtHR implementation processes

to systematically code more variables and to include a larger set of judgments than contained in existing datasets. For information not available in the case summaries, the English versions of the relevant judgments were consulted.

The IACtHR database is organized in nine different tables, which include case information, preliminary objections made by respondent states, the (alleged) victims, *amicus curiae* briefs submitted by third parties, merits decisions reached by the IACtHR, dissenting votes by individual judges, separate written opinions by individual judges, remedies ordered by the IACtHR, and finally information about compliance. This comprehensive data structure allows investigating previously unaddressed questions related to how case characteristics might influence compliance.[16] While the primary concern of this dissertation is compliance, I use data from most of the nine tables when constructing the datasets employed in chapters 4 and 5.

Like for the ECtHR data, there is considerable variation concerning the type of action required by the respondent state. For the IACtHR, this variation is measured at the level of the remedial order (see also Parente 2018: 14). The data allow distinguishing between 16 different types of measures. The frequencies of different types of remedial orders are displayed graphically in Figure 1.2. As the figure shows, most of the remedial orders concern monetary measures in the form of compensation for pecuniary or non-pecuniary damages and costs and expenses. The large share of such measures is explained by how most adverse ECtHR judgment will contain orders to compensate multiple victims. However, a large share of the remedial orders also concern practical measures, such as construction of buildings or exhumation of bodies. Although measures such as the investigations of crimes and legislative changes are fewer in terms of the number of remedies, most judgments require at least some such measures.

The datasets on ECtHR and IACtHR judgments are employed in conjunction with a number of existing sources of data concerning the respondent states. These datasets are the Political constraints data constructed by Henisz (2000; 2002), the Polity dataset (Marshall, Jaggers and Gurr 2004), the Varieties of Democracy dataset Coppedge et al. (2018), the Database of Political Institutions (Cruz, Keefer and Scartascini 2016), and the International Country Risk Guide (The PRS Group

[16]The data and coding procedures are discussed in more detail in Stiansen, Naurin and Bøyum 2017.

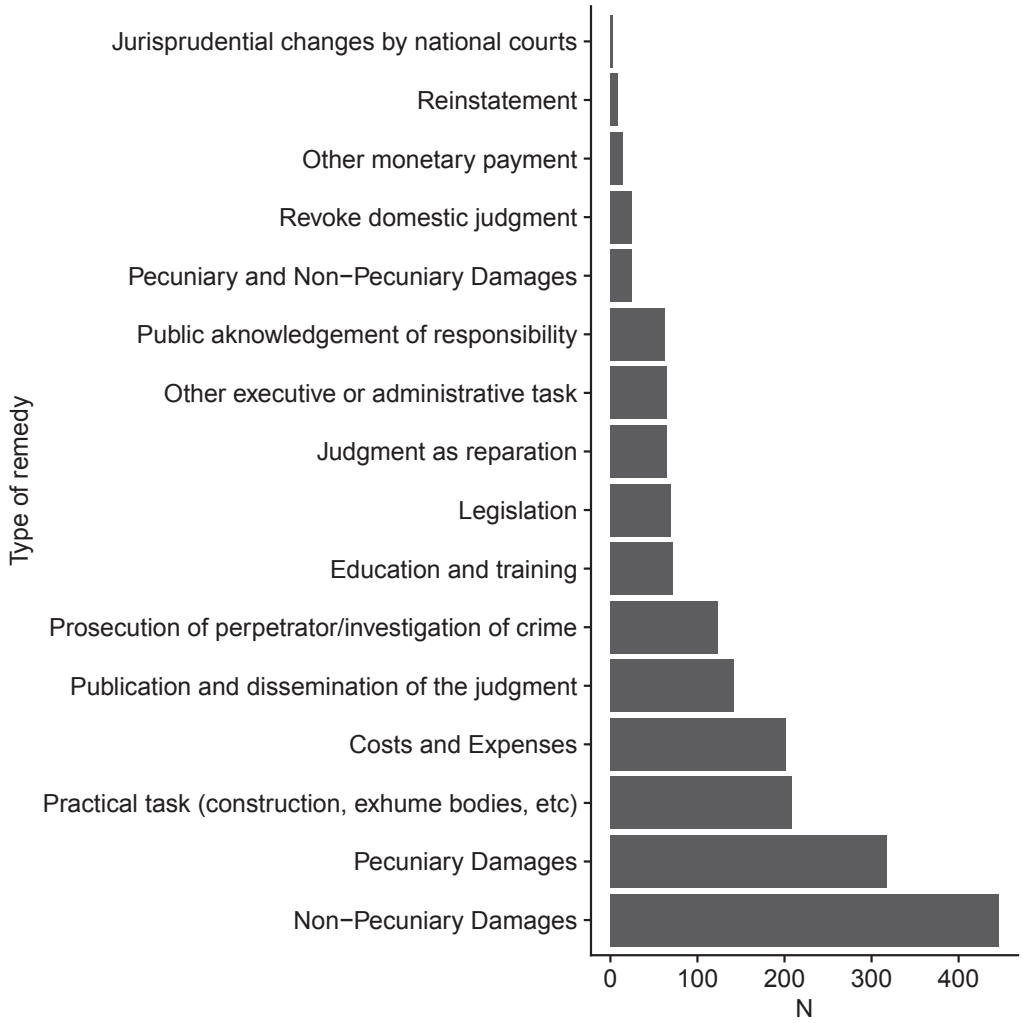

Figure 1.2: Different types of IACtHR remedial orders

2012).

1.3.2 Measuring and Modelling Compliance

My measures of compliance with IHRC rulings are consistent with the conceptualization of compliance discussed in Section 1.1.2. In other words, I measure whether responding states implemented the measures required by the ruling. Measuring compliance with judicial decisions can present a significant obstacle for scholars of judicial politics, because "determining what behavior is required by a judicial ruling can be difficult, as can accurately assessing to what extent subsequent government action corresponded to that requirement" (Kapiszewski and Taylor 2013: 804).

For both the ECtHR and the IACtHR, these challenges are mitigated by the compliance monitoring of the European and Inter-American human rights systems (Hawkins and Jacoby 2010: 43-57). By relying on data from these compliance monitoring systems, I avoid basing my measurement strategy on my own subjective assessments concerning compliance with specific cases. I also avoid relying exclusively on reports from the respondent states. Research concerning other legal regimes have found such reports to be unreliable as indicators of compliance (Zhelyazkova and Yordanova 2015). While the monitoring of ECtHR and the IACtHR judgments is based partly on state reports, such reports are evaluated critically by the responsible bodies, which may also consider other information submitted by applicants or civil-society actors (e.g. Dothan 2017).

My measurement of the dependent variable dictates the choice of statistical estimator. Because compliance is measured differently in the ECtHR and IACtHR contexts, I also rely on different statistical estimators when modelling compliance processes.

Compliance with ECtHR judgments

In the European human rights system, compliance is monitored by the CoM, which is the inter-governmental branch of the CoE. While the CoM is made up of the foreign ministers of the CoE (represented by their deputies in meetings concerning compliance monitoring), the day-to-day supervision of implementation

has been delegated to a professionalized secretariat, the Department of Execution of Judgments from the ECtHR (Çali and Koch 2014: 304). Because the CoM tends to follow the recommendations of this secretariat, the likelihood that compliance assessments are affected by political considerations is significantly mitigated (von Staden 2018: 19-20).

This supervision is organized under so-called lead case judgments, which are the first judgments to reveal specific violations within particular respondent states. Upon receiving a new adverse judgment from the ECtHR, the Department of Execution will first consider whether the judgment reveals a new human rights violation within the respondent state or concerns a human rights violation addressed in a case already under supervision. If the case reveals a new human rights violation, it enters the supervision process as a new lead case. Otherwise, it is grouped under the relevant lead case (Committee of Ministers 2010: 29-30).

The remainder of the implementation process proceeds as follows. The respondent state will submit an action plan outlining the remedies it plans to implement. This action plan is assessed and reviewed by the Department of Execution, which may also indicate other measures that are needed. As the state implements different measures, it reports on the progress of the implementation process in action reports, which are then critically assessed by the Department of Execution (Committee of Ministers 2009).

The CoM continues to monitor the case until all necessary measures are implemented (Committee of Ministers 2007: 18). When the CoM considers that compliance has been achieved, it closes the monitoring of the case by rendering a Final Resolution. The presence of such a resolution can thus be used as a measure for whether compliance has been achieved. As compliance is monitored under the heading of lead cases, and groups of cases receive a joint Final Resolution, compliance can only be studied for these groups of cases (Voeten 2014, Grewal and Voeten 2015).

In addition to whether a lead case eventually receives a Final Resolution, I measure the duration of the implementation process as the number of days between the lead case judgment and the Final Resolution. Figure 1.3, which displays the Kaplan-Meier survival curve (Kaplan and Meier 1958) for the ECtHR implementation processes, illustrates why it is desirable to measure not only the outcome, but also the duration of the compliance process. The curve shows the share

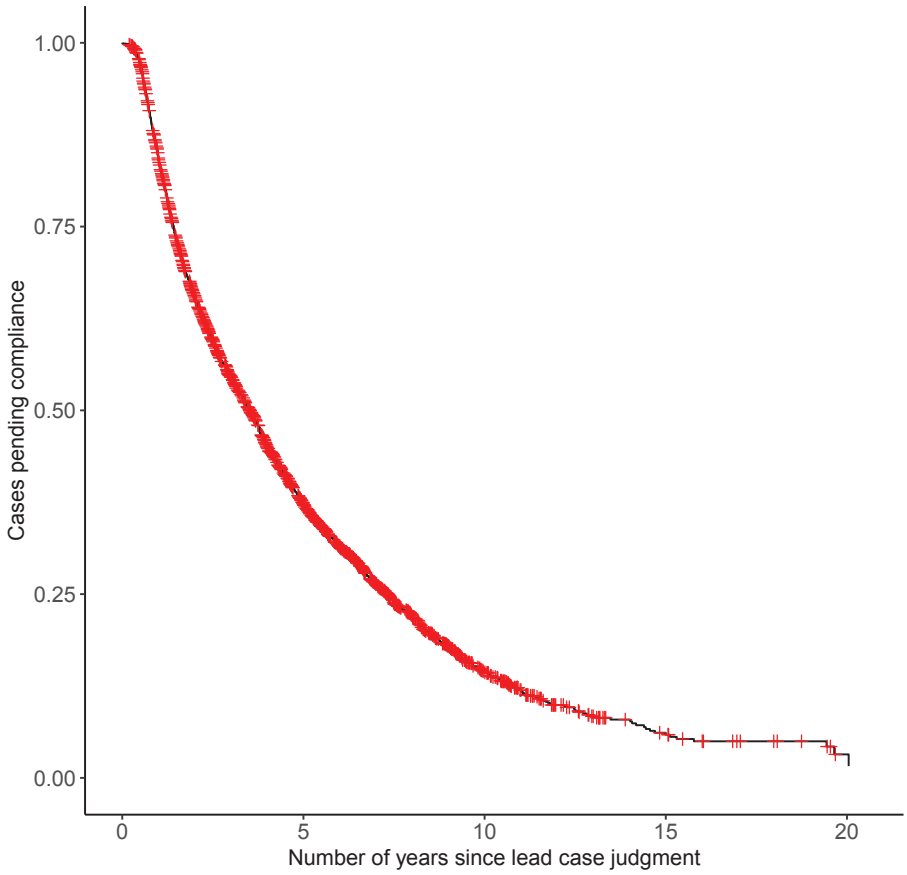

Figure 1.3: Kaplain Meier survival curve of the time between ECtHR lead case judgment and CoM Final Resolution

of judgments that remain unimplemented as a function of time since the lead case judgment. The tick marks indicate cases that are right-censored (i.e. not complied with at the time of observation). The figure shows that while most judgments are implemented relatively promptly, the implementation of some judgments is delayed for a considerable time. Such delays in the implementation process are a significant problem both for the European human rights system and for the victims of human rights violations. At the same time, some of the cases that have not yet been complied with are very recent. Because the implementation of some remedies may necessarily require some time, it is therefore important to account for how much time the state has had to implement the needed measures. These aspects of the ECtHR compliance data make event history analysis the appropriate framework for statistical analysis (Box-Steffensmeier and Jones 2004).

In my chapters investigating implementation of ECtHR judgments, I employ the Cox regression model. The Cox estimator is chosen because it avoids making assumptions concerning how the likelihood of implementation varies depending on how much time has passed since the judgment (Box-Steffensmeier and Jones 2004, Golub 2008). The Cox model can also easily accommodate coefficients that vary over time (Licht 2011), which is important in Chapter 2 where I investigate how the need for legislative changes influences compliance. Finally, Cox regression allows including covariates that change during the compliance process (Therneau, Crowson and Atkinson 2016), such as the degree of alignment between different veto players and the level of political competition, important in chapters 2 and 5, respectively.

Compliance with IACtHR remedial orders

The Inter-American compliance monitoring is different from the European system in two important respects. Firstly, the IACtHR will, upon finding one or more violations, order the respondent state to implement a set of specific remedies (Hawkins and Jacoby 2010: 37). Identifying what compliance should entail is thus relatively straightforward. Moreover, in the case of the IACtHR, compliance can be measured at the level of the remedial order rather than at the level of the judgment. For the IACtHR, it is therefore possible to exploit within-judgment variation concerning compliance with different remedial orders.

Secondly, the IACtHR monitors compliance with its own orders. Since 1996,

the IACtHR has held compliance hearings where respondent states are asked to report on their progress towards complying with the ordered measures (Hawkins and Jacoby 2010: 46-48). To evaluate the extent of compliance, the IACtHR asks the respondent state and representatives of the applicants to submit reports on compliance with each ordered remedy, and the IACtHR will also, when finding it necessary, hold private compliance hearings to get information about the progress of the compliance process. Based on this information, the IACtHR will declare whether it considers a remedial order to have been complied with.

The compliance hearings held by the IACtHR are not as frequent as the compliance monitoring the CoM provides for ECtHR judgments. One consequence is that the time between the remedial ruling and a recognition of compliance is a less reliable indicator of the duration of the compliance process. When studying compliance with IACtHR remedial orders, I therefore consider whether compliance is eventually achieved rather than the duration of the compliance process.

Figure 1.4 displays the distribution of compliance outcomes for the remedial orders included in the Bøyum, Naurin and Stiansen (2017) database. As illustrated by the figure, the IACtHR may reach three main conclusions in its compliance hearings: Non-compliance (if the IACtHR is not yet satisfied that the respondent state has implemented the ordered measure), full compliance (if the IACtHR considers the ordered measure to have been implemented), and partial compliance (if the IACtHR considers that the state has made efforts towards implementation but still considers that the implementation is not complete).

It is worth noting that although extant scholarship has argued that partial compliance is common in the Inter-American system (Hawkins and Jacoby 2010), partial compliance is a relatively infrequent conclusion in the IACtHR's own compliance hearings. One reason for this divergence is that the term "partial compliance" has been used to describe situations where respondent states have implemented some of a judgments' remedial orders, but not all of them. It is less common for state to only partially comply with a specific remedial order. Because I measure compliance at the level of remedial orders, full compliance or non-compliance are more frequent outcomes in my dataset (see also Hillebrecht 2014*a*, Parente 2018: 14-15).

Because my primary concern is whether compliance is achieved, my main dependent variable is whether "full compliance" is achieved for the remedial or-

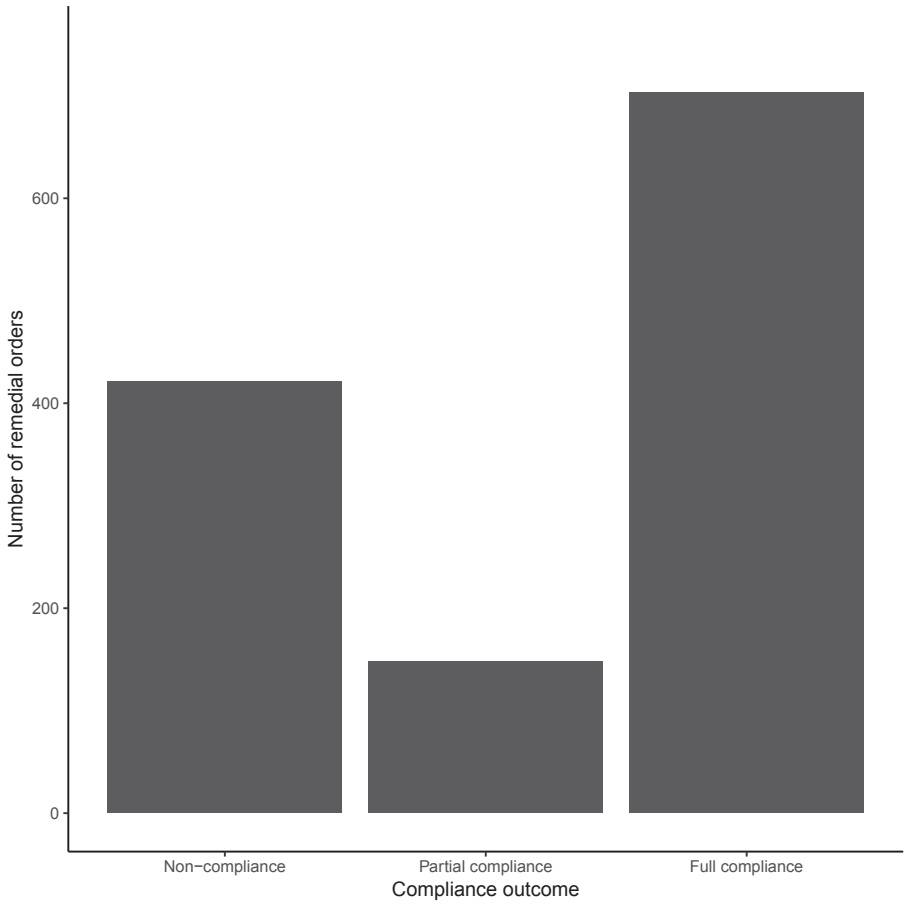

Figure 1.4: Distribution of compliance outcomes for IACtHR remedial orders

der. In studies of compliance with the IACtHR my primary dependent variable is therefore binary, and I rely on logistic regression models (e.g. Long 1997).

1.4 Approach to Inference

Confronting my theoretical expectations with empirical data requires adherence to a set of principles for making valid inferences. In this section, I first discuss the framework I rely on to make claims about empirical relationships based on data and estimated models. I then turn to the considerations that are important for whether and when a statistical relationship can be interpreted as causal.

1.4.1 Approach to Statistical Inference

In each of the following chapters, I seek to evaluate whether one or more theoretically motivated hypotheses are supported by the data. In making such inferences I follow what is the most common approach to statistical inference in the social sciences, namely frequentist hypothesis testing. This approach involves formulating a null hypothesis (typically that there is no relationship between the independent variable of interest and the dependent variable) and using test statistics (such as t values from regression models) to evaluate whether the null hypothesis should be retained or rejected with a given level of confidence (Greenland and Poole 2013). This decision is based on the magnitude of the p value, which is interpreted as the likelihood of observing the data at hand given that the null hypothesis is correct (Gill 1999: 654), and the chosen level of confidence. If the p value is below a certain threshold, α, the null hypothesis is rejected. In line with social science convention, I base my hypothesis testing on the 95 per cent confidence level, which means that $\alpha = .05$.

An important attraction of this approach to statistical inference is that it is widely understood in the social sciences. However, hypothesis testing based on p values has recently been subject to a range of criticisms (Gill 1999, Cumming 2014: 11-14, Schrodt 2014: 293-294), some of which are relevant to the present study.

A principled criticism is formulated by Gill (1999: 654-656), who holds that the p value is not the appropriate quantity of interest when deciding whether to

reject the null hypothesis. Gill posits that rather than asking what is the probability of observing the data at hand conditional on the null hypothesis being correct ($D|H_0$, where D is the observed data and H_0 is the null hypothesis), we should ask what is the probability of the null hypothesis being correct conditional on the observed data ($H_0|D$). The latter may be retrieved from a Bayesian analysis (Gill 1999: 656, Kruschke 2011: 280-281).[17] However, as frequentist statistics remain the most broadly understood framework for statistical analysis in the social science, I stick to this approach. My position is thus largely pragmatic in that I consider the common standard that the p value provides to be a helpful guideline when deciding whether the null-hypothesis may be rejected. At the same time, I take care not to read more meaning than appropriate into the estimated p values. Moreover, although p values are used for hypothesis testing, I also present other information more appropriate for evaluating the magnitude of statistical relationships and the degree of uncertainty surrounding them.

Another criticism is that p values often are attributed too much importance at the expense of carefully considering the substantive importance of estimated relationships. The attained p value is not informative about whether the identified relationship is substantively important. When deciding whether a result is important, I therefore also consider the magnitude of the reported relationships. For the logistic regression models of compliance with IACtHR remedial orders, such interpretation is assisted by calculating how changes on the independent variables of interest affect predicted probabilities of compliance (King, Tomz and Wittenberg 2000). The communication of intuitive quantities of interest is somewhat more challenging for the Cox models used to study the duration of ECtHR compliance processes, but, in chapters 3 and 4, I similarly use a method recently developed by Kropko and Harden (2017) to calculate marginal changes in time until compliance based on the Cox models. Where such other quantities are not calculated, I communicate what the estimated coefficients mean in terms of relative changes in the implementation rate or in the likelihood of compliance.

Reporting p values is similarly an insufficient way of communicating the uncertainty surrounding reported results. Even if a relationship is significantly dif-

[17] Specifically the highest density interval of the posterior distribution will contain all the most likely parameter with probabilities summing up to a desired level of confidence, such as 95 per cent (Kruschke 2011: 280-281).

ferent from zero, there might be considerable uncertainty concerning the exact magnitude of the relationship. Providing accurate estimates of uncertainty is a crucial part of any scientific result (King, Keohane and Verba 1994: 9). Although I rely on p values for significance tests, I therefore prefer to report uncertainty in the form of confidence intervals. Confidence intervals are based on the same information as p values and also involve making the same choice concerning an arbitrary significance level. Yet, experimental research suggests that researchers are more likely to correctly interpret uncertainty estimates if presented in the form of confidence intervals than if presented in the form of p values (Coulson et al. 2010). Confidence intervals have the desirable property of indicating the full range of values within the true parameter value may fall at a given level of confidence and are shrinking as certainty increases (Gill 1999: 661-662). Confidence intervals therefore make it easy to distinguish between how precisely different parameters are estimated and the amount of uncertainty that surrounds reported results (Cumming 2014: 13).

1.4.2 Approach to Causal Inference

I am interested not only in identifying statistical relationships between variables, but also whether such relationships can be interpreted as causal. Identifying causal relationships is a main goal for science (King, Keohane and Verba 1994). Elster (2015: 3) goes as far as to suggest that providing causal explanation is the main goal of social science "to which all other [goals] are subordinated or on which they depend". Providing insights concerning the *causes* of variation in states' compliance performance is also the primary motivation of this dissertation. Just as important as a framework for evaluating whether the data supports a hypothesis concerning the existence of a specific relationship is therefore an understanding of when such a relationship may be interpreted as causal.

I base my conception of causality on the *potential outcomes* framework (Rubin 1974).[18] According to this framework, the casual effect of any treatment variable is defined by comparing the outcomes that would have been observed given different values on the treatment variable (Rubin 2005: 323). More formally, for any

[18]The potential outcomes framework is consistent with the graph-based approach to causality developed by Judea Pearl, see e.g. (Pearl et al. 2009: 131-132).

observation i, the causal effect of a binary independent variable $X \in (0, 1)$ on the outcome variable Y is given by $Y_i(1) - Y_i(0)$, where $Y_i(1)$ is the outcome for unit i if it is treated and $Y_i(0)$ if it is not treated. This definition extends well to continuous independent variables and various forms of outcomes of interest (Morgan and Winship 2014).

Yet, a fundamental problem is that any observation i will be either treated or untreated. The different potential outcomes are therefore never observed (Holland 1986). It is necessary to base estimates of average causal effects on differences between comparable groups, where any difference in outcomes between the two groups can be attributed to differences on the treatment variable. Such attribution does, however, require that the two groups are balanced on all on other relevant variables. Outside the experimental context, where balance can be achieved through randomization, valid attribution of causal relationships is therefore notoriously difficult to establish (Morgan and Winship 2014). However, even if valid causal inference is difficult to achieve when relying on observational data, the potential outcomes framework and its approach to causal inference serves as a useful ideal to which feasible research designs should approximate as much as possible.

In each chapter, possible confounders are conditioned by including them as control variables in the statistical models that are estimated, and in Chapter 3 also by preprocessing the data using matching (Ho et al. 2007). Conditioning on potential confounders requires, however, that they are identified. Identifying confounding variables requires theory about the full causal process and will ultimately rest on previous research and "*causal intuitions* about what are (and what are not) plausible 'third factors' for which we need to control" (Elster 2015: 19, emphasis in original). Theory and previous research thus plays an important role in identifying variables that should be conditioned on and interpreting conditional relationships that are identified as causal relationships generally rests on the belief that important confounders have not been omitted (Samii 2016). This reliance is a central limitation on conditioning-based research designs such as those employed in this dissertation.

Acknowledging that strong causal claims are difficult to justify does not mean that the estimated empirical models are not informative about causal processes. Within the constraints posed by the available data and knowledge about the data generating processes, the estimated conditional correlations provide evidence of

which hypotheses that are supported by data and which are not. The acknowledgement that strong causal claims are difficult to justify further motivates attempts to critically evaluate how stable relationships of interests are to alternative (yet also reasonable) model specifications (Neumayer and Plümper 2017). Because there will always be uncertainty concerning what is the most appropriate combination of control variables, it is important to investigate critically how sensitive estimated results are to including other potentially important controls and to omitting variables suspected of introducing post-treatment bias. Identifying relationships that are stable across different responsible specifications will increase confidence in the interpretation of the results as reflecting causal relationships rather than modelling choices.

This approach to causal inference also has implications for the populations to which causal effects are generalized (Samii 2016: 943-944). Importantly, causal relationships can only be identified for the group of observations that has identifying variation, meaning that there is variation on the independent variable among observations that are otherwise comparable. This challenge is particularly relevant for chapters 3 and 4, which focus on relatively rare decision-level variables which tend to be present only in specific types of cases. Chapter 3 therefore uses matching to identify the set of control cases that are comparable to the judgments containing remedial indications (the independent variable of interest). The results from the empirical analysis are similarly limited to the types of cases that tend to receive remedial indications and for which the necessary identifying variation exists. Thus, although Chapter 3 provides strong evidence that remedial indications have been successful in promoting compliance with the type of judgments they tend to be offered in, they cannot necessarily be expected to be beneficial in other types of judgments.

1.5 The Structure of the Dissertation

The remainder of this dissertation consists of four article-length chapters, each analyzing a different factor expected to influence compliance with IHRC judgments. All the chapters have previously been presented at conferences or workshops. Chapter 2 has been resubmitted after revisions to *The International Journal of Human Rights*. Chapter 3 has been resubmitted after revisions to the *British Jour-*

nal of Political Science. Chapter 4 has been submitted to *Comparative Political Studies*. Chapter 5 is currently under review in *The Journal of Legal Studies*.

The chapters are connected by their joint concern with compliance with IHRC judgments. The analysis in each chapter is also motivated by the same theoretical framework outlined in Section 1.2, although the chapters focus on different implications of this framework. Finally, there are many methodological similarities as all the chapters rely on similar quantitative research designs, use similar measurement strategies, and employ the ECtHR and/or IACtHR data described in Section 1.3.1. Each chapter thus contributes to an overarching goal of understanding the politics of compliance with IHRC judgments based on systematic analysis of quantitative data. They therefore contribute to the larger scholarly literature on compliance with IHRC judgments and judicial decisions more broadly.

The are also important differences between the different chapters. Each chapter focuses on a distinct aspect of compliance politics likely to influence the duration of implementation processes or the likelihood of compliance. Accordingly, different independent variables are of interest in each of the chapters. The differences in research question and methodological challenges encountered also leads to some differences in the research designs that are employed. Finally, while each of the chapters contribute to the literature on compliance with IHRCs, the analyses differ in the other strands of scholarship they draw on and contribute to.

In the following, I summarize each chapter and explain how it contributes to the literature on compliance with IHRC judgments as well as to other relevant strands of scholarship.

1.5.1 Delayed but not Derailed: Legislative Compliance with European Court of Human Rights Judgments

Chapter 2 asks how the need for legislative changes influences the time it takes states to implement ECtHR judgments. While most existing scholarship concerning compliance with IHRC judgments (Hillebrecht 2014*a*;*b*, Voeten 2014, Grewal and Voeten 2015) has centred on country-level explanations of compliance, I consider how implementation processes might unfold differently, depending on the types of remedies needed for compliance (see also Huneeus 2011). Understanding how the need for legislative changes influences compliance may be considered

particularly important. Legislative changes are often needed to achieve important human rights reforms and about a quarter of all ECtHR implementation processes involve legislative changes (Stiansen and Voeten 2017).

The need for legislative changes may be expected to complicate the compliance process for at least two reasons. First, the ECtHR faces strong criticism in multiple countries for interfering too much with the will of elected parliaments (de Londras and Dzehtsiarou 2017: 476-477). For instance, Bates (2017: 276) argues that British resistance against the *Hirst* judgment was not fueled primarily by the substantive question of whether some prisoners should be given the right to vote, but rather by the perception of an international court overruling the will of the democratically elected Parliament. An important question is therefore whether the states are more prone to defying judgments that require legislative changes. Such resistance may be particularly likely in cases where the appropriate "margin of appreciation" that should be left to domestic decision-makers is contested and in states without a tradition for judicial review of legislation.

Second, even if judgments requiring legislative changes are not more likely to be resisted, the legislative process may delay compliance. Previous research has pointed to strong checks and balances as institutional characteristics that promote compliance by enabling pro-compliance actors to hold executives accountable for their compliance performance (Hillebrecht 2014*a*;*b*). Strong checks and balances may, however, also make legislative changes difficult to achieve because agreement will be needed among a large set of veto players (Tsebelis 1995; 2002, Binder 1999). Such veto player problems may make legislative changes harder to implement than other measures such as executive action or jurisprudential changes. The difference between implementation processes in which legislative changes are needed and other implementation processes may, however, be expected to diminish as time allows for legislative amendments to be negotiated, debated, and enacted. For the cases in which legislative changes are needed, implementation might be expected to be slower if there is a greater number of ideologically diverse veto players, if a proportional electoral system increases the fractionalization in the legislature, and if a bicameral system increases the number of hurdles bills must pass to be enacted.

I evaluate these expectation by estimating set of shared-frailty Cox regression models on ECtHR implementation data collected by Stiansen and Voeten

(2017). The results suggest that that need for legislative changes tends to delay compliance, but that the magnitude and statistical significance of this relationship diminish with time since the judgment. Thus, while need for legislative changes is initially an important obstacle to compliance, need for legislative changes is less likely to delay compliance when states have had time to draft, deliberate, and enact necessary legislation. In other words, need for legislative changes appears to systematically delay compliance with ECtHR judgments, but does not necessarily explain pro-longed non-compliance.

The analysis also suggests that when legislative change is needed, states with proportional electoral systems, states in which legislation has to be passed through two chambers, and states with ideologically diverse veto players are slower to implement ECtHR judgments than other states are. There is no evidence that the legislative compliance is less likely in cases where the appropriate "margin of appreciation" is contested. The absence of judicial review at the domestic level is, however, negatively associated with legislative compliance. This finding is not consistent with the veto-player perspective, but may suggest that judgments requiring legislative changes are more likely to be resisted in states without a tradition for judicial review of legislation.

Chapter 2 thus contributes increased understanding concerning how the prospects for compliance vary between different cases, depending on the measures needed for compliance. In showing how veto-player problems may delay compliance with judgments requiring legislative change, the chapter also contributes to a more nuanced understanding of how democratic politics and checks and balances influence compliance processes.

1.5.2 Directing Compliance? Remedial Approach and Compliance with European Court of Human Rights Judgments

Chapter 3 moves from the question of why some compliance processes are more difficult than others to the question of whether courts can act in ways that increase the prospects of prompt compliance. While a growing literature has argued that courts act strategically to influence the likelihood of prompt compliance (Staton and Vanberg 2008, Lupu and Voeten 2012, Larsson et al. 2017), less is known about whether such strategies are effective (but see Staton and Romero forthcom-

ing).

The chapter analyzes recent attempts by the ECtHR to influence implementation by indicating the measures it considers necessary in selected rulings. Remedial indications provide clarity concerning what compliance must entail. Such clarity may facilitate accountability politics by increasing the transparency of the implementation process. Remedial indication may therefore raise the political costs of prolonged non-compliance (Staton and Vanberg 2008). The indication of specific remedies may also provide greater political coverage for actors responsible for implementing costly or unpopular remedies (Allee and Huth 2006).

At the same time, actors within respondent states are often better placed than international court judges to identify appropriate remedies (Huneeus 2015, Staton and Romero forthcoming). Perhaps particularly in the European setting, where ECtHR judgments have traditionally been seen to be of a declaratory nature (Keller and Marti 2015), remedial indications may provoke accusations of judicial overreach. Such accusations may be used to undermine the legitimacy of the judgment and therefore justify non-compliance. These concerns might both undermine the effectiveness of remedial indications and limit their use.

Chapter 3 offers a first empirical assessment of how the ECtHR's remedial approach influences compliance. An important threat to causal inference is that remedial indications tend to be offered in cases where there is a low likelihood of prompt compliance. To address this threat, I identify a set of control cases without remedial indications that are comparable to the cases with such indications, using genetic matching (Diamond and Sekhon 2013). Cox models estimated on the matched data suggest that remedial indications are associated with quicker compliance with some of the ECtHR's most challenging judgments. Moreover, remedial indications are particularly effective in judgments against respondent states in which the domestic institutional environment enables pro-compliance actors to use the remedial indications to hold governments accountable.

The findings of Chapter 3 thus suggest that not only can judgment characteristics influence compliance politics, but strategic action from the bench can succeed in promoting quicker compliance. The finding that the ECtHR's remedial indications have contributed to quicker compliance is particularly important due to the type of challenging cases where they have been offered. These are exactly the types of cases where compliance is difficult to achieve. Moreover,

previous research suggests that case complexity is an important barrier for courts' engagement with implementation through remedial indications (Staton and Vanberg 2008, Staton and Romero forthcoming). My findings suggest that, if offered, remedial indications may contribute to quicker compliance also in complex and challenging cases.

1.5.3 The Dilemma of Dissent. Split Judicial Decisions and Compliance with Judgments from the International Human Rights Judiciary (with Daniel Naurin)

Like Chapter 3, Chapter 4 is also concerned with how the content of judicial decisions influence the likelihood of compliance. While Chapter 3 investigated whether judicial strategies can succeed in facilitating compliance, Chapter 4 is concerned with whether the likelihood of prompt compliance is reduced if the judges are unable to deliver a unanimous decision. The empirical focus is expanded as Chapter 4 turns to data concerning IACtHR remedial orders (in addition to data concerning ECtHR judgments).

The question of how open dissent among the judges may influence compliance is motivated by two strands of scholarship. Firstly, scholars of both domestic (Vanberg 2001; 2005, Staton and Vanberg 2008) and international courts (Carrubba 2009, Simmons 2009, Alter 2014) have argued that compliance with court decisions largely hinges on support from favorably inclined domestic constituencies. Such actors may use the court decision to more forcefully argue for policy change. An important precondition for this mechanism is that judicial decisions are perceived as legally authoritative, unbiased, and based on sound legal analysis rather than subjective preferences (Scheb and Lyons 2001).

A second strand of scholarship has debated the effects of judicial dissent (Stephens 1952, Anand 1965, Peterson 1981, Dunoff and Pollack 2017). An important concern in this debate is that open dissent may sow doubt concerning the validity of the ruling's legal reasoning (Lewis 2006: 903-905) and whether the judges were acting impartially (Zink, Spriggs and Scott 2009). Combining insights from these two strands of scholarship, we argue that judicial dissent may reduce the likelihood of compliance by making it more difficult for pro-compliance actors to argue unequivocally that "the law" is on their side. We therefore expect

the likelihood of prompt compliance with remedial orders to be lower if they are affected by judicial dissent than if they are unanimous.

We investigate this expectation using data concerning IACtHR and ECtHR rulings. The empirical analysis provides evidence of a negative relationship between judicial dissent (favoring the respondent state) and compliance with judicial decisions. This relationship holds for both IHRCs and across different model specifications. It is challenging to definitely determine the existence of causal relationship between judicial dissent and non-compliance. Nevertheless, our study provides theoretical arguments and compelling observational evidence pointing in that direction. Striving for unanimity should therefore be considered an important strategy for an international human rights judiciary that confronts significant compliance challenges.

Similarly to the preceding chapters, Chapter 4 also suggests that while compliance politics may be domestic in nature, how such politics unfold is influenced by case characteristics. Factors that influence the social legitimacy of the case may be particularly important. This finding relates to recent literature focusing on judicial strategies for rhetorical legitimation of judgments (Lupu and Voeten 2012, Larsson et al. 2017). While the effectiveness of such strategies should be investigated directly, Chapter 4 provides support for the key expectation that factors influencing the perceived quality and unbiasedness of judicial decisions can be important for the likelihood of compliance.

1.5.4 Competition and Compliance: Electoral Uncertainty and Implementation of Judgments from the International Human Rights Judiciary

Chapters 2-4 contribute to the compliance literature by investigating case characteristics that influence the compliance process. In contrast, Chapter 5 contributes to the understanding of how the political situation in the respondent state influences compliance. Much scholarship (including parts of this dissertation) considers factors that may influence the political costs of non-compliance. Less is known about why respondent governments sometimes comply with judgments they disagree with even when the immediate political costs of non-compliance appear minimal. This question is particularly relevant given how countries such as the

United Kingdom have continued to quickly implement most judgments relatively quickly even as the interference of international judges has been increasingly unpopular among the voters (Hillebrecht 2014*a*: 101-102, Masterman 2016). Moreover, some relatively recent democracies such as Hungary have increasingly become dominated by single political parties that have attacked the domestic judiciaries (Bugarič and Ginsburg 2016). An important question is whether such developments are likely to undermine the international human rights judiciary by contributing to increased defiance of its rulings.

Drawing on the political-competition theory of judicial review (Ramseyer 1994, Stephenson 2003, Ginsburg and Versteeg 2014, Epperly 2013; 2017), Chapter 5 considers whether the political competition in the respondent state may influence the propensity to promptly implement IHRC judgments. According to the political-competition theory of judicial review, political parties uncertain about the prospects for remaining in office will value judicial review as a constraint on their opponents. Political competition may therefore provide incentives for sustaining judicial review as an insurance against competing political parties. Because sustaining judicial review requires compliance with adverse judgments (Staton and Vanberg 2008: 507, Vanberg 2015: 173), compliance is more likely when there is approximate parity between the main competitors in the electoral market than when a single party dominates elections.

To test this hypothesis, I investigate how the difference in (lower house) seat shares between the two largest parties influence compliance with IHRC rulings. The results of Cox regression models of the implementation of ECtHR judgments (Stiansen and Voeten 2017) and logistic regression models of compliance with IACtHR remedial orders (Bøyum, Naurin and Stiansen 2017) provide empirical support for the link between political compliance competition and compliance. The relationship between political competition and compliance is robust to controlling for a range of other country-level explanations for compliance, such as the strength of accountability institutions, managerial capacity, and the degree of democratic consolidation. Moreover, despite the differences that exist between the two IHRCs and the politics of the states subject to their jurisdiction, there is a consistent relationship between political competition and compliance with adverse judgments for both these courts.

There is thus evidence that compliance with IHRC rulings is not *only* a result

of other societal actors holding responding governments responsible for compliance, but also from the interests that office holders may have in sustaining international human rights review.

This finding also contributes to the literature concerning the link between political competition and judicial review. While previous scholarship in this tradition has focused primarily on domestic judicial review (Ramseyer 1994, Stephenson 2003, Ginsburg and Versteeg 2014), I show that electoral uncertainty can also explain why political actors accept to be constrained by IHRCs. Moreover, previous empirical studies have not assessed whether political competition influences compliance. Instead, extant research has focused on the introduction of judicial review in domestic constitutions and cross-country differences in judicial independence. I demonstrate that political competition also influences compliance with judicial decisions.

Finally, some recent scholarship has suggested that political competition might in fact be detrimental to judicial independence as weak incumbents might manipulate the judiciary to increase their chances of reelection (Popova 2010, Trochev 2010, Aydın 2013, but see Epperly 2017; 2018 for diverging results). I show that at least for courts that may not easily be manipulated by a single government, such as IHRCs, political competition is beneficial for the willingness to comply with adverse decisions.

1.6 Implications for Research and Policy

IHRCs are ambitious attempts at subjecting states' treatment of their own citizens to international judicial oversight. They also constitute examples of courts controlling neither the sword nor the purse (Hamilton 1788) attempting to influence the behavior of other political actors. Identifying the factors that may influence compliance with their rulings therefore has important consequences both for the political project aimed at limiting arbitrary interference with the rights of individuals and minorities and for theories on judicial politics. This section summarizes the main contributions of this dissertation, identifies relevant policy implications, and proposes some important avenues for future research.

1.6.1 Main Contributions

A main contribution of chapters 2, 3, and 4 is to demonstrate that while compliance with IHRC judgments depends on domestic politics, aspects of the judgments influence how compliance politics unfold. This contribution is important for the scholarship concerning compliance with IHRC judgments that has so far focused primarily on characteristics of respondent states (Hillebrecht 2014*a*;*b*, Voeten 2014, Grewal and Voeten 2015). Moreover, my findings concerning factors that judges may influence, such as remedial indications and whether to make disagreements between the judges public, suggest that judicial strategies are more important for compliance politics than what is implied by extant scholarship.

Furthermore, the judgment characteristics that are found to be important relates to broader theoretical propositions concerning compliance politics. The link between remedial indications and compliance with ECtHR judgments (Chapter 3) suggests that greater clarity concerning what compliance should entail promotes compliance. This finding is consistent with scholarship on other courts that has suggested that such transparency is important for holding implementing actors responsible for their compliance performance (Vanberg 2001; 2005, Staton and Vanberg 2008, Gauri, Staton and Cullell 2015, Staton and Romero forthcoming). Showing how the ECtHR has been able to use remedial indications to promote quicker compliance with some of its most challenging judgments is an important contribution to this strand of scholarship.

The finding that judicial dissent is associated with a lower likelihood of compliance also relates to scholarship suggesting that how courts and their rulings are perceived by domestic constituencies can influence compliance. How judgments are perceived domestically can influence the ability of so-called compliance constituencies (Alter 2014) to mobilize support for compliance, for the electoral costs associated with blatant non-compliance (Vanberg 2001; 2005). The perception of judgments is also important for the political cover a decision provides for actors wishing to implement the necessary remedies (Allee and Huth 2006). Although judicial dissent is only one of several factors that might influence how judgments are perceived, the negative relationship between judicial dissent and compliance provides novel empirical support for the proposition that compliance politics is influenced by factors such as the perceived legal quality of a ruling.

Another important contribution made particularly in chapters 2 and 5 is to

provide a richer account of how the political situation in the respondent state influences compliance with IHRC judgments. Extant empirical research has tended to work from the assumption that while responding governments have reasons to resist the implementation of IHRC judgments, broader societal forces will favor compliance with human rights judgments (see also Simmons 2009). The ability of other branches to constrain executive power has therefore been perceived as beneficial for compliance (Haglund 2014, Hillebrecht 2014*a*;*b*). I add to the literature by showing two other ways in which the political situation in the respondent state influences compliance.

Firstly, Chapter 2 shows that the relationship between institutional constraints and compliance is more complicated than the extant account suggests. Specifically, compliance may be delayed where necessary remedies require agreement among multiple veto-players with diverging political preferences. Such veto-player problems delay the implementation of ECtHR judgments requiring legislative changes, particularly when different legislative veto-players are from different political parties.

Secondly, Chapter 5 shows that the political situation in the respondent state may create incentives for implementing judgments even if these are unpopular. Electoral uncertainty can lead politicians in power to value IHRCs as a constraint on other political parties that may gain power in future elections. Because compliance is necessary to preserve the authority of IHRCs, compliance is more likely when there is fierce political competition. Importantly, such incentives can explain why countries such as the United Kingdom has continued to promptly implement most ECtHR judgments, even if the European human rights regime has become increasingly unpopular among British voters. Likewise, countries where a single political party becomes increasingly dominant may be expected to become more reluctant to implementing IHRC judgments.

1.6.2 Policy Implications

My findings concerning the links between judgment characteristics and compliance have important implications for IHRC judges concerned with achieving prompt implementation of their rulings. Designing the rulings in ways that increase the transparency of the implementation process and avoiding acting in ways

that undermine their perceived legal authority appear to help facilitate prompt compliance. These findings are of particular importance in light of recent debates concerning how implementation of ECtHR judgments can be improved (Keller and Marti 2015, de Londras and Dzehtsiarou 2017). They are also important for the IACtHR, which has long struggled with a low compliance rate (Cavallaro and Brewer 2008). Moreover, the findings could also be useful for the ACtHPR which has not yet developed a large case law, but which may come to play an important role in strengthening human rights protection on the African continent. The reception of some of the ACtHPR's first judgments by respondent states such as Tanzania suggests that compliance will be a difficult challenge also for this new IHRC (Daly and Wiebusch 2018). Finally, these insights may be relevant to domestic and international courts also outside the human rights sphere. A main lesson is that compliance is not only affected by the external political environment but also by judicial activities.

The importance of veto-player problems for delaying compliance with judgments requiring legislative changes is also important for efforts to facilitate quicker compliance with IHRC judgments. An important implication is that prompt implementation is not only promoted by holding responsible decision makers accountable, but also by facilitating compromises between different actors responsible for implementation. If IHRCs are to indicate specific measures for respondent states, they are well advised to design their remedial orders in ways that reduce the chances of some veto players delaying their implementation.

The link between political competition and compliance is of relevance for actors seeking to promote compliance with IHRC decisions. The finding suggests that ability of IHRCs to constrain alternating elected majorities can motivate compliance with adverse decisions. The need to preserve constraints on future governments may help convince reluctant policy-makers that they should comply also with costly rulings. Particular attention should moreover be provided to countries where a single political party is becoming dominant in the electoral market. One current example is Hungary, where the Fidesz party has been dominant since 2010. The Hungarian government has already undermined the domestic judiciary in important ways (Bugarič and Ginsburg 2016). Monitoring Hungary's compliance with ECtHR judgments and invoking political costs on prolonged non-compliance may thus be particularly important in the current political situation.

1.6.3 Suggestions for Future Research

Future research may benefit from investigating the effectiveness of other strategies judges employ to promote compliance. One example concerns the use of citations to increase the legitimacy of decisions. Previous scholarship (Larsson et al. 2017), including in the ECtHR context (Lupu and Voeten 2012), suggests that such practices are strategically aimed towards affecting the reception of challenging judgments. Scholars have, however, not investigated whether citation practices actually facilitate compliance. Another frequent strategy is to increase societal awareness surrounding key judgments through media strategies (Staton 2006) or by making the proceedings more publicly visible (Krehbiel 2016*a*). While Cavallaro and Brewer (2008) suggest that such strategies are important for compliance with IACtHR remedial orders, this proposition has not been systematically evaluated. My findings suggest that actions taken by the judges can be successful in influencing compliance politics. Investigating the effectiveness of a broader range of judicial strategies is therefore a promising avenue for future research.

Future research may also benefit from considering other judgment-level factors expected to influence how judgments are perceived by domestic constituencies and whether such characteristics influence compliance. One important question is whether rulings on particular legal issues or judgments that favor particular groups of applicants face more resistance. For instance, scholars studying the implementation of judgments protecting Roma applicants have argued that hostility towards Roma by the majority populations in the states concerned has been detrimental to compliance (e.g Grozev 2013: 135-137; Majerčík 2016: 133-134). Voeten (2017*b*) suggest that clearly counter-majoritarian judgments become unpopular in countries with strong populist movements. Existing scholarship has, however, not systematically investigated whether such factors contribute to the social (il)legitimacy of IHRC judgments or whether they influence compliance. Investigating such claims is thus a second important avenue for future research

Finally, this dissertation has identified a number of factors influencing the likelihood of prompt compliance with IHRC judgments. An important question for future research will be whether such characteristics also influence judicial decision-making in the IHRCs. An important strand of scholarship regarding both domestic (Vanberg 2001; 2005) and international courts (Carrubba, Gabel and Hankla 2008) suggests that concerns about non-compliance can influence ju-

dicial decision-making. Such theories have received less empirical scrutiny in the context of IHRCs. However, Stiansen and Voeten (2018) show that increased criticism (including threats of non-compliance) of the ECtHR by consolidated democracies appears to have prompted an increased deference towards this group of states. One possible strategy for further research would be to investigate more directly whether the factors shown to influence compliance with IHRC rulings also influence the IHRCs' propensity to rule against respondent states.

1.6.4 Conclusion

In conclusion, the chapters in this dissertation explore how a number of case- and country-level factors influence the politics of compliance with IHRC judgments. In doing so, they advance our understanding of how courts come to influence policies and constrain other political actors and the conditions under which the international human rights judiciary can fulfill the promise of safeguarding individuals and minorities against the powers of their own states. The remainder of this dissertation shows that these conditions are found both in the politics of the states responding to IHRC judgments and in judgment characteristics that influence how specific rulings are received by domestic political actors.

2 Delayed but not Derailed: Legislative Compliance with European Court of Human Rights Judgments

Abstract

Legislative changes can be crucial for implementing human rights. This article investigates how need for legislative changes influences compliance with European Court of Human Rights (ECtHR) judgments. I argue that need for legislative changes might influence compliance politics in two ways. First, ECtHR interference with the will of elected parliaments is controversial in several European states. Such controversy might increase the risk of defiance of judgments requiring legislative changes. Second, the greater number of veto players needed to pass legislation is likely to delay compliance. Using original implementation data, I show that need for legislative changes tends to delay compliance, but does not increase the risk of long-term defiance. The ECtHR's ability to *eventually* prompt legislative changes is not smaller than its ability to induce other reforms. I also find that delays associated with need for legislative changes are greater in states with greater numbers of ideologically diverse veto players, in states with a proportional electoral system, and in states without domestic judicial review.

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2.1 Introduction

Legislative action is often crucial for improving state compliance with international human rights standards.[1] International institutions, ranging from international human rights courts such as the Inter-American Court of Human Rights (IACtHR) [2] to the Parliamentary Assembly of the Council of Europe (Parliamentary Assembly of the Council of Europe 2011), have therefore called on national parliaments to play greater roles in ensuring respect for human rights norms (Donald 2017*a*: 77). Understanding the conditions that influence legislative actors' ability to fulfill their human rights obligations is therefore important. Empirical research concerning the link between legislative institutions and compliance with human rights norms has, however, focused primarily on the ability of legislative actors to constrain the executive branch. Extant research has highlighted the importance of legislative constraints on the executive for increasing the costs of repression (Lupu 2015) and for enforcing compliance with international human rights court judgments (Hillebrecht 2014*a*;*b*). Less scrutiny has been offered to the politics of legislative changes aimed to comply with human rights obligations.

This article investigates how the need for legislative changes influences the implementation of European Court of Human Rights (ECtHR) judgments. Legislative changes are needed in about a quarter of all implementation processes following ECtHR judgments (Stiansen and Voeten 2017) and the ability of the ECtHR to prompt such changes is seen as evidence of the Court's authority (Shelton 2003: 147, Cichowski 2013: 326). Yet, although scholars have noted that the need for legislative changes might delay implementation (Voeten 2014: 234), extant scholarship has not systematically investigated how need for legislative changes influences the implementation process. This oversight is surprising because research

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[2]See e.g. paragraph 335 of the 2012 judgment in the case of *Artavia Murillo et al. v. Costa Rica*.

concerning other courts, such as the US Supreme Court and the IACtHR, indicates that the type of measures required for implementation significantly influences the likelihood of prompt compliance (Hall 2011; 2014, Huneeus 2011).

I identify two mechanisms that can be expected to reduce the likelihood of prompt compliance with ECtHR judgments when legislative changes are needed. First, judgments involving legislative changes are likely to be particularly controversial because they challenge democratic ideals concerning majority rule and parliamentary supremacy (de Londras and Dzehtsiarou 2017: 476-477). For instance, the controversies following the 2005 ECtHR judgment in *Hirst v. United Kingdom* and the subsequent *Greens and M.T. v. United Kingdom* ruling – which in the operative paragraphs ordered the United Kingdom to amend its 1983 *Representation of the People Act* within six months – have not been related only to the substantive issue concerning whether prisoners should have the right to vote. More importantly, there has been considerable resistance against what is presented – by anti-compliance actors – as Strasbourg judges' interference with the will of a democratically elected parliament (Bates 2017: 276). Similar concerns have been expressed in other countries (Gerards 2016: 333, Reiersten 2016: 366-367), suggesting that need for legislative changes might contribute to state defiance of ECtHR judgments.

Second, legislative changes often require agreement among a larger set of veto players with diverging political preferences compared to other types of measures, such as jurisprudential change or executive action. Such veto-player problems often contribute to legislative grid lock (Tsebelis 1995, Binder 1999; 2011). Thus, although the presence of veto players may be helpful in increasing the costs of human rights violations (Lupu 2015), a greater number of veto players has also been found to make it more challenging to enact legislative changes needed to end human rights violations (Conrad and Moore 2010). For instance, Donald and Leach report that delayed compliance with the 2009 judgment in the case of *M. v. Germany*, concerning detention of sex offenders, was not due to German legislators being opposed to amending the relevant legislation, but rather was explained by disagreement concerning the exact content of the legislative changes (Donald and Leach 2015: 87-88).

Both resistance against what anti-compliance actors present as judicial interference with the will of domestic parliaments and veto-player problems might

therefore explain a lower likelihood of prompt compliance with judgments requiring legislative changes. The two explanations do, however, give rise to different expectations concerning how need for legislative changes will influence compliance in the longer run. If judgments requiring legislative changes are systematically more likely to generate controversy and therefore motivate deliberate non-compliance, need for legislative changes can be expected to increase the likelihood not only of delayed implementation but also of long-term non-compliance. By contrast, research on veto-player problems more generally suggests that veto players are often able to overcome deadlocks in the long run – through issue linkages or other strategies (Golub and Steunenberg 2007: 157-158, Steunenberg and Kaeding 2009: 438-439). If veto-players problems explain delayed legislative compliance, need for legislative changes need thus not increase the risk of long-term non-compliance. Rather we may expect, as in the case of *M. v. Germany*, that legislation will eventually be changed, albeit after some delay.

The two explanations similarly differ in their predictions concerning the conditions that are likely to make legislative compliance particularly difficult to achieve. On one hand, a systematic unwillingness to change legislation to comply with international court judgments may be greater in countries without domestic judicial review of legislation and in cases where the appropriate delineation of power between the ECtHR and domestic law-makers is contested. The veto-player perspective, on the other hand, suggests that political systems with a greater number of ideologically diverse veto players will slow down compliance when legislative changes are needed. States with proportional electoral systems – which increase fragmentation in the legislature – and bicamerial legislatures – which increase the number of hurdles a bill needs to pass – may be expected to implement judgments requiring legislative changes at a slower rate.

To evaluate these expectations empirically, I employ original implementation data collected by Stiansen and Voeten (2017) to analyze how need for legislative changes influences the time it takes states to comply with ECtHR judgments. This dataset covers all lead case judgments rendered from the establishment of the ECtHR in 1959 till June 1, 2016. The empirical analysis confirms that need for legislative changes tends to significantly delay compliance with ECtHR judgments also when controlling for other variables that influence compliance. Although the need to enact legislative changes makes for a more difficult implementation

process, states are not more likely to indefinitely defy such judgments. The negative relationship between need for legislative changes and compliance diminishes with time since the judgment. Judgments requiring legislative changes are complied with at a similar rate as other judgments after states have had time to draft, deliberate, and enact necessary legislation. This finding is most consistent with the veto-player explanation for delayed legislative compliance.

Concerning the conditions that make judgments requiring legislative changes particularly challenging to implement, I find that the potential for deadlock among domestic veto players as measured by Henisz (2000; 2002) is associated with slower implementation. There is also some evidence that the need to pass legislative changes through two chambers may systematically delay compliance with judgments requiring legislative changes. Moreover, states that provide representation to a more diverse set of political actors through proportional elections are slower than states with majority- or plurality-based electoral systems to implement judgments that require legislative changes. I find no evidence that legislative compliance is less likely for judgments in cases where the width of the "margin of appreciation" extended to domestic law makers is contested. However, prompt legislative compliance is particularly unlikely in countries that do not have domestic judicial review. Although veto-player problems appear to be the primary explanation for delayed legislative compliance, there is thus some evidence of an increased likelihood of defiance in states, such as Switzerland, where judicial review is less familiar to domestic legislative actors.

2.2 Legislative Changes and Compliance with ECtHR Judgments

International human rights courts – and the regional human rights systems they are part of – have few means of enforcing judgments. Furthermore, as for international human rights obligations more generally, ECtHR judgments will typically only deal with matters internal to the respondent state. Other states therefore have few incentives to try to enforce compliance (Simmons 2009). Ultimately, compliance is left to the state targeted by a judgment. The existence of an implementation problem does not mean that respondent states never comply; however, state au-

thorities will often "resist and delay" (Staton 2004: 42), or comply only partially (Hawkins and Jacoby 2010). Delayed and incomplete compliance has important consequences both for the victims of human rights violations and for the European human rights system. The ECtHR has been troubled by a huge number of applications related to violations already adjudicated (Baluarte and de Vos 2010: 15, 33-34). While recent reforms of the European human rights system have reduced the backlog (Lambert Abdelgawad 2017), the influx of repetitive cases due to the failure of respondent states to effectively execute adverse judgments continues to be a problem (Keller and Marti 2015: 830).

Drawing on the literature on compliance with human rights treaties, extant scholarship has argued that compliance with ECtHR judgments is promoted by strong domestic institutions. Such institutions are expected to allow pro-compliance actors to hold respondent governments accountable for their compliance performance (Hillebrecht 2014*a*;*b*, Voeten 2014). An important assumption in this strand of scholarship is that the executive branch will both be the actor responsible for compliance and the actor most likely to resist human rights reform. For instance, Hillebrecht (2014*b*: 1107) considers that ECtHR judgments are implemented because they "arm judiciaries, legislatures, and civil society actors with an externally legitimated blueprint for human rights reform that might be counter to executives' own policy preferences". This account of the compliance process accurately describes many cases. For instance, between 2014 and 2018, Azerbaijan blatantly refused to comply with an ECtHR judgments requiring the release of the opposition politician Ilgar Mammadov from prison. It seems reasonable that political interests of the ruling government and the inability of other political actors to hold the government accountable contributed to prolonging this human rights violation.

However, compliance with ECtHR judgments often depends also on cooperation by actors outside the executive branch. Data from Stiansen and Voeten (2017) concerning the implementation of all ECtHR judgments until June 1, 2016 show that approximately 25 per cent of cases require legislative changes for compliance. In contrast to, for instance, the IACtHR, which tends to enumerate the required compliance measures in its judgments, the ECtHR typically does not spell out the need to change legislation explicitly in its judgments. Nevertheless, where a judgment finds existing legislation to violate human rights standards, legislative

changes are often needed. For instance, the 2009 ECtHR judgment in the case of *Anakomba Yula v. Belgium* created an obligation for Belgium to change Article 668 of its Judicial Code to provide for legal aid to a broader group of illegal aliens. Compliance will in such cases depend on the national legislative actors' ability and willingness to amend legislation in a timely manner. In the case of *Anakomba Yula v. Belgium*, compliance was not achieved until 2016 due to the failure of the government to secure support for its proposed legal reform (Agent of the Government of Belgium 2016).

In the remainder of this section, I discuss how the legislative process may be expected to influence compliance with ECtHR judgments both by increasing the likelihood of controversies that might motivate deliberate non-compliance and because enacting legislative changes requires agreement by a greater set of veto players than other remedies. I show that while both of these mechanisms may explain compliance challenges for judgments requiring legislative changes, they differ in other observable implications.

2.2.1 Need for Legislative Changes and Deliberate Non-Compliance

According to de Londras and Dzehtsiarou, some cases of non-compliance are the result of respondent states refusing

> to execute [an ECtHR judgment] because of a deep-seated disagreement not only with the outcome but, perhaps more significantly, with the *principle* of an international court's decision 'overturning' a domestic, democratically arrived at position in respect of a particular matter (de Londras and Dzehtsiarou 2017: 474, emphasis in original).

Because such cases of non-compliance explicitly challenge the ECtHR's authority, they may be considered particularly problematic for the Court compared to cases where managerial difficulties (Chayes and Chayes 1993, Anagnostou and Mungiu-Pippidi 2014) delay implementation. The term "principled resistance", which de Londras and Dzehtsiarou (2017) use to describe this type of compliance challenge is contested. In particular there will typically be considerable disagreement within a state concerning whether defiance of a judgment is justified and the

"principles" used to justify non-compliance may often mask more opportunistic behavior by certain political actors (Donald 2017*b*). Nevertheless, the ECtHR is facing explicit challenges to the its authority to decide certain types of issues and such resistance may lead states to adopt policies of deliberate non-compliance. Understanding what makes judgments particularly prone to such defiance is therefore important.

Blatant defiance of the ECtHR has often been linked to a concern that the ECtHR is undermining ideals of majority rule and parliamentary supremacy (Spano 2014: 488, Donald 2017*a*: 96). Such concerns can be expected to be most pronounced in cases where an ECtHR judgment requires democratically enacted legislation to be changed. Although domestic political actors are typically given considerable leeway concerning *how* legislation is to be changed, such cases may be seen as instances of "foreign judges" overriding the will of elected parliamentarians. Hence, Bates posits that the controversy surrounding the infamous 2005 judgment in the case of *Hirst v. United Kingdom* was not related primarily to the question of whether prisoners should be allowed to vote, but rather to whether "it is legitimate for Strasbourg to require the UK to change the law" (Bates 2017: 276).

British resistance towards compliance with *Hirst* did not extend to all ECtHR judgments. For instance, one member of the British Parliament opposed to complying with the *Hirst* judgment, David Davies, wrote in 2013 that the British Government should comply with certain ECtHR judgments, such as those prohibiting deportation of individuals to countries where they risk torture. At the same time, he argued that the United Kingdom ought not to comply with the *Hirst* judgment because the ECtHR had overstepped its legitimate authority by overruling the British Parliament (Davis 2013).

Although criticism of the ECtHR interference with domestic democracy has been particularly strong in the United Kingdom, similar concerns have been raised also in other states. In the Netherlands, criticism of the ECtHR particularly from the *Partij voor de Vrijheid* and the *Volkspartij voor Vrijheid en Democratie* has been motivated by resistance against the principle of judicial review (Gerards 2016: 332-333). Similarly, following the 2008 judgment in the case of *TV Vest and Rogaland pensjonistparti v. Norway*, concerning political advertisement on television, the responsible minister Trond Giske strongly criticised the notion that

seven judges in Strasboug "including one from Azerbaijan" should be able to override a majority in the Norwegian legislature (Simonsen 2009, Reiersten 2016: 366-367).

Across several countries, political resistance against the ECtHR thus appear, at least in part, to be motivated by resistance against the ECtHR overriding the will of democratically elected legislatures. Such resistance is not necessarily related to the difficulties associated with achieving the necessary legislative changes. For instance, the British parliament needed only to qualify the restriction on prisoners' right to vote and to provide a reasonable justification for the restriction on prisoner voting in order to comply with the *Hirst* judgment. The pro-longed non-compliance in this case is therefore better explained by controversies associated with changing legislation to comply with ECtHR judgments than by challenges associated with the particular legislative reforms needed. At least as far as judicial review of democratically enacted laws is controversial, the need for legislative changes might therefore be expected to increase the likelihood of blatant defiance.

2.2.2 The Legislative Process and Delayed Compliance

Compliance difficulties in cases involving legislative changes need, however, not be the result of blatant defiance. Italy is among the states with the poorest compliance records. However, Martinico (2016: 182) notes that the Italian parliament has never openly refused to make legislative changes to comply with an ECtHR judgment. Instead, explanations for lagging legislative compliance may be found in a slow and cumbersome legislative process.

Although legislative initiative may also come from parliamentarians, the legislative process typically begins with a new bill being prepared by the executive and ends when the bill is passed by the legislature. Before being enacted, new legislation is often extensively debated in committees and in plenary sessions. In many systems, additional institutional features, such as an additional chamber in the legislature, further raise the bar for legislative changes and thus increase policy stability (e.g. Congleton 2003). For good reasons, the legislative process is designed to preclude hastened decisions and facilitate regulatory predictability. Such challenges are of course further exacerbated for legislative and constitutional changes that require qualified majorities.

In addition to procedural hurdles, the legislative process involves a number of veto players: Different sets of governmental and parliamentarian actors are able to block new bills (Tsebelis 1995); thus, enacting new legislation may require agreement among actors from different political parties (Binder 2011). Legislatures, and to some extent coalition governments, are contentious arenas where different political parties are represented. Even where support for quick compliance can be found among a large share of the members of parliament, difficulties may arise if parties or parliamentarians whose support is needed exploit their pivotal position to achieve other political goals.

Although issue linkage can increase the opportunity space, compliance may be slowed down if the needed legislative changes become part of a larger political bargaining process. This aspect of the legislative process may be contrasted with measures that can be implemented by the executive alone, such as executive actions, publication of judgments, or certain types of measures of a practical nature. As explained by Huneeus,

> legislatures are less apt to act by institutional design. Executives are top-down institutions designed for carrying out action. Legislatures are designed for democratic deliberation and contestation. To pass a law, a majority vote must be negotiated and a series of procedural hurdles passed. One only has to see the differences [from executives] in structure to predict that legislatures will be slower and less likely to implement Court orders (Huneeus 2011: 517).

Procedural and institutional obstacles may delay compliance even in cases where a broad set of stakeholders agree that compliance is an important goal, but cannot agree on the exact design of the needed legislative measure. Consider Germany's compliance with the 2009 ECtHR judgment in the case of *M v. Germany*, concerning retrospective and indefinite preventive detention of sex offenders. According to a German parliamentarian interviewed by Donald and Leach, there was a consensus among German politicians that the judgment had to be implemented; however, it still proved difficult to negotiate a satisfactory solution within the *Bundestag's* legal committee. Thus, despite the will to comply with the judgment, implementation was delayed by difficulties in reaching agreement on the exact legislative changes to be enacted (Donald and Leach 2015: 87-88).

The greater number of veto points may also make it more likely that at least one veto player will withstand public pressure for compliance. Theories of compliance with international courts (Alter 2014) and international law more generally (Dai 2005) highlight the importance of compliance constituencies that can pressure decision-makers to comply. More veto players means that such actors need to exert influence over more actors. Consider the implementation of the 1999 ECtHR judgment in the case of *Dalban v. Romania*. The ECtHR found that Romania's calumny laws violated the freedom of expression. Faced with public pressure, the government moved relatively quickly to comply with the judgment. However, permanent legislation needed for compliance was not passed until 2006 and was then overturned by the Constitutional Court (Dragos and Mungiu-Pippidi 2013: 78-79). As a result, full compliance with the judgment was not achieved until 2011.

Such veto-player problems are less likely to delay implementation of other types of remedies. If compliance only requires executive action, the need for agreement with other domestic actors is limited. The smaller number of veto players and fewer institutional hurdles may increase the likelihood of timely compliance when only executive action is needed.

There are instances of tensions between domestic courts and the ECtHR and of national courts failing to apply ECtHR case law in their own cases (see Lambrecht 2016*a*: 534-550). However, national courts are less likely to be constrained by deadlocks between different veto players in their efforts to comply with specific ECtHR judgments through jurisprudential measures. While Huneeus (2011) shows that compliance with IACtHR remedial orders have been particularly low for orders requiring cooperation by domestic judges and prosecutors (see also Naurin and Stiansen 2018), these cases relate primarily to prosecutions of what are often unidentified perpetrators of atrocities years or decades after the fact. The low levels of compliance with these orders are likely due to the practical challenges of achieving effective prosecutions in these specific cases.

In contrast to what Huneeus finds in the Inter-American system (Huneeus 2011), domestic courts regularly adapt their case law to ECtHR judgments finding faults in domestic legislation before the political branches enact needed legislative changes. Consider the 2004 judgment in the case of *Ünal Tekeli v. Turkey*. While the implementation of this and related judgments remain pending because Turkey

has not amended legislation to allow married women to keep using only their maiden names, Turkish courts have in a number of judgments developed their case law to conform with the ECtHR's jurisprudence on the matter (Agent of the Government of Turkey 2016).

To summarize the argument thus far, prompt compliance with judgments requiring legislative changes can be challenging either because such legislative changes or more controversial or because the legislative changes involve more cumbersome procedures and more veto players with possibly diverging interests. This general expectation motivates a first hypothesis:

Hypothesis 2.1 *Need for legislative changes is associated with delayed compliance with ECtHR judgments.*

2.2.3 Longer Term Expectations

Although both political controversy and veto-player problems may explain a lower likelihood of prompt compliance when legislative changes are needed, the longer term expectations of these two explanations are different. If states are generally opposed to changing legislation to comply, such judgments would not only face a greater risk of delayed compliance, but also of longer-term non-compliance. For instance, the ECtHR concluded in its 2009 judgment in the case *Sejdić and Finci v. Bosnia and Herzegovina* that the ethnic discrimination inherent in the country's electoral system – negotiated in connection to the Dayton agreement – violates its human rights obligations. As discussed by Butenschøn, Stiansen and Vollan (2015: 145-146, 311), it is demanding to get the actors benefitting from the current arrangements to agree to the necessary constitutional and legislative changes. Although reports emerged in late 2017 that the United Kingdom would take steps to comply with the *Hirst* judgment, this case has similarly been characterized by deliberate non-compliance for more than a decade.

By contrast, scholars studying the effects of decision-making rules and veto-player problems in other types of legislative processes have argued that although veto players often delay the legislative process, it is often possible to overcome deadlocks through strategies such as issue linkages or redrafting legislative proposals (Golub and Steunenberg 2007: 157-158, Steunenberg and Kaeding 2009:

438-439). We might similarly expect that – provided that they are not by principle opposed to compliance – legislative veto players will be able to eventually overcome disagreements that block compliance with ECtHR judgments.

Even if judgments are initially resisted, time can permit the legislative actors to negotiate and enact needed legislative changes. Recall the cases of *Anakomba Yula v. Belgium*, *M v. Germany* and *Dalban v. Romania* discussed above. While all of these cases exemplify how the need for legislative changes delays compliance, they are also examples of such challenges eventually being overcome. These cases may therefore suggests that while need for legislative changes may mean that compliance will take a longer time to achieve, it does not necessarily increase the risk of permanent non-compliance.

One mechanism that may contribute to eventual compliance also when legislative changes are needed is the political costs associated with the long-term non-compliance. The lack of progress is likely to become increasingly visible to differences audiences as time pass since the judgment. At least if domestic constituencies view non-compliance unfavorably (Vanberg 2005), increased public attention may create political incentives for overcoming obstacles to compliance. The point is not that such public pressure is unique to judgments requiring legislative changes. Mounting public pressure might be expected to affect the decision-making calculus not only of legislators, but also of governments and heads of bureaucratic agencies. For judgments that remain unimplemented for a considerable time, the absence of political costs of non-compliance (or the prohibitively high costs of compliance) might, however, be a better explanation for non-compliance than the veto-player problems that legislative actors initially need to overcome.

As time since the judgment increases, the factors driving non-compliance for judgments requiring legislative changes and other judgments is therefore likely to become more similar. One important implication is that as time allows veto-player problems to be overcome, the difference in the implementation rate for judgments requiring legislative changes and those requiring other types of remedies is likely to decrease. Thus, although need for legislative changes will delay the implementation process, it will not necessarily explain prolonged non-compliance. This expectation motivates a second hypothesis:

Hypothesis 2.2 *The negative relationship between need for legislative changes and compliance with ECtHR judgments diminishes with time since the judgment.*

2.2.4 Variation across Political and Institutional Contexts

The two explanations for why need for legislative changes might reduce the likelihood of prompt compliance also have different implications concerning the conditions that will make prompt compliance particularly unlikely.

If legislative non-compliance is the result of resistance against ECtHR interference with domestic democratic processes, legislative compliance might be particularly unlikely when the judgment concerns issues that domestic law-makers think should fall within the scope of their sovereign decision-making power (Donald 2017*a*: 99). Following the *Hirst* judgment, British members of parliaments argued, for instance, that no European consensus existed on the question of prisoner disenfranchisement and that domestic law-makers should therefore enjoy considerable discretion to decide the matter (Davis 2013).

If the question of whether an issue can be decided by Strasbourg judges or should be left to the discretion of domestic law-makers is contested, this question will typically be addressed in the judgment. The appropriate balance between the ECtHR and national institutions is an important point of contention in debates concerning the European human rights system and is also an important question in the ECtHR's case law. In particular, the ECtHR has developed the "margin of appreciation" doctrine, which allows the Court to grant respondent states some leeway concerning how Convention rights are to be implemented at the domestic level. This doctrine is often invoked by respondent states that believe that the issue disputed in the case should be left to domestic authorities (Madsen 2018). Whether the respondent state claimed, but was not granted a margin of appreciation might therefore predict a greater likelihood of blatant defiance. This reasoning motivates a third hypothesis:

Hypothesis 2.3 *When legislative changes are needed for compliance, there is a lower likelihood of prompt compliance if the appropriate margin of appreciation for domestic law-makers was contested.*

The degree of resistance against judicial review from Strasbourg may also be expected to vary between different countries. If legislative defiance is related to resistance against the notion of judicial review, defiance by legislative actors should be particularly likely in respondent states that do not have domestic judicial review. For instance, Achermann and Dingwerth (2018) posit that the absence of

domestic judicial review might explain why the ECtHR is more controversial in Switzerland than in Austria (which has a strong constitutional court). Lambrecht (2016*a*) more generally links political actors' resistance against interference by the ECtHR with a lack of familiarity with judicial review from the domestic political system. If prompt compliance is particularly unlikely for judgments requiring legislative changes due to resistance against changing legislation to comply with international court decisions, legislative compliance might therefore be particularly challenging in countries that do not have domestic judicial review. This expectation motivates a fourth hypothesis.

Hypothesis 2.4 *When legislative changes are needed for compliance, there is a lower likelihood of prompt compliance if the respondent state does not have domestic judicial review*

It is worth noting how Hypothesis 2.4 differs from what the veto-player perspective would predict. As illustrated by the implementation of *Dalban v. Romania* judgment discussed above, the presence of a domestic court with the power to review legislation implies the presence of an additional veto player which veto-player theory would predict to delay compliance. Hypothesis 2.4 therefore constitutes a relatively strong test of the argument that judgments requiring legislative changes are less likely to be promptly implemented due to an increased risk of resistance from political actors.

If delays in the implementation process associated with need for legislative changes are due to a greater number of veto players, such delays should be affected by the number of veto players whose support is needed to pass legislation, the degree of polarization between these actors, and the degree of coherence within each collective actor (Tsebelis 1995; 2002, Binder 1999, Henisz 2000; 2002). Even if checks and balances more generally are associated with compliance (Hillebrecht 2014*b*), legislative productivity will tend to be lower during periods where a greater and more diverse group of veto players needs to agree to legislative changes (Conrad and Moore 2010). This expectation motivates a fifth hypothesis:

Hypothesis 2.5 *When legislative changes are needed for compliance, it will take longer time to implement ECtHR judgments if there are more legislative veto players that have diverging political preferences.*

The number of and alignment between veto players are related to the political institutions of the respondent states. States vary concerning whether institutions have been designed to facilitate efficiency and majority rule or to promote consensus-oriented bargaining between a broader set of interests (Lijphart 1999). Whereas majoritarian institutional arrangements can be expected to be associated with legislative productivity, consensus democracies have traits that make it more difficult to pass legislation.

One institutional trait influencing the number of hurdles a bill must pass is the number of chambers in the legislature. In many bicameral systems, legislation must pass through both chambers. Often, the two chambers are elected according to different principles and may have different political majorities, which is likely to increase policy stability by increasing the numbers of veto players (Tsebelis 1995: 290). Consider the implementation of the 2014 judgment in the case of *Cusan and Fazzo v. Italy*. While the necessary bill that would allow parents to register children under the mother's family name was passed by the lower chamber already in 2014, it proved difficult to pass it through the Italian Senate (Committee of Ministers 2017). The expected difference between unicameral and bicameral systems motivates a sixth hypothesis:

Hypothesis 2.6 *When legislative changes are needed for compliance, it will take longer time to implement ECtHR judgments in states where legislation has to pass through two chambers than in other states.*

The ability to quickly change legislation may also depend on the electoral system. Majority and plurality elections tend to produce lower fragmentation in the parliament than proportional systems do. They also entail a greater likelihood that a smaller group of parties will control a parliamentarian majority (Norris 1997: 304). By contrast, proportional elections often create fragmentation and representation by a larger number of parties, which may lead to slower decision-making and greater difficulties in achieving agreement concerning the needed legislative changes. Both the number of legislative veto players and the level of preference heterogeneity can therefore be expected to be smaller in majority- or plurality-based electoral systems than in proportional systems. These differences between electoral systems motivate a final hypothesis:

Hypothesis 2.7 *When legislative changes are needed for compliance, it will take longer time to implement ECtHR judgments in states with proportional electoral systems than in states with majority- or plurality-based electoral systems.*

2.3 Research Design

2.3.1 Dataset

Assessing the hypotheses developed in Section 2.2 requires data on the measure(s) needed for compliance with specific judgments and whether the judgments have been implemented. This information is available from the Stiansen and Voeten (2017) dataset, which includes all so-called lead case judgments rendered since the establishment of the ECtHR in 1959 until June 1, 2016. Lead case judgments are judgments that identify new human rights violations within the respondent states. Due to slow and lacking compliance, the ECtHR has also rendered a large number of judgments in repetitive cases relating to the same structural problems as those identified in the lead case judgment. As compliance with the lead case judgment also leads to compliance with the repetitive cases, the lead cases are the appropriate units of analysis (Voeten 2014: 231, Grewal and Voeten 2015: 502). The Stiansen and Voeten (2017) dataset expands the coverage of existing compliance data (Grewal and Voeten 2015) by a decade and includes more than four times as many cases.

2.3.2 Time until Compliance

I measure time until compliance as the number of days between an adverse ECtHR judgment and the case being closed by the Committee of Ministers (CoM) rendering a final resolution. The CoM is the body monitoring the compliance process (Grewal and Voeten 2015). Çali and Koch (2014) find that the CoM secretariat facilitates the consistent and professional monitoring even of politically difficult cases, which makes data from this body a reliable indicator of compliance (see also von Staden 2018). A final resolution is only rendered by the CoM when it is satisfied that there has been full compliance. In other words, cases where adopted measures are not considered sufficient are coded as still pending

compliance. Judgments that have not been complied with by June 1, 2016 are right-censored.

2.3.3 Need for Legislative Changes

The ECtHR generally does not "consider [itself] competent to make recommendations to the condemned State as to which steps it should take to remedy the consequences of the treaty violation" (Barkhuysen and van Emmerik 2005: 3). Instead, the needed remedies are identified through consultations between the CoM and the respondent state. Stiansen and Voeten (2017) have identified the measures needed for compliance based on documents from the CoM, including action reports submitted by the respondent states and assessments by the CoM secretariat.

To measure need for legislative change, I consider two items from the dataset: "Has the country already taken a legislative measure?" and "Does the country still need to take legislative measures to implement the judgment?". If either of these questions are coded affirmatively, I conclude that legislative changes were needed for compliance.[3]

2.3.4 Indicators of the Political and Institutional Context

To investigate Hypothesis 2.3, I searched the section discussing the "the law" of all lead case judgments available in English for the term "margin of appreciation". I then read the summaries of the parties' submissions and the Court's assessment and coded whether the respondent state claimed but was refused a margin of appreciation over the contested issue. Of the judgments requiring legislative changes that were available in English, there were 110 judgments in which the margin of appreciation was contested and 739 in which it was not.

Data concerning whether the respondent state has domestic judicial review and whether legislation needs to be enacted in two legislative chambers are available from the Varieties of Democracy database (Coppedge et al. 2018).

[3]This operationalization thus assumes that new legislation is only adopted when necessary. This assumption is in line with claims made in the literature that states will typically opt for minimal compliance even when they are inclined to honor the judgment (von Staden 2018). Yet, it may be problematic if legislative changes are enacted even if compliance could have been achieved without them. The available data do, however, not allow separating such cases from cases where legislative changes were strictly needed.

To investigate Hypothesis 2.5, I use the political constraints index developed by Henisz (2000; 2002). This index measures the degree to which preference change for one political actor is likely to result in policy change and considers the number of veto players in the legislative and executive branches, the degree of alignment between them, and the coherence of each collective veto player. The index is measured on an approximate interval scale ranging from 0 in cases where a single actor is unconstrained in generating policy change to a theoretical maximum of 1.

Because a large number of European countries have mixed electoral systems, I use data on electoral systems from the Database of Political Institutions (Cruz, Keefer and Scartascini 2016). In this database, mixed electoral systems are categorized as majoritarian systems if more than half of the seats are elected according to majority- or plurality-based rules.

Because implementation processes may last for several years, the political situation in the respondent stage may change during the implementation process. Such changes primarily affect the constellation of veto players (due to elections or government changes), but in some cases there are also institutional reforms. All country-level variables are therefore introduced as time-varying covariates.

2.3.5 Accounting for the Need for other Measures

Estimating the influence of need for legislative changes are complicated by how multiple compliance tasks may be needed to implement the same judgment. The need to implement several different types of measures could bias inferences in two ways. Firstly, if need for legislative changes tends to go together with needs for other difficult measures, these other measures may confound the relationship between the legislative process and compliance. To address this concern, the first model includes a set of dummies that capture need for other types of measures. The other types of measures that may be needed are "jurisprudential measures", "publication or dissemination of the judgment", "practical measures", "executive and/or administrative measures", and "individual measures" to provide redress for individual applicants.

Secondly, judgments that require legislation may also be more likely to be particularly complex and therefore require a greater number of different mea-

sures. Having to implement a greater number of distinct measures might delay compliance, irrespective of the types of measures that are needed. I therefore estimate models controlling for the count of different types of measures needed for compliance.

2.3.6 Other Control Variables

Both strategic decision-making by judges and systematic differences in the human rights violations of different countries could lead to systematic differences concerning which countries need to make legislative changes to comply with judgments. I therefore control for characteristics of the respondent state.

To control for the respondent state's capacity to implement judgments, I use the capacity index proposed by Grewal and Voeten (2015: 507-508). This index is based on the International Country Risk Guide (ICRG)'s "bureaucratic capacity" and "law and order" measures. These indicators capture the strength and expertise of the national bureaucracy, the impartiality of the judicial system, and popular observance of the law (The PRS Group 2012: 5-7).

Regime type may also be expected to influence both whether a respondent state's legislation is likely to be targeted by an ECtHR judgment and the likely response by the incumbent regime. To control for variation in the regime type of the respondent state, I include the Polity index (Marshall, Jaggers and Gurr 2004).

Grewal and Voeten (2015) find that new democracies tend to implement judgments quicker than their consolidated counterparts. I therefore control for recent democratization using the same binary indicator as Grewal and Voeten. This indicator takes the value of 1 if the respondent state has a Polity score of 6 or higher, but has not yet enjoyed this level of democracy for thirty consecutive years, and 0 otherwise.

Some judgment characteristics may also both affect the compliance process and correlate with whether legislative changes are needed. One concern is that legislative changes may be most likely to be needed in more complex cases. To measure case complexity, I include a count of the number of articles found to be violated in the judgment. Human rights violations that relate to more ECHR articles are likely to be of a more systematic nature and such complexity may complicate the compliance process.

Compliance processes may also unfold differently, depending on issue area. I therefore include a set of dummy variables for the most frequent types of violations. These are violations of articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to fair trial), 8 (right to respect for private and family life), 10 (freedom of expression), 13 (right to an effective remedy), 14 (prohibition of discrimination), and article 1 of Protocol 1 (protection of private property).

Some judgments that reach the ECtHR are ultimately settled amicably between the respondent state and the applicant. While such settlements have to be approved by the ECtHR and create similar legal obligations as an ECtHR judgment, the willingness of the respondent state to reach an out-of-court agreement with the applicant correlates with prompt compliance. I therefore include a dummy variable that takes the value of 1 if the case ended in a friendly settlement and 0 otherwise.

Finally, the ECtHR's deference towards respondent states (Stiansen and Voeten 2018), the case law on respondent states' obligations (Keller and Marti 2015), and the scrutiny of the CoM (Çali and Koch 2014) have evolved over time. To control for temporal variation affecting implementation, I introduce both a linear time trend and three dummy variables capturing important institutional changes. The first dummy captures whether the judgment was enacted after the entry into force of Protocol 11 on November 1, 1998. Protocol 11 abolished the European Commission of Human Rights and made the ECtHR a full-time institution. A second dummy captures whether the judgment was rendered after the implementation of new working methods for the CoM on May 10, 2006. These new working methods strengthened the monitoring procedures and may thus be expected to influence the duration of the implementation processes (Anagnostou 2013: 7-8). The final dummy controls for whether the judgment was rendered after the entry into force of Protocol 14 on June 1, 2010. Protocol 14 made a number of changes in the proceedings before the ECtHR and gave the CoM the formal authority to interpret what ECtHR judgments require.

Summary statistics for all included variables are reported in Table 2.1.

Table 2.1: Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Pctl(25)	Pctl(75)	Max
Compliance	4,536	0.715	0.451	0	0	1	1
Time until compliance	4,536	1,359.326	1,112.905	12	470	1,959.2	7,322
Need for legislative change	4,393	0.247	0.431	0.000	0.000	0.000	1.000
Need for jurisprudential change	4,396	0.131	0.337	0.000	0.000	0.000	1.000
Need for practical measure	4,396	0.113	0.317	0.000	0.000	0.000	1.000
Need to publish judgment	4,417	0.636	0.481	0.000	0.000	1.000	1.000
Need for executive action	4,398	0.165	0.371	0.000	0.000	0.000	1.000
Need for individual measure	4,403	0.244	0.429	0.000	0.000	0.000	1.000
Number of types of measures needed	4,386	1.530	1.333	0.000	0.000	2.000	6.000
Margin of appreciation contested	849	0.130	0.336	0.000	0.000	0.000	1.000
Domestic judicial review	4,458	0.969	0.172	0.000	1.000	1.000	1.000
Political constraints index	4,528	0.429	0.122	0.000	0.363	0.525	0.718
Legislation need to pass two chambers	4,536	0.336	0.472	0	0	1	1
Majoritarian electoral system	4,431	0.256	0.437	0.000	0.000	1.000	1.000
Capacity	4,336	3.240	1.173	0.417	2.333	3.917	4.917
Polity-index	4,417	8.768	2.119	−7.000	9.000	10.000	10.000
New democracy	4,419	0.494	0.500	0.000	0.000	1.000	1.000
Number of violations	4,536	1.068	0.761	0	1	1	10
Right to life violation	4,536	0.029	0.167	0	0	0	1
Prohibition of torture violation	4,536	0.082	0.274	0	0	0	1
Right to liberty violation	4,536	0.113	0.316	0	0	0	1
Right to fair trial violation	4,536	0.403	0.490	0	0	1	1
Right to privacy and family life violated	4,536	0.131	0.337	0	0	0	1
Freedom of expression violation	4,536	0.052	0.223	0	0	0	1
Right to effective remedy violation	4,536	0.061	0.239	0	0	0	1
Prohibition of discrimination violation	4,536	0.027	0.162	0	0	0	1
Property rights violations	4,536	0.101	0.301	0	0	0	1
Friendly settlement	4,536	0.093	0.290	0	0	0	1
Year of judgment	4,536	2,006.056	6.798	1,968	2,002	2,011	2,016
After protocol 11	4,536	0.888	0.316	0	1	1	1
After 2006 change in CoM Working methods	4,536	0.584	0.493	0	0	1	1
After protocol 14	4,536	0.347	0.476	0	0	1	1

2.3.7 Estimation

The dependent variable is the time until compliance measured in days. About one-third of the compliance processes are right-censored (i.e. compliance has not yet been achieved). Event history analysis is therefore the appropriate approach to statistical modelling (Box-Steffensmeier and Jones 2004). Event history models estimate the hazard rate, which is defined as the rate of occurrence of the event of interest. This framework is consistent with best practices in the literature (Voeten 2014: 232) and allows making robust inferences about the factors that explain the duration of the compliance process even in the presence of right-censoring. As theory is agnostic about the shape of the underlying duration dependency and incorrect specifications of the duration dependency can bias inferences, I use semi-parametric Cox models, which leave the duration dependency unspecified (Golub 2008).

Because the same states are subjected to multiple judgments, the observations cannot be considered independent. The dependence between judgments rendered against the same states, makes it important to account for potential unobserved country-level heterogeneity that may influence implementation. To account for dependence between observations, I include a shared frailty term, which is assumed to follow a gamma distribution, with a mean of 1 and a variance estimated from the data (Box-Steffensmeier and Jones 2004).

Although the Cox model in its standard form assumes proportional hazards, meaning that the effects of covariates do not vary with time, it is straightforward to test and correct for relationships that vary during the compliance process (Box-Steffensmeier and Zorn 2001, Licht 2011). Throughout, the proportional hazard assumption is evaluated using the Grambsch and Therneau (1994) test based on ranked survival times (Park and Hendry 2015). Across all model specifications, the effects of need for legislative changes as well as certain control variables are found to violate the proportional hazard assumption. To allow for non-proportional hazards, interactions are introduced between the offending variables and the natural logarithm of time (Box-Steffensmeier and Zorn 2001).

Interacting the legislation variable with the natural logarithm of time means that the estimated effect of need for legislative changes cannot easily be assessed by inspecting the hazard ratios reported in the regression table (Licht 2011). Conditional effects must be calculated based on the coefficients for both constituent

terms of the interaction (Brambor, Clark and Golder 2006). For binary variables in a Cox model, the appropriate interpretation is easiest achieved by investigating how the relative hazard develops over time (Licht 2011).[4] Relative hazards are therefore displayed in addition to the standard regression table.

2.4 Results

2.4.1 Need for Legislative Changes and Compliance

The shared-frailty Cox regression models are presented in Table 2.2. Each estimate is reported as a hazard ratio, which can be interpreted as the relative increase in the hazard rate of compliance given a one-unit increase in the variable of interest, keeping constant all other variables in the model (Licht 2011: 288). 95% confidence intervals for the hazard ratios are reported in parentheses. Relative hazards associated with legislative changes as a function of time are shown in Figure 2.1. The shaded areas correspond to the 90, 95 and 99 per cent confidence intervals.

Model 1 controls for the other types of measures needed for compliance (as well as other potential confounders). The model indicates that need for legislative changes is associated with a lower likelihood of prompt compliance. As can be seen from the hazard ratio for the interaction term and from the upper left panel of Figure 2.1, the strength of the relationship diminishes over time. While diminishing over time, the relationship between need for legislative changes and slow compliance remains statistically significant at the .01 level for approximately the first 8 years of the implementation process. Thus, although Model 1 provides support both for Hypothesis 2.1 and for Hypothesis 2.2, the delaying effect of need for legislative changes remains statistically significant for a long time, indicating that need for legislative changes does not only present a short-term challenge for compliance. The fact that the link between need for legislative changes and delayed compliance diminishes over time does, however, indicate that states tend not to defy such judgments by principle, but rather require some time to draft and negotiate legislative changes that are acceptable to domestic veto players.

[4] The relative hazard is given by $exp(\beta_1 + \beta_2 ln(t))$. See Golub and Steunenberg 2007 and Licht 2011: 5 for further mathematical detail.

Table 2.2: Shared-frailty Cox regression models: Need for legislative change and compliance

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8	Model 9
Need for legislative change	0.004***	0.122***	0.118***	0.066***					
	(0.001,0.01)	(0.039,0.38)	(0.038,0.37)	(0.02,0.221)					
Need for legislative change*log(t)	1.975***	1.253***	1.258***	1.377***					
	(1.713,2.278)	(1.069,1.469)	(1.072,1.477)	(1.163,1.63)					
Margin of appreciation discussed					0.879				
					(0.616,1.254)				
Domestic judicial review						3.121**			
						(1.038,9.381)			
Political constraints index	0.756	0.744	0.724	0.819			0.209**		
	(0.398,1.434)	(0.39,1.417)	(0.378,1.388)	(0.35,1.916)			(0.047,0.925)		
Legislation needs to pass two chambers								0.611*	
								(0.343,1.087)	
Majority/plurality-based electoral system									1.64**
									(1.034,2.601)
Need for jurisprudential change	0.678***								
	(0.598,0.768)								
Need for practical measures	0.575***								
	(0.501,0.658)								
Need for publication	0.543***								
	(0.455,0.649)								
Need for executive action	0.738***								
	(0.675,0.808)								
Need for individual measure	0.58***								
	(0.52,0.647)								
Number of needed measure types		0.073***	0.078***	0.134***	0.201***	0.158***	0.152***	0.156***	0.146***
		(0.051,0.105)	(0.054,0.112)	(0.075,0.24)	(0.061,0.66)	(0.053,0.476)	(0.052,0.448)	(0.053,0.461)	(0.05,0.428)
Number of needed measure types*log(t)		1.366***	1.356***	1.243***	1.165*	1.205**	1.211***	1.208**	1.22***
		(1.298,1.438)	(1.288,1.428)	(1.146,1.348)	(0.992,1.367)	(1.04,1.398)	(1.047,1.401)	(1.044,1.397)	(1.055,1.41)
Capacity	1.215***	1.218***	1.237***	1.286***	1.435***	1.51***	1.525***	1.492***	1.455***
	(1.121,1.315)	(1.124,1.32)	(1.14,1.342)	(1.153,1.435)	(1.19,1.731)	(1.262,1.807)	(1.272,1.829)	(1.251,1.778)	(1.22,1.735)
Polity-index	1.031	1.033	1.073	1.019	1.065	1.01	1.068	1.048	1.05
	(0.966,1.102)	(0.965,1.107)	(0.922,1.248)	(0.935,1.111)	(0.943,1.202)	(0.9,1.134)	(0.959,1.19)	(0.941,1.166)	(0.942,1.171)
New democracy	0.285***	0.331***	0.356***	0.273***	0.416	0.193	0.179	0.162	0.199
	(0.154,0.526)	(0.179,0.611)	(0.192,0.662)	(0.113,0.664)	(0.033,5.175)	(0.02,1.855)	(0.019,1.67)	(0.017,1.516)	(0.022,1.826)
New democracy*log(t)	1.321***	1.294***	1.279***	1.348***	1.182	1.341*	1.348*	1.364**	1.332*
	(1.206,1.446)	(1.182,1.416)	(1.168,1.401)	(1.184,1.534)	(0.833,1.676)	(0.981,1.834)	(0.991,1.834)	(1.002,1.856)	(0.98,1.812)
Number of articles violated	0.755***	0.845*	0.87	1.01	0.947	1.086	1.099	1.095	1.112
	(0.63,0.905)	(0.707,1.01)	(0.724,1.045)	(0.838,1.217)	(0.632,1.418)	(0.785,1.502)	(0.797,1.516)	(0.793,1.512)	(0.805,1.536)
Right to life violation	0.654**	0.605***	0.634**	0.617**	0.403*	0.487	0.493	0.488	0.483
	(0.45,0.952)	(0.416,0.88)	(0.434,0.924)	(0.411,0.928)	(0.138,1.173)	(0.202,1.173)	(0.205,1.187)	(0.203,1.174)	(0.201,1.163)
Prohibition of torture violation	0.784*	0.727**	0.728**	0.807	0.711	0.643*	0.634*	0.64*	0.605*
	(0.6,1.024)	(0.558,0.948)	(0.555,0.956)	(0.608,1.072)	(0.396,1.276)	(0.382,1.081)	(0.377,1.068)	(0.381,1.076)	(0.358,1.023)
Right to liberty violation	0.995	0.955	0.954	0.999	1.157	1.38	1.353	1.384	1.339
	(0.811,1.22)	(0.779,1.171)	(0.774,1.176)	(0.797,1.251)	(0.726,1.843)	(0.923,2.062)	(0.906,2.02)	(0.927,2.066)	(0.896,2)
Right to fair trial violation	1.098	1.064	1.075	1.114	1.153	1.244	1.226	1.22	1.217
	(0.92,1.311)	(0.891,1.27)	(0.896,1.289)	(0.921,1.348)	(0.758,1.756)	(0.87,1.78)	(0.861,1.747)	(0.857,1.738)	(0.853,1.735)
Right to privacy and family life violated	0.954	0.929	0.922	0.944	0.842	1.063	1.031	1.043	1.026
	(0.781,1.165)	(0.761,1.134)	(0.751,1.131)	(0.762,1.17)	(0.546,1.298)	(0.713,1.585)	(0.693,1.534)	(0.701,1.551)	(0.689,1.526)
Freedom of expression violation	0.911	0.889	0.879	0.96	0.595*	0.7	0.687	0.684	0.685
	(0.715,1.16)	(0.698,1.131)	(0.687,1.126)	(0.741,1.244)	(0.328,1.081)	(0.403,1.214)	(0.396,1.192)	(0.394,1.185)	(0.395,1.187)
Right to effective remedy violation	1.137	0.968	0.971	0.871	0.898	0.746	0.729	0.735	0.726
	(0.86,1.503)	(0.734,1.276)	(0.733,1.287)	(0.644,1.177)	(0.496,1.623)	(0.446,1.247)	(0.437,1.215)	(0.441,1.227)	(0.435,1.213)
Prohibition of discrimination violation	1.398**	1.252	1.26	1.011	1.262	0.992	1.003	0.994	0.954
	(1.017,1.922)	(0.914,1.715)	(0.916,1.732)	(0.717,1.425)	(0.644,2.471)	(0.552,1.783)	(0.559,1.8)	(0.555,1.782)	(0.531,1.714)
Property rights violations	0.794**	0.773**	0.754**	0.762**	0.72	0.782	0.773	0.778	0.784
	(0.645,0.979)	(0.628,0.952)	(0.608,0.936)	(0.607,0.956)	(0.429,1.21)	(0.503,1.216)	(0.498,1.2)	(0.5,1.21)	(0.504,1.218)
Friendly settlement	1.226**	1.147*	1.204**	2.039***	3.241**	2.778**	2.665**	2.637**	2.708**
	(1.043,1.441)	(0.979,1.343)	(1.026,1.413)	(1.455,2.857)	(1.301,8.072)	(1.24,6.221)	(1.188,5.979)	(1.175,5.918)	(1.207,6.075)
Judgment year	0.95***	0.953***	0.951***	0.959***	1.015	0.992	0.993	0.986	0.991
	(0.934,0.968)	(0.936,0.97)	(0.934,0.968)	(0.939,0.98)	(0.973,1.059)	(0.956,1.03)	(0.957,1.031)	(0.949,1.024)	(0.955,1.029)
After protocol 11	0.954	0.947	0.957	1.033	0.39***	0.581**	0.585**	0.594**	0.603**
	(0.784,1.161)	(0.779,1.153)	(0.786,1.166)	(0.819,1.303)	(0.245,0.62)	(0.382,0.883)	(0.383,0.894)	(0.39,0.905)	(0.394,0.922)
After 2006 change in CoM Working methods	1.374***	1.336***	1.367***	1.236**	1.238	1.45**	1.402*	1.456**	1.44**
	(1.194,1.58)	(1.162,1.537)	(1.187,1.574)	(1.048,1.456)	(0.824,1.86)	(1.027,2.048)	(0.995,1.975)	(1.034,2.05)	(1.021,2.03)
After protocol 14	1.497	2.344*	2.005	1.668	13.924	35.743*	23.503	32.473*	21.988
	(0.605,3.707)	(0.943,5.827)	(0.788,5.102)	(0.426,6.533)	(0.144,1351.112)	(0.654,1953.022)	(0.482,1147.23)	(0.669,1576.478)	(0.447,1082.44)
After protocol 14*log(t)	1.076	1.011	1.038	1.028	0.725	0.651	0.694	0.664	0.702
	(0.934,1.239)	(0.877,1.164)	(0.898,1.201)	(0.835,1.265)	(0.369,1.424)	(0.361,1.177)	(0.391,1.234)	(0.374,1.179)	(0.394,1.25)
AIC	41757.78	41616.83	40333.47	26461.93	4184.41	5478.52	5558.38	5559.47	5542.17
Number of events	2960	2960	2888	1956	394	491	498	498	497
Number of observations	4107	4107	3882	3073	766	982	990	990	990

Estimates in hazard ratios. 95 per cent confidence intervals in parentheses.
* p<0.1; ** p<0.05; *** p<0.01

Although a useful first step, Model 1 only includes separate dummies for whether each of the other measure types were also needed, not the count of the total number of different measure types that were needed. It is therefore hard to distinguish the estimated effect of each measure type from the effect of having to implement a greater number of distinct measures, irrespective of their type. Models 2-9 therefore control for the count of different types of measures needed for compliance.

Accounting for the number of different general measure types reduces the magnitude of both the hazard ratio for need for legislative changes and the interaction with $log(t)$. As can be seen from the upper right panel of Figure 2.1, Model 2 suggests a relationship between need for legislative changes and compliance which initially is slightly weaker, but remains significantly different from 1 through the first decade of the implementation process. Again, judgments that generate a need for legislative changes are implemented at a slower rate than other judgments. The difference becomes smaller as more time passes since the judgment, but it remains statistically significant for a long time. This time dependence may be explained by how delays associated with need for legislative changes are due to the challenges of the legislative process. Once such challenges are overcome, whether legislative changes are needed is less important for explaining why some judgments are never complied with at all. To explain prolonged non-compliance, it might be necessary to consider the causes of resistance to specific judgments rather than the process through which needed remedies must be implemented.

An important additional test for making sure that the estimated relationship is driven by need for legislative changes is to replace the need for legislative changes variable in Model 2 with indicators of the other measure types. If the estimated effects of the other measure types were generally similar to the effect found for legislation, it would undermine the argument that there is something particular about need for legislative changes. Results from these re-specifications of Model 2 (reported in the supplementary materials) show that need for jurisprudential changes, executive action, or individual measures do not have any discernable influence on the duration of the compliance process when controlling for the total number of measure types needed, while the need for dissemination of the judgment is associated with quicker compliance. The only exception is practical measures, such

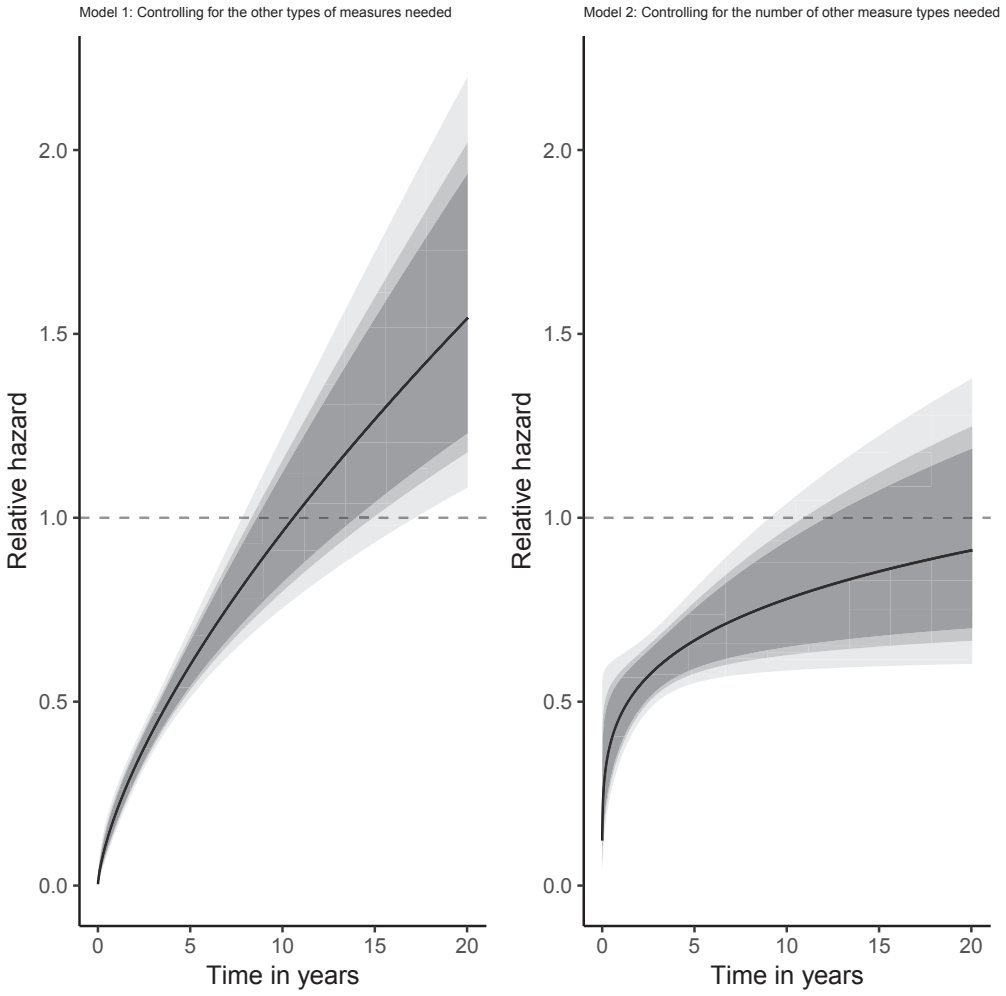

Figure 2.1: Relative hazards of implementation associated with need for legislative changes. The shaded areas represent 90, 95 and 99 per cent confidence intervals.

as construction of new detention facilities. This type of measure is also associated with a lower likelihood of prompt implementation. As practical measures such as constructing new detention facilities or recruiting more judges necessarily will be both costly and time consuming, it is not surprising that need for practical measures is also associated with compliance challenges.

Models 3 and 4 assess the robustness of Model 2 to two restrictions on the sample the model is estimated on. A first restriction concerns the fact that while most of the ECtHR judgments are rendered against democracies, also autocratic states such as Russia and Azerbaijan are subject to the ECtHR's jurisdiction. To the extent that the legislative process may unfold differently in these systems, it would be problematic if the results hinged on including judgments against autocracies. Model 3 is thus estimated only on the subset of judgments where the respondent state has a Polity score higher than 6. Omitting implementation processes in autocracies does, however, not have any considerable influence on the results.

The second restriction concerns implementation processes where the state had already implemented needed measures prior to the judgment or where only monetary measures were needed. Compliance with these cases will only involve paying the just satisfaction awarded by the ECtHR and reporting to the CoM that no further measures are needed. When comparing the implementation processes with needs for different types of measures, it is therefore not obvious that such cases ought to be included. Model 4 is estimated on a dataset that excludes judgments that did not require any measures beyond monetary payments. This restriction too has only limited effect on the estimated relationship between the need for legislative changes and delayed the compliance. In general, the estimated delaying effect of need for legislative changes is very stable across models 2-4.

2.4.2 Variation across Political and Institutional Contexts

Models 5-9 in Table 2 are estimated only on the subset of judgments for which legislative changes are needed. These models investigate how the institutional and political context influences implementation when legislative changes are needed.[5]

[5]Separate models for judgments involving legislative changes are reported instead of interactions between the need for legislative changes with the different moderators because the latter

Model 5 evaluates whether judgments requiring legislative changes are more likely to be defied in cases where the appropriate margin of appreciation is contested. Refuting Hypothesis 2.3, the model provides no evidence that legislative compliance is less likely for judgments involving a contested margin of appreciation. Although a relatively crude measure of the potential for controversy, this non-finding is at least suggestive that delayed legislative compliance is not due to disagreement concerning the extent to which national parliaments should be subject to the supervision of an international court.

However, Model 6 provides evidence in support of Hypothesis 2.4 concerning the link between the absence of judicial review and resistance against ECtHR judgments requiring legislative changes. The hazard ratio associated with having domestic judicial review is large and positive, suggesting that countries with domestic judicial review implement judgments requiring legislative changes at a considerably quicker rate than countries where judicial review is not part of the domestic political system. This finding is not consistent with the veto-player mechanism, but provides some evidence for the notion that need for legislative changes is associated with greater resistance at least in the subset of countries where judicial review is alien to the political actors.

Models 7-8 turns to investigate additional implications of the veto-player theory. Model 7 estimates the effect of legislative veto players, as captured by the political-constraints index developed by Henisz (2000; 2002). In line with the predictions of veto-player theory, settings with a higher number of veto players, a greater ideological divergence between veto players, and greater internal coherence within each collective veto players result in higher scores on this index. In line with Hypothesis 2.5, Model 7 suggests that greater political constraints are associated with slower implementation when legislative changes are needed. It is worth noting that the significant relationship between domestic veto players is only present in Model 7 which is estimated only on the judgments with need for legislative changes and not in the previous models estimated on the full sample. The delays associated with domestic veto players thus appear to be important when legislative changes are needed and not more generally. This finding pro-

would – due to the violation of the proportional hazard assumption – involve a three-way interaction that is difficult to interpret. The substantive conclusions are, however, robust to instead estimating an interaction model based on the full dataset.

vides additional evidence that delayed implementation of these judgments can be explained by the greater difficulty in negotiating solutions acceptable to all relevant veto players.

Model 8 includes a dummy variable for whether legislation has to be passed through two legislative chambers to be enacted. Although the hazard ratio is only weakly statistically significant, the model provides some evidence that compliance with judgments requiring legislative changes is delayed when two chambers need to approve legislation. This finding is consistent with the veto-player explanation.

Model 9 investigates whether electoral systems make a systematic difference when legislative changes are needed. In line with Hypothesis 2.7, states with predominantly majority- or plurality- based electoral systems are quicker at implementing these judgments. This relationship can be explained by how majority- or plurality- based electoral systems tend to produce lower levels of fractionalization in the legislatures and more solid parliamentary support for governments. These characteristics of the political system make it easier to negotiate necessary legislative reforms. Thus, Model 7 also provides support for the argument that political divisions among veto players involved in the legislative process are important for explaining delayed implementation in cases where legislative changes are needed.

2.5 Conclusion

This article has analyzed how need for legislative changes influences compliance with ECtHR judgments. The empirical analysis shows that need for legislative changes tends to initially delay – but not necessarily derail – compliance with ECtHR judgments. These findings suggest that respondent states do not become more prone to defy ECtHR judgments in the long term due to the need to enact legislative changes, but also that the legislative process tends to delay compliance. The explanation for such delays is that compared to other types of remedies, such as executive action or jurisprudential change, implementing legislative changes requires reaching agreement among a greater set of veto players and passing more procedural hurdles. Additional analysis confirms that delays in compliance with judgments requiring legislative changes are associated with veto-player configurations that increase the likelihood of legislative gridlock and with proportional

electoral systems that produce greater heterogeneity in the legislature. Bicameral systems that require legislation to be approved by both chambers of the legislature also appear to be slower in complying with judgments requiring legislative changes, although this finding is associated with somewhat greater uncertainty.

I find no evidence that legislative compliance is more challenging to achieve in cases where the width of the margin of appreciation extended to respondent states is contested. However, the absence of domestic judicial review is associated with greater compliance challenges for judgments requiring legislative changes. There is thus some evidence that legislative compliance is less likely in states where the ability of judges to override the will of parliamentary majorities is not part of the domestic political system.

These findings contributes to the scholarship investigating the domestic politics of compliance with ECtHR judgments (Hillebrecht 2014*a*;*b*, Voeten 2014, Grewal and Voeten 2015). The extant literature has focused primarily on country-level determinants of compliance and how country characteristics influence compliance. This article shows that compliance politics may unfold differently depending on the types of remedies that are needed for compliance. Moreover, the time dependence of the relationship between need for legislative changes and compliance points to how the causes of delayed compliance may be different from the causes of non-compliance. While existing theories concerning implementation focus on the latter, also delayed compliance is a significant challenge for the international human rights judiciary: Even if judgments are eventually complied with, delayed compliance prolong human rights violations at the domestic level and contributes to the backlog of repetitive cases that is burdening the ECtHR (Keller and Marti 2015). Future research may thus benefit from considering more carefully whether the factors that explain delays in compliance processes are different from the factors that explain why some judgments are never implemented.

Finally, this article contributes to a more nuanced understanding of how institutional constraints influence compliance with ECtHR judgments. Previous scholarship has argued that institutional constraints are important for holding executives accountable for their compliance performance (Hillebrecht 2014*a*;*b*, Voeten 2014). The importance attributed to institutional veto players may appear consistent with scholarship on compliance with human rights obligations showing that legislative veto players increase the costs associated with violating human rights

treaties (Lupu 2015). However, legislative veto players can also make the enactment of reforms more challenging and may therefore make it more difficult to end ongoing violations (Conrad and Moore 2010). Thus, even if legislative veto players may be important for holding executives accountable, the presence of multiple legislative veto players with diverging political preferences tend to delay compliance when legislative changes are needed.

2.A Appendix for Delayed but not Derailed: Legislative Compliance with European Court of Human Rights Judgments

2.A.1 Effects of other general measures

Table 2.A.1 below replicates Model 2 of Table 2.2 of the main article after replacing need for legislative changes with need for each of the other types of measures. The models show that after controlling for the total number of measures needed, only practical measures are also associated with a lower likelihood of prompt compliance.

Table 2.A.1: Shared frailty Cox models: Effects of other compliance tasks

	Model 10	Model 11	Model 12	Model 13	Model 14
Need for jurisprudential change	0.907				
	(0.78,1.055)				
Need for executive action		1.09			
		(0.946,1.255)			
Need for publication of judgment			1.648***		
			(1.474,1.844)		
Need for practical measure				0.74***	
				(0.609,0.899)	
Need for individual measure					1.006
					(0.888,1.139)
Number of measure types	0.06***	0.061***	0.034***	0.058***	0.061***
	(0.044,0.084)	(0.044,0.084)	(0.024,0.05)	(0.041,0.08)	(0.044,0.084)
Number of measure types*log(t)	1.389***	1.382***	1.475***	1.402***	1.385***
	(1.327,1.454)	(1.321,1.445)	(1.404,1.551)	(1.339,1.468)	(1.324,1.449)
Capacity	9.842***	9.848***	9.504***	9.556***	9.883***
	(4.203,23.047)	(4.196,23.114)	(4.153,21.75)	(4.061,22.485)	(4.225,23.12)
Polity index	1.012	1.011	1.016	1.012	1.012
	(0.948,1.08)	(0.947,1.079)	(0.954,1.081)	(0.948,1.08)	(0.948,1.079)
New democracy	0.384***	0.375***	0.367***	0.377***	0.38***
	(0.209,0.705)	(0.204,0.69)	(0.2,0.674)	(0.205,0.692)	(0.207,0.698)
New democracy*log(t)	1.278***	1.283***	1.282***	1.282***	1.28***
	(1.168,1.399)	(1.172,1.404)	(1.172,1.403)	(1.172,1.403)	(1.17,1.401)
Political constraints	0.635	0.635	0.64	0.629	0.636
	(0.337,1.197)	(0.337,1.197)	(0.342,1.197)	(0.334,1.186)	(0.338,1.199)
Number of articles violated	0.834**	0.84*	0.797**	0.83**	0.838*
	(0.698,0.998)	(0.702,1.004)	(0.666,0.953)	(0.693,0.993)	(0.701,1.002)
Right to life violation	0.624**	0.623**	0.66**	0.653**	0.631**
	(0.429,0.907)	(0.428,0.906)	(0.454,0.96)	(0.449,0.951)	(0.434,0.918)
Prohibition of torture violation	0.746**	0.738**	0.826	0.781*	0.749**
	(0.573,0.973)	(0.566,0.963)	(0.633,1.076)	(0.599,1.019)	(0.575,0.976)
Right to liberty violation	0.966	0.959	0.976	0.975	0.963
	(0.787,1.184)	(0.781,1.176)	(0.797,1.197)	(0.795,1.196)	(0.785,1.181)
Right to fair trial violation	1.076	1.069	1.101	1.075	1.071
	(0.9,1.285)	(0.895,1.277)	(0.923,1.315)	(0.9,1.284)	(0.897,1.279)
Right to privacy and family life violated	0.944	0.943	0.961	0.95	0.944
	(0.773,1.153)	(0.772,1.153)	(0.787,1.173)	(0.777,1.161)	(0.773,1.154)
Freedom of expression violation	0.919	0.912	0.932	0.92	0.91
	(0.721,1.17)	(0.716,1.161)	(0.732,1.186)	(0.723,1.172)	(0.714,1.158)
Right to effective remedy violation	0.963	0.95	1.052	0.969	0.955
	(0.73,1.27)	(0.72,1.253)	(0.796,1.39)	(0.734,1.28)	(0.724,1.259)
Prohibition of discrimination violation	1.197	1.189	1.307*	1.218	1.19
	(0.874,1.641)	(0.867,1.629)	(0.954,1.79)	(0.889,1.67)	(0.869,1.63)
Property rights violations	0.803**	0.799**	0.816*	0.798**	0.798**
	(0.651,0.989)	(0.648,0.984)	(0.663,1.005)	(0.647,0.983)	(0.648,0.984)
Friendly settlement	1.161*	1.153*	1.281***	1.166*	1.156*
	(0.991,1.361)	(0.984,1.351)	(1.09,1.505)	(0.995,1.366)	(0.986,1.354)
Judgment year	0.965***	0.965***	0.958***	0.965***	0.965***
	(0.948,0.982)	(0.948,0.982)	(0.941,0.975)	(0.948,0.983)	(0.948,0.982)
After protocol 11	1.038	1.05	0.943	1.038	1.044
	(0.85,1.268)	(0.86,1.283)	(0.773,1.152)	(0.85,1.267)	(0.855,1.274)
After 2006 change in CoM Working methods	1.29***	1.293***	1.325***	1.288***	1.286***
	(1.121,1.483)	(1.124,1.487)	(1.152,1.523)	(1.12,1.482)	(1.118,1.479)
After protocol 14	2.023	2	2.834**	2.065	2.017
	(0.818,5.006)	(0.808,4.949)	(1.139,7.054)	(0.834,5.112)	(0.815,4.991)
After protocol 14*log(t)	1.03	1.033	0.979	1.026	1.031
	(0.895,1.186)	(0.897,1.188)	(0.85,1.128)	(0.892,1.182)	(0.896,1.187)
AIC	41674.52	41674.51	41599.13	41666.16	41676.17
Number of events	2960	2960	2960	2960	2960
Number of observations	4107	4107	4107	4107	4107

Estimates in hazard ratios. 95 per cent confidence intervals in parentheses.
*p<0.1; **p<0.05; ***p<0.01

3 Directing Compliance? Remedial Approach and Compliance with European Court of Human Rights Judgments

Abstract

Judicial impact is often limited by courts' reliance on other actors to implement judgments. An important question is whether and, if so, how courts can promote timely compliance. I consider recent attempts by the European Court of Human Rights (ECtHR) to promote timely compliance by indicating appropriate remedies in its rulings. Remedial indications may facilitate more effective implementation monitoring and enable pro-compliance actors to argue more forcefully that specific remedies are necessary. However, the identification of appropriate remedies can be challenging for judges and remedial indications may both make defiance more damaging to the Court and invite accusations of judicial overreach. I offer a novel empirical assessment of how judges' remedial strategy influences compliance. I show that judgments with remedial indications are implemented at a quicker rate than comparable judgments without such indications. These results highlight the role judges can play in facilitating prompt compliance with their decisions.

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3.1 Introduction

Judicial power is often limited by courts' reliance on other actors to implement their rulings (Vanberg 2001; 2005, Carrubba, Gabel and Hankla 2008, Rosenberg 2008, Kapiszewski and Taylor 2013, Hall 2014, Carrubba and Gabel 2015, Johns 2015).[1] To promote compliance, courts therefore employ strategies aimed at legitimizing their judgments (Hume 2006, Lupu and Voeten 2012, Larsson et al. 2017), at raising public awareness (Staton 2006, Krehbiel 2016*a*), and at enabling pro-compliance constituencies to monitor implementation (Gauri, Staton and Cullell 2015, Staton and Romero forthcoming). However, few scholars have evaluated whether such strategies are effective (Keck and Strother 2016: 3, but see Gauri, Staton and Cullell 2015 and Staton and Romero forthcoming). Thus, we know that courts act strategically to promote compliance, but we do not yet know the conditions under which such strategies may succeed.

I investigate judges' ability to promote compliance in the context of the European Court of Human Rights (ECtHR). Despite being considered "the most effective human rights regime in the world"(Stone Sweet and Keller 2008), the ECtHR faces significant compliance problems (Hillebrecht 2014*a*;*b*). While the ECtHR traditionally leaves the identification of remedies to respondent states, its compliance problems have motivated the Court to start spelling out necessary remedies in selected judgments (Keller and Marti 2015: 836).[2] Such remedial indications may enable pro-compliance actors to argue more forcefully that specific remedies are necessary and to credibly call out non-compliance (Spriggs 1996: 1127, Staton and Vanberg 2008). However, the identification of appropriate remedies also presents a significant informational challenge for the judges and may trigger

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[2]The appendix provides further details concerning the ECtHR, its compliance problem, and the shift in remedial approach

accusations of judicial overreach.

I offer the first empirical assessment of whether the ECtHR's use of remedial indications has been successful in promoting prompt compliance. After conditioning on the factors that influence the ECtHR's decision to indicate remedies, I find that judgments containing remedial indications are implemented quicker than comparable judgments without such indications. Remedial indications are particularly helpful when the institutional context enables pro-compliance actors to hold governments accountable. These findings suggest that courts can succeed in promoting quicker compliance with their judgments. Importantly, spelling out necessary measures is a strategy that is available to a variety of courts and other actors that delegate implementation tasks.

3.2 Remedial Design and the Politics of Compliance

Vagueness concerning what a judgment require can contribute to courts' compliance problems (Staton and Vanberg 2008, Staton and Romero forthcoming). For instance, the Supreme Court of the United States held in its 1955 *Brown v. Board of Education II* ruling that school districts were to be desegregated "with all deliberate speed." Scholars have argued that the lack of more specific directions contributed to prolonged defiance of the ruling by recalcitrant local authorities (e.g. Rosenberg 2008).

By indicating remedies, courts can make the implementation process more transparent and in this way increase the political costs associated with non-compliance (Staton and Vanberg 2008). Such political costs may result either from diffuse support for the judiciary (Gibson, Caldeira and Baird 1998) or from public support for specific decisions (Hall 2011). Political costs of non-compliance presupposes, however, that relevant audiences will detect non-compliance (Vanberg 2001; 2005, Cavallaro and Brewer 2008). Whether there is a need to release the applicant from unlawful detention or for amending legislation, remedial indications create clear expectations concerning what compliance will entail and thus make non-compliance easier to detect.

Remedial indications can also provide "political cover" (Allee and Huth 2006) for actors required to implement unpopular remedies and may help prevent disagreement within a responding government concerning how to implement the

judgment (Baum 1976: 94, Spriggs 1996: 1124). These different mechanisms may operate either in combination or individually in different cases. In any event, remedial indications increase incentives to promptly comply.

However, Staton and Vanberg (2008) show that providing directions for compliance also has important disadvantages, which may both undermine remedial indications' effectiveness and limit their use. Perhaps most importantly, other actors are generally better situated than judges to identify appropriate remedies (Staton and Vanberg 2008, Staton and Romero forthcoming). Such informational disadvantages may be particularly severe for international human rights courts "that handle information about many different states' government, laws, politics, and cultures" (Huneeus 2015: 23). Indeed, uncertainty concerning how best to achieve desired outcomes is an important reason for granting states discretion when complying with legal obligations (Börzel 2003: 206).

If unsuccessful, remedial indications may also increase the damage that defiance does to the reputation of the Court and may desensitize important audiences to non-compliance (Staton and Vanberg 2008). Judges therefore prefer not to indicate remedies that are unlikely to be implemented (Donald and Speck 2018: 4).

Finally, remedial indications may trigger accusations of judicial overreach (Huneeus 2015: 24). Even if respect for the rule of law makes it difficult to justify blatant non-compliance with court decisions, courts risk backlash if perceived as encroaching on democratic decision-making. This concern may be particularly important for courts – such as the ECtHR – that are already criticized for not providing sufficient leeway to elected decision-makers.

These disadvantages may undermine the effectiveness of remedial indications, but will also – if judges are acting strategically – limit their use. In particular, remedial indications will be most likely where compliance is difficult to achieve, but where remedial indications are expected to be helpful. One such circumstance may be when challenging remedies are required from states with relatively low bureaucratic capacity, but where politicians are concerned about the political costs of blatant non-compliance.[3]

When evaluating the effect of remedial indications, it is important to not only

[3]See e.g. Slovenia's implementation of the 2014 *Ališić and Others* judgment (discussed in the appendix).

consider the outcome of the implementation process, but also its duration. Delayed compliance is in its own right an important challenge for courts, including for the ECtHR. Moreover, remedial indications are more likely to be offered in cases where *immediate* compliance is unlikely. Even willing states may need considerable time to enact legislative changes or improve prison conditions. Finally, judgments sometimes achieve compliance only after prolonged defiance. My hypotheses therefore concern time until compliance rather than just the likelihood of *eventual* compliance:

Hypothesis 3.1 *Judgments containing remedial indications are complied with at a quicker rate than comparable judgments without remedial indications*

If remedial indications promote quicker compliance by enabling compliance monitoring, their effectiveness may be strongest where the institutional context is conducive to holding governments accountable. As argued by Staton (2010: 198), the link between transparency and prompt compliance is most credible when a critical media, an active civil society, independent national courts, and free elections enable the public to hold governments accountable. These institutions may increase the costs of ignoring remedial indications:

Hypothesis 3.2 *The relationship between remedial indications and quicker compliance is stronger where domestic institutions enable holding governments accountable.*

3.3 Research Design

The ECtHR provides a particularly useful context for assessing how remedial indications influence compliance with judicial decisions. First, in contrast to for most courts, reliable data are available concerning compliance with ECtHR judgments. Second, the transition to the new remedial approach has been relatively cautious and judges have disagreed about their legal competence to indicate remedies (see e.g. the dissenting opinions in the 2017 *Moreira Ferreira (No. 2) v. Portugal* judgment). As a result, both scholars and judges have noted that there is a "haphazard" aspect to when remedial indications are provided (Donald and Speck 2018). Such inconsistencies facilitate comparisons between ECtHR judgments containing remedial indications and similar judgments without indications.

3.3.1 Compliance with ECtHR judgments

Stiansen and Voeten (2017) provide data concerning compliance with ECtHR judgments rendered by June 1 2016. Compliance is measured based on information from the Committee of Ministers (CoM), which supervises implementation of ECtHR judgments. The CoM supervision is conducted by a strong and professionalized secretariat, which contributes to its reliability (Çali and Koch 2014, see also the appendix). Supervision is organized by lead cases, which are judgments revealing new issues in a respondent state. Later judgments relating to the same issue within a particular state are monitored in conjunction with the lead case. Lead cases are therefore the appropriate units of analysis (Voeten 2014, Grewal and Voeten 2015).

When no further measures are needed, the CoM closes its supervision through a final resolution. Final resolutions thus provide a measure of compliance understood as the "full execution of the action (or complete avoidance of the action) called for (or prohibited)"(Kapiszewski and Taylor 2013: 806). The duration of the compliance process is measured as the number of days between the lead case judgment and the final resolution. A censoring indicator captures whether compliance was achieved by June 1 2016, the last date of observation.

3.3.2 Remedial Indications

I identified 202 judgments with remedial indications rendered before June 1 2016.[4] These judgments concerned 143 different lead cases. In 102 cases, remedial indications were offered already in the lead case judgment. In the remaining cases, indications were only given when the ECtHR was presented with a repetitive case. I therefore create a time-varying dummy which takes the value of 0 until the date when the ECtHR has indicated remedies and 1 thereafter.

3.3.3 Government Accountability

Hypothesis 3.2 anticipates that the effect of remedial indications is conditional on the ability of pro-compliance actors to hold governments accountable. To measure this ability, I use the Varieties of Democracy project's "accountability index". This

[4]The coding procedure is described in the appendix.

index measures the "ability of a state's population to hold its government accountable through elections", through "checks and balances between institutions", and through "oversight by civil society organizations and media activity" (Coppedge et al. 2018).

3.3.4 Conditioning on Case and Country Characteristics

To compare judgments containing remedial indications to similar judgments without such indications, I condition on case and country characteristics that may influence both the provision of remedial indications and subsequent compliance. Relevant case characteristics include the types of remedies needed for compliance, the complexity and character of the identified human rights violation(s), and when the judgment was rendered. Country-level confounders include the bureaucratic capacity of the respondent state, domestic veto players, the degree of democratic consolidation, the proximity to an election, and the extent to which domestic institutions help hold governments accountable. These variables are discussed further in the appendix.

I first pre-process the data using genetic matching (Sekhon 2011, Diamond and Sekhon 2013). Matching adjusts for the differences between those judgments containing remedial indications and those without by identifying "control cases" as similar as possible to the "treatment cases" on confounding variables. This procedure also reduces model dependence by avoiding extreme counterfactuals concerning cases that are very different (Ho et al. 2007). The matched dataset contains a total of 252 unique cases. Of these, 134 cases contain remedial indications[5], while 118 do not. Although these cases are few compared to the overall ECtHR caseload, they are the most informative cases concerning the effectiveness of the ECtHR's remedial indications.

The matching procedure and the resulting improvement in covariate balance is illustrated in Figure 3.1, which displays differences in means on the included covariates before and after matching. If treated and untreated cases are comparable, differences should be close to 0. The figure shows that remedial indications tend to be offered in cases involving multiple violations and requiring challenging

[5]9 "treated cases" were omitted due to missing values on the country-level covariates included in the analysis.

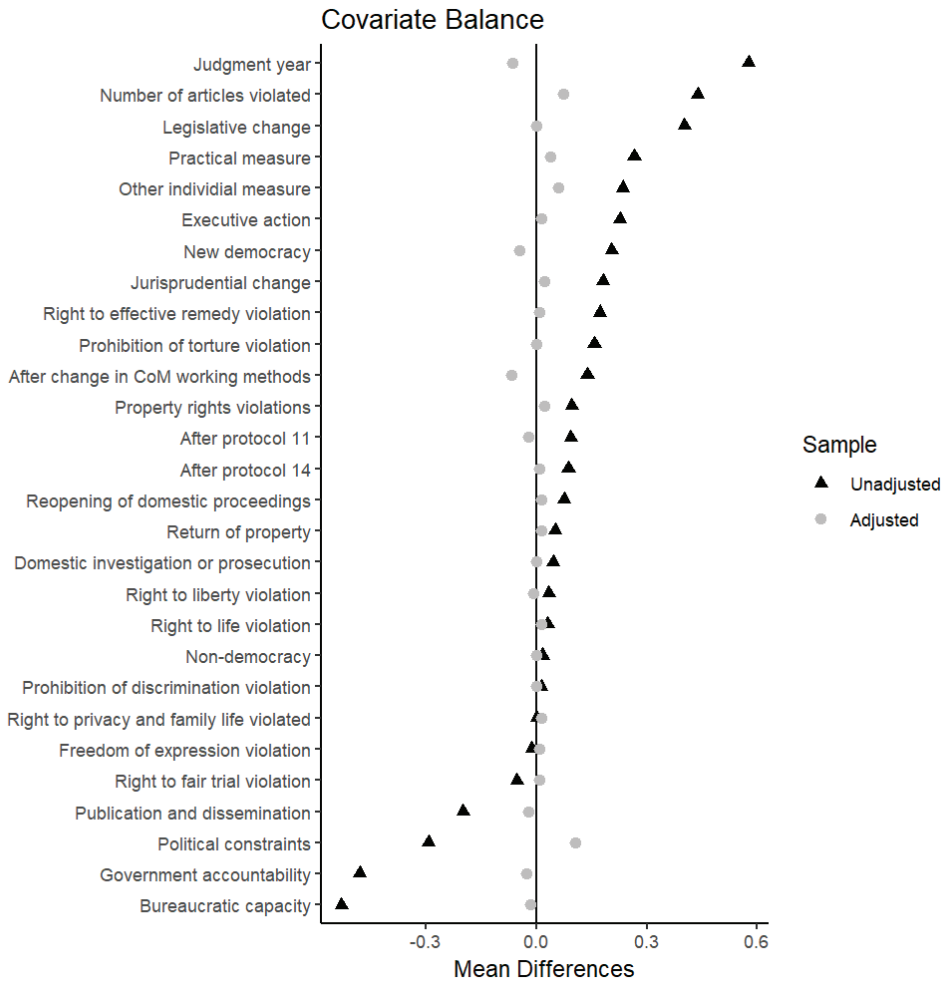

Figure 3.1: Covariate balance before and after matching

measures from states with relatively weak bureaucratic capacity and accountability institutions. After matching, the differences between judgments containing remedial indications and other judgments are greatly reduced.

The matching procedure does not result in perfect balance and multivariate modelling is therefore needed to further adjust for confounding variables (Ho et al. 2007: 201). The multivariate models also allow accounting for developments in variables that change during the course of the implementation process, such as election proximity.

Conditioning can only adjust for observable differences between judgments. This strategy does, however, result in balance on the variables that influence both the ECtHR's decision to indicate remedies and subsequent compliance. Because the ECtHR's shift in remedial approach has been inconsistent and comparisons are made between very similar cases, it is credible that differences in time until compliance are attributable to the remedial indications.

3.3.5 Estimation

I use the Cox model,[6] which avoids making assumptions concerning how the likelihood of compliance varies depending on the time since the judgment and allows for time-varying covariates (Box-Steffensmeier and Jones 2004). I cluster the standard errors on states.

3.4 Results

Figure 3.2 displays average marginal differences in time until compliance associated with remedial indications, calculated using the method proposed by Kropko and Harden (2017). The error bars indicate 95% confidence intervals. The full Cox models are reported in the appendix.

To show how conditioning on case and country characteristics influences the results, marginal difference # 1 is based on a model estimated on the full dataset before conditioning on control variables. This model suggests that judgments containing remedial indications are on average implemented 4.4 years later than other

[6]The Grambsch and Therneau (1994) test does not indicate violations of the proportional hazards assumption in the matched dataset.

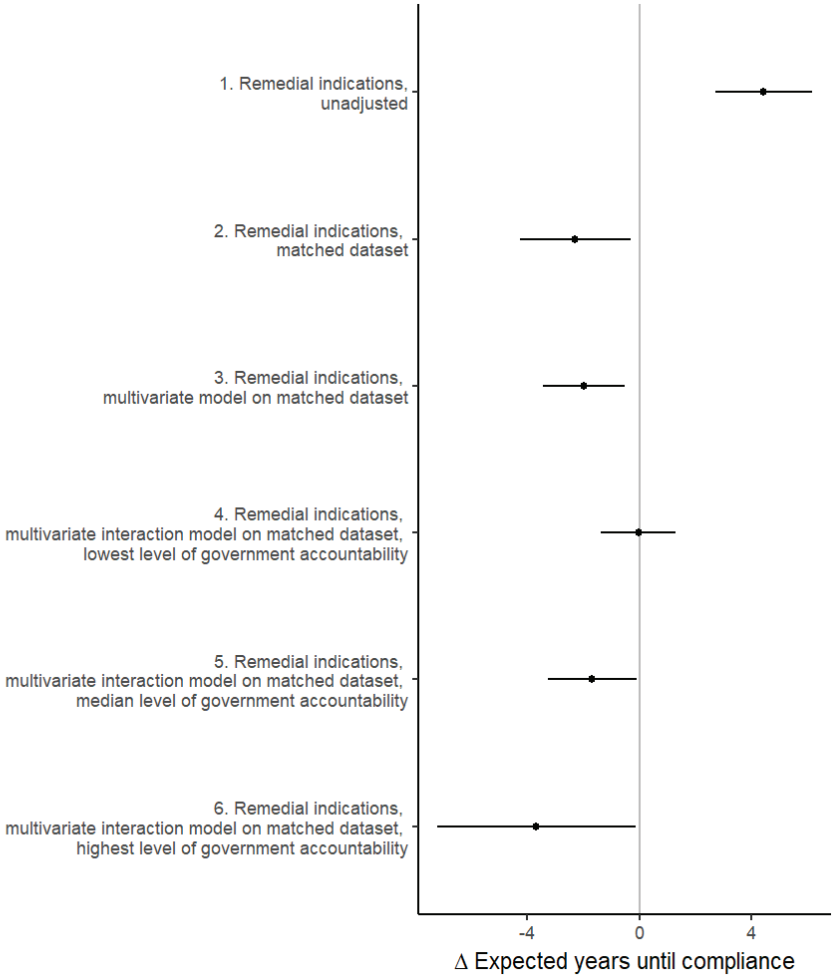

Figure 3.2: Marginal differences in years until compliance associated with remedial indications. Error bars indicate 95% confidence intervals.

judgments. This difference is considerable as the median time until compliance in the data is less than 3 years. This bivariate relationship is explained by remedial indications being offered in challenging judgments. The remaining marginal differences are based on models that condition on potential confounders.

Marginal difference # 2 is based on a bivariate model estimated on the matched dataset. This model suggests that judgments containing remedial indications are on average complied with 2.3 years before comparable judgments without such indications. The relationship between remedial indications and a quicker compliance holds also in the multivariate model, which accounts for remaining differences between the cases containing remedial indications and those that do not. Based on this model, marginal difference # 3 suggests an approximately 2 years average reduction in time until compliance if remedial indications were provided. In line with Hypothesis 3.1, there is thus evidence that remedial indications are associated with quicker compliance.

In the appendix, I show that this relationship between remedial indications and quicker compliance holds also in other model specifications, including a model based only on within-state variation and a multivariate model estimated on the full data (without matching).

Hypothesis 3.2 anticipates that the effect of remedial indications is conditional on whether the institutional context enables pro-compliance actors to hold governments accountable. To investigate this hypothesis, the remaining marginal differences are calculated based on a fourth model that interacts remedial interactions with the degree of government accountability. Although the interaction term in this model failed to achieve statistical significance, there is some evidence that the remedial indications are only effective if the level of government accountability is sufficiently high.

Marginal difference # 4 is the conditional effect of remedial indications when government accountability is at the lowest level observed in the matched dataset (Azerbaijan in 2016). The difference in time until compliance is approximately 0, suggesting that remedial indications do not promote quicker compliance if pro-compliance constituencies have very few means of holding respondent governments accountable for blatant non-compliance.

At the median level of government accountability (Turkey in 2004), the conditional effect of remedial indications increases to a 1.7 years reduction in time until

compliance (Marginal difference # 5). For the highest observed level of government accountability (United Kingdom in 2012), marginal difference # 6 suggests an reduction in time until compliance of approximately 3.7 years, although this estimate is associated with considerable uncertainty because high-accountability states rarely receive remedial indications.

These results shows that the ability of courts to promote quicker compliance through remedial indications is conditional on there being at least a minimum level of government accountability. The presence of substantially and statistically significant difference for respondent states with the median level of government accountability shows, however, that remedial indications promote quicker compliance from some of the ECtHR's notoriously recalcitrant respondents. In theoretical terms, the interaction between government accountability and remedial indications suggests that facilitating more effective compliance monitoring is one mechanism through which remedial indications promote quicker compliance.

3.5 Conclusion

Courts act strategically to promote compliance with their judgments, but few scholars have investigated whether their strategies are effective. I demonstrate that the ECtHR has been able to facilitate compliance by providing remedial indications in selected judgments. Importantly, remedial indications is a strategy that a variety of courts can use to promote compliance. Future research may benefit from investigating the effectiveness of other judicial strategies, such as citation practices aimed at legitimizing judgments (Lupu and Voeten 2012, Larsson et al. 2017) and strategies aimed at generating public awareness (Staton 2006, Krehbiel 2016*a*).

3.A Appendix for Directing Compliance? Remedial Approach and Compliance with European Court of Human Rights Judgments

3.A.1 Overview of the ECtHR, its Implementation Problem, and the Shift in its Remedial Approach

This section provides an overview of the ECtHR, its implementation problem, and the recent changes in the ECtHR's remedial approach.

The ECtHR was established in 1959 to adjudicate alleged violations of the European Convention on Human Rights (ECHR) by the Council of Europe (CoE) member states. Since the entry into force of Protocol 11 in 1998, all ECHR signatories have been obligated to accept individual access to the ECtHR. After the expansion of the CoE following the end of the Cold War, the ECtHR now has jurisdiction over human rights complaints launched by individuals against any of the 47 CoE states.

Since the late 1990s, the caseload of the ECtHR has increased substantially with hundreds of thousands of applications reaching the ECtHR (Lambert Abdelgawad 2017). While most applications are found inadmissable (Aletras et al. 2016: 3), the ECtHR renders hundreds of judgments each year (Madsen 2016: 159-167). In cases where it finds one or more human rights violations, the respondent state is obligated to pay compensation awarded by the Court. If necessary, it must also implement individual measures to remedy the applicant's situation and implement general measures to remove structural causes of the violation (Barkhuysen and van Emmerik 2005: 2). Individual measures may for instance involve releasing the applicant from unlawful detention or returning expropriated property. Necessary general measures might include legislative amendments, changes in the jurisprudence of domestic courts, or practical measures, such as rehabilitating prison facilities.

Traditionally, the ECtHR has not considered itself competent to specify the necessary non-monetary remedies (Nifosi-Sutton 2010: 55). Identifying appropriate individual and general measures has instead been left to the respondent state under the supervision of the Committee of Ministers (CoM), which is the body

charged with overseeing the implementation of ECtHR judgments (Hawkins and Jacoby 2010: 37). The CoM supervises the implementation process until it is convinced that the state has complied with the judgment (Hillebrecht 2014*b*: 10).

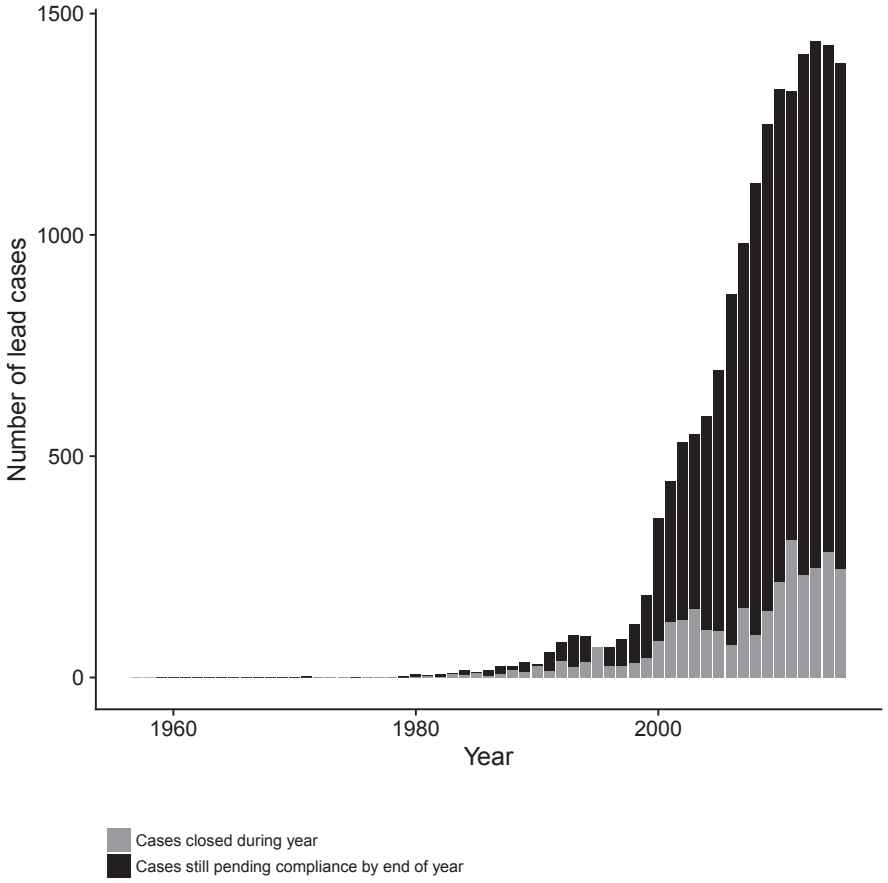

Figure 3.A.1: Groups of cases closed by the CoM and groups of cases still under supervision by year. Data from Stiansen and Voeten (2017).

The lack of strong enforcement mechanisms means that prompt implementation cannot be taken for granted. As the activity of the ECtHR has increased, so has the backlog of cases pending compliance. Figure 3.A.1 displays the number groups of cases for which the CoM has closed its monitoring each year, along with the number of groups of cases still under supervision by the end of each

year. Because unimplemented cases may lead to repetitive applications before the court, each group of cases may consist of many individual judgments. The figure shows the backlog of cases pending compliance is far greater than the number of cases successfully implemented each year. The large backlog creates challenges for the CoM and the ECtHR responsible, respectively, for overseeing the compliance efforts and for handling the influx of repetitive applications. The lack of prompt implementation also reduces the effectiveness of the ECtHR in improving human rights conditions (Hillebrecht 2014*b*: 1103). Finally, media coverage of the implementation problem (e.g. Hervey 2017) risks undermining the ECtHR's social legitimacy.

Delayed implementation of ECtHR judgments has received considerable attention at the political level within the CoE (Council of Europe 2015), by scholars analyzing the covariates of compliance (Hillebrecht 2014*a*;*b*, Voeten 2014, Grewal and Voeten 2015), and by the ECtHR itself. Political discussions have centred on improving the way domestic officials, parliaments, and courts receive adverse ECtHR judgments. Empirical scholarship has focused on how respondent states' domestic institutions and bureaucratic capacity influence compliance. In the meantime, the ECtHR has responded in its own way by altering its remedial practice (Colandrea 2007, Leach 2013, Sicilianos 2014, Huneeus 2015, Keller and Marti 2015, Mowbray 2017, Committee of Ministers 2013: 22).

As summarized by Keller and Marti (2015: 836), the ECtHR

> has become increasingly willing to occasionally give up its declaratory approach and, instead, spell out in the judgment, in a more or less detailed manner, what measures are required of the respondent state in order to repair the violation inflicted and fulfil its obligation of compliance.

Consider the 2009 judgment in the case of *Ürper and Others v. Turkey*, in which the ECtHR held that Turkey

> should revise section 6(5) of Law no. 3713 to take account of the principles enunciated in the present judgment [...] with a view to putting an end to the practice of suspending the future publication and distribution of entire periodicals.

In contrast to the traditional model of implementation, where respondent states are left to identify and implement appropriate remedies, the judgment in *Ürper and Others v. Turkey* thus suggested a specific piece of legislation for Turkey to revise. This example is not an isolated incident, as is shown by Figure 3.A.2, which displays the annual number of judgments indicating individual measures, general measures or a combination of individual and general measures.

As shown by the dashed line in Figure 3.A.2, the ECtHR's practice of indicating individual measures can be traced back to 1995 (see Section 3.A.3 for details concerning the coding procedure). In its 1995 judgment in the case of *Papamichalopoulos and Others v. Greece*, the ECtHR found that the expropriation of the applicants' land violated their right to private property and that the property therefore had to be returned (Colandrea 2007: 398). The next judgment indicating individual measures was not rendered until the 2004 ruling in the case of *Assanidze v. Georgia* where the Court ordered Georgia to release the unlawfully detained applicant from prison at the "earliest possible date". Since then, the number of ECtHR judgments indicating individual measures has increased substantially and by June 1 2016, the ECtHR had indicated individual measures in 79 different judgments.

In 2004, the ECtHR also rendered its first judgment indicating general measures. In the judgment in the case of *Broniowski v. Poland*, the ECtHR ruled that the property rights violations identified in the case affected nearly 80 000 people and ordered Poland to implement legal and administrative measures to ensure compensation for all the affected individuals in keeping with the principles outlined in the ruling. This first indication of general measures happened within the context of the pilot judgment procedure, which was developed specifically to help the ECtHR respond to its large backlog of repetitive cases resulting from the respondent states failing to resolve the systemic human rights violations from which they originated. The pilot judgment procedure was meant to be used in extraordinary circumstances and would in addition to the indication of general measures involve suspending related (repetitive) applications pending before the ECtHR (Leach, Hardman and Stephenson 2010, Leach et al. 2010, Huneeus 2015: 12).

The practice of indicating general measures was soon extended beyond the relatively rare pilot judgments. Keller and Marti (2015: 838) posit that the ECtHR

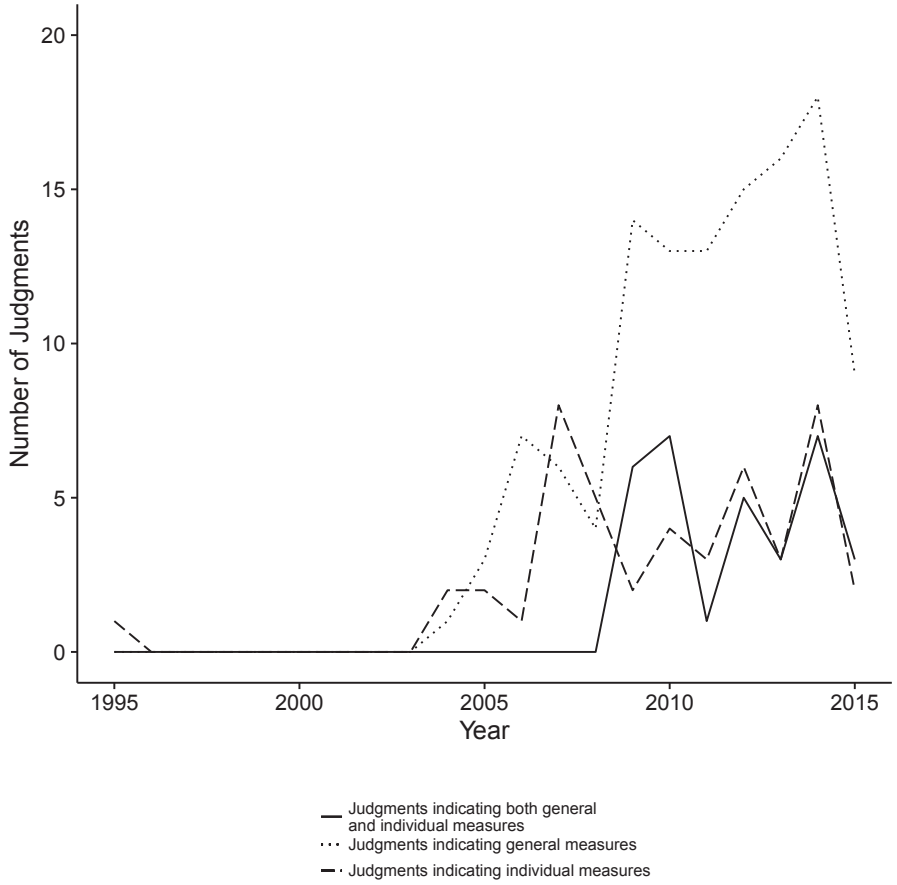

Figure 3.A.2: Annual count of ECtHR judgments indicating individual or general measures.

may currently decide to indicate general measures in any case that reveals "problems of a systemic nature in the domestic legal order". As Figure 3.A.2 shows, indications of general measures are more common than indications of individual measures (see also Sicilianos 2014). This development is significant, as it means that the ECtHR is engaged with reforms that have traditionally been thought best left to the respondent states.

I argue that such remedial indications can facilitate compliance by making the compliance process easier to monitor and providing political cover for actors responsible for implementing unpopular remedies. For instance, Slovenia quickly set up a compensatory scheme as ordered by the 2014 judgment in the case of *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and The former Yugoslav Republic of Macedonia*, concerning foreign currency saving accounts that the owners had not been able to access since the breakup of Yugoslavia. On July 3, 2015 the Slovenian parliament enacted a law that set up a repayment scheme for the affected individuals (Council of Europe 2016: 59-60). Declarations by the Slovenian government suggest that they did not agree with the judgment and that the indicated remedies were a significant financial burden (Government of the Republic of Slovenia 2015). However, the remedial indications received media attention (e.g. Kuzmanovic and Cerni 2014), and the Slovenian government considered compliance to be important for "the reputation of Slovenia as a credible partner in the international community" (Government of the Republic of Slovenia 2017).

The quantitative evidence reported in the main text suggests that the *Ališić and Others* case is not the only case in which remedial indications have promoted compliance: remedial indications have contributed to quicker compliance with some of the ECtHR's most challenging judgments.

3.A.2 CoM Final Resolutions as a Measure of Compliance

I measure compliance based on whether the CoM has closed the monitoring of the lead case judgment by rendering a final resolution. This section provides additional information about the CoM and its compliance monitoring.

The CoM is the intergovernmental branch of the CoE and consists of the foreign ministers from the member states, but the ministers are represented by their

representatives in Strasbourg at the regular CoM meetings. These representatives tend to be legal experts (Çali and Koch 2014: 308).

The day-to-day monitoring of compliance with ECtHR judgments is delegated to a secretariat, "The Department for Execution of Judgments of the ECtHR". Although the formal decision-making power is held by the state representatives in the CoM, the delegation of interpretation of the judgment and monitoring of the implementation of the necessary remedies ensures the "even-handed and impartial implementation of Court judgments" (Çali and Koch 2014: 314). Because the CoM defers to the conclusions of the secretariat, the CoM final resolutions are considered a reliable measure of state compliance. Final resolutions have therefore been used to measure compliance in existing research (Voeten 2014, Grewal and Voeten 2015).

The CoM compliance monitoring has been strengthened over time. As a result, respondent states have become subject to increasingly close scrutiny, which may affect the duration of implementation processes. In particular, the CoM changed their working methods in 2010 to ensure quicker and more consistent follow-up of new judgments. For instance, a six-month deadline was set for the respondent state to communicate planned measures to the CoM Secretariat. Because both such institutional changes and developments in the overall caseload of the CoM might influence time until compliance, I control for the timing of the judgment (see Section 3.A.4).

Using final resolutions as the benchmark for compliance means that judgments may be considered as not complied with even if some of the needed remedies are implemented. Using final resolutions may thus obscure "partial compliance" as one theoretically interesting outcome (Hillebrecht 2009, Hawkins and Jacoby 2010). However, an important aim of the ECtHR's remedial indications is to reduce the backlog of unimplemented cases by achieving *full* compliance (Keller and Marti 2015). Final resolutions offer the best measure of whether this goal is achieved.

3.A.3 Coding of Remedial Indications

To identify judgments containing remedial indications, I used the key-word search functionality of the ECtHR's HUDOC database to identify all judgments dis-

cussing matters of execution under article 46 of the ECHR, which is the legal basis the ECtHR invokes when indicating remedies.[7] Based on a reading of the judgments, I then excluded judgments that did not indicate any individual or general measures,[8] or where the judgment with remedial indications was appealed and overturned by the Grand Chamber.

The final list was cross-referenced for consistency with a similar list compiled by the *Human Rights Law Implementation Project* (author's correspondence with Alice Donald and Anne-Katrin Speck) and with the cases listed in the CoM's annual reports as containing "indications with relevance for execution".[9]

3.A.4 Case and Country-Level Confounders

This section describes all the variables conditioned on using matching and as controls in the subsequent statistical models.

At the case level, the types of action needed for compliance are particularly important. The dataset distinguishes between five different types of general measures: legislative changes, jurisprudential changes, executive action, dissemination of the judgment, and practical measures such as rehabilitating prisons or recruiting more judges. This categorization of general measures is consistent with Grewal and Voeten (2015). For individual measures, typically grouped together in extant research, the dataset allows distinguishing between property returns, reopening of domestic proceedings, domestic investigation or prosecution of individual perpetrators, and "other individual measures". Remedies in the latter category do for instance include the enforcement of domestic court judgments.

In addition to the type of remedies needed, case complexity is important. For instance, the 2011 judgment in the case of *Nechiporuk and Yonkalo v. Ukraine* identified a set of violations relating to articles 3, 5, and 6 of the ECHR, and each of these violations required distinct legislative or administrative measures

[7]This search also returned cases, such as *Papamichalopoulos and Others v. Greece*, in which the remedial indications were made without reference to article 46.

[8]Excluded cases include *inter alia* references to other judgments where remedies were indicated, cases where the applicant asked the ECtHR to indicate specific remedies but the ECtHR declined to do so, and cases where other matters of implementation were discussed in the judgment but no remedial indications were made.

[9]These cross-references led to the inclusion of 11 judgments containing remedial indications that were not classified accordingly in the HUDOC database.

(Agent of the Government of Ukraine 2012). To capture complexity related to the identification of multiple violations, I count the ECHR articles found to have been violated.

Issue area might also influence both compliance politics and judges' eagerness to indicate remedies. For instance, Lupu and Voeten (2012: 421) and Grewal and Voeten (2015: 504-505) argue that cases concerning the right to life or the prohibition of torture are particularly challenging because they often concern the limits of executive power. Because such physical integrity rights violations have particularly severe consequences for the victims, judges might be expected to be more willing to indicate remedies in order to achieve swift compliance. I therefore match on the most frequent violations using a set of dummy variables that receive the value of 1 if the relevant ECHR article was violated and 0 otherwise. Specifically, I match on violations of articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to fair trial), 8 (right to respect for private and family life), 10 (freedom of expression), 13 (right to an effective remedy), 14 (prohibition of discrimination), and article 1 of Protocol 1 (protection of private property).

As discussed, remedial indications constitute a significant development in the practice of the ECtHR and the number of indications has increased over time. During the same period there have been changes both in the CoM monitoring procedures (e.g. Çali and Koch 2014) and different countries' attitudes towards the ECtHR. I therefore match on when the (lead case) judgment was rendered. I include both a linear time trend and three dummy indicators capturing whether the lead case judgment was rendered after three important institutional changes: the entry into force of Protocol 11 on November 1, 1998, the change in the Working Methods of the CoM on May 10, 2006, and the entry into force of Protocol 14 on June 1, 2010. As noted, the changes in the CoM working methods included the introduction of deadlines for the initial follow-up of new judgments, which may generally have contributed to quicker compliance.

Due to the low number of cases in the matched dataset, I omit the violation dummies and the timing of the lead case judgment from the multivariate modelling. These variables are, however, well accounted for by the matching.

Characteristics of the respondent state that influence their compliance with ECtHR judgments may also influence the ECtHR's remedial approach. For in-

stance, Hillebrecht (2014*a*;*b*) finds checks and balances to be important for holding governments accountable for their compliance performance. As argued in the main letter, the strength of accountability institutions might also influence the effectiveness of remedial indications. I therefore condition on the Varieties of Democracy project's "accountability index". As discussed in the letter, this index measures the "ability of a state's population to hold its government accountable through elections", through "checks and balances between institutions", and through "oversight by civil society organizations and media activity" (Coppedge et al. 2018, the accountability index is also discussed in more detail by Lührmann, Marquardt and Mechkova 2017).

Particularly if legislative changes are needed for compliance, the duration of the implementation process is also likely to be influenced by the number of veto-players that need to agree to implement a remedy and whether these different veto-players belong to different political parties (Voeten 2014, Stiansen 2018). I therefore condition on the constraints imposed by domestic veto-players, using the political constraints index developed by Henisz (2000; 2002). This index ranges from 0 to 1 and is based on the number of independent branches of government that can block policy change, the degree of preference alignment between them, and the extent of preference heterogeneity within each branch.

The proximity to an upcoming election and changes in government might influence compliance if governments are more likely to comply when they face re-election or because new governments are eager to comply with judgments rendered against their predecessor. The relationship between remedial orders and quicker compliance might therefore be confounded if judges considers a country's electoral cycles and provides remedial indications in judgments that are rendered shortly before an election. I therefore control for time since the last election in the multivariate models. I use the time since the last election (rather than proximity to the next election) because electoral cycles are not fixed in all Council of Europe states. The time until the next election will therefore not always be known to the Court when it decides whether to provide remedial indications (Krehbiel 2016*b*).

I also estimate models in which I control for whether there has been a change the chief party in government or in the orientation of the government (on a left-right dimension) since the lead case judgment was rendered, based on data from the Database of Political Institutions (Cruz, Keefer and Scartascini 2016). Be-

cause there are relatively many missing values on these variables, I include these models as additional robustness checks in Section 3.A.6 of this appendix.

The jurisdiction of the ECtHR includes not only consolidated democracies of Western Europe. It also contains recent democracies that Grewal and Voeten (2015) show have a particular propensity to quickly implement ECtHR judgments, and non-democracies such as Azerbaijan and Russia that might be less concerned about political costs from non-compliance. I therefore introduce two dummy indicators for regime type based on the Polity dataset (Marshall, Jaggers and Gurr 2004). The first indicator captures whether the respondent state is democratic (has a Polity score of 6 or higher), but has not yet enjoyed this status for 30 consecutive years. The second indicator captures whether the respondent state is a non-democracy (has a polity score below 6). Long-term democracies constitute the reference category.

As a measure of respondent states' implementation capacity, I follow Grewal and Voeten (2015) in combining the bureaucratic quality and the law and order measures from the International Country Risk Guide (ICRG) (The PRS Group 2012) into an additive index. The resulting index captures the robustness of the respondent state's administrative and judicial structures.

For the purposes of the matching, I use the values of the country-level variables from the year of the lead case judgment. Changes on the institutional variables over time are, however, accounted for by the multivariate model.

As the ECtHR's decision to indicate remedies later in the compliance process may be influenced by the influx of repetitive cases, the multivariate models also include a cumulative count of the repetitive cases grouped under each lead case. Because this count by definition is 0 when the lead case is rendered, this variable can, however, not be used as a basis for matching.

3.A.5 Full Cox Models

Table 3.A.1 reports the full Cox models used to estimate the marginal differences displayed in Figure 2 of the letter. The reported estimates are coefficients with standard errors clustered on respondent state in parentheses.

Table 3.A.1: Full Cox models

	Model 1	Model 2	Model 3	Model 4
Remedial indications	-0.81^{***}	0.51^{**}	0.71^{**}	0.38
	(0.14)	(0.18)	(0.23)	(0.47)
Government accountability			1.41^{**}	1.29^{**}
			(0.49)	(0.50)
Government accountability * Remedial indications				0.25
				(0.39)
Years since last election			0.24^{*}	0.24^{*}
			(0.10)	(0.10)
Political constraints			1.16	1.12
			(1.05)	(1.06)
Non-democracy			0.80	0.80
			(0.84)	(0.86)
New democracy			0.71	0.70^{*}
			(0.36)	(0.36)
Bureaucratic capacity			0.07	0.07
			(0.13)	(0.14)
Need for legislative change			-1.03^{***}	-1.02^{***}
			(0.20)	(0.20)
Need for jurisprudential change			-0.79^{*}	-0.81^{*}
			(0.39)	(0.41)
Need for executive action			-0.52^{*}	-0.53^{*}
			(0.25)	(0.26)
Need for publication/dissemination			0.44	0.44
			(0.43)	(0.43)
Need for practical measures			-0.67^{**}	-0.67^{**}
			(0.22)	(0.22)
Need for property return			-1.98^{***}	-2.01^{***}
			(0.44)	(0.46)
Need for reopening of domestic case			0.41	0.43
			(0.28)	(0.26)
Need for other individual measure			-0.59^{*}	-0.60^{*}
			(0.27)	(0.28)
Number of articles violated			-0.11	-0.11
			(0.12)	(0.11)
Repetitive cases			-0.00	-0.00
			(0.00)	(0.00)
AIC	30394.05	745.18	628.08	629.77
Num. events	2099	79	76	76
Num. obs.	3234	252	249	249

$^{***}p < 0.001, {}^{**}p < 0.01, {}^{*}p < 0.05$

For model 4, the reported coefficients for remedial indications and government accountability are conditional effects. To evaluate Hypothesis 2, it is therefore necessary to consider how the estimated effect of remedial indications at different levels of government accountability (Brambor, Clark and Golder 2006). Figure 2 of the letter shows how the marginal difference in time until compliance associated with remedial indications varies depending on the level of government accountability. Figure 3.A.3 similarly shows the estimated coefficient for remedial indications conditional on government accountability. This figure confirms that – although the interaction term is not statistically significant – remedial indications have no substantive or statistical effect on time until compliance for the states with the lowest levels of government accountability, but that the effect increases and becomes statistically significant with higher levels of government accountability.

3.A.6 Robustness Checks

This section reports the results from additional models estimated to investigate the sensitivity of the link between remedial indications and quicker compliance to other reasonable model specifications. Results from the additional Cox models are reported in Table 3.A.2. The results are reported as coefficients with standard errors clustered on respondent state in parentheses.

Firstly, the matched data contain relatively few observations. The matching for the main models is done using one-to-one matching with replacement.[10] One potential concern is that the one-to-one matching approach leads to the pruning of control cases that are not highly dissimilar from the treated cases. The pruning of all but the closest matches also leaves relatively few observations and therefore reduces efficiency (King, Lucas and Nielsen 2017). To assess the sensitivity of the results, I therefore estimated two additional models: one estimated with all controls on the full (unmatched dataset) and one estimated on a dataset matched using one-to-two matching.

[10]In other words, each treated unit is matched with the most similar control unit. In cases where a control unit is the closest match for more than one treated unit, it is matched to both. This approach yields the best balance on the included covariates (Diamond and Sekhon 2013: 935). Similarly, if two control units are equally good matches for a treated unit, both are used and the weights used in the subsequent statistical modelling are adjusted accordingly.

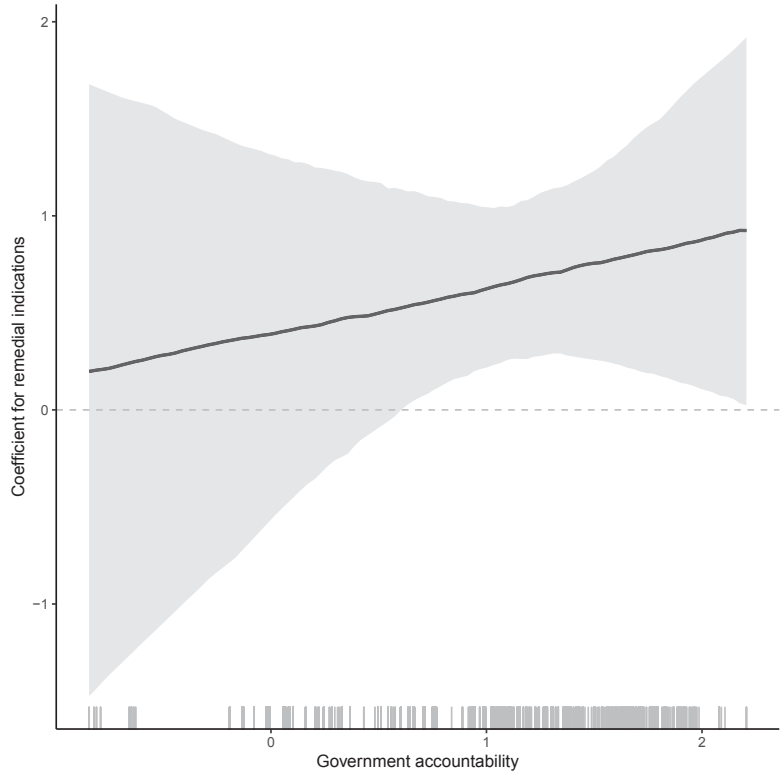

Figure 3.A.3: Coefficient for remedial indications conditional on government accountability (Model 4). Shaded area indicates the 95 per cent confidence interval.

Table 3.A.2: Robustness tests

	Model A1	Model A2	Model A3	Model A4	Model A5
Remedial indications	0.24^{*}	0.23	0.47^{*}	0.71^{**}	0.58^{*}
	(0.11)	(0.22)	(0.21)	(0.25)	(0.25)
Government accountability	1.85^{**}	2.16^{***}		1.53^{**}	1.83^{**}
	(0.69)	(0.58)		(0.55)	(0.61)
Years since last election	-0.06	0.24^{**}		0.22^{*}	0.28^{**}
	(0.04)	(0.08)		(0.11)	(0.11)
Change in government (party)				-0.16	
				(0.29)	
Change in government orientation					-0.52^{*}
					(0.25)
Political constraints	-0.65	-0.53		1.28	1.94
	(0.99)	(1.00)		(1.23)	(1.46)
Non-democracy	0.61	1.26		0.96	1.54
	(0.44)	(0.89)		(0.96)	(0.94)
New democracy	0.65^{***}	0.28		0.89	1.18^{*}
	(0.19)	(0.31)		(0.48)	(0.48)
Bureaucratic capacity	0.11	-0.06		0.07	0.07
	(0.20)	(0.16)		(0.15)	(0.16)
Need for legislative change	-0.84^{***}	-0.76^{***}	-1.56^{***}	-1.09^{***}	-1.15^{***}
	(0.09)	(0.17)	(0.29)	(0.22)	(0.24)
Need for jurisprudential change	-0.54^{***}	-0.66^{***}	-0.46	-0.99^{*}	-0.79
	(0.10)	(0.18)	(0.39)	(0.45)	(0.51)
Need for executive action	-0.40^{***}	-0.34	0.08	-0.45	-0.37
	(0.07)	(0.21)	(0.41)	(0.28)	(0.28)
Need for publication/dissemination	-0.11	0.72	0.95^{*}	0.38	0.05
	(0.12)	(0.43)	(0.46)	(0.46)	(0.50)
Need for practical measures	-0.56^{***}	-0.77^{***}	-1.03^{*}	-1.00^{***}	-1.22^{***}
	(0.09)	(0.19)	(0.42)	(0.28)	(0.29)
Need for property return	-0.68^{**}	-0.92	-1.71^{***}	-2.00^{***}	-1.96^{***}
	(0.25)	(0.69)	(0.51)	(0.43)	(0.49)
Need for reopening of domestic case	-0.27^{**}	0.62^{*}	0.66	0.43	0.43
	(0.10)	(0.25)	(0.47)	(0.30)	(0.35)
Need for other individual measure	-0.26^{***}	-0.36	-0.13	-0.54^{*}	-0.61^{*}
	(0.07)	(0.20)	(0.35)	(0.27)	(0.28)
Number of articles violated	-0.01	0.01	-0.18	-0.08	-0.07
	(0.11)	(0.10)	(0.16)	(0.13)	(0.15)
Repetitive cases	-0.01^{*}	-0.00	0.00	0.00	-0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Linear time trend	-0.06^{**}				
	(0.02)				
After protocol 11	-0.07				
	(0.33)				
After change in CoM working methods	0.26^{*}				
	(0.11)				
After protocol 14	0.91^{***}				
	(0.12)				
Right to life violation	-0.46				
	(0.24)				
Prohibition of torture violation	-0.25				
	(0.15)				
Right to liberty violation	0.01				
	(0.13)				
Right to fair trial violation	0.19^{*}				
	(0.08)				
Right to privacy and family life violation	-0.02				
	(0.08)				
Freedom of expression violation	0.04				
	(0.14)				
Right to effective remedy violation	-0.18				
	(0.14)				
Prohibition of discrimination violation	0.14				
	(0.19)				
Property rights violation	-0.19				
	(0.19)				
AIC	14156.17	1016.97	251.22	554.11	460.08
Num. events	1918	117	90	68	58
Num. obs.	2959	337	271	249	230

$^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$

Model A1 is a multivariate model that controls for the full set of potential confounders estimated on the unmatched dataset. This model also suggests a statistically significant relationship between remedial indications and quicker compliance, although the estimated coefficient is smaller in magnitude than in the models based on matching. I consider matching approach to be preferential to Model A1 because matching reduces model dependence (Ho et al. 2007). In particular, the complex strategic environment means that of some control variables are likely to interact in ways that the standard regression approach does not necessarily accommodate. By identifying pairs of cases that are as similar as possible on all the included covariates, matching reduces the risk of such model misspecification to bias the results.

Model A2 is estimated on a dataset matched using one-to-two matching. The inclusion of additional control cases reduces the magnitude of the estimated relationship between remedial orders and quicker compliance and the relationship is not statistically significant. One explanation is that the one-to-two matching does not produce the same degree of balance between the matched and unmatched cases. Despite the greater uncertainty in Model A2, the point estimates of Model A1 and A2 are very similar and both point in the direction of remedial indications being associated with quicker compliance, although the relationship is weaker than when using one-to-one matching.

Another concern is that missing data on the country-level variables exclude some cases. In particular, it excludes Bosnia-Herzegovina, which has received judgments containing remedial indications in five different cases. The sensitivity of empirical results to missing observations has been an increasing concern for political science scholarship because observations with missing information might be systematically different from other cases (Lall 2016; 2017). To avoid listwise deletion or imputation, Model A3 is estimated on a dataset that is matched on case characteristics and dummies for the different respondent states. I first match exactly on respondent state before using genetic matching to match on case characteristics. The Cox model is stratified by respondent state. By considering only within-state variation, this model also accounts for the possibility that different states are subject to different standards by the CoM in its compliance monitoring. The relationship between remedial indications and quicker compliance is robust to considering only within-state variation.

Models A4 and A5 consider whether the relationship between remedial indications and quicker compliance is sensitive to controlling for changes in government during the implementation, using data on government composition from the Database of Political Institutions (Cruz, Keefer and Scartascini 2016). Model A4 controls for whether there has been a change in the chief executive party. Model A5 considers whether there has been change in the ideological orientation of the government (on a left-right dimension). The relationship between remedial indications and quicker compliance holds in both of these models.

3.A.7 Additional Interaction Effects

There is robust evidence that the ECtHR's use of remedial indications have on average contributed to quicker compliance with some of the ECtHR's most challenging judgments, but also some evidence that the relationship between remedial indications and quicker compliance hinges on the presence of domestic institutions that enable pro-compliance actors to hold governments accountable. An important question is whether the effect of remedial indications is also influenced by other contextual factors. Answering this question is important both for understanding the conditions that enable courts to use remedial indications to promote compliance and for understanding the mechanisms that link remedial indications to quicker compliance.

In addition to helping hold governments accountable, remedial indications may facilitate quicker compliance by preventing disagreement within a responding government concerning how to implement the judgment (Baum 1976: 94, Spriggs 1996: 1124). The likelihood that such disagreements will reduce the likelihood of prompt implementation may be greatest in contexts where political power is divided among multiple veto-players with diverging political preferences (Tsebelis 1995; 2002). At least in the short term, the difficulty of achieving agreement between such veto-players can stall the implementation process in cases where the judges have not specified necessary remedies (Voeten 2014, Stiansen 2018).

Remedial indications may therefore be expected to be particularly helpful in judgments against states with multiple veto-players with diverging preferences. To evaluate this expectation, I estimate model A6 in which remedial indications

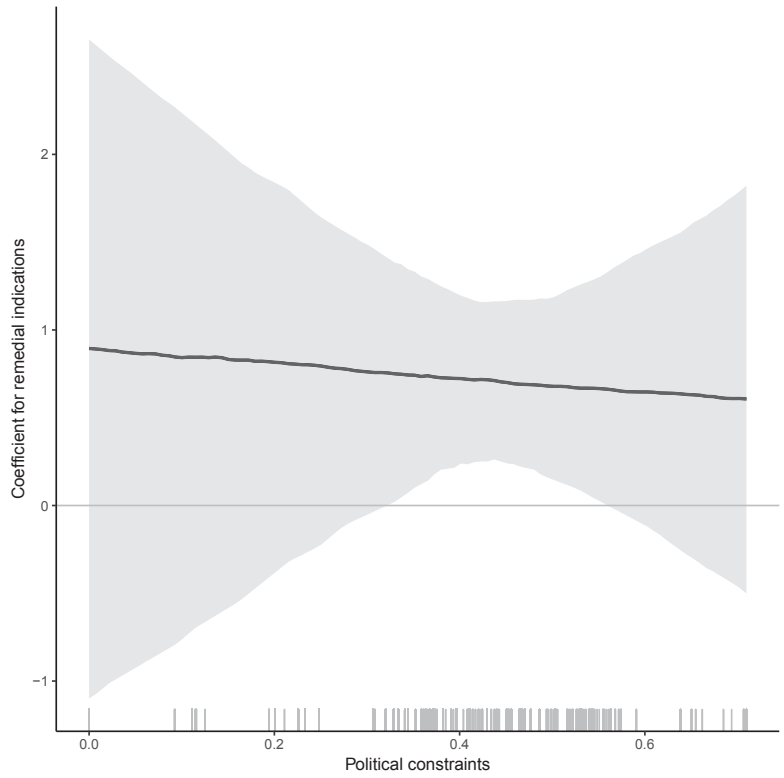

Figure 3.A.4: Coefficient for remedial indications conditional on political constraints (Model A6). Shaded area indicates the 95 per cent confidence interval.

are interacted with the level of political constraints (from Henisz 2000, Henisz 2002). The model is reported in Table 3.A.3 and the conditional coefficient for remedial indications is displayed in Figure 3.A.4.

Figure 3.A.4 provides no support for the expectation that the political constraints in the respondent state moderates the effect of remedial indications. One explanation may be that remedial indications facilitate quicker compliance primarily by enabling compliance monitoring rather than by avoiding disagreement within respondent governments.

As discussed in the main letter, the bureaucratic capacity of the respondent state can be important for judges' decision to indicate specific remedies. Two important explanations are (1) that compliance is relatively more costly for states

Table 3.A.3: Additional interaction models

	Model A6	Model A7
Remedial indications	0.86	0.04
	(0.93)	(0.46)
Political constraints	1.36	1.15
	(1.95)	(1.04)
Remedial indications*Political constraints	−0.35	
	(2.06)	
Bureaucratic capacity	0.07	−0.07
	(0.13)	(0.17)
Remedial indications*Bureaucratic capacity		0.24
		(0.17)
Government accountability	1.41**	1.47**
	(0.49)	(0.49)
Years since last election	0.24*	0.25*
	(0.10)	(0.10)
Non-democracy	0.80	0.83
	(0.84)	(0.86)
New democracy	0.72*	0.70*
	(0.35)	(0.35)
Need for legislative change	−1.04***	−0.98***
	(0.20)	(0.20)
Need for jurisprudential change	−0.79*	−0.79*
	(0.39)	(0.39)
Need for executive action	−0.51*	−0.55*
	(0.26)	(0.26)
Need for publication/dissemination	0.44	0.43
	(0.43)	(0.42)
Need for practical measures	−0.68**	−0.67**
	(0.22)	(0.22)
Need for property return	−1.99***	−2.03***
	(0.45)	(0.46)
Need for reopening of domestic case	0.40	0.45
	(0.27)	(0.27)
Need for other individual measure	−0.59*	−0.60*
	(0.27)	(0.27)
Number of articles violated	−0.11	−0.10
	(0.11)	(0.11)
Repetitive cases	−0.00	−0.00
	(0.00)	(0.00)
AIC	630.05	628.73
Num. events	76	76
Num. obs.	249	249

$^{***}p < 0.001, {}^{**}p < 0.01, {}^{*}p < 0.05$

with low bureaucratic capacity (see also Staton and Romero forthcoming) and (2) that the informational disadvantage of the Court will be smaller relative to these states. Yet, the ECtHR also provides remedial indications against high capacity states, such as in the 2012 judgment in the case of *Lindheim and Others v. Norway*. An important question is whether remedial indications are less effective when provided in judgments against such high-capacity states.

On the one hand, remedial indications in judgments against high-capacity states could be detrimental to compliance if the Court is more likely than respondent's states bureaucracies to indicate remedies that are inadequate for repairing the identified violations. On the other hand, the Court may be expected to refrain from indicating remedies in the cases in which informational challenges would lead it to indicate remedies that inadequate. I therefore consider bureaucratic capacity more important for the decision to provide remedial indications than as a condition for their effectiveness in the cases where they are provided.

Nevertheless, remedial indications are interacted with the level of bureaucratic capacity in Model A7 in Table 3.A.3. The conditional coefficient for remedial indications at different levels of bureaucratic capacity is displayed in Figure 3.A.5. The figure suggests that remedial indications are in fact more effective when provided in judgments against high capacity states. At very low levels of bureaucratic capacity, such as for Albania and for Bulgaria, the relationship between remedial indications and quicker implementation is not statistically significant. A likely explanation is that for these states, there can be important managerial obstacles to implement remedies even if the remedies have been indicated by the Court.

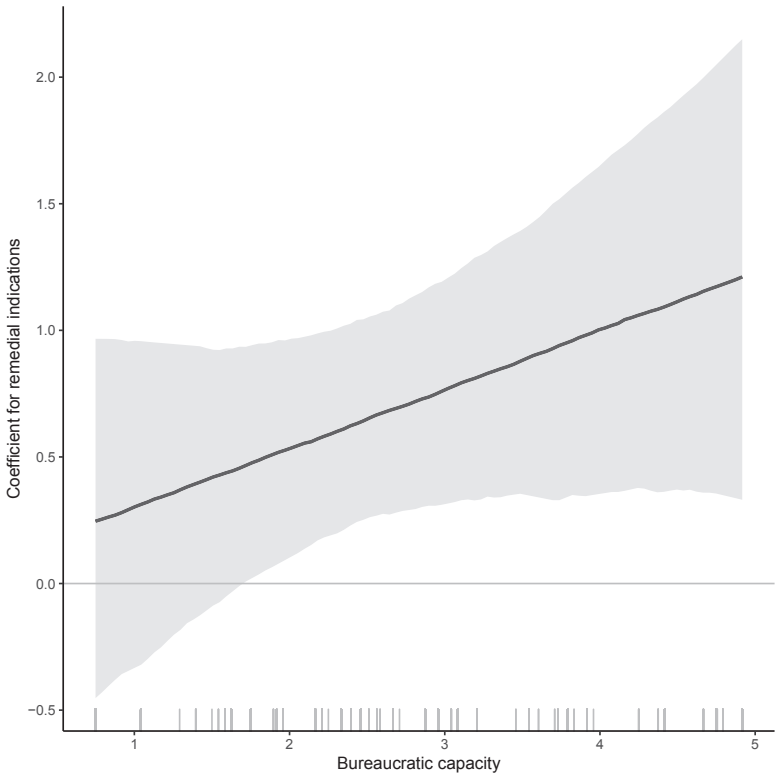

Figure 3.A.5: Coefficient for remedial indications conditional on bureaucratic capacity (Model A7). Shaded area indicates the 95 per cent confidence interval.

4 The Dilemma of Dissent. Split Judicial Decisions and Compliance with Judgments from the International Human Rights Judiciary (with Daniel Naurin)

Abstract

Dissenting opinions may serve important functions in judicial decision making, including increasing the transparency and perhaps even the quality of court decisions. But allowing dissent may also come with a price. We argue that visible disagreement on the bench may impact negatively on the authority of judicial decisions and provide justifications for non-compliance. Judicial dissent may therefore be problematic for international courts that struggle with uncertain social legitimacy and low levels of state compliance. Using data on Inter-American Court of Human Rights remedial orders and European Court of Human Rights judgments, we provide evidence of a negative relationship between judicial dissent and compliance. Our findings have important implications both for questions relating to what courts can do to manage their compliance problems and for understanding the conditions for effective international judicial protection of human rights.

Publication status: Under review in *Comparative Political Studies*.

4.1 Introduction

Rule of law is an exceptionally strong norm in modern societies. In most political settings, therefore, being able to credibly argue that you have the law on your side increases your chances of getting what you want.[1] Court decisions may provide such legal ammunition to individuals, advocacy groups, and to governmental actors. At the same time, those actors whose rights and interests are supported by court decisions may contribute to ensuring that these decisions are effectively implemented, even in the face of political resistance from recalcitrant state actors. This mutual dependence between courts and their compliance partners is a fundamental feature of judicial power (Staton and Moore 2011: 561-562)

However, not all court decisions are equally helpful in this regard. Specifically, we argue that judgments that contain dissenting opinions are less powerful compared to unanimous decisions. The reason is that dissent reduces the perceived legal authority of the judgment, by inducing the suspicion that the decision was based partly on the subjective preferences of the majority. Supportive compliance partners are thereby given a weaker hand, making it harder for them to argue that they have "the law" on their side, compared to if the court had spoken with one voice. Furthermore, actors who are negatively affected by the judgment may use the dissenting opinion as a point of reference to undermine the authority of the ruling. As a consequence, in contexts where compliance with court decisions is contested, judgments that contain dissent do not carry the same weight and are less likely to be complied with. This is the case even if dissent on the bench actually increases the quality of the majority judges' written reasoning, which has been suggested in the literature (Haire, Moyer and Treier 2013).

We examine the empirical relationship between dissent and compliance for two courts that face significant compliance challenges – the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR).

[1]This work benefited from support by the Research Council of Norway through its Centres of Excellence funding scheme, project number 223274. Previous versions of this article were presented at the 2016 "Lessons from judicial dialogues between the European, the African and the Inter-American Court of Human Rights" at Universidad Torcuato Di Tella, the 2017 Annual Conference of the International Studies Association, and the 2017 Annual Meeting of the Law & Society Association. We thank Alexandra Huneeus, Mackenzie Eason, Erik Voeten, Theresa Squatrito, Andreas Føllesdal, and Geir Ulfstein for valuable comments and suggestions.

These courts provide important opportunities for individuals to seek redress for human rights violations committed by their own states. We use two novel datasets concerning the compliance with judgments of the IACtHR and ECtHR (Bøyum, Naurin and Stiansen 2017, Stiansen and Voeten 2017). Our empirical analysis indicates that rulings affected by judicial dissent are significantly less likely to be complied with than unanimous rulings. This negative relationship holds both for IACtHR remedial orders and ECtHR judgments and across different model specifications. Although it is challenging to definitely determine a causal relationship between judicial dissent and non-compliance, our study is the first to provide compelling observational evidence pointing in that direction. It adds to previous experimental evidence (Zink, Spriggs and Scott 2009) suggesting that open dissent undermines support for judicial decisions.

Our study contributes to the comparative research on judicial politics in several ways. Constitutional and international courts vary significantly in the extent to which they allow and practice dissent. The literature on the institutional design of courts emphasizes the trade-off between accountability, transparency and judicial independence. It is argued that courts may successfully combine transparency and judicial independence as long as judges have non-renewable terms, which makes them less sensitive to political pressure (Dunoff and Pollack 2017). Our argument suggests that this balancing act needs to take into account the possibility that transparency—in the form of open dissent—may also weaken the ability of independent courts to effectively change state actors' unlawful behavior.

Furthermore, our findings indicate that striving for unanimity should be an important strategy for courts that confront significant compliance challenges. This resonates with the literature that argues that courts frequently use rhetorical legitimation strategies when they face an adverse political environment (Hume 2006, Lupu and Voeten 2012, Larsson et al. 2017). These scholars have assumed that perceptions of legal authority are crucial for how judgments are received, and that courts seek to persuade relevant audiences of the legal authority of their decisions. While previous studies have demonstrated that courts act strategically, by being more careful to ground their judgments in legal arguments when they expect political resistance, our study indicates that they have good reasons to do so. Furthermore, striving to achieve unanimous decisions is an additional and important instrument in that toolbox, not yet addressed in the literature.

Our study also has implications for the research on the international human rights judiciary and its ability to protect human rights. While the significant compliance problems that these courts face have been much discussed, few studies have asked what the courts can do themselves to promote the implementation of their judgments (Staton and Romero (forthcoming) is a recent exception). Previous studies of compliance with international human rights courts have focused mainly on characteristics of the respondent state, such as the quality of democratic institutions and the capacity of state institutions to implement rulings (Hillebrecht 2014*a*;*b*, Anagnostou and Mungiu-Pippidi 2014, Voeten 2014, Grewal and Voeten 2015). However, we know surprisingly little about how the content and form of judicial decisions contribute to the likelihood of effective compliance in this context. Our argument implies that failing to convincingly signal legal authority may have real consequences for the ability of international human rights courts to provide effective remedies to people whose fundamental rights have been violated.

4.2 Judicial Dissent and Compliance

Our theoretical argument combines the insight of two separate strands of scholarship. From the comparative and international judicial politics literature we take the argument that the effectiveness of courts in terms of influencing policy change largely hinges on the implementation of their decisions being followed through by favorably inclined domestic constituencies. A second literature has debated the pros and cons of dissenting opinions in judicial decision-making, including a possible negative effect on legal authority. We discuss these literatures in turn, before we turn to the empirical investigation of compliance with the international human rights judiciary.

4.2.1 Courts, Compliance Constituencies and Legal Authority

Comparative judicial politics scholars argue that the political and reputational costs that may compel state authorities to comply with court rulings that they would prefer to ignore, depend on the joint probability that important constituencies will detect non-compliance and view it unfavorably (Vanberg 2001, Vanberg 2005, Staton 2004, Staton 2006, Gauri, Staton and Cullell 2015. See also Rosen-

berg 2008:23). While a central assumption in the literature has been that open defiance of court decisions will often be costly due to diffuse support for domestic courts, there is a recognition that costs may vary depending on public support for specific court decisions (e.g. Vanberg 2005).

Scholars studying international courts have emphasized how national actors use court rulings to strengthen their own position in domestic debates (Simmons 2009, Alter 2014). Opinions on specific judicial decisions are also likely to be shaped by political interests. Alter (2014: 19) refers to compliance constituencies as actors with interests that are congruent with an international court's interpretation of international law. Compliance constituencies may include both governmental and civil-society actors and are expected to use the legitimacy of the law bestowed upon them by the court to gain leverage in domestic political debates. Groups that are able to claim successfully that they have the law on their side may help bring about compliance by pushing for necessary policy changes. Perceptions of courts as the embodiments of rule of law have been argued to work as a shield from political resistance for international courts (Burley and Mattli 1993: 72).

Another strand of scholarship argues that international court judgments provide "political cover" for domestic policy change (Allee and Huth 2006). Faced with an international court judgment, domestic decision-makers may be able to implement policy changes that would otherwise have been prohibitively controversial. As noted by Voeten (2013: 433), this argument too hinges on domestic audiences perceiving the international court as legitimate. Thus, whether the pro-compliance actors are located inside the state institutions or in civil society, broader societal beliefs about the legal authority of the courts are important for whether they will succeed in facilitating compliance.

In the context of our empirical analysis – international human rights regimes – previous research indicates that actors within the legislature or the executive may use human rights judgment to promote political goals resisted by other government actors (Hillebrecht 2012*a*;*b*), including not least the judiciary (Huneeus 2011). Relevant compliance constituencies may also include civil-society actors making use of the judgments to mobilize for compliance against the interests of hostile governments (Cavallaro and Brewer 2008). In either case, perceptions of legal authority are crucial to legitimize political aims or to shame defiant govern-

ments for their failure to live up to rule of law standards (Simmons 2009, Hathaway and Shapiro 2011, Alter 2014: 21-22). The effectiveness of such strategies depends on the belief in the validity of the reasoning of international court judges. Only if the judicial dictates are viewed as authoritative will reference to them be persuasive.

Both in the comparative and the international judicial politics literature scholars have found that judges that fear non-compliance or override are likely to engage in strategic rhetorical action with the purpose of convincing outside audiences of the legal quality and authority of their decisions (Hume 2006, Lupu and Voeten 2012, Larsson et al. 2017). Characteristics of judicial decisions that undermine external audiences' perception of these decisions as principled and impartial may weaken their usefulness for compliance constituencies, and decrease the costs domestic decision-makers face from refusing to abide by their dictates. Empirically, there is evidence that a perception that courts do not decide cases in a principled and neutral manner undermines public support for the judiciary (Scheb and Lyons 2001). There is also at least indirect evidence that perceptions of legal quality influence compliance. Voeten (2012) finds that respondent states are more likely to comply with judgments from the ECtHR when these are rendered by a higher proportion of career judges. He argues that this finding may be explained by professional judges being better able to persuade respondent states and compliance constituencies of the legal validity of their judgments.

4.2.2 Dissenting Opinions and Legal Authority

The occurrence of dissenting opinions varies widely between courts, both international and domestic, as well as over time for specific courts (Epstein, Segal and Spaeth 2001, Bentsen 2018*a*). At the national level, allowing public dissent has been alien to the civil law tradition, but widely accepted in common law systems (Hanretty 2012). International courts vary significantly in their practices regarding dissent, both with respect to formal institutional rules and informal norms (Dunoff and Pollack 2017). While, the Court of Justice of the European Union has a practice of never publishing dissenting opinions and the World Trade Organization's Appellate Body rarely does so, the judgments of the International Court of Justice contain dissents in the majority of cases (Lewis 2006: 903-904).

The scholarly literature on judicial dissent contains several normative and positive propositions. On the one hand, it is argued that the right to dissent is consistent with the values of free speech and judicial independence: Judges ought to be able to express their own views and to able to answer only to their own consciences (Vitale 2014: 84-85). The right to dissent may also have a disciplining effect on the individual judges as it promotes their sense of individual responsibility for the conclusions that are reached (Stephens 1952: 396-397). Judicial dissent can, moreover, be seen as "an expression of judicial innovation and creativity which contributes to the evolution of the law" (Vitale 2014: 87-88). A dissenting judge may be an important corrective to the majority (Sunstein 2005), and may if nothing else ensure that the majority's position becomes better argued as it is forced to confront an opposing view (Haire, Moyer and Treier 2013).[2]

On the other hand, several arguments are advanced against permitting publication of judicial dissent. Arguments against dissenting opinions include concerns about judges' workload (Vitale 2014: 94-95), as well as concerns about consequences of dissents for career prospects of judges (Strezhnev 2015), and – in part by extension – for judicial independence (Dunoff and Pollack 2017). However, for the purpose of achieving compliance, most importantly are concerns about preserving the authority of the court and communicating legal certainty (Westerland et al. 2010). A central argument against the publication of dissent is the presumed negative effect on public confidence and credibility (Vitale 2014: 91f). The legal authority of courts, according to this view, is dependent on the perhaps fictitious but effective idea that judicial decisions are the "necessary results of a principled interpretation" (Bourdieu 1986: 818) of legal texts. As argued by Shapiro (1986), the ability of judges to persuade their audiences that their rulings are unbiased interpretations of the law, rather than reflections of the judges own policy preferences, is crucial to their authority. Judicial dissent may damage the legitimacy of a court decision by undermining the credibility of the argument that the decision reached is based only on sound legal principles (Zink, Spriggs and Scott 2009). The idea that a court's decision followed automatically from an impartial application of the law becomes considerably less credible if the judges

[2]Notably, Justice Antonin Scalia is reported to have provided Justice Ruth Bader Ginsburg with an early draft of his dissent while she was writing the majority opinion in the US Supreme Court case of *United States v. Virginia*. According to Ginsburg, Scalia's dissent allowed her to "better write what is now a landmark majority opinion" (Ginsburg, Hartnett and Williams 2016: 281).

themselves do not agree that this is the case. As argued by Stack (1996: 2240), "The presence of a dissenting Justice demonstrates that behind the word 'Court' in the 'opinion of the Court' sit individual Justices". Vitale, similarly, summarizes this argument against the practice of public dissent as follows:

> a dissenting opinion explicitly or implicitly calls into question the persuasiveness and authority of the majority judgment. Dissents signal to the public that the law is political – i.e., a creation of individual judges expressing their predilections. This in turn leads the public to question the authority of the judiciary and the law they are formulating (Vitale 2014: 91f).

It is important to stress that this effect may exist even if dissent actually increases the legal quality of a judgment. Some scholars have suggested that judgments affected by dissent are better argued, because the majority will take the dissenting view into account (Haire, Moyer and Treier 2013, Vitale 2014: 87). Knowing that dissent may make the implementation of a decision more challenging may, moreover, motivate the majority judges to write even more high-quality judgments. However, even if these expectations are correct, external audiences may be more struck by the lack of unanimity than by the level of sophistication of the legal analysis of the majority.

There is some micro-level evidence supporting the expectation that belief in the "myth of legality" is associated with acceptance of court decisions as fair (Baird and Gangl 2006), and that people view split legal decisions less favorably than unanimous ones. Survey experiments conducted by Zink, Spriggs and Scott (2009) indicate that split decisions reduce individuals' willingness to support US Supreme Court decisions, although Salamone (2014) finds that the negative effect of split decisions on public support may be limited to low-salience issues.[3] So far, however, we are not aware of any observational studies of the costs associated with judicial dissent.

[3]The findings of the experimental literature are, however, somewhat inconsistent. In an experiment conducted in Norway, Bentsen (2018*b*) finds evidence that dissent in the Norwegian supreme court actually bolsters support for judgments in high-salience cases and does not affect support for judgments in other cases.

4.2.3 Judicial Dissent and Compliance

To summarize, extant scholarship suggests (1) that perceptions of legal authority are important for compliance and (2) that judicial dissent can undermine the perceived authority of judicial orders. If both of these arguments are correct, it follows that judicial dissent may be expected to increase the risk of non-compliance. We will examine this hypothesis empirically.

It is not hard to find salient examples of judicial dissent being invoked to justify non-compliance. One such example is found in the Italian Supreme Court's *Judgment No. 49 of year 2015*, which held that Italian courts would only be bound by ECtHR judgments applying "consolidated" ECtHR case law. As one indicator of what would count as evidence that the ECtHR did not rely on consolidated case law, the Italian Supreme Court pointed to "the existence of dissenting opinions, especially if fuelled by robust arguments".

In debates concerning specific implementation processes, judicial dissent is sometimes used by opponents of implementation to suggest that there might be other legitimate views concerning what "the law" requires. Consider for instance a statement from one member of the House of Lords, Baron Scott of Foscote, during a debate concerning British compliance with the 2005 ECtHR *Hirst v. United Kingdom* judgment. Scott pointed out that the "judgment contained a dissenting opinion from five of the 17 judges, including Judge Costa," and argued that "in the opinion of many, including myself, the dissenting opinions are far more convincing than those of the majority" (quoted by Wagner 2010). This example shows how judicial dissent can be used to justify non-compliance.

The potential for judicial dissent to reduce compliance also seems to be a concern for judges of several courts. Even if judges are allowed to decide cases by majority vote, courts often try to achieve unanimous decisions (Mathen 2003: 323). Perhaps most famously, the time delay before the 1954 US Supreme Court decision in *Brown vs. Board of Education* was reportedly due to the perceived need by chief justice Warren to secure a unanimous decision in a highly contested case. The outcome was subsequently celebrated by civil-society groups that argued that the "Court's interpretation of the law was 'very clear"'(Rosenberg 2008: 43). Chief Justice John Marshall is also known to have actively discouraged dissent during his time as chief justice of the US Supreme Court (1801-1835), for the reason that he believed dissent to be detrimental to the legitimacy of the court.

Similar practices have been noted for a wide range of courts. Supreme courts in Western Europe typically have rules against publishing dissenting opinions precisely because of the risk that such opinions may promote non-compliance (Hanretty 2012: 671-672). In Russia too, limitations on the publication of dissenting opinions from the Constitutional Court have been introduced in order to "limit the use of dissenting opinions as arguments in favor of noncompliance" (Trochev 2002: 101). Lewis (2006: 903-905) has suggested that dissents in the World Trade Organization's Appellate Body has been actively discouraged due to concerns about how dissent will affect legitimacy and the likelihood of non-compliance. In short, actors within various domestic and international courts seem to share a concern that judicial dissent may be damaging for compliance because it undermines the legitimacy of the decision.

In the remainder of this article, we consider whether rulings of the IACtHR and the ECtHR are less likely to have been complied with if they were opposed by one or more judges on the bench. Based on the discussion so far, we have the following hypothesis:

Hypothesis 4.1 *There is a negative relationship between judicial dissent and compliance with judicial decisions.*

4.3 Evidence from the IACtHR

We first consider evidence from the IACtHR. The IACtHR was established in 1979 to interpret the American Convention on Human Rights and adjudicate alleged violations of the Convention by state parties that have accepted the jurisdiction of the IACtHR. To date, 22 states have accepted the jurisdiction of the of the IACtHR, but two states, Trinidad and Tobago in 1998 and Venezuela in 2012, have later denounced it.[4]

The IACtHR is composed of seven judges, which are elected for six-year terms by the Organization of American States (OAS) General Assembly. The judges may be re-elected once. In contrast to the ECtHR, the IACtHR cases are heard

[4]The states that have accepted the jurisdiction of the IACtHR are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay. Trinidad and Tobago and Venezuela have later withdrawn their acceptance.

by the full Court. However, if a judge is a national of the respondent state, she may recuse herself from participating in the case. If the respondent state has no national on the bench or the national judge has recused herself, the respondent state may appoint an *ad hoc* judge. The *ad hoc* judge is not required to be a national of the respondent state, but must fulfil the same eligibility criteria as the judges elected by the OAS General Assembly. Thus, in some instances there are eight judges involved in a case. The quorum for the Court is five judges. There is generally a high level of consensus on most decisions, but if the bench was to be split between an even number of judges, the President would break the tie.

Contentious adjudication in the IACtHR results from applications launched by individuals or NGOs to the Inter-American Commission on Human Rights (IACmHR) which investigates the claims and issues recommendations to the respondent state (e.g. Hillebrecht 2012*a*: 960-961). If the respondent state fails to comply with these recommendations, the IACmHR may submit the case to the IACtHR, which will decide the case on the merits and order the remedies it considers necessary. States that have accepted the IACtHR's jurisdiction are bound by Article 86(1) of the Convention to comply with the IACtHR's judgments, but similar to other courts the IACtHR has few means to enforce its rulings

4.3.1 Research Design

We employ a novel dataset on IACtHR judgments. The dataset is based on the detailed case summaries published by the *Inter-American Court of Human Rights Project* at Loyola Law School, Los Angeles.[5] The database contains information on 181 IACtHR judgments, from the initial proceedings before the Inter-American Commission of Human Rights (IACmHR) and the IACtHR, to the implementation phase (Bøyum, Naurin and Stiansen 2017, Stiansen, Naurin and Bøyum 2017).

Units of Analysis

We use the remedial orders rendered by the IACtHR as our units of analysis. Each remedial order sets out a specific measure that the state needs to implement in order to comply with the judgment. Using the remedial orders rather than the judgments as the units of analysis is appropriate because judges may dissent to

[5] See `https://iachr.lls.edu/`.

only some of the ordered remedies. Moreover, previous research shows that it is common for states to comply with only a subset of the remedies ordered in the judgment (Hawkins and Jacoby 2010, Hillebrecht 2014*a*).

Since 1996, the IACtHR has monitored compliance with its remedial orders in compliance hearings (Hawkins and Jacoby 2010: 37). Based on information from the judgments and the compliance hearings, we identify the specific measures that the respondent state needed to comply with and the level of compliance with each discrete obligation. As our dependent variable is compliance, we include only the remedial orders that have been subject to at least one compliance hearing. We can thus not include remedies from the period before the IACtHR started its compliance monitoring, and also not the most recent remedial orders for which the IACtHR has yet to hold compliance hearings. Our analysis are thus based on 1272 remedial orders from 138 different adverse judgments against 21 different respondent states.

Dependent Variable

Our dependent variable is compliance with the remedial order. We base our compliance measure on the conclusions reached by the IACtHR in its compliance hearings. Consistent with Hawkins and Jacoby (2010: 48-49) and Huneeus (2011: 508-509), we adopt the IACtHR's own perspective of whether an order has been complied with. For our main models, we code compliance to be achieved if the IACtHR rules that the state has *fully* complied with the order and therefore closes its monitoring of the particular remedy. In our dataset, 55 per cent of the remedial orders have been fully complied with by the respondent state. However, the compliance rate varies considerably between different types of remedies (see also Hawkins and Jacoby 2010:57, Huneeus 2011, Parente 2018).

In some cases, the IACtHR rules that compliance with a remedial order is *partial*. In our dataset, 12 per cent of the remedial orders have achieved the status of partial compliance but have not yet been fully complied with. While the partial compliance is a theoretically interesting outcome (Hillebrecht 2009), it is not clear how IACtHR rulings on partial compliance ought to be interpreted. In some cases, partial compliance may indicate that the state is in the process of achieving full compliance, but has not yet completed the required task. In other cases, partial compliance can occur if the state is seeking to comply with the order, but circum-

stances outside its control make full compliance unfeasible. To make sure that the results are not driven by our binary definition of compliance, our appendix reports results from a model in which the dependent variable is an ordered categorization of compliance with "partial compliance" as a middle category between full compliance and non-compliance. It shows that the operationalization of compliance has very limited influence on our results.

Independent Variable

Our dataset also makes it possible to measure judicial dissent at the remedy level. Our measure of dissent is a binary indicator of whether any judge voted against the specific remedial decision. We use a binary indicator of dissent because only one of the remedial orders in our dataset included more than one dissent. On three occasions the dissenting judges wanted stronger remedies. As the dissent in these cases are unlikely to provide arguments against compliance, we do not code them as dissents.[6]

Our dataset contains 80 split decision remedial orders, relating to 11 different judgments, and affecting 6 different respondent states. Thus, although split remedial decisions are not common in the IACtHR, they do occur from time to time, and it is feasible to estimate their relationship with compliance.

A close reading of relevant dissenting opinions reveals that the stated reasons for dissent, as expressed in the opinions, include disagreement with the majority concerning whether it is appropriate to rule against the state, concerns that the ordered monetary remedies are excessive or concerns that the ordered remedies fall outside the jurisdiction of the IACtHR. All of these publicly stated reasons for dissent fit well with our theoretical argument concerning how dissents can be used to undermine the legal authority of a judicial order and hence undermine

[6] This applies to the orders of pecuniary damages and non-pecuniary damages in the case of *Loayza Tamayo v. Peru*, in which judge Carlos Vicente De Roux-Rengifo argued for larger compensation amounts, and the order of pecuniary damages to the victim's next of kin in the case of *Manuel Cepeda Vargas v. Colombia*, where both judge Manuel Ventura Robles and judge Alberto Pérez Pérez voted against the remedial order because they favored a different method for determining the size of the award, which would have resulted in a greater pecuniary damage award. This case is also the only case in our dataset where more than one judge dissented against the same remedial order.

compliance. A list of dissenting opinions and summaries of their content are reported in the appendix.

Control Variables

There are reasons to suspect that judicial dissent might correlate with the likelihood of compliance even in the absence of a causal relationship. On the one hand, both judicial dissent and non-compliance may be related to the controversy surrounding a case. For instance, Judge Eduardo Vio Grossi's dissent in the case of *Artavia Murillo et al. v. Costa Rica* was motivated by the same disagreement concerning whether life begins at conception that would likely have led to resistance in Costa Rica even if the judgment had been unanimous. On the other hand, collegial pressure to avoid dissent may be stronger in cases where compliance is expected to be difficult to achieve.[7] Although it is challenging to completely circumvent these threats to inference, we are able to control for a rich set of confounders that might be expected to affect both the likelihood of dissent and the likelihood of compliance.

First, we know from previous research that the likelihood of compliance depends on the type of remedy. The type of remedy might also influence the likelihood of dissent if some judges view certain types of remedies as too challenging for the respondent state or outside the mandate of the Court. When controlling for the type of remedy, we seek to capture both the practical and political difficulty of implementing the needed remedy (Staton and Romero forthcoming) and differences in the type of domestic actors responsible for implementation (Huneeus 2011). Accordingly, we divide the remedies into five categories: monetary payments, legislative measures, practical measures that can be achieved by the executive acting alone (such as the construction of memorials or reinstatements of sacked public officials), judicial remedies involving either prosecution of perpetrators or action by domestic courts, and measures of publication of the judgment or acknowledgement of the violation.

Second, we introduce several measures of case controversy as captured by the resistance the case meets from the respondent state. Whereas some judgments meet fierce resistance by the respondent state and even have led states to leave

[7] As discussed, US Supreme Court's the judgment in *Brown vs. Board of Education* was famously delayed due to the need to achieve consensus in the controversial case.

the Inter-American human rights system, other judgments are welcomed by governments as opportunities to address certain human rights challenges. While controlling for state reactions to the specific remedies would introduce post-treatment bias, we consider it important to control for signals of state resistance observed prior to the remedial ruling. We propose three measures for this purpose. The first measure is a count of the number of preliminary objections filed during the proceedings before the court. Raising preliminary objections is a strategy responding states can use to attempt to avoid a consideration of the merits of the case (Pasqualucci 1999), and more objections can be interpreted as evidence for stronger state hostility towards the case. Of the judgments included in our dataset, 53 per cent had at least one preliminary objection and the maximum number of preliminary objections filed in a case is 10. Of the remedial orders with at least one preliminary objection, 13 per cent were affected by dissent. By contrast, the only instances of judicial dissent in a case where no preliminary objections were filed are the monetary remedies in the case of *Maritza Urrutia v. Guatamala*, which *ad hoc* Judge Arturo Martínez Gálvez dissented against because he considered the awards to be excessive. This difference suggests that to the extent that preliminary objections signal state resistance also during the compliance stage, it is important to control for them when estimating the relationship between dissent and compliance.

Our second measure of state resistance is a binary indicator of whether the state explicitly acknowledged international responsibility for the violation during the proceedings of the case. In some cases, the respondent state chooses to admit that a human rights violation has occurred and that it has international legal responsibility for the violation (Pasqualucci 2012: 8). States that are willing to admit responsibility when the case reaches the IACtHR may also be expected to be inclined to implement the remedies ordered by the Court. Acknowledgements of international responsibility were made in 29 per cent of the judgments and affect 41 per cent of the remedial orders in our dataset. None of the dissents in our dataset were made in cases in which the respondent state had acknowledged international responsibility. As the willingness to acknowledge international responsibility may be expected to also affect the compliance process, it is thus important to control for such acknowledgments when estimating the relationship between dissent and compliance.

As a final measure of state resistance, we consider whether the respondent state appointed an *ad hoc* judge to sit on the case. The appointment of *ad hoc* judges provides an important avenue for states to have their views represented on the bench. It is thus not surprising that *ad hoc* judges are more prone to dissenting than the regular judges. In fact, eight out of the ten cases in our dataset that included dissents in relation to remedial orders were written by *ad hoc* judges. Yet, the respondent state only appointed an *ad hoc* judge in about 45 per cent of the judgments in our dataset.

Third, the salience of the case to other societal actors might be an important confounder. As discussed, compliance with judicial decisions often depends on the likelihood that compliance will be monitored by domestic actors able to punish non-compliance. The mobilization of civil-society groups during the proceedings has been used as a measure of the attentiveness of pro-compliance constituencies (Vanberg 2005: 103). Civil-society involvement has also been argued to be important for compliance with IACtHR judgments (Cavallaro and Brewer 2008, Hillebrecht 2014*a*). At the same time, civil-society organizations may be expected to be more easily mobilized in the type of controversial cases that also invite more dissents. We therefore control for the attentiveness of potential compliance constituencies using a count of the number of *amici* briefs filed before the IACtHR during the case proceedings. Although some briefs are submitted by legal academics and individuals, transnational and domestic civil-society groups are a main provider of *amici* briefs. More generally, *amici* activity may reflect attention to the case among broader audiences and we thus expect the *amici* count to be informative of the extent of attentiveness to the case among potential compliance constituencies. The share of cases with at least one *amicus curiae* brief in our data is 38 per cent.

Fourth, case controversy might vary depending on the type of human rights violations that are at stake. To account for this possibility, we control for the type of rights violated using the categorization developed by Hillebrecht (2014*a*: 52). Based on the articles of the American Convention of Human Rights found to be violated in the judgment, we code whether the judgment involved one or more of four types of human rights violations: physical integrity rights (violations of articles 4, 5, 6, 7(1), and 7(2)), political and civil rights (violations of articles 12, 13, 14, 15, 16, 18, 19, 20, 22, and 23), legal procedure and due process rights

(violations of articles 7(4), 7(5), 7(6), 7(7), 8, 9, 10, 24, and 25), and privacy and property rights (violations of articles 11, 17, and 24).[8] Most of the ordered remedies are from judgments finding violations of physical integrity rights and due process rights.

Finally, previous research on compliance with international human rights courts has highlighted the importance of several country characteristics for compliance outcomes. If judges are sensitive to the risk of non-compliance when they decide whether to dissent, such country characteristics may confound the relationship between dissent and compliance. We therefore control for three characteristics of the respondent state expected to be important for compliance.

First, previous research suggests that the extent to which responding governments are held accountable by other actors is important. As argued above, pro-compliance actors in civil society, the independent media, or in other government institutions are essential for compliance politics (Hillebrecht 2014*a*;*b*). To control for the ability of other domestic actors to hold governments accountable, we therefore include the accountability index provided by the Varieties of Democracy project. This index measures the "ability of a state's population to hold its government accountable through elections", through "checks and balances between institutions", and through "oversight by civil society organizations and media activity" (Coppedge et al. 2018, see also Lührmann, Marquardt and Mechkova 2017).

Second, when compliance requires agreement among several institutions, veto-player problems may be expected to delay the implementation process (Huneeus 2011, Stiansen 2018). To control for the presence of domestic veto-players, we include the political constraints index developed by Henisz (2000; 2002). This index is coded on an approximate interval scale ranging from 0 to 1. It measures whether policy change requires agreement between different state institutions, and the degree of policy preference alignment between them.

Third, in line with managerial perspectives on compliance (Chayes and Chayes 1993), Voeten (2014) and Grewal and Voeten (2015) also find the respondent states' capacity for implementing judgments to be important for compliance with ECtHR judgments. The degree to which the state's institutions are capable of implementing difficult measures can similarly be expected to affect compliance with

[8]Due to the low number of cases, we omit Hillebrecht's (2014*b*) "social, economic and cultural rights" category.

IACtHR remedial orders. We thus include the International Country Risk Guide's (ICRG) bureaucratic quality measure from the year of the remedial ruling.

Summary statistics for all variables included in the regression models are reported in appendix.

Estimation

Because our dependent variable is binary we use binomial logistic regression.[9] To account for our three-level data structure where remedial orders are nested in judgments and respondent states, we estimate hierarchical models with random intercepts at both the judgment and country level.[10] Because each judgment has only one respondent state, the judgment-level intercepts are nested in countries. To account for how the likelihood of compliance will vary depending on the time since the judgment, we also include a cubic polynomial of time since the remedial judgment.

4.3.2 Results

Results from the hierarchical logistic regression models are reported in Table 4.1. The dependent variable in all models is a binary indicator of whether the respondent state has complied with the remedial order. The main independent variable is whether the decision on the remedial order contained a dissenting vote. All models include random intercepts at both the judgment and country level and the cubic time trend, but we introduce the control variables gradually to assess whether the estimated relationship is sensitive to any particular set of controls. With the exception of the bivariate model, our coefficient for judicial dissent and the associated standard error are relatively stable across the different model specifications.

Model 1 includes only the independent variable, the time trend, and the random intercepts. In this model, the relationship between judicial dissent and compliance is not statistically significant. The lack of a relationship in this model can be explained by the fact that most split decisions in our data concern mone-

[9] Our results are robust to specifying the model instead with a probit link function. Comparing model fit suggests that the logistic specification fit the data better.

[10] The models are estimated using the lme4 package in R (Bates et al. 2015).

tary remedies, which have a higher compliance rate than other types of remedial orders.

In model 2, we control for the type of remedy, and here we find a strong and significant relationship between judicial dissent and the likelihood of non-compliance. Given the large differences in the likelihood of compliance between different types of remedial orders[11] (see also Huneeus 2011, Parente 2018), it is not surprising that this particular control is important. This negative and significant relationship between dissent and compliance holds across the subsequent model specifications.

Model 3 includes our three measures of initial resistance from the respondent state, the count of preliminary objections, the dummy for whether the state explicitly acknowledged international responsibility, and the dummy for whether an *ad hoc* judge was appointed. Including these controls does not have any important influence on the coefficient for judicial dissent. In model 4 we add the count of *amicus curiae* briefs submitted to the Court. The coefficient for *amicus curiae* briefs is close to zero and not statistically significant. More importantly for our purposes, the relationship between judicial dissent and compliance is robust to controlling for the count of *amici* briefs. Model 5 introduces controls for the type of human rights violations addressed by the judgment, while model 6 adds the country-level controls. The relationship between judicial dissent and a greater risk of non-compliance holds also in these models.

Because our model is non-linear, the estimated change in the predicted probability of compliance associated with judicial dissent depends on the other variables in the model. For the remedial orders in our data, the average predicted probability for full compliance is $.24$ if the remedial order was affected by judicial dissent and $.56$ if the order was unanimous. This difference shows there is a substantially important difference in the likelihood of compliance associated with judicial dissent.

The models reported in Table 4.1 suggest that judicial dissent has an effect

[11]The monetary remedies have the highest compliance rate, with 71 per cent of the payments having been paid in full. Legislative and judicial remedies on the other hand have compliance rates at 24 and 15 per cent, respectively. With a compliance rate of 68 per cent, orders to publish the judgment or acknowledge state responsibility are comparable to the monetary remedies. Remedial orders of a practical nature, or requiring only executive action, have a compliance rate of 28 per cent.

Table 4.1: Three-level logistic regression models

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Dissent against remedial order	-1.24	-2.55^{*}	-2.77^{*}	-2.78^{*}	-2.87^{*}	-2.60^{*}
	(1.15)	(1.15)	(1.19)	(1.22)	(1.26)	(1.27)
Legislative remedy		-3.16^{***}	-3.17^{***}	-3.17^{***}	-3.21^{***}	-3.04^{***}
		(0.64)	(0.64)	(0.64)	(0.65)	(0.67)
Practical/executive remedy		-2.60^{***}	-2.60^{***}	-2.60^{***}	-2.58^{***}	-2.56^{***}
		(0.32)	(0.32)	(0.32)	(0.32)	(0.32)
Judicial remedy		-3.99^{***}	-4.00^{***}	-4.00^{***}	-4.00^{***}	-4.11^{***}
		(0.45)	(0.45)	(0.45)	(0.45)	(0.47)
Publication remedy		0.33	0.32	0.32	0.34	0.36
		(0.35)	(0.35)	(0.35)	(0.35)	(0.35)
Number of preliminary objections			-0.11	-0.11	-0.13	-0.13
			(0.19)	(0.19)	(0.19)	(0.19)
Violation acknowledged by state			-0.65	-0.65	-0.16	-0.31
			(0.78)	(0.78)	(0.81)	(0.84)
ad hoc judge			0.80	0.80	0.83	0.84
			(0.72)	(0.73)	(0.72)	(0.74)
Number of *amici*				0.00	0.03	-0.02
				(0.06)	(0.07)	(0.07)
Physical integrity rights					-1.08	-0.68
					(0.89)	(0.92)
Political and civil rights					0.26	0.20
					(0.79)	(0.90)
Legal Procedure/due process rights					-0.69	-1.16
					(1.71)	(1.72)
Privacy and property rights					$-1.77^{\dagger}$	$-1.96^{\dagger}$
					(0.99)	(1.03)
Veto players						0.36
						(2.41)
Accountability institutions						1.61
						(1.12)
Bureaucratic quality						0.48
						(0.81)
Time trend	-91.48^{***}	-65.98^{***}	-66.42^{***}	-66.39^{***}	-68.01^{***}	-67.96^{***}
	(10.08)	(9.86)	(9.94)	(9.85)	(10.18)	(10.25)
Time trend^2	15.59^{*}	4.74	5.72	5.72	7.83	8.95
	(7.10)	(7.64)	(7.81)	(7.73)	(8.09)	(8.36)
Time trend^3	-6.33	0.17	0.14	0.13	-1.94	-3.23
	(5.88)	(7.07)	(7.09)	(7.03)	(7.36)	(7.58)
(Intercept)	0.05	1.33^{**}	$1.32^{\dagger}$	$1.32^{\dagger}$	2.91	0.42
	(0.47)	(0.48)	(0.68)	(0.70)	(2.01)	(2.38)
AIC	1098.74	928.20	932.00	934.00	936.91	927.48
BIC	1134.78	984.83	1004.08	1011.22	1034.73	1040.62
Log Likelihood	-542.37	-453.10	-452.00	-452.00	-449.46	-441.74
Num. obs.	1272	1272	1272	1272	1272	1265
Num. groups: Judgments	138	138	138	138	138	136
Num. groups: Respondent states	21	21	21	21	21	20
Var: Judgments (Intercept)	12.85	11.58	11.57	11.57	11.47	12.35
Var: Respondent states (Intercept)	1.20	1.44	1.37	1.36	1.12	0.08

$^{***}p < 0.001, {}^{**}p < 0.01, {}^{*}p < 0.05, {}^{\dagger}p < 0.1$

on compliance that is independent of important confounders such as the degree to which the respondent state signaled resistance during the initial proceedings and the extent to which the case is salient to civil-society actors. Nevertheless, there might still be unmeasured differences between judgments and remedial orders that explain both dissent and non-compliance. Sensitivity analysis allow us to assess how important an omitted variable would have to be to invalidate our inferences (Frank 2000, Clarke 2009, Frank et al. 2013). The sensitivity test shows that a potential omitted variable correlated with both dissent and compliance at .15 (conditional on the other covariates in the model) would be sufficient for the dissent coefficient to be insignificant at the .10 level.[12] Because the existence of such a variable is not unimaginable, caution is warranted when interpreting the relationship between judicial dissent and compliance as causal. This caveat notwithstanding, our analysis lends at least some support for the expectation that judicial dissent is associated with a greater risk of non-compliance.

4.4 Evidence from the ECtHR

We now turn to evidence from the European Court of Human Rights. The ECtHR was established in 1959 to adjudicate alleged violations of the European Convention on Human Rights in the Council of Europe states. The importance of the ECtHR greatly increased after the end of the Cold War when former communist states joined the Council of Europe and the jurisdiction of the ECtHR. Today, the ECtHR has jurisdiction of human rights complaints launched by individuals in 47 Council of Europe states.[13]

Previously, applications were filtered through the European Commission of Human Rights, but this Commission was abolished in 1998. The increase in mem-

[12]We use the "konfound" package developed by Rosenberg, Xu and Frank (2018) to conduct the sensitivity test. For the purpose of the causal sensitivity test, we re-estimated model 6 as a linear probability model. The linear probability model yields substantively similar results as the logistic models and is reported in the appendix.

[13]These are These are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, The Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Moldova, Romania, Russia, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.

ber states and the fact that individuals can now complain directly to the ECtHR after exhausting domestic remedies led to a significant increase in the ECtHR's case load from the late 1990s.

The ECtHR is composed of one judge from each member state. Each judge is elected by the Council of Europe's Parliamentary Assembly from a list of three candidates nominated by the relevant member state. Until 2010, judges were elected for renewable six-year terms. Since 2010, judges have been elected for nine-year terms, but may no longer be re-elected.

Since the entry into force of Protocol 11 in 1998, merits judgments are rendered by seven-judge Chamber panels or by seventeen-judge Grand Chamber panels (Leach 2011: 11). Cases may reach the Grand Chamber either because the Chamber relinquishes jurisdiction or because the Chamber judgment is appealed. For cases decided in Chamber, panels consist of the judge nominated from the respondent states and six other judges from the section of the court that deals with cases against the relevant respondent state. The sections are set up for periods of three years and the composition of each section aims to be balanced with respect to the gender and geographic and legal origin of the judges. The ECtHR currently has five sections. For cases decided in Grand Chamber, the panel always consists of the Court's president and vice-presidents, the section presidents, and the judge nominated from the respondent state. The remaining judges are selected through lottery.

4.4.1 Research Design

To investigate the relationship between judicial dissent and compliance with ECtHR judgments, we employ a novel database of ECtHR cases compiled by Stiansen and Voeten (2017). This database includes information about all ECtHR judgments rendered by June 1, 2016, their implementation by respondent states, and dissenting opinions.

Units of Analysis and Dependent Variable

Compliance with ECtHR judgments is monitored by the Committee of Ministers of the Council of Europe. The Committee of Ministers has established a specialized secretariat, the Department for Execution of ECtHR judgments to conduct the

day-to-day monitoring of implementation processes and make recommendations concerning when compliance has been achieved. Çali and Koch (2014) find that this system contributes to a relatively effective and unbiased compliance monitoring.

Consistent with previous research (Voeten 2014, Grewal and Voeten 2015), our measurement of compliance is based on the conclusions reached in this compliance-monitoring system. Specifically, we consider whether the Committee of Ministers has closed the compliance monitoring by rendering a final resolution. To account for the duration of the implementation process, we count the number of days between the judgment and the final resolution.

The Committee of Ministers organizes the monitoring of multiple judgments under the heading of lead cases, which are the first cases to identify a particular human rights violation in a particular respondent state. If compliance is not promptly achieved, it is not uncommon that a respondent state is faced with multiple new ECtHR judgments pertaining to the same human rights violation affecting other applicants. In such cases, the compliance monitoring for these repetitive judgments is grouped under the lead case. The respondent state is considered to have complied when it has remedied the violations identified both in the lead case and in repetitive cases grouped under it. The compliance with lead cases and repetitive cases can therefore not be assessed independently. Lead case judgments are therefore the appropriate units of analysis for studies of compliance with ECtHR judgments (Voeten 2014, Grewal and Voeten 2015).

We exclude from the analysis cases that were settled amicably between the applicant and the respondent state or that were decided by the now defunct European Commission of Human Rights. After these exclusions, we are left with a dataset of 3735 judgments. Of these, 2474 had been complied with by June 1, 2016 which is the last date of observation in the dataset.

Independent variables

Our theoretical argument concerns judicial dissent that provides arguments against compliance. Stiansen and Voeten (2018) coded the content and direction of all dissenting opinions in our dataset. For each contested issue in split judgments, they coded whether the dissenting opinion favored the respondent state or the

applicant. We use this information to measure the judicial dissent that favored the respondent state on at least some of the contested issues.

We measure dissent based on whether there was disagreement concerning the lead case judgment. First, we create a dummy variable that takes the value 1 if at least one judge dissented in favor of the respondent state and 0 otherwise. 425 of the judgments in the dataset (or about eleven per cent) contained at least one pro-government dissent. As shown by Voeten (2008), judges are more prone to dissent against cases that find a violation by their appointing governments. The dissent from such judges might be expected to be particularly likely to relate to how controversial the case is in the respondent state. We therefore also include a dummy capturing whether the non-national judges dissented. 358 judgments (or about ten per cent of our dataset) contained at least one pro-government dissent from a judge other than the national judge.

In contrast to the IACtHR, we have several judgments from the ECtHR in which more than one judge dissented. Qualitative evidence from implementation processes suggests that how many of the judges that dissented can make a difference in debates concerning compliance. For instance, opposition politicians arguing against legislative measures introduced to comply with the *Folgerø and others v. Norway* stressed that the judgment was rendered by the smallest possible majority in the Grand Chamber (Odelstinget 2008). We therefore also consider the share of the judges on the panel that dissented in favor of the respondent state.

The share of dissenting judges has a mean value of .028, reflecting the fact that such narrow majorities are relatively rare.[14] When excluding dissents from national judges, the mean share of dissenting judges is 0.024.

Control Variables

An important concern with respect to causal inference – for the ECtHR as for the IACtHR – is that judgments may vary systematically either because judges tend to disagree in particularly controversial cases or because the expectation of a challenging compliance process lead the Court to suppress open dissent. In the first scenario, we risk overestimating the effect of dissent on compliance, while in the second scenario we risk underestimating the same effect. In the appendix,

[14] Because the dissenting judges may have dissented to different parts of the judgment, the share of judges dissenting on at least one issue can exceed .5.

we therefore consider panel composition – specifically the propensity of individual judges on a panel to submit separate opinions – as an instrument for dissent. Voeten (2012) argues that because the composition of judges other than the non-national judge is decided through rotation or lottery, panel composition may be considered exogenous to compliance. Unfortunately, we find that this instrument is not strong enough to make us confident in the result of this analysis. Our primary identification strategy is therefore to estimate multivariate models in which we condition on potential confounders.

The types of measures needed for compliance is important also in the ECtHR context. For instance, judgments that require legislative changes can be expected to be more controversial and tend to be implemented at a slower rate than other judgments (Stiansen 2018). We therefore control for the type of remedies required for implementation. Specifically, we control for whether the judgment required legislative changes, jurisprudential changes, executive action, practical measures (such as the rehabilitation of prisons), publication and dissemination of the judgment, and individual measures (such as returns of property or reopening of domestic proceedings). Because a judgment may require more than one type of remedies, these categories are not mutually exclusive.

As a proxy for the degree to which the judgment was associated with legal controversy, we consider the judgment's contribution to development of new ECtHR case law. Innovative judgments that contribute to developing new convention law might face a greater likelihood of resistance from respondent states. Disagreement concerning how the ECtHR's case law ought to develop is also one of the primary sources of dissent. The ECtHR registry classifies judgments in four importance levels: judgments that are sufficiently important to be included in a case report, other judgments that "make a significant contribution to the development, modification, or clarification" of case law (importance level 1), judgments that do not make such significant contribution, but still "go beyond merely applying existing case law" (importance level 2), and finally judgments of "little legal interest" (importance level 3). Because this variable is on the ordinal scale, we introduce it as a set of dummy variables with case reports as the reference category.

Both pro-government dissent and compliance difficulties may be particularly likely for judgments that go far in what may be considered an "applicant friendly" or "violationist" direction. We therefore control for how "applicant friendly"

the median judge on the panel is based on the judge ideal points available from Stiansen and Voeten (2018).

More controversial judgments are also more likely to be decided in the Grand Chamber, where dissent is also more frequent. On the one hand, the controversy surrounding such cases may contribute not only to more frequent dissents, but also to a lower likelihood of prompt compliance. On the other hand, judgments rendered by the Grand Chamber may be considered particularly authoritative and therefore face less resistance within respondent states. We therefore include a dummy variable that takes the value of 1 if the judgment was rendered by the Grand Chamber and 0 otherwise.

Both the likelihood of dissent and compliance politics might be influenced by both the number and types of human rights violations identified in the judgment. We therefore include both a count of the number of articles found to be violated and a set of dummy variables for the most frequently violated articles. Specifically, we control for whether article 2 (right to life), article 3 (prohibition of torture), article 5 (right to liberty), article 6 (right to fair trial), article 8 (right to respect for private and family life), article 10 (freedom of speech), article 13 (right to an effective remedy), article 14 (prohibition of discrimination), and article 1 of protocol 1 (right to private property) were violated.

We include fixed effects on the respondent state. In addition, we control for domestic veto players, bureaucratic quality, and strength of accountability institutions using the same set of variables as for the IACtHR analysis.

Finally, we control for the year of the judgment both as a linear time trend and using three dummy variables that indicate whether judgment was rendered after important institutional changes in the European human right system that might be expected to influence judicial behavior and compliance: Protocol 11 which established the permanent court in 1998, changes in the Committee of Ministers' working methods which strengthened the compliance monitoring in 2006, and finally Protocol 14 which increased the term limits for the judges and removed the possibility for re-election in 2010.

Summary statistics for all the included variables are reported in the appendix.

Estimation

Compliance with ECtHR judgments can take several years to achieve even for willing states. At the same time, compliance is sometimes achieved after several years of defiance. It would therefore be problematic to only consider the outcome and not the duration of the ECtHR implementation processes. Our preferred estimator for modelling compliance with ECtHR judgments is therefore the Cox model, using the number of days until compliance (and a censoring indicator) as our dependent variable.[15] However, in the appendix we report logistic regression models of compliance outcomes. Our results do not depend on the choice of estimator.

4.4.2 Results

A set of Cox models of compliance with ECtHR judgments are reported in Table 4.2. The models are reported as coefficients with standard errors in parentheses. The models include different measures of judicial dissent, along with the full set of control variables discussed above, and are stratified by the respondent state to account for unobserved country-level variation. Average marginal differences in median expected years until compliance associated with dissent are reported in Figure 4.1. The marginal differences are calculated based on the Cox models using the method proposed by Kropko and Harden (2017).

In model 7, we include a dummy for whether at least one judge dissented in favor of the respondent state. In line with Hypothesis 4.1, the model suggests a statistically significant relationship between judicial dissent and compliance, but the magnitude of this relationship is relatively moderate. The average marginal difference reported in Figure 4.1 suggests that judgments in which at least one judge dissented in favor of the respondent state are on average implemented about 6.5 months later than other judgments. This moderate difference suggests that judicial dissent is not a primary explanation for lagging implementation of ECtHR judgments. Yet, judicial dissent has a discernable influence on compliance politics even when we control for a range of indicators of case controversy and the

[15] Throughout, we check for violations of the proportional hazard assumption using the Grambsch and Therneau (1994) test and interact any offending variables with the natural logarithm of time (Box-Steffensmeier and Zorn 2001).

Table 4.2: Stratified Cox models of compliance with ECtHR judgments

	Model 7	Model 8	Model 9	Model 10
Pro-government dissent	-0.19^{*}			
	(0.09)			
Pro-government dissent, excluding national judge		-0.25^{*}		
		(0.10)		
Share of judges dissenting in favor of government			-0.69^{*}	
			(0.31)	
Share of judges dissenting in favor of government, excluding national judge				-0.89^{**}
				(0.34)
Need for legislative changes	-5.39^{***}	-5.40^{***}	-5.41^{***}	-5.41^{***}
	(0.73)	(0.73)	(0.72)	(0.72)
Need for legislative changes * log(t)	0.63^{***}	0.63^{***}	0.63^{***}	0.63^{***}
	(0.11)	(0.11)	(0.11)	(0.11)
Need for jurisprudential changes	-0.63^{***}	-0.63^{***}	-0.62^{***}	-0.63^{***}
	(0.12)	(0.12)	(0.12)	(0.12)
Need for practical measures	-0.52^{***}	-0.52^{***}	-0.52^{***}	-0.52^{***}
	(0.08)	(0.08)	(0.08)	(0.08)
Need for executive action	-0.43^{***}	-0.43^{***}	-0.44^{***}	-0.44^{***}
	(0.06)	(0.06)	(0.06)	(0.06)
Need for publication of judgment	-0.04	-0.04	-0.04	-0.03
	(0.09)	(0.09)	(0.09)	(0.09)
Need for individual measures	-0.46^{***}	-0.46^{***}	-0.46^{***}	-0.46^{***}
	(0.06)	(0.06)	(0.06)	(0.06)
Grand Chamber judgment	0.11	0.12	0.11	0.11
	(0.09)	(0.09)	(0.09)	(0.09)
Ideal point of median judge	-0.10	-0.10	-0.10	-0.10
	(0.14)	(0.14)	(0.14)	(0.14)
Importance level 1	0.10	0.10	0.10	0.10
	(0.10)	(0.10)	(0.10)	(0.10)
Importance level 2	-0.00	-0.01	0.00	-0.00
	(0.09)	(0.09)	(0.09)	(0.09)
Importance level3	0.42^{***}	0.42^{***}	0.43^{***}	0.42^{***}
	(0.10)	(0.10)	(0.10)	(0.10)
Number of articles violated	-0.13	-0.13	-0.12	-0.12
	(0.15)	(0.15)	(0.15)	(0.15)
Right to life violation	-0.40	-0.40	-0.40	-0.40
	(0.24)	(0.24)	(0.24)	(0.24)
Prohibition of torture violation	-0.19	-0.19	-0.19	-0.19
	(0.13)	(0.13)	(0.13)	(0.13)
Right to liberty violation	-0.07	-0.07	-0.07	-0.08
	(0.16)	(0.15)	(0.16)	(0.15)
Right to fair trial violation	-0.03	-0.03	-0.04	-0.04
	(0.10)	(0.10)	(0.10)	(0.10)
Right to respect for private and family life violation	-0.04	-0.04	-0.05	-0.05
	(0.10)	(0.10)	(0.10)	(0.10)
Freedom of expression violation	-0.07	-0.07	-0.07	-0.07
	(0.12)	(0.12)	(0.12)	(0.12)
Right to effective remedy violation	-0.03	-0.03	-0.04	-0.03
	(0.16)	(0.16)	(0.16)	(0.16)
Prohibition of discrimination violation	0.38^{*}	0.37^{*}	0.36^{*}	0.36^{*}
	(0.18)	(0.18)	(0.18)	(0.18)
Private property rights violation	-0.36	-0.36	-0.37	-0.37
	(0.21)	(0.21)	(0.22)	(0.21)
Veto players	0.50	0.54	0.51	0.52
	(0.56)	(0.56)	(0.57)	(0.57)
Bureaucratic quality	-0.10	-0.10	-0.10	-0.11
	(0.11)	(0.11)	(0.11)	(0.11)
Accountability institutions	1.76^{**}	1.76^{**}	1.75^{**}	1.75^{**}
	(0.56)	(0.57)	(0.57)	(0.57)
Year of judgment	-0.04^{**}	-0.04^{*}	-0.05^{**}	-0.04^{**}
	(0.02)	(0.02)	(0.02)	(0.02)
Judgment rendered after protocol 11	-1.06^{***}	-1.07^{***}	-1.05^{***}	-1.06^{***}
	(0.21)	(0.21)	(0.21)	(0.21)
Judgment rendered after change in Committee of Minister working methods	0.13	0.13	0.14	0.13
	(0.12)	(0.12)	(0.12)	(0.12)
Judgment rendered after protocol 14	0.13	0.13	0.14	0.14
	(0.82)	(0.82)	(0.82)	(0.82)
Judgment rendered after protocol 14 * log(t)	0.08	0.08	0.07	0.07
	(0.12)	(0.12)	(0.12)	(0.12)
AIC	17689.71	17686.38	17689.12	17685.91
Num. events	2355	2355	2355	2355
Num. obs.	3422	3422	3422	3422

$^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$.
All models are stratified by respondent state.
Standard errors are clustered by respondent state.

compliance environment.

The judge nominated from the respondent state might be particularly sensitive to controversy within the respondent state when deciding whether to dissent. In Model 8, we therefore include a dummy which takes the value 1 if any of the other judges dissented. Excluding the national judge slightly strengthens the negative relationship between judicial dissent and prompt compliance. When the national judge is excluded, the average marginal difference in the expected median time until compliance increases to about eight months.

Models 9 and 10 considers whether judgments that contain more than one dissent are even less likely to be promptly complied with. The dependent variable is the share of all the judges on the bench and all the judges except the national judge that dissented. In Model 9, we include the share of all judges on the panel that dissented in favor of the respondent state. In Figure 4.1, we display the average difference in time until compliance associated with having $\frac{3}{7}$ of the judges dissenting in favor of the respondent state. Such judgments are on average implemented close to 10 months after comparable judgments without dissent. In line with our expectations, there are thus greater compliance challenges associated with having a minimal majority judgment than by having a single dissenting judge.

In model 10, we include the share of the judges other than the national judge that dissented. In Figure 4.1, we consider the difference in expected time until compliance if $\frac{3}{6}$ of the non-national judges dissented. The average marginal difference is about 15 months. The Kaplan-Meier estimate of the median time until compliance in our dataset is about 51 months. In this context, the estimated average delay of 15 months suggests that judicial dissent is associated with at greater compliance difficulties that are substantively important also in the ECtHR setting.

To be clear, we do not claim that our analysis provide definitive proof of a causal relationship between judicial dissent and challenges for prompt compliance. Future research may wish to further investigate the veracity of the causal relationship between dissent and non-compliance. We do, however, find evidence of a statistical relationship that holds for two different courts and when controlling for a rich set of potential confounders. Our observational evidence is, moreover, consistent with micro-level experimental evidence concerning how open dissent influences acceptance of judicial decisions (Zink, Spriggs and Scott 2009). The best available evidence is therefore at least suggestive of a relationship between

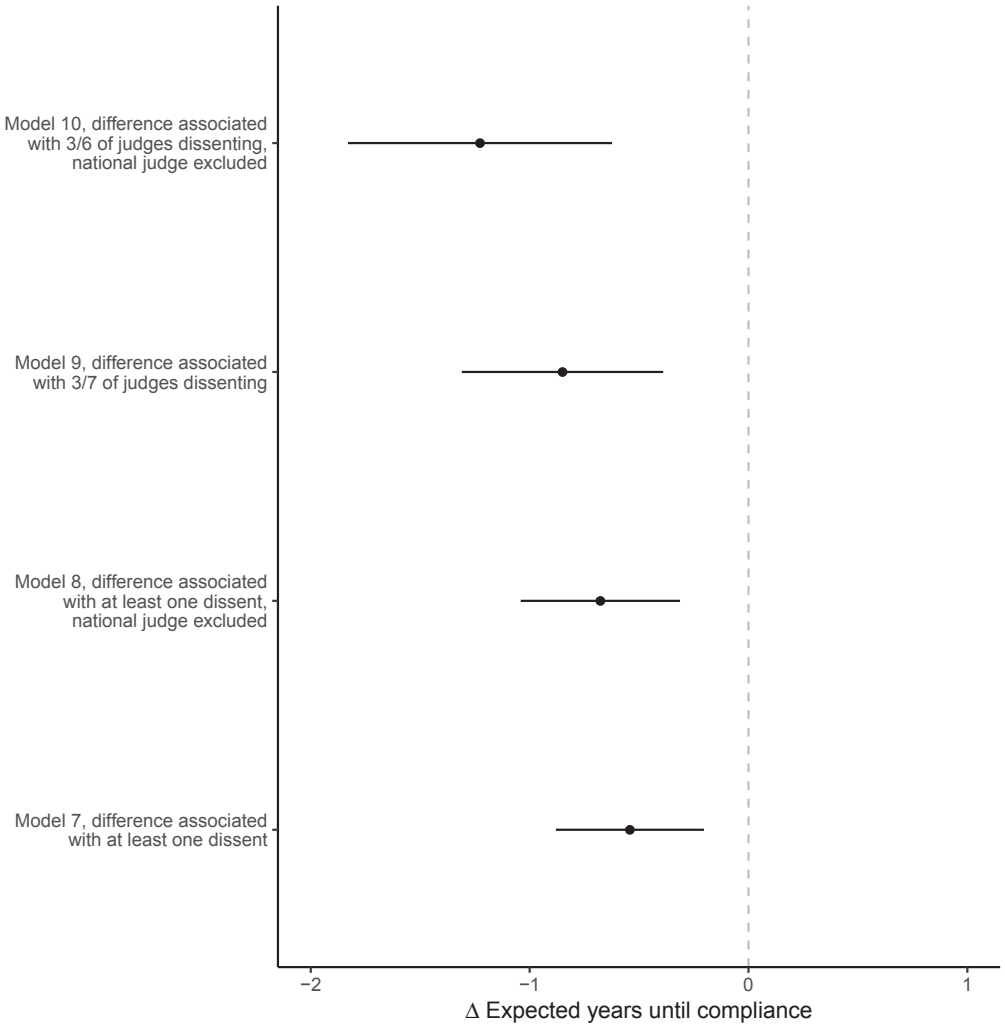

Figure 4.1: Average marginal differences in median expected years until compliance with ECtHR judgments associated with judicial dissent. Error bars indicate 95 per cent confidence intervals.

judicial dissent and greater compliance challenges.

4.5 Conclusion

Our study indicates that judicial dissent may reduce the ability of courts to achieve compliance with their rulings. To be clear, we do not claim to provide definitive proof of a causal relationship. Future research may wish to further investigate the veracity of the causal relationship between dissent and non-compliance. We do, however, find evidence of a statistical relationship that holds for two different courts and when controlling for a rich set of potential confounders. Our observational evidence is, moreover, consistent with micro-level experimental evidence concerning how open dissent influences acceptance of judicial decisions (Zink, Spriggs and Scott 2009). The best available evidence is therefore at least suggestive of a relationship between judicial dissent and greater compliance challenges.

These findings suggest that both those involved in the institutional design of constitutional and international courts, and the judges sitting on these courts, face an important tradeoff between, on the one hand, the possible positive implications of allowing and practicing judicial dissent, such as higher quality judgments and increased accountability and, on the other hand, the increased risk of non-compliance with their rulings.

We found that the relationship between judicial dissent and non-compliance is particularly strong for the IACtHR, which also faces exceptionally difficult compliance challenges. For a court that is confronted with severe compliance problems, discouraging dissent on the bench may be a wise strategy. It should be noted that the practice of letting the defendant state appoint an *ad hoc* judge to the court—if a judge from that state is not already on the bench—is likely not helpful in this regard. A large share of the dissents in the IACtHR comes from these *ad hoc* judges. Similarly, the ECtHR always includes on the bench a judge appointed by the respondent state, which also produces more dissents. Thus, our study indicates an additional trade-off for international courts; the value of local knowledge of the defendant state, which a national judge can bring may need to be balanced against an increased risk of non-compliance due to dissent.

Our findings have several implications for the judicial politics literature. We provide support for a chain of arguments that links domestic compliance politics to

perceptions of legal authority. It has been argued that court rulings influence politics by transferring legitimacy to actors with interests that align with the court's interpretation of the law, and that compliance hinges on the ability of these actors to use their strengthened position in domestic debates to facilitate policy change (e.g. Alter 2014: chapter 2). In line with this argument, we show that variation in the degree to which judgments are likely to be perceived as legitimate influences the likelihood of compliance and the duration of implementation processes.

Furthermore, the relationship between judicial dissent and compliance means that judges can influence the reception of their judgment by their actions. This finding contributes to the scholarship on domestic and international courts that argue that persuading external audiences of the legal qualities of judgments is important for courts when they face a hostile compliance environment (Hume 2006, Voeten 2012, Larsson et al. 2017). While existing scholarship has demonstrated that courts act strategically to influence their perceived legitimacy when they face political challenges, we show that there is indeed a relationship between one characteristic of the judicial output likely to influence perceived legitimacy – judicial dissent – and the likelihood of compliance.

Finally, the negative relationship between judicial dissent and compliance suggests that the positive effects of allowing dissents, such as increasing transparency and assuring individual judicial responsibility (Stephens 1952: 396-397), need to be weighed against the need to secure judgments likely to be complied with. It also suggests that when a unanimous decision cannot be reached, judges may be advised to increase the efforts in terms of other available strategies to promote compliance.

4.A Appendix for The Dilemma of Dissent. Split Judicial Decisions and Compliance with the Inter-American Court of Human Rights

4.A.1 Dissents Against IACtHR Remedial Orders

Table 4.A.1 lists the IACtHR judgments in our dataset that were affected by judicial dissent, the dissenting judge, and the number of remedial orders that were

affected by the dissent.

Table 4.A.1: Dissenting IACtHR Judges by Case

Case	Dissenting judge	Share of orders with dissent
Neira Alegría et al. v. Peru	Jorge E. Orihuela-Iberico	3 of 4 remedial orders
YATAMA v. Nicaragua	Alejandro Montiel Argüello	5 of 5 remedial orders
Martiza Urrutia v. Guatamala	Arturo Martínez Gálvez	3 of 4 remedial orders
Anzualdo Castro v. Peru	Víctor Oscar Shiyín García Toma	3 of 10 remedial orders
Mayagna (Sumo) Awas Tingni Community v. Nicaragua	Alejandro Montiel Argüello	2 of 4 remedial orders
Serrano Cruz Sisters v. El Salvador	Alejandro Montiel Argüello	11 of 11 remedial orders
Perozo et al. v. Venezuela	Pier Paolo Pasceri Scaramuzza	4 of 4 remedial orders
Reverón Trujillo v. Venezuela	Einer Elías Biel Morales	7 of 7 remedial orders
Ríos et al. v. Venezuela	Pier Paolo Pasceri Scaramuzza	5 of 5 remedial orders
Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica	Eduardo Vio Grossi	31 of 31 remedial orders
Wong Ho Wing v. Peru	Eduardo Vio Grossi and Alberto Pérez Pérez	6 of 6 remedial orders

4.A.2 Reasons for Dissents Against IACtHR Remedial Orders

This section provides brief summaries of the reasons for dissent against the IACtHR remedial orders as communicated in the dissenting judge's dissenting opinion. The summaries are based on the English versions of the dissenting opinions and are also cross referenced with the summaries provided by the IACtHR project at Loyola Law School, Los Angeles.

Dissenting opinion of Judge *Ad Hoc* Jorge E. Orihuela-Iberico on the remedial orders of *Neira Alegría et al. v. Peru*

Judge *Ad Hoc* Jorge E. Orihuela Iberico dissented only against the monetary compensations that were awarded. In his dissenting opinion, he argued that awarded amounts were arbitrarily set and that the IACtHR did not adequately consider the economic situation of Peru when deciding on the awards. According to his dissenting opinion, he thought the IACtHR was wrong in basing the awarded amounts on the general economic conditions in Latin America rather than in Peru specifically. He further argued that the compensations should have been based on Peru's statistics of Minimum Living Wages, which would have resulted in lower compensation amounts.

Dissenting opinion of Judgge *Ad Hoc* Alejandro Montiel Argüello on the remedial orders of *YATAMA v. Nicaragua*

Judge *Ad Hoc* Alejandro Montiel Argüello dissented both against the remedial orders and against the decisions on the merits of the case. His reason for dissenting

against the monetary measures was primarily that according to him there were no human rights violations in the case. In explaining his dissent against the other measures, including the ordered legislative change and the ordered publication of the judgment, he further argued that these measures were attempts to promote human rights rather than to provide remedies for a violation that had occured. The dissenting opinion holds that the IACtHR jurisdiction is limited to identifying appropriate remedies for the specific victims of the case.

Dissenting opinion of Judge Arturo Martínez Gálvez on the remedial orders of *Maritza Urrutia v. Guatamala*

Judge Arturo Martínez Gálvez dissented against the amount of compensation awarded to Maritza Urrutia. His main argument was that the awarded amount was excessive considering the economic situation of Guatamala and that they placed on unfair burden on the country's taxpayers.

Dissenting opinion of Judge *Ad Hoc* Víctor Oscar Shiyín García Toma on the remedial orders of *Anzualdo Castro v. Peru*

Judge *Ad Hoc* Víctor Oscar Shiyín García Toma dissented against the orders on monetary remedies because he objected to the way the amounts were decided. He argued that rather than using discretionary criteria, the IACtHR should use technical experts to determine specific rules for determining awards. He also held that the IACtHR ought to take the financial situation of the respondent state into account when awarding monetary compensation. He pointed to how the amounts awarded by IACtHR far exceeded "the amounts of reparations that the defendant State has, with all its efforts, been paying to victims or next-of-kin for acts of terrorism (civilians, political authorities and police and military officers); as well as the cases related to the HIV/AIDS infection at State hospitals".

Dissenting opinion of Judge *Ad Hoc* Alejandro Montiel Argüello on the remedial orders of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*

Judge *Ad Hoc* Alejandro Montiel Argüello dissented against the monetary remedies ordered in the case. Argüello's dissent against the ordered remedies was based on his view on the merits of the case. Argüello also dissented against parts

of the merits decision, arguing that the right to property and the right to judicial protection had not been violated. Because he held that there had not been a violation of these rights, Argüello concluded that monetary compensation was not appropriate. He also claimed that the costs and expenses of the applicants should not have been ordered to be reimbursed as the respondent state had rational reasons for contesting the applications.

Dissenting opinion of Judge *Ad Hoc* Alejandro Montiel Argüello on the remedial orders of *Serrano Cruz Sisters v. El Salvador*

Judge *Ad Hoc* Alejandro Montiel Argüello dissented to all the ordered remedies in the case of *Serrano Cruz Sisters v. El Salvador*. The dissent was motivated by his disagreement with the merits decision. Because Argüello's position was that the state could not be held responsible for the alleged disappearances in the case, he thought that ordering remedies that the state would have to implement was not appropriate. He also argued against the tendency of the IACtHR to order far reaching remedies rather than limiting its focus to providing reparations to the specific victims of the case at hand. Finally, he posited that the right to pecuniary damages cannot be inherited.

Dissenting opinion of Judge *Ad Hoc* Pier Paolo Pasceri Scaramuzza on the remedial orders of *Perozo et al. v. Venezuela*

Judge *Ad Hoc* Pier Paolo Pasceri Scaramuzza dissented against all the remedial orders as well as the decisions on the merits and the rejection of preliminary objections. His main reasons for dissenting, as outlined in the dissenting opinion, were that the applicants had not exhausted all the domestic remedies available to them and that appropriate remedies would have been available in the Venezuelan judicial system. He argued that for the IACtHR to resolve issues that could have been resolved within the Venezuelan judicial system would leave the latter "empty".

Dissenting opinion of Judge *Ad Hoc* Einer Elías Biel Morales on the remedial orders of *Reverón Trujillo v. Venezuela*

Judge *Ad Hoc* Einer Elías Biel Morales dissented against "the Judgment in its totality", and therefore voted against all the ordered remedies. The reason provided for the dissent was that he disagreed with the decision to dismiss Venezuela's preliminary objection concerning the failure to exhaust domestic remedies.

Dissenting opinion of Judge *Ad Hoc* Pier Paolo Pasceri Scaramuzza on the remedial orders of *Ríos et al. v. Venezuela*

Judge *Ad Hoc* Pier Paolo Pasceri Scaramuzza voted against all the remedial orders as well as the merit decisions and the dismissal of the preliminary objections. Parts of the reasoning behind the dissent was procedural as Scaramuzza argued that the preliminary objection concerning the failure to exhaust domestic remedies should not have been dismissed. According to Scaramuzza, the applicants would, moreover, have had good opportunities for having their claims addressed in the Venezuelan judicial system. Scaramuzza also dissented on substantial grounds, arguing that the situation of the applicants was not special and that the political conflict in the respondent state at the time exempted it from responsibility.

Dissenting Opinion of Judge Eduardo Vio Grossi on the remedial orders *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*

Judge Eduardo Vio Grossi dissented against all the remedial orders of the judgment as well as the merits decisions because he disagreed with the majority's interpretation of when life begins. He argued that a ban on *in vitro* fertilization would be in line with the right to life as understood by the drafters of the Convention. He held that the right to life, as protected by the ACHR, begins with the fertilization of the egg rather than the insertion of the fertilized egg into the uterus, which was the majority's view.

4.A.3 Summary Statistics for Variables Included in the Analysis of Compliance with IACtHR Remedial Orders

Summary statistics for all variables included in the analysis of IACtHR remedial orders are reported in Table 4.A.2.

Table 4.A.2: Summary Statistics for analysis of IACtHR remedial orders

Statistic	N	Mean	St. Dev.	Min	Max
Compliance	1,272	0.553	0.497	0	1
Dissenting vote against remedy	1,272	0.063	0.243	0	1
Monetary remedy	1,272	0.564	0.496	0	1
Legislative remedy	1,272	0.040	0.196	0	1
Publication/Aknowledgment	1,272	0.116	0.320	0	1
Practical/executive remedy	1,272	0.191	0.393	0	1
Judicial remedy	1,272	0.090	0.286	0	1
Number of preliminary objections	1,272	1.144	1.696	0	10
Violation acknowledged by state	1,272	0.410	0.492	0	1
Ad hoc judge	1,272	0.436	0.496	0	1
Number of *amici*	1,272	2.419	7.833	0	46
Physical integrity rights	1,272	0.847	0.360	0	1
Political and civil rights	1,272	0.384	0.487	0	1
Legal Procedure/due process rights	1,272	0.954	0.209	0	1
Privacy and property rights	1,272	0.221	0.415	0	1
Political constraints	1,272	0.362	0.174	0.036	0.691
Accountability institutions	1,272	1.009	0.442	0.031	1.957
Bureaucratic quality	1,265	1.916	0.564	1.000	3.000

4.A.4 Ordered Logistic Regression Models of Compliance with IACtHR Remedial Orders

The models reported in the main article are binomial logistic regression models in which the dependent variable is whether full compliance with the remedial order has been achieved. Partial compliance is thus not considered as a separate outcome from non-compliance. In Table 4.A.3, we report the results from an ordered logistic regression model in which partial compliance is considered a mid-category between full compliance and non-compliance. Our conclusions concerning the negative relationship between judicial dissent and compliance hold also in the ordered model.[16]

[16]For estimating the ordered model we use the ordinal package in R (Christensen 2015).

Table 4.A.3: Three-level ordered logistic regression model

	Ordered model
Dissent against remedial order	-2.22^{*}
	(1.00)
Legislative remedy	-2.64^{***}
	(0.49)
Practical/executive remedy	-2.32^{***}
	(0.24)
Judicial remedy	-3.65^{***}
	(0.33)
Publication remedy	0.03
	(0.30)
Number of preliminary objections	-0.04
	(0.17)
Violation acknowledged by state	0.33
	(0.72)
$ad\ hoc$ judge	1.03
	(0.64)
Number of $amici$	-0.01
	(0.06)
Physical integrity rights	-0.92
	(0.80)
Political and civil rights	0.45
	(0.71)
Legal Procedure/due process rights	-0.67
	(1.54)
Privacy and property rights	-2.15^{*}
	(0.89)
Veto players	0.19
	(2.07)
Accountability institutions	2.10^{*}
	(0.98)
Bureaucratic quality	-0.38
	(0.78)
Time trend	-51.70^{***}
	(7.39)
Time trend^2	16.27^{**}
	(6.19)
Time trend^3	-3.76
	(5.13)
Cut point: full compliance/partial compliance	-2.22
	(2.20)
Cut point: partial compliance/non-compliance	-0.82
	(2.19)
Log Likelihood	-735.75
AIC	1517.50
BIC	1635.78
Num. obs.	1265
Num. groups: Judgments	136
Num. groups: Respondent states	20
Var: JudgmentID (Intercept)	9.12
Var: Respondent states (Intercept)	0.78

$^{***}p < 0.001, {}^{**}p < 0.01, {}^{*}p < 0.05, {}^{\dagger}p < 0.1$

4.A.5 Linear Probability Model of Compliance with IACtHR Remedial Orders

The causal sensitivity model discussed in the main article is based on a hierarchical linear probability model. This model is reported in Table 4.A.4 and yields very similar results as the logistic models reported in the main article.

Table 4.A.4: Three-level linear probability model used for causal sensitivity test

	Three-level linear probability model
Dissent against remedial order	-0.23^{*}
	(0.11)
Legislative remedy	-0.25^{***}
	(0.05)
Practical/executive remedy	-0.25^{***}
	(0.02)
Judicial remedy	-0.41^{***}
	(0.03)
Publication remedy	0.02
	(0.03)
Number of preliminary objections	-0.00
	(0.02)
Violation acknowledged by state	0.00
	(0.08)
$ad\ hoc$ judge	0.09
	(0.07)
Number of $amici$	0.00
	(0.01)
Physical integrity rights	-0.07
	(0.09)
Political and civil rights	0.02
	(0.07)
Legal Procedure/due process rights	-0.11
	(0.16)
Privacy and property rights	$-0.16^{\dagger}$
	(0.09)
Veto players	0.06
	(0.21)
Accountability institutions	0.10
	(0.10)
Bureaucratic quality	0.00
	(0.09)
Time trend	-7.03^{***}
	(0.61)
Time trend^2	0.89
	(0.59)
Time trend^3	-0.32
	(0.53)
(Intercept)	0.65^{**}
	(0.24)
AIC	916.00
BIC	1034.28
Log Likelihood	-435.00
Num. obs.	1265
Num. groups: Judgments	136
Num. groups: Respondent states	20
Var: Judgments (Intercept)	0.12
Var: Respondent states (Intercept)	0.01
Var: Residual	0.09

$^{***}p < 0.001, {}^{**}p < 0.01, {}^{*}p < 0.05, {}^{\dagger}p < 0.1$

4.A.6 Summary Statistics for Analysis of Compliance with ECtHR Judgments

Summary statistics for all variables included in analysis of compliance with ECtHR judgments are reported in Table 4.A.5.

Table 4.A.5: Summary Statistics for analysis of ECtHR judgments

Statistic	N	Mean	St. Dev.	Min	Max
Days until compliance	3,735	1,491.750	1,099.357	35	7,322
Compliance	3,735	0.662	0.473	0	1
Pro-government dissent	3,735	0.114	0.318	0	1
Pro-government dissent, excluding national judge	3,735	0.096	0.294	0	1
Share of judges dissenting in favor of government	3,735	0.028	0.088	0	1
Share of judges dissenting in favour of government, excluding national judge	3,735	0.024	0.083	0	1
Need for legislative changes	3,735	0.282	0.450	0	1
Need for jurisprudential changes	3,735	0.152	0.359	0	1
Need for practical measures	3,735	0.128	0.334	0	1
Need for executive action	3,735	0.189	0.392	0	1
Need for publication of judgment	3,735	0.733	0.442	0	1
Need for individual measures	3,735	0.272	0.445	0	1
Grand Chamber judgment	3,735	0.048	0.214	0	1
Importance level 1	3,735	0.138	0.345	0	1
Importance level 2	3,735	0.398	0.490	0	1
Importance level 3	3,735	0.340	0.474	0	1
Ideal point of median judge	3,735	0.389	0.283	−0.400	1.136
Number of articles violated	3,735	1.277	0.632	0	10
Right to life violation	3,735	0.035	0.183	0	1
Prohibition of torture violation	3,735	0.098	0.297	0	1
Right to liberty violation	3,735	0.135	0.342	0	1
Right to fair trial violation	3,735	0.481	0.500	0	1
Right to respect for private and family life violation	3,735	0.157	0.364	0	1
Freedom of expression violation	3,735	0.063	0.243	0	1
Right to effective remedy violation	3,735	0.072	0.259	0	1
Prohibition of discrimination violation	3,735	0.033	0.178	0	1
Private property rights violation	3,735	0.120	0.326	0	1
Veto players	3,727	0.427	0.122	0.000	0.718
Bureaucratic quality	3,585	2.712	1.060	1.000	4.000
Accountability institutions	3,677	1.396	0.534	−0.806	2.191
Year of judgment	3,735	2,006.071	6.862	1,968	2,016
Judgment rendered after protocol 11	3,735	0.879	0.326	0	1
Judgment rendered after change in Commmittee of Minister working methods	3,735	0.613	0.487	0	1
Judgment rendered after protocol 14	3,735	0.328	0.470	0	1

4.A.7 Logistic Regression Models of Compliance with ECtHR Judgments

The models of compliance with ECtHR judgments reported in the main article are Cox regression models which consider both the duration and the outcome of the implementation process as the dependent variable. We prefer this event-history approach because compliance with ECtHR judgments can take multiple years to achieve even when the respondent state is not recalcitrant and because compliance is sometimes achieved after several years of defiance. It is therefore

important to account for how much time the respondent state has had to implement the judgment.

Nevertheless, our main theoretical concern is whether judicial dissent increases the risk of a judgment being defied. In Table 4.A.6, we therefore report a set of fixed effects logistic regression models with compliance as the dependent variable and the same independent and control variables as in the Cox models. We include a cubic polynomial of time since the judgment to account for how the likelihood of compliance varies depending on how long the state has had to comply.

The logistic regression models provide evidence for our expectation that judicial dissent is associated with a lower likelihood of compliance compared to unanimous judgments.

4.A.8 Panel Composition as a Potential Instrument for Dissent in ECtHR Judgments

As discussed in the main article, an important concern is that unobserved case controversy might influence both the likelihood of judicial dissent and the likelihood of compliance. Our results might be biased either if omitted variables both motivate dissent and contribute to non-compliance or if expected compliance challenges increase collegial pressures to avoid open dissent. In the former case we would risk overestimating the effect of dissent on compliance, while in the latter case we would risk underestimating the effect. Although we control for a number of potential confounders, our research design cannot rule out the possibility that our results are driven by unobserved differences between judgments affected by judicial dissent and unanimous judgments.

One way to circumvent this threat to inference would be to exploit variation in judicial dissent that is exogenous to compliance politics. One source of such exogenous variation is individual judges' propensity to diverge from the majority opinion. Judges may differ in their proclivity to write separately for instance due to differences in personality or in professional background. As long as the assignment of judges to panels can be treated as exogenous, such differences between judges would introduce variation in dissent that is exogenous to compliance.

The judge nominated from the respondent state (or an *ad hoc* judge) is always part of judgment panels. However, the remainder of the panel in Chamber judg-

Table 4.A.6: Fixed effects logistic regression models of compliance with ECtHR judgments

	ECtHR Logit 1	ECtHR Logit 2	ECtHR Logit 3	ECtHR Logit 4
Pro-government dissent	-1.06^{*}			
	(0.50)			
Pro-government dissent, excluding national judge		-1.15^{*}		
		(0.55)		
Share of judges dissenting in favour of government			-3.92^{*}	
			(1.73)	
Share of judges dissenting in favour of government,excluding national judge				-5.37^{**}
				(1.77)
Need for legislative changes	-1.20^{***}	-1.20^{***}	-1.21^{***}	-1.22^{***}
	(0.31)	(0.32)	(0.31)	(0.32)
Need for jurisprudential changes	0.02	0.03	0.01	0.01
	(0.25)	(0.25)	(0.25)	(0.25)
Need for practical measures	-0.45	-0.46	-0.43	-0.45
	(0.28)	(0.28)	(0.27)	(0.27)
Need for executive action	-0.09	-0.09	-0.10	-0.10
	(0.26)	(0.26)	(0.26)	(0.26)
Need for publication of judgment	0.47	0.46	0.47	0.47
	(0.50)	(0.50)	(0.50)	(0.50)
Need for individual measures	-0.53^{*}	-0.52^{*}	-0.53^{*}	-0.52
	(0.27)	(0.26)	(0.27)	(0.26)
Grand Chamber judgment	-0.19	-0.25	-0.28	-0.30
	(0.76)	(0.73)	(0.78)	(0.74)
Ideal point of median judge	-0.19	-0.20	-0.19	-0.16
	(0.51)	(0.51)	(0.52)	(0.52)
Importance level 1	0.15	0.14	0.19	0.17
	(0.56)	(0.55)	(0.56)	(0.56)
Importance level 2	-0.72	-0.74	-0.68	-0.72
	(0.57)	(0.56)	(0.56)	(0.56)
Importance level3	-0.73	-0.74	-0.71	-0.76
	(0.56)	(0.55)	(0.55)	(0.56)
Number of articles violated	-0.29	-0.28	-0.25	-0.25
	(0.50)	(0.50)	(0.49)	(0.50)
Right to life violation	-0.90	-0.90	-0.93	-0.94
	(0.86)	(0.86)	(0.86)	(0.87)
Prohibition of torture violation	0.07	0.05	-0.02	-0.04
	(0.58)	(0.57)	(0.57)	(0.58)
Right to liberty violation	-0.24	-0.23	-0.23	-0.21
	(0.47)	(0.47)	(0.47)	(0.48)
Right to fair trial violation	0.06	0.06	0.02	0.02
	(0.40)	(0.40)	(0.40)	(0.40)
Right to respect for private and family life violation	0.23	0.23	0.19	0.20
	(0.56)	(0.55)	(0.54)	(0.54)
Freedom of expression violation	-0.26	-0.25	-0.29	-0.27
	(0.70)	(0.70)	(0.71)	(0.72)
Right to effective remedy violation	0.67	0.67	0.65	0.67
	(0.65)	(0.65)	(0.64)	(0.65)
Prohibition of discrimination violation	0.72	0.74	0.69	0.75
	(0.66)	(0.66)	(0.65)	(0.66)
Private property rights violation	-0.08	-0.10	-0.11	-0.14
	(0.51)	(0.50)	(0.51)	(0.51)
Veto players	1.05	1.12	1.04	1.01
	(2.28)	(2.30)	(2.28)	(2.30)
Bureaucratic quality	-14.44^{***}	-15.07^{***}	-14.72^{***}	-15.20^{***}
	(1.66)	(1.61)	(1.59)	(1.59)
Accountability institutions	-2.70^{*}	-2.71^{*}	-2.61^{*}	-2.63^{*}
	(1.07)	(1.07)	(1.05)	(1.05)
Year of judgment	-5.07^{***}	-5.08^{***}	-5.07^{***}	-5.11^{***}
	(0.37)	(0.37)	(0.36)	(0.37)
Judgment rendered after protocol 11	8.24^{***}	7.91^{***}	7.99^{***}	7.82^{***}
	(1.67)	(1.63)	(1.63)	(1.60)
Judgment rendered after change in Commmittee of Minister working methods	-2.11^{*}	-2.10^{*}	-2.11^{*}	-2.15^{*}
	(1.03)	(1.03)	(1.01)	(1.02)
Judgment rendered after protocol 14	-1.82^{**}	-1.83^{**}	-1.87^{**}	-1.87^{**}
	(0.63)	(0.62)	(0.63)	(0.63)
Intercept	10230.79^{***}	10257.20^{***}	10235.79^{***}	10312.70^{***}
	(740.52)	(756.88)	(735.62)	(752.33)
AIC	737.86	737.47	737.72	734.06
BIC	1170.12	1169.74	1169.99	1166.33
Log Likelihood	-298.93	-298.73	-298.86	-297.03
Deviance	597.86	597.47	597.72	594.06
Num. obs.	3552	3552	3552	3552

$^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$.
All models include fixed effects for the respondent state and a cubic time trend for the number of days since the judgment.
Standard errors are clustered by respondent state.

ments is decided through rotation among judges within a Section (with section membership also rotating over time). Voeten (2012) therefore argues that with exception of the national judge, the composition of the panel can be considered exogenous to the likelihood of compliance. Focusing only on Chamber judgments, we therefore construct a measure of the propensity of the non-national judges to write separately and consider whether this measure can be used an instrument for dissent.

To construct our instrument, we first create a dataset with one row for each judge for each merits judgment, excluding the national judges. We then estimate a linear probability model in which the dependent variable is whether the judge wrote any form of individual opinion (including dissenting, concurring, and separate opinions) in the case. We consider any type of individual opinion (rather than only dissents) to get increased leverage over individual judges' proclivity to write separately. On the right-hand side, we include dummies for each judge and fixed effects on the case. The judge coefficients can thus be interpreted as the proclivity of each judge to write separately, controlling for judgment characteristics. These coefficients are estimated with varying precision depending on the number of panels each judge has been part of. To account for varying precision, we calculate judge level Z-scores. Finally, we calculate the maximum judge-level Z-score on each panel. This means that we use the value of the individual judge on the panel with the highest propensity to write separate opinions as our instrument.[17]

To be used as an instrument for judicial dissent, the highest value of the propensity to dissent among the judges on the panel must meet three criteria. First, assignment must be (conditionally) independent of the likelihood of compliance (Angrist and Pischke 2014: 106). A potential threat against this assumption is that the rotation of judges happen within sections that deal with particular sets of states. Although the composition of sections also rotate, we therefore consider it important to include country-fixed effects. In addition, we consider a model in which we also condition on the full set of control variables from the main models.

Secondly, the instrument must only influence compliance through increasing the likelihood of judicial dissent Angrist and Pischke 2014: 106-107. We con-

[17]We also considered a number of alternative strategies, including using the mean propensity to dissent and considering instead how much judges on the panel diverge in terms of their estimated ideal points. These strategies yield similar results in the second-stage equations, but weaker correlations with dissent in the first-stage equations.

sider this assumption relatively plausible, although it should be noted that Voeten (2012) argues that also other characteristics of the judges, such as their professional background, might influence compliance. To the extent that such other characteristics correlate with proclivity to write separately, they risk introducing bias in our instrumental-variable models.

Finally, the instrument must be a sufficiently strong predictor of judicial dissent. This requirement is evaluated using F-tests on the first-stage equations of our instrumental-variable models (Sovey and Green 2011).

Two instrumental variable probit models using judges' propensity to writing separately as an instrument for dissent by judges other than the national judge are reported in Table 4.A.7. Although both models point at a negative relationship between judicial dissent and compliance, the F-tests for the first-stage equations give cause for concern. In both specifications, our proposed instrument is at best a moderate predictor of judicial dissent. The lack of stronger correlation means that the second-stage estimates are likely to be biased and must be interpreted with care. The estimated relationship between judicial dissent and a greater risk of non-compliance is much stronger in the instrumental-variable model than in our main models, which is likely due to weak-instrument bias.

Although propensity to dissent could in principle be considered a valid instrument for judicial dissent, as panel-composition is exogenous to compliance, the fact that we likely have a weak-instrument bias means that we cannot put much faith in the estimated instrumental-variable probit models. We do, however, note that these models at least point in the same direction as our other models and hope that future research will develop identification strategies that allow for stronger causal inferences.

Table 4.A.7: Instrumental-Variable probit models of relationship between judicial dissent and compliance with ECtHR judgments

	IV-Probit 1		IV-Probit 2	
	First-stage	Second-stage	First-stage	Second-stage
Dissent by non-national judge		-3.34**		-3.96***
		(1.06)		(0.99)
Maximum proclivity to write separately on panel	0.02**		0.01	
	(0.01)		(0.01)	
Need for legislative changes			0	-0.59
			(0.01)	(0.34)
Need for jurisprudential changes			-0.01	-0.27
			(0.01)	(0.15)
Need for executive action			-0.01	-0.23
			(0.01)	(0.14)
Need for practical measure			0.01	-0.22
			(0.01)	(0.19)
Need for publication of judgment			0	-0.17
			(0.01)	(0.12)
Need for individual measure			0	-0.32
			(0.01)	(0.21)
Ideal point of median judge			0	-0.18
			(0.02)	(0.12)
Importance level 1			-0.05*	-0.08
			(0.02)	(0.17)
Importance level 2			-0.09***	-0.34*
			(0.02)	(0.14)
Importance level 3			-0.12***	-0.32
			(0.02)	(0.24)
Right to life violation			-0.03	-0.49*
			(0.02)	(0.25)
Prohibition of torture violation			0.02	-0.18
			(0.02)	(0.19)
Right to liberty violation			-0.02	-0.14
			(0.01)	(0.09)
Right to fair trial violation			-0.01	-0.13
			(0.01)	(0.08)
Right to respect for private and family life violation			0.03*	0.05
			(0.01)	(0.1)
Freedom of expression violation			0	-0.18
			(0.02)	(0.16)
Right to effective remedy violation			0.01	-0.02
			(0.02)	(0.11)
Prohibition of discrimination violation			0.06*	0.43**
			(0.02)	(0.16)
Right to private property violation			-0.01	-0.18
			(0.01)	(0.11)
Veto players			0.11	0.62
			(0.06)	(0.39)
Bureaucratic quality			0.05	0.18
			(0.03)	(0.33)
Accountability institutions			-0.06	-0.01
			(0.04)	(0.35)
Year of Judgment	0	-0.14*	0.01*	-0.16
	(0)	(0.06)	(0)	(0.12)
After 2006 change in Committee of Ministers Working Methods			-0.04*	0.05
			(0.02)	(0.19)
After Protocol 14			0	0.15
			(0.02)	(0.13)
(Intercept)	-1.78	290.47**	-11.24*	323.81
	(2.14)	(112.58)	(5.43)	(238.15)
Country fixed effects	Yes	Yes	Yes	Yes
N	3110		2844	
F-test	6.96		3.48	

$^{***}p < 0.001, ^{**}p < 0.01, ^{*}p < 0.05$

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