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

Øyvind Stiansen

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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 legislative 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.

Key words: European Court of Human Rights, Compliance, Legislative Changes, Implementation, Event History Analysis

1 Introduction

Legislative action is often crucial for improving state compliance with international human rights standards. International institutions, ranging from international human rights courts such as the Inter-American Court of Human Rights (IACtHR) [1] to the Parliamentary Assembly of the Council of Europe,[2] have therefore called on national parliaments to play greater roles in ensuring respect for human rights norms.[3] 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[4] and for enforcing compliance with international human rights court judgments.[5] 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[6] and the ability of the ECtHR to prompt such changes is seen as evidence of the Court's authority.[7] Yet, although scholars have noted that need for legislative changes is associated with delayed implementation,[8] extant scholarship has not systematically investigated how need for legislative changes influences the implementation process. This oversight is surprising because research 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.[9]

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.[10] For instance, the controversies following the 2005 ECtHR judgment in *Hirst v. United King-*

dom 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, but also, more importantly, to resistance against what is presented – by anti-compliance actors – as Strasbourg judges' interference with the will of a democratically elected parliament.[11] Similar concerns have been expressed in other countries,[12] 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.[13] Thus, although the presence of veto players may be helpful in increasing the costs of human rights violations,[14] 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.[15] 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.[16]

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.[17] 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 Author and Collaborator[18] 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 blatantly 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 consistent with the veto-player explanation for delayed legislative compliance.

Concerning the conditions that make judgments requiring legislative changes partic-

ularly challenging to implement, I find that the potential for deadlock among domestic veto players as measured by Henisz[19] 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 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.[20] Although the Council of Europe members have urged states 'to develop domestic capacities and mechanisms to ensure the rapid execution of the Court's judgments'[21] and states can be held accountable by their peers in meetings of the Committee of Ministers (CoM), there are no strong enforcement mechanisms. 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 authorities will often 'resist and delay',[22] or comply only partially.[23] Delayed and incomplete com-

pliance 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.[24] While recent reforms of the European human rights system have reduced the backlog,[25] the influx of repetitive cases due to the failure of respondent states to effectively execute adverse judgments continues to be a problem.[26]

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.[27] 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 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'.[28] 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 Author and Collaborator concerning the implementation of all ECtHR judgments until June 1, 2016 show that approximately 25 per cent of cases require legislative changes for compliance.[29] 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.[30]

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.

2.1 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.[31]

Because such cases of non-compliance explicitly challenge the ECtHR's authority, they may be considered more particularly problematic for the Court compared to cases where managerial difficulties[32] delay implementation. The term 'principled resistance', which de Londras and Dzehtsiarou use to describe this type of compliance challenge is contested.[33] 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. Nevertheless, the ECtHR is facing explicit challenges to the its authority to decide certain types of issues and such resistance may lead states adopt policies or 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.[34] 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* has 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'.[35]

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.[36]

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.[37] 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.[38]

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 prisoner 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 changed 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 be therefore expected to increase the likelihood of blatant defiance.

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 notes that the Italian parliament has never openly refused to make legislative changes to comply with an ECtHR judgment.[39] Instead, explanations for lagging legislative compliance may be found in a slow and cumbersome legislative process.

Although there are important institutional and political differences respondent states that may account for distinct compliance challenges, certain common features of the legislative process is likely to delay legislative compliance in a variety of systems. 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, in plenary sessions, and in different chambers. 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.[40] 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;[41] thus, enacting new legislation may require agreement among actors from different political parties.[42] 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.[43]

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.[44]

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[45] and international law more generally[46] 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.[47] 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.[48] 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[49] shows that compliance with IACtHR remedial orders have been particularly low for orders requiring cooperation by domestic judges and prosecutors,[50] 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,[51] 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.[52]

To summarise, 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 1 *Need for legislative changes is associated with delayed compliance with ECtHR judgments.*

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 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, it is demanding to get the actors benefitting from the current arrangements to agree to the necessary constitutional and legislative changes.[53] 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.[54] 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,[55] 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 *The negative relationship between need for legislative changes and compliance with ECtHR judgments diminishes with time since the judgment.*

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 fall within the scope of their sovereign decision-making power.[56] 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.[57]

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 allow 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.[58] 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 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 posit that absence of domestic judicial review might explain why the ECtHR is more controversial in Switzerland than in Austria (which has a strong constitutional court).[59] Lambrecht more generally links political actors' resistance against interference by the ECtHR with a lack of familiarity with judicial review from the domestic political system.[60] 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 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 the expectation captured Hypothesis 4 differ 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 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 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.[61] Even if checks and balances more generally are associated with compliance,[62] 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.[63] This expectation motivates a fifth hypothesis:

Hypothesis 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.[64] 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 bicameral legislatures, 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.[65] 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.[66] The expected difference between unicameral and bicameral systems motivates a sixth hypothesis:

Hypothesis 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.[67] By contrast, proportional elections 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.[68] 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 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 system.*

3 Research Design

3.1 Dataset

Assessing the hypotheses developed in Section 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 Author and Collaborator[69] 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 judgments in lead cases. Compliance with the judgment of the lead case also leads to compliance with the repetitive cases. For instance, compliance with the aforementioned pilot judgment in the case of *Greens and M.T v. United Kingdom* would involve compliance also with the *Hirst v. United Kingdom* ruling and the two judgments were monitored in conjunction. The lead cases are therefore the appropriate units of analysis [70]. The Author and Collaborator[71] dataset expands the coverage of existing compliance data[72] by a decade and includes more than four times as many cases.

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 CoM rendering a final resolution. The CoM is the body monitoring the compliance process.[73] Çali and Koch find that the CoM secretariat facilitates the consistent and professional monitoring even of politically difficult cases,[74] which makes data from this body a reliable indicator of compliance. 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.

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'.[75] Instead, the needed remedies are identified through consultations between the CoM and the respondent state. Author and Collaborator[76] 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.[77]

3.4 Indicators of the Political and Institutional Context

To investigate Hypothesis 3, I searched the section discussing the 'the law' of all lead case judgments available in English for the term 'margin of appreciation'. I 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.[78]

To investigate Hypothesis 5, I use the political constraints index developed by Henisz.[79] 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.[80] 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.

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 measures. 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.

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.[81] 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.[82]

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.[83]

Grewal and Voeten find that new democracies tend to implement judgments quicker than their consolidated counterparts.[84] 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. Judges that identify multiple violations sometimes require different types of measures to remedy each of the identified violations. Such complexity is likely to complicate the compliance process independently of the types of measures that are needed.

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,[85] the case law on respondent states' obligations,[86] and the scrutiny of the CoM[87] 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.[88]

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 1.

Table 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

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..[89] 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[90] 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.[91]

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.[92] The country-shared frailties account for the fact that there unobserved differences in the constitutional and political systems of different respondent states that are likely to also influence implementation of ECtHR judgments.

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.[93] Throughout, the proportional hazard assumption is evaluated using the Grambsch and Therneau test[94] based on ranked survival times. 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.[95]

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.[96] Conditional effects must be calculated based on the coefficients for both constituent terms of the interaction. For binary variables in a Cox model, the appropriate interpretation is easiest achieved by investigating how the relative hazard develops over time.[97] Relative hazards are therefore displayed in addition to the standard regression table.

4 Results

4.1 Need for Legislative Changes and Compliance

The shared-frailty Cox regression models are presented in Table 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.[98] 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 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 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 1 and for Hypothesis 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.

Table 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 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 change 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 effect of the other measure types were generally similar to the effect found for legislation, it would under-

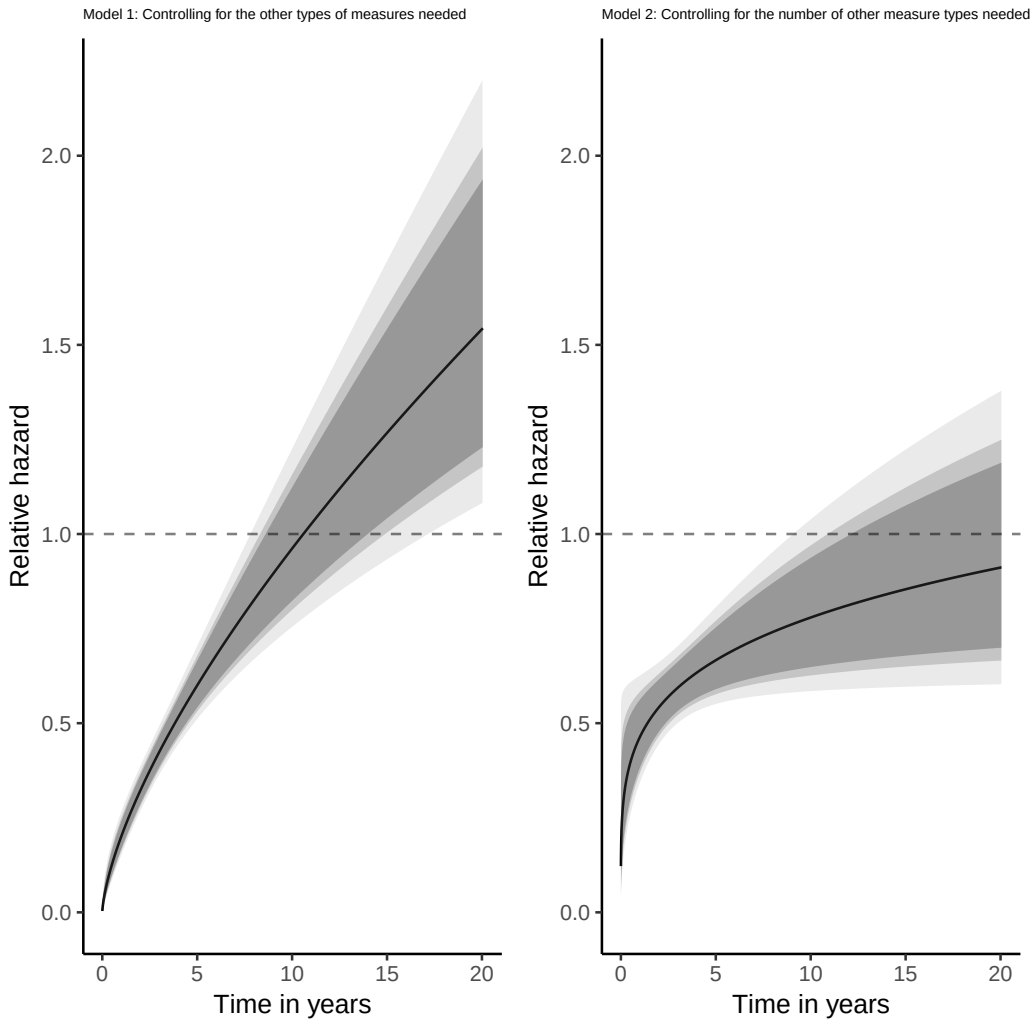

Figure 1: Relative hazards of implementation associated with need for legislative changes. The shaded areas represent 90, 95 and 99 per cent confidence intervals.

mine 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 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 the 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.

4.2 Variation across Political and Institutional Contexts

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

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 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 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.[99] 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 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 provides 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 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.

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 judg-

ments 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.[100] 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.[101] 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.

Notes

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

[2]Parliamentary Assembly of the Council of Europe, "National parliaments: guarantors of human rights in Europe," *Resolution 1823*, 2011,

[3]Alice Donald, "Parliaments as Compliance Partners in the European Convention on Human Rights System," in *The International Human Rights Judiciary and National Parliaments Europe and Beyond*, ed. Matthew Saul, Andreas Føllesdal, and Geir Ulfstein (Cambridge: Cambridge University Press, 2017), 77.

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[5]Courtney Hillebrecht, *Domestic politics and international human rights tribunals: the problem of compliance* (Cambridge: Cambridge University Press, 2014); Courtney Hillebrecht, "The power of human rights tribunals: Compliance with the European Court of Human Rights and domestic policy change," *European Journal of International Relations* 20, no. 4 (2014): 1100–1123.

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[7]e.g. Dinah Shelton, "The Boundaries of Human Rights Jurisdiction in Europe," *Duke Journal of Comparative and International Law* 13 (2003): 147; Rachel Cichowski, "Mobilisation, litigation and democratic governance," *Representation* 49, no. 3 (2013): 326

[8]Erik Voeten, "Domestic Implementation of European Court of Human Rights Judgments: Legal Infrastructure and Government Effectiveness Matter: A Reply to Dia Anagnostou and Alina Mungiu-Pippidi," *European Journal of International Law* 25, no. 1 (2014): 234.

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[12]Janneke Gerards, "The Netherlands: Political Dynamics, Institutional Robustness," in *Criticism of the the European Court of Human Rights. Shifting the Dynamics of the Convention System: Counter-Dynamics at the National and EU level*, ed. Patricia Popelier, Sarah Lambrecht, and Koen Lemmens (Intersentia, 2016), 333; Michael Reiersten, "Norway: New Constitutionalism, New Counter-Dynamics?,"

in *Criticism of the the European Court of Human Rights. Shifting the Dynamics of the Convention System: Counter-Dynamics at the National and EU level*, ed. Patricia Popelier, Sarah Lambrecht, and Koen Lemmens (Intersentia, 2016), 366-367

[13]George Tsebelis, "Decision making in political systems: Veto players in presidentialism, parliamentarism, multicameralism and multipartyism," *British journal of political science* 25, no. 03 (1995): 289–325; Sarah A. Binder, "The dynamics of legislative gridlock, 1947–96," *American Political Science Review* 93, no. 03 (1999): 519–533; Sarah A. Binder, "Legislative productivity and gridlock," in *The Oxford Handbook of the American Congress*, ed. George C. Edwards et al. (Oxford University Press, 2011).

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[16]Alice Donald and Phillip Leach, "The Role of Parliaments following Judgments of the European Court of Human Rights," in *Parliaments and Human Rights: Redressing the Democratic Deficit*, ed. Murray Hun, Hayley Hooper, and Paul Yowell (Oxford: Hart Publishing, 2015), 87-88.

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[25]Élisabeth Lambert Abdelgawad, "Measuring the judicial performance of the European Court of Human Rights," *International Journal for Court Administration* 8, no. 2 (2017): 20–29.

[26]Helen Keller and Cedric Marti, "Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments," *European Journal of International Law* 26, no. 4 (2015): 830.

[27]Hillebrecht, *Domestic politics and international human rights tribunals: the problem of compliance*; Hillebrecht, "The power of human rights tribunals: Compliance with the European Court of Human Rights and domestic policy change"; Voeten, "Domestic Implementation of European Court of Human Rights Judgments: Legal Infrastructure and Government Effectiveness Matter: A Reply to Dia Anagnostou and Alina Mungiu-Pippidi."

[28]Hillebrecht, "The power of human rights tribunals: Compliance with the European Court of Human Rights and domestic policy change," 1107.

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[30]Agent of the Government of Belgium, "Communication de la Belgique concernant l'affaire Anakomba Yula contre Belgique," *Action report presented to the Committee of Ministers*, 2016,

[31]de Londras and Dzehtsiarou, "Mission Impossible? Addressing Non-execution Through Infringement Proceedings in the European Court of Human Rights," 474, emphasis in original.

[32]Abram Chayes and Antonia Handler Chayes, "On compliance," *International organization* 47, no. 02 (1993): 175–205; Dia Anagnostou and Alina Mungiu-Pippidi, "Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter," *European Journal of International Law* 25, no. 1 (2014): 205–227.

[33]Alice Donald, "Tackling Non-Implementation in the Strasbourg System: The Art of the Possible?," *EJIL: Talk!*, 2017,

[34]Robert Spano, "Universality or diversity of human rights? Strasbourg in the age of subsidiarity," *Human Rights Law Review* 14, no. 3 (2014): 488; Donald, "Parliaments as Compliance Partners in the European Convention on Human Rights System," 96

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[42]Binder, "Legislative productivity and gridlock."

[43]Huneeus, "Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights," 517.

[44]Donald and Leach, "The Role of Parliaments following Judgments of the European Court of Human Rights," 87-88.

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[48]Sarah Lambrecht, "Assessing the Existence of Criticism of the European Court of Human Rights," in *Criticism of the the European Court of Human Rights. Shifting the Dynamics of the Convention System: Counter-Dynamics at the National and EU level*, ed. Patricia Popelier, Sarah Lambrecht, and Koen Lemmens (Intersentia, 2016), 534-550.

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[54]Golub and Steunenberg, "How time affects EU decision-making," 157-158; Steunenberg and Kaeding, "'As time goes by': Explaining the transposition of maritime directives," 438-439

[55]Georg Vanberg, *The politics of constitutional review in Germany* (Cambridge: Cambridge University Press, 2005).

[56]Donald, "Parliaments as Compliance Partners in the European Convention on Human Rights System," 99.

[57]Davis, "Britain must defy the European Court of Human Rights on prisoner voting as Strasbourg is exceeding its authority: Turning Criticism into Strength."

[58]Mikael Rask Madsen, "Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?," *Journal of International Dispute Settlement*, 2017,

[59]Katja Achermann and Klaus Dingwerth, "The Politicization of the European Court of Human Rights: A Comparison of Austria and Switzerland," *Unpublished working paper prepared for the workshop 'The Political and Legal Theory of International Tribunals', University of Oslo, 18–19 June 2018*, 2018,

[60]Lambrecht, "Assessing the Existence of Criticism of the European Court of Human Rights."

[61]Tsebelis, "Decision making in political systems: Veto players in presidentialism, parliamentarism, multicameralism and multipartyism"; George Tsebelis, *Veto players: How political institutions work* (Princeton University Press, 2002); Binder, "The dynamics of legislative gridlock, 1947–96"; Henisz, "The institutional environment for economic growth"; Henisz, "The institutional environment for infrastructure investment."

[62]Hillebrecht, "The power of human rights tribunals: Compliance with the European Court of Human Rights and domestic policy change."

[63]Conrad and Moore, "What stops the torture?"

[64]Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999).

[65]Tsebelis, "Decision making in political systems: Veto players in presidentialism, parliamentarism, multicameralism and multipartyism," 290.

[66]Committee of Ministers, "Cusan and Fazzo v. Italy: State of Execution," *Notes from the Department for the Execution of ECtHR Judgments*, 2017,

[67]Pippa Norris, "Choosing electoral systems: proportional, majoritarian and mixed systems," *International political science review* 18, no. 3 (1997): 304.

[68]There is of course great variation in the degree of fragmentation that different proportional systems produce, relating for instance to the number of constituencies and thresholds. On average proportional systems will, however, tend to produce greater fragmentation than majority- or plurality-based systems

[69]Author and Collaborator, *European Court of Human Rights Database*.

[70]Voeten, "Domestic Implementation of European Court of Human Rights Judgments: Legal Infrastructure and Government Effectiveness Matter: A Reply to Dia Anagnostou and Alina Mungiu-Pippidi," 231; Sharanbir Grewal and Erik Voeten, "Are New Democracies Better Human Rights Compliers?,"

International Organization 69, no. 02 (2015): 502

[71]Author and Collaborator, *European Court of Human Rights Database.*

[72]Grewal and Voeten, "Are New Democracies Better Human Rights Compliers?"

[73]Ibid.

[74]Başak Çali and Anne Koch, "Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe," *Human Rights Law Review* 14, no. 2 (2014): 301–325.

[75]Tom Barkhuysen and Michiel L. Van Emmerik, "A comparative view on the execution of judgments of the European Court of Human Rights," in *European Court of Human Rights, Remedies and Execution of Judgments*, ed. Theodora Christou and Juan P. Raymond (2005), 3.

[76]Author and Collaborator, *European Court of Human Rights Database.*

[77]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 Andreas von Staden, "Rational choice within normative constraints: compliance by liberal democracies with the judgments of the European Court of Human Rights," *Available at SSRN 2000024*, 2012, 10. 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.

[78]Michael Coppedge et al., *V-Dem Country-Year Dataset v8*, Varieties of Democracy (V-Dem) Project, 2018.

[79]Henisz, "The institutional environment for economic growth"; Henisz, "The institutional environment for infrastructure investment."

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[81]Grewal and Voeten, "Are New Democracies Better Human Rights Compliers?," 507-508.

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[91]Jonathan Golub, "Survival Analysis," in *The Oxford Handbook of Political Methodology*, ed. Janet M. Box Steffensmeier, Henry E. Brady, and David Collier (Oxford: Oxford: Oxford University Press, 2008).

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[95]Box-Steffensmeier and Zorn, "Duration models and proportional hazards in political science."

[96]Licht, "Change comes with time: Substantive interpretation of nonproportional hazards in event history analysis."

[97]ibid. The relative hazard is given by $exp(\beta_1 + \beta_2 ln(t))$. See Golub and Steunenberg, "How time affects EU decision-making" and Licht, "Change comes with time: Substantive interpretation of nonproportional hazards in event history analysis," 5 for further mathematical detail.

[98]Ibid., 288.

[99]Henisz, "The institutional environment for economic growth"; Henisz, "The institutional environment for infrastructure investment."

[100]Hillebrecht, *Domestic politics and international human rights tribunals: the problem of compliance*; Hillebrecht, "The power of human rights tribunals: Compliance with the European Court of Human Rights and domestic policy change"; Voeten, "Domestic Implementation of European Court of Human Rights Judgments: Legal Infrastructure and Government Effectiveness Matter: A Reply to Dia Anagnostou and Alina Mungiu-Pippidi"; Grewal and Voeten, "Are New Democracies Better Human Rights Compliers?"

[101]Keller and Marti, "Reconceptualizing Implementation: The Judicialization of the Execution of the

European Court of Human Rights' Judgments."