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Judgement without justice: on the efficacy of the European human rights regime

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ABSTRACT

The European Court of Human Rights (ECtHR) is widely regarded as the most important human rights court worldwide. This article investigates the extent to which the court addresses cases from countries with the worst human rights performance. Using a new data set on all ECtHR judgments from 1995–2012, the analysis suggests that the ECtHR does not deliver its judgments against members of the Council of Europe with the worst human rights records, but instead against more democratic and affluent states. The reason is that litigating in front of a supranational court requires capacities that vulnerable people are unlikely to possess, except when aided by transnational advocacy groups. However, more judgements are issued against countries that lack independent judiciaries, where cases are less likely to be resolved at the domestic level. While the ECtHR might not address the worst human rights crimes, it plays a subsidiary role in the European human rights protection system by compensating for weak domestic judiciaries. However, the court's inability to independently pursue litigation, together with the lack of capacity in some countries to bring cases forward, have hampered more effective protection of human rights for the most vulnerable in Europe.

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Over the past 70 years, the advancement of democracy and human rights has been one of Europe's most successful stories. After WWII, most of Western Europe became democratic and embarked on an unprecedented effort to unite the continent. In the 1970s and 1980s, Southern Europe abandoned its autocratic regimes, democratized and joined the European integration project. In the early 1990s, many post-communist countries in Eastern Europe followed this path.¹ The growing influence of democracy and human rights across the continent has made the European Court of Human Rights (ECtHR) more relevant, but has also drastically increased its workload. The adoption of Protocol 11 in 1998 marked an important turning point for the Court, and resulted in a significant increase in the volume of applications and judgments.² The number of applications skyrocketed from 12,700 in 1996 to over 50,500 just 10 years later in 2006.

Similarly, in the nearly 40 years between 1959 and 1998, the court issued only 837 judgments compared to 1499 judgments in 2010 alone.

Although the remarkable increase in the number of judgments is impressive in itself, it does not tell us much about which countries have the most cases heard at the ECtHR – and to what extent the ECtHR delivers more judgments against the worst human rights violators. In this article, we theorize and analyse why the ECtHR hears more cases from some countries than others. This question is of both fundamental scientific and societal relevance. The problem of basic freedoms and their protection is of central concern to our understanding of democratization; yet, the literature on democratization has not yet given adequate attention to the role of international human rights regimes.³ Our analysis and discussion suggests that, lacking certain institutional prerequisites and capacities, many Europeans are unable to effectively attain redress for human rights violations through the Court and in thus justice is being partially undermined.

To investigate which factors might account for variation in the number of the Court's judgments across countries and over time, we constructed a panel dataset covering all 47 signatories to the ECtHR for the period from 1995 to 2012. Using two distinct measures of human rights performance, the analysis indicates that there is no clear relationship in the aggregate between a country's human rights record and the number of ECtHR judgments delivered against that country. In other words, the worst offenders of human rights (such as Ukraine and Albania) are not necessarily those against whom most ECtHR judgments are issued. Instead, the ECtHR delivers most of its judgments against more economically developed and more democratic countries, arguably because these are places in which the human and institutional capacity to litigate at the Court is the greatest. However, our analysis does indicate that more judgements are issued against countries that lack independent judiciaries, where cases are less likely to be resolved at the domestic level.⁴ In other words, while the ECtHR might not address the worst human rights crimes, it plays a subsidiary role in the European human rights protection system by compensating for weak domestic judiciaries.⁵

The remainder of the article proceeds as follows: First, we briefly describe how the Court operates, situate our contribution within the literature and develop our argument. Next, we introduce our data and methods. This leads to our discussion of the main quantitative results. The last part concludes with implications for our understanding of human rights and their protection, along with potential avenues for future research.

The European Court of Human Rights: judgment without justice?

The ECtHR is a supranational court with headquarters in Strasbourg, France.⁶ First established under the auspices of the Council of Europe on 21 January 1959, the ECtHR emerged from Article 19 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which called for the establishment of the Court to adjudicate and enforce human rights.^{7,8} Since the ECHR came into force in 1953, it has aimed to define and protect a well-defined set of civil and political rights for all persons within the Council of Europe member-states, regardless of whether those persons are refugees, immigrants, stateless persons, or citizens.⁹

The Court rules on individual and state applications alleging violations of the civil and/or political rights set forth in the ECHR. More precisely, the ECtHR hears applications concerning member-state violations of one or more of the human rights

outlined in the Convention and its protocols. Individuals, companies, NGOs (private applicants) or other member-states (inter-state applicants) can lodge a complaint against a state and file an application to the Court.¹⁰ The ECtHR can deliver judgments and issue advisory opinions.¹¹ The judgments of the Court are binding on the states concerned and have been effective in causing governments to revise their legislation and administrative practices.¹² Although the Court exercises some clout in the domestic affairs of contracting states, there is a provision that gives states the ability to infringe on human rights. States can circumvent their human rights obligations by invoking “the margin of appreciation doctrine” which allows countries to impose limitations on the human rights and freedoms of their citizens in cases of public emergency.¹³

In the 1990s, more countries acceded to the ECHR, which contributed to an increase in applications filed with the Court.¹⁴ The Court issued 177 judgments in 1999, 695 judgments in 2000, and 888 judgments in 2001. From 2005 to 2012, the number of judgments delivered by the ECtHR was consistently over 1000.¹⁵ Yet, looking at the ratio between applications and judgments, the actual number of judgments is very small. The Court received more than 261,000 applications between 1998 and 2005, but only 6535 or 2.5% were admitted.¹⁶ In 83% of these cases, the ECtHR found at least one violation of the ECHR, and nearly half of the judgments concerned violations of Article 6 on the right to a fair trial.¹⁷ For the period between 1959 and 2014, 43% of the judgments concerned Article 6, 12.6% were linked to Article 1 on protection of property and 12% related to Article 5 on right to liberty and security.¹⁸

The sheer number of applications that reached the court in recent years has created a “docket crisis”. While the court received 404 applications in 1988, by 1997 the number grew to 4750, and in 2004 there were 44,100 applications. The court has proven flexible in addressing this crisis, and has introduced the principle of subsidiarity and the margin of appreciation into the ECtHR’s preamble. It also reduced the time within which an application to the ECtHR must be lodged by two months (from six to four months after a final national decision has been made). As a result, much of the literature on the ECtHR casts it in a very positive light. Although some states have expressed considerable dissatisfaction, the Court is highly respected by most of the member states of the Council of Europe, in part due to the fact that the Court is embedded in their legal framework.¹⁹

Not only has the court successfully reformed its procedures and adapted to the new wave of applications, but it also enjoys a high degree of respect for its judgements. As Moravcsik notes, state compliance with the Court’s judgments is nearly as consistent as that of domestic courts.²⁰ Many empirical examples substantiate this statement. For instance, in a recent case, Amos cites the Court’s decision that asylum applicants who suffered illnesses could resist deportation from the UK, based on Article 3, and the British government accepted this judgment.²¹ Moravcsik refers to a case in which the Court found the UK’s exclusion of homosexuals in the armed forces to be a violation of the ECtHR, and the UK government complied with the judgment.²² Van der Vet lists cases of “disappearances” of Chechens presented to the Court by human rights lawyers and NGOs to highlight how international organizations or groups can successfully litigate on behalf of individuals.²³ Although it is not always possible to determine what has happened to the victim, Van der Vet showed that the Court was able to obtain financial compensation from the Russian authorities.²⁴ By March 2011, Russia had paid a total of 1.3 million Euros for material damages and 12.7 million Euros for moral damages to Chechen applicants.

The literature also concurs that the ECtHR's influence extends beyond single cases. For example, Scribner and Slaughter highlight how domestic courts use the ECtHR as a reference for their judgments in order to go beyond (and even against) existing domestic norms.²⁵ Moreover, as Moravcsik suggests, ECtHR judgments affect domestic agenda-setting by providing crucial incentives for avoiding future disputes.²⁶ Helfer and Voeten substantiated this claim in their study of Lesbian Gay Bisexual and Transgender (LGBT) issues, and demonstrated that ECtHR judgments "increase the likelihood that all European nations – even those whose laws the court has not explicitly found to violate the Convention – will adopt progressive LGBT policies".²⁷ In short, most studies concur that the Court has made significant contributions to the enhancement of human rights in Europe by creating new opportunities for individuals to reach redress at both the domestic and supranational level.²⁸ However, Gorzev shows that some states are highly selective in their implementation, depending on the domestic political costs, and make concessions to religious minorities, but resist implementing those changes due to strong public opposition.²⁹ Sileoni highlights the ineffective and delayed implementation of ECtHR judgements in Italy, citing the legal system, cultural attitudes, and political divisions as the main reasons.³⁰

Thus, although the Court has made important judgments and shaped the behaviour of states towards greater respect for human rights, it remains unclear whether the Court is able to protect the most vulnerable by issuing judgments against those countries with the worst human rights records. Studies have demonstrated that compliance with the Court's rulings can be politically unpopular and divisive domestically,³¹ and countries are more prone to compensate victims and to cover the costs of litigation than to amend legislation or change institutional practices³² without further external incentives.³³

Existing studies have also examined the types of judgments, the concurrence of states with the Court's judgments, the relationship between the ECtHR and the European Court of Justice,³⁴ as well as possible ways of reforming the court.³⁵ However, to the best of our knowledge, scholars have not yet investigated the power and efficacy of the ECtHR in terms of whether it has been successful in delivering judgments against those countries with the worst human rights records. This dimension of the Court's power and efficacy is of paramount importance, since one of its chief missions is to protect those who are most in need. Here we systematically examine how well the Court fulfils this important role in the European human rights protection system.

In a well-functioning human rights regime, judgments against any given state should be a reflection of micro-level demand for arbitration on human rights issues, and should therefore be negatively correlated with the ability of domestic institutions to provide adequate redress of alleged human rights violations and grievances.³⁶ However, for cases to be heard in Strasbourg, litigants must first comply with the Court's administrative requirements. As the Court has no mandate to prosecute independently, it depends on individuals, organizations, and states in order to consider a case. Submitting a claim to the court involves overcoming two hurdles and demonstrating in a legally compelling manner that (1) the domestic court options have been exhausted and (2) the case falls within the existing mandate of the ECtHR. For many individuals and groups in countries with less developed human and institutional capacity – which is also incidentally where one would expect worse human rights records – these hurdles are sufficiently large to prevent citizens from successfully reaching judicial redress at the Court. As a result, the demand for arbitration is filtered through domestic institutions and the legal capacity to bring cases forward to the Court.

Next, we assess whether the ECtHR is able to effectively address the worst offenders by investigating the relationship between countries' human rights records and the number of ECtHR judgments against these countries for the 47 member states from 1995 to 2012.

Data and methods

To operationalize the number of judgments that the court pronounces, we include the count of the number of judgments per year issued against any given country per one million people. It is necessary to control for varying population sizes, because of different baseline probabilities between countries with several hundred million inhabitants, like Russia, and countries that have less than one million inhabitants, such as Andorra. Even controlling for population size, the number of judgements per one million citizens per year ranges from 0 to 25 with an average number of 2.5 (see Table 1, for descriptive statistics see Table A1 in Appendix).

Independent variables

Human rights performances

To investigate the main hypothesis – that the ECtHR issues more judgments against countries with worse human rights violations – we need to gauge a country's human rights record. For this purpose, we used data from the Cingranelli and Richards' (CIRI) Human Rights Data Project,³⁷ which provides information about governmental adherence to human rights in nearly every country in the world. We used the average score on three measures – (1) Freedom of Speech and Press, (2) Freedom of Religion and (3) Freedom of Assembly and Association – that we deliberately chose for theoretical and methodological reasons. Theoretically, these three human rights indicators are considered the most fundamental freedoms.³⁸ If these rights are not upheld, other more complex rights are difficult to defend. Methodologically, these three basic human rights indicators showed the most variation among all the indicators in CIRI database for the 47 countries of the Council of Europe.

In order to examine the robustness of our findings, we also considered an alternative measure of human rights performance: the Political Terror Scale (PTS).³⁹ The PTS ratings are based on yearly country reports on human rights and practices by the US State Department and the country reports of Amnesty International.⁴⁰ PTS codes countries on a five-point scale, where 1 indicates countries under “secure rule of law, [where] people are not imprisoned for their views and torture is rare or exceptional” and 5 indicates countries, where “terror has expanded to whole population, the leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals”.

Economic development

We hypothesize that claimants must have the capacity to bring cases to Strasbourg, and assume that citizens in wealthier countries on average tend to possess more human and social capital. According to modernization theory,⁴¹ the development of rich tertiary sector societies renders citizens more attuned to post-materialist values, which include respect for ethnic and sexual minorities, the advancement of gender equality,

Table 1. Average number of judgements per country (1995–2012).

Ranking	Country	Number of judgments per year	Number of judgments per year per one million citizens
1.	Turkey	159.33	2.18
2.	Italy	124.78	2.15
3.	Poland	56.67	1.47
4.	Romania	52.11	2.37
5.	Ukraine	49.61	1.07
6.	France	45.72	0.73
7.	Greece	40.33	3.73
8.	Russia	36.39	0.53
9.	Bulgaria	27.83	3.79
10.	UK	22.78	0.38
11.	Slovakia	16.22	2.98
12.	Hungary	15.06	1.51
13.	Slovenia	14.83	7.36
14.	Croatia	14.17	3.05
15.	Portugal	14.05	1.34
16.	Moldova	14.11	3.50
17.	Germany	12.5	0.15
18.	Czech Republic	10.83	1.05
19.	Finland	9.11	1.74
20.	Serbia	8.11	1.01
21.	Belgium	7.39	0.71
22.	Spain	6.61	0.13
23.	Netherlands	6.33	0.39
24.	Azerbaijan	6.18	0.43
25.	Austria	5.70	2.08
26.	Switzerland	5.39	0.71
27.	Macedonia	5.06	2.04
28.	Armenia	5.06	0.86
29.	Lithuania	4.84	1.41
30.	Sweden	4.72	0.52
31.	Latvia	3.94	1.79
32.	Georgia	3.93	0.67
33.	Cyprus	3.44	3.35
34.	Malta	2.56	6.32
35.	Montenegro	2.33	1.25
36.	Luxembourg	2.28	4.73
37.	Albania	2.17	0.65
38.	Denmark	1.94	0.36
39.	Norway	1.72	0.37
40.	Estonia	1.67	1.26
41.	Ireland	1.06	0.26
42.	San Marino	0.72	25.01
43.	Iceland	0.61	2.04
44.	Andorra	0.33	4.36
45.	Lichtenstein	0.28	8.27
46.	Monaco	0.13	1.53

Note: Source ECtHR, own calculations.

environmental protection and participatory democracy. We operationalize economic development, and its capacity enhancing derivatives, using each country's gross domestic product (GDP) per capita for a given year.⁴² Because we cannot necessarily assume a linear relationship between changes in material wealth and the number of ECtHR judgments, we use the commonly employed log transformed GDP per capita to reduce the influence of outliers. Given that we have outlying countries with very high GDP per capita, the log transformation also ensures that these influential points do not drive the findings.

Democracy

Many studies suggest that there is a negative relationship between democracy and the violation of human rights because democracies are less repressive than other regime types, and a democratic government's ability to violate human rights is curtailed by its constitution.⁴³ Democratic systems often have various institutional checks and balances on the possible abuse of power, which constrain repressive actions and facilitate redress. However, studies over the past 20 years suggest that the effect of democracy on repression is more complicated.⁴⁴ For example, in a study on the relationship between democracy and repression from 1976 to 1996 across 147 countries, Davenport and Armstrong find that "below a certain level [of domestic democratic peace], democracy has no impact on human rights violations".⁴⁵ Only once a certain threshold pertaining to democratic quality and good governance has been passed, does democracy decrease state repression. This finding implies that until a state becomes a fully-fledged democracy with an engaged civil society, a well-functioning bureaucracy and independent courts, officials may not be adequately deterred from violating human rights.

To operationalize the quality of democracy, we used each country's Polity IV democracy score, which ranges from -10 to 10. The countries in our sample range between 4 and 10 on this scale, meaning that the sample includes some hybrid regimes and some more consolidated democracies.⁴⁶ Because there is debate in the literature on the whether the Polity IV or Freedom House is a more accurate ranking to measure respect of procedural democracy, we also ran our analysis using the Political Rights Index compiled by Freedom House.

Independent judiciary

In order to litigate at the ECtHR, the claimants first have to exhaust all domestic judicial instances. To account for the ability of litigants to reach redress in their domestic judiciary system, we used the CIRI indicator for the "Independence of the Judiciary".⁴⁷ It measures the degree to which the national judiciary is free and independent of societal and political influences. The rationale behind this variable is that when domestic courts are effective within the national jurisdiction, there is less need for claimants to appeal to international courts, because the redress for human rights violation can take place at the domestic level. We therefore predict a negative relationship, such that countries with more judicial independence should be subjected to fewer judgments.

EU membership

The European Union (EU) and its member states recognize the importance of human rights both verbally and legally. In addition, adherence to human rights is an important part of the Copenhagen Criteria (respect for Human Rights is a political condition for countries to join the EU). We therefore assume that EU members will generally have a better human rights record than countries that have not been exposed to the EU incentives and rules. The EU also provides assistance to new member states, including support in establishing a system of education for judges and attorneys. This assistance should increase the capacity of domestic courts to address human rights issues. The EU member states also have a higher capacity in terms of human rights NGOs, which provide assistance to citizens seeking redress at the ECtHR. Because there might be a systematic difference between

“old” EU member states (such as Germany and France), which negotiated the ECHR and have the most well-defined human rights discourse, and “new” member states, which generally have weaker human rights regimes, we operationalize EU membership using the number of years that a country has been a member of the EU.

Population

The analysis controls for a country’s population size. Small countries are likely to be more homogenous and are typically characterized by closer connections between citizens and representatives. This should lead to greater accountability, and should also increase the chances that all relevant groups in the population are heard in the deliberation process.⁴⁸ The larger the country, the harder it is for governments to distribute services equally and stop discrimination against any regional, religious or ethnic group.⁴⁹ Building on this logic, we expect smaller countries to have comparatively fewer cases brought to the ECtHR than larger countries. We collected population data from the United Nations Statistical Division (2013) and log transformed it in the analysis.

Ethnic fractionalization

Many researchers have argued that democratic regimes made up of various religious or ethnic groups struggle to become consolidated.⁵⁰ This argument suggests that there is a latent danger that the (majority) group in power uses its prerogatives and powers to infringe upon the chances and rights of other groups in multi-racial or multi-ethnic countries. Reasons for such infringements range from historical animosities of competing groups to competition over scarce material resources. In such a setting, human rights abuses are common. To measure ethnic fractionalization, we used Fearon and Laitin’s data on ethnic fractionalization.⁵¹

Time

Finally, the analysis includes a time trend variable that is consecutively coded from 0 (for 1995) to 17 (for 2012), which is intended to account for the increase in number of judgments.

Statistical procedures

To estimate the influence of human rights violations on the number of ECHR judgements, we engage in three types of analysis. First, we display the average number of judgements and judgments per one million people to give readers an idea of the number of judgements directed against individual countries. While helpful on one level, these numbers do not account for the population size of the country and, thus, are highly skewed. To visualize more comparable figures, we also include the average number of judgements issued against countries per one million inhabitants per year. By setting all states on the same playing field, this second operationalization allows for more candid comparisons across states. Next, we display the bivariate relationship between our two human rights indices and our dependent variable, the annual number of judgements per country per one million inhabitants. Third, we display the results of six negative binomial regression models. Due to the count nature of the data (the number of judgments per

country per year), we considered both Poisson regression and Negative binomial regression models. An over-dispersion test indicated that the variance is larger than the mean of the dependent variable and thus, the negative binomial regression is preferable. In the regression analyses, we considered two human rights indicators. For each indicator, we run three models: one model with random effects, one model with fixed effects, and one model with a lagged dependent variable to account for autocorrelation.⁵²

Results

Table 1 displays the univariate statistics and reveals several interesting findings. First, there are vast differences in the number of judgments across countries. The number of cases ranges from an average of over 100 cases per year (for Turkey and Italy) to two or fewer cases (for Ireland or Iceland). Second, and more important, there are vast differences between the absolute and the relative rankings: While Turkey and Italy have by far the most cases directed against them in absolute terms, these two countries rank in the middle when it comes to judgments per one million individuals.⁵³ Third, by just looking at the raw data, it is already evident that – at least in some cases – the worst offenders are not those that receive the most judgments. For instance, if we use judgements per one million people, Russia or Georgia have fewer judgements than France or Italy, even though the human rights records of the former two countries is appreciably worse than that of the latter two countries.

Tables 2 and 3 reveal that there is no relationship between the two human rights indices and the number of judgements per country-year. In both tables, we fail to detect a linear relationship between either the CIRI Human Rights Index or the PTS and the annual count of ECtHR judgments. Instead, we find that countries with a rather poor human rights record (countries that have a low ranking on the CIRI Human Rights Index and a high score on the PTS) have few judgements issued against them. Examples of such cases include Russia, Albania, and Georgia.

All six models (**Table 4**) suggest that the Court is not issuing more judgments against countries with worse human rights records.⁵⁴ Models 1, 3 and 5 use the CIRI and

Table 2. Bivariate relationship between CIRI Human Rights Index and the average number of judgements per one million people per year.

CIRI Human Rights Index	Mean number of judgements per one million people per year	N
0	0.96	4
0.33	1.85	6
0.67	2.58	31
1	1.69	92
1.33	1.79	132
1.67	2.28	200
2	3.47	174

Table 3. Bivariate relationship between PTS and the average number of judgements per one million people per year.

Political Terror Scale	Mean number of judgements per one million people per year	N
1	1.76	348
2	2.02	250
3	1.70	88
4	1.04	32
5	0.01	4

Table 4. Negative binomial regression models.

Predictors	Model 1 RE	Model 2 RE	Model 3 LG DV	Model 4 LG DV	Model 5 FE	Model 6 FE
Human Rights (CIRI)	.006 (.190)		-.001 (.192)		.107 (.183)	
Human Rights (PTS)		.157 (.103)		.164 (.104)		.125 (.099)
Democracy score	.311** (.103)	.309** (.100)	.288** (.105)	.286** (.102)	.269** (.100)	.267** (.097)
EU membership	-.040*** (.010)	-.040*** (.010)	-.040*** (.010)	-.041*** (.010)	-.039*** (.013)	-.039*** (.013)
Independent judiciary	-.258* (.120)	-.232 (.120)	-.262* (.121)	-.238* (.121)	-.158 (.117)	-.130 (.116)
GDP per capita (log)	.929*** (.170)	.954*** (.171)	.918*** (.176)	.951*** (.178)	1.30*** (.172)	1.32*** (.172)
Population (log)	1.06*** (.187)	1.02*** (.183)	1.06*** (.193)	1.03*** (.188)	2.04*** (.282)	1.97*** (.278)
Ethnic fractionalization	6.82*** (1.28)	6.71*** (1.24)	6.66*** (1.30)	6.58*** (1.26)	9.91*** (1.66)	9.60*** (1.61)
Year	.080*** (.015)	.078*** (.016)	.074*** (.016)	.071** (.017)	.053* (.017)	.051** (.017)
Judgements (lag)			.004 (.005)	.003 (.006)		
Constant	-181.70*** (29.56)	-177.81*** (29.91)	-168.60*** (34.96)	-161.41*** (32.42)	-138.85*** (32.31)	-133.64*** (32.51)
N	566	563	533	530	566	563
Log likelihood	-771.81	-766.85	-755.64	-750.65	-595.59	-591.23

Note: Standard errors in parentheses.

***Significance at $p < .01$.

**Significance at $p < .05$.

*Significance at $p < .10$.

models 2, 4, and 6 the PTS measures of human rights. In none of the models does the coefficient for any of the two human rights indices approach statistical significance. In fact, the coefficient for the CIRI index is negative and the coefficient for the PTS scale positive; this indicates that – if anything – there is a negative relationship between human abuses and judgements.

In other words, the ECtHR does not issue more judgments against member states of the Council of Europe with worse human rights records; instead, we find that more democratic and more economically developed countries are much more likely to receive ECtHR judgments. From the literature on post-materialism, we know that citizens of richer democratic countries tend to have higher expectations with regard to the protection of civil liberties and human rights, and are therefore more likely to view transgressions as worth prosecuting.⁵⁵ Consistent with the literature on unequal access to justice,⁵⁶ our study also finds that litigating in front of a supranational court requires capacities that vulnerable people subjected to severe human rights violations in less affluent countries (typically with fewer NGOs providing legal aid) are unlikely to possess, unless they are aided by transnational advocacy groups.⁵⁷

Hence, for courts such as the ECtHR to work most efficiently, it is essential that individuals, groups, and organizations have the resources, both ideational and material, along with an open political environment, to bring cases to Strasbourg. While our study does not provide evidence that the ECtHR is effective in “targeting” worst offenders, it does indicate that the EU’s human rights regime is effective insofar as states that have been EU members for longer, face less litigation than new EU members and non-EU members. In addition, our results indicate that countries with a large and ethnically diverse population have more cases. Finally, although only marginally significant, the ECtHR does seem to hear more cases from countries with less independent judiciaries, where cases are less likely to be resolved at the domestic level. This result is significant and suggests that the ECtHR may partially compensate for weak judiciaries.

To examine the robustness of our findings, we performed several additional tests. These additional specifications confirm that democracies have more judgements directed against them. Second, since there is a relatively high positive correlation between procedural democracy and human rights abuses,⁵⁸ we also re-estimated the six models without democracy indicators. The results again corroborate the main results. In these additional specifications, we find that human rights abuses are not significant predictors of the number of ECtHR judgements.

Conclusions

The ECtHR has been successful on several fronts. It has strengthened the legal protection of human rights in Europe. Its decisions are recognized by national governments and have contributed to reducing discrimination against minorities both within the continent and beyond. However, despite these positive features, there is one important caveat with regard to the effectiveness with the ECtHR: it does not address the worst human rights offenders more than countries with better human rights records. Countries with a rather tarnished human rights record, including Russia, the Ukraine, and Serbia, have not seen more cases brought against them in Strasbourg than the forerunners in human rights, such as Germany and the UK.

This analysis indicates that human rights violations do not seem to translate into human rights violation judgments from the ECtHR. On the contrary, our findings

suggest that citizens of more democratic and more affluent countries are significantly *more* likely to be subject to judgments from the ECtHR, despite the fact that they are much less likely to engage in actual violations of human rights. This implies that those most in need of ECtHR protection – citizens of smaller, less democratic and less affluent states – are *less* likely to be protected under the ECHR.

Although the ECtHR might not address the worst human rights crimes, our findings still suggest that it plays an important auxiliary role in the European human rights protection system. For one, it is important for a court like the ECtHR to hear any case alleging human rights abuse, including claims that originate from wealthy and free countries. Attention to human rights issues can only further strengthen the rule of law in countries with an already high-quality record for human rights. Second, and perhaps more importantly, the court hears cases from countries such as Russia, Ukraine, or Albania. Even if it does not always target the worst offenders, it can address cases from countries with poor human rights records, and can help raise international awareness of the human rights violations in those parts of Europe that do not yet fully respect human rights.

We wish to highlight two theoretical and empirical implications of this research. First, from a theoretical standpoint, these findings indicate that the efficacy of an international court should be measured not only by its output – the implementation of its judgments – but also by its input – the number of cases that are admitted to the court and on which it rules (its judgments). To strengthen the ECtHR's efficacy on this dimension, it would be important to expand the powers of the court by including the possibility of independent prosecution. Second, research on democratization should consider including international human rights courts as important external actors in the process of democratization. The ECtHR shows the potential of external actors, despite limited powers, to provide incentive structures for domestic reforms and punish non-compliance, both symbolically by employing naming and shaming strategies and monetarily by awarding damages to victims of human rights violations.

From a more practical standpoint, there is still no mechanism in place that effectively stops human rights abuses that occur on a daily basis in some Council of Europe countries. This reminds us that the struggle for the universal respect of human rights, despite all its progress, still has some way to go. In future research, scholars and the Court itself would benefit from paying more attention to the capacity of citizens and organizations to bring cases to Strasbourg in the first instance. There is much more to be learned from unpacking the black box of capacity, and its effect on human rights and democratization, and we hope this article contributes to starting that conversation.

Notes

1. Elster et al., *Institutional Design in Post-Communist Societies*; Kitschelt et al., *Post-Communist Party Systems*; Vachudova, "Corruption and Compliance in the EU's Post-Communist Members and Candidates."
2. Protocol 11 (opened for signatures in 1994 came into force in November 1998) restructured the control machinery and significantly improved the ECHR's efficiency. After 1998, direct access for litigants is mandatory, and states were no longer allowed to exempt themselves from compulsory jurisdiction. The ECtHR also became a permanent court and created a more flexible evaluation structure for determining the admissibility of cases. Submissions are now evaluated by a registry, which dismisses cases for administrative reasons; the remaining cases are then given to judge-rapporteur (usually the national judge of the respondent country) and the

- admissibility is evaluated by a committee of three judges. If unanimity cannot be reached, the case is referred to the Chamber of seven judges, with the possibility of a rehearing after the delivery of judgment by the Grand Chamber of 17 judges. The Committee of Ministers retains its role in ensuring the compliance of governments with the judgments, but it no longer has the right to address the merits of cases. ECHR, Protocol No.11; Voeten, “The Politics of International Judicial Appointments,” 673.
3. For exceptions, see Elster et al., *Institutional Design in Post-Communist Societies*; Croisant and Merkel, “Introduction”; Merkel, “Embedded and Defective Democracies”; Schneider and Schmitter, “Liberalization, Transition and Consolidation”; Dimitrova and Pridham, “International Actors and Democracy Promotion.”
 4. For a study of how the effect of political awareness on public confidence in the judiciary depends on a country’s level of democracy, see Çakır and Şekerçioğlu, “Public Confidence in the Judiciary.”
 5. Wincott, “Human Rights, Democracy and the Role of the Court.”
 6. ECHR, “Overview 1959–2013.”
 7. The ECHR, formally the Convention for the Protection of Human Rights and Fundamental Freedoms, is an international treaty for the protection of human rights and fundamental freedoms in Europe. Drafted in 1950 by the Council of Europe, the convention began enforcement on 3 September 1953. To date, it has been ratified by 47 states and has 18 articles and 14 protocols. Of the protocols, eight are procedural and four are intended to expand the rights of European citizens.
 8. ECHR, *European Convention on Human Rights*.
 9. Moravcsik, “The Origins of Human Rights Regimes,” 218; ECHR, *The Court in Brief*.
 10. The admissibility of a case to the ECHR is a complex procedure, guided by numerous rules and criteria (ECHR 2011). The types of applicants are individuals (both citizens of Council of Europe member-states and third country nationals), non-governmental actors (associations, foundations, political parties), and states. The majority of applications are individual applications against states (95%), with the remaining cases being advisory opinions (in accordance with Protocol No. 2) and inter-state cases. The ECHR is required to reply to all applications regardless of their admissibility – however, given the high number of pending cases, in 2010 more than 130,000 cases were awaiting admissibility review (ECHR 2011), and the decision of whether or not a case will be admitted can take years. In order to make the procedure easier, in 2010 ECHR adopted a simplified procedure (Protocol No. 14) under which inadmissible cases will be dealt with by a single judge assisted by non-judicial rapporteurs who will provide detailed guidelines for applicants. However, these measures are only partially effective and the backlog of cases remains an issue.
 11. ECHR, *The ECHR in Facts and Figures, 2013*.
 12. In contrast to the Inter-American Court, which frequently faces staunch opposition from member states that practice mass violations of human rights, it is also the only court whose decisions are respected by its member states. Huneeus, “International Criminal Law by Other Means,” 5.
 13. Nigro, “The Margin of Appreciation Doctrine.”
 14. The original founding members are: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the UK. An additional 18 countries joined in the 1990s. In order of accession, these include: Greece, Turkey, Iceland, Germany, Austria, Cyprus, Switzerland, Malta, Portugal, Spain, Liechtenstein, San Marino, Finland, Hungary, Poland, Bulgaria, Estonia, Lithuania, Slovenia, the Czech Republic, Slovakia, Romania, Andorra, Latvia, Albania, Moldova, Macedonia, Ukraine, Russia, Croatia, Georgia, Armenia, Azerbaijan, Bosnia and Herzegovina, Serbia, Monaco, and Montenegro. Please note that Russia was suspended in early 2014.
 15. ECHR, *The Court in Brief*.
 16. Janis, *European Human Rights Law*, 28; see also Scribner and Slagter, “Domestic Institutions and Supranational Human Rights.”
 17. Sileoni, “Between Political Inertia and Timid Judicial Activism,” 52. In regard to Article 6, Italian case, state with high number of judgements, which struggles with their implementation, the explanation is to be found in the “has been due to factors concerning legal system as well as the cultural attitude of Italian politicians and civil society.” Sileoni, “Between Political Inertia

- and Timid Judicial Activism,” 52. Until recently, the judicial reforms necessary to accommodate obligations from the ECHR were not given high political priority. The driving rationale behind the recent reform efforts is unclear (attitudinal change or rational attempt to avoid further charges); the reluctance of judges to engage with the litigation of the ECtHR is pertinent. Yet, an agreement exists among political actors to address most pressing issues – the length of proceedings and trial procedures.
18. ECHR, *The Court in Brief*.
 19. We thank an anonymous reviewer for pointing out that British politicians, legal scholars, and legal practitioners have voiced considerable dissatisfaction with the Court, and some have even suggested that the UK might pull out of the ECHR altogether. Russian politicians have also been highly critical of the rulings of the ECtHR on human rights violations in Chechnya. In both countries, voices were repeatedly raised regarding UK’s and Russian’s possible exit from the ECHR. In July 2015, UK Prime Minister David Cameron raised the issue again in relationship to possible rejection of the changes to UK human rights proposed by his government; also in July 2015, Russian Constitutional Court ruled in the highly medialized Yukos case (2014 ECtHR ruling awarded shareholders of the now-defunct oil company Yukos €1.9 billion in compensation) that national laws should take precedence over decisions of the ECtHR.
 20. Moravcsik, “The Origins of Human Rights Regimes.”
 21. Amos, “The Dialogue between United Kingdom Courts and the European Court of Human Rights.”
 22. Moravcsik, “The Origins of Human Rights Regimes,” 256.
 23. Van der Vet, “Seeking Life, Finding Justice.”
 24. *Ibid.*, 319.
 25. Scribner and Slagter, “Domestic Institutions and Supranational Human Rights Adjudication.”
 26. Moravcsik, “The Origins of Human Rights Regimes.”
 27. Helfer and Voeten, “Do European Court of Human Rights?” 33.
 28. Cichowski, “Courts, Rights, and Democratic Participation”; Cichowski, “International Courts and Democracy”; Meehan, “Human Rights Imprisoned”; Anagnostou, *The European Court of Human Rights*.
 29. Gorzev, “Political Opposition and Judicial Resistance.”
 30. Sileoni, “Between Political Inertia and Timid Judicial Activism.”
 31. Hillebrecht, “The European Court of Human Rights.”
 32. Hawkins and Jacoby, “Partial compliance.”
 33. Bogdan and Mungiu-Pippidi, “The Reluctant Embrace.”
 34. Scheeck, “Solving Europe’s Binary Human Rights Puzzle.”
 35. Helfer, “Redesigning the European Court of Human Rights.”
 36. Hafner-Burton, “International Regimes for Human Rights.”
 37. Cingranelli et al., “The CIRI Human Rights Dataset.”
 38. Dahl, “Decision-Making in a Democracy”; Dahl, *Democracy and its Critics*.
 39. Wood and Gibney, “The Political Terror Scale.”
 40. As a result of known bias of AI reports (Hill et al., “Information Politics versus Organizational Incentives”), we only include the scores based on the US State Department Reports.
 41. Inglehart, *Modernization and Postmodernization*; Inglehart and Welzel, “Modernization, Cultural Change and Democracy.”
 42. United Nations Statistical Division, “Population and Vital Statistics Report.”
 43. Dahl, *Political Opposition in Western Democracies*; Russell, *Power*. For a study investigating the extent to which specific and diffuse political support is related to individuals’ perceptions of respect for human rights in the context of an emerging democracy, see Hillebrecht et al., “Perceived Human Rights and Support for New Democracies.”
 44. King, “Repression, Domestic Threat, and Interactions in Argentina and Chile”; Regan and Henderson, “Democracy, Threats and Political Repression in Developing Countries”; Davenport, *State Repression and the Domestic Democratic Peace*.
 45. Davenport and Armstrong, “Democracy and the Violation of Human Rights.”
 46. The data were retrieved from the Center for Systemic Peace. As a robustness check, we also examined the political rights index from Freedom House. For a discussion of the Freedom House measurements, see Giannone, “Political and Ideological Aspects in the Measurement of Democracy.”

47. Cingranelli et al., “The CIRI Human Rights Dataset.”
48. Geys, “Explaining Voter Turnout.”
49. Chaudhry et al., “Factors Affecting Good Governance in Pakistan.”
50. Dahl, *Polyarchy*; Horowitz, *Ethnic Groups in Conflict*; Muller, “Income Inequality and Democratization.”
51. Fearon and Laitin, “Ethnicity and Insurgency in Civil War Data.”
52. Kmenta, *Elements of Econometrics*.
53. For a comparison of the different approaches followed by the Turkish Constitutional Court and the ECtHR, in the specific domain of party prohibition cases, see Özbudun, “Party Prohibition Cases.”
54. The results from the pairwise correlation indicate that there is no relationship between a country’s human rights record and the number of judgments directed against them. The Pearson correlation coefficient is not significant at any conventional level ($p = .11$) and is substantively very small (.06). The raw data confirms this assessment. For example, if we look at the 10 European countries with the worst human rights records, according to our composite index – Russia, Former Yugoslavia, Ukraine, Montenegro, Greece, Moldova, Bulgaria, Georgia, Bosnia, Croatia, and Serbia – only three are states with the most ECtHR judgments (Greece, Russia, and Bulgaria). Equally telling, these countries are only ranked seventh, eighth and ninth.
55. Inglehart, *Modernization and Postmodernization*; Inglehart and Welzel, *Modernization, Cultural Change and Democracy*.
56. Albiston and Sandefur, “Expanding the Empirical Study of Access to Justice,” 101; Nash, “Financing Access to Justice.”
57. Gorzev, “Political Opposition and Judicial Resistance”; ECHR, *Systemic Problem of Ineffectiveness of Investigation in Bulgaria*; Guasti, “Beyond EU Conditionality.” For more general literature on role of transnational NGOs see Sikkink and Kim, “The Justice Cascade”; Risse et al., *The Persistent Power of Human Rights*.
58. The Pearson correlation between the Polity IV index and the two Human Rights indices is 0.58 and 0.46, respectively.

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Appendix

Table A1. Descriptive statistics.

Variables	Mean	SD	Min	Max
Judgments per country per year	20.09	47.91	0	413
Judgements per country per year per one million people	2.46	8.05	0	139.4
Human Rights Index	1.50	.439	0	2
PTS	1.75	.87	1	5
Polity	8.72	2.17	0	10
GDP per capita (log)	9.37	1.40	5.64	12.14
Independence of the judiciary	1.63	.61	0	2
Ethnic fractionalization	.29	.19	.04	.71
Population size (log)	8.42	2.05	3.22	11.91