

Abstract

The thesis empirically investigates and compares three states from the European Central East, namely Slovenia, Hungary and Poland, before the European Court of Human Rights (ECtHR, Court) to discern possible pockets of (non)compliance with the Court's rulings. Considering the recent illiberal developments in Europe, it looks specifically into state strategies and their underlying patterns of resistance as employed during ECtHR compliance supervision. The literature in this respect often sees all Eastern European resistance as unitary, expecting all states to behave similarly (defiant). This seems to be a consequence of both, compartmentalising Council of Europe into the liberal West and the less liberal East and an oversimplistic binary categorization of all resistance as either serious backlash or innocent pushback. Both views, as the thesis shows, fail to grasp the differences, extent and severity of contemporary state approaches to ECtHR (non)compliance, with important implications for the system. The cumulative thesis approaches the three states individually, comparatively and as a pocket within the ECtHR system to identify, map and compare their behavioural nuances and, in turn, explore how each may affect the European human rights system. In this respect, it employs an original database containing several pieces of information on all ECtHR cases against the three states until 2021 including their (inter)national follow-up, and mixes a constellation of quantitative and qualitative methods of analysis. Challenging their uniform treatment, it showcases that the three states significantly differ: compared to the other two states Slovenia goes above and beyond to signal its loyalty to the ECtHR system, whilst the illiberal Hungary and Poland each in their own albeit much different way (selectively) resist. Yet, although they differ on the surface, their two approaches seem to share a common, underlying bad faith element as reflected in their instrumentalization of (non)compliance to reap the (inter)national benefits of enduring with the ECtHR system. This, as the thesis shows, can have important consequences for its ability to react and effectively exercise its core functions as well as it can deter the victims from accessing the Court. Conceptually, the finding also places similar forms of resistance into an analytically uncharted area between pushback and backlash, thus shaking our categorical understanding of (non)compliance and resistance. As the examples of Hungary and Poland suggest, capturing ECtHR resistance – even beyond the mere Central-Eastern European context – seems to require loosening the constraints of the existing pushback-backlash dichotomy by introducing more nuance and higher sensitivity to (bad faith) motives underlying different state (non)compliance strategies. Not only can this allow for a more robust understanding of the slippery slope from pushback to backlash, it may possibly also be the only way to comprehend fully the extent and seriousness of the currently prevailing forms of (illiberal) resistance against the ECtHR system.