

“Judgments of the European Court of Human Rights:  
A Test Case for Enforcement and Managerial Theories of State Compliance”

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Abstract:

This paper assesses government compliance to European Court of Human Rights (ECHR) decisions and the fulfillment of ECHR member-state criminal justice obligations. Judgments of the ECHR can involve either a monetary award given by the state to the claimant, “individual measures” or “general measures.” Monetary award judgments cover pecuniary damage and expenses. Individual measures are judgments by the ECHR which are considered necessary to prevent the further erosion of the claimant’s rights. Finally, the ECHR may impose general measures which require a state to enact legislative reforms to prevent future violations. A perennial question in the international law and organizations literature is why states adhere to the decisions of international bodies. In recent years, the question of what determines compliance to international regulatory agreements has gained a prominent position in the literature on international regime effectiveness. The debate in the literature is framed in terms of two alternative perspectives on compliance. The enforcement and managerial perspectives present contending claims about the most effective means of addressing non-compliance in international cooperation. Whereas enforcement theorists social (Simmons 2000; Cortright and Lopez 2002; Kelley 2004; Vachudova 2005) characteristically stress a coercive strategy of monitoring and sanctions, managerial theorists (Chayes and Chayes (1993, 1995) embrace a problem-solving approach based on capacity-building, rule interpretation and transparency. The enforcement theory of compliance posits that sanctions and monitoring yields fulfillment whereas the managerial theory suggests that conformity is due to increasing capacity, transparency and simplification in rules. We test for whether judgments on treaty violations are best viewed as a form of enforcement or managerial compliance. We conclude that the enforcement theory best captures the nature of ECHR member-state compliance to treaty obligations.

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Since the end of World War II, judicial bodies have been created with the goal to modify the behavior of states. A central theme in much of the recent international legal scholarship is the growing role of formal agreements and supranational authority as states have created international courts with administrative and constitutional review powers. Courts have been given the right to constrain, shape and reverse state acts (Alter 2006; Moravcsik 2000). Supporters of international courts believe that these judicial bodies will encourage greater respect for international law. However, one of the concerns in the legalization of international relations is that the process changes the relationship between citizens and their elected governments.

While there is a growing interest in how international courts are influencing international politics, we know very little about the relationship between international courts and compliance with international law. The literature tends to focus on broad questions of why states follow international law or contextual factors shaping state compliance with international obligations. Some argue that courts enhance the level of state compliance with international law with little empirical evidence as to when, how or why this is likely to occur. While there have been a number of case studies which have examined judicial bodies including the World Trade Organization and the International Court of Justice, there has been surprisingly little longitudinal analysis of state patterns of cooperation and the mechanisms which influence this behavior.

This paper assesses government compliance to European Court of Human Rights (ECHR) decisions and the fulfillment of ECHR member-state criminal justice obligations. Judgments of the ECHR can involve either a monetary award given by the state to the claimant, “individual measures” or “general measures.” Monetary award judgments cover pecuniary damage and expenses. Individual measures are judgments by the ECHR which are considered necessary to prevent the further erosion of the claimant’s rights. Finally, the ECHR may impose

general measures which require a state to enact legislative reforms to prevent future violations. A perennial question in the international law and organizations literature is why states adhere to the decisions of international bodies. The enforcement theory of compliance posits that sanctions and monitoring yields fulfillment whereas the managerial theory suggests that conformity is due to increasing capacity, transparency and simplification in rules. We test for whether judgments on treaty violations are best viewed as a form of enforcement or managerial compliance. We conclude that the enforcement theory best captures the nature of ECHR member-state compliance to treaty obligations.

### **The European Human Rights System**

Adopted in 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force in 1953. Unlike other human rights instruments such as the United Nations Universal Declaration on Human Rights, the Convention is the basis of legal judgments that can lead to significant changes in the domestic laws of member states. The Convention requires that all contracting states implement and enforce its rights provisions in their domestic legal system. The Convention commits states to human rights principles chiefly defined in terms of civil liberties and political rights, excluding social and economic rights (Polakiewicz 1996). After domestic remedies have been exhausted, any state party, individual, group or non-governmental organization (NGO) may bring a suit claiming a human rights violation against one of the member-states.

Under the original system, three institutions were responsible for enforcing the obligations undertaken by member-states: The European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe. Initially, the Convention treated both an individual's ability to petition the Commission and

Court jurisdiction as optional rather than mandatory features. States were able to commit to these measures (and rescind these commitments) separately from each other and separately from ratification of the Convention. The Convention created a Commission which processed complaints about human rights violations, weeded out those that did not meet the criteria for admissibility, gathered information about the cases, attempted to reach a friendly settlement between the disputants, published reports and recommendations and forwarded unresolved disputes to other decision-making bodies. The Commission exercised a gate-keeping function by first reviewing cases submitted to the Court. Only if no settlement could be reached did the Commission draw up a report on the facts of the case and forward these, along with its opinion, to the Court.<sup>1</sup> In 1998, a series of major reforms ended the Commission as a separate entity and folded many of its functions into the Court itself. This new structure began operation in 1999.

States established the Commission specifically to screen individual applications, and allowed only the Commission or states (not individuals) to take cases to the Court. Of equal importance, states wrote rules to ensure that individuals had no standing before the Court, and no way to represent themselves there, even after the Commission referred their case to the Court. States instructed the Commission to bring complaints to the Court but then to not act in the interests of the individual but rather as the “defender of the public interest.” States did not even make provisions in the rules to inform individuals of proceedings before the Court in which they were the chief complainant (Robertson and Merrills 1993).

When European states disbanded the Commission in 1998, they transferred its functions to the Court. The European Court of Human Rights (ECHR) was established in 1959 and comprises judges equal in number to the member-states to the Convention. Increasing caseload and the addition of new contracting states in the 1990s made institutional reform a key priority.

Major reforms targeted individual access as well as granting compulsory jurisdiction to the Court. In 1994, Protocol 9 amended Articles 44 and 48 of the Convention formally extending standing to individuals, NGOs and groups of individuals to bring a case to the Court and to receive copies of the Commission's reports on their case. In 1998, Protocol 11 amended Article 25 and made individual access compulsory. Following these reforms, individuals were given formal access to the Court. Article 46, which governed the Court's jurisdiction, was optional until 1998. This gave states the choice to have claims decided by an intergovernmental body rather than the Court. The reform of Convention institutions in 1998 abolished the Commission and established the Court as final arbitrator of Convention rights.

States delegate to the Court the ability to decide if the Convention and additional protocols have been violated and to pass binding judgments requiring states to alter their practices. If an application to the ECHR is found admissible, each party is given a chance to respond and to resolve the dispute in a friendly settlement, thus avoiding a final ECHR decision. When a case has to be decided by the Court, it can only rule on whether an individual has had his or her rights violated by a member-state; however, it generally cannot over-rule national decisions or annul national laws. Rather, states must determine from the violation what remedies to adopt in order to avoid future cases. States can decide to make legislative changes as part of their remedies, but this is not something the ECHR can prescribe for them or even require of them in a general way (Hawkins and Jacoby 2008).

This pattern of extreme deference to states, however, has changed recently with the Court becoming more willing to give specific instructions to the violating state, including some specific mentions of offending laws and practices. It seems that this trend is linked mostly to a Court effort to signal what kinds of state behavior are most likely to minimize future cases; although, it

does nothing to change the basic fact that states are free to decide their own legal remedies to adverse rulings. When the Court rules against a state, it generally obliges the state to undertake “just satisfaction” towards the victim. Typically, just satisfaction takes the form of some kind of payment to the victim, often a combination of pecuniary losses, non-pecuniary losses (*e.g.*, psychological damages), court costs and even interest payments (Sims 2004). In addition, the Court can invite the state to take either individual and/or general measures. Individual measures are meant to put the victim into the same position enjoyed prior to the violation. The individual measures are classified into eleven categories.<sup>2</sup> The Court can also expect states to undertake general measures in order to prevent further violations associated with a specific judgment. These are not intended to remedy a past violation which is the function of both just satisfaction and individual measures. General measures arose as a category in the 1980s and most general measures have been issued since the 1990s. The ECHR classifies general measures into seven categories.<sup>3</sup> Over the last fifty years, the Court has delivered more than 12,000 judgments and decisions. However, the Court has no power to actually demand any specific legal or behavioral remedies from the state in question. The ECHR cannot order a state that has been held to have violated the Convention to take any action other than the payment of just satisfaction as determined by the Court. The judgments of the ECHR are transmitted to the Committee of Ministers which monitors compliance with judgments.

The Committee of Ministers is comprised of the ministers of foreign affairs (or their deputies) from the member-states. The Committee is assisted by the Department for the Execution of Judgments which works with respondent states to ensure the effective execution of the Court’s ruling. The procedures followed by the Committee regarding its supervision of the execution of ECHR judgments are established in rules that were adopted in 2001. Once the

Court's judgment has been transmitted to the Committee of Ministers, the role of the ECHR ends. In the case of an adverse ruling against a state, the Committee promptly puts the matter on its human rights agenda and "invites" the state to report on the measures it has taken to address the violations found by the Court. The Committee revisits the case at regular intervals to assess state compliance with the rulings of the Court. The Committee meets four times a year with private deliberations; although, the agendas for the meetings are made public as well as its decisions.

Cases on which the ECHR has already rendered judgment can either be pending which means the Committee had not yet closed the case (though in some cases, the state may already have satisfied Court requirements but not adequately reported these actions) or closed which equates to a Committee judgment of full compliance with Court's decision. For cases that have been pending for some time, interim reports are also issued by the Committee. When the Committee is convinced that full compliance has occurred, it closes the case. In addition, the Committee may adopt interim resolutions concerning the interim measures already taken and establish a schedule for completion of obligations in order to comply with the judgment. The use of interim resolutions indicates that fulfillment of ECHR judgments is not automatic and that states may take considerable time before complying with decisions. Given the financial and even more important sovereignty costs involved, it is not surprising that states may be averse to implementing judgments. Indeed what may be surprising is the general level of compliance to Court decisions which begs the question: How can we explain why states comply with the decisions of international bodies?

## **Compliance with International Obligations: Enforcement and Managerial Accounts**

For Raustiala (2000), compliance is conformity between a behavior and a legal standard. Compliance could be the result of the rules and enforcement efforts or it could be sheer coincidence. To say an actor complies with the rule is not to imply that the rule caused the behavior. In recent years, the question of what determines compliance to international regulatory agreements has gained a prominent position in the literature on international regime effectiveness. The debate in the literature is framed in terms of two alternative perspectives on compliance. The enforcement and managerial perspectives present contending claims about the most effective means of addressing non-compliance in international cooperation. Whereas enforcement theorists characteristically stress a coercive strategy of monitoring and sanctions, managerial theorists embrace a problem-solving approach based on capacity-building, rule interpretation and transparency.

International enforcement elicits compliance through the imposition of penalties or rewards, material and social (Simmons 2000; Cortright and Lopez 2002; Kelley 2004; Vachudova 2005). The enforcement approach is firmly anchored in the political economy tradition of game theory and collective action theory. States are conceived of as rational actors that weigh the costs and the benefits of choices when making compliance decisions in cooperative situations. The source of non-compliance and its solution stems from the decision's incentive structure. States choose to defect (not comply) when confronted with an incentive structure in which the benefits of shirking exceed the costs of defection. Compliance problems are, therefore, best remedied by increasing the likelihood and the costs of non-compliance through monitoring and the threat of sanctions. Haas argues that "even if a state may believe that signing a treaty is in its best interest, the political calculations associated with the subsequent

decision actually to comply with international agreements are distinct and quite different” (1998, 19). For cooperation to generate collective benefits, enforcement is required to deter states from shirking. Monitoring and sanctions constitute the two central elements of this strategy. Monitoring increases transparency and exposes possible defectors. Sanctions raise the costs of shirking and make non-compliance a less attractive option. Together, monitoring and sanctions carry the capacity of deterring defections and compelling compliance (Tallberg 2002).

Simmons (2000) suggests that states are more likely to comply with international commitments when they are concerned about their international reputation for predictable and law-abiding behavior. States enjoying such reputation are likely to be rewarded by others while states lacking such reputation are likely to be punished (Keohane 1984). Hafner-Burton (2005) argues that states are more likely to comply with international human rights agreements when compliance is tied to specific material incentives, such as trade integration. Downs, Rocke and Barsoom (1996) focus on the relationship between enforcement and the nature of the regime commitment or their “depth.” As regimes deepen, demanding greater changes from the *status quo*, the gains from cooperation grow. Yet incentives to behave opportunistically, to violate the agreement, also grow. As a result, deeper agreements require correspondingly harsher punishments to deter non-compliance and sustain cooperation. In deeper, more demanding cooperative regimes, the domestic interests affected and the costs and the benefits involved are more significant, and the deepest regimes have in fact used the most extensive enforcement systems.

Thus, enforcement theory suggests that much of the evidence of high compliance with international law is merely indicative of the “shallowness” of many international agreements and should not be generalized to more demanding cases. International agreements tend to codify

existing behavior, rather than impose far-reaching requirements and confront states with few incentives to defect. Governments are more prone to make agreements that comport with the kinds of activities they were willing to engage in anyway, and from which they foresee little incentive to defect. As a result, it is difficult to show that a rule, commitment, or norm *per se* influenced governments to take particular positions that represent compliance. Ultimately, states with good domestic rules are not likely to produce many internationally reviewed cases.

Another approach, most closely associated with Chayes and Chayes (1993, 1995), emphasizes the ways in which management problems influence compliance. Managerial theory of compliance rejects sanctions and other “hard” forms of enforcement as the basis of compliance in favor of collective management. Managerialism begins with the premise that states have a desire to comply with their international commitments. Management problems arise due to the nature of the international rules and the capabilities of states. In some cases, international rules are ambiguous so states are unsure of the particular course of action that they need to take in order to comply with their commitments. Another management problem arises due to the lack of state technical expertise or economic capacity to implement international rules. Lacking administrative or technical capacities, a state may not be able to engage in rule-consistent behavior. Therefore, the function of international agreements, in this case, is not only to specify obligations but to facilitate their attainment for certain classes of signatories deemed unable, without external resources, to meet particular standards of behavior (Haas, Keohane and Levy 1993).

Finally, non-compliance may simply be a timing issue: Many international rules are quite difficult to implement and require an extended amount of time. Chayes and Chayes (1993) explicitly identify human rights treaties in this category. The ECHR, for example, tends to

attribute partial or non-compliance entirely to issues of timing, asserting that ultimately, all of its judgments are complied with (Hawkins and Jacoby 2008). Managerial theorists privilege capacity-building, rule interpretation and transparency as cures for non-compliance. To reduce compliance problems resulting from ambiguous treaty language, the management approach suggests authoritative rule interpretation in international legal bodies. In this line of theorizing, dispute settlement is primarily viewed as clarifying common norms through interpretation and adjudication rather than providing enforcement.

Applying a management approach to international courts, Helfer and Slaughter (1997) and Keohane, Moravcsik and Slaughter (2000) have focused on the institutional design of courts to explain levels of compliance. Helfer and Slaughter (1997) argue that effective international legal institutions are independent. When states move from inter-state dispute resolution to transnational dispute resolution, the increasingly court-like nature of the tribunal leads to stronger ties between the states. Keohane, Moravcsik and Slaughter (2000) argue that compliance with international courts is affected by the independence of the court from state pressures, the extent to which individuals and NGOs have access to the court and the extent to which domestic courts are tied to the international courts or the level of “embeddedness.” Higher levels on these measures mean that the court has higher levels of compliance.

Tallberg (2002) challenges the conception of enforcement and management as competing strategies for achieving compliance. Based on the case of the European Union (EU) and a comparison with other international regimes, he finds that enforcement and management mechanisms are most effective when combined. International cooperation relies on both strategies which are complementary and mutually reinforcing not discrete alternatives. For Tallberg, the combination of compliance mechanisms in the EU takes the form of a highly

developed “management-enforcement ladder” combining cooperative and coercive measures that improve a state’s capacity and incentives for compliance.

### **Understanding Compliance**

When a country persists in behavior long enough for an international court to rule against that country’s practices, and the state subsequently changes its practices, one can assume that the court’s ruling helped trigger the change in behavior. Likewise, when a court asks for a specific behavior, such as the payment of monetary damages to a particular individual, and the state responds, we assume the court’s request had something to do with the behavior. Because most court cases take several years and cost states a significant amount of money and time, it is reasonable to assume that the state prefers to persist in the behavior being challenged in court. Hence, any resulting behavioral change after an adverse court ruling suggests court effectiveness and creates a class of cases where we can reasonably treat compliance and effectiveness as the same thing.

Raustiala and Slaughter (2002) define compliance as a state of conformity or identity between an actor’s behavior and a specified rule. Young (1979) suggests that compliance occurs when the subject’s behavior conforms to prescribed behavior, and non-compliance or violation occurs when the behavior departs significantly from prescription. This definition distinguishes compliance behavior from treaty implementation (the adoption of domestic rules or regulations that are meant to facilitate, but do not in themselves constitute, compliance with international agreements). Fisher (1981) has drawn an important distinction between “first order” and “second order” compliance. The former refers to compliance with standing, substantive rules often embodied in treaty arrangements. Second-order compliance refers to the authoritative decision of

a third party, such as a panel of the United Nations Human Rights Committee or the International Court of Justice.

### **Research Design and Data:**

One of the problems in testing member-state compliance to international organization decisions is the lack of theorizing regarding the operationalization of compliance in terms of the enforcement and managerial theories. As most research in this area tends to be case studies, there have been few attempts at conceptualizing empirical measures for these theories. In the case of the ECHR, there are actually two compliance decision-points. The “first order” compliance decision is the judgment of the Commission/Court in terms of a violation of the ECHR Convention. States that are found in violation of the Convention have not complied with their treaty obligations. The “second order” compliance decision-point refers to the Committee of Ministers execution of the Court’s ruling. Here compliance is defined in terms of abiding by the judgment of the Commission/Court. Our research examines the first order level of ECHR compliance and analyzes the frequency of violations among member-states as an indicator of compliance.

More specifically, we operationalize compliance as the number of repeat violations over time. Critically, member compliance is not a one-shot phenomenon based on any one decision, resolution or case in any international organization but needs to be evaluated based on longitudinal trends. The frequency of violations over time is essential measurement for our competing theoretical accounts of compliance. If the enforcement theory is correct, then absent changes in the sanction regime of the organization, the cost-benefit analysis of a state will remain the same. Therefore, we would anticipate that over time, the number of member-state Convention violations should remain largely the same as the sanctioning power of the ECHR has

not changed over time. If the managerial theory is correct, then we would anticipate that over time, members develop greater institutional capacity to fulfill their obligations as well as technical expertise in understanding treaty rules. Since managerial theory assumes that states want to comply with their international commitments, time provides members an opportunity to increase their capacity and understanding of rules to eliminate future violations. Therefore if the managerial theory is correct, we would anticipate that judgment violations should resemble an inverse linear relationship and decrease over time. Therefore, our operationalization of compliance based on violations over time allows us to use the same measurement for both theories while anticipating different theoretical outcomes.

To assess ECHR compliance, our data set includes all cases in which a judgment was rendered by the Commission or Court from 1960-2005. The data contains over 6,000 cases among the forty-seven ECHR member-states. While we coded for every protocol and article in which there was a judgment (thirty-three in all), our analysis includes only those protocols and articles in which at least five percent of the cases resulted in a judgment.<sup>4</sup> As we conceptualize the frequency of violations as a measure of enforcement, it may little sense to include protocols and articles in which there was no variation. Our choice of five percent was somewhat arbitrary, but we felt that protocols and articles in which at least 300 or more judgments had been rendered would provide us a means to assess compliance in terms of our competing theories. Based on our selection criteria, there were four articles and one protocol that we included for analysis: Article 6.1 (right to a fair trial), Article 8 (right to respect for private and family life), Article 13 (right to effective remedy when rights and freedoms are violated), Article 14 (prohibition of discrimination when applying the rights and freedoms) and Protocol 1.1 (protection of property).

## **Empirical Analysis and Discussion:**

### *Protocol 1.1*

Protocol 1.1 of the Convention addresses the issue of protection of property. It establishes that individuals are entitled to the peaceful enjoyment of their possessions and shall be deprived of these only in the case of the public interest and subject to the conditions of both domestic and international law. Cases where member-states had adverse judgments before the ECHR span the period from 1976-2005 with a total of 579 violations. Graph 1 depicts the violations of Protocol 1.1 by year. Between 1976-2000, we observe that violations of Protocol 1.1 were minor and remain constant over time. The highest number of violations occurred in 1994 and 1996 with five and six violations respectively while most other years had zero to three violations. However during the 2001-2005 period, there is a dramatic increase of Protocol 1.1 violations. In 2001 alone, there are 143 violations; however, from this all-time high, there is a decrease by 2005 to sixty-eight violations. The downward trend could be an indication that states are learning from their past mistakes and are implementing the necessary changes domestically to reduce the number of violations incurred; however, this remains to be seen.

### **Graph 1 about here**

Graph 2 identifies Protocol 1.1 violations by member-states during the 1976-2005 period. Violators during this period included Austria, Sweden, Greece, France, Italy, Belgium, Turkey, France, Netherlands, Romania, Germany and Portugal. Long-time members Greece and Italy show a consist pattern of violations over this period. The lack of compliance with Protocol 1.1 is exacerbated during the 2001-2005 period with Turkey, Romania, Moldova, Ukraine and the Russian Federation becoming major violators. While the managerial model of compliance emphasizes a learning curve for violators that will lead to a decrease in the number of violations,

these states show consistent or increasing numbers of violations over time. Overall, the patterns found in Graphs 1 and 2 seem to indicate that between 1976-2000, states were engaged in a cost-benefit analysis where violations remained low but consistent over time. For the second period from 2001-2005, we believe that the dramatic increase of violations shows that states were still engage in a cost-benefit analysis in which capacity-building has not occurred.

### **Graph 2 about here**

#### *Article 6.1*

Article 6.1 of the Convention establishes that individuals are entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. It also specifies that judgments are to be made public, but the press and the public may be excluded from hearings under certain conditions. During the period from 1968-2005, the ECHR ruled against states in 2,721 cases (by far, the largest number of Convention violations). Graph 3 shows the distribution of these violations over time. The period from 1968-1998 shows a steady increase in the number of violations, reaching a high of forty-six in 1992. However, it is the period between 1999-2005 in which there is a dramatic increase in violations, and the peak is in 2002 with 482 violations.

### **Graph 3 about here**

Graph 4 shows member-state violators of Article 6.1 by year. During the 1968-1998 period, Denmark, France, Germany, Greece, Italy, the Netherlands, Portugal, Austria, Spain, Sweden, Turkey, the United Kingdom and Belgium are major violators. These states exhibit a consistent pattern of violations. During the period between 1999-2005, the Czech Republic, France, Greece, Italy, Poland and Turkey have the largest number of violations. Based on the trends observed in Graphs 3 and 4, we argue that there are low levels of compliance with Article 6.1. The enforcement model which emphasizes the cost-benefit analysis made by states seems to

fit best with the data as states have not modified their behavior over time even when they have continuously been found to be in violation of the Convention.

**Graph 4 about here**

*Article 8*

Article 8 of the Convention states that individuals are entitled to enjoy the protection of their private and family life, home and correspondence. Public authorities cannot interfere with the exercise of this right except when it is in accordance with the law and is necessary for national security, public safety or economic purposes, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Between 1967-2005, the ECHR judged 197 violations of Article 8. Graph 5 shows during the period of 1967-1999 a consistent pattern of violations, reaching a peak of seven cases in 1992. Furthermore, there is a sharp increase of violations during the 2000-2005 period reaching a peak of forty-two in 2003. While there is a dramatic increase in this second time period, there is also a downward trend after 2003 reaching a low of twenty cases in 2005.

**Graph 5 about here**

Graph 6 identifies the major violators of Article 8. France, Ireland, the Netherland, Sweden and the United Kingdom show consistent patterns of violations during the 1967-1999 period. As the number of violations increases over the 2000-2005 period, Finland, France, Germany, Italy, the Netherland, Poland, Turkey and the United Kingdom show consistent patterns of violations. Again, Graphs 5 and 6 show that compliance with the treaty provisions is a problem among many member-states. While these states have ratified the Convention, the lack of compliance with Article 8 supports the enforcement perspective of compliance.

**Graph 6 about here**

### *Article 13*

Article 13 of the Convention protects the rights and freedoms of individuals and guarantees effective remedies before a national authority even in cases where a violation has been committed by persons acting in an official capacity. Between 1970-2005, the ECHR judged 213 violations of Article 13. Graph 7 shows during this period a consistent pattern of violations, reaching a peak of sixty-four cases in 2005. Indeed since 2000, there has been a significant increase in the number of judgments against member-states. From 1970-1999, member-states violations were found in only nine cases. Therefore, 95 percent of the violations have been ruled since 2000. There seems to be a linkage between the change in individual and group standing before the Court and the number of cases and judgments against member-states.

#### **Graph 7 about here**

Graph 8 identifies the major violators of Article 13. Cases involving Turkey, Greece and the United Kingdom represent more than fifty percent of all violation judgments. No member-state was found to have the level of violation of these three states. While graphs 7 and 8 show that compliance with this treaty provision is a problem for many member-states, the level of violations among all members is relatively low during the period from 1970-1999. Therefore, the significant level of violations since 2000 is once again an indicator of institutional change as individuals now have direct redress to the Court. Indeed since 2000, the level of judgment violations has increase in every single year demonstrating a lack of capacity-building and technical expertise development confirming the enforcement theory of compliance.

#### **Graph 8 about here**

## *Article 14*

Article 14 of the Convention guarantees rights regardless of sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This article serves as an equal protection clause for citizens of Council of Europe states. Graph 9 depicts the violations by year from 1967-2005. Unlike other rights discussed above, the number of violations relative to cases was actually quite small (only fifty-eight judgments against states). Moreover unlike the other rights discussed, Graph 9 shows much more volatility in the number of violations per year. Undoubtedly, this volatility is somewhat due to the small number of violations. Interestingly while many other graphs show a significant uptick in violations after the institutional reform of the Court in 1999, Article 14 violations first peak in 1996 and again in 1998 demonstrating that these judgments against states were not due to institutional reform.

### **Graph 9 about here**

Graph 10 identifies the major violators of Article 14. Once again, the pattern of member-state violators for Article 14 cases is unlike other rights. Austria and Turkey report the largest number of violations with Germany a close third. While Austria and Germany had high levels of judgments violations for other rights, Article 14 cases are the first in which these two countries figure so prominently. Indeed, it is noteworthy that many of the violators are long-standing members in the Council of Europe. Therefore even states that have a long history in the Council and within the ECHR are found to have high levels of violations. We interpret this pattern to mean that judicial capacity-building and technical expertise do not explain these violations, and once again, the enforcement approach offers the best account of the data.

### **Graph 10 about here**

## **Conclusions:**

In this paper, we have sought to explain why states comply with ECHR decisions by examining the frequency of violations of the Convention. As decisions have a signal effect not only to the individual member-state violator but to the entire membership, we hypothesize that repeated and consistent violations support the enforcement theory of international organization compliance. In every article and protocol that we analyzed, the patterns suggests that member-states regard the costs of compliance as relatively low with the benefit of the *status quo* relatively high. For member-states, it is less costly to pay just satisfaction and provide individual measures than to re-adjust domestic legislation. Not surprisingly for member-states in which policy changes are more difficult, compliance is likely to be lower (Downs, Rocke and Barsoom 1996).

Another finding of this research is that while member-states violate certain articles and protocols of the Convention, there is surprising compliance to most of the treaty. Of the 6,100 cases considered in this analysis, less than ten percent resulted in judgment violations (4,749). Therefore for the vast majority of cases, the ECHR judgments show that rules that member-states are complying with the treaty obligations and upholding human rights for citizens. While the costs of violations are quite low as demonstrated by frequency of judgments against states for specific articles and protocols, member-states calculations yield compliance in most cases. How can we explain this state behavior as conforming to the Convention results in a loss of sovereignty as well as flexibility in dealing with citizens.

One argument in the literature is that compliance might be the result of pre-existing domestic factors that led states to commit to the particular international rules in the first place. Therefore, compliance is not the result of international rules but existing state norms. The legal rules of an international organization simply codify state behavior and make no special

requirements on the state for compliance. Some studies have recently shown that compliance with human rights treaties is higher in countries with more robust civil societies in which the norms of human rights pre-exist. Ultimately, international organizations do not establish aspirational goals but serve as a least common denominator of state behavior. We find that the number of violations of the Convention is quite low relative to the case judgments confirming that the treaty embodies pre-existing state norms.

Our analysis of the ECHR shows the complexity of understanding compliance to legal rules. This project contributes to our understanding of this complexity by empirically analyzing member-state behavior over a long period of time to establish patterns. Ultimately, our analysis will only be as good as our operationalization of compliance in terms of organizations and states. Understanding the conditions that enhance compliance becomes increasingly important for understanding not only the construction of global governance, but also the potential shift in power between actors in international politics.

**Endnotes:**

1. While individuals did not have direct access to the Court, states could proceed directly to the Court depending on the subject jurisdiction of the case.
2. These individual measures include: (1) Speeding-up or conclusion of pending proceedings, (2) reinstatement of the applicant's rights, (3) official statement by the government on the applicant's innocence, (4) modification of a sentence by administrative measure such as pardon/clemency/non-execution of judgment, (5) measures concerning restitution of/access to property or use thereof, (6) measures concerning the adaptation of proceedings, (7) modification in criminal records or in other official registers, (8) special refunds, (9) re-opening of domestic proceedings, (10) measures concerning the right to residence (right granted/reinstated, non-execution of expulsion measure and (11) special measures (pictures destroyed, meetings organized between parents and children).
3. General measures which the Court can issue include: (1) Legislative changes, (2) executive action in the form of regulations of changes of practice, (3) changes of jurisprudence, (4) administrative measures, (5) publication of judgments/resolutions, (6) practical measures like recruitment of judges or construction of prisons and (7) dissemination.

4. For our data analysis, judgments of the ECHR were coded as “no violation” and “violation.” The actual data set also contains additional judgments which the ECHR renders including “not necessary to examine” and “no separate issue.” We excluded these judgments from our analysis.

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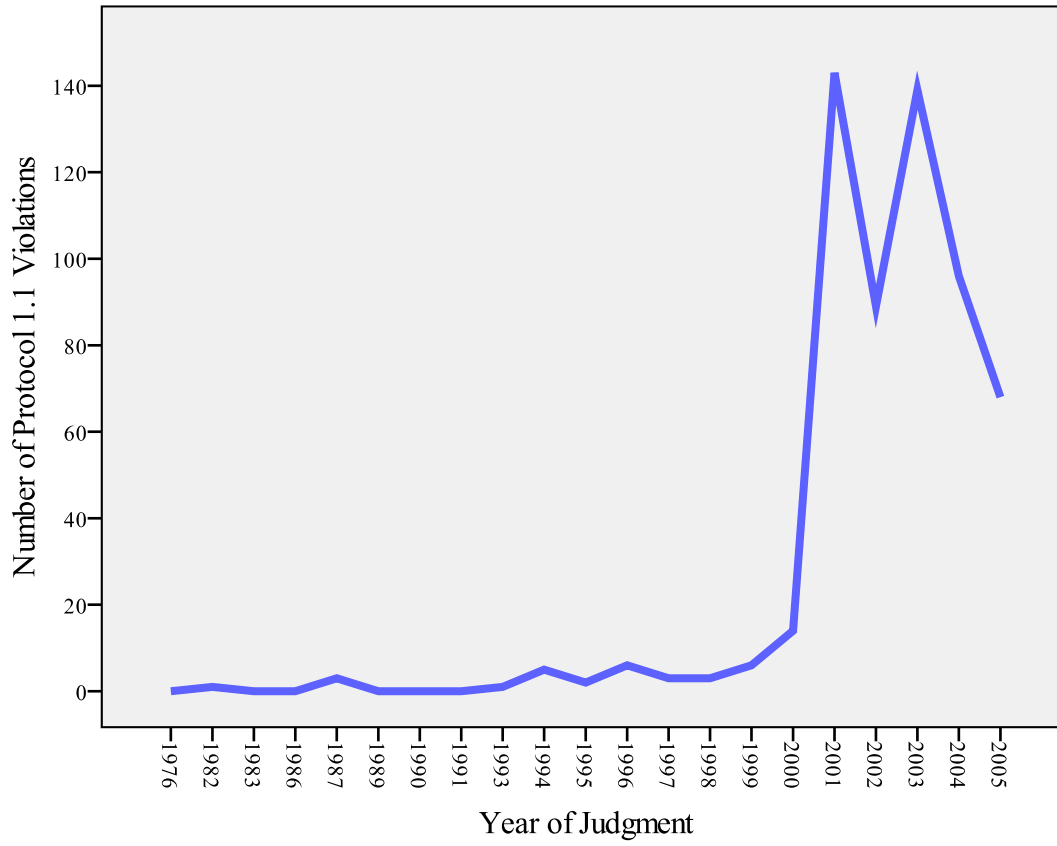
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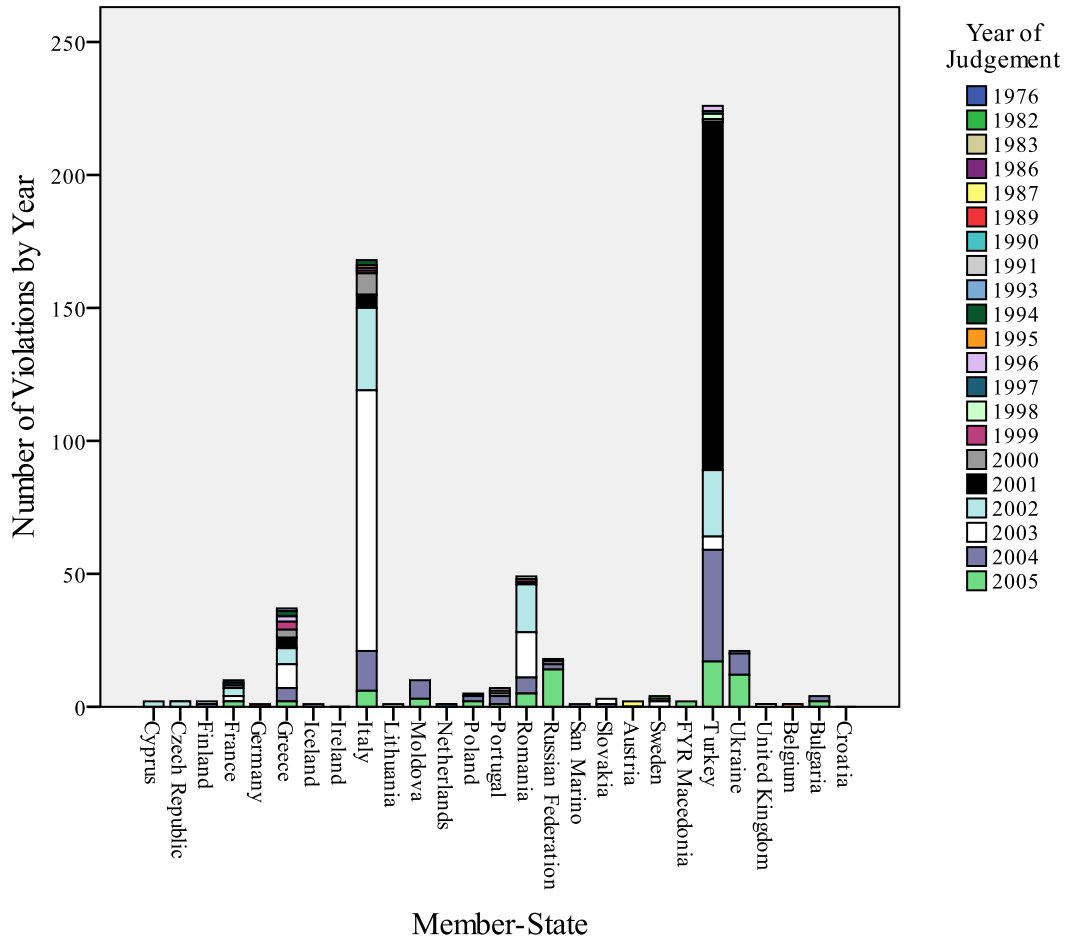
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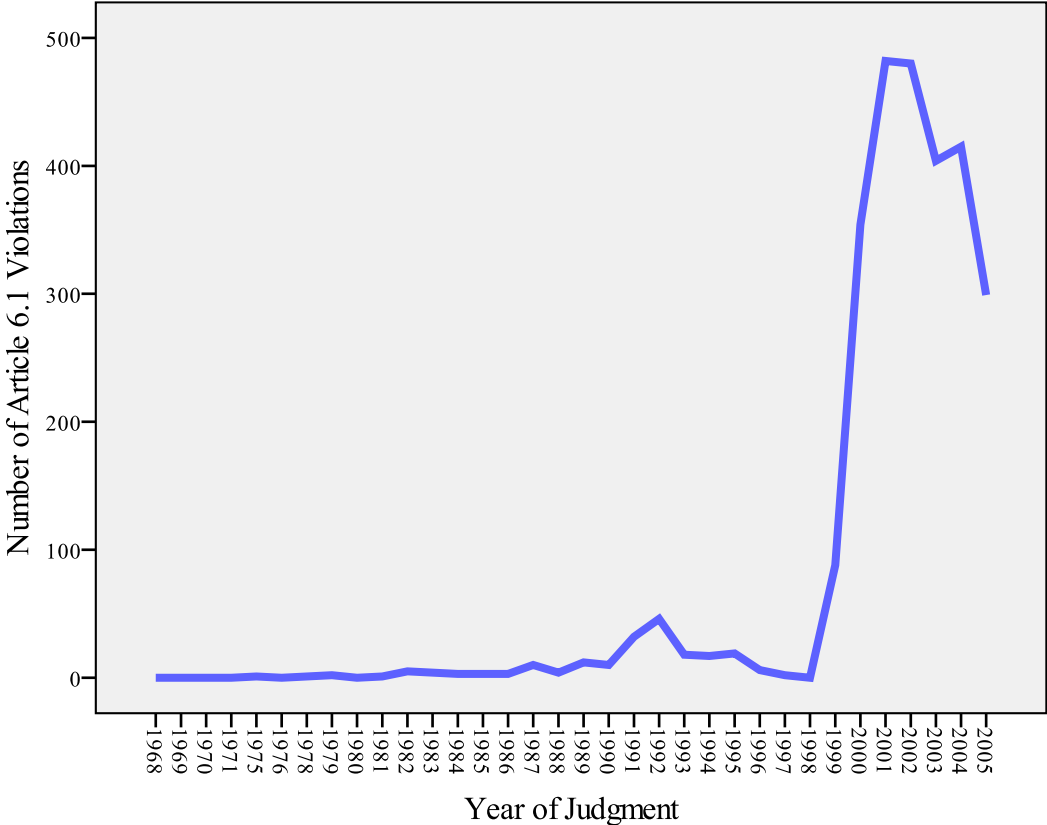
Graph 1. Protocol 1.1 Violations by Year



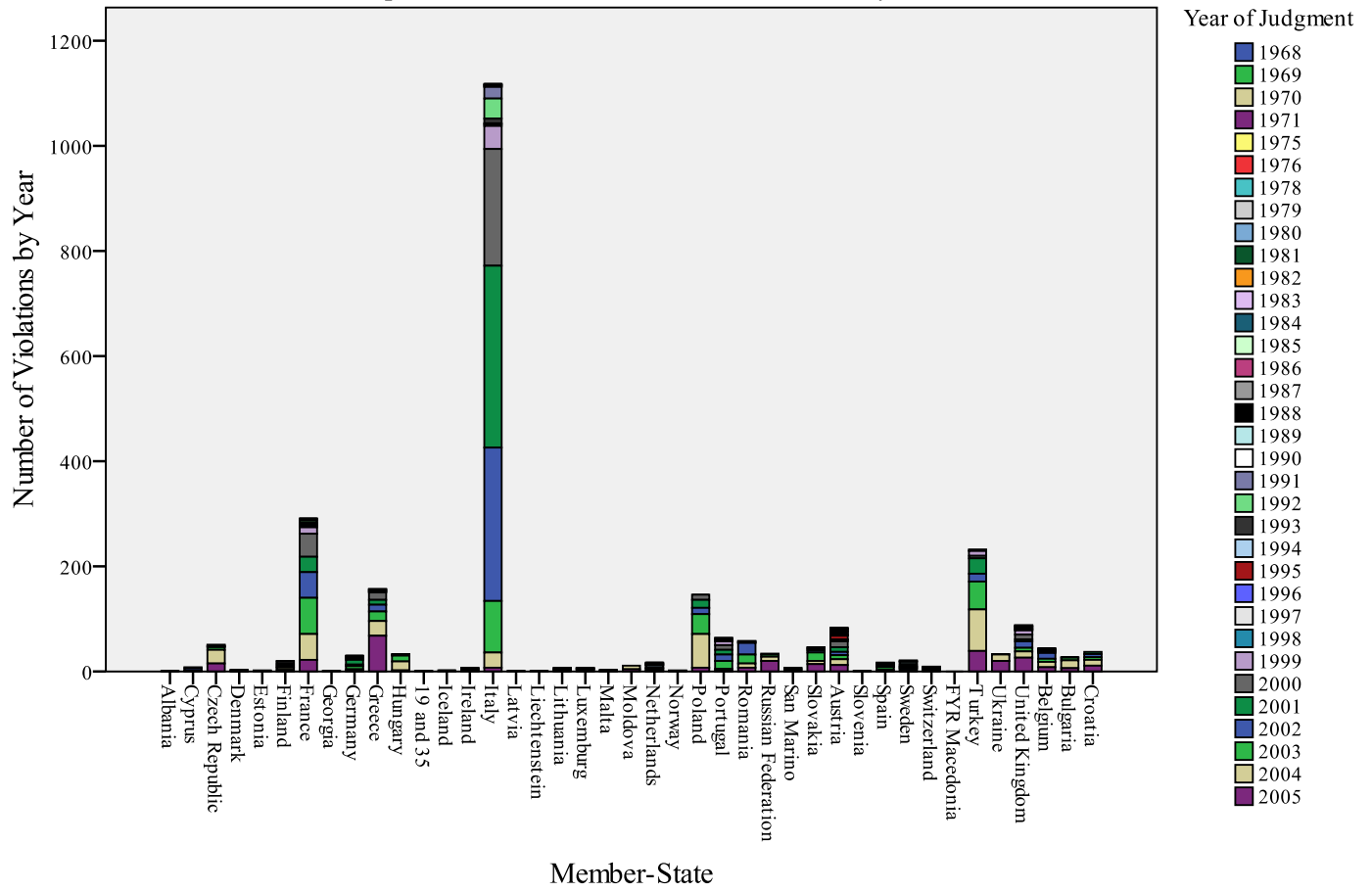
Graph 2. Protocol 1.1 Member-State Violations by Year



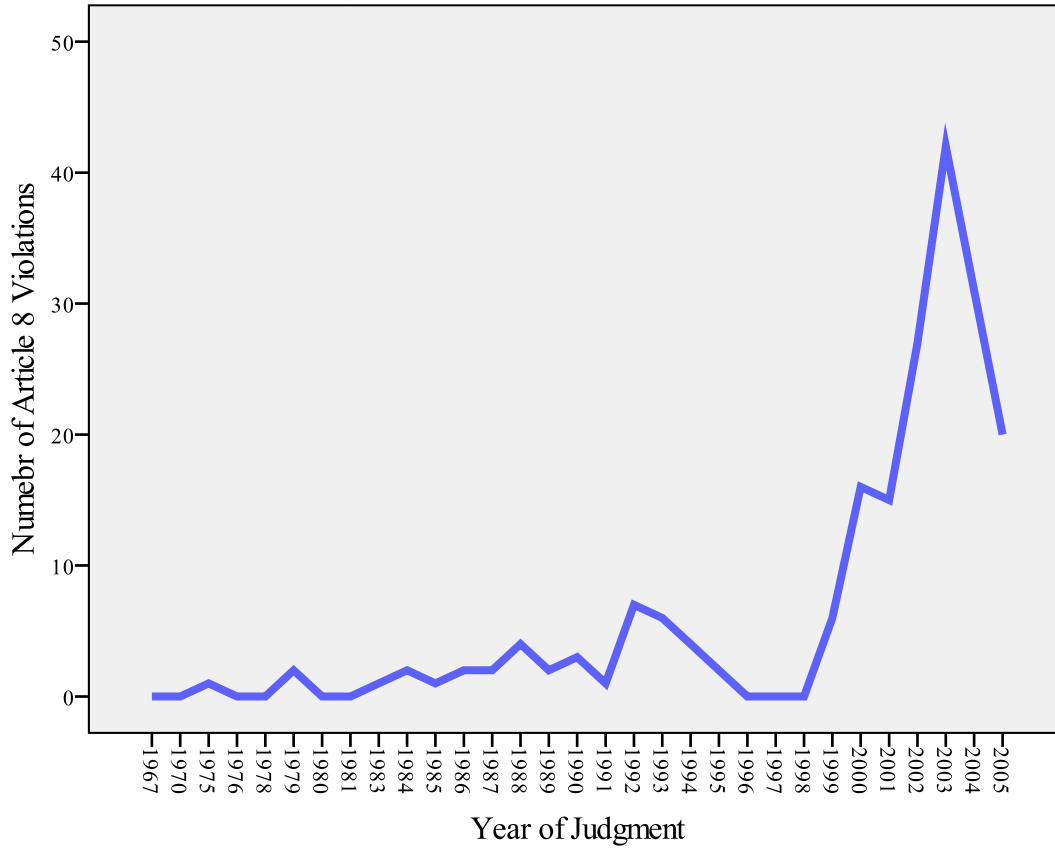
Graph 3. Article 6.1 Violations by Year



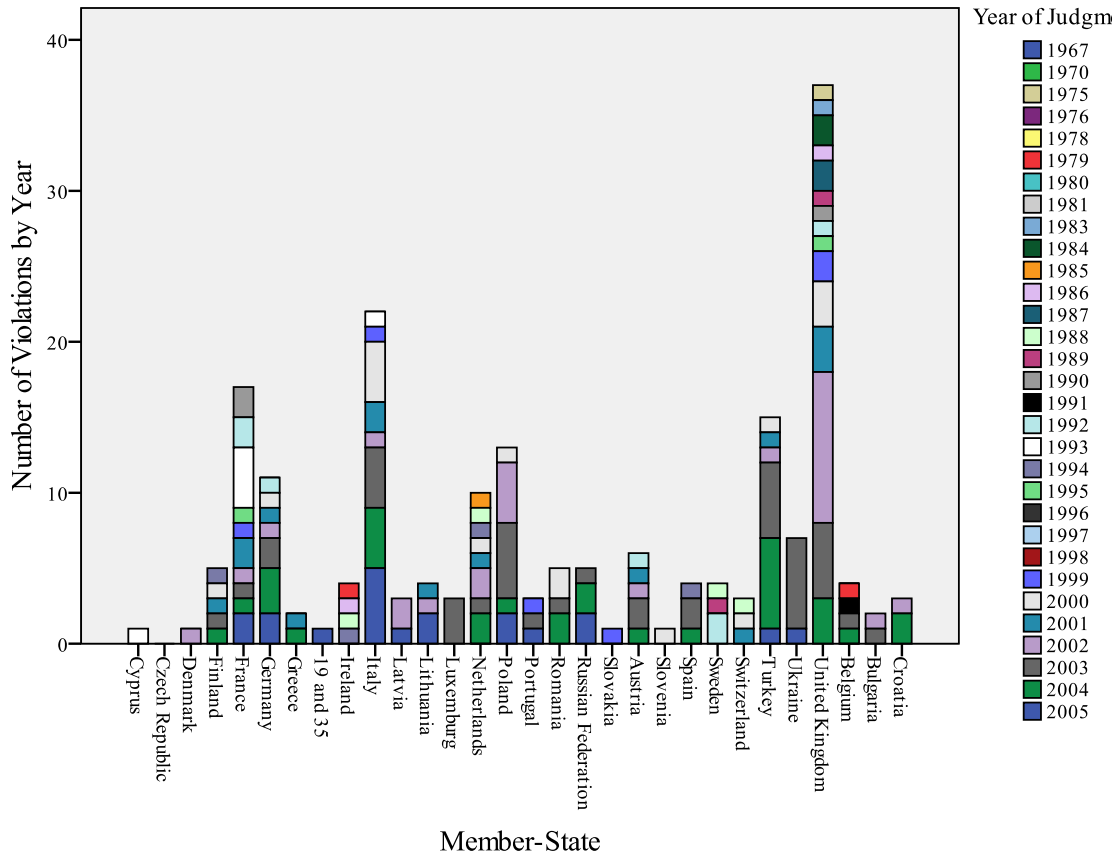
Graph 4. Article 6.1 Member-State Violations by Year



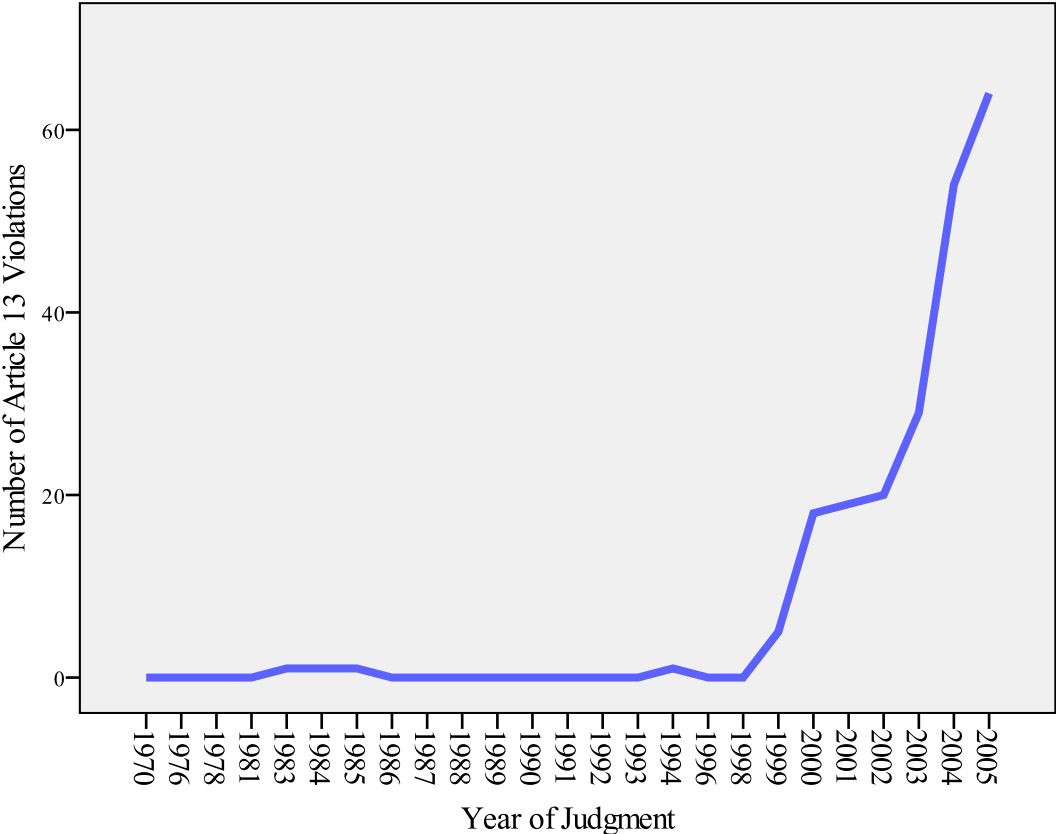
Graph 5. Article 8 Violations by Year



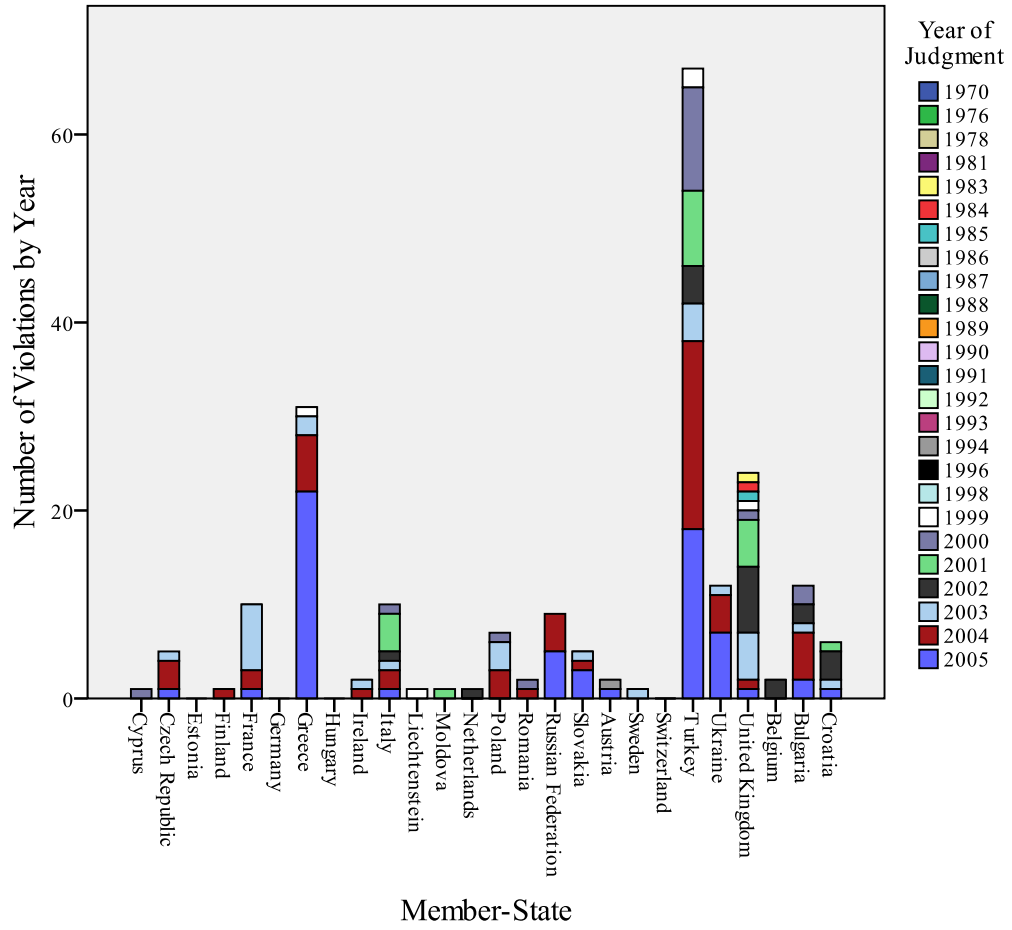
Graph 6. Article 8 Member-State Violations by Year



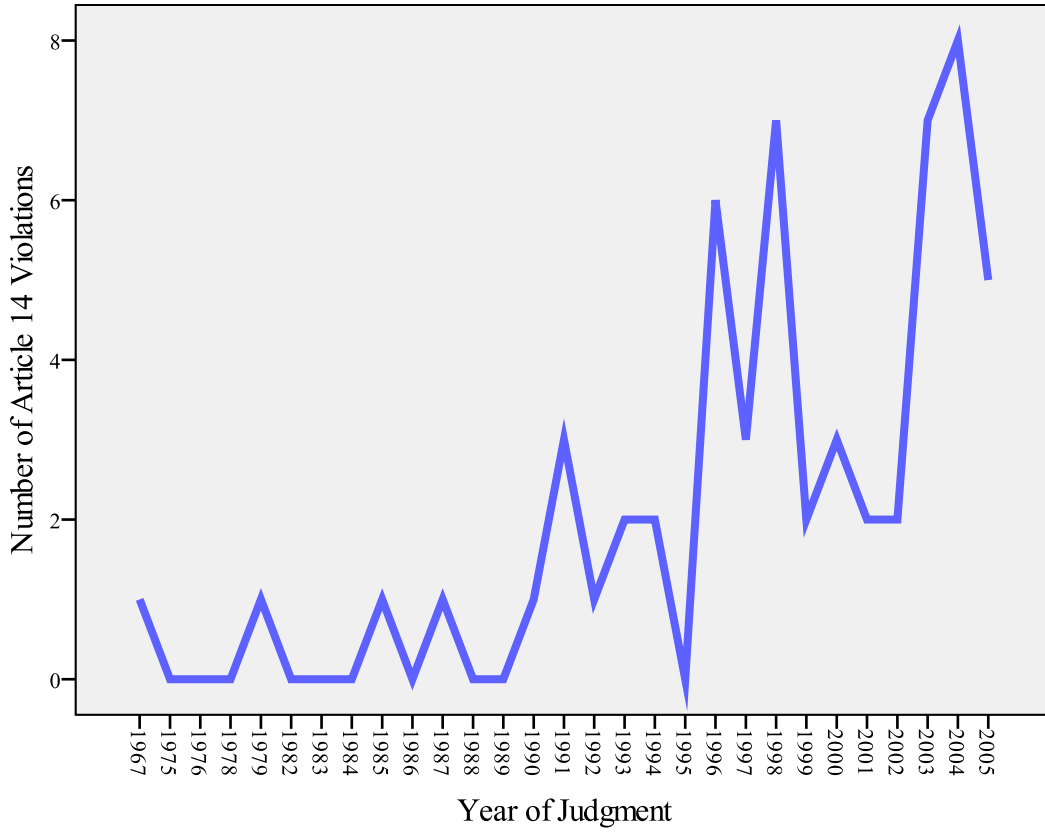
Graph 7. Article 13 Violations by Year



Graph 8. Article 13 Member-State Violations by Year



Graph 9. Article 14 Violations by Year



Graph 10. Article 14 Member-State Violations by Year

