

Why International Law Needs ABM: The Case of Compliance

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Outline

- Human Rights Nudge Project
- Empirical Insights
- Open questions
- How ABM might help to answer them



European Research Council
Established by the European Commission

Project

A NUDGE IN THE RIGHTS DIRECTION? REDESIGNING THE ARCHITECTURE OF HUMAN RIGHTS REMEDIES

- Multi-method study on states' compliance with European Court of Human Rights judgements – qualitative and quantitative (interviews, network/actor analysis, coding of judgements), and now computational
- Purpose: (a) analyse structures which lead to state compliance with judgements, and (b) identify new remedy options – incentives or nudges – which human rights institutions can use to deter future violations
- More information:
<https://www.humanrightsnudge.com>



European Court of Human Rights

- Central body of the Council of Europe in upholding human rights in Europe
 - Recognized by the 47 member states of the Council of Europe
- Founded in 1959 with a steadily increasing case load and a total of 22,500 rendered cases
 - Judgements are binding
- YET, more than half the cases rendered remain unenforced

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Image: © Council of Europe⁴

Collected data

40 years of ECtHR judgements with

- Type of infraction (torture, unlawful detainment, etc.)
- Compliance with judgements (0/1)
- Duration it took to comply &
- Duration from paying damages to other compliance remedies adopted by the state
- Remedies chosen by the state (state choose the remedies, court only determines damage payment)
- Compliance network studies of individual states



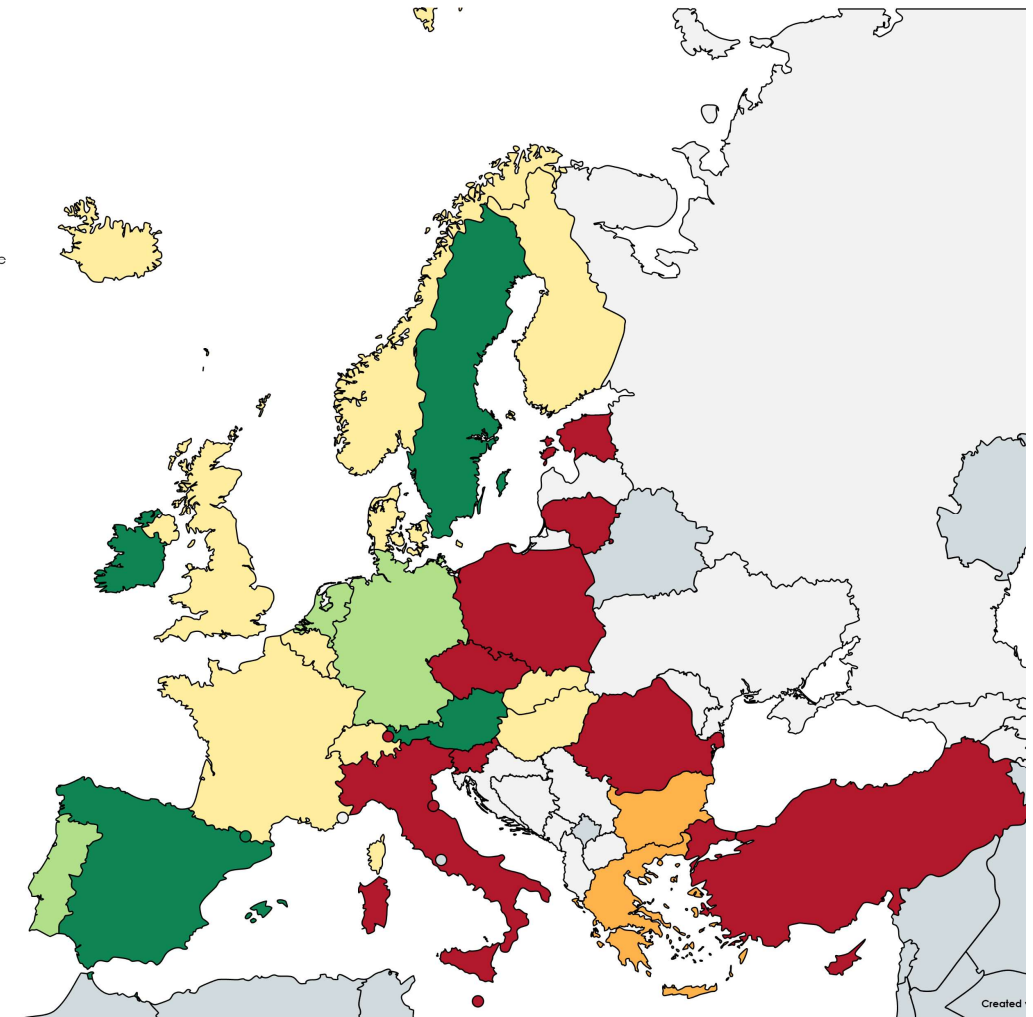
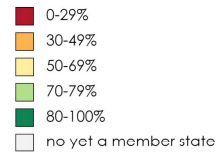
Average compliance rates over time

- Compliance rates averaged over all member states per year
- Average compliance rate is falling as new member states enter the European Convention on Human Rights
- Compliance waves not only caused by new entries

Compliance rates by country, 2000

- Compliance rates for each member state in 2000, 2010, 2020
- Stark differences between “good” and “bad” compliers
- New member states generally move from low compliance rates to higher ones, established member states drive wave pattern of compliance

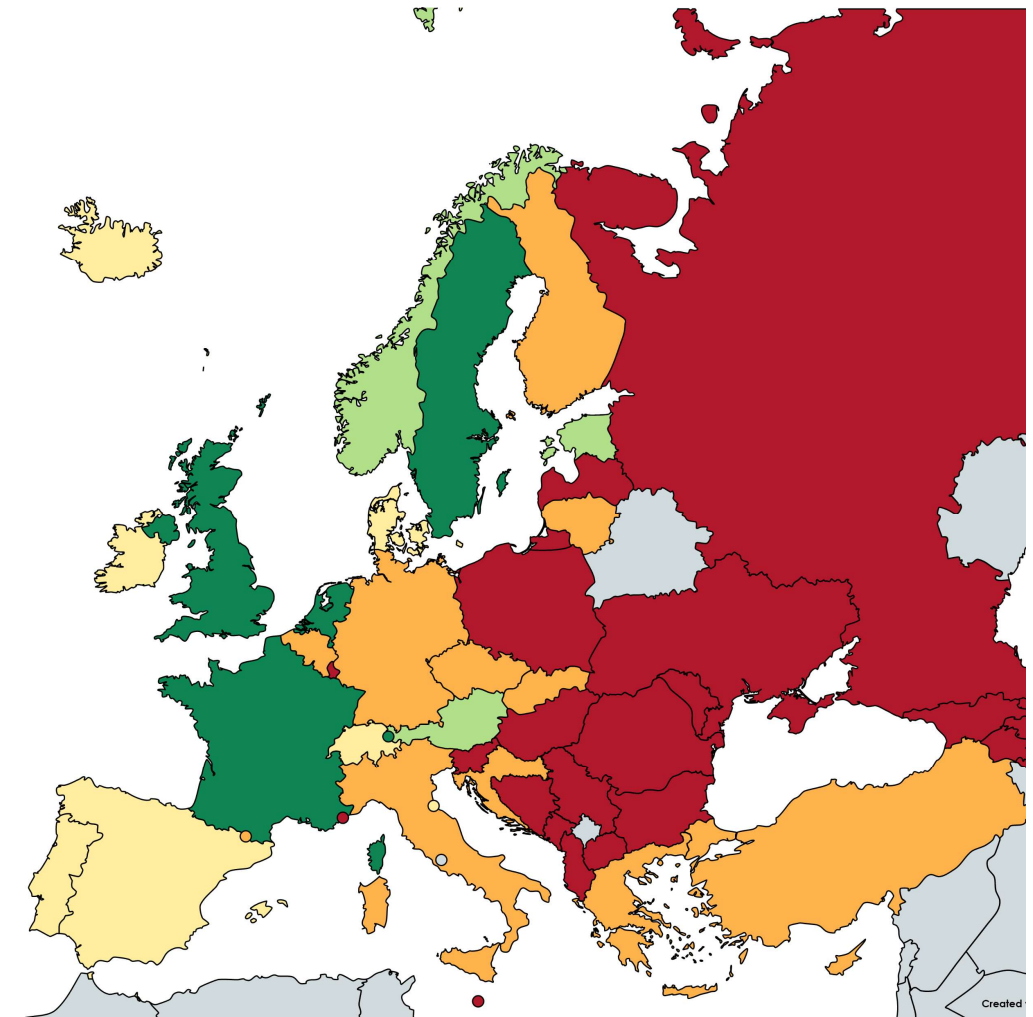
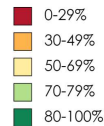
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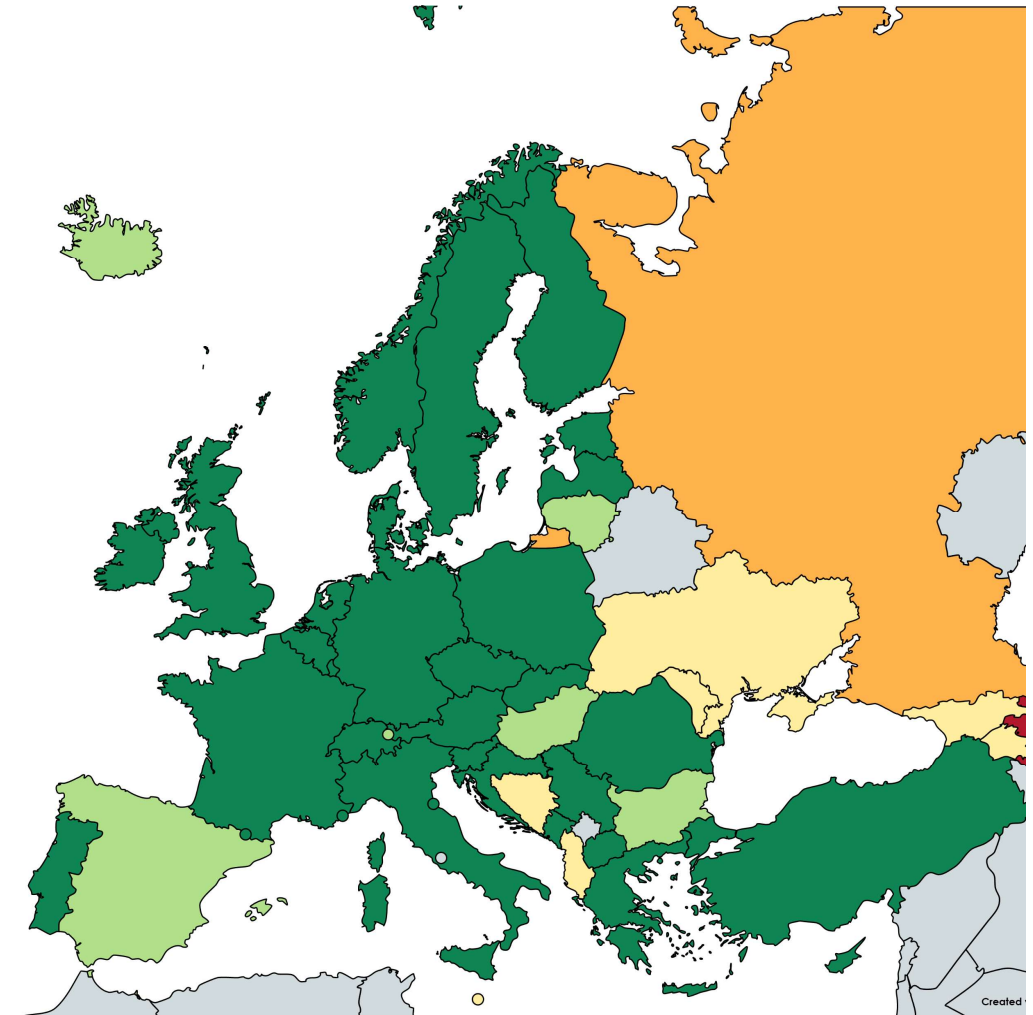
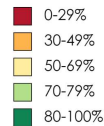
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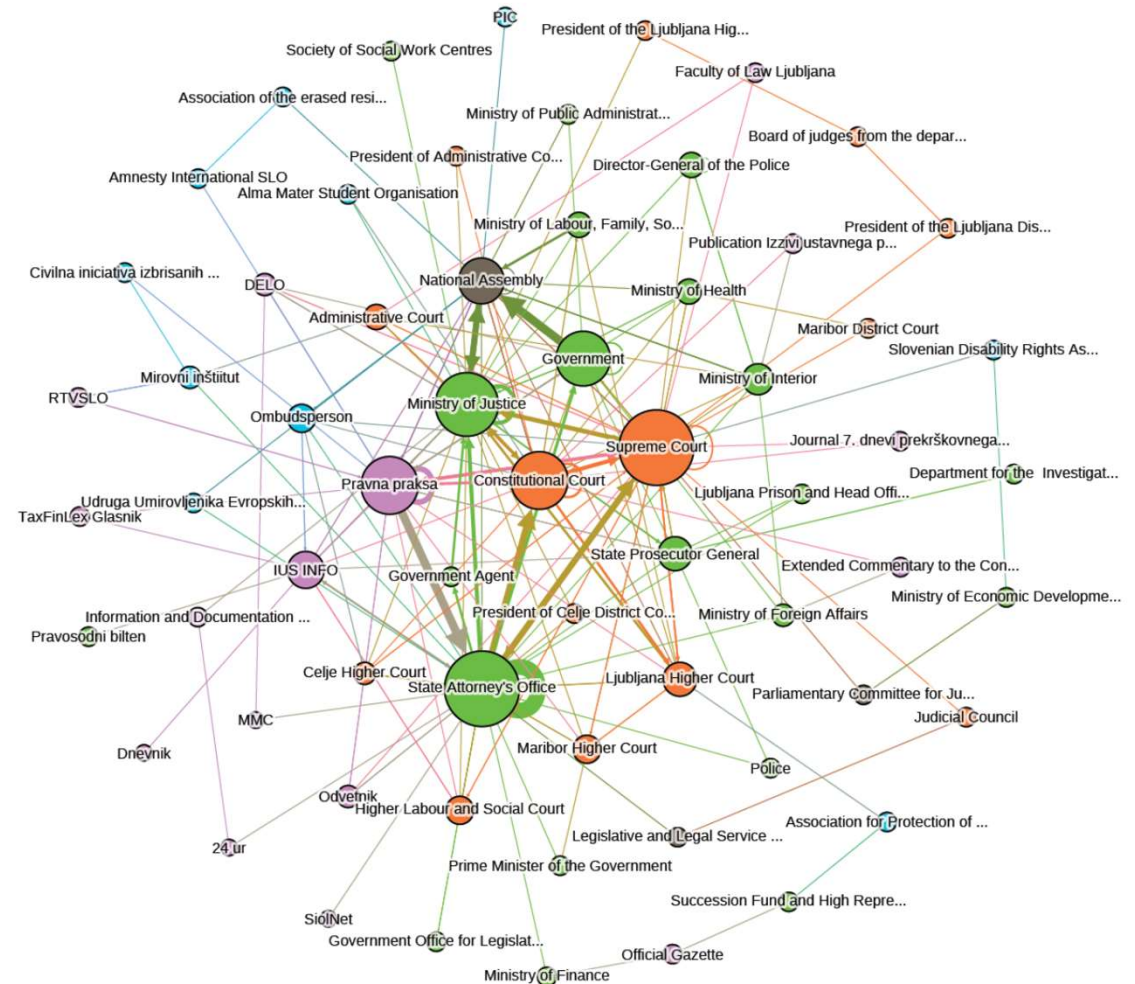
Compliance rates, 2020



Case study Slovenia: Compliance network

- Many actors are part of the Slovenian compliance apparatus
 - Different branches of government
 - Media
 - Domestic NGOs/civil society organisations
 - International organisations
- Reform in 2015 of the compliance process led to a more complex, but also more successful compliance network

Source: Fikfak, Veronika; Kos, Ula (2021): SLOVENIA - AN EXEMPLARY COMPLIER WITH JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS? Compliance and ECtHR - Country Report.



Central Questions

- What explains the (development of the) compliance rates
 - ...through time?
 - ...between states?
- How does the compliance apparatus work?
- What remedies/policies might increase compliance?

How ABM could be helpful

- Breaking the black box of the state
 - Strong actor heterogeneity: NGOs, institutions, government actors, courts
- Evolution through time, spatial patterns of compliance
 - Macro patterns known, micro determinants unknown
- Laboratory for interventions
 - Many suggestions to increase compliance: punishment, shaming, rewards → what effect do they have?

Anticipated trouble

- Data is rich in some aspect (case content, written report, etc.) and sparse in others (internal organisational dynamics, intra-organisation communication, NGO funding, etc.)
→ Strong assumptions necessary
- Lack of theory with respect to non-state actor involvement in compliance, networked apparatus for increased state capacity for compliance

Example: NGO involvement in compliance

When/how do NGOs intervene (and how does that influence state compliance)?

Competing evidence:

- Literature: interventions mostly against “good” compliers, highest changes of success
- Data: interventions against “bad” compliers, more nuanced picture

Example: NGO involvement in compliance

- NGOs can intervene in compliance procedures
 - “Kindly” with constructive information and suggestions
 - “Harshly” by denouncing (lack of) state efforts
 - premise: they follow strategies, e.g., pragmatic maximization of their influence
- States can respond
 - Acknowledge/engage; deny/reject; no response/ignore
 - Response has short- and long-term consequences for the state, which differ between the types
 - Regardless of state response, there are consequences for
 - Withdrawal of funding, removal of privileges, diminishing reputation
 - Seat at the table, long term cooperation

Thank you!



Questions or comments?



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