

Appendix

Data and analysis in the *Controlling the narrative: Hungary's post-2010 strategies of non-compliance before the European Court of Human Rights*

1. Quantitative data

The article relies first on quantitative data generated based on 1,105 reported cases against Hungary from 1997 until November 2021, information which was retrieved from HUDOC ECtHR and HUDOC EXEC databases, both run by the European Court of Human Rights.¹ The first batch of information related to judgment information (see section The coding tree, point A. below) and types of settlement (B.) were generated using the HUDOC ECHR database. The second batch of information relating to remedies (C.) and compliance data for each case (D.) were generated from the HUDOC Exec database, which lists all cases that have been settled and followed up for compliance.

In particular, information on friendly settlements was generated first automatically through the keyword “friendly settlement.” This keyword search was complemented with a lexical search for “friendly settlement,” “settlement” or “settled”. All of the cases generated by HUDOC EXEC are categorized as having taken place within the ECtHR system, i.e., with the help of the Registry and entitled to follow up from the Committee of Ministers. Often, these cases include multiple victims and join together multiple applications. Second, information on friendly settlements from the HUDOC EXEC dataset was complemented using the HUDOC ECHR database by searching for cases that had been struck out, but which contained terms “friendly settlement,” “settlement,” or “settled”. These cases contain only a description of the agreement achieved between the state and an individual applicant, and have not received any follow up from the Committee of Ministers. These were classified as having taken place outside the ECtHR system and as constituting bilateral settlements.

In addition, unilateral declaration cases were generated from both databases by searching for terms “unilateral declaration” and “unilateral”. Only cases in which a unilateral declaration had been made and accepted were analyzed. When “unilateral declaration” was rejected by the Court and the judgment resulted in a judgment, those cases were removed from the dataset. In total, there were 25 unilateral declarations concluded by Hungary.

2. HUDOC databases and the concept of “reported cases”

It is important to underline that the ECHR considers the HUDOC databases as the “official case law database of the ECtHR.”² While HUDOC databases are a wonderful source of judgments and compliance materials, they only contain reports of cases that are resolved in judicial panels. All applications disposed of in single-judge formation remain unreported. From 2000 onwards, these represent between 88% and 95% of all applications allocated.³ This means that any HUDOC

¹ We have explicit authorization from the European Court of Human Rights to use the data contained on the HUDOC websites for the HRNudge project. ©Council of Europe/European Court of Human Rights—Conseil de l'Europe/Cour européenne des droits de l'homme.

² See *Collections*, EUR. CT. HUM. RTS., www.echr.coe.int/Pages/home.aspx?p=library/collections&c= (last visited Sept. 14, 2022).

³ Term “allocated applications” has been used by the Court since the year 2007 to refer to applications which were not rejected automatically as incomplete, but which were allocated to a single-judge formation. In 2007, the Court therefore changed the counting and retroactively amended figures for 1998 onwards. For years before 1998, annual

based analysis are based on a small subset of all applications allocated (e.g., 5–12%). This study is therefore based on these “reported cases.”

In addition, the HUDOC databases are often incomplete—information is entered only after a certain time has passed; some of the material is only available in French; and the keywords/labels that are automatically added to cases (e.g., “friendly settlement”) are often incomplete, though rarely incorrect. To mitigate for this, the study employed several strategies: first, the study includes the full population of cases, in order to avoid any issues with sampling; second, the study includes only cases up to 2021, thus allowing time for the Registry to enter cases into HUDOC; third, when labels/keywords were used to narrow the search, the search results were complemented with a lexical search; finally, all of the lexical searches were conducted both in English and French. In addition, a check was done to identify any duplicates of cases, which were then promptly removed.

Finally, it is important to note that number of friendly settlements are higher than the statistics published in ECtHR’s annual reports, which consistently underreport the number of settled cases per country.⁴ The Court’s reports include only settlements reached in *judgments*, whilst our numbers include also settlements reached in *decisions*, which are struck out. Since 2012 about 4–7% of settlements were contained in decisions, while between 2004 and 2010 as much as 65–86% of all reported settled cases were contained in decisions, rather than judgments. This means that by extending the analysis to decisions, we are able to provide a fuller picture of the settlement practice at the Court.

3. The coding tree

We coded the following information from the databases. The coding was partly automatic (e.g., search for all adverse judgments against Hungary, search for “friendly settlement” labels, terms) and partly manual. The accuracy of autocoding was checked in Maxqda.

A. Judgment information

- (a) Year and Date of judgment
- (b) Section responsible
- (c) Respondent state, in the case of this article only Hungary⁵
- (d) Brief description of decision (e.g., judgment, leading, repetitive, friendly settlement, unilateral declaration)
- (e) Number of applications per each case
- (f) Article violations alleged (0/1 for each article)
- (g) Number of violations alleged
- (h) Manual coding of the content of settlements

reports refer to applications as all received applications. See EUR. CT. HUM. RTS. ANNUAL REPORT 2007 at 133 (2008), www.echr.coe.int/Documents/Annual_report_2007_ENG.pdf.

⁴ For 2015, for example, the Annual Report cites eight cases as having resulted in a settlement. HRNudge project’s database—generated from HUDOC—contains 637 such cases, excluding unilateral declarations. See EUR. CT. HUM. RTS. ANNUAL REPORT 2015 (2016), https://echr.coe.int/Documents/Annual_report_2015_ENG.pdf.

⁵ The coding mirrors the coding adopted by the Max Planck Study: S. Altwicker, T. Altwicker & A Peters, *Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage Under the European Convention on Human Rights*, 76 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZAÖRV)/HEIDELBERG J. INT’L L. 1 (2016); Veronika Fikfak, *Non-Pecuniary Damages before the European Court of Human Rights: Forget the Victim; It’s All about the State*, 33 LEIDEN J. INT’L L. 335 (2020); Veronika Fikfak, *Changing State Behaviour: Damages before the European Court of Human Rights*, 29 EUR. J. INT’L L. 1091 (2018).

B. Types of settlement

- (a) settlements which were entered into between the state and the applicant;
- (b) settlements which included the Registry and were followed up by the Committee of Ministers; and
- (c) unilateral declarations.

C. Remedies data

- (a) Damages and Total amount
- (b) Recognition of violation
- (c) Individual measure (and specific types)
- (d) General measure (and specific types)

D. Compliance data for each case⁶

- (a) Supervision status (closed, standard, enhanced)
- (b) Date of payment of compensation/settlement
- (c) Date of closure
- (d) Days to payment (number of days between the date of payment and the date of judgment)
- (e) Days to closure (number of days between the date of closure by the Committee of Ministers via final resolution and the date of judgment)

4. Qualitative data

A. Documents

To triangulate, complement, and develop findings of the quantitative part, the study employs also qualitative document analysis. The qualitative part is twofold and consists of constructing the international and domestic image of Hungary's compliance process. The international part includes an analysis of all documents on each case published on HUDOC EXEC. These documents were submitted to the Committee of Ministers during the process of supervision by various actors and may consist of:

- (a) Applicant Communications
- (b) Respondent state's Government Communications
- (c) Respondent state's Action Plans
- (d) Respondent state's Action Reports
- (e) NGO Communications under Rule 9

In addition, they may include documents issued by the Committee of Ministers, such as:

- (a) CM Decisions
- (b) CM Notes
- (c) Interim Resolutions
- (d) Final Resolutions

⁶ The coding and analysis of compliance mirrors the approach undertaken in Veronika Fikfak & Ula Kos, *Slovenia—An Exemplary Complier With Judgments of the European Court of Human Rights?*, 40 PRAVNA PRAKSA (Special Edition) at ii (Mar. 9, 2021), <http://dx.doi.org/10.2139/ssrn.3801105>. On compliance with ECtHR decisions generally, see ANDREAS VON STADEN, STRATEGIES OF COMPLIANCE WITH THE EUROPEAN COURT OF HUMAN RIGHTS (2018).

For the domestic part, I relied on the help of a Hungarian legal expert, who collected, translated, and assisted in interpreting every piece of information we could find on each ECtHR ruling. We looked into documents produced by several domestic actors who participate in the process of domestic implementation, including the records of Hungarian parliamentary sessions and its various committees, Hungarian state officials' statements and texts found on different ministerial/governmental webpages. We also investigated all Hungarian media outlets that we could find which had reported on any of the cases and looked into scholarly works of the Hungarian academia. We furthermore looked into Hungarian non-governmental organizations' reports and statements that they had issued in relation to ECtHR cases either domestically or internationally in addition to their Rule 9 submissions to the Committee of Ministers. This resulted in a more than 400 pages long document entailing a detailed record of Hungary's actions during its compliance process.

B. Interviews

Informed by the findings of the quantitative part and the qualitative document analysis, I conducted four semi-structured interviews in relation to this article:

Representatives of the Hungarian Helsinki Committee, NGO, (10 March, 2022)

Representative of the Hungarian Civil Liberties Union NGO (24 March, 2022)

Representative of the Hungarian Human Rights Department, Ministry of Justice (1 March, 2022)

Hungarian scholar, Central European University (10 May, 2022)