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Challenging the Unconditional: Partial Compliance with ECtHR Judgments in the South Caucasus States

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The European human rights system has long been seen as one of the greatest European achievements, with its European Court of Human Rights (ECtHR) as the world's leading human rights court. Current turbulent times, however, pose serious challenges to the European system, which is increasingly being contested by the deepening 'implementation crisis'. The absolute obligation of member states of the Council of Europe (CoE) to abide by ECtHR judgments under Article 46 of the European Convention on Human Rights has been increasingly compromised by the selective approach of states, often resulting in minimal, dilatory, lengthy or even contested compliance with ECtHR judgments. As the implementation backlog has grown largely after the accession to the CoE of the newly emerged states, as aspiring democracies, in the late 1990s and early 2000s following the collapse of the Soviet Union, this article analyses the compliance behaviour of these states by looking at the South Caucasus states: Armenia, Azerbaijan and Georgia. The research findings suggest that partial compliance is a very likely form of compliance in the South Caucasus states as democratising states, and that some of the factors that explain such behaviour discussed in the article may be distinctive of states that joined the CoE as emerging democracies after the collapse of the Soviet Union. These states continue to display various vulnerabilities in the areas of human rights, the rule of law and democracy. This, in turn, has serious implications for the whole European human rights system and its ability to ensure that states' commitments to the CoE are duly respected in the longer term.

Keywords: compliance, partial compliance, implementation, European Court of Human Rights, South Caucasus, Armenia, Azerbaijan, Georgia

1. Introduction

The unequivocal legal obligation for member states of the Council of Europe (CoE) to abide by judgments of the European Court of Human Rights (ECtHR) is effective as long as states comply fully in practice with those human rights judgments. The growing concern over the 'implementation crisis' in Europe,[1] caused by a sharp increase in the number of cases that came with the enlargement of the CoE in the early 1990s,[2] is evident in the backlog of recent years, reaching

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[1] Nils Muižnieks, 'Non-implementation of the Court's Judgments: Our Shared Responsibility', Council of Europe, The Commissioner's Human Rights Comments, 23 August 2016, https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/non-implementation-of-the-court-s-judgments-our-shared-responsibility?_101_INSTANCE_xZ32OPEoxOkq_languageId=en_GB; Open Society Justice Initiative, *From Judgment to Justice: Implementing International and Regional Human Rights Judgments* (Open Society Foundations 2010) 11; European Implementation Network, 'EIN Launch Event: A Strong Call for Collective Responsibility over Implementation of ECtHR Judgments', *EIN News,* 6 December 2016, http://www.einnetwork.org/ein-news-past-editions/2016/12/6/ein-launch-event-a-strong-call-for-collective-responsibility-over-implementation-of-european-court-judgments.

[2] Council of Europe, 'Supervision of the Execution of Judgments of the European Court of Human Rights: 11th Annual Report of the Committee of Ministers 2017', March 2018, 64, https://rm.coe.int/annual-report-2017/16807af92b (CoE 11th Annual Report 2017). Seven out of ten 'main states with cases under enhanced

between 10,000 and 11,000 cases during the period 2012–16.[3] In 2017, eight of eleven member states with the highest number of cases under enhanced supervision – that is, identifying systemic, structural issues – are those that joined the CoE after the collapse of the Soviet Union.[4] The number of leading cases awaiting implementation for more than five years has been growing in recent years and, although 2017 saw an increase in the closure of such cases, the total number of 718 such cases in 2017 remains as high as it was in 2016, comprising more than half (52 per cent) of all pending leading cases.[5] Furthermore, recent years have witnessed instances of increasing contestation by certain states (referred to as 'situations of resistance' by the Committee of Ministers (CM), which supervises implementation), which have not been limited to the former Soviet Union states.[6] Some of these states, such as the Russian Federation and Azerbaijan, have shown worrying regression either by reorganising their domestic constitutional hierarchy so that ECtHR judgments can be trumped,[7] or by explicitly refusing to adopt measures indicated by the CM[8] when compliance becomes too 'costly' (politically, financially, or in other forms), thus subjecting their unconditional adherence to their selective approach.

Azerbaijan, Russia and Ukraine stand out among CoE member states as representing the highest number of cases awaiting payment of compensation beyond the payment deadlines; these cases comprise 70 per cent of all the late payment cases.[9] Furthermore, and what is perhaps more alarming, there are major underlying problems in the implementation of general measures, which often entail the adoption or amendment of domestic laws, policies or practices aimed at preventing a repetition of similar violations in the future.[10] In 2017, the CM, as the political

supervision' are states that joined the CoE in the early 1990s and later: Azerbaijan, Bulgaria, Hungary, Moldova, Romania, Russia and Ukraine.

[3] 2017 saw a remarkable decrease to almost 7,600 cases compared with 9,941 cases in 2016 and 11,099 in 2012 (rising from 709 in 1996). This, however, is a result of the new policy of 'partial closure', which changes the method of calculating the number of cases that are closed when individual measures have been implemented but general measures have not been yet resolved; therefore, in the author's view, they cannot be considered as indicating a higher rate of implementation: ibid 62. The 11th Annual Report (ibid) documents a sharp reduction in the total number of cases awaiting implementation compared with 9,941 cases in 2016 and 11,099 in 2012.

[4] ibid 75.

[5] ibid 76. 'Leading cases' are defined as those that give rise to new structural and/or systemic problems, and therefore require new general measures.

[6] ibid 10, 13.

[7] Philip Leach and Alice Donald, 'Russia Defies Strasbourg: Is Contagion Spreading?', *EJIL: Talk! Blog*, 19 December 2015, https://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading.

[8] Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2017)429, Execution of the Judgment of the European Court of Human Rights, Ilgar Mammadov against Azerbaijan (adopted by the Committee of Ministers on 5 December 2017 at the 1302nd meeting of the Ministers' Deputies), 7 December 2017 (to initiate infringement proceedings and to refer the case to the ECtHR under Article 46(4) of the European Convention on Human Rights (ECHR) as a result Azerbaijan's failure to comply with the repeated calls of the CM to release Ilgar Mammadov).

[9] CoE 11th Annual Report 2017 (n 2) 83–84. As at 31 December 2017 late payments were pending in 95 cases against Azerbaijan, 230 cases against Russia and 212 against Ukraine. These numbers increased significantly in 2017 compared with those in 2016. By way of comparison, Georgia was late in paying compensation in one case, Armenia had no cases with late payments, Bulgaria 4, Romania 16, Italy 35.

[10] Council of Europe, 'Supervision of the Execution of Judgments of the European Court of Human Rights: 10th Annual Report of the Committee of Ministers 2016', March 2017, 284, https://rm.coe.int/prems-021117-gbr-2001-10e-rapport-annuel-2016-web-16x24/168072800b.

body of the CoE tasked with supervising the execution of ECtHR judgments, explained some of the most difficult compliance challenges resulting in such high numbers of repetitive cases: 'complex structural problems causing difficulties', 'the absence of common understanding as to the scope of the execution measures' and 'slow or blocked execution'.[11] Although it is to be recognised that implementing judgments, particularly those involving general measures, is often a time and resource-consuming process, dependent largely on the circumstances of each situation, the growing number of cases of minimal or lengthy implementation, or even 'situations of contestation', begs for further research of this phenomenon. This is of particular importance in light of the unconditional obligation of states to comply.

This situation further suggests that it is no longer sufficient to see compliance as a dichotomous concept defined by the two pillars of full compliance or no compliance, with implementation merely a process towards full compliance. The growing statistics over recent years that indicate increasing numbers of pending cases and longer periods of implementation, as well as the interplay of multiple dependent variables in the implementation process of each case or group of cases (such as the domestic political context), presuppose the existence of other – intermediate – forms of compliance beyond the concept of the binary compliance system. As states differ in their motivations (which include both incentives and deterrents) for compliance behaviour, leading to growing concerns over the position today, pending cases can no longer be viewed as simply in their transitional mode towards full compliance. Through the analysis of compliance with selected ECtHR judgments by three South Caucasus states – taking into account domestic political, social and historical contexts, and in light of empirical studies – this article identifies and discusses key factors that explain state behaviour. On that basis, the article suggests that partial compliance with ECtHR judgments is a very probable form of compliance in the respective states as democratising states, and defines a number of specific forms of partial compliance.

Partial compliance is not a new concept in legal scholarship; it was introduced by Hawkins and Jacoby in 2008 and updated in 2010 in relation to compliance with judgments of the ECtHR and the Inter-American Court of Human Rights.[12] Hawkins and Jacoby argued that partial compliance is likely to be a common occurrence as states have strong incentives for both compliance and non-compliance, which suggests that partial compliance is a relatively stable end point. In relation to the ECtHR, they found that although the Court continues to achieve full compliance with its judgments, a substantial number of its cases await compliance for quite extended periods, clearly demonstrating partial compliance. In some cases partial compliance may be the long-term outcome. Hawkins and Jacoby conducted their analysis on the basis of information obtained from CM annual reports, decisions and interim resolutions on specific cases, and other publications, before the 2011 reforms. These reforms were aimed at enhancing the efficiency and transparency

[11] ibid 13.

[12] Partial compliance as a concept was first suggested by Darren Hawkins and Wade Jacoby in their article 'Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights' (2010) 6 *Journal of International Law and International Relations* 35.

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of the CM supervision process and led to increased access to documentation provided by member states and to 'alternative reports' by civil society.

This article aims to revive and advance the so far limited scholarly debate on the concept of partial compliance in the context of state socialisation with international human rights law, and in particular on partial compliance with ECtHR human rights judgments. The findings of the in-depth analysis into compliance with ECtHR judgments by the selected democratising states, on the basis of all available official reports and semi-structured interviews with key domestic actors on their motivations and attitudes to compliance, suggest the increasing relevance of this concept. The concept of partial compliance initially raised by Hawkins and Jacoby has not received wider recognition in legal scholarship, which relies largely on the premise that domestic systems generally accept and socialise with international law.[13] The existing literature focuses largely on well-established Western democracies and their motivations for compliance with ECtHR judgments, and significantly less on the younger democracies of the CoE. The article aims to further encourage the debate on partial compliance in light of the growing presence of various forms of compliance as middle ground between the starting point and full compliance in democratising states such as the South Caucasus states. It does not challenge the impact of the democratising states' exposure to and socialisation with international human rights institutions and norms but rather sees partial compliance as a crucial element of the socialisation process of these states. Its relevance is further supported by the recent introduction of a new 'partial closure' policy by the CM.[14] In this regard, the environment in which democratising states operate is unique as the level of democracy and elements of democracy – such as separation of powers, respect for the rule of law (which includes the independence of the judiciary), regular fair and free elections, and other forms of citizen participation – are somewhat turbulent and influence domestic compliance with human rights. The starting point of their socialisation process therefore differs from that of older democracies. This needs to be taken into consideration in assessing their compliance efforts.

Further, compliance is often analysed as the application of the wider norms of the European Convention on Human Rights (ECHR) and the case law of the ECtHR by national courts rather than the process of adopting specific individual and general measures within the framework of specific ECtHR judgments to remedy specific violations and prevent their repetition. This analysis focuses on the latter, on the premise of Article 46 of the ECHR, which establishes the obligation of states to comply with ECtHR judgments in cases against them and on the actions of the executive power as the primary domestic implementing body in the supervision process before the CM. For the purposes of this article, I have adopted definitions of the terms 'implementation' and 'compliance', which overlap and are often inconsistently used in

[13] Janneke Gerards and Joseph Fleuren (eds), *Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in National Case Law: A Comparative Analysis* (Intersentia 2014) 3–5; Başak Çalı, Anne Koch and Nicola Bruch, 'The Legitimacy of the European Court of Human Rights: The View from the Ground', 2 May 2011, University College London, 35–37, https://ecthrproject.files.wordpress.com/2011/04/ecthr-legitimacyreport.pdf.

[14] CoE 11th Annual Report 2017 (n 2) 14.

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relation to ECtHR judgments and the CoE system. I view 'implementation' as the process of adopting measures by domestic authorities to address human rights issues raised in those judgments, whereas 'compliance' is seen as an outcome of the implementation: that is, a state implements certain measures in order to comply with judgments. I identify compliance by a number of factors, including the formal closure of cases by the CM as the supervising body of the CoE, which establishes that a state has taken all necessary measures by adopting a final resolution, but this is not the sole decisive factor. I also take into consideration repetitive cases pending before the ECtHR; reports on respective human rights issues by domestic human rights groups, such as NGOs, Ombudsman Offices and the media; and reports by regional and international bodies (such as the CoE Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance (ECRI)), reflecting on the most recent situation in the country. I use 'execution' only when referring to CM working methods, this being the official term employed by the CM. My broader research also looks into the impact of ECtHR judgments where possible, which, as some scholars and researchers suggest, can take place with or without formal compliance.[15]

The article thus begins with an overview of the context within which the South Caucasus states were accepted into the CoE; this, I argue, is a fundamental factor in the current situation regarding state compliance. Section 3 presents a discussion of factors that aim to explain the states' compliance behaviour by looking into their domestic contexts within which judgments are being implemented. Section 4 discusses the concept of partial compliance and the likelihood of it becoming the most common form of compliance in the South Caucasus states. Section 5 concludes.

2. ACCESSION BY THE SOUTH CAUCASUS STATES TO THE CONVENTION SYSTEM: THE OPEN DOOR POLICY

For many member states of the CoE that joined the organisation in the late 1990s/early 2000s – such as the states that emerged after the collapse of the Soviet Union – ratification of the ECHR and joining the 'Western club of democracies' was one of the gateways to their aspired democratisation.[16] CoE membership offered these states assistance and support in putting their domestic laws and policies in conformity with European standards, in strengthening separation of powers,

[15] Yuval Shany, 'Assessing the Effectiveness of International Courts: A Goal-Based Approach' (2012) 106 *American Journal of International Law* 225; Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Practice* (Open Society Foundations 2017) 26–27.

[16] Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1247 (1994), Enlargement of the Council of Europe; 4 October 1994, http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15281&lang=en; PACE Report, 'Georgia's Application for Membership of the Council of Europe', Doc 8275, prepared by the Political Affairs Committee and its Rapporteur Mr Terry Davis (UK, Socialist Group), 2 December 1998; PACE Report, 'Armenia's Application for Membership of the Council of Europe', Doc 8747, prepared by the Political Affairs Committee and its Rapporteur Mr Demetrio Volcic (Socialist Group), 23 May 2000; PACE Report, 'Azerbaijan's Application for Membership of the Council of Europe', Doc 8748, prepared by the Political Affairs Committee and its Rapporteur Mr Jacques Baumel (France, European Democratic Group), 23 May 2000.

the rule of law and democratic procedures, in developing the capacities of public offices, and in creating a platform for engaging in peaceful conflict resolution, such as the Nagorno-Karabakh conflict between Armenia and Azerbaijan and the Russian-Georgian conflicts over the regions of South Ossetia and Abkhazia.[17] The Soviet legacy, however, has left the new states with deep political, economic and social vulnerabilities, varying from weak separation of powers to poor respect for fundamental rights and freedoms, which could not be rectified easily and quickly to fully incorporate European standards before accession to the CoE. Being sensitive to the political realities, in 1994, following the debate on enlargement and the decision to open up to newly emerging states, the Western democracies in the CoE invited all three South Caucasus states to apply for membership, while recognising their existing vulnerabilities 'provided they clearly indicate their will to be considered as part of Europe'.[18] The three states were invited to join the CoE on the basis of their promise to adhere to European values rather than their proven state of play, something that had always been a pre-condition to joining the CoE since its establishment in 1949.[19] It was the first time that the CoE had invited new members, relying on their promise and expressed willingness to pursue progress as 'it would not have been realistic to expect a better result so soon after the end of the totalitarian Soviet regime'.[20] The 'open door' approach of the CoE carried both risks and promises: serious concerns grew over the ability of the states to absorb the European human rights standards rapidly; however, this approach has been seen as presenting an opportunity to spread those values across a wider Europe.[21] In the case of Armenia, for example, the report of eminent lawyers on the conformity of the Armenian legal system with the standards of the CoE – on the basis of which the Parliamentary Assembly of the Council of Europe (PACE) partly based its recommendations to the CM – concluded as follows:[22]

> All our discussion partners are keenly aware that the current democratisation is not yet complete, and our visit very obviously prompted a wide variety of reactions: some fear that Armenian membership of the Council of Europe will obscure realities and bestow a certificate of good conduct in the human rights field upon this State, while others consider that it might provide assistance and the requisite support along the road to democracy.

[17] PACE, Opinion 209 (1999), Georgia's Application for Membership in the Council of Europe, 12 January 1999, http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16669&lang=en; PACE, Opinion 221 (2000), Armenia's Application for Membership of the Council of Europe, 28 June 2000, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16815&lang=en; PACE, Opinion 222 (2000), Azerbaijan's Application for Membership of the Council of Europe, 28 June 2000, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16816&lang=en.

[18] ibid.

[19] Statute of the Council of Europe (entered into force 5 May 1949) CETS 001, arts 3 and 4.

[20] PACE Report, Georgia's Application (n 16) Annex II para 7.

[21] Dean Spielmann, 'Foreword' in Iulia Motoc and Ineta Ziemele (eds), *The Impact of the ECHR in Democratic Change in Central and Eastern Europe: Judicial Perspectives* (Cambridge University Press 2016) xxv, xxv; Wojciech Sadurski, 'Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments' (2009) 9 *Human Rights Law Review* 397.

[22] PACE Report, Armenia's Application (n 16) App I.

As noted by Andrew Drzemczewski, former Head of the Committee on Legal Affairs and Human Rights of PACE, 'the doors must definitely not be slammed in the face of countries wishing to join the democratic club … enlargement to the East … may have been too precipitate but appeared, at the time, to be politically inevitable'.[23] With its openness and incremental approach towards the aspiring democracies, the CoE assumed a major role in building democratic societies in the East and supporting them in undertaking necessary reforms in rather fragile contexts.[24] This shift in the CoE approach laid the ground for the aspired democratisation of the newly emerged South Caucasus states, which to date appear to be struggling despite their firm commitments.[25]

The three countries share a number of fundamental background characteristics, including the historical trajectories of the last century – in that they all were part of the Soviet Union – which led to similar legal systems and democratic identity building following the breakdown of the Union. They all joined the CoE at around the same time (1999–2001), in the midst of their building of an independent state, availing themselves of the relevant expertise and efforts of the CoE towards that goal.[26] Furthermore, Azerbaijan and Armenia saw the CoE as the mediator for the resolution of their conflict over Nagorno-Karabakh.[27] Since their independence from the Soviet Union, all three countries had had similar political systems with weak separation of powers stemming from the Soviet heritage and low respect for civil and political freedoms.[28] Many of the judgments that recognise violations of a wide spectrum of human rights reveal 'systemic and structural problems' and require the adoption of both individual and general measures. The three countries also feature variables in terms of diversity. They have different domestic structures and processes for the implementation of ECtHR judgments; they are led by different domestic actors; their political systems vary in levels of inclusiveness and diversity of political forces and other domestic actors such as civil society; and they differ in leverage of the executive power over the judiciary and in the extent of dialogues with civil society.

The following sections analyse the current dynamics of compliance with ECtHR judgments in the three states in light of this context, and offer explanations for the existing and, at times, increasing challenges almost two decades after their accession to the CoE.

[23] Andrew Drzemczewski, 'Human Rights in Europe: An Insider's View', Inaugural Professorial Lecture, School of Law, Middlesex University, 18 January 2017. A shortened version of the lecture was published in (2017) 2 *European Human Rights Law Review* 134–44.
[24] PACE Report, Georgia's Application (n 16) para 91; PACE Report, Armenia's Application (n 16) para 116; PACE Report, Azerbaijan's Application (n 16) paras 108, 112.
[25] PACE Report, Azerbaijan's Application (n 16), Apps 4 and 7.
[26] PACE Report, Georgia's Application (n 16); PACE Report, Armenia's Application (n 16); and PACE Report, Azerbaijan's Application (n 16).
[27] PACE Report, Azerbaijan's Application (n 16) para 43; PACE Report, Armenia's Application (n 16) para 62.
[28] PACE Report, Georgia's Application (n 16) para 88; PACE Report, Azerbaijan's Application (n 16) para 109; Transparency International, 'Corruption Perceptions Index 2015', https://issuu.com/transparencyinternational/docs/2015_corruptionperceptionsindex_rep?e=2496456/33011041 (ranking Azerbaijan 119th, Armenia 95th and Georgia 48th out of 168 countries).

3. EXPLAINING COMPLIANCE IN THE SOUTH CAUCASUS STATES: THE SELECTIVE POLICY APPROACH

Through analysis of the lifespan of a selected number of ECtHR judgments from all three countries and the underlying processes of domestic implementation, this section provides a discussion of the factors that influence and explain the compliance behaviour of the states. The research suggests that some factors may be particularly distinctive of the selected states as representative states of those that joined the CoE after the collapse of the Soviet Union, being aspiring democracies that continue to display various vulnerabilities in the areas of human rights, the rule of law and democracy. The findings in this article are reached on the basis of a comprehensive analysis of cases or groups of cases against each South Caucasus state identified by the CM, in its country factsheets, as representing the 'main issues' addressed in ECtHR judgments. These cover a wide spectrum of human rights issues, all of which identify complex, structural issues as lead cases, some of which are strikingly similar across the three countries (see the Annex at the end of this article for a list of cases). The findings cover issues such as excessive use of force or other illegal actions by the police or security forces, particularly in custody; ineffective investigations; poor detention conditions, including inadequate medical care; unlawful detentions; violations of freedom of assembly, including excessive use of force by police and failure to protect individuals from violence; violations of freedom of association hindering the ability of NGOs to operate; freedom of expression violations, including defamation laws which lead to imprisonment; failure to compensate victims of Soviet repression; failure to protect property, including cases relating to the Nagorno-Karabakh conflict between Armenia and Azerbaijan.

All cases are identified by the CM in its country factsheets as key cases under its supervision. The majority of them are under enhanced supervision; all require both individual and general measures for the established violations to be remedied fully. Except for Azerbaijan, for which only 1.5 per cent of all of its ECtHR cases have been closed to date, the selected cases include both pending cases and those closed by the CM by its final resolutions; for the CM, this marks the state's full compliance with a particular judgment.[29] To analyse the implementation process, I took into consideration multiple factors, including:

- the length of the proceedings before the CM in each case or group of cases;
- the measures adopted by the domestic authorities as part of the implementation process before the CM;
- reports on related human rights issues by local human rights groups and regional bodies;
- public statements of state authorities and politicians; and
- information obtained during interviews I conducted with various representatives of the CoE, domestic institutions and civil society for this research.

The duration of the implementation process of the selected cases ranges from 3 to 12 years since the adoption of the lead case as the first case in the respective groups of cases. In all cases, except

[29] Department for Execution of Judgments of the European Court of Human Rights, 'Country Factsheets', last updated 31 December 2018, https://www.coe.int/en/web/execution/country-factsheets.

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Table 1 Overview of ECtHR Cases against Armenia, Azerbaijan and Georgia before the CM (as of 31 December 2018)

Category	Armenia	Azerbaijan	Georgia
First judgment delivered (year)	2007	2007	2004
Total number of cases transmitted for CM supervision	88	206	110
Total number of cases closed	56	3	73
Total number of leading cases	36	56	52

for one, monetary compensation was paid to applicants, although the implementation of general measures has been pending for a significant amount of time. The longest time periods for implementation are noted in the cases against Azerbaijan: 3 out of 5 selected groups of cases are pending implementation for 8 to 11 years.

The more general compliance statistics of all three focus countries produced by the CoE have also been taken into consideration. Azerbaijan is among the top ten CoE countries with the highest number of cases under enhanced supervision – namely, those that identify structural and complex human rights issues. In addition, since the ECHR entered into force Azerbaijan has had twice as many judgments referred for supervision compared with Armenia and Georgia, with only 1.5 per cent of cases closed to date, compared with 61 per cent for Armenia and 66 per cent for Georgia (Table 1).[30] Although among the three states Azerbaijan has the highest number of leading cases[31] in absolute numbers (56 cases compared with 52 in Georgia and 36 in Armenia), relatively the percentage of cases examined as leading cases against Georgia and Armenia is higher than those against Azerbaijan (41 per cent for Armenia and 47 per cent for Georgia, compared with 27 per cent for Azerbaijan).[32] I suggest that it is important, in assessing state compliance, to consider state behaviour in light of the specific domestic context, and analyse the domestic implementation process and the real change that state efforts produce.

The general domestic political narratives relating to the CoE are also given adequate consideration in analysing compliance with ECtHR judgments. While the Georgian and Armenian authorities continue to assert the significance of the CoE and the ECtHR for their 'Europeanisation',[33] Azerbaijan`s relations with the CoE have reached unprecedented levels of frustration over the state's continued defiance of the calls of the CM for it to release key political opposition figure Ilgar Mammadov in compliance with the ECtHR judgment in *Mammadov v Azerbaijan*.[34] This led to the first ever infringement proceedings in the history of the CoE, further

[30] ibid.
[31] See n 5.
[32] Statistics on the HUDOC EXEC database as of 31 December 2018.
[33] Interviews conducted with domestic actors in 2016–17; interviews with two Georgian government agents and two MPs conducted in September 2016; interviews with the Armenian Ministry of Justice and Ombudsman Office conducted in April 2017.
[34] CoE CM Interim Resolution CM/ResDH(2017)429 (n 8).

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followed by the scandalous corruption investigations at PACE.[35] These investigations concern revelations of alleged corruption and the lobbying of former and current PACE members by Azerbaijan to ensure politically favourable decisions, such as voting on the resolution relating to political prisoners in Azerbaijan, an issue the resolution of which was one of the main preconditions set by the CoE in the accession process. Public statements of high-level state officials, including the state President, defying the role of the CoE and its efforts relating to Azerbaijan, as well as growing sentiments to follow the Russian example and adopt a law to enable the trumping of 'unfavourable' ECtHR judgments, further demonstrate the deepening ambivalence of Azerbaijan`s willingness and ability to abide by European values.[36]

I also analysed the domestic systems within which the implementation of ECtHR judgments takes place and the actors that play a role in that process. The three countries have different domestic structures and processes for implementing ECtHR judgments, led by different domestic actors. They also feature different political systems with varying degrees of leverage of the executive power over the judiciary, and the involvement of the political opposition and civil society.[37]

In addition to the desk research of the extensive material relating to compliance with ECtHR judgments – such as states' action plans and reports, CM decisions and resolutions, and reports of various CoE bodies – I employed empirical studies in the form of semi-structured interviews with various domestic and CoE actors. This provided productive data explaining the contexts, procedures, roles, attitudes and motivations of various actors of the three states behind the implementation process of ECtHR judgments in the South Caucasus. Such data allows for an examination of the states' underlying motivations and interests behind their compliance behaviour and their attitudes towards the process, which is reflected in the analysis.

On the basis of this analysis, the rest of this section discusses various factors that shape and influence the states' behaviour in complying with ECtHR judgments: (i) the complexity of human rights issues addressed by the ECtHR in its judgments; (ii) the domestic political climate; and (iii) the domestic infrastructure for implementation of ECtHR judgments.

3.1. The Complexity of the Human Rights Issues

All three states emerged as new states – aspiring democracies – with their extremely fragile political and legal systems and turbulent economic conditions, feeding into high levels of corruption and a weak human rights protection system. This involved a high number of very serious human rights issues, and major concerns about the proper functioning of the justice system and the independence of the judiciary. As the PACE noted in its 'accession' reports in relation to:

[35] Council of Europe, 'Report of the Independent Investigation Body on the Allegations of Corruption within the Parliamentary Assembly of the Council of Europe', 15 April 2018, http://assembly.coe.int/Communication/IBAC/IBAC-GIAC-Report-EN.pdf.

[36] Among others, see the speech by Samad Sayidov, Representative of the Azerbaijani Delegation to PACE, 26 April 2018, https://vodmanager.coe.int/coe/webcast/coe/2018-04-26-1/en [1:20:09].

[37] In Azerbaijan, for example, the process for implementing ECtHR judgments is run predominantly by the presidential administration; in Georgia and Armenia, it is under the responsibility of the Ministry of Justice.

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- Azerbaijan:[38]

> It is particularly appropriate to emphasise the need to improve respect for the principle of the separation of powers and to strengthen the independence of the courts, as the best guarantors against arbitrary decisions or actions by the executive. Some of the problems observed, however, have their origins in the country's long totalitarian past and will not disappear completely until mentalities change.

- Georgia:[39]

> The deep-rooted origins of these problems are to be found in the country's totalitarian past and the difficult economic situation. There is no immediate solution to these underlying problems and, accordingly, as in many other countries, which have recently become democracies, the functioning of the state apparatus can improve only gradually. It is encouraging to see that the authorities are fully aware of these problems and are taking steps to overcome them.

- Armenia:[40]

> Armenia is on the right road towards democracy, but only after completion of the reform of the judicial system which the Constitution provides for and which we have mentioned in this report will we be able to say that Armenia's domestic legal system is compatible with the Council of Europe's standards in the human rights field.

In addition to the consequences of their totalitarian past, all three states have endured turbulent situations in the conflict-torn areas in Nagorno-Karabakh, South Ossetia and Abkhazia. This not only caused huge humanitarian losses but also led to an unstable political situation in the region and halted diplomatic relations between the affected states.[41] In this context, when all three states were admitted to the CoE on the basis of their *promise* to abide by European standards and integrate them into their domestic systems and were given time to undergo the necessary reforms, the ECtHR individual petition system quite naturally became part of the CoE support mechanisms for those states in their broader CoE compliance process. As a result, many ECtHR judgments address human rights issues that are deeply systemic, with several strikingly similar issues across the three countries that require substantial reform by adopting new laws or amending existing legislation, coupled with effective implementation of such reforms, or reinforcing institutional capacities or financial resources (as addressed above and discussed further below). By way of example, the finding by the Court of the absence of effective investigation into actions of the security forces, such as ill-treatment and torture of detainees, and recognising the lack of accountability in several cases as a systemic problem indicate the need for a series of measures aimed at targeting the legal, political, social and even attitudinal causes of such practices.

[38] PACE Report, Azerbaijan's Application (n 16) para 109.
[39] PACE Report, Georgia's Application (n 16) para 88.
[40] PACE Report, Armenia's Application (n 16) App I.
[41] ibid para 62; PACE Report, Georgia's Application (n 16) para 8.

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3.2. The Domestic Political Climate: International Reputation versus Domestic Interests

As compliance is an entirely domestic process undertaken by the domestic authorities, the existence of political willingness and the political power (im)balance among various domestic actors play a fundamental role in the South Caucasus states (as is the case in any other state). This stems from the normative nature of the ECHR, in stipulating that it is the primary obligation of member states to implement ECtHR judgments and to identify the most appropriate measures to be adopted. It also stems from the practical realisation that any domestic changes must be enforced by the state authorities in order for those changes to remain operative. Research suggests that the political will of the state authorities – particularly of the executive power as the branch tasked with ensuring compliance with ECtHR judgments and the gatekeeper of information and relationships with the CM and other CoE bodies – is the keystone in the compliance problem in the South Caucasus states. Such political will lays the ground for the implementation process and is a guarantor that the authorities will not renege on their efforts to comply with ECtHR judgments. The presence of political will is fundamental particularly with adverse judgments, such as politically sensitive, socially controversial or resource intensive cases, and its forms may vary from the passive lack of political incentive to more active political resistance, depending on the political, financial and other costs of the judgment. This is particularly true in the absence of effective domestic implementation mechanisms or procedures that would otherwise institutionalise or 'lock-in' the implementation process and enable other relevant domestic actors to engage in the process (as discussed below).

The levels and forms of political willingness to comply with human rights judgments vary, depending largely on the nature of the remedies imposed by the judgment and the challenges or sensitivities that implementation of such remedies may cause. As the practice with the implementation of specific judgments shows, the political power to comply with ECtHR judgments in the South Caucasus states ranges from political engagement to political passivity to political resistance, and relies on the balancing of the 'costs' that are imposed on the domestic interests of the ruling authorities and their international performance. By way of example, the adoption of the *Ghavtadze* group of cases by the ECtHR relating to the inadequacy of medical care for detainees suffering from contagious diseases, such as hepatitis C and tuberculosis, led to the adoption of necessary legislative and policy reforms that fully addressed the problem.[42] In comparison, the slow process in the *Identoba* group of cases in securing the right of the LGBTI community, as a largely marginalised group in society, to exercise freedom of assembly without obstruction, or the Nagorno-Karabakh conflict cases against Azerbaijan and Armenia relating to compensation for violations of property rights of internally displaced persons who had lost

[42] Council of Europe Committee of Ministers, Resolution CM/ResDH(2014)209, Execution of the Judgments of the European Court of Human Rights in Five Cases against Georgia (adopted by the Committee of Ministers on 12 November 2014 at the 1211th meeting of the Ministers' Deputies), 17 March 2016; interviews with representatives of civil society and the Ombudsman Office, 24 September 2015.

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their homes as a result of the unresolved conflict, demonstrate a different level of engagement on the part of the executive, or even no engagement at all.[43]

The difference in political power in terms of adopting individual and general measures is noticeable in all three countries. A relatively stable record of well-timed compensation payments to applicants in all of the cases researched (with the exception of the recent protracted performance by the Azerbaijani authorities over the last couple of years) may suggest that the compliance rate in respect of clear, straightforward and 'easy to implement' measures (such as financial compensation) is high, and that the political willingness to comply is well established.[44] The monetary expression of this remedial measure, involving the simple action of a bank transfer to the respective applicants, requires no institutional coordination of the involvement of any other domestic actors or consideration of any other actions. This is likely to be a pre-condition for high compliance rates.

The implementation process becomes more complex where other, more 'costly' individual measures or general measures are required. In such cases political willingness will vary depending on the political sensitivity or ambiguity of the particular case. For example, in cases that require re-investigation of ill-treatment by police, including ill-treatment taking place in custody, for the state bodies tasked with investigating the actions of responsible state officials and bringing them to justice this involves challenging certain institutional or political powers (as discussed above). Such political sensitivity is likely to lead to passivity or even unwillingness to investigate their counterparts effectively, as is seen in some of the *Tsintsabadze* cases in Georgia and in the *Virabyan* cases in Armenia. Furthermore, this passivity carries the risk of an inability to re-investigate such cases effectively, in terms of obtaining necessary evidence (in the form of witness testimonies), given the time lapse since the occurrence of some of the incidents that date back to the early 2000s.

Political resistance can also arise if the case is ambiguous as to the measures that are required. In the politically sensitive case of Ilgar Mammadov (referred to above) the authorities, infamous for their democratic deficit and lack of political pluralism, did comply with the obligation to pay compensation, but have refused to release Mammadov upon the requests of the CM to do so. They claim that the ECtHR did not indicate such a measure, thus dismissing the repeated calls of the CM to release the political activist whose detention the ECtHR found to be unlawful and was intended 'to silence and punish him for criticising the Government'.[45] Although payment of compensation to Mammadov indicates the government's recognition of the applicant's violated rights, unravelling the political imprisonment of an oppositionist who aimed to challenge

[43] Council of Europe Committee of Ministers, Notes on the Agenda, H46-8 *Identoba and Others v Georgia* (App no 73235/12), CM/Notes/1318/H46-8, 7 June 2018; case progress description in the cases of *Sargsyan v Azerbaijan* and *Chiragov and Others v Armenia* on HUDOC EXEC database (last updated 12 December 2018), https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22Chiragov%20and%20others%20v%20Armenia%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-353%22]}.

[44] CoE 11th Annual Report 2017 (n 2) 83–84.

[45] CoE CM Interim Resolution CM/ResDH(2017)429 (n 8) Appendix: Views of the Republic of Azerbaijan, para 23.

the highest leadership of the country in the presidential elections brings huge political costs to the ruling authorities, on which they appear to be unwilling to reach a compromise. Such situations lead to instances of minimal compliance with ECtHR judgments where payment of compensation is often the only measure that is complied with fully and in time, whereas measures that require further action and the involvement of various state bodies lead to dilatory or contested processes. The adoption of subsequent ECtHR judgments establishing violations of Article 18 of the ECHR in cases involving criticism of the government – that is, finding that the detainees' arrest and pre-trial detention was intended to punish them for their criticism and/or human rights work – as well as the authorities' acting 'in bad faith', further demonstrates the regression in the government's commitment to comply fully with ECtHR judgments.[46]

This fragmented compliance is frequently observed in the adoption of general measures that are intended to prevent similar violations in the future and thus require systemic reforms, such as adopting new laws and policies or improving material conditions. Such measures often require the involvement of various state bodies and costs considerations. High costs may involve putting political gains at risk – for example, reforms to enhance political pluralism (as in the case of Ilgar Mammadov), disclosing and effectively investigating potential wrongdoings on the part of state officials (as in the *Virabyan* group of cases), or engaging in reforms that may not receive popular support in largely conservative societies (as in *Identoba and Others v Georgia*). It may also require creating a genuinely enabling environment for media freedom in Azerbaijan as part of the measures in the *Mahmudov and Agazade* group of cases against Azerbaijan, where the current ruling power's very low tolerance of criticism and media freedom is probably the result of exposure to instances of high levels of corruption among the ruling elites.[47]

Similar challenges are observed in cases involving investigations into wrongful actions by law enforcement agents, such as ill-treatment and excessive use of force, and prosecution of those responsible in groups of cases against Armenia and Georgia.[48] For example, in *Tsintsabadze and Others v Georgia* numerous calls by civil society groups, the Ombudsman Office, the CPT and the CoE Commissioner for Human Rights, among others, to create an independent investigatory mechanism have been met with little enthusiasm and progress by the Georgian authorities. This was in order to eradicate impunity and avoid situations of 'colleagues investigating colleagues' arising from close interaction between prosecutors and police.[49] Although

[46] ECtHR, *Jafarov v Azerbaijan*, App no 69981/14, 17 March 2016; ECtHR, *Mammadli v Azerbaijan*, App no 47145/14, 19 April 2018, paras 153–63; ECtHR, *Rashad Hasanov and Others v Azerbaijan,* App no 48653/13 and three others, 7 June 2018, paras 116–27; ECtHR, *Aliyev v Azerbaijan*, App nos 68762/14 and 71200/14, 20 September 2018, paras 197–216; see also ECtHR, *Merabishvili v Georgia*, App no 72508/13, 28 November 2017, paras 264–354.

[47] Among other CM decisions available on the HUDOC EXEC database see Council of Europe Committee of Ministers, Decisions, H46-3 *Mahmudov and Agazade Group v Azerbaijan* (App no 35877/04), CM/Del/Dec (2017)1294/H46-3, 21 September 2017; '2017 World Press Freedom Index', *Reporters Without Borders*, https://rsf.org/en/ranking/2017 (ranking Azerbaijan in 162nd place).

[48] ECtHR, *Virabyan v Armenia*, App no 40094/05, 2 January 2013; ECtHR, *Tsintsabadze v Georgia*, App no 35403/06, 15 February 2011.

[49] Communication of the Coalition for an Independent and Transparent Judiciary to the Committee of Ministers in the *Gharibashvili* group of cases, received by the CM on 7 March 2017.

the Georgian government responded to the repeated calls of the CM to establish such a mechanism and included it in its 2016–17 Human Rights Action Plan, the civil society groups reported to the CM that no legislative action has yet been taken.[50] Several domestic actors suggested in interviews that such passivity may indicate the government's inability to overcome the resistance of affected domestic institutions – the police and the prosecution apparatus – who interact closely during investigations and therefore shield the offenders by operating in the culture of hierarchical subordination and institutional self-protection.[51]

Research into the selected cases suggests that the higher the costs, which may result in political resistance from certain state bodies, the higher the significance of a strong political will and engagement of state authorities in the implementation process, where firm political decisions are needed. This is seen in domestic environments where democratic processes and the rule of law are not firmly embedded or are in fact deeply compromised, and therefore more is at stake for the incumbent authorities.[52] The cases suggest that the costs of complying with ECtHR judgments are likely to be high in the South Caucasus states as the implementation of many judgments requires structural legislative or policy reforms at the domestic level, often challenging the current political and social status quo. This comes as no surprise in light of the promises made by these three states upon their admission to the CoE (discussed above), which the ECtHR helps to address through its judgments. In the case of *Identoba and Others*, for example, the Georgian government paid compensation to victims of homophobic attacks by members and supporters of the Orthodox Church, the police having failed to protect the victims during a demonstration in the capital Tbilisi in 2012. Investigations into the attacks and prosecution of those responsible, however, have not yet been concluded and the effectiveness of the general measures adopted by the authorities, such as specialised training for police forces, are seen as being far from being comprehensive in addressing the structural issues raised by civil society.[53]

In the extremely hierarchical societies of the South Caucasus states – with their deeply ingrained traditional gender and family values, backed by the prevailing religions and their institutions – European positive values struggle to find their way to their incorporation at the domestic level. In light of this context, implementation of general measures in *Identoba v Georgia* has been met with passivity, and at times resistance, among certain political groups and the public in Georgia as a result of the controversial nature of the issue in Georgian society. According to the report of the European Commission against Racism and Intolerance (ECRI) on Georgia published in 2015, in a survey relating to violence against the LGBTI community following

[50] ibid.
[51] ibid; interviews with representatives of Georgian civil society on 24 November 2016, and with a former representative of the Georgian government on 16 January 2018.
[52] 'Freedom in the World 2017: Azerbaijan', *Freedom House*, https://freedomhouse.org/report/freedom-world/2017/azerbaijan.
[53] CoE, CM Secretariat, 'Communication from NGOs (Identoba, the Women's Initiatives Support Group (WISG), Amnesty International and ILGA-Europe) in the Case of Identoba and Others v Georgia (Application No. 73235/12)', Submission to the Committee of Ministers, Council of Europe, 24 November 2016, DH-DD(2016)1303, paras 23, 40, https://www.ilga-europe.org/sites/default/files/Attachments/2016_11_identoba_wisg_ai_ie_submission_government_response_dh-dd20161303e.pdf.

the events addressed in the *Identoba* case, 50 per cent of the respondents said that violence was acceptable towards people who 'endanger national values, such as LGBTI persons'.[54] The survey also found that nearly 60 per cent of the respondents thought that members of the Orthodox clergy who participated in acts of violence against LGBTI people should not face trial and that approximately 50 per cent said that the rights of sexual minorities should never be respected. The same report refers to the hostile statements of the then Chairman of the Georgian Dream Parliamentary majority who 'blamed the LGBTI organisations themselves for the violence, portraying them as provocateurs'. Such hostile attitudes to human rights issues that remain sensitive to the traditional wider Georgian public may explain the slow progress in incorporating the necessary measures, including investigations into the attacks, which have remained pending for over six years since the incident in 2012. Although the investigations were resurrected on the basis of the *Identoba* judgment, no further progress has been noted.[55] Payment of compensation to victims, however, is more straightforward; it does not compromise the government's domestic gains in a country where homophobic intolerance is widespread in its largely conservative society and, at the same time, it allows the state to engage in the implementation process from the very beginning.

It is suggested that where human rights judgments incur low or no political or societal costs, the South Caucasus states are more responsive to ECtHR judgments and full compliance is likely.[56] For example, the *Ghavtadze* group of cases involved the structural inadequacy of medical care in prisons, which led to a lack of appropriate medical treatment for detainees suffering from contagious diseases (such as hepatitis C or tuberculosis), and the ineffectiveness of the complaints procedure. The Georgian authorities, in a newly enacted Penal Code in 2010, introduced a right to healthcare for detainees in prison and formulated the procedure for submitting complaints if a detainee considered that his rights, including the right to healthcare, were not being duly respected by the prison authorities.[57] The adoption of further extensive reforms in the penitentiary health system, including the new Penal Code, in line with standards laid down in the European Prison Rules[58] and the recommendations of the CPT in introducing prevention, diagnostic and treatment programmes for tuberculosis and hepatitis C, as well as an improved medical infrastructure and other steps, further support the finding that the political will to comply with human rights judgments is greater where no political or other domestic interests are at stake. Furthermore, this example demonstrates how a strong political will can overcome other potential

[54] European Commission against Racism and Intolerance, 'ECRI Report on Georgia', CRI(2016)2, 1 March 2016, para 104, https://rm.coe.int/fourth-report-on-georgia/16808b5773.
[55] Background information on *Identoba and Others v Georgia*, https://hudoc.exec.coe.int/eng#{"fulltext":["Identoba and Others v Georgia"],"EXECDocumentTypeCollection":["CEC"],"EXECIdentifier":["004-5894"]}.
[56] Shai Dothan, 'A Virtual Wall of Shame: The New Way of Imposing Reputational Sanctions on Defiant States' (2017) 27 *Duke Journal of Comparative & International Law* 141, 181.
[57] The reforms were first documented by the ECtHR in the subsequent similar case of *Goginashvili v Georgia*, App no 47729/08, 4 October 2011, para 55.
[58] *European Prison Rules* (Council of Europe Publishing 2006), https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae.

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challenges, such as resource-intensive measures.[59] This group of ECtHR judgments helped to put the systemic issue of lack of medical care in prisons on the political agenda at the domestic level and aided the government in pursuing the necessary reforms. As noted by a former government agent, the judgments created 'a framework to develop and implement an action plan in order to undertake necessary reforms'.[60] The fact that no further applications based on similar issues have been filed with the ECtHR in recent years suggests that the government has taken adequate measures to initiate reforms to address the respective human rights issues (some of which are still ongoing) and has effectively complied with the ECtHR judgments.[61]

Although political will is a key pre-condition for compliance, it is not the 'all or nothing' factor in cases where there is no persistent political resistance and a favourable political climate for reform can be created or further encouraged with the support of ECtHR judgments and the CM supervision process, and the involvement of civil society. The existing political will of the executive enables or allows compliance with ECtHR judgments. Reforms that are aimed at encouraging domestic change without putting the powers of the executive or other domestic authorities at stake (or requiring high management capacities) take effect at the domestic level as a result of the ECtHR findings and further assistance from the CM and other CoE bodies. In such instances, the adoption of necessary reforms as part of the implementation of ECtHR judgments is often the outcome of constructive cooperation between the government and various actors at both national and CoE levels.

The landmark case of *Klaus and Yuri Kiladze v Georgia* of 2010, for example, paved the way for thousands of Georgian victims of Soviet political repression to receive compensation from the state. It represents a useful example of the combined efforts of various actors seeking effective implementation of the judgment, with the political will of the Georgian government serving as a precondition to allow for such positive developments.[62] The case was brought before the ECtHR by two human rights NGOs – the Georgian Young Lawyers Association (GYLA) and the London-based European Human Rights Advocacy Centre (EHRAC) – and served as a framework for the Georgian government to take the necessary steps to create a mechanism for the applicants and thousands of other victims to receive compensation to which they were legally entitled. As a result of the ECtHR judgment, on 18 May 2011 the respective law and the Code on Administrative Procedure were amended to enable victims and their first-generation heirs to apply to Tbilisi City Court for compensation.[63] It was left for the City Court to decide on the

[59] Government Reports to the CM on 27 January 2014, 4 August 2014, 30 September 2014.
[60] Interview with a representative of the Ministry of Justice of Georgia, 14 October 2016.
[61] Interview with representatives of the Ministry of Justice of Georgia, 11 September 2015 and 14 October 2016. The CM closed the examination of the *Ghavtadze* group of cases on 12 November 2014: CM Resolution CM/ResDH(2014)209 (n 42).
[62] All interviewed Georgian actors mentioned the *Kiladze* case as an illustrative example of compliance with ECtHR judgments, referring to the government's political will to undertake reforms and the introduction of necessary changes.
[63] CoE, CM Secretariat, 'Communication from Georgia concerning the Case of Klaus and Yuri Kiladze against Georgia (Application No. 7975/06)', Submission to the Committee of Ministers, Council of Europe, 5 December 2014, DH-DD(2014)1508, paras 13–14, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a30d4.

amount of compensation in each case, having regard to the particular circumstances; this ranged from 92 to 230 euros in 6,914 applications that had been granted by the end of 2014.[64] Not satisfied with the implementation of the newly adopted amendments, which led to derisory amounts of compensation, delays caused at the admissibility stage, and the fact that such compensation had to be sought from the Tbilisi City Court, the two NGOs disputed the newly introduced mechanism and, in their submission to the CM, called for further reforms as a part of full and effective implementation of the ECtHR judgment.[65] In addition, the two NGOs filed a new application on behalf of four other first-generation heirs of victims of Soviet political repression, alleging that the compensation awarded to the applicants following the 2011 amendments to the compensation laws were derisory, and called into question the fairness and effectiveness of the domestic proceedings.[66] Further, the two organisations have closely monitored and advocated the required changes to domestic legislation, including liaising directly with the Georgian state representative to the ECtHR at the Georgian Ministry of Justice.[67] Their efforts led to Georgia amending the law once again on 31 October 2014 to enable victims to receive greater awards; ensuring that applications may be lodged by the victim, his or her first-generation heirs or an appointed representative, and can be submitted to a number of district courts across the country; and implementing the necessary budgetary measures to secure timely implementation of such reforms.[68]

The government's response to the measures indicated by the ECtHR – later followed up continuously by the two NGOs representing the applicants, who had comprehensively exhausted both domestic and regional avenues to advocate changes, and supervised by the CM – bears witness to the government's willingness to abide by the judgment. The representative of the Ministry of Justice at the time suggested in an interview that such willingness can be explained by the absence of any political or social controversy in connection with the issue addressed in the judgment and the willingness of the Georgian government to perform as a state that respects human rights.[69]

Compliance with ECtHR judgments in the South Caucasus states most frequently involves the adoption of general measures in the form of legislative or policy reforms, typically aimed at rectifying the existing 'Soviet regime gaps', as well as individual measures other than the payment of compensation, and full compliance rarely comes without high costs. It often carries political risks for the incumbent authorities, requiring them to balance their international priorities

[64] ibid para 16. In their submission to the CM, received on 24 January 2012, the two NGOs representing clients submitted that the compensation ranged between 46 and 230 euros.

[65] CoE, CM Secretariat, 'Communication from NGOs (Georgian Young Lawyers Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) in the Case of Klaus and Youri Kiladze against Georgia (Application No. 7975/06)', Submission to the Committee of Ministers, Council of Europe, 24 January 2012, DH-DD(2012)238, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063c993.

[66] ECtHR, *Burdiashvili and Others v Georgia*, App no 26290/12, 23 September 2013 (currently awaiting judgment).

[67] 'Georgia Amends Legislation Following European Court Case', *EHRAC News*, 13 November 2014, http://ehrac.org.uk/news/georgia-amends-legislation-following-european-court-case.

[68] Communication from Georgia concerning the Case of Klaus and Yuri Kiladze against Georgia (n 63) paras 13–14.

[69] Interview with a representative of the Georgian Ministry of Justice, 24 September 2015.

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against their domestic priorities. The fact that the authorities pay compensation to victims regardless of the costs of such judgments but are slow to adopt general measures suggests that they view partial compliance as a way of balancing their international/reputational and domestic/political gains.

3.3. THE DOMESTIC 'INFRASTRUCTURE' FOR COMPLYING WITH ECTHR JUDGMENTS

In current times of deepening concerns over the implementation crisis in Europe, responsibility at the domestic level for effective implementation of ECtHR judgments and the need for increased domestic efforts have been recurrent topics at the level of the CoE and remain at the heart of discussions on the effectiveness of the ECHR system.[70] Setting up domestic mechanisms or procedures has been recognised as an important step for the timely and effective implementation of ECtHR judgments. Both the PACE and the CM have called for the establishment of such mechanisms 'urging member states to improve and where necessary to set up domestic mechanisms and procedures'[71] and 'to develop effective synergies between relevant actors in the execution process at the national level'.[72]

Domestic implementation, as discussed above, requires not only political will but also an effective 'infrastructure' to enable the necessary measures to materialise. If implementation of individual measures is often quite straightforward in terms of the actions needed and the actors involved, the effective adoption of general measures entailing legislative and/or policy reforms often require a pool of expertise, management and financial resources, with efficient coordination. As issues addressed by those general measures often affect the broader public or carry strong political interest, consideration of the public voice, through national parliaments or civil society, including the media, is essential. As states operate through institutions and procedures, none of the above can effectively materialise unless there are procedures and mechanisms in place for such cooperation and coordination.

The existence of domestic implementation mechanisms and procedures may also help to reduce challenges of political will and mitigate the high sensitivity of issues addressed by the ECtHR. Where political will is positive, such mechanisms can lead to full compliance with the judgment and ensure the participation of all relevant domestic actors regardless of sensitivities. In other words, such mechanisms can 'institutionalise' and facilitate collective

[70] Council of Europe Committee of Ministers, 'Brussels Declaration – High-level CM Conference on the "Implementation of the European Convention on Human Rights, Our Shared Responsibility"', 27 March 2015, is the latest high level political agreement on the need to enhance implementation efforts; Council of Europe Committee of Ministers, 'Copenhagen Declaration – High-level Conference Meeting in Copenhagen', 12–13 April 2018.

[71] PACE, Recommendation 1764 (2006), Implementation of the Judgments of the European Court of Human Rights, 2 October 2006, para 1.4, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17471&lang=en.

[72] Council of Europe Committee of Ministers, Recommendation CM/Rec(2008)2 of the Committee of Ministers to Member States on Efficient Domestic Capacity for Rapid Execution of Judgments of the European Court of Human Rights, CM/Rec(2008)2, 6 February 2008, para 5.

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implementation of ECtHR judgments and reduce the likelihood of politicising the process. Formalised procedures would also assist the executive in resolving issues arising from the resistance of responsible institutions operating in the culture of hierarchical subordination and institutional self-protection in the implementation process, as discussed above in relation to the *Tsintsabadze* group of cases. As a former government agent suggested, '[i]t is sometimes difficult to involve those that are technically responsible for implementation of a specific judgment, especially when judgments are not very clear as to what measures need to be taken'.[73]

In the South Caucasus states, as is the case in all CoE countries, the executive power is responsible for compliance with ECtHR judgments and is in charge of the implementation process. It is tasked with preparation of action plans for implementation; it represents its government in proceedings before the CM; it adopts decisions on necessary measures and oversees the overall implementation process. With the exception of cases involving reopening civil or criminal proceedings, where ECtHR judgments form a legal ground for such actions established in the domestic legislation, the executive power holds full discretion over what measures are to be taken to comply with judgments. The responsible executive bodies – the Ministries of Justice in Georgia and Armenia, and the Presidential Administration in Azerbaijan – examine their respective ECtHR judgments, identify necessary measures and delegate tasks to responsible institutions.[74] The holding of such a top-down 'monopoly' over the implementation process, in the absence of any procedures for state bodies other than those 'selected' by the responsible authorities to become involved, prevents inclusive dialogue and cooperation over what are often very structural political or societal reforms and fails to provide sufficient checks and balances over executive action. The importance of the latter is particularly relevant in the domestic context of younger aspiring democracies that feature various vulnerabilities in their separation of powers and respect for the rule of law, including the independence of the judiciary. The absence of institutionalised mechanisms or procedures leaves the executive with the prerogative to decide on the level of measures in cases of 'high cost' judgments (when, as discussed above, the minimal compliance approach is preferred). Equally, it can be detrimental to cases where there is strong political willingness to engage in the required reforms and the inclusive dialogue of relevant actors is obstructed by the absence of any procedures for engagement.

National parliaments, which undoubtedly can contribute to effective implementation of ECtHR judgments as the 'representation of people', need to be enabled institutionally for them to engage effectively in the process. It is very difficult, if not impossible, for them to become engaged in cases where the respective governments bear no formal duty to report to them on ECtHR compliance. As Drzemczewski and Gaughan argue:[75]

[73] Interview with a representative of the Georgian Ministry of Justice, 24 September 2015.
[74] Interviews with former representatives of the Ministry of Justice of Georgia and the Ombudsman Office, 24 September 2015; interviews with human rights lawyers from Armenia and Azerbaijan, 22 April 2017 and 15 May 2017 respectively.
[75] Andrew Drzemczewski and James Gaughan, 'Implementing Strasbourg Court Judgments: The Parliamentary Dimension' in Wolfgang Benedek and others (eds), *European Yearbook on Human Rights* (European Academic Press 2010) 233, 240.

> To enable parliament to effectively supervise the government's response to an adverse decision of the Court, there must exist a procedure through which parliament is promptly and systematically informed of such judgments and the measures implemented in the execution thereof.

There is no formal parliamentary oversight mechanism over governmental actions relating to implementation of ECtHR judgments in any of the three states and the national parliaments do not engage in any systemic supervision of the implementation of such judgments. The parliamentary role in the implementation process is limited to considering legislative proposals submitted by the executive as part of the implementation process. Without institutional mechanisms, the national parliaments can do very little, if anything, in the South Caucasus states where the tradition of overall parliamentary oversight of the executive is weak and often risks politicising the domestic implementation processes. An opposition member of the Georgian parliament and representative of the parliamentary human rights committee described the absence of parliamentary oversight of the implementation of ECtHR judgments as part of 'the problem of the Georgian democracy':[76]

> In Georgia, the government is not used to being overseen by and accountable to the parliament and that applies to its actions to comply with ECtHR judgments too. This in turn leads to Parliament's passivity, largely affected by the fact that the agenda is being set by the political majority. We certainly need a mechanism that would allow avoiding any political fragility in cases of change of power and effectively supervise the government's actions, including on complying with ECtHR judgments.

The same holds true for civil society and national human rights institutions (NHRIs) in terms of their ability to engage in reforms stemming from ECtHR judgments and to subject the authorities to public accountability for their actions.[77] The current literature suggests that ECtHR judgments may have an agenda-setting effect that catalyses domestic mobilisation in favour of domestic reforms; civil society and NHRIs, therefore, may serve as strong implementation partners, along with all state institutions that hold the primary obligation to abide by ECtHR judgments.[78] Both NGOs and NHRIs are relatively new to this scene in the South Caucasus states, partly because until 2011, when more transparency was brought to the implementation process by Strasbourg, this process was a closed bilateral matter between the state and the CM.

Without any type of formalised involvement, either through consultations or presentation of its position, civil society organisations are left with their own ad hoc sporadic attempts to engage in the process, or by way of communication with the CM through formal NGO submissions on

[76] Interview with an opposition member of the parliament, a representative of the parliamentary human rights committee, 14 September 2015.
[77] I discuss the role of civil society and its impact on the implementation process in greater detail in my forthcoming PhD thesis on compliance with ECtHR judgments in the South Caucasus states.
[78] Laurence R Helfer and Erik Voeten, 'Do European Court of Human Rights Judgments Promote Legal and Policy Change?', paper presented at the International Law Workshop, University of Chicago Law School, 22 April 2011.

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the state's actions relating to a specific ECtHR judgment.[79] In Georgia, where civil society actively participates in public debates on various societal and political issues and contributes to a number of domestic reforms of public matters, establishing a procedure for formalised civil society contributions on the implementation of ECtHR judgments is likely to lead to tangible changes. In other domestic contexts where dialogue with civil society groups is non-existent, such as Azerbaijan, the mere adoption of procedures may be insufficient; the creation of an enabling environment for civil society is needed, as well as broader recognition that public dialogue and coordinated actions of various domestic actors will enhance effective implementation of ECtHR judgments. Such broader domestic contexts therefore significantly affect the compliance process.

4. THE CONCEPT OF PARTIAL COMPLIANCE AND THE SOUTH CAUCASUS STATES

Relying on the above factors that shape the compliance behaviour of states and aim to explain numerous instances of minimal, protracted and even contested compliance, this article suggests that partial compliance is likely to become a form of compliance in the South Caucasus states as examples of democratising states. The analysis suggests that the likelihood of partial compliance presupposes the following key factors: (i) the complexity of human rights issues addressed by ECtHR judgments, which often require deep systemic changes; and (ii) political, social or cultural sensitivity to the findings of the ECtHR in the domestic context, both by state bodies – particularly the executive, being responsible for compliance with ECtHR judgments – and the wider public. In addition, the absence of implementation mechanisms or procedures that would ensure the synergies of various relevant domestic actors to address what are often complex and structural human rights issues hinders the institutionalisation and de-politicisation of compliance with ECtHR judgments. I employ the term 'partial compliance' as an overarching definition of a form of compliance behaviour of the respective states and break it down into three categories of partial compliance on the basis of the cases researched.

Although concerns continue to grow over the failure of states to comply fully with their international human rights obligations in the current political context in Europe, legal theory seems to continue to rely on the acceptance of international law in domestic systems. While the levels of acceptance vary across CoE countries, my research findings enhance the concept of partial compliance in international human rights law and suggest that partial compliance is a very likely form of compliance in the South Caucasus states, as they represent aspiring democracies or 'new member states' of the CoE. Although the socialisation of these states with international human rights norms, including through the ECtHR adjudication process and the CM supervision process, is significant (which I do not discuss in this article but analyse in my forthcoming broader PhD research on compliance with ECtHR judgments in the South Caucasus states), I argue that the

[79] Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (entered into force 10 May 2006), r 9.2.

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concept of partial compliance deserves wider scholarly recognition in light of the growing concerns over non-implementation of ECtHR judgments. As the incrementally based optimism of the CoE towards the South Caucasus states over the last two decades has been challenged with an ever-increasing implementation backlog that addresses serious systemic and structural problems – followed by the 'Article 18' judgments against Azerbaijan and Georgia in recent years, which questioned the very essence of their democratisation and 'good faith' – the debate on partial compliance and its impact appears to be inevitable.

In analysing compliance in the three states, I rely on the synthesis of two prevailing compliance theories – *constructivism* and *rational choice* – the integration of which has been increasing and gaining support among compliance scholars. *Constructivism* focuses on the way in which international law 'socialises' states by their exposure to and interaction with human rights norms and institutions,[80] whereas the *rational choice* theory focuses on material incentives and the self-interest of governments.[81] I argue that such a synergy is particularly relevant to member states that joined the CoE in the late 1990s/early 2000s, such as the three South Caucasus countries, where the political will of the authorities and their 'socialisation' with international mechanisms and norms, followed by additional incentives, play a crucial role in shaping state compliance with ECtHR judgments. These member states of the CoE feature considerably less than Western democracies in scholarly works on compliance with human rights judgments and, to the author's knowledge, very little academic research has been undertaken on compliance with ECtHR judgments specifically in Armenia, Azerbaijan and Georgia.[82]

The growing number of ECtHR judgments against the South Caucasus states awaiting implementation before the CM over almost two decades since their accession to the CoE – including notorious cases finding that Azerbaijan and Georgia had acted in 'bad faith' in violation of Article 18 of the ECHR,[83] as well as instances of contested compliance – suggest that the hopes of the CoE for an incremental democratisation process have been challenged or even stalled. I support this finding further with the fact that a majority of the cases raise very complex human rights issues, which I categorise as (i) politically and/or socially sensitive; (ii) resource intensive; and (iii) otherwise requiring structural reforms.

On this basis, like Hawkins and Jacoby,[84] I propose the following forms of partial compliance for the South Caucasus states. They reflect specifically the particular tendencies of the domestic context within which implementation takes place:

[80] Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (Oxford University Press 2013); Jutta Brunnée and Stephen J Toope, *Legitimacy and Legality in International Law: An International Account* (Cambridge University Press 2010).
[81] Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005); Andrew T Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press 2010).
[82] Motoc and Ziemele (n 21).
[83] ECtHR, *Merabishvili v Georgia*, App no 72508/13, 28 November 2017; ECtHR, *Mammadov v Azerbaijan*, App no 15172/13, 22 May 2014.
[84] Hawkins and Jacoby suggested five forms of partial compliance: split decisions, state substitution, slow motion compliance, impossible requests, and disputes over details: Hawkins and Jacoby (n 12) 38.

Minimal compliance

In cases of minimal compliance states take the least possible measures to respond to the ECtHR ruling and are often limited to minimal measures to remedy the situation for the applicant. In such instances monetary compensation, also known as just satisfaction, usually indicated by the Court in its judgments, is commonly the sole measure taken by the authorities. No other effective measures, including individual measures – such as the reopening of a criminal investigation – are taken. By way of example, this was the only measure taken by the Azerbaijani authorities in the case of *Rasul Jafarov v Azerbaijan*, where the Court found the detention of a human rights activist to be unlawful and was 'aimed to punish him for his human rights work'. The case illustrates the government's minimalist selective compliance with the judgment as it had failed to pay full compensation to the applicant since 2016 by making two partial payments on random occasions and the applicant's requests to reopen the criminal proceedings were dismissed by the domestic courts.[85]

Dilatory and/or protracted compliance

I categorise compliance as dilatory or protracted in cases where a government has engaged in the implementation process and has taken action with regard to specific measures, of either an individual or general nature, but that action has failed to produce any tangible results to remedy the applicant's situation or amend existing legislation or policy for a period of time long enough to achieve such changes. In the *Tsintsabadze* group of cases, for example, dating back from 2004 to 2011 (and ECtHR judgments adopted between 2011 and 2015), the Georgian authorities were required to investigate the alleged ill-treatment of detainees by law enforcement agents. Although they reopened the investigations following the ECtHR judgments, serious shortcomings have been flagged since then, including those described as negligent actions by the applicants and civil society,[86] or those stemming from the inability to investigate effectively after a very long time lapse.[87] In the *Mahmudov and Agazade v Azerbaijan* group of cases of 2009, concerning the imprisonment of journalists on criminal defamation charges, the authorities paid compensation to the applicants but, to date, have failed to bring legislation in line with European standards despite their various engagements with the CoE, including the Venice Commission, to decriminalise defamation and stop the arbitrary application of the criminal law to limit freedom of expression.[88] Dilatory and/or protracted compliance therefore includes

[85] 'Status of Execution' in the case of *Rasul Jafarov v Azerbaijan*, App no 69941/14, https://hudoc.exec.coe.int/eng#{"fulltext":["Rasul Jafarov v Azerbaijan"],"EXECDocumentTypeCollection":["CEC"],"EXECIdentifier":["004-1605"]} (last visited 7 October 2018).
[86] 'Communication from the Georgian Young Lawyers Association and the European Human Rights Advocacy Centre to the Department for Execution of Judgments of the European Court of Human Rights on the Implementation of the Case of *Tsintsabadze v Georgia* (App no 35403/06)', 30 August 2018.
[87] For a similar status of execution see ECtHR, *Virabyan v Armenia* group, App no 40094/05, 2 January 2013.
[88] 'Status of Execution' in the case of *Mahmudov and Agazade v Azerbaijan*, https://hudoc.exec.coe.int/eng#{"fulltext":["Mahmudov"],"EXECDocumentTypeCollection":["CEC"],"EXECIdentifier":["004-1709"]} (last visited 11 October 2018).

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cases where the authorities engage in the process of adopting individual and general measures, which are usually more complex, but the process becomes protracted or even stalls as a result of the authorities' unwillingness or inability to achieve tangible results. The research suggests that this type of compliance is a very common form of partial compliance in the states under consideration.

Contested compliance

Contested compliance is a relatively new phenomenon in CoE member states, including those that joined the CoE at the end of the 1990s/early 2000s, but it features a tendency to grow and spread in the current hostility towards human rights. As mentioned above, Russia has already institutionalised, through its Constitutional Court, its ability to decide which ECtHR judgments it would implement, and has applied it in practice; Azerbaijan's parliament has debated following the Russian example. The case of *Ilgar Mammadov* is a classic example of contested compliance where the authorities explicitly opposed the individual measure proposed by the CM: the immediate release of the applicant. The growth in the number of 'Article 18' cases from the region, including Azerbaijan and Georgia, as testimony to the authorities' acting in bad faith in limiting human rights, suggests that instances of contested compliance may grow.

Contested compliance is likely to arise in very highly political and otherwise sensitive cases where there is very little or no political will to engage in the process. For example, in the two landmark cases of *Sargsyan v Azerbaijan* and *Chiragov v Armenia*, which address violations of property rights of owners who had to leave their homes during the Nagorno-Karabakh war between Armenia and Azerbaijan in the early 1990s, the two governments have so far failed to pay compensation to the applicants in blatant violation of their duty to comply with the remedy ordered by the ECtHR or to take any other measures to resolve the currently frozen conflict.[89]

I apply this categorisation both to pending cases and to those that have already been closed but where the implementation process has been protracted, often on the grounds of (i) ambiguity and complexity of the human rights issues and the measures required, (ii) state contestation, or (iii) where cases have been closed by the CM, but the decision to close has been criticised by domestic human rights groups as being premature, with state actions failing to address the systemic nature of the violations. My research therefore does not rely only on the closure of cases by final resolution of the CM as the absolute indicator of compliance with ECtHR judgments, but also takes into consideration domestic concerns.

This proposed categorisation aims to demonstrate that partial compliance varies in form and can be identified across the three countries. Furthermore, some of the categories can overlap and apply to the same case. It is not suggested that they are exhaustive as they stem from patterns observed in the compliance behaviour of the South Caucasus states. As the CM supervision

[89] CoE CM Secretariat, 'Communication from the Applicant (27 July 2018) in Sargsyan v Azerbaijan (Application No. 40167/06)', submitted to the Department for Execution of Judgments of the European Court of Human Rights, 9 October 2018, DH-DD(2018)980, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e49f2.

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procedure engages CoE states in the implementation process, it is no longer sufficient to view compliance as a dichotomous concept and, as the number of cases pending implementation has grown immensely during the last years, it is very likely that partial compliance is now a common form of compliance.

5. CONCLUSION

The analysis of the selected ECtHR cases and the domestic contexts of the South Caucasus states, as emerging democracies, suggests that partial compliance is a very likely form of compliance because of a number of factors. These include the complexity of human rights issues addressed by ECtHR judgments against the three states, often requiring deep systemic changes; political, social or cultural sensitivity to the ECtHR findings; and required reforms in the domestic systems. As a result, the absolute nature of the obligation of states under Article 46 of the ECHR to comply with ECtHR judgments has been increasingly challenged by the states' selective behaviour, resulting in minimal, dilatory, lengthy or even contested compliance with the judgments. The growing concern over the 'implementation crisis' in Europe unfolded mainly after the enlargement of the CoE in the late 1990s/early 2000s with the emergence of new states following the collapse of the Soviet Union, such states having been accepted into the CoE through its 'open door' approach.

It is suggested that such phenomena can be explained by the balancing by the states of international reputation and their domestic interests. Depending on the nature of the remedies imposed by the ECtHR judgments and the challenges or sensitivities that implementation of such remedies may cause, the political power to comply with judgments in the South Caucasus states ranges from political engagement to political passivity to political resistance. It relies on balancing the 'costs' that states impose on the domestic political interests of the ruling authorities and their international performance. The likelihood of partial compliance is further explained by the absence of domestic implementation mechanisms in all three states which deprive other domestic actors (such as national parliaments or civil society) of the opportunity to engage in the process. Without checks and balances over the compliance behaviour of the executive, the adoption of necessary measures is left entirely to executive discretion and is thus conditioned by the balancing of 'costs'.

With these findings, this article further encourages scholarly debate on partial compliance in light of the growing presence of various forms of partial compliance in the ECtHR context in democratising states. It is no longer sufficient to see compliance as a dichotomous concept on the premise that domestic systems generally accept and socialise with international law, and that partial compliance in its various forms should be seen as the middle ground in the study of compliance. Such findings do not challenge the impact of the democratising states' socialisation with the ECtHR and its judgments, but suggest that partial compliance is a crucial element in the socialisation process. This is particularly so given that in the unique domestic environments of these states, the level of democracy and its foundations remain turbulent.

ANNEX

LIST OF ECTHR JUDGMENTS

Armenia

ECtHR, *Bayatyan v Armenia*, App no 23459/03, 7 July 2011; Council of Europe Committee of Ministers, Execution of the Judgments of the European Court of Human Rights in Three Cases against Armenia (adopted by the Committee of Ministers on 19 November 2014 at the 1212th meeting of the Minister's Deputies), CM/ResDH(2014)225

ECtHR, *Chiragov and Others v Armenia*, App no 13216/05, 16 June 2015

ECtHR, *Harutyunyan v Armenia*, App no 34334/04, 15 September 2010

ECtHR, *Minasyan and Semerjyan v Armenia*, App no 26651/05, 23 September 2009; Council of Europe Committee of Ministers, Execution of the Judgments of the European Court of Human Rights in Eight Cases against Armenia (adopted by the Committee of Ministers on 17 November at the 1240th meeting of the Ministers' Deputies), CM/ResDH(2015)191

ECtHR, *Virabyan v Armenia*, App no 40094/05, 2 January 2013

Azerbaijan

ECtHR, *Mahmudov and Agazade v Azerbaijan*, App no 35877/04, 18 March 2009

ECtHR, *Mammadov v Azerbaijan*, App no 15172/13, 13 October 2014

ECtHR, *Mirzayev v Azerbaijan*, App no 50187/06, 3 March 2010

ECtHR, *Ramazanova and Others v Azerbaijan*, App no 44363/02, 1 February 2007

ECtHR, *Sargsyan v Azerbaijan*, App no 40167/06, 16 June 2015

Georgia

ECtHR, *Ghavtadze v Georgia*, App no 23204/07, 30 March 2009; Council of Europe Committee of Ministers, Execution of the Judgments of the European Court of Human Rights in Five Cases against Georgia (adopted by the Committee of Ministers on 12 November 2014 at the 1211th meeting of the Ministers' Deputies), CM/ResDH(2014)209

ECtHR, *Gorelishvili v Georgia*, App no 12979/04, 5 June 2007; Council of Europe Committee of Ministers, Execution of the Judgment of the European Court of Human Rights in *Gorelishvili v Georgia* (adopted by the Committee of Ministers on 2 December 2010 at the 1100th meeting of the Ministers' Deputies), CM/ResDH(2010)164

ECtHR, *Identoba and Others v Georgia* (Lack of Protection against Homophobic Attacks), App no 73235/12, 12 May 2015

ECtHR, *Kiladze v Georgia*, App no 7975/06, 2 February 2010; Council of Europe Committee of Ministers, Execution of the Judgment of the European Court of Human Rights in *Klaus and Youri Kiladze v Georgia* (adopted by the Committee of Ministers on 15 March 2015 at the 1222nd meeting of the Ministers' Deputies), CM/ResDH(2015)41

ECtHR, *Tsintsabadze v Georgia*, App no 35403/06, 15 February 2011