



# Social networks and the impact of the European Court of Human Rights

Shai Dothan 

Associate Professor of International and Public Law, University of Copenhagen, Faculty of Law affiliated with iCourts – the Centre of Excellence for International Courts and Study Hub for International Economic Law and Development (SHIELD), Copenhagen, Denmark

Email: [shai.dothan@jur.ku.dk](mailto:shai.dothan@jur.ku.dk)

(Received 6 September 2023; revised 14 June 2024; accepted 19 July 2024)

## Abstract

Insights from Social Network Analysis reveal that the structure of the social network surrounding international courts is important for these courts' ability to secure compliance with their judgments and by this to initiate social change. International courts like the European Court of Human Rights (ECtHR) invest growing resources in shaping their networks, recognising that these networks are necessary tools that can help them to influence society. This paper will focus on the ways social network analysis can facilitate a better understanding of the ECtHR. The paper explains how certain characteristics of the network surrounding the ECtHR determine the ultimate social impact of the court.

**Keywords:** European law; law in context; sociology; economy; European court of human rights; Social network analysis

## 1. Introduction

This paper seeks to demonstrate through insights from Social Network Analysis how the structure of the network surrounding the European Court of Human Rights (ECtHR) helps to determine the court's social impact. The impact of the court depends on its ability to generate reputational sanctions that harm those who fail to comply with its judgments. These sanctions result from signals transmitted in the network surrounding the court. The structure of the network has a crucial influence on the ability of these signals to travel quickly and widely and to remain unalloyed by falsehoods.

The literature on the effectiveness of courts has been subject to several important developments since its inception in 1997 when Laurence R. Helfer and Anne-Marie Slaughter published a paper titled 'Toward a Theory of Effective Supranational Adjudication' in the *Yale Law Journal*, which suggested a method for constructing effective international courts – trying to imitate the qualities of two courts that are especially effective: the Court of Justice of the European Union (CJEU) and the ECtHR.<sup>1</sup>

First, there are certain refinements to the focus on compliance that the literature elaborated on as a measure of the effectiveness of international courts. Scholars have observed that courts are susceptible to a variety of responses besides noncompliance, for example cutting their budgets, leaving the treaty regime, or changing stipulations in the treaty are all forms of backlash that could

<sup>1</sup>LR Helfer and A-M Slaughter, 'Toward a Theory of Effective Supranational Adjudication' 107 (1997) *Yale Law Journal* 273.

deter and restrain courts.<sup>2</sup> Moreover, the trajectory of courts' behavior is to a large extent determined by their judges. Therefore, the incentives of international judges could also shape the strategy of international courts.<sup>3</sup> Other scholars have noted that courts can make an impact in other ways besides receiving compliance with their judgments. The organisations and states that create international courts are considered by this strand of the literature as assigning to courts more diverse goals than just issuing orders to states and making sure these orders are fulfilled.<sup>4</sup> Despite all these additional directions in the study of international courts, measuring compliance with these courts remains a key metric in assessing their effectiveness.

Second, the literature tried to explain why states comply with the judgments of international courts. There could be cases of coincidence of interests between the court and the state, namely, the state just looks for an excuse to change its behavior as the court requires.<sup>5</sup> But there are clearly many cases in which international courts require states to change their behavior against their wishes and states nevertheless comply. Take the ECtHR case of *Broniowski v. Poland*<sup>6</sup> as an example. This case concerned a promise that was made by Poland after World War II to compensate its citizens that lost their property when the Soviet Union annexed Polish territories. The promise remained unfulfilled even though the citizens sued for their rights in Polish national courts and won. When the ECtHR decided that Poland violated its citizens' right to property, however, Poland eventually complied by setting legislation to regulate compensation for its citizens.<sup>7</sup> Compliance with such a case that goes against what Poland initially perceived as its interests requires an explanation.

National courts can secure compliance with their judgments through a powerful enforcement mechanism that would punish the government if it fails to comply. But such a mechanism does not exist for many international courts. Compliance with the ECtHR is monitored by the Committee of Ministers of the Council of Europe.<sup>8</sup> As demonstrated in Part 3, this is a body that can assist in shaming states to encourage them to comply, but the only real sanction that it can use against a disobedient state is to expel it from the Council of Europe.<sup>9</sup> This sanction was recently used against Russia following the war in Ukraine,<sup>10</sup> but it is clearly unfitting for the numerous smaller violations that the court found in the countries under its jurisdiction. The real reason courts like the ECtHR are complied with must lie elsewhere.

The main reason that was noted in the literature for compliance with judgments that cut against the interests of states is reputational sanctions that will be sustained by countries that fail to comply with the court. Courts who wish to secure compliance in future cases should therefore

<sup>2</sup>See T Ginsburg, 'Bounded Discretion in International Judicial Lawmaking' 45 (2005) *Virginia Journal of International Law* 631, 658; JK Cogan, 'Competition and Control in International Adjudication' 48 (2008) *Virginia Journal of International Law* 411; S Dothan, *Reputation and Judicial Tactics: A Theory of National and International Courts*, Chapter 3 (Cambridge University Press 2015); MR Madsen, P Cebulak, and M Wiebusch, 'Backlash Against International Courts: Explaining the Forms and Patterns of Resistance to International Courts' 14 (2018) *International Journal of Law in Context* 197.

<sup>3</sup>See EA Posner and MFP de Figueiredo, 'Is the International Court of Justice Biased?' 34 (2005) *Journal of Legal Studies* 599; E Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights' 102 (2008) *American Political Science Review* 417; S Dothan, 'The Motivations of Individual Judges and How They Act as a Group' 19 (2018) *German Law Journal* 2165.

<sup>4</sup>See Y Shany, 'Assessing the Effectiveness of International Courts: A Goal-Based Approach' 106 (2012) *American Journal of International Law* 225, 240–42.

<sup>5</sup>H Lauterpacht, *The Development of International Law by the International Court* (1958, Cambridge University Press 1996) 4.

<sup>6</sup>*Broniowski v. Poland*, judgment of June 22, 2004, 2004-V EUR. Ct. H.R. 1.

<sup>7</sup>See Dothan (n 2) 1.

<sup>8</sup>European Convention on Human Rights, Art 46 (2).

<sup>9</sup>Statute of the Council of Europe, Arts 3, 8.

<sup>10</sup>See <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>. The only other historical precedent is a threat by the Committee to expel Greece due to the violations committed by the military dictatorship there in 1970. Expecting expulsion, Greece eventually left the Council of Europe itself. See *The Greek Case*, 1969 YB Eur Conv on HR 1 (1969). See C Ovey and R White, *Jacobs and White, The European Convention On Human Rights* (4th edn, Oxford University Press 2006) 504.

strive to increase the reputational sanction on states that fail to comply with them. One way to do that is to build the reputation of the court – namely the expectation of the international community that states would comply with that court. In that way, any state that fails to comply with this court would be considered as behaving against the expectations of the international community and suffer a strong reputational sanction.<sup>11</sup>

Another way for the court to increase its chances of getting compliance is to improve the flow of information about the practices of the states. This flow of information can be facilitated by the structure of the network surrounding the court as later Parts of this contribution demonstrate. If the infringements of states are known to the international community, the reputational costs of noncompliance increase and the chances of compliance, in turn, would rise. The networks of lawyers and activists that interact with international courts distribute information about the courts' judgments and the descriptions contained within them concerning the actions of states. This information can cause damage to the reputation of states that are caught violating their international obligations. However, the information that reaches the states may not be identical with what the judges are saying. This information is channeled through the networks that surround courts and the structure of the network can determine both the rate and the scope of dissemination of this information and its accuracy.

Courts can improve the flow of information by creating connections between the core of people that surround the court and the larger periphery of interested actors. Courts can also shape the networks surrounding them to increase the accuracy of the information that is delivered in them and thereby increase the reputational sanction for every violation. The network that surrounds the ECtHR therefore plays an important role in the ability of the court to ensure compliance with its judgments. Insights from the growing field of Social Network Analysis and other disciplines that can be applied to make sense of information flow in networks are useful tools for understanding the condition of the ECtHR. This paper relies on quantitative and qualitative empirical work on the network of Non-Governmental Organisations (NGOs) that surround the ECtHR to demonstrate the crucial role that this network plays in strengthening the court's impact on society.

Part 1 argues that international courts secure compliance with their judgments by strategically building their reputation. Part 2 describes the main relevant methodological insights of Social Network Analysis. Part 3 explains how the network that surrounds the ECtHR can help it become more influential using insights from Social Network Analysis and information about the NGO network surrounding the ECtHR. Part 4 suggests ways in which the ECtHR can manipulate the network around it. Part 5 concludes.

## 2. International courts use reputational sanctions to get compliance

If states comply with international courts despite the lack of a material sanction in case of non-compliance, there must be another type of sanction that motivates them to change their practices. This sanction is reputational in nature. Countries need to preserve their reputation for compliance with international law because this reputation helps them to improve their credibility when they close deals with other countries. A country that is considered credible is able to get better deals in any negotiation with other countries because these countries will believe that it will fulfill its promises.

If a country shows that it is willing to comply with international law despite an immediate interest to violate it, it shows that it cares about its success in the long-term and not just about short-term benefits. This quality is known as having a 'low discount rate' because the country does not significantly discount future costs or benefits. When a country complies with its international obligations it sends a signal to other countries that it has a low discount rate. This country would be considered as having a high reputation for compliance with international law because it is

<sup>11</sup>See generally Dothan (n 2).

expected by the international community to continue to comply with its international obligations in the hope of maintaining its image as a country with a low discount rate.<sup>12</sup>

When an international court finds a state in violation of international law, this naturally damages the state's reputation. But it also gives that state an opportunity to remedy its reputation, at least partly, by complying with the court's judgment. Compliance with judgments, just like fulfilling other international obligations, comes at an immediate cost. Countries that are willing to pay that cost indicate that they care enough about the future to do so. They, therefore, signal that they have a low discount rate and a high reputation.<sup>13</sup>

In contrast, if a country fails to comply with a judgment of an international court, it will suffer a reputational sanction. Other countries will deduce from its behavior that it is unwilling to pay the price of compliance in order to preserve its reputation and its credibility will suffer as a result. International courts that wish to increase compliance with their judgments should aim at having a high reputational sanction on a state that fails to comply with them. The higher the sanction, the larger the chances that the state would comply because a rational state would comply in this situation unless the offsetting cost of compliance is particularly high.<sup>14</sup>

International courts that strive to improve their compliance rates are therefore tasked with increasing the reputational sanction with their judgments. For the sake of simplicity, it is possible to refer to a court that generates high reputational sanctions for noncompliance with its judgments as a 'high-reputation court'. How can a court like the ECtHR become a high reputation court?

The first intuition would probably be that the court needs to get as much compliance as possible and avoid any criticism or attack from states. This would suggest that international courts should view the fear of backlash as a reason to restrain themselves in order to avoid provoking the ire of states. But in my previous work, I argued based on a theoretical model and some examples that courts can sometimes gain from challenging states with demanding judgments that states do not care to comply with. If states comply with such judgments from fear of a reputational sanction, the court's reputation will rise significantly, which would allow it to demand even more from states in the future. The reason for this surprising effect is that compliance with a demanding judgment proves to the international community that states comply with this court even if compliance is very difficult. This, in turn, proves that the court generates a strong reputational sanction, sending a signal to all other states that the international community expects compliance with this court.<sup>15</sup>

Furthermore, instead of trying to convince states to comply by supplying its judgments with a reasoning that seems grounded in existing doctrine, courts can strategically opt for types of reasoning that reveal their discretion. If states comply with judgments that reveal the court's discretion, the court signals that these states comply because of fear of the court's own reputational sanction and not because of respect for the legal sources mentioned in the court's judgments.<sup>16</sup>

Issuing demanding judgments and using discretionary reasoning is a risky strategy because these judgments are more likely to lead to noncompliance than judgments that are easy to comply with and that rest on established legal rules. The court should practice the strategy of walking on the brink of noncompliance, issuing in every case the most demanding judgments and the most discretionary reasoning that will still lead to compliance.<sup>17</sup>

The limitations of reputation as a tool to coerce state compliance should also be recognised. When states have a high reputation, they have more to lose from any act of noncompliance that

<sup>12</sup>See AT Guzman, *How International Law Works – A Rational Choice Theory* (Oxford University Press 2008) 33–36.

<sup>13</sup>See Dothan (n 2) Chapter 2.

<sup>14</sup>See *Ibid.*

<sup>15</sup>See *generally* Dothan (n 2); S Dothan, 'Judicial Tactics in the European Court of Human Rights' 12 (2011) *Chicago Journal of International Law* 115.

<sup>16</sup>See *Ibid.*

<sup>17</sup>See *Ibid.*

would form a potent signal that their current reputation level is exaggerated.<sup>18</sup> But they can also harm the court more by criticising it or simply by failing to comply, leading the ECtHR to be more lenient when facing high reputation states.<sup>19</sup> In contrast, low-reputation states have little to lose from noncompliance because their current reputation is not worth much, which makes them prone to additional acts of noncompliance.<sup>20</sup>

The argument that courts seek to increase their reputation by taking risks is focused on the way courts can change their behavior and the way they are perceived and accepted by their audiences. There is also literature that is focused on the ability of international courts to shape the behavior of a particular target audience.<sup>21</sup> However, little attention is given to the way the sociological structure of the audience can affect the ability of the court to reach its goals and even less attention to the possibility that international courts can deliberately manipulate this structure. These factors are the subjects of the rest of this paper.

### 3. The methodology of social network analysis

Before going on to describe the nature of the network that surrounds the ECtHR, it is necessary to examine the type of methodology that will be used to analyze this network. The methodology used in this paper mainly draws on Social Network Analysis and several insights from other studies that can be easily integrated into the framework of this methodology.

Social Network Analysis is a sociological method designed to help predict the behavior of actors based on the types of connections they have with others.<sup>22</sup> The main tool used by social network analysis is the sociogram, which depicts the connections people or other agents have with one another. The agents inside the sociogram are referred to as 'nodes' and the connections between them are called 'ties'. Ties may include any transfer of information or any type of material goods between the different nodes in the sociogram.

There are other sociological methods that can be used to describe complicated situations like the interactions of international courts. Structural-functionalist theories can be used to present the social structures that affect people's behavior, symbolic-interactionist theories can be used to explain the behavior of people in small groups, and social conflict theories can expose the patterns of inequality in society that motivate the struggle of rival groups.<sup>23</sup> There are also scholars who applied the sophisticated tools of reflexive sociology developed by Pierre Bourdieu to the study of legal fields.<sup>24</sup>

Such sociological inquiries may be useful for understanding the main sociological forces that operate in the legal field, but they lack a formal and accurate mechanism for systematically describing individual ties. The epistemic superiority that social network analysis provides compared to other theories stems exactly from the existence of such a mechanism for systematically describing social ties. It is due to this mechanism that Social Network Analysis can be used not only as a tool for understanding and explaining complicated problems but also as a

<sup>18</sup>See Hathaway (n 54); Guzman (n 12) 83; Dothan (n 2) 13.

<sup>19</sup>See Dothan (n 2) Chapter 6.

<sup>20</sup>See Hathaway (n 54); Guzman (n 12) 83; Dothan (n 2) 13.

<sup>21</sup>See KJ Alter, LR Helfer, and MR Madsen, 'How Context Shapes the Authority of International Courts' 79 (2016) *Law and Contemporary Problems* 1.

<sup>22</sup>For a general introduction to the field see C Kadushin, *Understanding Social Networks: Theories, Concepts and Findings* (Oxford University Press 2012); NA Christakis and JH Fowler, *Connected: The Surprising Power of Our Social Networks and How They Shape Our Lives* (Little, Brown and Company 2009); G Caldarelli and M Catanzaro, *Networks: A Very Short Introduction* (Oxford University Press 2012).

<sup>23</sup>See M Hirsch, *Invitation to the Sociology of International Law* (Oxford University Press 2015) 34–40.

<sup>24</sup>See MR Madsen, 'Reflexive Sociology of International Law: Pierre Bourdieu and the Globalization of Law' in M Hirsch and A Lang (eds), *Edward Elgar Research Handbook on the Sociology of International Law* (Edward Elgar 2018) 189, 333. MR Madsen, 'Unpacking Legal Network Power: The Structural Construction of Transnational Legal Expert Networks' in M Fenwick, S Van Uytzel, and S Wrba (eds), *Networked Governance, Transnational Business and the Law* (Springer 2014), 39.

tool of prediction – of setting precise hypotheses for the way social agents are going to act because of the influence exercised on them by their social ties. Fundamental insights such as the small number of ties that connect even very distant people in the modern world,<sup>25</sup> the non-intuitive result that it is weak ties that can help people to find their next job,<sup>26</sup> or the fact that people who bridge socially distinct worlds (so-called ‘brokers’) are usually the most creative and productive<sup>27</sup> can all be learned from highly precise studies and applied to situations that are socially similar.

The key to using Social Network Analysis as a powerful method of prediction is exposing the nature of ties between different agents. Ties can be symmetrical when people have the same type of exchange with their interlocutor or they can be asymmetrical when one agent is linked to another, but the other is not linked to that agent in the same way. Ties can be weak because they involve a limited exchange of goods or information, or they can be strong. Most importantly, agents can be connected directly, or they could be connected through ties to others. In that case, it becomes important to analyze the type of indirect links that connect these agents who are not directly connected to each other. The sociogram will describe all these ties together and allow scholars to form a hypothesis on how agents are likely to act given their place in the network.<sup>28</sup>

Besides its accuracy, the main advantage of Social Network Analysis is its ability to deal with very large and complicated networks. Already before Social Network Analysis was applied to law, scholars were intrigued by how people settle their disputes in communities.<sup>29</sup> Scholars developed intricate accounts of how communities of merchants, for example, regulate their behavior as a group.<sup>30</sup> When called upon to analyze the interaction between a small number of actors, the tools of game theory proved incredibly valuable and they helped, for example, to explain the behavior of medieval traders.<sup>31</sup> But the thing that makes Social Network Analysis truly unique is its ability to investigate accurately the interaction of numerous actors with a variety of ties. This is why Social Network Analysis is increasingly applied to investigate problems of law generally,<sup>32</sup> international law,<sup>33</sup> and recently also of international courts.<sup>34</sup>

The reason that the unique ability of Social Network Analysis to deal with complexity is so useful in the study of international institutions is a growing realisation that the relevant network that has a real impact on behaviors in the international arena includes not only the highest echelons of government but also a much larger number of administrators that continuously interact with one another.<sup>35</sup> This is why instead of thinking of the practice of international law and international relations as a strategic game with relatively few actors, it should be viewed as a vast and complicated network of actors interacting with each other.<sup>36</sup>

<sup>25</sup>See J Travers and S Milgram, ‘An Experimental Study of the Small World Problem’ 32 (1969) *Sociometry* 425.

<sup>26</sup>See M Granovetter, *Getting a Job: A Study of Contacts and Careers* (2nd edn, University of Chicago Press 1995).

<sup>27</sup>See RS Burt, *Brokerage and Closure: An Introduction to Social Capital* (Oxford University Press 2005).

<sup>28</sup>See EM Hafner-Burton, M Kahler, and AH Montgomery, ‘Network Analysis for International Relations’ 63 (2009) *International Organization* 559, 562–4.

<sup>29</sup>RC Ellickson, *Order without Law: How Neighbors Settle Disputes* (Harvard University Press 1991).

<sup>30</sup>See L Bernstein, ‘Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry’ 21 (1992) *The Journal of Legal Studies* 115; L Bernstein, ‘Private Commercial Law in the Cotton Industry: Creating Cooperation through Rules, Norms, and Institutions’ 99 (2001) *Michigan Law Review* 1724.

<sup>31</sup>See A Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge University Press 2006).

<sup>32</sup>See, for example, LJ Strahilevitz, ‘A Social Networks Theory of Privacy’ 72 (2005) *The University of Chicago Law Review* 919; L Bernstein, ‘Beyond Relational Contracts: Social Capital and Network Governance in Procurement Contracts’ 7 (2015) *Journal of Legal Analysis* 561.

<sup>33</sup>See S Puig, ‘Social Capital in the Arbitration Market’ 25 (2014) *European Journal of International Law* 387.

<sup>34</sup>See S Dothan, ‘Social Networks and the Enforcement of International Law’ in M Hirsch and A Lang (eds), *Edward Elgar Research Handbook on the Sociology of International Law* (Edward Elgar 2018) 333.

<sup>35</sup>See A-M Slaughter, *A New World Order* (Princeton University Press 2004).

<sup>36</sup>See A-M Slaughter, *The Chess-Board and the Web: Strategies of Connection in a Networked World* (Yale University Press 2017).



When international courts are studied, it is a natural tendency to focus primarily on judges and to a lesser extent maybe on legal staff and networks of legal experts. This paper calls on scholars to realise that the network of agents that actually determine the social impact of the court is much larger. NGOs have an important role in bringing cases to the court, either directly as applicants or indirectly by providing potential applicants with legal aid, funding, or guidance. NGOs provide information to international courts when they act as *amicus curiae*. Most importantly for the purpose of this paper, NGOs assist with enforcing the judgments of international courts by spreading information about the violations of states and shaming them into compliance.<sup>37</sup>

Once it is accepted that the main reason states comply with the ECtHR is the fear of reputational sanctions, it becomes evident that the group of NGOs that observe the practice of states and exchange information about it is a crucial part of the network that needs to be examined. The interactions of NGOs with the ECtHR is therefore an excellent case study where the methodological power of Social Network Analysis can be demonstrated.

#### 4. How networks support the impact of the ECtHR

The network surrounding a court has to transmit messages about the behavior of states. These messages are used to shape the reputation of the states, in essence shaming states that are caught infringing international law by exposing their behavior. Reputational sanctions are completely dependent on the flow of information in the community of states. States lose or gain reputation based on the beliefs of the community about their future actions, which is grounded, in turn, on what they heard about their past behavior. This is why a court cannot generate a strong reputational sanction on noncomplying states without having a network with a good flow of information. This part argues that the true social impact of the court is determined both by the reputation of the court and by the quality of the network that surrounds it.

The network can increase the reputational sanction issued by the court when it transmits information quickly and accurately. Rapid transmission of information is essential to get as many actors as possible informed about the actions of the state and generate a reputational sanction. The transmission of information should also avoid spreading any falsehood so that news about the actions of the state will be believed and will have an impact on the state's reputation.

This part presents factors that make the network surrounding the ECtHR particularly successful in both speed of transmission and their ability to avoid falsehoods. It relies on a study that I conducted using both quantitative and qualitative methods to investigate the transmission of information through the network of NGOs surrounding the ECtHR.<sup>38</sup>

##### A. Fast dissemination

The Department for the Execution of Judgments (DEJ) assists the Committee of Ministers, the body charged with monitoring compliance with the ECtHR. In 2011, the DEJ created a new website that started to publish reports by NGOs about the actions states take to comply with ECtHR judgments.<sup>39</sup> I identified in this website an opportunity for quantitative research that would survey everything on the website as a micro-cosmos that would reflect trends in the compliance behavior of states and can therefore be easily generalisable to other settings. I closed

<sup>37</sup>See S Dothan, 'Luring NGOs to International Courts: A Comment on *CLR v. Romania*' 75 (2015) *Heidelberg Journal of International Law* 635.

<sup>38</sup>See S Dothan, 'A Virtual Wall of Shame: The New Way of Imposing Reputational Sanctions on Defiant States' 27 (2017) *Duke Journal of Comparative and International Law* 141.

<sup>39</sup>The website has seen many changes and improvements over the years. Here is the newest version: <https://www.coe.int/en/web/execution/submissions> (accessed on 12 August 2023).

the dataset four years after the website was created. By this time, already more than two hundred NGOs took part in submitting reports about the behavior of states.<sup>40</sup> 266 reports were published on the website. These reports addressed compliance with 137 ECtHR judgments.<sup>41</sup>

What is immediately apparent about a network of two hundred NGOs engaged in shaming states for their noncompliance is that it is very broad. The ECtHR has a core of professionals that interact with each other and know each other well. This core of the network certainly includes the judges and probably a small number of senior administrators at the court's staff and the Council of Europe, as well as lawyers who act as repeat players. But in addition to this core, the network includes a vast periphery of actors that get information from the court and transmit information back to others. The large and diverse group of lawyers and activists that form the NGOs in my database constitute a periphery of actors – a lot of people that are not densely connected to each other, but nevertheless are engaged with the court and send information about its judgments.

In the literature on Social Network Analysis social networks are known to have a core in which participants have many connections with each other and a periphery where there are fewer such connections. Networks that have multiple ties between the core and the periphery are known as networks of 'disassortative mixing'. They spread anything that goes through their ties much faster than networks in which the core and the periphery are rarely connected.<sup>42</sup> In a network like that surrounding the ECtHR where the core and the periphery are connected, information spreads rapidly.

The NGO lawyers and activists in the periphery are sharing their views about states and their practices in ways that have a strong effect on states' reputations. If information spreads rapidly about the violations the states committed and their unwillingness to comply with the court's judgments, the states' reputations will suffer. This means that the court has greater leverage on the states because it can generate a more potent reputational sanction than if information about the actions of the states would not spread so effectively. Reputational sanctions are likely to be effective across the Council of Europe because the network around the ECtHR is built in a way that disseminates shaming information about the states quickly to a large audience.

It is important to note that this type of network does not exist around all international courts. The International Court of Justice (ICJ) for example is a prestigious international court, but its ability to generate reputational sanctions is limited because the network surrounding it does not have frequent ties between the core and the periphery. The ICJ has only a limited staff and it usually hears arguments from a small and elitist group of lawyers.<sup>43</sup> In contrast, the ECtHR has a very large staff with more than 600 people in the registry alone,<sup>44</sup> and the court and its enforcement machinery at the Committee of Ministers interact regularly with many thousands of people that compose the human rights community helping to enforce the court's judgments. The DEJ website allows the community of NGOs not just to receive information from the ECtHR and the Committee of Ministers, but also to send information that is visible to everyone engaged in assessing the reputation of the states. This is a tool that magnifies the reputational sanction on states and by this improves the ability of the ECtHR to guide states towards better human rights practices.

### B. Minimising falsehoods

If information flows swiftly throughout the network, but as this information is transmitted from one actor to the other it gets corrupted by falsehoods and inaccuracies, then the network cannot be

<sup>40</sup>See *Dothan* (n 38).

<sup>41</sup>See *Ibid.*, 144.

<sup>42</sup>See EO Laumann and Y Youm, 'Racial/Ethnic Group Differences in the Prevalence of Sexually Transmitted Diseases in the United States: A Network Explanation' 26 (1999) *Sexually Transmitted Diseases* 250.

<sup>43</sup>See S Dezalay and Y Dezalay, 'Professionals of International Justice. From the Shadow of State Diplomacy to the Pull of the Market of Arbitration' in J d'Aspremont et al (eds), *International Law as a Profession* (Cambridge University Press 2017) 311.

<sup>44</sup>See [https://www.echr.coe.int/documents/d/echr/Registry\\_ENG](https://www.echr.coe.int/documents/d/echr/Registry_ENG)



considered as effectively transmitting information. If a network is to support a system of reputation that deters states from wrongdoing, states must know that accusations against them will be repeated accurately by members of the network and will consequently be believed by the whole relevant community assessing their reputation.

The empirical research that I conducted gives significant support to the proposition that the network surrounding the ECtHR spreads true information that doesn't spiral out of control when it is discussed by the civil society organisations involved. NGOs tend to focus their attention on the most severe human rights violations of states and on cases that raise the most important legal issues. These tendencies are revealed across a variety of proxies that were used in my research, as described in the following paragraphs.

For example, there is a greater proportion among cases that involve NGO reports compared to cases that did not lead to a report of judgments involving a violation of Articles 2 (the right to life) and 3 (the prohibition of torture) of the European Convention on Human Rights compared to violations of other Articles that are of a less severe nature. Furthermore, there is a greater proportion among cases involving NGO reports of violations of Articles 13 (right to an effective remedy) and Article 14 (prohibition of discrimination). These two Articles are usually added to other violations in cases in which the results of violations are particularly severe. All these differences are statistically significant, which indicates that NGOs use their limited resources to focus especially on severe violations.<sup>45</sup>

As far as the legal importance of the case goes, the categorisation of cases in several importance levels that is published by the HUDOC database including all the Court's judgments indicates that cases that led to NGO reports tend to be categorised as more important. Most of the cases decided by the ECtHR are categorised as level three cases that only apply the law, but more than half of the cases leading to NGO reports are categorised as level one cases that contributed significantly to the Court's jurisprudence or even Case Report cases that are published.<sup>46</sup>

Cases that led to NGO reports are also more likely to be decided by the Grand Chamber, a panel of seventeen judges that is used only in cases of extreme legal importance. Cases that lead to NGO reports are also more likely to lead to dissents and concurring opinions, another proxy for the legal importance of the case.<sup>47</sup>

There are also some indications that NGOs tend to file more reports, longer reports, and involve participation by more NGOs in cases that are more legally important and involve more severe violations. These and other proxies all indicate that NGOs are acting based on true information because they focus on the issues that are the most severe violations and the most legally important cases.<sup>48</sup>

The question why the network of NGOs is good at processing information should be answered based on the insights of Social Network Analysis and other methodologies that could be applied to the study of networks. Social Network Analysis describes two types of networks: 'echo networks' and 'bandwidth networks'. In an echo network, the biases of each actor amplify one another because people tend to exaggerate or mischaracterise the already inaccurate information that they receive from others. In a bandwidth network, the knowledge that members of the network have about one another leads to healthy skepticism and the rejection of some biased views, which makes the information flowing through the network improve instead of deteriorating.<sup>49</sup>

The first quality that turns the network of NGOs surrounding the ECtHR into a bandwidth network is the independence of the activists in this community from one another. While NGO activists talk and collaborate with one another, they are not obligated to follow what other organisations decide. Independent actors reduce falsehoods because even if several actors

<sup>45</sup>See Dothan (n 38) 151–53.

<sup>46</sup>See Dothan (n 38) 155–56.

<sup>47</sup>See Dothan (n 38) 156–57.

<sup>48</sup>See *generally* Dothan (n 38) 149–59.

<sup>49</sup>See RS Burt, *Brokerage and Closure: An Introduction to Social Capital* (Oxford University Press 2005) 167–68.

previously generated an accusation, others would not repeat it without any proof. The literature speaks about a ‘threshold’ – the number of people who need to make a statement before other actors repeat it – as a measure of the ability of the network to stop unfounded rumours.<sup>50</sup> When actors are independent, this threshold is high, and falsehoods are hard to spread. The network that surrounds the ECtHR would therefore be described as a high-threshold network because the independence of the NGOs in the network decreases the chances that they would blindly follow accusations by other NGOs.

Social Network Analysis can be complemented by the experimental literature on group deliberation. By investigating what happens when real people discuss issues in a lab, it is possible to surmise how even a much more complicated network would behave. Experiments have shown that when the deliberating group has people that are different from each other, the group has less of a tendency to shift to extreme views. The same is probably true for the network of NGOs. Because there are so many different organisations – different in size, in location, and in objective – and because the activists come from a variety of different cultures, the likelihood of repeating falsehoods without any criticism decreases.<sup>51</sup> Therefore the large difference between the NGOs in the network that surrounds the ECtHR turns it into a bandwidth network.

Research on group deliberation also revealed that when members of a group have clear roles that are known to others, the group is less likely to escalate to extreme views.<sup>52</sup> Similarly, because NGOs in the ECtHR’s network have very specific and transparent missions, it is easier for members of the group to scrutinise the truth. The NGOs that interact with the ECtHR have a clear agenda, which is published on their websites and other publications. This allows everyone observing the actions of an NGO to put them in context in light of the declared aims of that specific organisation. This, in turn, reduces the spreading of falsehoods and increases the reliability of the information in the NGO network around the ECtHR.

### C. How reputational sanctions work in a functional network

The previous sub-parts argued that the NGO network surrounding the ECtHR is good at spreading information quickly and accurately and that this increases the reputational sanction on states that fail to comply with the Court. If that is indeed the case, then reputational considerations can be expected to lead to real changes in the behavior of states. While observing the actual compliance behavior of states following shaming by NGOs is impractical, research can reveal evidence that reputational sanctions in the community that surrounds the ECtHR are indeed effective.

Interviews with NGO lawyers and activists that I conducted reveal that NGOs are clearly committed to making a change in the world following their intervention.<sup>53</sup> Given the limited resources of NGOs, it is natural that they will focus their energy on cases where they can make a real difference. If states indeed shape their behavior based on reputational sanctions, then the most natural thing for NGOs to do is to spend more resources exactly on cases where their reputational sanctions harm states the most.

The literature on reputation has consistently claimed that reputational sanctions are the most potent when they address high-reputation actors. When a state has a high reputation every indication of misconduct leads to a significant shift in the expectations of the international community about its future behavior. In contrast, when a state already has a low reputation, misconduct does not come as a surprise to the international community and will not violently

<sup>50</sup>See M Granovetter, ‘Threshold Models of Collective Behavior’ 83 (1978) *American Journal of Sociology* 1420, 1423, 1429.

<sup>51</sup>See CR Sunstein, ‘Deliberative Trouble? Why Groups Go to Extremes’ 110 (2000) *Yale Law Journal* 71, 89–90.

<sup>52</sup>See CR Sunstein and R Hastie, *Wiser: Getting Beyond Groupthink to Make Groups Smarter* – (Harvard Business Review Press 2015) 111–12.

<sup>53</sup>See Dothan (n 38) 176.

change the community's assessment of the state's future behavior.<sup>54</sup> If the network that surrounds the ECtHR is really able to make reputational sanctions on states an effective method to change their behavior for the better, it should be expected that NGOs would focus their efforts on states with higher reputations.

While it is quite difficult, and certainly very controversial to rate states according to their relative reputations, I used several proxies to determine who are the high-reputation states and who are the low-reputation states in Europe. The proxies are based on statistics published by the Committee of Ministers about the relative number of judgments against different states in Europe, of violations found against them, and of cases awaiting compliance. The proxies are highly consistent with each other and their aggregation leads to results that are hardly surprising, for example, Russia (when it was still a member of the Council of Europe), Poland, Turkey, and Romania were all coded as low-reputation states.<sup>55</sup>

Once states are coded according to their reputation, it is possible to check on which type of states NGOs are more likely to issue reports. The result is that relative to the number of judgments against different types of states, NGOs are more likely to file reports against high-reputation states.<sup>56</sup> These findings support the conclusion that reputational sanctions in the network that surrounds the ECtHR are effective, because they indicate that NGOs are behaving exactly as would be expected in an effective system of reputational sanctions. NGOs focus their attention and energy on states that are likely to be the most responsive to reputational sanctions, high-reputation states, which is precisely what NGOs should do in order to increase their impact on the behavior of states.

Naturally, this finding calls into mind a large number of other potential reasons besides a focus of NGOs on cases where they can make a real difference to human rights. My paper conducted a series of robustness checks in order to demonstrate that the result does not appear just because high-reputation states are more likely to reply to NGO reports, to cooperate with the committee of ministers, to try to comply with the judgment (perhaps without remedying the larger underlying problems), to involve NGOs who acted as friends of the Court, or to involve a greater proportion of severe violations and legally important cases that draw more NGO reports. The conclusion of these robustness checks is that the most reasonable explanation for NGO activity remains a focus of NGOs on states with a high reputation that are likely to change their behavior for the better when subject to shaming.<sup>57</sup> This result concurs with the outcomes of interviews with NGO activists who indicate a willingness to improve behavior in response to criticism in high-reputation states compared to inactivity or even hostility in low-reputation states.<sup>58</sup>

The fact that NGOs consistently focus their attention on high-reputation states that are exactly the states where they can make a difference serves as another demonstration that NGOs act based on good information. This strengthens the evidence that the network surrounding the ECtHR is good at transmitting information quickly and accurately to the thousands of activists in the network who act based on this information. The network surrounding the ECtHR is able to multiply its reputational impact on states and push them toward better human rights standards in an attempt to comply with the Court.

## 5. How the ECtHR can shape its network

The previous part argued that the network surrounding the ECtHR allows the Court to increase the impact of its reputational sanctions and thereby has the potential to improve compliance with

<sup>54</sup>See OA Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' 72 (2005) University of Chicago Law Review 469, 510; Guzman (n 12) 83; Dothan (n 2) 13.

<sup>55</sup>See Dothan (n 38) 159–62.

<sup>56</sup>*Ibid.*, 165.

<sup>57</sup>*Ibid.*, 166–73.

<sup>58</sup>*Ibid.*, 176–77.

the Court and allow it to initiate social change. But this network was not a result of serendipity alone. The Court and its enforcement mechanisms had to set proper rules of procedure, in particular rule 9.2 of the Committee of Ministers Rules that allows the Committee of Ministers to consider communications from NGOs. They had to set the infrastructure for the website, and they sustain a long history of collaboration with NGOs in myriad ways.

When courts want to have the proper network to support their goals, they need to work for it. Building a network surrounding the court requires deliberate choices and quite a lot of effort and investments. But these networks are essential to support the court's ability to impact society. Networks are necessary at every level: to get cases, to enforce judgments, and to change the practices of national bodies in light of the court's jurisprudence.

The history of NGO involvement in the ECtHR is a history of providing the proper incentives to NGOs to collaborate with the court. In addition to assisting the enforcement of ECtHR judgments by shaming states who fail to comply with judgments, NGOs have also proved useful in bringing cases to the court, in filing amicus curiae briefs that provide useful information, and in improving the support for the court among various audiences.<sup>59</sup>

Research has shown that most of the involvement of NGOs with the ECtHR has been informal, including assistance to applicants with funds, legal representation, or advice.<sup>60</sup> This assistance is important and NGOs who participate even in this way do show a commitment to helping with the enforcement of the judgments they made possible with their support. However, getting NGOs to participate more closely and more formally in the judgment by submitting amicus curiae briefs or acting as applicants will probably increase their incentive to monitor compliance with these cases and improve the human rights condition in Europe. This can be accomplished by granting standing to NGOs in more cases as well as by bureaucratic changes that would make it easier for NGOs to take part in cases.<sup>61</sup>

Nevertheless, some changes to the network evolve organically without direct guidance by the ECtHR itself. For example, research reveals that some Russian NGOs in the ECtHR started to speak to delegations of other countries to the Committee of Ministers instead of to the Russian delegation in an effort to lead to interim resolutions of the Committee of Ministers against Russia (when Russia was still a member of the ECtHR).<sup>62</sup> Practices such as these show that within an existing mechanism time and ingenuity by NGOs within the network can lead to new ties and interactions that make the network a more powerful tool for changing the behavior of states.

This paper has focused mostly on the network of NGO activists surrounding the ECtHR, but these activists are not the only people who take part in exchanging information about the judgments of the ECtHR and the underlying violations that lead to them. There are numerous administrators within the states under the court's jurisdiction that also form an important part in discussing violations and helping to change state behavior.

The ECtHR is actively trying to initiate a change in the practices of national administrators, national legislators, and national courts by giving them an incentive to make sure their procedures work properly. The incentive comes in the form of a heightened scrutiny of cases that manifest a flawed procedure at the national level.<sup>63</sup> Assuming that national bodies want to shield their decisions from intervention by the ECtHR, the entire network of national bodies that is rewarded for good practices gets an incentive to make sure that its procedures are up to par with the requirements of the ECtHR. If this incentive works properly, it will lead to a change in the practices of all administrators at the state level who will try to ensure their state's procedures are

<sup>59</sup>See Dothan (n 37) 644–48.

<sup>60</sup>See generally L Hodson, *NGOs and the Struggle for Human Rights in Europe* (Hart Publishing 2011) 55–56.

<sup>61</sup>See Dothan (n 37) 662–66.

<sup>62</sup>See Dothan (n 38) 176–77.

<sup>63</sup>See R Spano, 'Universality or Diversity of Human Rights: Strasbourg in the Age of Subsidiarity' 14 (2014) *Human Rights Law Review* 487, 498–99.

good enough to avoid meriting scrutiny by the ECtHR. This may mean that a largely invisible network within the states would also help ECtHR in protecting the highest human rights standards in Europe. While this network is harder to investigate directly than the network of NGOs described in this paper whose interactions are visible on the Committee of Ministers' website, its implications for human rights in Europe may be just as important.

The challenge of using Social Network Analysis to examine the ECtHR and its interlocutors is the challenge of making hypotheses based on limited available information. There is rarely enough information to build an accurate sociogram of the relevant social ties. Sometimes, parts of the relevant network are revealed. For example, the activity of the NGOs that submitted reports to the website of the Committee of Ministers is partly visible, but even then, many of the social ties have to be deduced from limited information. In other times, even the members of network are hidden, but conjectures about the actors who are influential, about their incentives, and about the social ties that connect them can be raised to make viable hypotheses about the success of the ECtHR.

## 6. Conclusion

Social Network Analysis is a way to make sense of complicated systems by focusing on certain sociological structures that usually lead to specific results. Applying this tool to the ECtHR helps to explain the social impact of its judgments. If compliance cannot be enforced by legal sanctions, courts must rely on reputational sanctions to see their judgments implemented by states. Reputational sanctions are conditioned on the flow of information within the relevant community, and information flow, in turn, is conditioned on the structure of the network constituting this community.

When the network structures that support the rapid and accurate flow of information are understood, courts can devise a viable strategy for building and sustaining such networks to support their power to initiate social change. This type of strategy requires a reorientation of much of the literature on the politics of international courts. Instead of focusing only on what courts can do to transform themselves and their image within their audiences, courts should also look for ways to reform the structure of these very audiences, laying the foundations for a future of judicial success.

**Acknowledgements.** This research is funded by the Danish National Research Foundation Grant no. DNRF105 and conducted under the auspices of iCourts, the Danish National Research Foundation's Centre of Excellence for International Courts.

**Competing interests.** The author has no conflicting interests to declare.