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Disrupting Strasbourg: Conservative Christian challengers versus liberal incumbents

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From 2020 to 2024, the European Centre for Law and Justice (ECLJ), a conservative NGO backed by US evangelical Christians, secured certain procedural reforms to the practices of the European Court of Human Rights. The rules and guidance governing the recusal of judges were elaborated, and third-party intervention was made more transparent. These reforms were intended to constrain judicial discretion and possibly limit the liberal human rights community's influence over the Court's substantive jurisprudence and the Council of Europe's (CoE) policies toward its member states and the public at large. Given the liberals' predominance in strategic supranational litigation and their institutional incumbency, this is a puzzling outcome. The challenge to Strasbourg's democratic legitimacy took place in the teeth of a tightly closed political opportunity structure for conservative Christians. Relying on process tracing and abductive inference to the best explanation known, within an actor-centered institutionalist framework, we show how the ECLJ, acting as a norm entrepreneur, controverted certain possible conflicts of interest involving named judges and prominent liberal NGOs and their private donors. In the process, it mobilized conservative member state governments and delegates to national and supranational parliaments to prevail on the CoE committee system (comitology) and the Court to undertake limited reforms. These concessions demonstrate the potential of a new elite transnational network of conservative Christians to challenge Strasbourg's incumbents against a political background of rising populism.

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1. Introduction

For decades, the European Court of Human Rights (ECtHR) has been guided by a transnationally networked community of liberal human rights professionals comprising judges, Registry officers, Council of Europe (CoE) civil servants, academic jurists, and well-funded non-governmental organizations (NGOs). They have extended the reach of the Court and of the European Convention on Human Rights (ECHR) with strategic litigation and third-party interventions which have enjoyed the availability of the "living instrument" doctrine of interpretation of legal texts.[1]

Yet from 2020 to 2024 the European Centre for Law and Justice (ECLJ), a small conservative Christian NGO, published a series of reports alleging conflicts of interest that involved ECtHR judges, liberal advocacy groups, and their private donors, in the pursuit of a long-term aim of reshaping the public policies falling out of the Court's decisions.[2] The ECLJ's reports unleashed a cascade of reactions eventuating in the revision of the Rules of Court on recusal and third-party intervention. The Christian insurgents were hoping that constraining judicial discretion, if a formal revision could accomplish that, might limit the liberal incumbents' sway over the CoE's judge-made public policy. The causal nexus explaining the outcome of this challenge features the ECLJ's entrepreneurial trigger; the disaffection of a minority of conservative member state governments and parliamentarians with Strasbourg; and the acts of liberal incumbents inside CoE comitology to contain the scandals and shield the Court's reputation at all costs, including by discreetly nudging the Court toward concessions.

Understanding these causes reveals that the transnationally networked liberal rights community is resilient but far from invulnerable, and that the CoE is not "splendidly isolated" from the political undercurrents now running through the European Union (EU). This article broadens academic inquiry by showing that these phenomena are hardly tournament jousting between liberal champions and populist interlopers, but contestations in earnest between two elite transnational networks with incompatible visions of law, rights, and institutional authority.

[1] Liberalism is herein defined as an ideological tendency and its policy agenda, which confers legal entitlements on certain categories of minorities, and favors international organizations, cosmopolitan citizenship, and an internationalist vision of law that enshrines human rights on a global scale. Charles R. Beitz, *Social and Cosmopolitan Liberalism*, 75 Int'l Aff. 515 (1999).

[2] On the US Supreme Court as a policymaker, see Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 1957 J. Pub. L. 279. The ECtHR occupies a structurally analogous position. Its rulings are binding and require legislative, administrative, and constitutional adjustments at the national level. This too is public policymaking.

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Scholarship on legal mobilization before the ECtHR has focused on liberal progressive actors and their litigation.[3] Conservative legal mobilization has garnered short shrift in comparison. Nonetheless, scholarship has documented it in the supranational European courts, especially in disputes over religion, including before the ECtHR itself.[4] The export of America's "culture wars" between conservative Christians and their liberal progressive adversary over rights has been noted, too.[5] That literature has found that Christian NGOs like Poland's Ordo Iuris use the same stratagems as the liberals, only in order to block the expansion of liberally defined rights;[6] and that the ECLJ and the Alliance Defending Freedom International (ADF) combine litigation, third-party interventions, and discursive initiatives in their efforts to reorient the European courts' decisional outputs and rein in their activism.[7] What is lacking, however, is an inquiry into the causes of their stratagems' success in yielding real institutional or policy changes. The present article fills this gap with an account of Christian influence not in isolation, but in the dynamic setting of a live contest between mobilized elites mediated by the (in)action of democratic veto players. In the event, as much is revealed about the liberal community inside the CoE as about its Christian challengers.

The remainder of this article proceeds as follows. Section 2 maps the "actor constellation" in Strasbourg, distinguishing the incumbent liberal community from its conservative Christian rivals, while identifying both as legal professionals, and distinguishing them from the political veto players who could, in principle, mediate or settle the conflict. Section 3 lays out

[3] Rachel A. Cichowski, *The European Court of Human Rights, Amicus Curiae, and Violence Against Women*, 50 Law & Soc'y Rev. 890 (2016); Gráinne de Búrca, *The Trajectories of European and American Antidiscrimination Law*, 60 Am. J. Comp. L. 1 (2012); Laura Van den Eynde, *An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights*, 31 Neth. Q. Hum. Rts. 271 (2017).

[4] Effie Fokas, *Comparative Susceptibility and Differential Effects on the Two European Courts: A Study of Grasstops Mobilizations around Religion*, 5 Oxford J.L. & Religion 1 (2016); Lisa Harms, Faith in Courts: Human Rights Advocacy and the Transnational Regulation of Religion (2022).

[5] Clifford Bob, The Global Right Wing and the Clash of World Politics (2012); Clifford Bob, Rights as Weapons: Instrument of Conflict, Tools of Power (2019); Christopher McCrudden, *Transnational Culture Wars*, 13 Int'l J. Const. L. 434 (2015); Ann Southworth, *US Conservative Advocacy Organizations and Right-Wing Legal Mobilization in Europe*, 20 Int'l J. L. In Context 307 (2024).

[6] Paul Blokker, *Using Liberal-Legal Tools for Illiberal Gains: The European Court of Human Rights and Legal Mobilization by Conservative Right-Wing Actors*, 20 Int'l J. L. In Context 401 (2024).

[7] Gaëtan Cliquennois, Simon Chaptel, & Brice Champetier, *How Conservative Groups Fight Liberal Values and Try to "Moralize" the European Court of Human Rights*, 20 Int'l J. L. in Context 360 (2024); Martijn Mos, *God's Lawyers? The Christian Right at the European Court of Human Rights*, 27 Int'l Feminist J. Pol. 537 (2025); Eugenia Relaño Pastor, *Christian Faith-Based Organizations as Third-Party Interveners at the European Court of Human Rights*, 46 Brigham Young U. L. Rev. 1329 (2021).

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the empirical methodology, from case selection to process tracing and abductive inference, as well as its scope conditions. Section 4 makes the empirical case, tracing the sequence of events from the ECLJ's reports, through its mobilization of delegates to the Parliamentary Assembly of the Council of Europe (PACE) and disaffected member state governments, to the reactions of CoE comitology and the Court's eventual procedural concessions. Section 5 concludes by assessing the significance of these findings for the study of transnational elite networks and institutional change in nonmajoritarian supranational settings.

2. The actor constellation in Strasbourg

Relying on actor-centered institutionalism, we first map the "actor constellation" in Strasbourg: the configuration of intentional policy actors along with their resources, end goals, and modes of interaction in a determinate institutional setting.[8] Constellations may harbor distinctive players in the "game"—norm entrepreneurs who, driven by principled commitments, run personal and professional risks, which other, similarly situated actors would eschew, in order to challenge existing norms of appropriateness and champion new ones.[9]

2.1. The human rights community

Analogous to the European Court of Justice's "integration through law," the ECtHR could not have thriven without the sustained support of a critical mass of legal professionals forming a "very proactive and powerful epistemic community," if not a veritable "society of European legal actors,"[10] the lack whereof has hindered, for instance, the attempts at supranational integration by the Andean Community in South America, comprising Bolivia, Colombia, Ecuador, and Peru.[11] In Strasbourg, it comprises public and private actors working in and around CoE organs: apex judges, Registry officials, senior civil servants, academic jurists, norm entrepreneurs, even politicians with a legal background, and, among the most active, lawyerly

[8] Fritz W. Scharpf, Games Real Actors Play: Actor-Centered Institutionalism in Policy Research (1997).

[9] Margaret E. Keck & Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (1998); Cass R. Sunstein, *Social Norms and Social Roles*, 96 Colum. L. Rev. 903 (1996).

[10] Laurent Scheeck, *Diplomatic Intrusions, Dialogues, and Fragile Equilibria: The European Court as a Constitutional Actor of the European Union*, *in* The European Court of Human Rights Between Law and Politics 164, 171 (Jonas Christoffersen & Mikael Rask Madsen eds., 2011).

[11] Karen J. Alter, *Jurist Social Movements in Europe: The Role of Euro-Law Associations in European Integration (1953–1975)*, 20 Eur. Union Stud. Ass'n Rev. 6 (2007).

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interest groups *qua* human rights NGOs.[12] These last are funded by private philanthropic foundations like the Sigrid Rausing Trust, the Open Society, Ford, Arcus, OAK, and MacArthur.[13] Their vast resources position them to exert considerable influence over the strategic direction of human rights policy. In recent decades, this community has been able to maximize the Convention's liberal tenor and the Court's authority to advance progressive secular policies in member states pursuant to the "living instrument" doctrine.[14]

In many ways, this community functions like a grand-scale interest group.[15] Its most entrepreneurial jurists are networked, formally and informally, by way of revolving-door interconnections, personal ties, and relations of resource dependency, all of which foster a sense of common mission and identity as well as discreet influence inside Strasbourg.[16] In particular, a core group of "Convention people" comprising not only judges but also "a wider but instrumental group" of jurists in the Registry and on key CoE steering committees on human rights policy are "tied together not only by feelings of institutional loyalty or socio-professional resemblances but also … by a shared vision of law … a strongly constitutionalist vision of the Convention."[17]

One of the key institutional arenas of interest to this community is the Steering Committee for Human Rights (CDDH) and subcommittees, the standard-setting organs responsible for Court governance and reform, upon which the CoE's Committee of Ministers (CM) relies. Called "comitology" in EU studies, this committee system consists of national civil

[12] Cristina E. Parau, Transnational Networks and Elite Self-Empowerment: The Making of the Judiciary in Contemporary Europe and Beyond (2018); The European Court of Human Rights Between Law and Politics (Jonas Christoffersen & Mikael Rask Madsen eds., 2011); Mikael Rask Madsen, *The Challenging Authority of the European Court of Human Rights: From Cold War Legal Diplomacy to the Brighton Declaration and Backlash*, 79 Law & Contemp. Probs. 141 (2016).

[13] Gaëtan Cliquennois, European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds (2020); Heidi Nichols Haddad, The Hidden Hands of Justice: NGOs, Human Rights, and International Courts (2018).

[14] John Finnis, *Judicial Law-Making and the "Living" Instrumentalization of the ECHR*, *in* Lord Sumption and the Limits of the Law 73 (Nicholas W. Barber, Richard Ekins, & Paul Yowell eds., 2016); George Letsas, *The ECHR as a Living Instrument: Its Meaning and Legitimacy*, *in* Constituting Europe: The European Court of Human Rights in a National, European and Global Context 106 (Andreas Føllesdal, Birgit Peters, & Geir Ulfstein eds., 2013); Ivana Radačić, *Gender Equality Jurisprudence of the European Court of Human Rights*, 19 Eur. J. Int'l L. 841 (2008).

[15] *See* Parau, *supra* note 12.

[16] *Id.*; *see also* Cliquennois, *supra* note 13; Nichols Haddad, *supra* note 13.

[17] Stéphanie Hennette-Vauchez, *Divided in Diversity: National Legal Scholarship(s) and the European Convention of Human Rights* 3 (EUI Rsch. Working Paper No. 2008/39, 2008), https://hdl.handle.net/1814/10033; Anthony Lester, *The European Court of Human Rights after 50 Years*, *in* The European Court of Human Rights between Law and Politics 98 (Jonas Christoffersen & Mikael Rask Madsen eds., 2011).

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servants appointed by the member states, who meet regularly with supranational CoE officials and reach consensus on issues under their jurisdiction.[18] This "fusion" of the national and the supranational means that "regular and often long-lasting contacts" create a "club-type" atmosphere where "a sense of intra-group loyalty" naturally prevails. In this setting, "responsibility is shared" and "legitimacy is pooled." Participants come to regard collaboration as a "common endeavour," a normal part of professional life. Comitology proves a "vital arena for power struggles in a multi-level system," including, in the CoE, member states' grievances over the workings of the ECtHR, as evidenced in this article. (The Court is not itself structured like an intergovernmental forum designed to remedy systemic dissatisfaction.) Civil servants in comitology, however, are known to be "particularly successful in keeping their political masters out of the game." The situation is no different in the CoE, where very few issues reach the CM for final arbitration without the determination of the CoE comitology itself. As a result, "[t]ransparency is certainly lost. Democratic control is impossible" in these "secretive, closed and isolated decision-making bod[ies]," whose work neither national nor supranational parliaments are capable of scrutinizing. But this "maze of administrative interactions" is no less a "closed shop" in Strasbourg than it is in Brussels. NGOs and interest groups "invest considerable resources … continuously developing institutionalized channels" to lobby the CoE.[19]

Access to CoE comitology is carefully gatekept, with civil servants discretionarily deciding whom to admit. A striking illustration of gatekeeping in action is CDDH practice on observer status. In the 1980s it granted this status to Amnesty International, the International Commission of Jurists, and the International Federation for Human Rights. When the Conference of European Churches (KEK) applied for observer status in 2004, the application was rejected on the express grounds that acceptance "would create a precedent which would encourage other organizations, notably representing religious faiths or philosophies, to request the same status"; instead, KEK might be invited to specific meetings "in the light of the items which are placed on the agenda."[20] This suggests a policy convergence between the

[18] Wolfgang Wessels, *Comitology: Fusion in Action*, 5 J. Eur. Pub. Pol'y 209, 210, 226–7, 229–8 (1998). *See also* Gijs Jan Brandsma, Backstage Europe: Comitology, Accountability and Democracy in the European Union (2010); EU Committees: Social Regulation, Law and Politics (Christian Joerges & Ellen Vos eds., 1999).

[19] Silke M. Trommer & Raj S. Chari, *The Council of Europe: Interest Groups and Ideological Missions?*, 30 W. Eur. Pol. 665, 666 (2007) (reporting 400 groups); *Conference of INGOs*, Council of Europe, www.coe.int/en/web/ingo (last visited Sept. 14, 2026) (listing 267 organizations with participatory status).

[20] Council of Europe, *Co-operation between the Council of Europe and the Conference of European Churches (KEK)*, RAP-CBM/NGO(2005)2 (Mar. 10, 2005), https://search.coe.int/cm?i=09125 9488020a861.

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CDDH, or elements of its comitology, and established secular human rights NGOs, and a divergence from Christian organizations—consistent with the "predominantly secular" international institutions that exclude "any reference to anything transcendent, and to the consequences which the possibility of something transcendent offers as a guide to human behavior."[21]

Such selective practices are enabled by the distribution of influence inside the comitology itself. Not all members are equally influential.[22] Business is not, because it cannot be, conducted by all forty-seven member state delegates to each committee, who also meet too infrequently to govern. By the time they reconvene, "everybody has forgotten what happened last time," and steering committees "have no chance in taking the initiative and following it in an efficient manner."[23] Policy development is redelegated to the steering committee Bureaux who steer policy *de facto* by deciding what the full committee can or cannot adopt. Even Bureaux themselves meet too infrequently to transact the business in hand; a fraction of the delegates and their small secretariats comprising just a few civil servants make the important decisions. They, too, rely on subcommittees of experts that include not just delegates and accredited observers but also outside legal professionals, either independents or interest-group and NGO representatives. When such a subcommittee is formed, its personnel are selected by just a few Bureau staff, with the Chair enjoying discretion over whom to rely on. Activist Chairs tend to invite professionals who share their worldview; to that extent, they are likelier to side with the prevailing supranational or cosmopolitan consensus. Chairs closer to their national governments might seek to balance the subcommittee somewhat, the better to represent the gamut of legal professional opinion.

2.2. The conservative Christian NGOs

The liberal community's newfound opponents—advocates of Christian conservative policies and an originalist interpretation of the ECHR—did not begin to mobilize until the late 1990s and still remain marginal players on the fringes of the Strasbourg legal ecosystem. The most prominent among them are the ECLJ, ADF, and Poland's Ordo Iuris, who seek to influence the ECtHR's jurisprudence through litigation, the manner of executing judgments, and judicial appointments.[24] Among them, the ECLJ is regarded as

[21] Henri de Riedmatten, *Christians and International Institutions*, 38 BLACKFRIARS 498, 500–1 (1957).

[22] Research on the CDDH is almost non-existent. What is known about other Steering Committees like the European Committee on Legal Cooperation is useful because all steering committees follow a standardized institutional framework established by the CM (including a Bureau and expert groups); the CDDH most likely operates in the same way.

[23] PARAU, *supra* note 12, at 157–60.

[24] *See* Cliquennois, Chaptel, & Champetier, *supra* note 7.

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the most influential. Founded in 1998 by legally trained evangelist Pat Robertson and American constitutional lawyer Jay Sekulow—who is known for his victories before the US Supreme Court in First Amendment cases and who later served as a member of President Trump's legal team—the ECLJ is the European branch of the American Center for Law and Justice and depends heavily on American funding and support.[25]

The ECLJ pursues alliances with like-minded organizations to shore up their collective efforts; maintains ties with European judges "sensitive to their values"; cooperates with populist and right-wing ruling parties; and enjoys close ties with the Vatican.[26] In *Lautsi v. Italy* the ECLJ played the leading role in mobilizing a "transnational alliance against secularism" in coordination with the Holy See that persuaded the Grand Chamber to reverse the earlier judgment of the Chamber of the Second Section.[27]

These conservative Christian NGOs uphold traditional understandings of human dignity, the sanctity of life, marriage and family, religious liberty, and courts of a jurisdiction that is bounded by original intent—not the predominant normative framework of the CoE. Their ideological divergence from supranational governance is exacerbated by Europe's overall secular, socially liberal drift.[28]

This ideological disadvantage is compounded by the marked resource disparity: according to *Time*, twenty-eight US conservative Christian organizations collectively spent USD 88 million in Europe between 2007 and 2018.[29] By contrast, the Open Society Foundations (OSF) disbursed USD 946 million in total between 1999 and 2018—USD 529 million in Eastern Europe and USD 417 million in Western Europe—in support of liberal-progressive causes such as liberal human rights and revisions of justice.[30] These figures suggest that OSF alone spent over ten times as much in Europe as the

[25] *See* Fokas, *supra note* 4; Harms, *supra* note 4.

[26] *See* Cliquennois, Chaptel, & Champetier, *supra* note 7, at 372.

[27] Lautsi & Ors. v. Italy, App. No. 30814/06, Eur. Ct. H.R. (Mar. 18, 2011), https://hudoc.echr.coe.int/?i=001-104040; Harms, *supra* note 4, at 117; Pasquale Annicchino, *Winning the Battle by Losing the War*, 6 Religion and Human Rights 213, 213–19 (2011); Bob, Rights as Weapons, *supra* note 5.

[28] Pippa Norris & Ronald Inglehart, Sacred And Secular: Religion And Politics Worldwide (2004).

[29] Suyin Haynes, *U.S. Christian Right Groups Are Pouring Millions into Conservative and Anti-LGBTQ Causes in Europe*, Time (Oct. 13, 2020), https://time.com/5903931/christian-right-conservative-agenda-europe-report/; Samuel Laurent, *Des proches de Donald Trump au secours de La Manif pour tous*, Le Monde (Mar. 3, 2020), www.lemonde.fr/societe/article/2020/03/03/comment-l-avocat-de-donald-trump-finance-une-ong-proche-de-la-manif-pour-tous_6031593_3224.html.

[30] Guadalupe Correa-Cabrera, Lucas Núñez, & Hayden Ludwig, *Assessing the International Influence of Private Philanthropy: The Case of Open Society Foundations*, 1 Glob. Stud. Q. 1, 6–7 (2021).

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combined total of twenty-eight US conservative Christian NGOs over roughly the same period.

All these factors yield a closed opportunity structure for Christian lawyers who are otherwise equal to their adversaries in legal professional competence and credentials. This helps explain why they have so far failed to shift the ECtHR's jurisprudence on the issues that matter to them.[31]

2.3. Rival elite networks and veto players

The contest in Strasbourg, then, is not between "elites" and "masses," but between rival elite jurists and their allies—one liberal and incumbent, the other conservative Christian, marginalized, and counterhegemonic. Both, in theory, lie at the mercy of veto players with formal coercive power—political actors authorized to block policy proposals and reset policy to the *status quo ante*.[32] Member states hold the formal authority to amend or abolish the ECHR, to appoint judges, and, informally, to resist ECtHR rulings. The voting public, meanwhile, the veto player of last resort, wields a colossal but seldom-used power to vote in governments more attentive to majority preferences.[33] If mobilized and aligned with conservatives, its intervention could curtail the power of the liberal community of legal professionals. The latter therefore have a structural incentive to avoid public attention, lest controversy arouse any such veto players to action. Christian conservatives, in contrast, have only leverage to gain by alerting dormant veto players to judicial overreach,[34] or to any dysfunction that might mobilize them.

3. Methodology

The actor constellation in Strasbourg is dominated by a networked, liberal, epistemic community shielded from external scrutiny by veto-player dormancy and by gatekeeping internal to the CoE. The ECLJ's inroads into reforming the ECtHR's rules of procedure were an unexpected victory of norm entrepreneurship in a political environment hostile to its aims.

3.1. Case selection

The selection of the ECLJ was incidental, not predetermined. Its agency was discovered by serendipity during fieldwork for a European Research Council project on legal mobilization in Strasbourg. To our knowledge, no other actors had publicly raised the issue of judge–NGO conflicts of interest

[31] *See* Cliquennois, Chaptel, & Champetier, *supra* note 7.
[32] George Tsebelis, Veto Players: How Political Institutions Work (2002).
[33] Anthony Downs, An Economic Theory of Democracy (1957).
[34] *See* Finnis, *supra* note 14, at 73.

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before the ECLJ initiated its campaign for change. The singularity of this case does not diminish its theoretical relevance; on the contrary, single-case studies—particularly deviant or influential ones—can contribute vitally to theory development by revealing causal nexuses that large numbers of cases may obscure.[35] The one *a priori* methodological choice was to adopt the actor-centered institutionalist framework on the premise that agency is what drives institutional and policy change.[36]

3.2. Causal inference: Process tracing and abductive reasoning

Undergirded by abductive reasoning in reconstructing the causes of the observed outcome, process tracing, familiar to qualitative political science, follows case-specific evidence to infer a rational account on which a theory might rest which can answer the *how*, not just the *why*.[37] It is especially well suited to studies of elite decisionmaking outside the realm of majority consent, where the object is not to generalize across populations but to reconstruct the "process," or sequence of events, that produced the specific outcome unique to the elites involved. Thus, "traces," or clues, were sought in speeches, elite interviews, conference minutes, and other records—whatever might be admitted in a court of law as testimonial or circumstantial evidence of what happened and in what order.[38] Particular attention was paid to the CDDH and one of its subcommittees as the principal venue of negotiations between the key contestants, where the decisions were made. As is the case with all comitology meetings, detailed minutes are lacking—in contrast with the British Parliament, for instance—and so elite interviews proved essential. "Elite" is understood classically as persons occupying apex posts in institutional hierarchies and exercising disproportionate influence over policy by virtue of their privileged access to resources, connections, and information typically unavailable to ordinary citizens.[39]

We conducted ten interviews with seven participants in the events, including the ECLJ Director and a senior lawyer, a director of ADF, a senior CoE official, a senior national government official delegated to a CoE committee, a senior participant in the CDDH Drafting Group, a former ECtHR judge, an ECtHR Registry functionary, and a French academic specializing

[35] Andrew Bennett & Jeffrey T. Checkel, Process Tracing: From Metaphor to Analytic Tool (2014).

[36] *See* Scharpf, *supra* note 8.

[37] Derek Beach & Rasmus Brun Pedersen, Process-Tracing Methods: Foundations and Guidelines (2013).

[38] John Dyson Heydon, Cross on Evidence (2015).

[39] Steven Lukes, Power: A Radical View (1974); C. Wright Mills, The Power Elite (1956); Vilfredo Pareto, The Rise and Fall of Elites: An Application of Theoretical Sociology (1901).

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in human rights and strategic litigation. Some were interviewed more than once, and most were anonymized to protect their identities.

These interviewees were best positioned to provide authoritative eyewitness accounts of events. Random sampling would have missed precisely those informants who possessed the most insider knowledge.[40] A semi-structured format was the most suitable; it set the topic but allowed interviewees to speak their minds and volunteer unexpected facts, insights, and commentary. Interviews were one on one and featured controversial claims from both sides of the transnational contest. Although data yielded by this method pass through the prism of interviewee self-interest, the several viewpoints selected tended to keep each other in check.[41] We gained privileged access to key actors' perceptions of their standpoints and roles in events, the meanings they assign to their own and others' actions, and the rationales for their decisions. The fact remains that they drove the documented courses of action, regardless of whether their assumptions and perceptions were objective.

Elite interviews have inherent limitations. Political actors are rarely fully transparent—they have strategic and personal incentives to exaggerate their roles, downplay their mistakes, remain silent on sensitive matters, and offer incompatible views of events. Seldom does any one interview, or all interviews taken together, yield a complete picture. The researcher resorts to "abductive inference to the best explanation" to reach a comprehensive understanding when evidence is incomplete, ambiguous, or contradictory. Charles Sanders Peirce first theorized this mode of reasoning as the preferred logic of everyday life, where it proves its pragmatic worth day in and day out. It comprises three main steps: first, identify surprising facts that lack an obvious explanation; second, conceive a hypothesis that leaves the fewest surprising *and* unsurprising facts unexplained; and third, compare this hypothesis with alternative explanations to determine which explains the most, most comprehensively.[42] Inference is indispensable. As John Stuart Mill observed, "very few facts are able to tell their own story, without comments to bring out their meaning." Of course, abductive inferences can be wrong, but their value lies in the fact that they "can be set right" by exposing what is fallacious.[43]

[40] Oisín Tansey, *Process Tracing and Elite Interviewing: A Case for Non-probability Sampling*, 40 PS: Pol. Sci. & Pol. 765, 765–72 (2007).

[41] Ezequiel González-Ocantos & Juan Masullo, *Aligning Interviewing with Process Tracing*, 55 Socio. Methods & Rsch. 219, 219–67 (2026).

[42] 2 Charles S. Peirce, The Essential Peirce: Selected Philosophical Writings: 1893–1913 (Nathan Houser gen. ed., Indiana Univ. Press 1998); Terence Anderson, David Schum, & William Twining, Analysis of Evidence (2005).

[43] John Stuart Mill, On Liberty (Penguin Classics 1985) (1859).

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3.3. Scope conditions

Important issues lie beyond the scope of this article. First, conservative Christian influence on ECtHR case law is not examined. It has begun to be explored in recent scholarship, though much remains to be adequately understood. We focus instead on their impact on the Court's internal governance procedures. These are distinct but complementary dimensions of conservative mobilization in Strasbourg. Second, as an interdisciplinary inquiry that treats all actors as strategic players in the "game" of supranational politics, this study does not evaluate their normative legitimacy or the desirability of the procedural reforms they effected. Positive and analytical, its focus is on what is, not what ought to be. It does not depend on the authors' own normative stance toward human rights norms or institutions.

4. The case study

4.1. Conservative norm entrepreneurs confront the ECtHR

The ECLJ is an organization of ten permanent lawyers, supported by research fellows and led by Grégor Puppinck, a Catholic French lawyer specializing in religious freedom and bioethics. Puppinck first gained prominence in conservative legal circles for his role in the high-profile *Lautsi v. Italy* case, for which he received a Knighthood of the Order of Merit of the Italian Republic (Cavaliere della Repubblica) in 2011, and, in 2014, was made Commander of the Pontifical Order of Saint Gregory the Great by Pope Benedict XVI.[44] Both Puppinck and senior ECLJ lawyer Nicolas Bauer serve in their personal capacities as official Observers for the Holy See on several CoE steering committees, including the CDDH. This incidentally gives the ECLJ institutional access and perhaps some influence in those forums, though not formal voting power.

And yet, the ECLJ and allied NGOs ADF and SOS Chrétiens d'Orient had been denied participatory status in the CoE's Conference of International Non-Governmental Organisations (INGOs), a body that grants international NGOs formal institutional access to many CoE proceedings. Having been rejected twice on procedural grounds, ADF lawyers on the third attempt were arbitrarily dismissed, reportedly, on the grounds that they "do not represent European values."[45] This implies that a conservative Christian lawyer will be excluded from CoE comitology if he or she does not simultaneously hold the status of Holy See Observer.

[44] *Grégor Puppinck*, Eur. Ctr. for L. & Just., https://eclj.org/writers/gregor-puppinck (last visited Sept. 14, 2026).

[45] Zoom interview with an Alliance Defending Freedom International representative (Nov. 13, 2024) [hereinafter Interview with an ADF representative].

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Puppinck traces the origins of the judge–NGO conflict-of-interest campaign to 2010, when a Court insider, critical of its activism, tipped him off about the effect of what he called "Soros judges" on the Court.[46] His own litigation experience, particularly in *Lautsi*, *Mennesson v. France*, and *Lambert v. France*, convinced him of a progressive leaning in the Court's jurisprudence, such that he perceived it to have come uncomfortably close to banning crucifixes in classrooms, creating surrogacy rights, permitting euthanasia and assisted suicide, and decriminalizing prostitution. "Strategic behavior" inside the Court and coordination with liberal NGO litigants had apparently "arranged these rulings," according to insider stories of judges who had actively prompted third-party interventions. Learning of this had shattered Puppinck's "naïve" trust in the Court's "perfect authority." He concluded that "militancy," entrenched by an appointments process that packs the Court one-sidedly, was skewing its jurisprudence, not merely the postwar drift from natural law to "Do what thou wilt." As he later wrote, this has reduced "human dignity to the individual will alone in contempt of the body," while liberal human rights "quietly accompany … transhumanism, working toward the overcoming of representative democracy."[47]

A prior political "earthquake" in the Court's makeup was implicated in these shifts. Before Eastern Europe acceded to the CoE, most judges had been seasoned jurists from national Supreme or Constitutional Courts, for whom Strasbourg "crowned" their careers, or else academic jurists of high repute. Ordinary lawyers were rarely considered.[48] But Eastern enlargement diversified the Court in an unexpected way: it proved daunting to find qualified jurists untainted by Communist *kompromat*. The focus shifted toward taking in "a bunch of young people," mainly from private practice (often in liberal human rights NGOs), who "altered the face of the court" with their activism, a risk that "was known but ignored for years."[49]

[46] Telephone interview with former ECtHR judge (Dec. 10, 2024); Zoom Interview with Grégor Puppinck, Eur. Ctr. for L. & Just. Director (Dec. 12, 2024) [hereinafter Interview with Puppinck]. Evidently, the ECLJ has penetrated the Court, but its allies remain exceptions, as witness the Registry lawyer who, describing himself as bound by a "loyalty duty," approached the author unsolicited, concerned over the Court's trajectory. Email from ECtHR Registry lawyer (May 15, 2022, 5:40 PM).

[47] Interview with Puppinck, *supra* note 46. *See also* GRÉGOR PUPPINCK, LES DROITS DE L'HOMME DÉNATURÉ (2018).

[48] Zoom interview with senior national delegate to a Council of Europe committee (Oct. 15, 2024) [hereinafter Interview with a Senior CoE delegate]. *See also* Paul Mahoney & Søren Prebensen, *The European Court of Human Rights*, *in* THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS 621, 623 (Ronald St. John Macdonald ed., 1993).

[49] Interview with a Senior CoE delegate, *supra* note 48. *See also* Erik Voeten, *The Politics of International Judicial Appointments: Evidence from the European Court of Human Rights*, 61 INT'L ORG. 669, 669 (2007).

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The ECLJ intervened in 2020 with evidence of judge–liberal NGO ties in a report, "NGOs and the Judges of the ECHR 2009–2019," which examined their *curricula vitae*, rulings, and records, alleging that:

> [A]t least 22 of the 100 permanent judges who have served on the ECtHR between 2009 and 2019 are former officials or collaborators of seven NGOs that are highly active before the Court. Twelve judges are linked to the Open Society Foundation (OSF) network, seven to the Helsinki committees, five to the International Commission of Jurists, three to Amnesty International, and one each to Human Rights Watch, Interights and the A.I.R.E. Centre. The Open Society network is distinguished by the number of judges linked to it and by the fact that it funds the other six organizations mentioned in this report.[50]

The report stated that "out of the 185 cases in which the seven NGOs have acted since 2009 … in 88 cases, judges ruled even though they had links with an NGO visibly involved … [and] 18 of the 22 judges … have sat in cases involving the NGO with which they had collaborated."[51] From 2020 onward, some ECLJ communications labeled them "Soros judges" to suggest that their past affiliations had compromised their impartiality.[52]

The report also highlighted instances, such as *Neshkov and Others v. Bulgaria*,[53] where NGOs acted as both representatives of applicants and third-party interveners in the same case, creating at least the appearance of a conflict of interest, as interested parties were represented as disinterested *amici curiae* ("friends of the court") under rule 44 of the Rules of Court.[54] Rule 44 permits third-party interventions by non-applicants, but does not expressly prohibit NGOs from serving in both roles. The ECLJ argues that this dual role masks bias and undermines judicial impartiality:

> When we are legal counsel, we don't intervene as a third party. We're not supposed to do both because you cannot intervene either for or against the complainant. In the US, third-party interveners like *amicus curiae* officially support one party or the other, but here at the Court, the idea is to support neither of the parties, but to develop one's own expertise. Thus, you cannot do both.[55]

[50] Grégor Puppinck & Delphine Loiseau, NGOs and the Judges of the ECHR 2009–2019, at 2 (2020), https://eclj.org/ngos-and-the-judges-of-the-echr.

[51] *Id.* at 18.

[52] Grégor Puppinck, *ECHR: Belgium Proposes the Election of a New "Soros Judge,"* Valeurs Actuelles (Feb. 5, 2021), www.valeursactuelles.com/societe/cedh-la-belgique-propose-lelection-dune-nouvelle-juge-soros; Grégor Puppinck, *ECHR: A "Soros-Judge" Abandons a Polish Patient to His Death*, Eur. Ctr. for L. & Just. (Mar. 10, 2021), https://eclj.org/euthanasia/echr/echr—a-soros-judge-abandons-a-polish-patient-to-his-death.

[53] Neshkov & Others v. Bulgaria, App. Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 & 9717/13, Eur. Ct. H.R. (Jan. 27, 2015), https://hudoc.echr.coe.int/?i=001-150771.

[54] Puppinck & Loiseau, *supra* note 50, at 2–3.

[55] Interview with Nicolas Bauer, Senior Lawyer, Eur. Ctr. for L. & Just., Strasbourg (Nov. 8, 2024).

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In 2023 the ECLJ returned with fresh evidence:

> [C]onflicts of interest between judges and NGOs have not decreased [since 2020]. On the contrary … [a]mong the 114 cases in which at least one of the six NGOs openly intervened, in 34 of them, some judges sat and ruled, which created 54 direct conflicts of interest … These judges sat even though "their" former NGO was defending the applicants or intervening as a third party. The conflict of interest was then due to the significant tie between the judge(s) and one of the parties to the case … 7 of the 34 identified cases of conflict-of-interest concern judgments of the Grand Chamber … [Furthermore, t]he opacity of the registry's composition is in serious breach of the institution's transparency … [it] may … endanger the Court's impartiality due to the numerous personal links between the registry and the main NGOs … [that] result from the circulation of the staff between them … some registrars come from NGOs active with the Court [meaning that they] are in the position to participate to [*sic*] cases filed by such NGOs … This is the same conflicts of interest problem identified amongst the judges, but at the registry level … the ECHR does not provide for a recusal procedure, judges do not publish declarations of interest, and the handling of cases is opaque, which undermines the right to a fair trial.[56]

The ECLJ urged a series of institutional remedies: stringent judge-selection procedures; greater transparency regarding NGO funding and ties; rules forewarning parties of panel composition and permitting them to request the recusal of named judges; and even revisiting past "problematic judgments" to rectify bias.[57]

Knowing that "Personnel is policy"—a principle long evident in political conduct—the ECLJ's ultimate goal is to recompose the Court to eliminate the perceived institutional bias against conservative Christians. The American experience is parallel. Liberal activism prevailed after Roosevelt-appointed judges remade the US Constitution into a "living constitution" in 1937, only to meet a counterattack under Reagan in the 1980s, when he nominated only purported conservatives. Sekulow's outfit in Strasbourg is attempting something similar. A CoE jurist observed:

> The ECLJ is trying to influence the candidate lists, but the kind of disclosure where everyone is grilled in the US style means smear campaigns will be at full throttle. You'll end up with some professor who has never done anything, or with only government appointees. They want to steer the Court away from evolving the case law through the living instrument doctrine, away from being progressive in inventing human rights to serve new societal developments.[58]

[56] Grégor Puppinck & Nicolas Bauer, *The Impartiality of the ECHR: Concerns and Recommendations* 4, 18, 19, 33 (2023) (in order of appearance), https://eclj.org/echr-impartiality-concerns-and-recommendations?lng=en.

[57] Puppinck & Loiseau, *supra* note 50, at 25.

[58] Interview with a Senior CoE delegate, *supra* note 48.

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It is an established fact that the ECtHR favors this American doctrine over the Convention's own *travaux préparatoires*, material drafted at the time of its creation documenting its framers' intentions.[59]

The ECLJ at first shared its findings inside the CoE organs and its own networks, while weighing public release. Bespeaking loyalty and duty,[60] insider whistleblowers' practice is to address fellow insiders first "as a matter of decency,"[61] to offer them a chance to "do something,"[62] to course-correct, manage risks, mitigate harm, and shield professional reputations.[63] Public disclosure eventuates only if internal efforts fail or incur retaliation.

In this, the ECLJ relied on common knowledge, a community's daily observation of itself. Familiarity at the CoE was such that denizens were gossiping about conflicts of interest long before the ECLJ reported them; indeed, former ECtHR judge Boštjan Zupančič said he was "not surprised" by the ECLJ's findings and that he "wish[ed] the content of this report had been known earlier."[64] A senior CoE official affirmed, "I know the people working for the ECLJ; they are serious lawyers unlikely to fabricate claims; Gregor is a very engaged conservative who doesn't want the Court to turn into a left-wing liberal impostor of the political correctness agenda of Mr Soros." He noted that some PACE delegates "clearly disliked" judges with Soros affiliations.[65] Even the "most vehement" critics of the report[66] faulted it not for fabricating but for having "blown the issue out of proportion."[67]

CoE organs ignored the report,[68] demonstrating that a conservative Christian NGO disliked in Strasbourg gets little to no traction on its own. The ECLJ is regarded as "not part of our system" but "something from the American born-again community," who have "never been taken seriously in the human rights community" in Strasbourg. Their combative approach clashes with the CoE's culture of "conferring with each other," and they are seen as importing the "American war of cultures" into Europe, where "it's already bad enough as it is."[69]

[59] Philip Leach, Taking a Case to the European Court of Human Rights 10 (2017).
[60] Marcia P. Miceli & Janet P. Near, *The Relationships Among Beliefs, Organizational Position, and Whistle-Blowing Status: A Discriminant Analysis*, 27 Acad. Mgmt. J. 687, 687 (1984).
[61] Interview with Puppinck, *supra* note 46.
[62] *Id.*
[63] C. Fred Alford, Whistleblowers: Broken Lives and Organizational Power 18 (2002).
[64] Boštjan Zupančič, *Le scandale Soros: Un ancien juge de la CEDH réagit après les révélations de Valeurs actuelles* [*The Soros Scandal: A Former ECHR Judge Reacts to* Valeurs Actuelles' *Revelations*], Valeurs Actuelles (Mar. 4, 2020), www.valeursactuelles.com/politique/le-scandale-soros-un-ancien-juge-de-la-cedh-reagit-apres-les-revelations-de-valeurs-actuelles.
[65] Zoom interview with senior CoE official (Oct. 28, 2024).
[66] Interview with Puppinck, *supra* note 46.
[67] Interview with a Senior CoE delegate, *supra* note 48.
[68] Interview with Puppinck, *supra* note 46.
[69] Interview with a Senior CoE delegate, *supra* note 48.

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With "no other tactics available," the ECLJ broke decisively with the prevailing norms of Strasbourg, resorting to full publication of its reports as "the only way to achieve a result."[70] The member states having by default avoided complaining about the ECtHR lest they "inject politics" into judicial affairs, it remained for private civil society to act and to lead. This threatened to alienate the whole of Strasbourg: "We became quite radioactive, officials debating whether to interact with us any more." The ECLJ's report risked tarnishing the ECtHR's legitimacy, at length compelling it to respond: reform its practices or face member states' political action. The CoE was obliged to entertain dissident publics and member states and their concerns in an institutional setting usually insulated from external scrutiny.

Other conservative civil society organizations were unwilling to pursue such a high-risk stratagem, preferring to preserve their *entrée* with the CoE for conventional litigation lest they fall afoul of the ECtHR section presidents' discretionary power to (de)select third-party interveners. The director of one Christian NGO acknowledged having "good relations" with the ECLJ and conceded that the report on conflicts of interest had merit and that they were grateful for the ECLJ's work; however, his own organization would avoid open confrontation because it is not possible to represent clients and submit applications or third-party interventions while at the same time openly criticizing the Court—it is, in his words, "either-or."[71]

4.2. The ECLJ rallies allies

It has long been observed of human behavior that actors and actor collectives, once they find their influence inadequate, will network to amplify it.[72] Knowing itself to be powerless inside the CoE, the ECLJ recruited allies wherever it could find them.

a. The ECLJ mobilizes elected representatives

The ECLJ recognized the limits of the PACE,[73] but understood that, through its election of ECtHR judges, it wielded the main scrutiny of a Court whose jurisdiction spans Europe.[74]

The ECLJ urged PACE delegates to scrutinize the ECtHR.[75] Putting their queries in writing to bind the CM to public responses, they exacted a

[70] Interview with Puppinck, *supra* note 46.

[71] Interview with an ADF representative, *supra* note 45.

[72] Niccolò Machiavelli, The Prince (1532); Alexis De Tocqueville, Democracy In America (1835–1840); Robert Michels, Political Parties: A Sociological Study of The Oligarchical Tendencies of Modern Democracy (1911).

[73] Interview with Puppinck, *supra* note 46.

[74] Philip Leach, *The Parliamentary Assembly of the Council of Europe*, *in* The Council of Europe: Its Law and Policies 166 (S. Schmahl & M. Breuer eds., 2017).

[75] Interview with Puppinck, *supra* note 46.

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modicum of transparency.[76] In April 2020 Milan Knežević of Montenegro, who had experienced a conflict of interest in his own case involving Judge Mārtiņš Mits,[77] asked the CM what it planned to do about it: "Two months after its publication, the ECLJ report remains uncontested, including by the Court itself, which tacitly acknowledges its veracity."[78] Isabel Meirelles of Portugal, a lawyer, inquired about remedies for judge–NGO ties.[79] Barna Pál Zsigmond of Hungary, also a lawyer, warned of reputational loss: "These problems are serious and must be answered for the sake of the Court."[80] These questions closely tracked the report; all three PACE delegates began their interventions by summarizing its key findings before pressing the CM for answers. The report had clearly raised awareness and prodded action.

In November 2022 twenty conservative delegates to PACE from thirteen countries in the EPP/CD (Group of the European People's Party) introduced a resolution titled "The Serious Problem of Conflicts of Interest at the European Court of Human Rights." It summarized the ECLJ's findings and urged reform.[81] Under parliamentary rules, PACE's Committee on Legal Affairs (AS/Jur) and the Bureau decide whether to advance resolutions. If advanced, a rapporteur drafts a report for debate in the plenary. If adopted, the CM must respond.[82] Resolutions are nonbinding but enjoy the democratic legitimacy of the member states. They can spark public awareness of obscure goings-on if, through media and activism, they trickle down into public consciousness and discourse.

The ECLJ was simultaneously gathering 60,000 signatures on a petition to PACE President Tiny Kox, demanding both an inquiry into the ECtHR's "dysfunctions," and reforms such as declarations of interests by current and prospective judges; vetting of nominees from militant organizations active at the ECtHR; a formulary on which third parties applying for intervention must disclose any ties to litigants; and publication of a list of

[76] *See* Leach, *supra* note 74.

[77] Maja Vukićević, *Protecting the Right to Request the Recusal of a Judge of the European Court of Human Rights: Written Question No. 759 to the Committee of Ministers*, Doc. 15260, PACE (Apr. 8, 2021), https://pace.coe.int/en/files/29105/html.

[78] Milan Knežević, *Restoring the Integrity of the European Court of Human Rights: Written Question No. 748 to the Committee of Ministers*, Doc. 15096, PACE (Apr. 24, 2020), https://pace.coe.int/en/files/28629/html.

[79] Isabel Meirelles, *Restoring the Integrity of the European Court of Human Rights: Written Question No. 747 to the Committee of Ministers*, Doc. 15095, PACE (Apr. 24, 2020), https://pace.coe.int/en/files/28628/html.

[80] Barna Pál Zsigmond, *Restoring the Integrity of the European Court of Human Rights: Written Question No. 746 to the Committee of Ministers*, Doc. 15094, PACE (Apr. 24, 2020), https://pace.coe.int/en/files/28633/html.

[81] PACE, *Le grave problème des conflits d'intérêts à la Cour européenne des droits de l'homme* [*The Serious Problem of Conflicts of Interest at the European Court of Human Rights: Resolution Proposal*], Doc. No. 15661 (Nov. 30, 2022), https://pace.coe.int/fr/files/31447/html.

[82] *See* Leach, *supra* note 74, at 172.

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Registry members, as the Inter-American Court of Human Rights and the Court of Justice of the European Union (CJEU) also do.[83] By thus invoking international judicial standards, the ECLJ was angling to trigger PACE Rule 71, under which the Bureau should issue a report recommending these solutions for adoption by the CM.[84]

In parallel, the ECLJ rallied allies in Brussels by sending the report to members of the European Parliament (MEPs).[85] German MEP Maximilian Krah, a lawyer and representative of the Alternativ für Deutschland (AfD) party, wondered, "Is the EU's [expected] participation in the European Convention still viable?"[86] Dutch MEP Rob Roos, a representative of the Netherlands' Forum voor Democratie, impugned the ECtHR's impartiality, citing the report's revelations.[87] MEP Jérôme Rivière of Le Pen's Rassemblement National called the ECtHR a "stranglehold of George Soros."[88] This backlash raised the stakes when the European Commission reentered negotiations over EU accession to the ECHR,[89] a development that necessitated safeguarding the ECtHR's reputation just as the ECLJ's campaign was getting into full swing. An observer of Strasbourg noted, "The issue of the EU joining Strasbourg's court system is highly delicate" (more so after the CJEU's objections to it in 2014). The ECLJ felt the touchiness firsthand; Director Puppinck, after pressing allied MEPs for action on conflicts of interest, faced censure days later in Strasbourg for having suggested that the EU might refuse to join the Convention.[90]

The ECLJ campaign did not remain confined to Strasbourg or Brussels. In several national capitals, politicians took up the cause and posed similar queries.[91] Germany's Bundestag Research Services briefed German MPs on

[83] Grégor Puppnick, *One Year after the Report on NGOs and Judges of the ECHR: State of Play*, Eur. Ctr. for L. & Just. (Mar. 9, 2021), https://eclj.org/geopolitics/echr/un-an-apres-le-rapport-sur-les-ong-et-les-juges-de-la-cedh—etat-des-lieux?lng=en; *Putting an End to Conflicts of Interest at the ECHR*, Eur. Ctr. for L. & Just. (2022), https://eclj.org/geopolitics/echr/mettre-fin-aux-conflits-dinterets-a-la-cedh.

[84] Interview with Puppinck, *supra* note 46.

[85] *Id*.

[86] Maximilian Krah, *ECLJ Report on Instances of Collusion at the ECHR: Question for Written Answer E-002327/2020/rev.1 to the Council*, Eur. Parl. (Apr. 16, 2020), www.europarl.europa.eu/doceo/document/E-9-2020-002327_EN.html.

[87] Rob Roos, *Biased Judges at the European Court of Human Rights: Question for Written Answer E-001484/2020 to the Council*, Eur. Parl. (Mar. 10, 2020), www.europarl.europa.eu/doceo/document/E-9-2020-001484_EN.html.

[88] Jérôme Rivière, *European Court of Human Rights: Stranglehold of George Soros and Accession of the European Union: Question for Written Answer E-001137/2020 to the Commission*, Eur. Parl. (Feb. 2, 2020), www.europarl.europa.eu/doceo/document/E-9-2020-001137_EN.html.

[89] *European Union Accession to the European Convention on Human Rights: Questions and Answers*, Council of Eur. (2024), www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers.

[90] Interview with Puppinck, *supra* note 46.

[91] *Id.*

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the ECLJ report.[92] AfD's Georg Pazderski amplified the furor in his tweets.[93] A Dutch Parliament roundtable cited the ECLJ's position paper "Judicial Supremacy and Supranationalism," which controverted the "living instrument" doctrine to move debate on judicial overreach.[94]

MPs of the nationalist Danish People's Party (DPP) queried the Justice Minister (paraphrasing): Denmark decided back in 1992 to give all judgments of the ECtHR precedence over Danish law, including any judgments directed at any of the forty-seven member states of the CoE. This means the ECtHR has enormous power, can override government decisions, laws passed here in the Folketing, and decisions of the Danish Supreme Court. Therefore, it is crucial that those who sit on the Court observe the finest principles of a court, including the rules on recusal, i.e., that if there is the slightest doubt as to one's impartiality in a case, one lets a colleague take over. Recently, very great and serious doubts have arisen as to whether the judges on the Court live up to that. We would like to have a discussion of that today in order to send a signal about the Court's strengths and weaknesses. We want not a ritual discussion of whether the Court interferes too much or too little, but of the quality of the judgments, and, if something needs to be changed, as we in my party believe it does, a discussion of what to do about it.[95]

The unease predated the ECLJ; Denmark and other member states had long harbored concerns over the ECtHR's activism and its effect on national law, as witness the reply of Nick Hækkerup, Danish Minister of Justice, to the DPP:

> [T]he European Court of Human Rights and especially the activist style of interpretation have been the subject of debate on several occasions in this Chamber. It is actually a topic that concerns me … and it is an important discussion because law is being created … that will come into effect in Denmark when the Court of Human Rights issues its judgments. Therefore, we must constantly be aware of

[92] *Wissenschaftliche Dienste, Mögliche Zusammenhänge zwischen privaten und staatlichen Akteuren und dem Europäischen Gerichtshof für Menschenrechte (EGMR)* [*Possible Connections Between Private and State Actors and the European Court of Human Rights (ECtHR)*], Doc No. WD 2-3000-079/20 (Sept. 29, 2020), https://www.bundestag.de/resource/blob/808446/6b8e88713c5a6f6b267769e8e5b5d68f/WD-2-079-20-pdf-data.pdf.

[93] Georg Pazderski (@Georg_Pazderski), *Erhellender Artikel in #CATO 3/20 zu den Absichten von #Soros, der sich gern als "Staatschef ohne Staat" bezeichnet: "Auflösung der Grenzen, Apologie der Migration…"* [*Illuminating Article in #CATO 3/20 on the Intentions of #Soros, Who Likes to Call Himself "Head of State Without a State": "Dissolution of Borders, Apology for Migration…"*], X (Apr. 19, 2020, at 8:07 AM), https://x.com/Georg_Pazderski/status/1251769375847264256.

[94] John Laughland, *Position Paper*, Tweede Kamer (Mar. 9, 2020), www.tweedekamer.nl/kamerstukken/detail?id=2020Z04490&did=2020D09416.

[95] Morten Messerschmidt & Pia Kjærsgaard, *F 26 Om Den Europæiske Menneskerettighedsdomstol* [*F 26 on the European Court of Human Rights*], Folketinget (Jan. 19, 2021), www.ft.dk/samling/20201/forespoergsel/F26/BEH1-50/forhandling.htm.

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> developments … particularly when it comes to the Court's interpretation of the Convention in specific cases.[96]

The querying MPs, delegates to PACE, and MEPs, together with NGOs like the ECLJ and ADF, are part of a conservative Christian rise across Europe, transnationally interconnecting think tanks, financiers, charities, lobbying associations, political parties, civil society organizations, and church leaders in "highly sophisticated networks"[97] promoting conservative nationalism and the defense of Western civilization. For instance, the Edmund Burke Foundation is a public affairs institute, founded in 2019 to further national conservatism in democratic countries and led by American and British conservatives. It organizes an annual National Conservatism Conference, whose 2024 theme, "Preserving the Nation-State in Europe," featured former UK Home Secretary Suella Braverman, Reform UK leader Nigel Farage, Hungarian Prime Minister Viktor Orbán, and others, and was cosponsored by the Herzl Institute for Zionist political thought and the Italian conservative foundation Nazione Futura (tied to Giorgia Meloni).[98] The Alliance for Responsible Citizenship is a global movement that seeks to recover the foundations of Western civilization against what it describes as an "age of deconstruction" and "cultural amnesia."[99] The Political Network for Values links parliamentarians and family-values advocates across Europe and the Americas.[100] These conservative networks link elites with supporters transatlantically. European nationalism redux, thus supplemented, is rather buoyantly revising the opportunity structure of conservative Christians in Strasbourg and beyond. (Whether this networking reflects a deep ideological intersection or merely a marriage of convenience is beyond the scope of this article.)

b. The ECLJ campaign gains traction among certain member states

By 2023, the controversy surrounding the ECLJ's report had clearly spread beyond juridical circles in Strasbourg and was attracting the attention of

[96] *Id.*

[97] The Christian Right in Europe: Movements, Networks, and Denominations 12 (Giuseppe Lo Mascolo ed., 2023).

[98] *A Conference in Brussels: Apr. 16–17, 2024: About*, Nat'l Conservatism, https://nationalconservatism.org/natcon-brussels-2/about/ (last visited Sept. 14, 2026); Emanuele Chesi, *Giubilei alla corte di Trump: Un cesenate "ambasciatore" della Meloni negli USA* [*Jubilees at Trump's Court: A Cesena Native Becomes Meloni's "Ambassador" to the United States*], Il Resto Del Carlino (Feb. 27, 2024), www.ilrestodelcarlino.it/cesena/politica/giubilei-trump-meloni-2166125c.

[99] Email from Philippa Stroud, Alliance for Responsible Citizenship, subject: "A Defining Moment for Our Civilisation" (Feb. 3, 2026) (arguing that the postwar liberal consensus is ending and calling for civilizational renewal).

[100] *Who We Are*, Pol. Network for Values (June 2, 2026), https://politicsnetworkforvalues.com/en/who-we-are/.

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member state publics with Soros's name, threatening to widen the European debate.[101] French jurists complained:

> Vitriolic articles … continue to be regularly distilled on … the "infiltration" of the Court by the "friends" of George Soros. The methods used by Viktor Orban … consisting of demonizing the American philanthropist to the point … of having a transparency law adopted to prohibit the funding of liberal NGOs, are spreading to France.[102]

The ECLJ's gambit of rallying believers and recruiting allies began to bear fruit; Bulgarian, Russian, and Turkish officials spoke out, leveraging the opportunity presented by the report to air their own prior dissatisfaction as representatives of the member states that the Court had condemned most frequently. Bulgaria was sufficiently stirred for its Justice Minister to call on the Court to address the matter internally by having nonconflicted judges act against conflicted ones: "[I]f its [ECLJ's] allegations are correct, a termination of powers … should be carried out … by the judges of the ECHR with a specially qualified majority – 2/3 of the entire panel … [which] could be formed from the judges … who do not have a conflict of interest."[103] The Minister meant rule 7, "Dismissal from office," of the Rules of Court: "No judge may be dismissed from his or her office unless the other elected judges in office, meeting in plenary session, decide by a majority of two-thirds that he or she has ceased to fulfil the required conditions. Any judge may set in motion the procedure for dismissal from office" for serious misconduct.[104]

Russia cited the report to vindicate its long-standing dissatisfaction with the ECtHR's composition and rulings and conveyed its discontent in CoE forums.[105] Foreign Minister Sergey Lavrov referenced the report as

[101] James Wignall, *Why Everyone Is Talking about George Soros*, BBC NEWS (Nov. 6, 2018), www.bbc.co.uk/news/av/uk-44392441; *Why Is Billionaire George Soros a Bogeyman for the Hard Right?*, BBC NEWS (Sept. 7, 2019), www.bbc.com/news/world-49515402.

[102] Laurence Burgorgue-Larsen, *Le basculement de l'Histoire? Les attaques contre l'universalisme des droits de l'homme* [*The Shift of History? Attacks on the Universalism of Human Rights*], REVUE DES DROITS ET LIBERTÉS FONDAMENTAUX, no. 6 (2021), https://revuedlf.com/droit-international/le-basculement-de-lhistoire-les-attaques-contre-luniversalisme-des-droits-de-lhomme/.

[103] Vasilia Peycheva, *Kvalifitsirano mnozinstvo v ESPCh mozhe da otzove Yonko Grozev* [*A Qualified Majority in the ECHR May Recall Yonko Grozev*], DARIKNEWS (Mar. 5, 2020), https://dariknews.bg/novini/bylgariia/kvalificirano-mnozinstvo-v-espch-mozhe-da-otzove-ionko-grozev-2215177 (quoting a statement by Danail Kirilov).

[104] Rules of Court, Eur. Ct. H.R. (Sept. 15, 2025), www.echr.coe.int/documents/d/echr/rules_court_eng.

[105] Zoom interview with senior CoE official, *supra* note 65.

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evidence that the CoE stood in need of serious introspection. Partiality inside the ECtHR, lax recusal, and judicial inexperience were serious complaints. He advocated depoliticization.[106] Reportedly, the Russian and Turkish ambassadors at a CM meeting in 2020 questioned outgoing Court President Linos-Alexandre Sicilianos about the ECLJ's allegations, who apparently blamed the member states that had nominated and PACE that had elected the judges, noting also that the cases in question were a negligible fraction of the total.[107] In November 2020, during an exchange of views with the Parliamentary Assembly, newly elected President Robert Spano addressed these allegations. When asked by a Russian member of PACE's Committee on Legal Affairs and Human Rights:

> How are we going to be able to come up with a solution to the problems mentioned with regard to the issue of the conflict of interest of judges at the European Court of Human Rights, given the influence that is being exerted on them by some NGOs, which are political ones, for instance, George Soros' foundation?

Spano reiterated the position that he and his predecessor had conveyed to the CM:

> I give the same answer that I have given, and my predecessor Alexandre Sicilianos gave to the Committee of Ministers in May: there is no allegation which is credible, in our view, on any influence by non-governmental organizations on the work of this Court. The fact that judges of the Court may, in their previous professional lives, have had experience and training in the field of human rights law through work in non-governmental organizations shows the diversity of professional backgrounds that is necessary for an international court. But the main issue here is that the Parliamentary Assembly elects the judges. The judges' Curriculum Vitae, with all of the background information about their life's work, is before you when you make these determinations. It is for you to decide the diversity of the group that is within this Court. I would simply say, I do not accept the allegations that have been made in this report.[108]

[106] Ministry of Foreign Aff. of the Russian Federation, *Press Release on the Newly Released Report, NGOs and the Judges of the ECHR 2009–2019* (Apr. 15, 2020), https://mid.ru/en/foreign_policy/rso/1430402/.

[107] Valeurs Actuelles, *Emprise de Soros sur la CEDH: Le mutisme inquiétant de la Cour* [*Soros's Grip on the ECtHR: The Court's Worrying Silence*] (July 9, 2020), www.valeursactuelles.com/clubvaleurs/monde/emprise-de-soros-sur-la-cedh-le-mutisme-inquietant-de-la-cour.

[108] *Minutes of the Meeting Held by Videoconference on Friday 20 November 2020 from 09:30 to 12:30 and from 14:30 to 17:30*, AS/Per (2020) PV 07, at 15–16 (Dec. 4, 2020) (statements by Robert Spano), https://assembly.coe.int/LifeRay/APCE/pdf/SCs/2020/AS-PER-2020-PV-07-EN.pdf.

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This public exchange demonstrates that the ECLJ's campaign had gained sufficient traction among member states to force the Court President to address it directly before the Assembly.

c. The ECLJ's failed bid for media attention

"Information politics" is a byword acknowledging that the media are "an essential partner" of political actors.[109] An NGO can reach a wide audience only with media cooperation. If it can generate the right scandal, that can galvanize elite action.

Strasbourg worried that news coverage could mar the credibility of the Court and Convention system. CoE interviewees brought up the *Daily Mail*'s coverage unprompted, for instance, as an example of "sensationalist media" hyping an "incredible" controversy over Nicolas Bratza, a former British judge and President of the ECtHR, recalling its description of him as "the son of a Serbian fiddler."[110] The interviewees interpreted this as an *ad hominem* attack on the entire Court. *The Telegraph* was perceived as "not much better."[111] One insider accused them of impugning the CoE's legitimacy by "casting doubt on [our] competence and impartiality" and likened bad press to "tiny building blocks" rising like a siege tower to "erode confidence in the system."[112] Evidently, Strasbourg cares about its media profile. The news trickles down to center-right and uncommitted ("swing") voters, who might wreak who knows what havoc. Such fears are bound to intensify as nationalism surges across Europe.

In May 2020 the ECLJ enlisted over a hundred jurists, legal professionals, academics, magistrates, and even a former ECtHR judge to sign a statement expressing concern over conflicts of interest on the Court and demanding reforms. It was published in the French conservative magazine *Valeurs Actuelles*.[113]

Lacking reach, *Valeurs Actuelles* caused "no big stir."[114] *Le Figaro* was the only mainstream outlet to take notice, reporting the reactions of National Rally party leaders; for example, Nicolas Bay denounced the Court

[109] Keck & Sikkink, *supra* note 9, at 22.

[110] James Slack, *UK Judge Who Went Native in Strasbourg*, Daily Mail (Jan. 25, 2012), www.dailymail.co.uk/debate/article-2091571/UK-judge-went-native-Strasbourg.html ("Sir Nicolas, son of a Serbian concert violinist who settled in London after the First World War, has never held senior judicial office in Britain"). To us, "concert violinist" seems an honor rather than a smear. Stress may be distorting interpretations: ECLJ looms larger than life.

[111] Interview with a Senior CoE delegate, *supra* note 48.

[112] *Id.*

[113] Valeurs Actuelles, *Une centaine de juristes lance un appel pour l'indépendance et l'impartialité de la CEDH* [*Around a Hundred Legal Experts Launch an Appeal for the Independence and Impartiality of the ECtHR*] (May 7, 2020), www.valeursactuelles.com/monde/une-centaine-de-juristes-lance-un-appel-pour-lindependance-et-limpartialite-de-la-cedh.

[114] Zoom Interview with French human rights scholar (Oct. 9, 2024).

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as "infiltrated" by Soros-funded NGOs and urged France to withdraw; Marine Le Pen herself proposed ignoring ECtHR opinions; and Jérôme Rivière called for abolishing the ECtHR.[115]

The ECLJ deemed even this limited publicity ineffectual because it was neutralized by two *Le Monde* articles, allegedly written "at the Court Registry's request," which defended the Court and linked the ECLJ to Trump through Sekulow.[116] Without significant media support, the ECLJ's attempt to generate a public scandal gained little traction. Yet its entrepreneurial agency succeeded in triggering political interventions more consequential than its own.

4.3. The CoE counters the ECLJ's campaign

In March 2020, two weeks after *Valeurs Actuelles*, *Le Monde* reported, "À la Cour européenne des droits de l'homme … on ne décolère pas" [at the European Court of Human Rights … they are still fuming].[117] CoE officials were still angry four years later, deploring the ECLJ and its allies for "orchestrating" efforts against the Court,[118] and dismissing their criticisms of prior NGO ties: "It's like saying, if you've fought against torture, you're biased against it and can't judge."[119] Yet this very straw-man kind of argument, which sidesteps the polarizing issues (abortion, same-sex marriage, the living instrument doctrine, etc.) preoccupying the Christian Right, evinces an anxiety about whether the ECLJ's report could be defeated. Strasbourg's reactiveness indicates the ECLJ had struck a nerve. The CoE leapt into action to contain the damage.

a. The PACE leadership signals the Court

Representing the Assembly, PACE leadership, and specifically the Bureau, has authority to decide which issues are "of interest" to the Assembly as a whole and when to "bury" a motion for a resolution.[120] In practice, the Bureau takes its cues from the Committee on Legal Affairs and Human Rights (AS/Jur),[121] a "highest profile" committee of elite lawyers[122] that

[115] *Le RN se demande si la CEDH est infiltrée par les ONG de M. Soros* [*The RN Wonders if the ECHR Is "Infiltrated" by Mr. Soros's NGOs*], Le Figaro (Feb. 20, 2020), www.lefigaro.fr/le-rn-se-demande-si-la-cedh-est-infiltree-par-les-ong-de-m-soros-20200220.

[116] Laurent, *supra* note 29. For the claim that *Le Monde* wrote "at the Court Registry's request," see Interview with Puppinck, *supra* note 46.

[117] Laurent, *supra* note 29.

[118] Zoom interview with senior CoE official, *supra* note 65.

[119] Interview with a Senior CoE delegate, *supra* note 48.

[120] Zoom interview with senior CoE official, *supra* note 65.

[121] *Id.*

[122] *See* Leach, *supra* note 74, at 173.

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"promotes the rule of law and defends human rights."[123] AS/Jur delegates see their mission as guarding the Court's independence.[124] They were bound to concur that "a minority political interest" from the EPP/CD group, made up of the British Conservatives and "strange far right parties like the AfD and other strange bedfellows, 'the usual suspects,' as we call them," must not be allowed to create difficulties.[125] They deemed that "having worked for Soros before does not mean you lack impartiality," and prioritized "not weakening the Court's authority"[126] to avoid any impression that the report might be justified,[127] in accord with the informal norm, "[w]e have always been extremely cautious about telling the Court what to do."[128] And yet, even so, pending the Bureau's decision, PACE leaders raised "the situation of the petition" in forums in which Court officials participated.[129] In the last reckoning, the Bureau rejected both the conservative delegates' resolution proposal on judicial impartiality and the ECLJ's petition backed by 60,000 signatures.[130]

That the ECLJ could gather so many signatures on such a recondite point revealed greater public awareness of Strasbourg's affairs than it had ever imagined. The Bureau, guided by AS/Jur, "sent a message to the Court" that PACE was "waiting to see the evolution" of CoE comitology and the Court's response.[131]

b. Committee of Ministers deflects criticism

As nominal head of the entire intergovernmental reform process, the CM is responsible for addressing these matters at intermittent ministerial meetings. Responding to the queries of PACE delegates in March 2021, the CM referred to existing impartiality guidelines to defend the status quo while ignoring the specific concerns they had raised. The power to amend the Rules of Court (the internal procedural rules governing the Court's operations) rests exclusively with the Court,[132] the CM stated, offering little else. In July 2021 the CM noted that the Court's Committee on Working Methods was "reviewing the existing Rules of Court, including Rule 28" on the

[123] *Committee on Legal Affairs and Human Rights (AS/Jur)*, Parl. Assembly (June 3, 2026), https://pace.coe.int/en/pages/committee-5-presentation.
[124] Zoom interview with senior CoE official, *supra* note 65.
[125] *Id.*
[126] *Id.*
[127] Zoom interview with a senior participant in the CDDH Drafting Group (Dec. 9, 2024).
[128] Zoom interview with senior CoE official, *supra* note 65.
[129] Zoom interview with a senior participant in the CDDH Drafting Group, *supra* note 127.
[130] AS/Jur classified its response justifying its decision. CM rejected our request for declassification.
[131] Zoom interview with senior CoE official, *supra* note 65.
[132] Council of Europe, Comm. Ministers, *Joint Reply of the Committee of Ministers to Written Questions Nos. 747, 748, and 749*, Doc. No. CM/AS(2021)Quest747-748-749-final (Mar. 31, 2021), https://search.coe.int/cm?i=0900001680a1f44c.

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recusal of judges.[133] If in public documents it hinted that the Court should reassess its post-appointment conflict-of-interest guidelines, the CM did so discreetly.

c. CoE comitology quells the threat with containment

In practice, the CM addresses concerns through its established comitology, principally CDDH and its Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC),[134] comprising CoE staff, civil servants with legal expertise from national Ministries of Justice, and external experts invited by the Chair. They belong to the human rights network practically *ex officio*.

In June 2022, the CDDH instructed DH-SYSC-JC—its Drafting Group on issues related to ECtHR judges—to evaluate, under the authority of the DH-SYSC, "the effectiveness of the system for the selection and election of judges and the means to ensure due recognition for judges' status and service," with a reporting deadline of December 2024.[135] Conflict of interest was *not* part of its initial remit and was added only in January 2023, after concerns had "surfaced more and more" in PACE and after the CDDH "discussed the issue raised by some of its members regarding the impossibility for parties to a case to request the recusal of a judge."[136] This timing and sequence of events implies that the ECLJ was the trigger.

As in any close-knit community, the Drafting Group strives to contain disreputable allegations. All is well so long as it remains unthinkable that the Court might be shamed. Faced with such opponents—the first time "any of this new-right, American Christian political movement spilled over into the human rights community"[137]—the Drafting Group seems to have panicked. Its Chair, Head of the Human Rights Division of the German Federal Ministry of Justice and Agent for Germany before the ECtHR, wrote in the journal *European Convention on Human Rights Law Review* during his tenure as Chair:

[133] Comm. Ministers, *Protecting the Right to Request the Recusal of a Judge of the European Court of Human Rights: Creating a Right to Request for a Revision of Decisions of the European Court of Human Rights*, Doc. No. 15345 (July 26, 2021), https://pace.coe.int/en/files/29383/html.

[134] Council of Europe, *Issues Relating to Judges of the ECHR (DH-SYSC-JC)* (2024), www.coe.int/en/web/human-rights-intergovernmental-cooperation/judges-of-the-european-court-of-human-rights-dh-sysc-jc.

[135] Council of Europe, *Terms of Reference of the Drafting Group on Issues Relating to Judges of the European Court of Human Rights (DH-SYSC-JC)*, Doc. No. CDDH(2022)R96 Add.3, at 2 (July 11, 2022), https://rm.coe.int/steering-committee-for-human-rights-cddh-terms-of-reference-of-the-dra/1680a6f01f.

[136] Interview with a Senior CoE delegate, *supra* note 48; Council of Europe, *Draft Report on Issues Related to Judges of the European Court of Human Rights*, Doc. No. DH-SYSC-JC(2023)01, at 19 (Apr. 20, 2023), https://rm.coe.int/draft-report-on-issues-related-to-judges-of-the-european-court-of-huma/1680aafcd8.

[137] Interview with a Senior CoE delegate, *supra* note 48.

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> [T]he Drafting Group will also discuss safeguards for the preservation of the Judges' independence and impartiality. This is a particularly sensitive topic, since there is an ongoing campaign in the media and in the PACE which aims to delegitimize the Court and to detract from the credibility of its judgments by employing … a smear campaign against individual Judges … [the implication of which] is that anyone who has defended human rights in their pre-Court career is unfit to sit as a Judge … [as] "not impartial." This kind of argument does not merit discussion in an academic journal.[138]

His article in the *Review*—"the first journal devoted exclusively" to the ECHR, publishing "information of interest to scholars and practitioners"[139]—seems intended to reassure the human rights community by signaling that the controversy was contained: "The Committee of Ministers has so far been very clear in its rejection of these allegations."[140] Another interviewee expressed the same confidence: "We have a definitive response to this situation. We are aware of this attack and prepared to fight it."[141]

Buttressing these rebuttals, a leading international law jurist who has advocated a World Court of Human Rights modeled on the ECtHR[142] called the ECLJ's report "political advocacy," yet himself asserted that judges' links to NGOs serve as a "balancing act" against state bias: "a proper study on the NGO links of judges or other independent human rights experts should be based on the hypothesis that in many cases it should be seen as a welcome balancing act, more a demonstration of independence than a sign of its absence … Self-recusal will probably suffice."[143]

The desire to mitigate the ECLJ's impact on the official narrative helps explain why "interference" with the Drafting Group's work was so punctiliously cautioned against. In the words of the Chair, "It is important that the Drafting Group's deliberations … are not twisted by the authors of this campaign for their goals, namely by claiming … the Council of Europe has found it necessary to set up a working group to deal with their allegations."[144]

But containment can falter. What if member states were to increase their nonexecution of judgments as an act of resistance? It was a worry that the

[138] Hans-Jörg Behrens, *The Status of Judges: Intergovernmental Work on the Evaluation of Issues Relating to the Judges of the ECHR*, 4 Eur. Convention H.R. L. Rev. 241, 247 (2023).

[139] Eur. Convention on Hum. Rts. L. Rev., https://brill.com/view/journals/eclr/eclr-overview.xml.

[140] Behrens, *supra* note 138, at 247.

[141] Interview with a Senior CoE delegate, *supra* note 48.

[142] Behrens, *supra* note 138, at 247; Martin Scheinin, *Towards a World Court of Human Rights: Research Report within the Framework of the Swiss Initiative to Commemorate the 60th Anniversary of the Universal Declaration of Human Rights* (June 22, 2009), www.eui.eu/documents/departmentscentres/academyofeuropeanlaw/coursematerialshr/hr2009/scheinin/scheininclassreading1.pdf.

[143] Martin Scheinin, *NGOs and ECtHR Judges: A Clarification*, EJIL:Talk! (Mar. 13, 2020), www.ejiltalk.org/ngos-and-ecthr-judges-a-clarification/.

[144] Behrens, *supra* note 138, at 248.

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Chair exhibited by warning that the ECLJ might "delegitimize the Court and detract from the credibility of its judgments"[145] to the point that a member state might seek review of a past judgment anew, a remedy the ECLJ also called for.[146] Member states could also, as Russia did in 2017, threaten to suspend their financial contributions to the CoE, which the CoE would surely feel in times of economic stress.

The Drafting Group recommitted to shielding the Court's reputation by citing existing ethics and recusal rules. Its public documents aligned with the CM's position on responding to queries from delegates to PACE in June 2021: there is "no reason for departing" from "established principles," and "the issue of judges' recusal remains within the remit of the Court."[147] The thrust was to protect the status quo, with the Group's final report to the CDDH publicly calling for no changes.

Before its second meeting in January 2023, the Drafting Group published a compilation of comments on a draft report by two co-*rapporteurs* from the CoE's staff of career civil servants, addressing issues related to ECtHR judges and including feedback from participants. Like CoE comitology generally, the Group's reports omitted contentious details; nonetheless, the records show multiple insertions and deletions proposed by the Italian and Polish delegates and the Holy See Observer (i.e., Puppinck, acting independently of the ECLJ).[148] Italy called for "early prior disclosure of relationships with NGOs, prominent political figures and relevant economic interests," arguing that this was necessary for a proper assessment of "the high moral character requirement" at the preliminary stages of the selection procedure. The Holy See Observer, who lacks voting rights—"they have nothing without [member state] support"[149]—and is already "a bit too demonized,"[150] urged greater transparency, specifically a "declaration of interests similar to those produced by judges of the CJEU or members of PACE" from candidates, the public identification of judge-*rapporteurs*, and provisions for the right of parties to request recusal of judges by name—the norm in "ordinary judicial practice." He expressed concern about the "relatively low number of candidates with long judicial experience at a high

[145] *Id.* at 247.

[146] Benoît Dumoulin, *Gregor Puppinck: "*Le Monde *passe à l'offensive non contre ce rapport, mais contre son auteur, avec les bonnes vieilles méthodes staliniennes"* [*Gregor Puppinck: "*Le Monde *Goes on the Offensive not against this Report, but against Its Author, with Good Old Stalinist Methods"*], L'INCORRECT (Mar. 3, 2020), https://lincorrect.org/le-monde-puppinck-soros-cedh/.

[147] Council of Europe, *supra* note 136, at 19, 20, 27.

[148] Council of Europe, *Compilation of Comments on the Draft Report on Issues Related to Judges of the European Court of Human Rights*, Doc. No. DH-SYSC-JC(2023)01, at 4 (2023), https://rm.coe.int/compilation-of-comments-on-the-draft-report-on-issues-related-to-judge/1680ab4410 (Italy); *id.* at 27 (Holy See Observer); *id.* at 18, 21, 23 (Poland).

[149] Interview with a Senior CoE delegate, *supra* note 48.

[150] Zoom interview with senior CoE official, *supra* note 65.

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national court." Reform would likely alter the Court's composition by increasing the proportion of apex national career judges and thus affect the Court's jurisprudence insofar as prior judicial experience correlates with judicial restraint, whereas private practice and human rights work incline one to judicial activism.[151] The Polish delegate to the Drafting Group noted the queries from PACE delegates prompted by the ECLJ report and stated that Rule 28 "lacks the requisite precision and guarantees offered to the parties in national court proceedings." The trend of these comments "pushing in the direction of the ECLJ" rattled certain Group members, one of whom claimed it "certainly looked like a coordinated attack."[152]

Poland's main concerns, however, arose from the Law and Justice Party's disaffection with PACE's rejection of all its judicial nominees and with the conduct of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights. The Panel is a seven-member body composed of members of the highest national courts and international courts (including the ECtHR) and other jurists of recognized competence, appointed by the CM after consultation with the Court President.[153] This composition likely ties the Panel to the human rights community. Poland's complaints concerned specifically "the potential conflict of interest between the members of the Panel and the candidates" and its "evolving practice" of assessing "the national selection procedures" themselves, an expansion of its original mandate "to assess the candidates on their own merit" that was not "envisaged" when the Panel was created in 2010.

Questions of how the Panel originated, how its members are selected in practice, and how it actually decides which candidates to reject deserve an article of their own. Here it suffices to say that the evidence implies it is neither the member states nor PACE but the Panel—including Strasbourg Court judges—that functions as the de facto gatekeeper of candidates. In practice, with just one exception, PACE has deferred to its own Committee on the Election of Judges—itself dominated by lawyers[154]—"instructed" to reject a list when the Advisory Panel was not duly consulted by the member states.[155] Member states are not bound to follow the Panel, but the realities of politics mean that their incentives and attention are focused on national rather than supranational politics. The Panel thus emerges as the prime

[151] Kanstantsin Dzehtsiarou & Alex Schwartz, *Electing Team Strasbourg: Professional Diversity on the European Court of Human Rights and Why It Matters*, 21 GER. L.J. 621, 640 (2020).

[152] Interview with a Senior CoE delegate, *supra* note 48.

[153] Council of Europe, Comm. Ministers, Res. CM/Res(2010)26 on the Establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights (Nov. 10, 2010), https://search.coe.int/cm?i=09125948801e6331.

[154] Zoom interview with a former candidate for election as ECtHR judge (Apr. 4, 2026).

[155] Council of Europe, *Draft Report on Issues Related to Judges of the European Court of Human Rights*, Doc. No. DH-SYSC-JC(2023)01REV, at 4, 5, 16 (May 17, 2023), https://rm.coe.int/draft-report-on-issues-related-to-judges-of-the-european-court-of-huma/1680ab44c2.

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mover among CoE organs in the judicial selection process. This and existing institutional arrangements give the liberal human rights community the upper hand in their organization and focus on the singular agenda, wittingly or unwittingly, of expanding the Court's power and, with it, their own.

To contain the disagreements, the Drafting Group postponed discussion at its third meeting in May 2023, referring some of these contentious issues upward to the CDDH, which was due to meet the following month, for guidance on "incompatible activities" such as conflicts of interest.[156] On that occasion, the Group Chair reported its "reflections on the role of the Panel," its procedure, and its "dialogue with the Assembly." A discussion ensued in the CDDH, during which:

> [Italy's or Poland's] delegation shared its reflections, previously presented to and discussed in the Group, on certain issues of judges' independence and impartiality relating to possible conflicts of interests and the mechanism of recusal … Several other delegations shared their views, in one case describing an example of the recusal system in practice, but considered that there is no systemic problem of conflicts of interest … and cautioned against addressing this question in a way that could raise unjustified suspicions. While they would fall within the autonomy of the Court, improvements to Rule 28 of the Rules of Court and the regulation of the mechanism of recusal, may be beneficial.[157]

The Chair of the CDDH concurred, noting:

> [N]o interest [in] making significant changes in the system of national selection of candidates and election of judges … The CDDH did not wish to address the issue of the independence and impartiality of judges of the Court in such a way as to create the false impression that there is a widespread problem of judicial conflicts of interest. This does not mean that the Court's communication with the parties on aspects of recusal of judges could not be improved.[158]

An "exchange of views" with ECtHR President Síofra O'Leary ensued. The CDDH's summary report of that meeting contains no mention of the dissenters' more contentious concerns—requiring disclosure of interests prior to appointment, the workings of the Panel, or conflicts of interest arising between its delegates and judicial candidates—implying that these issues were effectively muted.

The Chair of the Drafting Group later informed its members of his "recent meeting with the President of the Court [who] informed him … that the

[156] Council of Europe, *Meeting Report of the 3rd Meeting (15–17 May 2023)*, Doc. No. DH-SYSC-JC(2023)R3 (May 2023), https://rm.coe.int/meeting-report-3rd-meeting-dh-sysc-jc/1680ab444e.

[157] Council of Europe, *Report of the 98th Meeting of the Steering Committee for Human Rights (CDDH)* (CDDH(2023)R98, at 5–6 (June 27–30, 2023), https://rm.coe.int/steering-committee-for-human-rights-cddh-report-98th-meeting-strasbour/1680ac01ce.

[158] *Id*. at 149.

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Plenary Court had decided to revise Rule 28 … and that States Parties to the Convention would be consulted."[159] Echoing this position, the Drafting Group's Final Report to the CDDH in November 2024 was ultimately deemed "rather modest."[160] It made no mention of vetting candidates' moral caliber or requiring disclosure of potentially prejudicial interests at the point of selection.

Italy's and Poland's disaffection had surfaced in the Drafting Group, yet consensus prevailed, with not a peep of protest recorded in the final report: "Italy handed in a document at some stage, and that was that; we still had a consensus report in the end."[161] The CM "took note" of the Report and instructed its Rapporteur Group on Human Rights to draft a declaration on protecting judges from threats and recognizing their service.[162]

The Drafting Group maintained internal consensus by acting confidentially, bolstered by institutional features fostering *esprit de corps*, such as the career stability of tenured civil servants, which gives them an advantage over member state delegates. Supranational civil servants spend their careers in Strasbourg, some in senior leadership roles; they naturally support their own institution. Civil servants delegated from national capitals develop loyalty to Strasbourg, too, although their domestic ties moderate their allegiance, comparatively.[163] A frail individual ego merges into an invincible collective identity. This is what is meant by "going native" in Strasbourg or Brussels.[164]

Elected officeholders, by contrast, are transient: "they change so often," one interviewee noted of delegates to PACE. Meanwhile, career officials meet regularly and bargain strategically regardless of which member state presides. This epistemic community knows how to compromise as needed. Its leading jurists approach "troublemakers" thus: "'Look, X, I know this is rubbish from your government, so what should we do?' This usually leaves everyone satisfied."[165] Even the Polish and Italian delegates took positions that "were never very hard," buoyed by a sense of belonging to the community, i.e., "the people here who know what they're doing."[166] Their own

[159] Council of Europe, *Meeting Report of the 3rd Meeting (15–17 May 2023)*, DH-SYSC-JC(2023)R3, at 2 (May 17, 2023), https://rm.coe.int/meeting-report-3rd-meeting-dh-sysc-jc/1680ab444e.

[160] Zoom interview with senior CoE official, *supra* note 65.

[161] Interview with a Senior CoE delegate, *supra* note 48.

[162] *Issues Relating to Judges of the European Court of Human Rights (DH-SYSC-JC)*, Council of Europe, www.coe.int/en/web/human-rights-intergovernmental-cooperation/judges-of-the-european-court-of-human-rights-dh-sysc-jc (last visited Sept. 14, 2026).

[163] *See* Parau, *supra* note 12.

[164] Filippa Chatzistavrou, *The Permanent Representatives to the EU: Going Native in the European Field?*, *in* The Field of Eurocracy: Mapping EU Actors and Professionals 61 (Didier Georgakakis & Jay Rowell eds., 2013); Jarle Trondal, *Re-Socializing Civil Servants: The Transformative Powers of EU Institutions*, 39 Acta Politica 5 (2004).

[165] Interview with a Senior CoE delegate, *supra* note 48.

[166] *Id.*

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phraseology implies a distinction between themselves and the member states that delegated them. Chosen as agents of national interests, they subtly circumvent their principals' instructions: an interviewee explains, "There's always the choice of just not being in the negotiating room at the right moment or not taking part in the session," a skill one develops upon going native.[167]

The Polish and Italian delegates were "playing for the audience at home," meaning those in Italy or Poland who had expressed concern about the Court. It was part of "the game that was going on."[168] They managed their ministries' expectations while tacitly aligning with CoE incumbents and their elite self-interest in preserving their highly useful, transnational, networked solidarity: "'Yes, we're with you, here are our proposals,' they say to their ministries." Or else they circularly blame each other.[169] They "tick the boxes" for the sake of the folks back home, then wait for the periodic tempests in teapots to blow over until "nobody cares about the end product."[170]

Abductive inference might conclude that delegates representing national interests manipulate their governments, diverting them from the real decisionmaking, just as comitology theory predicts.[171] The acid test of member states' determination to carry out meaningful reform would have been a critical Final Report; a "sharp statement against the Court" would be "quite a thing," but putting on a show of being "active in the process and trying to do something about it, it is quite another."[172] The CoE comitology can use its institutional nodality to veto any inroad that risks bringing the Court or its officials into disrepute. The sheer scale of the containment efforts masks a deeper vulnerability, however; Strasbourg's influence relies on its reputation and moral standing.

Whether the Court is really "the crown jewel of the world's most advanced international system for protecting civil and political liberties"[173] is a matter for future research. A contrarian trend would undermine the human rights community's collective power over the member states, whom it depends on to enforce its judgments. Both international lawyers and domestic interlocutors contribute to this power by transmitting reputational signals. Reputational sanctions against noncompliant member states hinge on the ECtHR's credibility as an impartial, authoritative interpreter

[167] Zoom interview with senior CoE official, *supra* note 65.
[168] Interview with a Senior CoE delegate, *supra* note 48.
[169] *Id.*
[170] *Id.*
[171] Wessels, *supra* note 18.
[172] Interview with a Senior CoE delegate, *supra* note 48.
[173] Laurence R. Helfer & Erik Voeten, *Walking Back Human Rights in Europe?*, 31 Eur. J. Int'l L. 797, 825 (2020).

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of the Convention.[174] Public scandal emboldens member states to hold the Court in contempt, regardless of how little the public or national officials know about its internal processes. Enforcement is hard graft; member states have a spotty record of compliance,[175] and "national veto players have not yet been domesticated."[176]

The greater risk is arousing organized opposition. It is already emerging, as witness the May 2025 open letter from nine European heads of government calling for a rebalancing of the Court's interpretation of the Convention to give member states greater latitude, particularly in the expulsion of foreign nationals convicted of crimes.[177] As scholars defending the Court observed in 2020:

> [T]he European consensus on stronger judicial independence balanced by weaker forms of accountability and public confidence in European judges might not be eternal when populism threatens the future of rights universalism and ignores the need for reputation … beyond the occasional criticism concerning interpretations by the Court deemed questionable, there is a growing structural criticism that challenges its very existence … the European Court of Human Rights is under attack from all sides.[178]

All these motives combined—collective identification with the Court and Convention system, defense of their elite reputation, and what Nietzsche termed the all-too-human "will to power" (expressed as a collective drive to grow, assert, and enhance institutional authority and influence)[179]—explain why the comitology members close ranks. To defend the ECtHR is to defend themselves.

4.4. The Court's internal reforms let off the pressure

As a rule, judges seek to maximize their discretion,[180] but under pressure, the Strasbourg Court found its interest in avoiding controversy best served

[174] Shai Dothan, *Social Networks and the Impact of the European Court of Human Rights*, 3 Eur. L. Open 418, 419–30 (2024).

[175] Leach, *supra* note 74.

[176] Jörg Luther, *Judicial Independence and Accountability in the Council of Europe and the European Court of Human Rights*, 1 Eur. Y.B. Const. L. 197, 218 (2019).

[177] Open Letter on the Interpretation of the European Convention on Human Rights (May 22, 2025), www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf.

[178] Caroline Boiteux-Picheral, Céline Husson-Rochcongar, & Mustapha Afroukh, *Developments in the Case Law of the European Court of Human Rights: First Half of 2020*, Revue des droits et libertés fondamentaux, No. 75 (2020), https://revuedlf.com/cedh/evolutions-de-la-jurisprudence-de-la-cour-europeenne-des-droits-de-lhomme-premier-semestre-2020/.

[179] Friedrich Nietzsche, The Will to Power (Walter Kaufmann ed. & trans., R.J. Hollingdale trans., Vintage Books, 1968) (1901).

[180] Richard A. Posner, *What Do Judges and Justices Maximize? (The Same Things Everyone Else Does)* (Coase-Sandor Inst. for Law & Econ. Working Paper No. 15, 1993), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1616&context=law_and_economics.

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by conceding on the matter of recusal. This response was facilitated by the collaborative communication between PACE leadership, the CoE comitology, and the Court. Their representatives regularly engage in dialogue and visit one another.[181] Any issue may be raised, and the President "will take it back to the Court."[182] Reciprocity and consensus-building let institutional leaders know "what the other institution thinks," so that concerns "have a way of being heard," even if the final decision rests with the Court.[183]

The Court began revising its conflict-of-interest rules a year after the ECLJ report appeared and while the Drafting Group was still meeting. Its 2008 Resolution on Judicial Ethics was revised in June 2021. It further revised its Rules of Court in March and December 2023. These revisions and the comitology proceedings occurred simultaneously after the ECLJ published its report; nothing else contemporaneous was observed that could explain why these proceedings were triggered at this particular moment.

The 2021 Resolution marks a turning point. Section I on judicial conduct was elaborated for greater clarity. It now reads, "A judge shall exercise particular caution in all contact with parties and other persons associated with pending cases,"[184] replacing the more general "judges shall be independent of all external authority or influence."[185] Section II on Independence defines the concept more precisely, stating that judges "shall be independent of any public national or international institution, body or authority or any private entity" and "shall keep themselves free from undue influence of any kind, whether external or internal, direct or indirect,"[186] sharpening the earlier formula that judges "shall be independent of all external authority or influence."[187] Section X provides that the new rules "shall apply to ad hoc judges,"[188] a firmer formula than "the principles set forth above apply to the members of the Court and, where relevant, to former judges and ad hoc judges."[189]

A new Practice Direction of March 2023 on third-party interventions requires applicants to divulge "enough information about: (a) the would-be third party; (b) any links between that would-be third party and any of the

[181] Zoom interview with senior CoE official, *supra* note 65.
[182] *Id.*
[183] *Id.*
[184] Eur. Ct. Hum. Rts., Resolution on Judicial Ethics (June 21, 2021), www.echr.coe.int/documents/d/echr/Resolution_Judicial_Ethics_ENG [hereinafter Eur. Ct. Hum. Rts., Resolution on Judicial Ethics 2021].
[185] Eur. Ct. Hum. Rts., Resolution on Judicial Ethics (June 23, 2008) [hereinafter Eur. Ct. Hum. Rts., Resolution on Judicial Ethics 2008].
[186] *See* Eur. Ct. Hum. Rts., Resolution on Judicial Ethics 2021, *supra* note 184.
[187] *See* Eur. Ct. Hum. Rts., Resolution on Judicial Ethics 2008, *supra* note 185.
[188] *See* Eur. Ct. Hum. Rts., Resolution on Judicial Ethics 2021, *supra* note 184.
[189] *See* Eur. Ct. Hum. Rts., Resolution on Judicial Ethics 2008, *supra* note 185.

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parties to the case; [and] (c) the reasons why the would-be third party wishes to intervene."[190]

Rule 28 on recusal was revised in December 2023 and retitled "Inability to Sit and Recusal."[191] Previously, a judge's discretionary decision to recuse required only notification to the Court President.[192] Revised rule 28 requires recusal, stating: "A judge has the duty to sit in all cases assigned, unless precluded by the conditions listed in paragraph 2, at which point participation is prohibited."[193] A new paragraph 4 enables parties to request a judge's recusal. Recusal is thus no longer solely within the judge's discretion. A new Practice Direction on recusal was also issued to guide litigants on how to raise impartiality concerns.[194]

The duty to recuse imposes no significant burden on experienced judges; the human rights community compromised to this limited extent. The Court's reputation emerged unscathed, with the issue of recusal having "largely gone away."[195] Even so, the CoE comitology never conceded the main prize that might have allowed alteration of the composition of the Court: reform of selection procedures and scrutiny of the Advisory Panel's pivotal role.

5. Conclusion

How did the agency of one small conservative Christian NGO—a norm entrepreneur dissatisfied with the Strasbourg status quo and viewed with suspicion there—lead to something as substantial as procedural reforms at the ECtHR? A policy outcome is hardly ever explained by a single cause. We have sought to disentangle causation and identify a nexus of interacting causes. First, one NGO triggered the process by being the first to assemble and publicize evidence of former network ties between judges or Court staff and private interests. The initiative did not originate with the democratically elected populist or conservative nationalist politicians featured in this article; they were reacting to norm-entrepreneurial agency, which they expressly invoked in their initiatives. The populist *Zeitgeist* in Europe may have enabled and amplified the ECLJ's influence, but without its norm

[190] Eur. Ct. Hum. Rts., Practice Directions, ¶ 27 (Mar. 13, 2023), www.echr.coe.int/documents/d/echr/pd_third_party_intervention_eng-pdf.

[191] Eur. Ct. Hum. Rts., Rules of Court, r. 28 (Jan. 22, 2024) (governing recusal), www.echr.coe.int/documents/d/echr/library-2024-roc-eng. Rule 28 has formed part of the Rules of Court since 1959 and was amended in 2002, 2004, and 2006. *See further* Luther, *supra* note 176.

[192] Eur. Ct. Hum. Rts., Rules of Court (Aug. 1, 2021), www.echr.coe.int/documents/d/echr/Library_2021_RoC_ENG.

[193] *Id.*

[194] Eur. Ct. Hum. Rts., Practice Direction: Recusal of Judges (Jan. 22, 2024), www.echr.coe.int/documents/d/echr/pd_recusal_judges_eng.

[195] Interview with a Senior CoE delegate, *supra* note 48.

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entrepreneurship catalyzing the agency of other key actors, the chain of events that followed might not have occurred when it did, or at all. This was a necessary but insufficient condition.

The ECLJ's agency would most likely have failed on its own without, second, the intervention of member state governments and elected representatives or their delegates in national and supranational political bodies, who nudged CoE comitology and the Court toward reform. These veto players intervened out of their own disaffection with supranational governance, which also has an ideological dimension, given their networking with one another, but not with their opponents, in certain transatlantic forums. Yet these actors were but a small minority of member states and elected representatives belonging to political parties, some of whom may be mainstream in their own countries but not at the supranational level. Their agency alone might have accomplished nothing had it not been, third, for the community of human rights advocates represented by leaders of CM comitology. Galvanized by their identification with the CoE and Convention system and their desire to protect their own and the Court's reputations, these actors contained the incipient public scandal caused by the ECLJ report before it could escalate into a political crisis. Such a crisis might have moved enough veto players to intervene collectively, posing a risk to the CoE in its current form—as in fact occurred in 2025.[196] Instead, they discreetly nudged the Court toward concessions. This causal nexus of agency and structure produced observable if limited reforms.

This partial success demonstrates a small but real, possibly growing conservative Christian influence in Strasbourg that knows how to exploit institutional veto points to contest the dominant human rights ideology. Unlike the cooperative Catholic NGOs of the 1950s,[197] the new NGOs' confrontational approach poses a risk to Strasbourg's incumbents. Their success in prevailing over the ECtHR's organic bylaws demonstrates that they can exert enough leverage to set agendas. Future research might examine the conditions under which these counter-elites are willing to bear reputational and political costs that may or may not yield reforms at the supranational level. Their failure to overhaul judicial selection procedures, however, demonstrates that Christian conservatives have a long way to go before displacing the incumbents. This attests to the resilience of transnationally networked liberal actors who dominate many nonmajoritarian institutions in Europe today.

Our findings also invite inquiry into insider–outsider dynamics elsewhere and their repercussions for global institutions. This remains an undertheorized area awaiting further study of evolving contests between rival transnational networks.

[196] *See* Open Letter on the Interpretation of the European Convention on Human Rights, *supra* note 177.

[197] de Riedmatten, *supra* note 21.

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