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The Human Rights Policies of the EU: Political Nature, Existing Incoherencies and Institutional Bifurcation

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Abstract

The history of human rights in the context of the European Union (EU) is complex and riddled with contradictions. This was convincingly demonstrated by leading experts in the area who wrote copiously about the existence of elements of institutional bifurcation in the organisation's policies in the area. Although the EU is an important global actor in the field of human rights and had a positive impact on a number of human rights issues, a number of incoherencies and inconsistencies in its policies continue to have a detrimental impact on its political actions on the world stage. By examining the traditional explanations for these existing deficiencies in the political and institutional system of the organisation through a document analysis, this article sketches their problematic overall impact and argues, concurring to the above-mentioned experts, that these incoherencies resulted in a bifurcated human rights regime produced by the problematic elements of the EU's own political identity. It also considers the impact of the Union's enlargement on its human rights policies and the potential challenges this phenomenon poses in political and social terms.

Keywords: EU, human rights, institutional bifurcation, incoherence, EU enlargement
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Introduction: the historical context and the literature on the EU's human rights policies

The history of human rights in the context of the European Union (EU) is complex and riddled with contradictions. This was convincingly demonstrated by leading experts in the area such as Philip Alston et al. (1999), Andrew Williams (2004) and Jan Wouters et al. (2020) who wrote copiously about the existence of institutional bifurcation and "irony" in the organisation's policies in the area. Such a statement is not to deny that the EU is an important global human rights actor and contributed greatly to a stronger human rights protection internationally, but simply to underline that a number of incoherencies and inconsistencies in its policies continue to afflict its political actions in the field of human rights. This is related to the existence of a central paradox that still plagues the organisation's policies: on the one hand, it uses a strong normative rhetoric and sets high international standards, while on the other it often acts in a way inconsistent with its own prescriptions (Alston and Weiler, 1998: 661; cf. Wouters et al., 2020). The causes for this phenomenon are numerous and far-reaching, some of them touching directly upon issues related to EU's own nature. But before exploring these issues, a short historical overview of the EU's development as a human rights actor is necessary.

The institutional structures preceding the EU – the European Communities – initially did not have a human rights dimension since they were, in their essence, economic organisations with only moderate political aspirations. However, with the gradual development of these structures and with their undeniable economic success,[2] the integration of the European continent came to spill over in the domain of the political. This process was, by no means, uncontroversial and unproblematic but it eventually led to successive reforms, which resulted in the creation of the EU with the Treaty of Maastricht in 1993, and the introduction of human rights as a founding principle. The constitutional and institutional overhauls of the EU's system were further pursued with the Treaties of Amsterdam and Nice which introduced and consolidated a sanction mechanism in Art. 7 for a "serious and persistent breach" of human rights principles by the EU's member states. Despite these improvements, serious criticism continued to be levelled against the EU human rights policies and the Treaty of Lisbon tried to enhance the consistency and the coherence of the union's actions by "mainstreaming" human rights in all of its policies. However, as Gráinne de Búrca (2011) suggests in a seminal article, this traditional account of the gradual emergence of the EU as a human rights actor does not mean that ideas for a strong EU regime in this area were not present before. It merely shows how human rights became embedded in the structure of the EU as a both political principle and a legal norm and how this development led to the progress of rights promotion worldwide but also to the multiple deficiencies that remained and still beset the EU's system in this field. Therefore, this article re-examines

[2] Economic historians such as Jean Fourastié (1979) called this period "Les Trente Glorieuses" in homage of the significant progress achieved.

important, timely and somewhat neglected questions: what are the causes for bifurcated human rights regime in the EU and how such policies came to be?

The article aims to accomplish this by presenting and reviewing the basic problems related to the EU's internal and external human rights actions, which is the main goal of the text and proceeds as follows. In the next section the main objective of the text is to elucidate the main types of incoherence identified in the academic literature and it is demonstrated how they are manifested, as it is argued that the EU did not fully succeed to tackle these challenges. Next, the text aims to trace the scope of the existing problems by examining the discrepancies in the definitions, the scrutiny measures and the enforcement mechanisms employed by the EU internally and externally. In the fourth and the fifth sections the text analyses respectively the roots of the examined phenomena and the negative effects they have on the EU's credibility at home and abroad. Finally, before concluding, the article discusses the impact that the enlargement process exerted on EU's development and consolidation as a human rights promoter and its relation to the problem of incoherence.

Research methodology

This article uses research methods that fall within the qualitative research tradition. It is based mainly on a documents analysis (Wesley, 2010; Wach and Ward, 2013) that evaluates the existing theoretical and empirical arguments in the existing academic literature on the EU's actions in the area of human rights. It also considers some policy documents (such as expert opinions) produced by the EU's institutions and bodies. That said, the article represents mainly a conceptual and theoretical effort to explore the EU's human rights regime, to re-assess the claims made in the specialised literature on the topic and to rehash the principal issues concerning the promotion of human rights in, and by, the EU. In doing this, it aims to revisit the arguments made in seminal texts on the subject, such as Alston et al. (1999) and Williams (2004) analyses, along with the exploration of more contemporary works tackling the deficiencies of the EU's role as a global human rights actor (Isa et al., 2018; Wouters et al., 2020).

In terms of particular methodological tools, the article draws on several approaches such as process tracing, institutional and normative analysis. For instance, in order to elucidate the causal mechanisms of the depicted dysfunctionalities in the EU's human rights regime, the text traces the causal links and arrows that connect several entities through various activities, as it is typical for a process tracing methodology (Beach and Pedersen, 2019). This means that in the text it is considered how various institutional tools produce a certain result in terms of political action in the human rights area. Additionally, the text explores, by the application of insights drawn from methodologies examining the role of institutions and norms, how they develop, evolve, and in this way also predetermine particular type of policies through the non-material pressure they might generate.

Overall, this methodological approach allows for examining and assessing how the specific actions of the organisation were constructed and makes possible to unearth deeper

meanings, identities and norms that were instrumental for generating the respective policies. It also provides the researcher with the opportunity to trace various belief systems and internal motivations that contributed to the devising a bifurcated human rights (Williams, 2004) regime and to explain the underlying causes for its occurrence. All of this allows for the creation of a dynamic and immersive methodological framework that fits well the research question this article is aiming to address.

The problems: existing types of incoherencies and inconsistencies

The critiques of the EU's human rights regime are diverse and concern several different types of incoherence. They are related to issues pertaining to the EU's functioning, its diverse political and economic considerations and could be divided in several main categories. Apart from the institutional and technical problems that contribute to a certain policy inconsistency, the researchers in the field most often define them as three types – internal/internal, internal/external and external/external (Isa et al., 2018; Wouters et al., 2020).[3]

In the first category is usually included the inability of the EU to impose any substantial human rights standard to itself. This incoherence has two dimensions – the EU's failure to apply such measures in regard to its member states and to its own institutions. On the first issue, the EU is generally blamed for the weakness of its sanction mechanism in Article 7 TEU and the difficulties it experiences in punishing democratic backsliding, rising authoritarianism and the related violations of human rights. Although there are different ideas to reinforce the existing system by linking it to the granting of EU funds (Bayer, 2019), the dominant view continues to be one according to which the member states are the best custodians of their internal human rights standards. This view, however, continues to be challenged by specialised organisations which criticize the failure of the EU to support additionally CSOs and human rights defenders and thus to reinforce additionally the protection of fundamental rights domestically through an increased funding (see for instance the activities of National Disability Rights Network).

The second dimension of the problem – the fact that the EU does not hold its own institutions to the level of scrutiny that it requires from others – demonstrates another hypocritical trait of the EU's rights engagement, consisting in the fact that its institutional structures are not monitored in their daily work. The troubles related to the accession of the Union to the European Convention on Human Rights (ECHR) is often brought up in the discussion of this problem, as it evidences well the EU's reluctance to enhance the internal supervision of human rights in regards to its own composing parts. This is not to say that there are no internal rulebooks and statutes controlling the workings of the EU bodies or that there are massive violations of human rights carried out by these structures. It is just

[3] For detailed accounts on these developments, see "The search for coherence in the EU's human rights policy and discourse" by Dolores M. Taramundi in Isa et al. (2018).

to underline the belief held inside the EU that its internal condition is somehow inherently superior to that outside the organisation.

The next, internal/external critique, points to the probably most rehashed accusation levelled against the EU's human rights policies – the accusation that the Union behaves differently as regards human rights in its internal and external policies.[4] According to this argument, the EU is not capable and willing to apply rigorous human rights standards internally, while at the same time it requires such an application by its trading partners, development and accession countries etc. Furthermore, as Dolores Taramundi (2018: 78) points out, the EU often insists for the signature and the ratification of international documents by third countries, while it does not require its own member states to follow the same procedure consistently. Thus, a policy-making distinction is created between the internal and the external sphere under the different names of "fundamental rights" and "human rights", one of the notions stemming from the development in the EU of the concept of "European citizenship" and the other from the separate inception of its external action. This false division "leads to the undesirable possibility of creating a two-tier system (…) which would undermine the principles of universality and indivisibility of human rights" (Lewis, 2014: 81).

Finally, the external/external criticism depicts the tendency of the EU to apply "double standards" in its external action (Isa et al., 2018). This relates to the fact that the EU may be more willing to impose strong human rights requirements to a smaller and economically weaker "development" countries than to an important economic or investment partner such as the USA and China, for instance. In the case of this type of incoherence, the EU gives predominance to other geopolitical, strategic, economic, etc. interests at the expense of its proclaimed commitment to a set of universal values. In other words, a principled and ethical foreign policy is sacrificed for the achievement of other important material interests such as the conclusion of trade deals, investment strategies and other international agreements. Although some defenders of this approach might argue from a culturally relativist perspective that similar circumstantial differentiation is needed, such a foreign policy is not generally consistent with core EU values.

The scope: the parameters of the EU's human rights policy incoherence

In order to demonstrate fully the phenomenon of incoherence, a more thorough examination of the extent to which it exists in the EU's human rights policies is necessary. The distinct approaches in the EU's actions in the area appear on multiple levels and could be traced in several different ways. The most obvious one is to outline and examine the differences in the main stages of the EU's policy activities: its definition, scrutiny and enforcement measures.

[4] See the seminal early account by Alston et al. (1999), the later contribution to this debate by Andrew Williams (2004) and post-Lisbon criticism by the edited volume by Isa et al. (2018).

As regards the discrepancies between the definitions of human rights in EU's internal and the external affairs, the problem becomes evident when the sources of law and the conceptions used in the two spheres are examined. In its external relations, the organisation uses broad definitions by making references to international documents and instruments. It freely draws an inspiration from the UN legal heritage and from the work of other international bodies. Internally, however, rights are defined quite differently. The sources of definition used are more limited and relate predominantly to European documents, some of which, as the EU's Charter of Fundamental Rights, produced by the EU itself. Additionally, in the internal sphere the references to international instruments are only indirect and are not employed unless they are common for all the EU member states. Furthermore, the EU makes a distinction in the definition of the so-called third generation of human rights or collective rights (de Witte, 2000). In its external affairs, it embraces this notion and applies a similar approach in its development and accession policies, for example. This is not the case inside the organisation where some member states did not ratify documents such as the Framework Convention for Protection of National Minorities, which constitutes a requirement as regards candidate countries. This represents a stark contrast between the internal and the external EU approach and produces a major definitional inconsistency in the very nature of its rights regime. Therefore, as Andrew Williams (2004: 94) puts it, it turns out that the "concept of universalism is an ambiguous construct in the Community's hands". Put simply, the EU does not apply the same principles and standards when it comes to protecting human rights internally and externally. A relativist practice is established when the criteria and standards to be applied in these areas are determined.

The scope of incoherence in the area of EU human rights policies is also revealed in the exploration of the scrutiny measures undertaken inside and outside the EU. On a close look, the case of the EU's external action demonstrates that its approach is strongly interventionist and wide-ranging in scope. The EU possesses a well-developed and intricate system of monitoring for rights issues, which is an inevitable political necessity, since the scrutiny is a prerequisite for the granting of funds in development and accession countries. Hence, the measures undertaken for the supervision in third countries and the process of reporting on different issues are extensive and substantial in political terms (Williams, 2004: 95). On the other hand, internally the situation is starkly different. Firstly, the EU does not scrutinize in a sufficient way the actions of its own institutions (Ibid.). Although the EU's Court of Justice (ECJ), the European Ombudsman and the European Parliament (EP) each participate in a certain type of internal supervision, they do not perform a systematic surveillance dedicated specifically on the impact that the EU institutions have on rights issues and do not dispose with the capacities required by such an important and demanding task. Concerning the EU's member states, there are similar mechanisms for the purposes of internal observation such as reports by the EP and Council of the EU's Annual Reports, plus structures such as the Fundamental Rights Agency (FRA), but these instruments lack both the respective power and resources necessary to match the breadth of the external system of scrutiny (Williams, 2004). Their findings tend to be vague and patchy and their work

depends heavily on information provided by national authorities, which prevents them from supervising effectively the member states (cf. HRDN 2018). Moreover, the Council of the EU, for example, focuses in its reports intentionally and almost entirely on the external relations of the EU and avoids mentioning specific member states, which consolidates, instead of rectifying the existing incoherence regarding the approach adopted externally (Williams, 2004). Therefore, it is not too risky to conclude that the EU seems to lack "any systematic approach to the collection of information on human rights" (Cassese et al., 1998: 4). This and other distinctions demonstrate the divergences between the internal and the external spheres.

A third facet of the policy incoherence could be discovered in the consideration of the differences in enforcing human rights internally and in the EU's external action. In the Union's internal affairs dominant stays the view that a pro-active action in this sensitive high-politics area would be an "invitation to a wholesale destruction of the juridical boundaries between the Community and its Member states" (Alston and Weiler, 1998: 678). Thus, the problem is mainly considered through the lenses of competences and jurisdiction and the EU is generally considered to have only limited powers to act in national cases of human rights violations. This is exemplified by the general (self-)restriction of the ECJ to intervene in domestic affairs related to such issues, which results in a "mismatch" between the wide-ranging EU policy activities and the modest number of human rights related cases (von Bogdany, 2000: 1321). The above-mentioned Art. 7 and its inability to provide a rigorous surveillance mechanism evidences the same type of limited capacity for internal enforcement, since it is politically difficult to apply and does not represent an instrument for constant and systematic observation (Williams, 2004: 109). As a result, as more recent investigations of these problems suggest, "major components of a comprehensive and all-embracing fundamental rights policy are still absent" in the political and institutional system of the EU (Kalaitzaki, 2020: 44). This situation presupposes a relatively weak enforcement role for the EU internally.

In its foreign policy, however, the EU does not hesitate to enforce its policies in a considerably more serious manner (Williams, 2004). The case of the Union's development policy shows that the entity is ready to cut funding for countries that do not comply with the human rights measures in bilateral trade agreements (Ibid.; see also ISHR, 2023). The same holds true for the enlargement countries where the non-compliance with the Copenhagen criteria, which include human rights, might lead not only to a halt of the pre-accession economic aid but also to a temporary freeze of the accession process itself (Ibid.). Additionally, the EU continues to prioritize security and economy in its immigration policies, as searing critiques of the organisation's recent Pact on Migration and Asylum suggest (Sunderland, 2023). All these factors demonstrate that the numerous inconsistencies of the EU human rights practice permeate also its enforcement dimension.

The causes: explaining incoherence and bifurcation

The explanations for the incoherence of the EU human rights policy in the academic literature dedicated on the subject are multiple. Scholars usually analyse them as a problem related to the legal division of competences between the EU and its member states, the relationship of the EU with the Council of Europe as regards human rights, the differing rights situations in and outside the EU and the elements of Realpolitik in the EU's foreign policy.[5] However, the problem seems to go beyond simple legal and institutional explanations. As Williams (2004) points out, it goes deeper, straight into EU's what he depicts as misconceived identity and the exclusionary policy it allows. But in order to present the full complexity of this identitarian argument, first have to be considered the orthodox explanations for the incoherence of the EU's rights regime.

The first and probably the most common factor pointed out in discussions on the inconsistencies of the EU behaviour in the area of human rights is its institutional structure. As Alston and Weiler (1998) point out in their classical monograph, the simultaneous inception of a number of policies in the union, coupled with its enlargement and institutional evolution, puts a problem for its human rights action. More precisely, the EU lacked a coherent institutional structure for dealing with these issues, which produced problems in terms of both conceptual clarity and questions related to the practical assuming of responsibility. This situation was addressed with a number of reforms and the Treaty of Lisbon streamlined the EU's internal organisation in order to deal with some of the most serious institutional flaws. However, the resolution of a number of institutional issues is not enough to overcome in a meaningful way the existing incoherence, since it goes deeper in the conception of the existing policies.

The next argument related to the explanation of the existing problems with EU's human rights policies is related to the legal competences assumed by the EC, and later the EU, or granted to it. While externally the powers of the organisation gradually grew because of the numerous benefits that this approach brought, internally "explicit and implicit competence has been deliberately kept under tight control" (Williams, 2004: 114). In this way, an important incoherence of the EU emerged and the organisation developed rather significant powers externally but kept only limited impact on its member states. The main reason behind this development was the resistance by member states against the potential control that the EU could exercise over them.

Another traditional explanation for the existing state of the EU human rights acquis is the Union's development in relation to the Council of Europe (CoE) as another organisation dedicated solely to the protection of human rights. As this argument goes, the EU's role as a human rights actor has been intentionally limited in order not to interfere, and probably undermine, the work of CoE by compromising its well-developed system of protection. Since the EU is an organisation driven also by different economic and political interests, its

[5] For a detailed discussion of these arguments, see Williams (2004: Chapter 5).

strong interference in the internal affairs of its member states might result in "dilution of standards" and create a confusion in already well-established rules (Williams, 2004). Such a prospect would be highly undesirable by decision-makers and other actors who realise the significant achievements of the CoE system and therefore, via a kind of legal reverence, the EU's role in internal human rights affairs was restricted while the external action was free of similar constraints.

In the explanations of incoherence between the EU's internal and external policies often are pointed out the distinct conditions and standards as regards human rights inside and outside the EU. In advancing this claim, Paul Craig and Gráinne de Búrca (2011: 355) contend that the EU's member states have already higher standards in comparison to third countries. In other words, the violations of rights outside the EU are of completely different scope in comparison to those inside the entity. Therefore, the already scarce resources should not be wasted on expensive mechanisms for observing problematic developments inside the EU. Thus, following such a reasoning, a policy distinction between internal and external action is produced according to which an internal supervision is just not necessary due to the absence of serious abuses. It would be redundant and not really relevant in the context of the EU. Outside of the Union, however, cases of grave violations are frequent in many countries and there are occurrences of genocide, crimes against humanity, etc. The existing abuses are of a significant scope and often systematic as phenomena in the respective countries. In sum, this argument depicts a bleak picture of poorly respected human rights standards outside the EU, which is in stark contrast with an internal reality of well-promoted principles. This obliges the EU to put human rights clauses in its trade agreements, to monitor more closely problematic countries, and to enforce its legislation externally, i.e. justifies a more interventionist EU approach (Williams, 2004).

Finally, the incoherence of the EU's human rights policies is often linked to the so-called "Realpolitik argument" (Williams, 2004: 124). By this term, in general it is claimed that the development of a strong internal EU human rights policy would effectively deprive its member states of a very sensitive competence touching directly upon national sovereignty and such a move is politically unacceptable for the majority of the EU countries. This argument has several dimensions, as Williams demonstrates. First, it is related to a widespread national resistance of what is perceived to be a constant centralization of power in Brussels which disregards the principle of subsidiarity. The second aspect of this explanation is the claim that the member states are already exposed to rigorous scrutiny by a number of European and international bodies and there is no need for the development of internal EU competence in this area. The third dimension of the Realpolitik argument contends that EU criticism of a particular member state could be politically unpalatable and hence unacceptable. Externally, however, the situation is different. The costs of such interference by the EU are smaller and therefore a central distinction between internal and external approaches has been developed.

Despite the importance of these attempts to explain the condition of incoherence in the EU's human rights policies, they fail both individually and collectively, to explain the

deeper causes for this state of affairs. The arguments about the different legal bases from which the internal and the external policies are stemming describe the actual situation but are not able to explain *why* this divergence emerged. The claim that the incoherence is the result of a "legal reverence" regarding the ECHR system also does not provide a convincing explanation because the case of the EU accession countries shows that that the ECHR is not sufficient and should be complemented by stricter EU human rights legislation in the area. Thirdly, the explanation of incoherence with the existence of higher human rights standards inside the EU is also insufficient because the situation internally is far from perfect and seems to be worsening with the rise of far-right parties, the existing systemic racism, the spread of social populist movements. Finally, the Realpolitik argument is equally not able to account for the full scope of incoherence, since it does not provide explanation of why the EU rhetorically presents itself as a global promoter of human rights, on the one hand, and acts in a way that undermines this position, on the other.

Therefore, it is necessary to look beyond the classical attempts to be explained the phenomenon of incoherence. The analysis of these arguments shows that the causes for the existing problems go deeper than the suggested legal and political approaches and are related to the initial conception of human rights in the EU through the formation of exclusionary identity of the polity. More specifically, the retroactive adoption of the human rights discourse as a founding principle of the EU, without constitutionalizing and thus clarifying the content of the term, provided the conditions not only for inconsistency, but also for a complete bifurcation between the internal and external approach of the EU (Williams, 2004). This allowed for the development of an EU identity that sought to give external face to the organisation without making the same claims internally where member states were left to deal with human rights issues (Lyons, 1998: 170). In other words, two separate narratives evolved which made possible the distinction between internal and external spheres and thus gave rise to different systems of human rights protection in terms of standards, scrutiny measures and enforcement mechanisms.

The results: tracing the impact of incoherence

The significant extent of the above-outlined incoherence that unfortunately still plagues the EU's action in the field of human rights has been present in various research agendas and was explored in significant depth. The problem has been considered from different angles and concrete cases of inconsistencies in the EU's approach have been analysed. Academic inquiries proved that the issue is rather one of bifurcation of human rights narratives in the EU's internal and external affairs than a mere inconsistency because of dysfunctional policy processes, an institutional flaw or a bad implementation (Williams, 2004). But still, a larger question emerges in the discussion of different strategies for overcoming some of the existing deficiencies. As Williams (2004: 196) puts it simply, why should the EU "care about bifurcation"? After all, is not the described condition the usual state reality, especially the one we could empirically observe in other major powers?

This section addresses this question and argues that the EU needs to care about this phenomenon because it has grave and damaging consequences for the organisation in at least three different ways. First, it severely undermines its international standing as a global actor. By treating differently its own member states and institutions than third countries, it erodes its credibility on the world stage and thus undercuts its rhetorically proclaimed goals (Clapham, 1998: 642). This signalises a "failure of resolve on an issue of principle", which gives a sense of hypocrisy to all of the EU's partners (Williams, 2004: 197). Thus, the EU's ability to project its ideas and influence internationally is severely strained. Put differently, the consistent disregard of human rights issues due to other considerations has long-lasting negative effects on well-established international relationships. This condition is perfectly captured by Weiler and Fries (1999: 149) who insist that the EU "is extremely apt at preaching democracy to others when it, itself, continues to suffer from serious democratic deficiencies and insists that all newcomers adhere to the ECHR when it, itself, refuses to do the same" (see also Wouters et al., 2020).

The existing incoherence also hampers the level of protection inside the EU, which results into discriminatory practises, damaged rule of law, inability to tackle occurrences of xenophobia, racism, homophobia, etc. (cf. Williams 2004). The weaknesses of the existing sanction mechanism contained in Art. 7 of TEU and some other initiatives leave the EU with still very limited capabilities to counter internal rule of law and human rights abuses while this is not the case in the EU's external action.[6] This situation has adverse effects on the work of human rights defenders, NGOs and other organisations dealing with human rights problems since it leaves them often without support in dealing with vital problems. Hence not only external to the EU actors, but also the population of its member states becomes ever more sceptical about the organisation's willingness to match its fine words with concrete actions when it comes to human rights. Thus, an increasing number of people are brought to think that the ethical side of many issues could be left behind due to the pursuit of other political goals (Williams, 2004: 198; Wouters et al., 2020).

Finally, the incoherent policy approaches of the EU produce a sense of irony, meaning the far-reaching mismatch between the EU's rhetoric self-depiction as a "force for good" in world politics and its actual political actions (cf. Manners, 2002). This allows for the embedding and the continuation of deeply rooted and outright discrimination in EU's policies. Its institutional narrative, as established, creates a distinction between a problematic external reality in need of constant scrutiny and an internal one presented as a "beacon of virtue" (Williams, 2004: 201). This runs counter to the principles of universality and indivisibility of human rights, which are textually promoted by the organisation. All of this undermines the stance of the EU as a moral high ground and a "normative power" (Manners, 2002) in regards to human rights in general. As Martti Koskenniemi (1999: 100) points out, "a political

[6] The difficulty of the EU to tackle internal problems in terms of both rule of law and human rights has been well evidenced by the process of democratic backsliding in Hungary and Poland, but also in Romania and most of the countries in the EU's Eastern dimension. For an overview see "Upholding the rule of law in times of crisis: (ineffective) procedures under Article 7 TEU and possible solutions" by Jaworek (2018).

culture that officially insists that rights are foundational… but in practice constantly finds they are not, becomes a culture of bad faith." In this way, it becomes ever more difficult for the Union to achieve its goals, both internally and externally.

Impact of enlargement on the EU human rights policies

The accession of new countries to the EU, particularly from Eastern Europe, changed in important ways the EU's human rights policies. It brought inside the organisation new constitutional traditions and enriched its legal and political diversity but at the same time, in some cases, led to the accession of countries with serious problems in the area of minority protection and bad human rights records in general. These developments led to the realisation that a total revamp of the internal system of protection is necessary and resulted in the establishment of the concept of "fundamental rights" and the appropriate institutional structures necessary for observing the developments in the area. However, the existing incoherence in EU's rights regime often remained and was even deepened by the newly arising problems with which the EU was confronted. All of this contributed to the creation and the consolidation of the Art. 7 sanction mechanism that became ever more necessary in view of the increased number of EU member states and human rights violations, respectively.

Furthermore, the EU's enlargement process led to the introduction of ever more diverse political and economic interests in the organisation. It expanded its geo-strategic positioning, especially in Eastern Europe, which influenced indirectly the EU's human rights policies by changing the perceptions of its interests and obligations. Its increased political weight led to the development of its international actorness in an ever more increasing number of policies. Hence, through the development of its acquis, it also had to assume a more significant role in the area of human rights, which corresponds to its external presence and influence in international politics. However, this development had also a potentially negative impact on the EU's global human rights role. It is true that the organisation extended its actions in the area, both quantitatively and qualitatively, but at the same time, the above-mentioned multiplication of disparate national and other interests in the organisation stimulated the described processes of incoherence and bifurcation of standards and principles applied internally and externally. If the EU is considered as a polity driven by a multiplicity of diverse interests and not as a "human rights organisation" *per se,* this development seems only normal. Nevertheless, it is hardly a positive development for the global promotion of human rights.

Another aspect of the impact exerted by the EU's eastern enlargement could be discerned if the EU's identity as a promoter of human rights and its impact on the organisation's foreign policy are examined. The enlargement with a number of fragile democracies led the EU to develop and consolidate its primary law with regard to human rights principles and to embed their respective norms further in its identity, which, in turn, affects its foreign policy more broadly (Sedelmeier, 2003). Put simply, the mere practice of enlarging, coupled with the

accompanying discourses, made out of the EU an important human rights actor by forcing it to adopt a stronger rhetoric and often actions on these issues. In this way, the enlargement process, especially the fifth wave, due to its size, had a constitutive role on what the EU represents in world politics and what it should aspire to become. This phenomenon, however, could be related only to the crystallization of EU's *external* identity – the enlargement process reinforced the EU's human rights standards externally, but once a country is admitted in the organisation, less stringent rules are applied. This means that the enlargement did not have the same positive impact on the internal human rights monitoring, as it did in EU's external action.

Conclusion

The process of economic and political integration in Western Europe and its main product – the EU – led to the establishment of high international standards in the field of human rights and to the progressive enhancement of their scrutiny and enforcement in Europe and abroad. The EU also played a significant global role in the fight against human rights abuses, contributed to the resolution of international crises and was an active participant in efforts to combat discrimination, racism and xenophobia. The criticism in this overview of its human rights policies does not aim to deny this record.

Rather, its purpose is to underline the still existing deficiencies, incoherencies and dysfunctionalities, of whatever nature, in the EU's approach to the field of human rights. These problems encompass flaws in the EU's institutional arrangements, the hypocritical distinction between the human rights situation inside and outside the organisation, the application of double standards in its external action, and issues related to the big questions of the EU's own identity and nature. The alleged defects of the EU's policies are significant in scope, which is evident from the examination of distinctions existing in terms of the definitions employed, the measures for scrutiny and the EU's enforcement mechanism in the area. The causes for this condition of an incoherent, or rather bifurcated, policy activity are multiple. They include purely legal explanations of the division of competences in the EU's founding treaties, the EU's relationship with the ECHR system and the superior human rights standards inside the EU, but also the consideration of the problem through the EU's misconceived identity.

This situation has significant effects on EU's human rights policies and damaging consequences for its international standing and actorness in the field. On the one hand, it leaves a sense of bitter disappointment among parts of its own population that feel the lack of a meaningful EU support in cases of different types of discrimination, while externally the organisation staunchly defends higher standards. On the other hand, the incoherence of the EU policy regime undermines the international credibility of the organisation by showing to the world that the EU does not necessarily espouse the high rhetoric it emanates, especially when other political and economic interests are at stake. These elements of institutional bifurcation in the EU's human rights policy infuse the organisation's global role with a

certain sense of irony (Williams, 2004). Therefore, if it is to develop as a meaningful human rights organisation, this situation has to be urgently addressed.

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