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CEDI Working Paper No. 2

Petra Guasti, University of Mainz

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Paper No. 9

Institut für Politikwissenschaft

JG|U JOHANNES GUTENBERG UNIVERSITÄT MAINZ

Mainz Papers on International and European Politics (MPIEP)
ISSN: 2193-6684

Edited by the Chair of International Relations, University of Mainz

Johannes Gutenberg University of Mainz
Department of Political Science
Chair of International Relations

Georg Forster-Building
D-55099 Mainz
Phone: +49 (0)6131-39-21051
Fax: +49 (0)6131-39-27109
E-mail: mpiep@uni-mainz.de
http://international.politics.uni-mainz.de/

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Guasti, Petra and Niemann, Arne (2015): Lost in Translation: Human and Minority Rights Discourses of the European Union. Joint Working Paper Series of Mainz Papers on International and European Politics (MPIEP) No. 9 and Jean Monnet Centre of Excellence "EU in Global Dialogue" (CEDI) Working Paper Series No. 2. Mainz: Chair of International Relations, Johannes Gutenberg University.

Petra Guasti is researcher and lecturer at the University of Mainz
guasti@uni-mainz.de
Niemann, Arne is Professor of International Politics at the University of Mainz and Co-Director of the Jean Monnet Centre of Excellence "EU in Global Dialogue" (CEDI)
arne.niemann@uni-mainz.de

Lost in Translation: Human and Minority Rights Discourses of the European Union and Russia

Petra Guasti and Arne Niemann

Abstract

The legal documents drafted in April 2013 to enable the EU's accession to the European Charter of Human Rights represented a further confirmation of the unprecedented victory of democracy and human rights in Europe. However, with the outbreak and evolution of the armed conflict in Eastern Ukraine in 2014, the victory of democracy and human rights in Europe is less straightforward. The conflict highlights the clash over the understanding of human rights between the two major political powers on the European continent – the EU and Russia. This article complements quantitative data on human rights violations with qualitative discourse analysis of human rights frames. The highly contentious case of the Russian-speaking minority in Latvia is selected as a test case. Presented analysis shows that the Russian-speaking minority in Latvia is lost in translation – caught between the Latvian notion of non-citizens as a legally justified statelessness and the Russian notion of compatriots, victims of aggressive Western expansion. Neither the Latvian nor the Russian official discourse has recognized the Russian-speaking minority as an autonomous entity; rather for both the minority issue is instrumentalized for domestic and foreign policy reasons - identity is instrumentalized and securitized. The EU, whose hands are tied, is largely absent. The relationship between the actors is polarized and antagonistic, and as the situation of Ukraine shows, has further potential for violence.

Keywords: human rights, minority rights, Russia, Latvia, European Union (EU).

1. Introduction

In April 2013, legal documents were drafted and the EU's accession to the European Charter of Human Rights (ECHR) was official. It was a further confirmation of the unprecedented victory of democracy and human rights in the post WWI and WWII era in Europe. However, from February 2014 onwards with the outbreak and evolution of the armed conflict in Eastern Ukraine, the victory of democracy and human rights in Europe, as well as peaceful coexistence, cooperation and integration in post-war Europe is less straightforward. The conflict in Eastern Ukraine, in which both sides speak of violations of human rights and justify their action with the need to protect human rights and minorities, highlights the clash over understanding of human rights between the two major political powers on the European continent – the EU and Russia.

The current situation exemplifies an interesting paradox: although Europe overall became more democratic and friendlier towards human rights especially in the last two decades, the number of human rights violations has continued to grow significantly. This fact hints at the limits of quantitative approaches to the study of human rights. This article proposes to complement the data on human rights violations with qualitative discourse analysis of human rights frames. As a test case we choose the highly contentious case of the Russian-speaking minority in Latvia.

The article proceeds as follows. First, we discuss the literature on international human rights regimes and their efficacy. Then we introduce the European Court of Human Rights (ECtHR) and the literature surrounding it. Next, we briefly present quantitative data of the human rights (HR) violations in 47 European countries between 1995 and 2012. Thereafter, we propose qualitative methodology to analyse existing HR frames. Finally, we conclude with the study's implications, and discuss avenues for future research.

2. Human Rights Regimes

Human rights regimes are institutions that hold governments accountable for their domestic and internal activities. According to Moravcsik (2000), human rights regimes are not enforced by interstate action, as governments rarely challenge one another, but exist (1) as a result of states' aims to enhance the credibility of their domestic policies by binding themselves to international institutions and (2) as a way of reinforcing domestic changes in recently democratized countries. According to Risse and Sikkink (1999, 2013) human rights define the category of liberal democratic states, and thus contribute to the identity formation of states. Belonging to a human rights regime is akin to belonging to a club of advanced states.

The Central and Eastern European countries were quick to accept the obligations of ECHR membership, including Protocol 11, which permits the ECtHR to require all new signatories to accept compulsory jurisdiction. In general, democratising states join international organisations more frequently than other countries, especially those where existing members are democratic. Joining such organisations reduces the prospect of reverting back to an authoritarian regime (cf. Moravcsik 2000, Mansfield and Pevehouse 2006).

As Hathaway (2002) notes, international human rights treaties fulfil a dual role: their ratification enhances the credibility of a state and can also relieve external pressure for HR protection. However, because monitoring mechanisms are generally weak, there are few incentives for governments to implement policies stemming from these commitments, which can lead the ratifying country to change its practices less than expected. Liberal democracies have a normative commitment to the aspirations embedded in the treaties, but it is more difficult for less democratic countries to conceal the dissonance between expressive and actual behaviour. The ratification of an international human rights treaty creates an opportunity for a norm entrepreneur to provoke gradual internalization of the norms embodied in the treaty (2002: 2016-2017, cf. Koh 1997).

While the importance of human rights in the international arena has grown (Dai 2013), the enforcement of such rights is still difficult and human rights regimes remain rather state centric and are often weak (Forsythe 2000). Still, human rights norms and treaties, while difficult to enforce, have had an influence on the behaviour of states. Intermediate positions include Hafner-Burton and Tsutsui who demonstrate that human rights treaties can only make a difference under certain conditions – the absence of severe repression, relative stability and an active civil society - and that the worst abusers of human rights fail to reform even upon accession to a human rights treaty (2007: 422-423).

The scholarly literature also suggests that international courts (ICs) are an important part of international human rights regimes. For example, ICs are more independent than domestic courts because they allow access to private litigants and compulsory jurisdiction. Moreover, they can introduce additional checks to domestic jurisdiction by establishing international legal regimes (Alter 2006). Among all international courts, the ECtHR is the most powerful international enforcement mechanism; it is also the only court whose decisions are respected by its member states (Huneeus 2013: 5). In the next section, we investigate the ECtHR.

3. The European Court of Human Rights

The European Court of Human Rights (ECtHR) is a supranational court headquartered in Strasbourg, France. It was first established under the auspices of the Council of Europe in 1959, and sprang from Article 19 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Since the ECHR came into force in 1953, it has aimed to define and protect a clear set of civil and political rights for all persons within the Council of Europe member-states, regardless of whether those persons are refugees, immigrants, stateless persons, or citizens (Moravcsik 2000: 218). The Court is responsible for monitoring compliance and respect for the human rights of 800 million Europeans across the 47 Council of Europe member-states that have ratified the Convention (ECHR 2013).

The ECtHR is highly respected by the member states of the Council of Europe, embedded in the legal framework of its member states, and gradually increasing in prominence. The judgments of the Court are binding in the states concerned and have been effective in causing governments to revise their legislation and administrative practices (Nigro 2010). The number of cases has skyrocketed during the last two decades. The increased number of applications is also partially due to the 1990s expansion in the number of states acceding to the ECHR. Between 1959 and 1998, for instance, the ECtHR ruled on a total of 837 applications. However, the number increased to 177 judgements in 1999, 695 judgements in 2000, and 888 judgements in 2001. From 2005 to 2012, the number of judgements delivered by the ECtHR was consistently over 1,000 (ECHR 2013).

Looking at the ratio between applications and judgements, the actual number of judgements is very small. According to Janis et al. (2008: 28), ECtHR received more than 261,000 applications between 1998 and 2005, of which 6,535 (2.5%) were admitted (cf. Scribner and Slagter 2009). In the 83% of cases in which the court delivered a judgement, the ECtHR found at least one violation of the European Convention on Human Rights. With respect to the subject matter of these cases, nearly half of the judgements concerned violations of Article 6 on the right to a fair trial. In addition, 55% of violations infringed on the foregoing Article 6 or Article 1 of the protocol concerning the protection of property. About 13% of the violations tackled Article 2 on the right to life or Article 3 on the prohibition of torture and otherwise inhuman treatment (ECHR 2013).

The literature on the ECtHR generally casts it in a very positive light. State compliance with the Court's judgements is nearly as consistent as that of domestic courts. Numerous empirical examples substantiate this statement. For instance, Moravcsik (2000: 256) shows that when the Court found the United Kingdom's exclusion of homosexuals in the armed forces as a violation of the ECHR, the government complied with the verdict. Van der Vet (2012) lists cases of the disappearances of Chechens presented to the ECtHR by human rights lawyers and NGOs to highlight how international organizations or groups can successfully litigate on behalf of individuals.

In short, the literature (Cichowski 2006, Meehan 2009) concurs that the Court has made significant contributions to the enhancement of human rights in Europe by changing democratic opportunities for individuals at both the domestic and supranational level. The comparison presented below between EU and non-EU countries shows that in terms of judgements as well as actual violations, this argument holds for the EU countries, which represent the majority of cases.

Table 1. The number of judgements at the European Court of Human Rights 1995-2000-2005-2010-2012 - EU 28 (without Cyprus)

	1995	2000	2005	2010	2012
Austria	14	21	22	19	29
Belgium	1	2	14	4	6
Bulgaria	0	3	23	81	64
Croatia	0	0	26	21	29
Czech Republic	0	4	33	11	15
Denmark	0	6	3	0	1
Estonia	0	1	4	2	4
Finland	3	8	13	17	5
France	12	73	60	42	29
Germany	1	3	16	36	23
Greece	3	19	105	56	56
Hungary	0	1	17	21	26
Ireland	1	3	3	2	2
Italy	29	396	79	98	63
Latvia	0	0	1	4	14
Lithuania	0	5	2	8	12
Luxembourg	1	1	1	7	2
Malta	0	1	2	4	3
Netherlands	5	6	10	4	7
Poland	0	19	49	107	74
Portugal	1	20	10	19	23
Romania	0	3	33	143	79
Slovakia	0	6	29	39	23
Slovenia	0	2	1	6	22
Spain	2	3	0	13	10
Sweden	0	1	7	6	15
United Kingdom	8	27	18	21	24

Source: ECtHR, authors' calculation

Table 1 shows differences among the EU countries, which remain significant over time, even when the population size is considered. Comparing the old and the new EU member states, considering the length of EU membership as an exposure to democratic values of human rights, also yields only limited results. Rather, as the recent analysis of Guasti et al. (2014) indicates, the difference is best explained by the presence of economic capital and civil society. In this sense, the ECHR human rights regime represents an opportunity structure, which can be utilized when actors (such as civil society) are present and have resources to bring the case to the Court.

Table 2 below shows that in particular Russia, Turkey, Ukraine and Moldova face numerous judgements regarding violations of human rights. However, unlike in the EU 28 countries, the civil society and resources for human rights promotion and protection mostly stem from international sources. The domestic resources for human rights protection in all four countries are utilized rather selectively (protection of children rights) and in some cases rights of selected social groups are questioned and undermined by discriminatory legislation.

Table 2. The number of judgements at the European Court of Human Rights 1995-2000-2005-2010-2012 - non-EU countries

	1995	2000	2005	2010	2012
Albania	0	0	1	7	7
Andorra	0	0	0	0	2
Armenia	0	0	0	5	16
Azerbaijan	0	0	0	16	17
Georgia	0	0	3	4	12
Iceland	0	2	0	1	2
Lichtenstein	0	0	1	1	0
Moldova	0	0	14	28	27
Monaco	0	0	0	0	0
Montenegro	0	0	0	2	6
Norway	0	1	0	1	3
Russia	0	0	83	217	134
San Marino	0	2	1	0	1
Serbia	0	0	0	9	12
Switzerland	0	5	5	11	8
FRY Republic of Macedonia	0	0	4	15	7
Turkey	3	39	290	278	123
Ukraine	0	0	120	109	71
Total non-EU	3	49	522	704	448
Total ECtHR	84	683	1103	1495	1108
Percentage	**3,6**	**7,2**	**47,3**	**47,1**	**40,4**

Source: ECtHR, authors' calculations

The results of quantitative analysis presented here thus yield limited findings – the EU sees itself as a long term promoter of human rights (Commission 2001), on the whole however, the direct role of the EU in minority rights protection and human rights is limited, as these are not part of the acquis communautaire, and the protection of national minorities has not yet become a binding rule of the EU. Yet, with the Lisbon Treaty the protection of minorities became an explicit founding principle of the EU. In particular in the areas of external relations, neighbourhood policy and enlargement, protection of national minorities is one of the main criteria for cooperation with the EU and for potential accession.

Within Eastern Enlargement the success of the EU in the field of human rights also varied: in her study of EU conditionality and minority rights, Sasse (2005: 18) showed that the biggest issue in translating the Copenhagen criterion into policy was the vagueness with which the EU norm of minority rights was defined, as well as the limited formal leverage. This led domestic elites in accession countries to a strategic game of limited compliance in order to limit the costs. The degree of compliance with the EU norm was directly related to the degree with which the political elites were able to mobilize ethnic majorities in the name of national interests.

4. Russian Speaking Minorities in the Baltics

In the EU accession process and thereafter, this was the case in Hungary, Slovakia and Latvia. The case of Latvia is especially interesting as the Latvian Russian-speaking ethnic minority represents almost 30% of the population and simultaneously most members of this minority do not hold citizen status (Zepa 2003: 86-88). This represents a significant disadvantage for minority rights promotion as political mobilization as a tool can only have limited results. Furthermore, the majority identities in Latvia as well as the identity of Russian minorities are both in flux - over the course of two decades these shifted significantly and became more polarized (Gruzina 2011, Laitin 1998).

Over time the discrepancy in interpretation and evaluation of the USSR past between the majority Latvian population and the Russian-speaking minority grew and resulted in the inability of the large portion of Russian speakers to form substantial bonds with their country of residence. The disillusionment with their own fragile situation and social standing led to a considerable decrease of sense of belonging to Latvia among the Russian-speaking majority and to a significant increase in identification with Russia as external homeland (Gruzina 2011: 418-422).

Furthermore, the situation of Russian speakers in Latvia (and similarly in the other two Baltic countries) is considered perilous by international human rights organisations. In 2011 the Field Report of Refugees International identified that the Latvian political elites and majority society consider the issues of statelessness in Latvia as resolved by giving the Russian speakers the (second rate) official status of non-citizens, banned from voting in both parliamentary and municipal elections. The only option for the 360,000 non-citizens is to undergo the process of naturalization. At the core of this process is the knowledge of the Latvian language. The process itself has been regarded as extremely difficult, but according to the Latvian state it meets the EU standard. Between 1995 and 2011 more than 130,000 members of the Russian-speaking minority naturalized. International organizations such as UN and OBSE have social integration of minorities in the Baltic countries on their agendas. Still more than 340,000 Latvian Russian speakers remain caught in the legal trap of statelessness.

Given the historical ties and geographical proximity of Russia, the issue of the Russian minority in the Baltic countries is highly contentious and possibly explosive both within domestic and international politics (Morozov 2002). So much so, that in the late summer of 2014 US President Barack Obama felt the need to visit both Estonia and Latvia and guarantee that in case of attack the Baltic countries will receive support from fellow NATO members.

The fear in the Baltic countries is that minority issues will be instrumentalized by Russia to provide justification for intervention (on humanitarian grounds). This fear is closely tied to the view of the Russian speakers as internal enemies and allies of Russia. This is further strengthened by the dominant discourse of romantic nationalism emphasizing the values of nationhood and

internal consolidation, as well as securitization of contemporary Russian foreign policy (Morozov 2002: 425-426).

In his 2012 speech Vladimir Putin strongly criticized the issues of statelessness in both Latvia and Estonia and hinted towards strong Russian resolve to change the status quo:

> *"We are determined to ensure that Latvian and Estonian authorities follow the numerous recommendations of reputable international organizations on observing generally accepted rights of ethnic minorities." (Putin 2012)*

Furthermore, Putin framed the issue as a failure of Western dominated human rights agenda, which he framed as highly politicized, biased, and instrumentalized:

> *"Russia has been the target of biased and aggressive criticism that, at times, exceeds all limits. When we are given constructive criticism, we welcome it and are ready to learn from it. But when we are subjected, again and again, to blanket criticisms in a persistent effort to influence our citizens, their attitudes, and our domestic affairs, it becomes clear that these attacks are not rooted in moral and democratic values." (Putin 2012)*

This calls for more research focusing on the interaction between the EU and Russia, and their mutual perceptions vis-à-vis human rights and minority protection issues. Both the EU and Russia are committed to minority rights protection and bound by international law in the framework of the United Nations, the Council of Europe (ECHR) and the Organization for Security and Co-operation in Europe. However as the statements of Vladimir Putin above demonstrate, there is a strong mismatch in the framing of human rights and minority protection between Russia and the EU. In order to address this issue, in the next part we develop an analytical framework for the study of human rights and minority protection discourses.

5. Conceptualizing and Operationalizing Political Discourse of Human Rights and Minority Protection

We understand discourse as a "cognitive world constructed by actors", and as a "discursive process" (Chilton 2004). Furthermore, discourses are not only constructed by actors in a discursive process, but discourse also defines the discursive context of an actor (Diez 1999: 603), and as such represents a constraint on actors' agency. Therefore, discourses are created and shaped by actors, but also structure and define actors (see also Schukkink and Niemann 2012).

In this sense, discourse analysis of key EU, Latvian and Russian documents regarding human rights issues related to the Russian-speaking minority in Latvia will reveal the explicit and implicit ontological entities of the human rights discourse in Europe today. Crucial for this analysis is not only the defining and enabling power of a discourse, but also its power to exclude and dominate actors, categories, and justifications by withholding recognition and endorsement of them (Milliken 1999: 229). The analysis will attempt to identify the political categories forming the basis of the European human rights order.

Following Dryzek and Berejikian, discourse is seen as "representing a coherent point of view", and analysing political discourses thus requires de-construction of analysed texts into components of the discourse and its re-construction into a coherent image utilising the following elements of discourse: ontology, agency, motives, and relations. Based on Dryzek and Berejikan (1993), in Table 3 we propose deconstructing the four vital elements of public discourse on human rights and minority protection. First, ontology will deconstruct the basic categories of self- and the other, and its discursive and historical fundament. Second, the issue of agency will ascertain the degree to which members of the minority in question are recognized as autonomous subjects, or as objects that are acted upon. Third, the motives for the position of all three actors are to be identified and categorised (along the lines of material self-interests, identities and civic virtues). Fourth, relationships among actors ought to be scrutinized to identify the forms of their interaction.

Table 3. Construction of minority protection and human rights

Category	Dryzek/Berejiki 1993, Liebert 2006, Guasti 2014	Latvia	Russia	EU
1. Ontology	Construction of entities that are recognized as existing; Identity constitutive discourses, discursive strategies; Representations of social actors in discourse; Personifications	How does Latvia discursively constitute itself and others vis-à-vis protection of minorities and human rights?	How does Russia discursively constitute itself and others vis-à-vis protection of minorities and human rights?	How does EU discursively constitute itself and others vis-à-vis protection of minorities and human rights?
2. Agency	The degrees of agency assigned to these entities	How autonomous does Latvia see itself vis-à-vis minorities?	How autonomous does Russia see itself vis-à-vis minorities?	EU's degree of autonomy
3. Motives	Material self-interests; Identities; Civic virtues	Why is the issue of minority protection and human rights salient?	Why is the issue of minority protection and human rights salient?	Why is the issue of minority protection and human rights salient?
4. Relationships	Relations between self and other; Implicit and explicit forms of interaction	What types of interaction are envisaged and with whom?	What types of interaction are envisaged and with whom?	What types of interaction are envisaged and with whom?

Source: Adapted from Liebert 2006, Dryzek/Berejikian 1993, Guasti et al. 2014

6. Preliminary Conclusions

This study opens up a new chapter in the literature on the study of human rights and minority protection. Our preliminary analysis shows that in terms of ontology and agency the Russian-speaking minority in Latvia is lost in translation – caught between the Latvian notion of non-citizens as a legally justified statelessness and the Russian notion of compatriots, i.e. victims of aggressive Western expansion (a ticking bomb ready to be instrumentalized by Moscow). The key identity constitutive discourse is the interpretation of a joint past – exclusion from the shared national suffering by Latvia during the Soviet Era and incorporation in the glorified Soviet past by Russia.

In terms of agency, however, neither the Latvian nor the Russian official discourse recognized the Russian-speaking minority as an autonomous entity. Rather for both the minority issue is instrumentalized for domestic and foreign policy reasons: as mobilization of ethnic

majority for the national interest on the part of the Latvian political elite and as an indicator of failure of the Western human rights agenda by Russia.

The motives of both Latvian and Russian political elites are similar - identity is instrumentalized and securitized. The EU, whose hands are tied vis-à-vis human rights and minority issues in the member states, is largely absent. While Latvian elites claim compliance with EU law and are willing to adapt (simplifying naturalization procedures), Russia does not recognize the EU as a relevant actor. The relationship between the actors is polarized and antagonistic, and as the case of Ukraine shows, has further potential for violence.

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