Chapter 3

Human Rights Conditionality in the EU’s Newly Concluded Association Agreements with the Eastern Partners

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ABSTRACT

The recent association agreements with Ukraine, Moldova and Georgia are meant to replace the existing Partnership and Cooperation Agreements between the EU and the three Eastern Partners. Their purpose is to deepen the political and economic ties between the contracting parties and to gradually integrate these countries into the legal and economic system of the EU. This Chapter aims to provide a critical discussion of human rights conditionality under these agreements and ascertain whether the ‘human rights’ clauses included in these agreements are a simple matter of ‘legal inflation’, mere political commitments, or whether the EU managed to design legally enforceable provisions and has provided a common ground to be followed in this field. It is concluded that even though the agreements provide a more robust institutional set-up and new multi-level instruments exist to ensure the implementation and reporting of human rights commitments, in essence the agreements are still focused on trade-related issues and the practical operation of human rights clauses is questionable.
I. INTRODUCTION

On 27 June 2014 the EU has signed association agreements (AAs) with three of its Eastern Partners: Ukraine, Moldova and Georgia. The AAs are meant to replace the existing Partnership and Cooperation Agreements (PCAs) that governed the bilateral relationships between the EU and the three Eastern Partners. Their main purpose is to deepen the political and economic ties between the contracting parties and to gradually integrate these countries into the legal and economic system of the EU (Kawecka-Wyrzykowska, 2015, p. 79). This is to be done by establishing “an enhanced institutional framework and innovative provisions on regulatory and legislative approximation” (Van der Loo et al., 2014, p.1).

All three agreements are underpinned by two different forms of conditionality. First, the preambles and initial articles of the AAs include several provisions related to the Eastern Partners’ commitments to the ‘common values’ of the EU, such as the respect for human rights, democracy and the rule of law. Some of these are contained in so called ‘essential elements’ clauses. Second, the parts dealing with the DCFTA include ‘market access’ conditionality on the basis of which additional access of the Eastern Partners’ to the EU Internal Market depends on whether they have successfully implemented their legislative approximation commitments.

This Chapter aims to provide a critical discussion of the first type of conditionality, more specifically human rights conditionality under the three AAs. The underlying purpose is to see whether the ‘human rights’ conditionality clauses included in these agreements are a simple matter of ‘legal inflation’, mere political commitments, or whether the EU has managed to design legally enforceable provisions and has provided a common ground to be followed in this field.

In light of the above, Section II of this Chapter provides a succinct overview of the evolution of human rights conditionality in EU external relations and the evolution of the Eastern Partnership. This section also introduces the types of human rights clauses that are included in the three AAs, mainly the ‘essential elements’ clause and its counterpart the ‘non-execution’ clause. Section III then critically assesses the coverage of the essential elements clauses, with a specific focus on the conduct that is required from the contracting parties, the ‘common values’ which are included in such clauses and the human rights instruments they refer to. Section IV is reserved for the institutional framework under the AAs and the operation of the ‘non-execution’ clauses in case an ‘essential element’ of the agreements is breached. Section V discusses whether these clauses have managed to tackle some of the existing challenges of human rights conditionality, with a specific focus on monitoring and implementing mechanisms. Section VI is meant for conclusions.
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