European Policy Research Unit Series

Children's rights, Eastern enlargement and the EU human rights regime

Ingi Iusmen

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Manchester University Press
Manchester and New York

distributed in the United States exclusively by Palgrave Macmillan

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Published by Manchester University Press
Oxford Road, Manchester M13 9NR, UK
and Room 400, 175 Fifth Avenue, New York, NY 10010, USA
www.manchesteruniversitypress.co.uk

Distributed exclusively in the USA by
Palgrave Macmillan, 175 Fifth Avenue, New York,
NY 10010, USA

Distributed exclusively in Canada by
UBC Press, University of British Columbia, 2029 West Mall,
Vancouver, BC, Canada V6T 1Z2

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data applied for

ISBN 978 0 7190 8822 3 hardback

First published 2014

The publisher has no responsibility for the persistence or accuracy of URLs for any external or third-party internet websites referred to in this book, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Typeset
by 4word Ltd, Bristol
Printed in Great Britain
by CPI Antony Rowe Ltd, Chippenham, Wiltshire

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MANCHESTER
1824
Manchester University Press

European Policy Research Unit Series

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Acknowledgements

I have benefited from much support and guidance in writing this book. The main argument and accompanying empirical findings took shape as part of my doctoral research, at the University of Strathclyde (Glasgow), under the supervision of Laura Cram. I am deeply grateful to Laura for her constant academic and moral support during my doctoral studies and for instilling in me the passion for researching EU politics and European integration. The Economic and Social Research Council (ESRC) postdoctoral fellowship, held at the University of Sheffield, enabled me to further develop and broaden the arguments of my doctoral research and, particularly, to carry out empirical research, which underpins the findings of the book. Therefore, I am very grateful for the funding I benefited from the University of Strathclyde (university studentship for my PhD, 2006–2009) and from the ESRC (postdoctoral fellowship grant PTA-026-27-2846 'The EU Human Rights Regime: Policy Feedback and Children's Rights', 2011–2012) in order to conduct the research for the book. I am immensely grateful to and appreciative of the substantial support and guidance of Simon Bulmer and Jean Grugel at Sheffield University. I am particularly indebted to them for providing me with the much-needed encouragement and motivation to write the book. Thanks must also go to Helen Stalford (Liverpool University) whose passion and dedication for researching European children's rights has proved so influential in the latter stages of writing this book. I am thankful to all those at Manchester University Press for their patience, professionalism and efficiency in preparing this book for publication.

I am deeply grateful for the support, loyalty and friendship over the years of all my friends in Glasgow and Sheffield. The ceaseless support and help of my dear friends Ruxandra Arsene, Dawn Morrow, Fernanda Jäkel, Alessandra Negreiros and Dine (Christine) Haider, as well as Vicky Ward and Caz Rouse, have been vital over the last 2 years.

A special acknowledgement must go to my family in Romania: I will be eternally grateful to my parents, Saime and Ilhan, whose love truly knows no boundaries. They have been such an enormous support over the years by offering uplifting advice and encouragement and, particularly, by simply

believing in me. I am grateful, as ever, for the love and good humour of my sister, Meral.

The final word of thanks must go to Alan D. Donaldson, who, unfortunately, is no longer with us. Alan's unstinting love, patience, sense of humour, bright mind and gentle spirit have guided my doctoral research in Glasgow and, at a deeper level, have rendered the completion of this book possible. This book is dedicated to Alan and his memory.

Ingi Iusmen
February 2013

List of abbreviations

AFSJ	Area of Freedom, Security and Justice
ANPCA	National Authority for Child Protection and Adoption in Romania (in Romanian: Autoritatea Nationala pentru Protectia Copilului si Adoptii)
CARDS	Community Assistance for Reconstruction, Development and Stability in the Balkans
CEECS	Central and Eastern European Countries
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
DC	Democratic Convention
DCP	Department for Child Protection
DG	Directorate General
DG EAC	Directorate General Education & Culture
DG ELARG	Directorate General Enlargement
DG EMPL	Directorate General Employment, Social Affairs and Inclusion
DG JLS	Directorate General Justice, Freedom and Security
DG RELEX	Directorate General External Relations
DG SANCO	Directorate General Health & Consumers
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EIDHR	European Instrument for Democracy and Human Rights
EP	European Parliament
EU	European Union
FoR	Focus on Romania
FRA	EU Agency for Fundamental Rights
FYROM	Former Yugoslav Republic of Macedonia
ICA	inter-country adoption

IGIAA	Independent Group for Inter-country Adoption Analysis
IiP	Investing in People
ILO	International Labour Organization
IMAS	Institute for Marketing and Polls
IPA	Instrument for Pre-Accession Assistance
ISG	Inter-Service Group
ISPA	Instrument for Structural Policies for Pre-Accession
JHA	Justice and Home Affairs
LIBE	European Parliament Committee on Civil Liberties, Justice and Home Affairs
MEP	member of the European Parliament
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Cooperation and Development
OSCE	Organization for Security and Cooperation in Europe
PHARE	Poland and Hungary: Assistance for Reconstructing their Economies
PKK	Kurdish Workers' Party
SAA	Stabilization and Association Agreement
SAPARD	Special Accession Programme for Agriculture and Rural Development
SERA	Solidarité Enfants Roumains Abandonnes
TEC	Treaty establishing the European Community
TEU	Treaty establishing the European Union
UN	United Nations
UNICEF	United Nations Children's Fund
USA	United States of America

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Introduction

Human rights and minority protection have been at the core of the Eastern enlargement process of the European Union (EU). Human rights norms also underpin the European project and are constitutionally enshrined at treaty level. The EU accession conditionality, in particular, has provided EU institutions with the necessary 'stick and carrot' clout to trigger structural reforms regarding the human rights provision and minority protection in the Eastern candidate countries. Indeed, Eastern enlargement saw the EU-driven overhaul of the human rights provision in Eastern candidates on an unprecedented scale in the history of the EU (Sedelmeier, 2003; Smith, 2003). The EU's human rights mandate, however, is far more limited in relation to EU Member States than candidate states and, subsequently, this has raised harsh criticisms regarding the EU's use of double standards in its approach to human rights (Alston and Weiler, 1999; Williams, 2000, 2004; De Witte and Toggenburg, 2004). This critique is even more pertinent given the violation of human rights in the Member States, a fact regularly denunciated by various international non-governmental organizations (NGOs) (Pop, 2009; Human Rights Watch, 2012a; Amnesty International, 2013), and human rights bodies, such as the Council of Europe (Council of Europe, 2008). Furthermore, the profile and political salience of human rights protection at the EU level has been recently augmented due to the constitutional and legal changes introduced by the Lisbon Treaty (2007) and the binding nature of the EU Charter of Fundamental Rights (2000). Additionally, the EU's recent policy initiatives aimed at establishing an area of freedom, security and justice (AFSJ) in Europe, along with the EU's external role in international politics, have all boosted the profile of human rights principles at the EU level. However, the underlying dynamics between EU external policy, such as Eastern enlargement, and EU internal processes regarding human rights protection has not been thoroughly scrutinized so far. Indeed, there is no analytically rigorous and empirically robust research exploring how, why and the extent to which the human rights conditionality applied to Eastern candidates, as part of the accession negotiations process, has had feedback effects and far-reaching consequences for the EU's human rights provision, and for the broader European integration.

This book offers a timely exploration of the nature and scale of this emergent EU human rights regime as a consequence of Eastern enlargement. The human rights conditionality applied to Eastern candidates went well beyond the EU's internal role and mandate in human rights in relation to the Member States and led to the radical transformation of the human rights provision of the former communist states. Nevertheless, the implications and far-reaching consequences of this interventionist policy on the EU's own approach to human rights matters have not been scrutinized. By drawing on the human rights conditionality (particularly in relation to children's rights) as applied to Romania, the book interrogates *whether*, *how* and *why* the extension of EU human rights remit externally has resulted in extensive institutional and policy feedback on the EU human rights policy in general.

A set of crucial analytical, conceptual and empirical questions are raised in this book. Empirically, what shape did the feedback effects and processes take? What factors and actors triggered these feedback effects and why? Or what was the impact of EU accession conditionality on human rights provision in Romania? What were the consequences of Eastern enlargement on EU human rights provision? To what extent can the empirical findings scrutinized here be generalized? Analytically, how are these empirical processes explained most cogently? What kind of insights does the empirical evidence provide into Europeanization, EU enlargement and EU human rights scholarship? What analytical and conceptual frameworks capture best the emergence and impact of feedback effects? Ultimately, how do the empirical findings and the accompanying analytical debate inform our understanding of European integration and the role of human rights within it?

The feedback effects regarding the protection of children's rights have transformed the EU institutions' role and scope in this policy area both in EU internal and external human rights dimensions. The key findings of this book also provide a process-tracing approach to the EU's recent developments in the field of children's rights and the broader human rights areas – for instance with respect to Roma protection, mental health or international adoptions – by unearthing why the EU has intervened in these areas in the first place. The process-tracing dimension demonstrates why policy issues emerge on EU agenda and why other policy structures and issues persist over time, hence becoming entrenched. At the same time, the analytical and empirical foci of the book move from the specific case of human rights in Eastern candidates (the case of Romania) and their feedback effects to the broader EU human rights provision by showing how certain feedback effects are interlinked with the broader EU human rights actions, particularly after the entry into force of the Lisbon Treaty in December 2009, which underlines the emergence of a well-defined and robust EU human rights regime.

The key arguments of the book

The feedback effects of Eastern enlargement on the EU itself have shaped and continue to influence the EU's institutional and policy structures. The empirical findings of the book provide evidence in relation to the depth and scale of the impact and feedback effects triggered by the EU's advance of human rights measures – via the EU accession conditionality – on the EU itself. At the same time, by drawing on the human rights conditionality as applied to Romania, the empirical findings of the book provide substantial insights into the effectiveness of EU accession conditionality to radically transform the human rights provision in the former communist states. One of the main empirical findings of this book centres on the conditions and factors generating policy development, and hence agenda-setting processes, at the EU level due to Eastern enlargement. It is argued, therefore, that provided the availability of certain factors – such as propitious institutional and political conditions and policy entrepreneurs at the EU level – then EU actions in human rights outside the Union (e.g. as part of Eastern enlargement) will prompt feedback effects *qua* policy development at the EU level by shaping EU policy agenda. The policy feedback effects are shown to be most evident in relation to the protection of children's rights, where policy entrepreneurs at the Commission level seized the window of opportunity (Kingdon, 1984; Baumgartner and Jones, 1993; Mintrom, 1997, 2000) to import an EU external policy issue into the EU internal dimension.

Furthermore, the feedback effects constitute a function of the intrusive human rights policy applied by the Commission as part of the political accession criteria. The EU's intervention in human rights provision in Romania, with a key focus on child protection, demonstrates how the Commission crafted and applied a wide range of conditions and mechanisms to transform human rights sectors – where the Commission had no expertise and internal mandate – and particularly the sensitive and highly controversial issue of children's rights. In the Romanian case, policy entrepreneurs at the European Parliament and Commission level are shown to be the main driving forces behind the radical reforms in and the political salience attached to areas such as children's rights and the issue of international adoption. In other words, given the scale and high profile of the EU's intervention in areas such as child protection, it was deemed that Romania's case would have repercussions on the EU's approach to human rights in general. In the same vein, EU intervention in child protection in Romania also produced feedback effects on the current EU enlargement policy, as children's rights have now become an entrenched and standardized EU accession condition, which signals the continuation of the policy framework developed initially in relation to Romania. Meanwhile, other Eastern candidates did not experience the same level and depth of EU scrutiny in children's rights as Romania

had and, consequently, they could not shape the EU's internal approach to child rights.

A range of post-accession impacts are examined in relation to high-profile areas such as the Roma minority, protection of disabled people and mental health. The process-tracing approach demonstrates how and why certain human rights matters have landed on the EU policy agenda after Romania's accession to the EU in 2007 and because of Eastern enlargement in general. The accession to the EU of new members from Eastern Europe, therefore, meant that new human rights violations or deficits of rights protection had to be addressed as part of the EU's internal policy framework. Indeed, Eastern enlargement galvanized the need for EU institutions to devise policy tools and mechanisms to address new human rights issues, which had been 'imported' with the accession of Eastern candidates.

Last but not least, one of the key empirical findings of this book is that the feedback effects generated by Eastern enlargement in general and the Romanian case in particular have shaped the scope and function of the emergent EU human rights regime after the entry into force of the Lisbon Treaty (2007). The consequences of Eastern enlargement for EU human rights policy, along with the constitutional and legal provisions brought about by the Lisbon Treaty and the binding aspect of the EU Charter of Fundamental Rights (2000), have further augmented the profile of certain human rights areas, such as child rights and Roma protection, at the EU level. Therefore, this book offers a timely empirical scrutiny of the EU human rights policy after Eastern enlargement and post-Lisbon.

The empirical findings examined in this book make analytical contributions to agenda-setting theories, the Europeanization analytical framework and historical institutionalism. The existing analytical frameworks, along with a set of new conceptual heuristic devices, are employed and adjusted to capture the dynamics and diversity of the feedback effects under scrutiny. The feedback effects of the EU's intervention in child protection in Romania on the EU's internal policy dimension are explained via the agenda-setting analytical framework, whilst the specific effects are envisaged as policy development processes. The driving force behind agenda-setting processes in the area of children's rights is policy entrepreneurship. To this end, Kingdon's (1984) model of agenda-setting via the role played by policy entrepreneurs in coupling the separate streams of politics, problems and policies is adjusted and applied to capture the emergence of child rights as an EU policy area. Kingdon's model of agenda-setting provides insights into the complexity and dynamics of EU policy process regarding human rights by accommodating both contextual factors and agency-based changes to explain *how*, *why* and *when* new issues emerge on EU political agenda.

The EU's interventionist policy in child protection in Romania, whereby the Commission applied human rights standards and principles for which

it lacks an internal mandate, is described as an indication of promoting an EU-topia[1] in the field of human rights. The advancement of a human rights EU-topia in candidate countries sheds new light on the enlargement-led Europeanization, by unpacking how and the extent to which the EU intervened and sought changes in areas where it had no expertise or experience of involvement. To this end, the feedback effects triggered by the EU's enlargement policy on the EU's internal dimension are coined as the 'import of the EU's human rights EU-topia', initially intended for external consumption. Therefore, the findings of this book make two significant analytical contributions to the Europeanization East scholarship: first, they distinguish the human rights conditionality applied to candidates as a form of EU-topia in human rights; while, second they unveil the consequences of the external EU-topia on the EU internal structures. In brief, the EU's import of its own EU-topia into the EU internal dimension amounts to processes of agenda-setting and policy development.

The impact of the EU's intervention in human rights provision in Romania on the current enlargement process is analytically explained via historical institutionalist accounts. The continuation and entrenchment of policy structures and mechanisms developed initially during the accession process with Romania in the current enlargement process reflect aspects of *path dependency*, *lock-in effects* and *institutional self-reinforcement*, in this case observed in relation to the European Commission (EC). Therefore, historical institutionalist insights are shown to shed light on the key reasons and processes for which aspects related to child rights policy as part of EU enlargement have become entrenched and hard to roll back.

The key empirical findings and analytical accounts of this book reveal why and the extent to which EU intervention in human rights provision of the Eastern candidate Romania had feedback effects on EU internal and external human rights policies. At the same time, the processes under scrutiny provide a glimpse into the EU's role as a human rights actor, both inside and outside the Union, and the broader processes of European integration and EU enlargement after the entry into force of the Lisbon Treaty.

Eastern enlargement, policy feedback and EU children's rights

This book makes a vital contribution to the existing scholarship on Eastern enlargement, post-communist transition, Europeanization and EU human and children's rights protection. More specifically, the book advances the field of EU governance and human rights promotion, with a particular emphasis on Eastern enlargement and the emergent EU human rights regime, by providing new insights into: (a) EU policy feedback and the resulting EU human rights regime, (b) the key factors that explain the feedback effects of EU external

action on the EU internal dimension, (c) historical institutionalism and policy entrepreneurship providing an analytical account of feedback effects in relation to EU human rights policy, (d) the bridging of the gap between EU internal and external human rights dimensions, and (e) the nature and scope of the developing EU human rights regime. The analysis of the causal factors that triggered feedback effects due to EU intervention in child protection in Romania in particular set a parameter for the analysis of other policy areas where the EU enjoys limited internal remit but a broad external role.

Methodologically, the empirical findings of this book are based on an in-depth case study analysis, i.e. the feedback effects generated by the EU human rights conditionality as applied to Romania (with a key focus on EU intervention in child protection), before 2007. The book draws on an extensive set of qualitative interviews (sixty) conducted between 2008–2009 and in 2011 with key EU officials (in the European Commission and European Parliament), children's NGOs, child rights experts and national actors (NGOs, government officials, civil servants) in Romania. Also, extensive documentary analysis of key EU and Romanian official policy documents, legislation and letters was conducted.

Chapter 1 provides an overview of the historical background to the EU's involvement with human rights and, at the same time, fleshes out the main analytical frameworks employed in the book to explain the feedback processes. The enlargement-led Europeanization analytical perspective describes how the EU, mostly the Commission, transformed candidate states' institutions and policies during the EU accession negotiations. It is argued that the EU 'Europeanized' candidate countries with respect to those conditions which involved the transposition of the already existing EU set of laws and rules – the *acquis communautaire* – at the national level. Yet, given that there is no EU *acquis* with respect to most human rights matters, the EU exported a human rights 'EU-topia' (Nicolaidis and Howse, 2002) to non-EU countries with regard to those human rights issues where the EU has limited internal mandate and has no EU *acquis communautaire*. The feedback effects triggered by this intervention are conceptualized as conducive to policy development (via policy entrepreneurship and agenda-setting) in EU internal policy sphere and to policy continuation (in line with historical institutionalism) in EU enlargement policy.

The breadth and depth of the EU intervention in human rights and minority protection provision in Romania during the Eastern enlargement process is scrutinized in Chapter 2. The human rights conditionality applied in Romania went beyond the existing EU *acquis* and internal mandate in human rights, particularly in relation to those politically sensitive sectors such as Roma minority, mental health and prison conditions. By deploying a wide range of financial, technical and international instruments, the EU sought to transform the provision of a wide spectrum of social, civil and political rights, including minority protection. This chapter shows that EU intervention in

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