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# **EU Policy on Economic and Social Rights in Russia: A Missed Opportunity?**

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by

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## **Abstract**

In recent years the EU's policy on human rights in Russia has been the focus of considerable internal and external attention, much of it critical. Despite longstanding programmes for funding human rights projects in Russia and the launch of biannual EU-Russia human rights consultations in 2005, the subject of human rights remains contentious within EU-Russia relations. One striking aspect of the EU's policy towards Russia is its focus on issues such as prison reform, freedom of speech and prevention of torture which can broadly be characterized as civil and political rights issues. The purpose of this paper is to examine the EU's approach to another aspect of human rights policy which tends to receive very little attention, namely economic and social rights issues such as housing, health, access to social security and workers' rights. Utilising data gathered from elite interviews with EU officials and representatives of Russian human rights and social NGOs during fieldwork in Brussels and Russia in 2011, the paper will argue that that the EU's lack of internal consensus on the importance of economic and social rights issues hinders its ability to raise these issues in its interactions with Russia on human rights. Yet the fact that economic and social rights have traditionally enjoyed a relatively high degree of visibility and importance in Russia has the potential to make this an area where more fruitful engagement on human rights could take place.

## **Introduction**

The purpose of this paper is to explore how economic and social rights are constructed in the discourse of various EU institutions, using data drawn from official EU documents on internal and

external human rights policy and from interviews with representatives of the EU and several of its individual Member States conducted in Brussels, Moscow and St Petersburg with responsibility for human rights policy. It will begin with a brief discussion of the concept of economic and social rights as a distinct subset of human rights which contrasts with the frequently more prominent and better-known issues of civil and political rights in the context of the European human rights regime. It will then go on to demonstrate that, despite a rhetorical commitment at the official level to promoting economic and social rights on an equal basis to civil and political rights in the EU's internal and external relations, those representing EU institutions and Member States in the context of relations with Russia often expressed conflicting views on the importance of such rights and the need for the EU to promote these rights in its civil society initiatives in Russia and its political engagement with the Russian leadership. This lack of consensus on the importance and relevance of such rights is shown to have important implications for the coherence and effectiveness of the EU's policy on human rights in Russia given the importance of economic and social rights to the Russian public which was widely acknowledged by the respondents involved in this study.

### **Defining economic and social rights**

Prior to examining some of the more specific issues surrounding the EU's rhetoric on economic and social rights, it is important to first consider some of the ways in which these rights have been understood and conceptualised since the United Nations' drafting of the Universal Declaration of Human Rights (UDHR) of 1948 and the subsequent drafting of the European Convention on Human Rights of 1950 ushered in a new era of human rights monitoring in Europe.

Economic and social rights such as the right to work, housing, health, education and social protection are sometimes referred to as 'second-generation' rights inspired by the developing labour movement in Europe in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, compared to the so-called 'first generation' of civil and political rights such as freedom from torture and freedom of expression which are seen as being based on understandings of natural law which came about in the 18<sup>th</sup> century, and 'third generation' rights concerning development and self-determination which emerged in the developing world in the late 20<sup>th</sup> century (Yokota 2008: 8). Yet it was the drafting of the UDHR and its subsequent Conventions in the late 1940s and 1960s which first attempted to codify economic and social rights alongside civil and political rights and to outline states' obligations to observe these rights. Scholars such as Renteln (1990: 30) and Cassese (1990: 35) have argued that the UDHR was biased in favour of civil and political rights at the behest of Western nations acting on ideological grounds and that the few economic and social rights it does refer to were only included as the result of lobbying by the Soviet bloc and Third World countries to place greater emphasis on economic and social rights. The fact that the majority of the treaty's articles refer to civil and political rights and that the original treaty was divided into two separate conventions (the International Covenant on Civil and

Political Rights and the International Covenant on Economic, Social and Cultural Rights) in 1966 appears to add some weight to this argument: according to Donnelly (2007: 42), civil and political rights were treated as individual rights claims which could be pursued through legal channels and should therefore be incorporated into national law, whereas economic and social rights were seen more as statements of desirable policy goals which would be realised progressively over time based on the resources available to a particular state. This may help to explain a problem which Alston (1997: 188) highlights, namely the failure of leading international human rights organizations such as Human Rights Watch and Amnesty International to address economic and social rights issues in their work: according to Alston, their neglect of this area “cannot do anything but reinforce, rather dramatically, the more general view that economic and social rights are not ‘real’ human rights.”

It could be argued, however, that the UDHR’s alleged bias in favour of civil and political rights has been overstated since the Declaration contains several articles on fundamental economic and social rights including the right to an adequate standard of living, the right to education (also considered a cultural right), the right to join trade unions, and the right to social security (Hertel and Minkler 2007: 4). Indeed Donnelly (2007: 40) argues that, far from opposing the inclusion of such rights in the Declaration, Western governments of the time played a key role in ensuring that they were included: “Not a single Western state pressed for a Declaration without economic and social rights...The Universal Declaration was drafted precisely at the time of the flowering of the Western welfare state and was seen by most Western states as part of the process of consolidating an understanding of human rights that prominently features economic and social rights.” Where the European human rights system is concerned, although the initial key document was the Council of Europe’s European Convention on Human Rights and Fundamental Freedoms (ECHR) of 1950, which focused largely but not exclusively on civil and political rights as outlined in the UDHR, in 1961 the Council drafted the European Social Charter (ESC) which outlined the fundamental economic and social rights which the citizens of states party to the Charter would be entitled to and established its own system of monitoring and reporting on compliance with the Charter for all states which chose to ratify it. Donnelly (2007: 16) argues that the ESC provides a “substantively more demanding list of rights and a significantly stronger review process than the ICESCR or any other regional system. This is the best evidence of the attitude of Western states – acting alone, without any Soviet or Third World pressure – toward economic and social rights.”

Nevertheless it remains hard to argue with Hertel and Minkler’s assertion that economic and social rights remain “less well articulated conceptually than civil and political rights, less accurately measured, and less consistently implemented in public policy” (2007: 1). Treaty commitments to observing such rights may be all very well on paper, but it is in policy and practice that this approach often falls short. The ESC, for example, which Alston (1997) describes as the “poor stepchild” of the

ECHR, does not enjoy the ECHR's advantage of being legally binding with the result that a state's violations of its statutes cannot be challenged through a body such as the European Court of Human Rights. In addition, the perception that the state must take concrete political and financial steps to ensure the realisation of economic and social rights creates certain obstacles: Eide (2001: 23) points to the "widely spread misunderstanding...that all economic, social and cultural rights must be provided by the state, and that they are costly and lead to an overgrown state apparatus." Ultimately this makes economic and social rights somewhat vulnerable to the political vagaries of each individual state and the ideological commitments of its government of the time: As Eide and Rosas (2001) point out, "taking economic, social and cultural rights seriously implies at the same time a commitment to social integration, solidarity and equality, including tackling the question of income distribution." Where this commitment is lacking, the 'progressive realization' of economic and social rights which the ICESCR envisages is likely to suffer.

### **Internal EU constructions of economic and social rights**

Having defined the concept of economic and social rights as used in this study, it is important to explore how such rights are understood and expressed within the EU's internal policy on human rights governing its own Member States since the way in which the EU perceives and portrays its own values will arguably have an impact on its external approach towards countries such as Russia. Indeed, according to Alston and Weiler (1999: 8), the internal and external dimensions of the EU's human rights policy are 'two sides of the same coin.' Certainly on an official level the Union appears to be all too conscious of its 'spiritual and moral heritage' where human rights and human dignity are concerned (Charter of Fundamental Rights of the European Union 2000: 8). In terms of public opinion, this apparent belief in the existence of specific European values with an emphasis on human rights appears to be shared by the populations of the EU's Member States: a EuroBarometer poll of the EU27 from 2008 indicates that, when asked to specify which three values were the most important to them personally, respondents across the EU chose peace (45%), human rights (42%) and respect for human life (41%). When asked which values best represent the EU, 37% chose human rights, ahead of peace (35%) and democracy (34%).<sup>1</sup>

It is worth noting, however, that the development of EU policy on human rights in general is a relatively recent phenomenon: it was the Treaty on European Union (TEU) in 1992 which, while transforming the European Community into the European Union, first affirmed the new Union's commitment to human rights and fundamental freedoms alongside peace, liberty, democracy and the rule of law as its founding principles in its Article 6. These principles were reiterated in relation to

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<sup>1</sup> For further details see EuroBarometer 69: Values of Europeans, November 2008, available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb69/eb69\\_values\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb69/eb69_values_en.pdf)

both internal and external relations in the subsequent Treaty of Amsterdam of 1997 and the Lisbon Treaty of 2009 (Alston and Weiler 1999: 6; Tocci 2008: 2). While the concept of ‘human rights’ is used in the treaties in a broad and generally undefined sense, economic and social rights have not simply been ignored: in the Preamble to the Treaty of Amsterdam, for example, the Union’s Member States affirm their “attachment to fundamental rights as defined in the European Social Charter...and in the 1989 Community Charter of the Fundamental Social Rights of Workers” (de Witte 2001: 158). In addition, in 2000 the European Council adopted a Charter of Fundamental Rights of the EU. While four of the Charter’s six chapters focus on civil and political rights grouped under dignity, freedoms, citizen’s rights and justice, two chapters cover certain economic and social rights relating to employment, access to medical care and social security, and non-discrimination under the headings of equality and solidarity (Charter of Fundamental Rights of the EU 2000)

As with external policy, there are several different institutions involved in formulating the Union’s internal strategy on human rights in general and economic and social rights more specifically. These can include the Commission, the Council of the EU, the European Parliament, the European Council, and consultative bodies such as the European Economic and Social Committee and the Committee of the Regions. In terms of official statements on human rights, the European Parliament, the Union’s only directly elected body, has been particularly outspoken and is often perceived to be taking an ‘activist’ stance on such issues in both internal and external relations (European Inter-University for Human Rights and Democratisation 2006: 7). Where economic and social rights are concerned, long before the Union proclaimed the internal Charter of Fundamental Rights in 2000, the Parliament made its official position on the importance of these rights clear in some of its formal resolutions. In its Declaration of Fundamental Rights and Freedoms of 1989, for example, several key economic and social rights such as the right to social welfare, education and collective social rights were included alongside a more extensive list of civil and political rights such as the right to life, freedom of association and expression, and the prohibition of the death penalty.<sup>2</sup> These rights were further elaborated upon a few years later:

*The European Parliament considers that economic, social, trade union and cultural rights should be respected and that the right to work, housing, education, social protection and culture in particular should be recognized as fundamental rights. [The Parliament] urges the Member States to take decisive action in the following fields: the right to work, the right to social security, the right to protection against poverty and social exclusion, the right to housing and other social rights. [The Parliament] advocates the drawing up at Community level of instruments laying down*

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<sup>2</sup> See ‘Resolution adopting the Declaration of fundamental rights and freedoms,’ European Parliament, 1989, available at [http://www.europarl.europa.eu/charter/docs/pdf/a2\\_0003\\_89\\_en\\_en.pdf](http://www.europarl.europa.eu/charter/docs/pdf/a2_0003_89_en_en.pdf)

*minimum guarantees in respect of income, social protection, and the right to medical treatment and housing as an essential prerequisite for ensuring a quality of life consistent with human dignity* (European Parliament Resolution 1996).

In 2000 an internal document provided further detail on the Parliament's concept of economic and social rights:

*Fundamental social rights...mean rights to which the individual citizen is entitled, which he can exercise only in his relationship with other human beings as a member of a group and which can be made effective only if the State acts to safeguard the individual's environment. Social rights are a necessary complement to civil rights and liberties, since the latter cannot be enjoyed without a minimum of social security. In contrast to civil rights and liberties, this means that it is not freedom from the State that is achieved, but freedom with the State's help. These are, then, fundamental rights in the form of entitlements. Although this would appear at first glance to indicate that they can be distinguished from the classical civil rights and liberties and the general principle of equality, there is considerable overlap.* (European Parliament Working Paper: Fundamental Social Rights in Europe 2000).

This statement is important in two respects: firstly, it sets out a position in which social rights are 'group' or collective rights which are inextricably linked to the State and can only be realised 'with the State's help.' This coincides with what Hertel and Minkler (2007: 9) see as a tendency on the part of both states and international organisations to see civil and political rights as 'negative' rights, in that they merely require a state to refrain from interfering with an individual's liberty, whereas economic and social rights are seen as 'positive' since they 'obligate government and others to actually provide something to an individual.' Secondly, the idea that social rights are a 'necessary complement' to civil and political rights recognises the importance of such rights while falling short of acknowledging them as being equal to civil and political rights and liberties. As will be discussed below, this view is reflected by several of the EU representatives interviewed for this study.

Nevertheless, many of the economic and social rights highlighted by the 1996 parliamentary resolution made their way into the Charter of Fundamental Rights in December 2000, where they fell under the heading of 'solidarity' (Charter of Fundamental Rights of the European Union 2000). Yet, judging by the working paper cited above, just a few months earlier the Parliament had not been confident that this would necessarily be the case and in fact appeared somewhat pessimistic about the prospects for upholding these rights at Union level given the diversity of approaches to such rights taken by the individual Member States:

*It remains to be seen how far social rights will form part of an EU bill of rights since, unlike the classical liberal civil rights and liberties recognised in all constitutions, social rights are not regarded as fundamental rights in all Member States...Owing to the liberal basic attitude in Austria and the United Kingdom, for example, there are no constitutional social rights in these countries. The German Basic Law does not specify any fundamental social rights apart from the right of mothers to special protection. Germany nonetheless sees itself as a welfare state and, by defining state objectives, requires the public authorities to base all their actions on the welfare state principle. The Benelux countries, France and the Scandinavian countries have fundamental social rights in the form of individual rights, policy clauses or provisions defining the state's objectives, but tend to be restrained when it comes to detail, leaving this to ordinary legislation. The southern European countries all have extensive bills of rights, which also include detailed fundamental social rights...however, they are not as a rule enforceable rights but instructions to the legislature to make them effective (European Parliament Working Paper: Fundamental Social Rights in Europe 2000).*

This document makes clear some of the challenges facing any attempt to formulate a coherent Union-level position on economic and social rights as fundamental rights since there appears to be little consensus amongst the Member States on just how 'fundamental' these rights should be. This issue was also raised by one of the respondents interviewed for this study, a diplomat working as a political officer at the British Embassy in Moscow:

*The debate over differing social models in Europe makes economic and social rights stuff more controversial – so the UK might agree with the Scandinavians on civil and political rights but not on taxation or social welfare and so on (John, British diplomat, Moscow)*

This appears to indicate that attitudes towards both the welfare state and economic and social rights remain very much divided on a national level. Several commentators have linked this firstly to historical differences between what are sometimes categorised as the liberal, Continental and Scandinavian models of welfare and social rights protection in Europe (Katragoulos 1996) or, according to Esping-Anderson's (1990) famous typology, the liberal, conservative-corporatist and social democratic systems of welfare; and secondly to the fact that certain political and economic theories dominant in Western thinking see economic and social rights either as being out with the remit and control of the state, or even as compromising the freedoms inherent in civil and political rights. According to Gavison (2003: 24), for example, 'many Western theories of political justice and liberalism make civil and political rights a necessary component of the liberal, democratic state, but do not include social and economic benefits in the order of rights...some such theories present the

taxation required for efforts of redistribution seeking to address social and economic concerns as a violation of civil and political rights, specifically the right to liberty and property.’ The shift towards a more neoliberal approach in economic and social policy and politics more generally on the part of various Western European and non-European states including the UK and US from the late 1970s onwards (Mudge 2008) and those former Communist states in Central and Eastern Europe who aspired to begin the EU accession process in the early 1990s (Bohle and Greskovits 2007) has also had important implications for the way in which a whole range of economic and social rights are perceived and upheld at both national and EU level, as has the fact that a number of social democratic parties who came to power in various EU Member States in the late 1990s also maintained to varying degrees certain aspects of neoliberal political and economic approaches (Hansen and Schierup 2005). Arguably the ‘turn’ towards neo-liberalism has led to a fundamental and lasting change in expectations of what the State can and should provide in terms of social security and employment and, as Katragoulos (1996: 312) points out, the dominant trend has for some time been ‘a reduction of the public sector, the curtailment of social benefits and the abandonment of the goal of full employment in favour of economic efficiency and flexibility in the labour market.’ Szyszczak (2001: 493) goes even further, claiming that ‘the demise of the welfare state across Europe has created tensions as to the proper place and classification of social rights.’ In addition, in terms of contemporary EU policymaking there seems to be a tendency to see issues concerning economic and social rights as practical problems relating to the areas of social policy or social work rather than ‘classical’ human rights, an approach reflected by one respondent working for the European Parliament:

*The Council of the European Union for a long time couldn't officially work on human rights inside the EU, it was the Council of Europe that did that so that's why we don't label a lot of the social work that we do human rights. Even in our hearings [at the Parliament] there's a lot of let's say housing, jobs so no, they will rarely call them economic and social rights but yes, they'll be addressing the practical issues...even though we don't have an EU model we have a common baseline that's respected in EU directives on what we have as social policy so yes, we don't have the same position for everyone on the minimum wage but on a lot of other, say, housing issues I would say we have a sort of minimum common denominator which makes a sort of European model if you will (Anna, human rights researcher, European Parliament)*

It is also worth noting that, while several key economic and social rights were in fact included in the final Charter, the failure of all the Member States to ratify the Treaty of Lisbon until December 2009 meant that none of the rights outlined by the Charter became legally binding until that point. As a result, at present it is somewhat difficult to assess the impact it will have on the EU's internal human rights strategy. Nevertheless, the thematic areas outlined by the European Union Agency for

Fundamental Rights (FRA), an EU advisory body set up in 2007 to monitor implementation of the rights outlined by the Charter at both EU and Member State level, provide some indication of where the priorities lie: while the issues of access to justice; child rights; LGBT rights; minorities; people with disabilities; racism and xenophobia; and the Roma and Traveller communities constitute the FRA's 'themes,' there is no mention of monitoring economic and social rights issues as 'fundamental' rights.<sup>3</sup> Overall, then, it appears that, while on a rhetorical level economic and social rights are proclaimed to be fundamental rights belonging to all EU citizens, to some extent there is a lack of internal consensus at Member State and EU level on their true meaning and importance.

### **Understandings of human rights in the EU's external relations policy**

Having examined the manner in which economic and social rights are conceptualised within the EU's internal human rights strategy, attention now turns to the Union's external policy on human rights promotion and the extent to which economic and social rights are integrated into this policy. Once again, on a general rhetorical level it appears that the EU has a strong commitment to upholding economic and social as well as civil and political rights in its external relations policy. In policy documents released by various EU institutions which mention the place of human rights in the Union's external relations strategy, the importance of human rights as a defining value for the EU is reiterated. The European External Action Service (EEAS), for example, a new body which took over from the European Commission in late 2009 in overseeing the implementation of the EU's external policies and strategies around the world, refers to clauses from the Treaty on European Union as amended in 2009 to emphasise respect for human rights as a fundamental principle for the EU :

*If it is true that our values and principles define who we are, the EU's identity is clear:*

*"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." (Article 2 of the Treaty on European Union). Beyond this, the EU has a vocation to bring the same values to its external relations. "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and*

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<sup>3</sup> For further details see 'The European Union Agency for Fundamental Rights,' available at [http://fra.europa.eu/fraWebsite/home/home\\_en.htm](http://fra.europa.eu/fraWebsite/home/home_en.htm)

*international law” (Article 21 of the Treaty on European Union) (EEAS Report on Human Rights in the World 2010)*

The use of the word ‘vocation’ here is interesting because it implies that the Union is some sort of ‘moral crusader’ when it comes to promoting human rights on the world stage. This notion is also emphasised in a recent statement by the EU’s High Representative for Foreign Affairs and Security Policy, Catherine Ashton:

*Respect for human rights and fundamental freedoms is at the core of the European Union. The protection and promotion of human rights is a silver thread running through all EU action both at home and abroad. On human rights and democracy, the EU must be principled when it comes to the norms and values it seeks to uphold, creative in the ways it does so, and absolutely determined to achieve concrete results. The EU promotes human rights inside and outside its borders on the basis that human rights are indispensable both for individual dignity and social justice and for the promotion of international peace, prosperity and stability (High Representative of the European Union for Foreign Affairs and Security Policy 2011).*

There appears, however, to be some official recognition of the fact that the intention to make human rights a ‘silver thread’ running through the EU’s external relations policy has not yet come to fruition and has in fact been hampered by the inconsistencies in its internal approach to human rights at a time when the EU is trying to promote human rights in its relations with third countries:

*The EU is extremely serious about delivering on its pledges. This is vital when it comes to the EU’s credibility on the world stage. Increasingly the EU is subject to scrutiny by others, who question its record on human rights. It is a defining characteristic of the EU (EEAS Report on Human Rights in the World 2010)*

*There is...the perception that the EU’s statements on human rights and democracy are not always fully matched by its external or internal policies. The EU’s internal human rights record has come under increasing scrutiny. The EU has not always been as effective or as joined-up as it might have been. The task in hand is to ensure the clarity, coherence, and effectiveness of policy, by being smarter and more strategic... The EU should commit itself to promoting and protecting freedom, dignity, equality and justice for all as a key foreign policy priority. (EU High Representative Joint Communication to EP 2011)*

This awareness of the fact that a lack of coherence and clarity in internal attitudes towards human rights policy and the resultant criticism has an impact on the Union’s external approach was shared by one of the EU respondents:

*We're not allowed to have a human rights-based approach because what we do is called an internal market. Now we're starting to have a new Charter on Fundamental Rights but it's really new and you've seen in the press whenever the EU starts to talk about the Roma, or violations of the EU... it gets bashed on the head so we have no interest in talking about what we do inside Europe on human rights. We progressively do, will have more and more of that but it's not in the culture to say what we do in Europe on human rights. I think progressively we'll get there as we get more confident about what we do in Europe but no, it definitely would be better accepted, it would be taken more seriously, and it would have more value-added [impact] (Anna, human rights researcher, European Parliament).*

This view underlines the fact that in many ways the EU's strategy on human rights as a whole remains in a fairly nascent form and may not as yet be meeting the lofty goals set for it in the Union's official statements on the issue. In addition, it points to a certain defensiveness on the part of the Union and its individual Member States when it comes to discussing internal problems with human rights violations which may compromise its ability to promote human rights internationally, a point this respondent then elaborated upon:

*The problem is our Member States don't like us to talk about what goes in Member States when we have dialogues with third countries and that is a huge weakness because the EU has no mandate to work on human rights. So it's very difficult for us to go to these dialogues and, you know, the Russians would say 'so what about prisons inside the EU, what is the EU doing?' and the EU would say 'oh, no, we can't talk about that because it's not our mandate' and they'd be like 'well why are we talking to you about ours?'... it's extremely difficult in these dialogues to refer to what we do internally because it's not an area where we have a mandate because our Member States get angry with us if we raise the way they do things. So it's been difficult to raise the EU model (Anna, human rights researcher, European Parliament).*

Yet, regardless of whether this stance on the part of some Member States is due to defensiveness over any discussion of their internal human rights record or a fear of being 'bashed on the head' in public, it leaves the EU open to accusations of 'double standards' from countries such as Russia which themselves face criticism from the Union of their domestic human rights record. One possible solution some respondents highlighted as a way to tackle the lack of coherence in the Union's external human rights policy was the idea of 'mainstreaming' human rights throughout the EU's overall external relations policy, rather than treating the issue as a separate theme only to be discussed at very specific meetings or events. This idea reflects the earlier concept of a 'silver thread' of human rights running

through EU external relations policy, although the same respondents simultaneously expressed doubt that, at least at present, this was in fact being implemented:

*The main answer I've tried to give is mainstreaming, so it's like making sure that human rights arise at summit level, to raise it in political dialogue meetings, or high-level meetings on visa dialogue, it's just put a bit of human rights everywhere and make sure that there is no human rights in a box side-lined somewhere, that's one thing, it's also showing the message that you are consistent with your concerns (Anton, EEAS official, Brussels)*

*If we had a more common line, or a common line at a higher level, let's put it that way – if we had even a common line on internal energy policy then it would free the EU's hands to talk in a strengthened way about any number of issues including energy but also including human rights. If human rights policy is hermetically sealed then it's not, it can't play a role in the dynamics of linkages, trade-offs. It has to be part of the mix otherwise it's out of the game (Rachel, human rights advisor, EEAS).*

Some respondents expressed the more cynical yet fairly prevalent view that the whole idea of promoting human rights in the EU's foreign policy was not as important as issues surrounding trade and energy negotiations, particularly where large and oil-rich countries such as Russia are concerned:

*Business trumps human rights and EU businesspeople are not interested in human rights (Neil, European affairs think-tank analyst, Brussels).*

*There are some Member States where with Russia they would have an interest in just keeping human rights out of discussions (Anton, EEAS official, Brussels)*

This view may not be entirely fair since in practical as well as rhetorical terms the EU does appear to have a commitment to promoting human rights in its relations with Russia through longstanding project funding programmes such as the European Instrument for Democracy and Human Rights.<sup>4</sup> Nevertheless, the views expressed by these respondents highlight the level of concern over the perceived inconsistencies in the EU's internal and external strategy on promoting human rights and a degree of frustration at the extent to which the Union is in some respects hamstrung by its need to respect the often differing agendas of its individual Member States.

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<sup>4</sup> For further details see 'Civil Society Dialogue: Overview,' Delegation of the European Union to Russia, available at [http://eeas.europa.eu/delegations/russia/eu\\_russia/civil\\_society\\_dialogue/overview/index\\_en.htm](http://eeas.europa.eu/delegations/russia/eu_russia/civil_society_dialogue/overview/index_en.htm)

## **Constructions of Economic and Social Rights in External Relations with Russia**

Despite the possible inconsistencies in the Union's general approach towards human rights, when it comes to understandings of economic and social rights specifically the EU's institutions appear to be at pains to stress the indivisibility of these rights and civil and political rights in its external policies:

*The EU attaches the same importance to economic, social and cultural rights as it does to civil and political rights. As is the case for political and civil rights issues, the EU also raises economic, social and cultural rights during EU human rights dialogues and consultations with non-EU countries, as well as during meetings with relevant civil society groups (European External Action Service)*

*All human rights – civil, political, economic, social and cultural – are universal in nature, valid for everyone, everywhere... the EU should reaffirm its commitment to the universality, indivisibility and interdependence of all human rights – civil, political, economic, social and cultural (High Representative of the European Union for Foreign Affairs and Security Policy 2011).*

Despite this seeming commitment to the universality and indivisibility of rights, however, in practice it appears that there is some recognition that economic and social rights come second to civil and political rights in both EU thinking and actual policy. The European Economic and Social Committee (EESC), for example, has called for greater emphasis on these rights in the Union's external policies on human rights and civil society development, particularly in the context of the global economic crisis:

*The EESC calls for economic, social and cultural rights to be given greater importance in the European Union's policies. Due to the financial and economic crisis, this priority has now become more urgent than ever. The EESC considers that as protagonists of the social dialogue, social partners must be seen as indispensable players and partners of the EU and must be fully integrated into the political dialogue. They must also be able to benefit from direct EU financial support when operating under difficult conditions. The EESC stresses the importance of protecting work and the associated rights set out by the International Labour Organisation core conventions (right to work, right to organise and collective bargaining, non-discrimination at work, outlawing of child and forced labour) (European Economic and Social Committee 2009).*

Several of the EU and Member State representatives interviewed for this study also expressed the view that these rights were not seen by the EU as being on the same level as ‘classical’ civil and political rights and were therefore of less interest when it came to discussions on human rights with Russia and other third countries:

*Economic and social rights come far down the EU agenda, the EU could and should do more on economic and social rights...there is less EU clarity and consensus about economic and social rights despite the stuff in the Treaties (John, British diplomat, Moscow)*

*We still have a rather classic definition of human rights...there is perhaps a need to modernise the approach because perhaps our too traditional definition of our human rights is not always a vehicle for ensuring that you facilitate your dialogue with the authorities here [in Russia]. I wouldn't say that our approach to human rights definitely does not need a substantial change - our rhetoric, as we started off with the conservative definition [of human rights], we need to work on this, I would broaden the understanding - perhaps it is also a necessity for us to diversify this image a bit and to accept that human rights research has a broader definition... as we have so many topics to go over in the classic definition I see that that space has not been made in the political agenda but I personally do see that we could win by broadening perhaps sometimes that understanding of human rights and that it could give perhaps some more allies on the authority side here. (Peter, EU official, Moscow)*

At the same time they acknowledged that insisting on a somewhat narrow definition of human rights could be counterproductive in terms of the EU's policy towards Russia given the importance of such rights to the Russian public at large and the possibility that Russian government officials might be more willing to discuss such issues:

*There is always at least one topic if not two or three on economic, social and cultural rights [during the human rights consultations] and these are of course the ones where you can usually get a little more traction with the Russian side: the rights of women, education, health issues – these are issues where there's real common ground with Russia and where I think we could do a lot more than we do currently (Rachel, human rights advisor, EEAS).*

*There is definitely more public support [in Russia] for social rights issues than traditional human rights issues. Even in the big cities, people feel social problems are closer to their own lives e.g. health, children etc so more people volunteer for these issues (Katya, Netherlands Consulate, St Petersburg)*

One respondent highlighted the fact that the EU essentially chooses to disregard such attitudes by concentrating on civil and political rights problems:

*There's more focus [by the EU] on political than socio-economic rights issues but there is more appetite for economic and social issues in the [Russian] regions than for our distant political concerns* (John, British diplomat, Moscow)

These views appear to be supported by survey data from late 2010, which indicates that such rights are indeed held to be the most important by the Russian public: a survey conducted by the Russian Public Opinion Research Center (VTsIOM) asked respondents 'which fundamental rights and freedoms proclaimed in the Constitution are violated most often in our country?' A total of 38% felt that the right to health protection was the most frequently violated, with 35% citing the right to housing and 32% the right to education. A further 21% highlighted the right to leisure and 20% to the right to social security. Only 19% pointed to violations of the right to freedom and security of the person, 18% to the right to life, and 14% to freedom of thought and expression. When asked which categories of the population suffered the most frequent rights violations, respondents identified orphans (39%), the disabled (35%) and the elderly (31%) as the most likely to have their rights violated.<sup>5</sup> Similar data gathered by the Levada Center in October 2010 asked respondents to rank various rights in their perceived order of importance: 69% cited the right to free education, medical assistance and social security in sickness and old age, while 57% pointed to the right to life as the most important. The right to well-paid work in one's discipline (50%) and the right to a state-guaranteed minimum level of subsistence (36%) came ahead of freedom of speech (34%) and freedom of information (22%).<sup>6</sup> Ultimately, therefore, there appears to be something of a disconnect between the EU's interests and objectives in the human rights policy it pursues towards Russia, and those of the wider Russian public.

One respondent indicated that there was indeed an overall tendency within the Union's human rights policy towards third countries to focus on civil and political rights, but that there was also a division between the individual Member States when it came to discussing economic and social rights in the

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<sup>5</sup> 'Press Release No.1648: Whose Rights and Which Rights Are Being Violated Today?' [in Russian], VTsIOM, 10 December 2010, available at <http://wciom.ru/index.php?id=459&uid=111158>

<sup>6</sup> 'Which human rights are, in your opinion, the most important?' [in Russian], Levada Center, 8 September 2011, available at <http://www.levada.ru/archive/prava-cheloveka/kakie-iz-prav-cheloveka-po-vashemu-mneniyu-naibolee-vazhny-otvety-ranzhirova>

EU's official consultations with Russia. This perhaps reflects the internal lack of consensus on the meaning and importance of such rights discussed earlier:

*There are always certain items that are on the agenda, the 'evergreens,' that include the usual suspects of political and civil rights, human rights defenders... We do talk as well about economic, social and cultural rights, probably there's less of an emphasis on this than on the civil and political rights but I wouldn't characterise this as being isolated to the Russian case, I would say that this is overall a problem of balance in our human rights consultations and dialogues, we do tend to focus more on those two, the first Convention<sup>7</sup> rather than the second. There are certain Member States which have pushed very hard to include more economic, social and cultural rights. We acknowledge the importance and the indivisibility of applied rights but many Member States feel that we should be focusing on civil and political rights in Russia because that's where there are glaring violations that we see. (Rachel, human rights advisor, EEAS)*

This point about the influence of individual Member States was also raised by another respondent, who highlighted the often troubled relationship between Russia and some of the newer EU Member States from Central and Eastern Europe as a potential obstacle in discussing economic and social rights issues:

*I think it also reflects what a lot of Member States want, they think emphasis should be put on [civil and political rights], especially given the legacy, the historical legacy of some of them where you know the situation.<sup>8</sup>(Anton, EEAS official, Brussels).*

If, however, it is the case that 'at least one' if not more topics related to economic and social rights always make it on to the agenda of the biannual EU-Russia Human Rights Consultations, then this is not reflected in recent official accounts of the discussions, which indicate that all of the issues raised are connected to civil and political rights issues:

*The EU and Russia focussed in particular on the rule of law and the working of civil*

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<sup>7</sup> The 'Convention' the respondent is referring to here is the UN's International Covenant on Civil and Political Rights of 1966. That same year the UN's original Universal Declaration of Human Rights was divided into this Covenant and the International Covenant on Economic, Social and Cultural Rights. For further details see 'The United Nations International Covenant on Civil and Political Rights,' available at <http://www.hrweb.org/legal/cpr.html>

<sup>8</sup> The respondent is referring to EU Member States such as the Baltic countries which were part of the Soviet Union until 1991 and Poland which was one of the Warsaw Pact countries until 1989.

*Society. The EU and Russia also discussed the rights of the child. The EU raised a number of concerns related to specific human rights issues in the Russian Federation, including issues pertaining to racism and discrimination, LGBT rights, stateless persons, the freedom of association, expression and assembly as well as continuing impunity, especially regarding cases involving human rights defenders, journalists and in the Northern Caucasus (Council of the European Union May 2011)*

*The EU and Russia focussed in particular on the working of civil society, notably in the context of the forthcoming elections in Russia, rule of law, as well as cooperation in international fora and the fight against discrimination. Russia stressed its commitment to increase the protection of journalists and human rights defenders, and in response to the EU's concerns on the situation in detention facilities, outlined the ongoing reforms in the penitentiary system. The EU raised a number of concerns related to specific human rights issues in the Russian Federation, including issues pertaining to the situation of Roma, LGBT rights, stateless persons, the freedom of association, expression and assembly as well as continuing impunity, especially regarding cases involving human rights defenders and journalists. Regarding the Northern Caucasus, the EU touched on the issues of abductions and enforced disappearances, forced evictions and women's rights (Council of the European Union November 2011)*

This apparent failure to raise economic and social rights issues is not necessarily entirely down to the EU: Some respondents maintained that the Russian government representatives party to discussions with the EU on human rights issues either showed little interest in human rights in general or had not shown any particular desire to discuss economic and social rights issues more specifically:

*It is difficult for us to know what the Russians are interested in because they refuse to play an active part even in the backseat... they're honestly not interested in human rights, they want energy cooperation...They were apparently interested in citizenship issues but no, to my knowledge they're not interested in talking about economic and social rights that I'm aware of (Anna, human rights researcher, European Parliament)*

Another respondent contrasted the Russian approach with that of China, which he claimed tends to emphasise economic and social rights in its own human rights discussions with the EU:

*Russia particularly likes to raise issues of racism and hate crime so there's a feature more politically on that. It's a recent thing, there is space to change but probably also it's not a request that we get from the Russian side, on the contrary we see it with China for example, China was*

*very much pushing to get social and economic rights on the agenda so we were always trying to do it* (Anton, EEAS official, Brussels)

Yet several respondents who are responsible for implementing the human rights policies of individual Member States in Russia expressed opinions on the validity of promoting economic and social rights which appear to be reflected in the Union's official stance on such matters. Some, for example, seemed to see economic and social rights as 'budgetary' issues which should be taken care of solely by the State rather than becoming a focus for international concern or intervention. Where Russia is concerned, they felt this was something the State could easily afford to do:

*The State has the money for social services, the [Russian] public is interested in social rights but not in human rights violations – we shouldn't focus on things the government can afford to do* (Edith, Dutch political affairs officer, Moscow)

*Political and civil rights are much more prevalent than economic and social rights. Economic and social rights are often to do with budgetary possibilities, and stuff like that, where I think the government doesn't... My feelings are the Russian authorities today seek to address most issues of economic and social rights, not necessarily because those are rights but because that is what the people want and they will maintain stability and the recent popularity for the authorities, whereas in some areas they actually strive to limit civil and political rights. I think that is why the attention is primarily focused on that area* (Thomas, Swedish political affairs officer, Moscow)

One respondent highlighted this perspective by pointing to the perception on the part of some Member States that so-called 'soft rights' related to economic and social issues could distract from official discussions of civil and political rights, particularly when the time available for such discussions was so limited:

*The [human rights] Consultations are short, I mean you're talking about two days every year, so there is probably also a fear that some 'soft right' as it could be seen could distract from the focus of the Consultations. Take for example China wanted to discuss pensioners' rights or the right to health some years ago* (Anton, EEAS official, Brussels)

This indicates that there is a degree of ambivalence towards promoting economic and social rights on both the official level of the EU Member States and on the part of some of those countries' representatives working 'on the ground' on human rights issues in Russia. It also reflects the institutional approach discussed earlier whereby economic and social rights are seen as falling under the categories of social or economic policy or social work, rather than being defined as rights claims on a par with civil and political rights.

## **Conclusion**

This paper has attempted to explore some of the ways in which economic and social rights are defined and to examine how human rights in general and economic and social rights in particular are constructed in official EU discourse on internal and external policy and by individual representatives of the Union and its Member States working in the area of human rights policy. Where both the internal and external context is concerned, a picture emerges of a lack of clarity and consensus in the Union's conceptual aims and objectives when it comes to accepting and promoting economic and social rights as fundamental rights for EU citizens and as desirable values to be promoted in the Union's relations with third countries. Much of this can be attributed to the fact that there appears to be an internal divide between the different Member States in terms of desirable models of delivering welfare and consequently realising social rights, as well as a reluctance by Member States to have their internal human rights affairs raised in discussions with Russia and other external partners which leaves the Union open to accusations of double standards when it attempts to raise human rights violations with third countries such as Russia and China. As a result, despite the Union's lofty and oft-stated commitment to upholding the universality and indivisibility of all human rights, it appears that ultimately this aim is not being realised and that there is a clear and longstanding emphasis on those rights which coincide with values that are perceived to be 'liberal.' As many involved in formulating EU and Member State policy on human rights recognise, however, maintaining a somewhat narrow classical definition of what human rights are at a time when many on the Russian side appear to define both the meaning and hierarchy of human rights somewhat differently poses a number of problems for the long-term impact of the Union's policy and programmes in this area.

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