

THE EUROPEAN UNION AS A NORMATIVE POWER

- a study on the diffusion of human rights norms by the EU in its member states

Author: Patrik Gustafsson

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Supervisor: Magnus Ekengren

List of content

1. INTRODUCTION.....	3
2. PURPOSE.....	3
2.1 PEOPLE WITH DISABILITIES IN THE EUROPEAN UNION.....	4
2.2 QUESTION FORMULATION.....	5
3. NORMS AND THE THEORY OF 'NORMATIVE POWER EUROPE'.....	5
3.1 THE EU AS A NORMATIVE POWER – AS EXPLAINED BY MANNERS.....	8
3.2 CRITIQUE AGAINST 'NORMATIVE POWER EUROPE'.....	9
4. METHOD.....	10
4.1 SOURCES AND MATERIAL.....	12
5. EARLIER RESEARCH.....	14
6. WHAT IS 'DISABILITY'?.....	16
7. EMPIRICAL PRESENTATION - HOLDERS OF RIGHTS.....	17
7.1. HUMAN RIGHTS WATCH.....	17
7.1.1 HUNGARY.....	17
7.1.2 CROATIA.....	19
7.2 EUROPEAN UNION AGENCY FOR FUNDAMENTAL HUMAN RIGHTS.....	21
8. ANALYSIS.....	25
9. CONCLUSION.....	28
10. BIBLIOGRAPHY.....	31

1. INTRODUCTION

Over the last decades the European Union (hereafter it will also be referred to as the EU or the Union) has grown as an international actor in both the political and the economical sphere. It is evident that the EU is steadily expanding its area of influence around the globe. Its number of member states is increasing constantly with Croatia being the newest member as of July 2013.¹ Consequently, as the EU grows the importance to study it increases so to see what an actor it truly is, what its strengths and weaknesses are, and where it is heading in world politics. Therefore, this study is meant to contribute to the discussion on what an actor the EU is and should be perceived as.

This study is based on the theory of 'normative power Europe' (NPE). In 2002 Ian Manners, a Danish professor, published the article *Normative power Europe: a contradiction in terms?* It presented a groundbreaking perspective of the EU as Manners claimed that it should be considered a normative power (NP) in world politics. This new concept stood in contrast to the, arguably, two most utilized perspectives of the EU; being civilian- and military power. Manners argues that even though the EU "has the economic tools of a civilian power and is acquiring the armed forces of a military power, [...] these are secondary to its ability to shape the ideational constitution of international relations."² However, when Manners presented this theory it was a viewpoint few intellectuals shared at the time. The NPE is still widely contested and criticized, as are all theories, but has become a prominent theory in the discussion on the EU as an international actor.

The young nature of NPE makes it interesting to investigate in order to better understand the theory and its use. Using this theory in this study on the EU as an actor makes for a great opportunity to examine NPE's field of application further as well as for creating a better understanding of the EU as a whole.

2. PURPOSE

First and foremost it should be noted that NPE is mainly supposed to be used when discussing norm diffusion in countries outside of the EU's own borders. However, since this study is trying to take the theory a step further it will be applied to EU's norm diffusion within the EU itself. One of the reasons for this is because of an argument made by the

¹ European Union, *List of countries*, europa.eu, 2014-12-01
http://europa.eu/about-eu/countries/member-countries/croatia/index_en.htm (2014-12-01)

² Manners, I. 'Normative Power Europe: A Contradiction in Terms?', Copenhagen Peace Research Institute, Copenhagen. 2000. p. 44

professors Kalypso Nicolaidis and Robert Howse. They say that "in playing up its normative vocation abroad the Union conveniently forgets its own, less than perfect record of norm compliance at home."³ The legitimacy of this statement will be investigated further. This paper will provide an attempt to see if the EU's normative power reflects on its norm diffusion of human rights norms in its own member states. In this study the term 'national normative power' (NNP) will serve to illustrate this relationship. This term is not used by Manners himself as he focuses on the EU as an international normative power. The basic nature of NNP and NP is the same. The only difference is that NP is the term Manners use in his theory to describe the EU in an international context whilst NNP represents this study's attempt to use NPE on a national level. Put bluntly the goal here is to see if the theory can be applied nationally as well as internationally. As mentioned Manners does not dedicate much attention to the former in his original theory. This study will because of this contribute with some theoretical development (albeit limited) to this discussion in the theory. The study will focus on the EU's norm diffusion of human rights norms in particular.

For clarification purposes, this study does not intent to challenge NPE as a theory. Instead, the intention is rather to expand upon this theory and to get a better comprehension as to how far EU's normative power stretches. This study should be perceived as a contribution to the discussion on the European Union as an actor, specifically in regard to NNP.

2.1 PEOPLE WITH DISABILITIES IN THE EUROPEAN UNION

In recent years there has been an intensified discussion on the rights to equality. The discussion has mainly focused on the rights of men and women and the difference between the two. It is not unreasonable to argue that some countries in the EU have come very far in their work with gender equality. Some EU members can even be considered to be the cutting edge in this field of work. It is however always possible to argue that even the most prominent EU members in this area still have a long way to go before they can set a good examples to the rest of the world. This is a hot topic for discussion and an important one at that. In a perfect world every individual person would be treated an equal. Yet, this world is not a perfect place. In the discussion of equality one tends to forget about what, arguably, is an even more exposed group than that of women. This study argues

³ Howse, Robert & Kalypso, Nicolaidis, *'This is my EUtopia ...': Narrative as Power*, Journal of Common Market Studies, 40(4), 767-792, 2002. p. 789
<http://users.ox.ac.uk/~ssfc0041/Nic-Howse2002.pdf> (2014-12-01)

that not enough light has been shed on the situation of the intellectually- and mental disabled persons that are living within the EU member states. Whilst women have the ability to defend themselves and stand up for their rights this second group does not have the ability to do so, at least not to the same extent. For this reason this study carries a secondary purpose in addition to the contribution to the discussion on the EU in terms of NNP. This study also aims to inform and enlighten its readers on the living situation of the intellectually- and mentally disabled population in the European Union.

2.2 QUESTION FORMULATION

1. Is the European Union a 'national normative power' when it comes to advocating and diffusing human rights norms for the intellectually- and mentally disabled persons living in its member states?
2. Are there any other normative powers within the EU when it comes to norm diffusion of these particular human rights?

3. NORMS AND THE THEORY OF 'NORMATIVE POWER EUROPE'

In its most simplified form NPE means that the EU is a normative power in international affairs, as opposed to being either a civilian- or a military power for example. There are other normative powers in the world too, but the EU is one of its kind. The things that makes it different lies within its approach. Manners lists the following five examples in order to explain how the EU is a unique normative power in the world:

1. State sovereignty — the EU can impinge on state sovereignty with impunity because itself is not a state actor. It does not threaten the security of other states because of that.
2. Solidarist society — the EU can and will intervene in support of individuals.
3. Non-material benefits — the EU does not get any material gain from its interventions. In fact, the interventions are quite costly for the Union to take part in.
4. The unusual suspects — the EU often faces opposition from the international community, specifically many of the western powers, when trying to diffuse norms. What this means is that EU norms is not another mean to repress 'the rest' and force EU views on them.
5. Normative power — the EU does not act as any other known state or super-state. It does not serve any self-interest and often "works with civil society and NGOs [non-go-

vernmental organizations] to go beyond 'traditional' tools such as economic and military power."⁴

What represents a normative power in general is what sometimes is referred to as the 'power over opinion', as coined by Bertrand Russell in 1938, or the 'power of ideas', as formulated by Johan Galtung in 1973. Galtung argues that an "ideological power [read: normative power] is 'powerful because the power-sender's ideas penetrate and shape the will of the power-recipient through the media of culture." He also argues that whilst the USA is essentially strong in its channels of power (being ideological power, remunerative power, and punitive power), the EU is stronger in its sources of power (being resource power and structural power).⁵

There are by no means not just one single point of view on how the terms 'norm' and 'normative power' should be defined. The following definition is how Manners defines the two and because it is his theory that is a part of this discussion it is logical to use his definitions in the study.

What then constitutes the 'norm' in Manners use of the term 'normative power'? According to him (as well as quite many other intellectuals) there are three different types of norms: utilitarian norms, social norms, and moral norms. In addition to the others Manners expands on this view and suggests a fourth norm. He calls it 'the narrative norm'. Without explaining any of them in detail the first three can be outlined briefly as follows: "utilitarian norms [are] situated in a rational context, social norms [are] situated in an intersubjective context, and moral norms [are] situated in a judgemental context."⁶ Manners concept of the 'narrative norm' did not however take form in a vacuum. It actually encompasses the view of professor Ann Florini that a norm "must take on an aura of legitimacy before it can be considered a norm."⁷ The 'narrative norm' can therefore also be seen as a 'legitimation norm'. When combined these four norms constitute the definition of a 'norm' as the term is used by Manners and therefore also in this study. As has already been suggested, to be a

⁴ Manners, I, *Normative power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40(2), 235-258, 2002. p 252-253 & Manners, I. 'Normative Power Europe:: A Contradiction in Terms?', Copenhagen Peace Research Institute, Copenhagen. 2000. p. 36-37

⁵ Manners, I, *Normative power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40(2), 235-258, 2002. p 239

⁶ Manners, I. 'Normative Power Europe:: A Contradiction in Terms?', Copenhagen Peace Research Institute, Copenhagen. 2000. p. 31

⁷ Ibid. p. 32

normative power is to have the ability to shape what passes for 'normal' in international relations and international politics.⁸

According to Manners it is possible to identify five 'core' norms within the EU: (1) Peace, (2) Liberty, (3) Democracy, (4) Rule of law, and (5) Human rights. Another four 'minor' norms can also be distinguished (these are however much more controversial): (6) Social progress, (7) Discrimination, (8) Sustainable development, and (9) Good governance.⁹ This study will focus mainly on human rights norms, but because it sometimes is hard to differentiate one norm from another the study will also contain elements from many of the other eight EU norms.

This normative basis of the EU is essential and gives the Union legitimacy as a normative power. However, it is only when combined with the ability to diffuse these norms in third parties that the EU can be considered a NP as a whole. For this to work the EU needs to have implemented the norms itself so to set a good example (which sometimes is referred to as 'power by example'). The EU obviously also needs to have some form of relation with a third party. These two requirements together with the following six factors explains how norms can be diffused, as explained by Manners:

1. Contagion - norms are spread unintentionally.
2. Informational - norms are spread strategically and through communication.
3. Procedural - norms are spread through institutionalization of a relationship by the EU and a third party.
4. Transference - norms are spread through an exchange of benefits.
5. Overt - norms are spread through the physical presence of the EU in a third party.
6. Cultural filter — norms are spread through cultural diffusion and political learning in a third party.¹⁰

In 2009 Manners published a paper which helps clarify the concept of a normative power even further. A normative power uses normative justifications rather than material incentives (as a civilian power does) or physical force (as a military power does) when diffusing and promoting norms in a third party. This is a slow process that can take several ye-

⁸ Manners, I. 'Normative Power Europe:: A Contradiction in Terms?', Copenhagen Peace Research Institute, Copenhagen. 2000. p. 32

⁹ Manners, I. *Normative power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40(2), 235-258, 2002. p 242-243

¹⁰ Ibid. p. 244-245

ars to accomplish. Manners uses the following metaphor to depict the nature of norm diffusion by a normative power: "normative power works 'like water on stone', not like 'napalm in the morning'."¹¹ Nonetheless, "in practical terms normative power [...] is often used together with material incentives and/or physical force."¹² It is important to remember, as is also mentioned above, that though the EU is a normative power (as according to Manners), it also has capabilities that are associated with civilian- and military powers.¹³

3.1 THE EU AS A NORMATIVE POWER - AS EXPLAINED BY MANNERS

As known by now Manners claims that the EU is a prosperous and strong normative power in world politics. But how did he come to this conclusion? The answer can be found in the EU's involvement in the large-scale pursuit on the abolition of the death penalty. Manners argues that the EU was an essential power in this work.

To begin with, the EU played an important role in abolishing the death penalty in its member states. However, its role was not as important as it was in many of the non-EU members. Within the EU it is likely that the Council of Europe (CoE) carried the greatest burden. Manners argues that "the role of the CoE was vital in ensuring that from the mid 1980s onward the abolition of the death penalty had become a significant norm in western Europe."¹⁴ Also, in 1996 the CoE made it a requirement to ratify *protocol no.6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty*¹⁵ (protocol no. 6) for all its members, including the member of the EU.¹⁶ By 1999 all of the EU members and all of its candidates no longer practiced the death penalty as a form of punishment for crimes. What this meant, says Manners, was that the EU now was in a strong position to "pursue the abolition of the death penalty

¹¹ Manners, I. 'The Concept of Normative Power in World Politics', Danish Institute for International Studies, Copenhagen. 2009. p. 2
http://subweb.diiis.dk/graphics/Publications/Briefs2009/B09_maj_Concept_Normative_Power_World_Politics.pdf (2014-11-13)

¹² Ibid. p. 4

¹³ Manners, I, *Normative power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40(2), 235-258, 2002. p. 239

¹⁴ Ibid. p. 246

¹⁵ CoE, *protocol no.6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty*, 1983.
<http://conventions.coe.int/Treaty/en/Treaties/Html/114.htm> (2015-01-08)

¹⁶ Manners, I, *Normative power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40(2), 235-258, 2002. p. 246

as a broader international policy initiative.”¹⁷ It had become a ‘power by example’.

Manners main argument for that the EU is a normative power lies in much of the work it did internationally. Two of the countries in which the EU was successful were Cyprus and Poland. At the time being they were still EU candidates. Manners argues that it was through his concept of procedural diffusion that the EU was able to influence these two countries to such a degree that they decided to abolish the death penalty. The motivational factor for Cyprus and Poland was the fact that this would bring them closer to an actual EU membership. Despite that Manners recognize the importance of the CoE in the already EU members, he denies that the CoE would have been the main source of influence in these two countries. Manners argument lies in the fact that it did take until late 2000 before Poland ratified protocol no.6. This was eight years later than its neighbouring countries and the CoE members Slovakia, the Czech Republic and Hungary which ratified it in 1992. To Manners the answer is that the EU’s pre-accession negotiations that began in 1998 had a huge impact to Poland policy on the death penalty. This is why the EU is a normative power according to Manners.¹⁸

3.2 CRITIQUE AGAINST ‘NORMATIVE POWER EUROPE’

As mentioned in the introduction not everyone agrees with Manners theory and his belief that the EU is a normative power. Professor Thomas Diez is one of these critics. He argues that there is no difference between a civilian- and a normative power. Diez claims that the concept of a normative power is actually imbedded in the concept of civilian power and, thus, the term becomes superfluous.¹⁹

There are also critics that argue that the EU should be perceived from a neorealist perspective. One of them is Adrian Hyde-Price. He grounds his belief on Hedley Bull’s reasoning from 1982 that “the power of influence exerted by the European Community and other such civilian actors [is] conditional upon a strategic environment provided by the mili-

¹⁷ Manners, I, *Normative power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40(2), 235-258, 2002. p 247

¹⁸ Ibid. p 249

¹⁹ Diez, Thomas, *Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'*, Millennium Journal of International Studies, 33(3), 613-636, 2005. p. 617
<http://mil.sagepub.com/content/33/3/613.full.pdf+html> (2014-12-01)

tary power of states, which they [do] not control.”²⁰ Security is and will always be a primary concern for individual states. And because of the inherent anarchic world order the EU is established as a form of self-help system that brings peace to the EU region.²¹ Hyde-Price does however recognize the EU as being a ‘force for good’. It is nonetheless only entitled to handle the EU members’ ‘second-order’ concerns. He says that the EU members “will only allow the EU to act as the repository for shared ethical concerns as long as this does not conflict with their core national interests.”²² Additionally, he also criticize the EU’s use of ‘hard power’ to achieve its goals and contend that this is not in line with the image of being a normative power. A normative power should rather focus on achieving its goals by the means of ‘soft power’.²³

A third critique against NPE is presented by professor Michael Merlingen. He expands on the above arguments and adds to this that the national interests of the EU member states are a stronger force than the EU’s normative agenda if they conflict with one another. He also criticizes the EU for not being solely a ‘force for good’. Norm diffusion, he says, is not only about promoting and diffusing norms. It is also a matter of subordination and superordination.²⁴ It can be thought of as a show of power.

4. METHOD

A qualitatively oriented content analysis is probably the most common approach when it comes to interpretation of documents. It is a practical method when trying to find underlying themes in a material²⁵, and because this is the case in this study this became the method of choice. A quantitatively oriented content analysis could also have been used, but this would not have allowed for the same extent of deep interpretation of the themes as the qualitative content analysis provides for. This is important to better un-

²⁰ Hyde-Price, Adrian, *‘Normative’ power Europe: a realist critique*, Journal of European Public Policy, 13(2), 217-234, 2006. p. 218
http://www.tandfonline.com/doi/abs/10.1080/13501760500451634#.VHyHRot5_-Z (2014-12-01)

²¹ Ibid. p. 221

²² bid. p. 223

²³ Ibid. p. 227

²⁴ Merlingen, Michael, *Everything is Dangerous: a Critique of ‘Normative Power Europe’*, Security Dialogue, 38(4), 435-452, 2007. p. 443
http://graduateinstitute.ch/files/live/sites/iheid/files/sites/political_science/shared/political_science/7183/9th%20week/Merlingen.pdf (2014-12-01)

²⁵ Bryman, Alan, *Samhällsvetenskapliga metoder, 2., [rev.] uppl., Liber, Malmö, 2011. p. 505*

derstand the EU as a normative power. Whilst the quantitative method would have strengthened the reliability of the study (because it would have been easier to mirror), the qualitative method strengthens its validity. It would perhaps have been easier if the study would have had predetermined themes to look for in the material, but that could have proven hurtful since other important themes that would have come up had needed to be left out.

The material was analyzed in such a way that it was possible to distinguish whether the EU tries to diffuse human rights norms in its member states through any of the six ways of norm diffusion that is mentioned in the NPE. This study will specifically focus on the EU members Hungary and Croatia. A concrete example of how the procedural was done is as follows: since the EU was able to influence Croatian policies when it still was a candidate state it becomes an example of procedural diffusion. This study has not, however, been trying to find terms that is identifiable with Manners theory. If this would have been a possibility, then a quantitative method would have been the most practical method to use instead. However, it is not realistic to believe that the material would use such theoretical terms since terms like these mostly are used in theoretical papers, which this material is not. Therefore, instead of trying to find specific words in the material, this study has been trying to interpret the material in regard to NNP.

To be more specific, what has been looked for in the material is when human rights norms concerning the disabled EU population has been mentioned in the texts. It has then been attempted to identify which actors that are part of that discussion, as well as if the actors are promoting human rights norms in a third party. Furthermore, it has also been attempted to see to what an extent the human rights norms has been implemented in general. The goal here is not to go into depth on how well the norms are implemented. This will merely enable a comprehension of the living situation of the disabled EU population, including the situation in Hungary and Croatia.

Moreover, Thomas Diez has suggested that a "normative power is a power that is able to shape conceptions of the 'normal'."²⁶ Thus, by using this definition a normative power can be identified by the impact a power has on what is considered appropriate behavior by other actors. The definition of 'power' will be discussed further in the analysis.

²⁶ Manners, Ian, *the European Union as a normative power: a response to Thomas Diez*, Millennium - Journal of International Studies, 35(1), 167-168, 2006. p. 168
http://polski.ku.dk/english/staff/Academic_staff/?pure=en%2Fpublications%2Fthe-european-union-as-a-normative-power%28fb92b01-76b9-40c7-8e55-2d9dd4fb44f2%29.html (2015-01-06)

By viewing how persons with intellectual- and mental disabilities are treated within the EU member states and how and if the EU advocates and try to diffuse human rights norms for this group of people within the member states, this study should be able to clarify if the EU is and should be considered a NNP in addition to its international normative power.

4.1 SOURCES AND MATERIAL

The material used in this study consist of different types of documents from two main sources. One of them is the European Agency for Fundamental Rights (Fundamental rights agency). The relevance of this source can be explained by 'Article 2' in the founding regulations of the FRA:

"the objective of the Agency shall be to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights."²⁷

With this in mind it should be safe to say that the FRA has a very good insight in how the EU's institutions as well as its members states work with these certain issues. To further strengthen the motive of using FRA as a source; in 2012 the agency was scrutinized and undertaken an independent evaluation of its work. The report read: "overall, the evaluation findings point towards a clearly favorable assessment in terms of the FRA's ability to contribute to a greater shared understanding of fundamental rights issues in the framework of Union law among policy/decision-makers and stakeholders in the EU and member states."²⁸ This should prove the legitimacy of the FRA. Also, "EU agencies, the Commission, and the Parliament expressed positive views with regard to collaboration with the FRA."²⁹

Many of the FRA documents are the result of an examination on the legal fram-

²⁷ CoE, *Council Regulation (EC) no 168/2007 of February 2007 establishing a European Union Agency for Fundamental Rights*, 2007.
http://fra.europa.eu/sites/default/files/fra_uploads/74-reg_168-2007_en.pdf (2015-01-08)

²⁸ Ramboll, *External evaluation of the European Union agency for fundamental rights*, final report, Copenhagen, November 2012. p. 67
http://ec.europa.eu/justice/fundamental-rights/files/fra_evaluation_final_en.pdf (2015-01-06)

²⁹ Ibid. p. 85

etworks of all the EU member states which began in 2008. It also includes a more qualitative fieldwork on nine specific EU member states; being Bulgaria, France, Germany, Greece, Hungary, Latvia, Romania, Sweden and the United Kingdom.³⁰

The second main source constitutes of documents and articles from the Human Rights Watch (HRW). This is a good compliment to the FRA with the intention make a more complete picture of the EU as a NNP. A second reason for using material from HRW is to see if it has the same apprehension as the FRA does on the matter. The FRA is established by the EU to deal with research and evaluation on human rights in the EU member states. By also analyzing an actor that is not so heavily associated with the EU should result in a more objective presentation of the it. It should also be noted that the HRW handles almost the same sort of questions and issues within the EU as the FRA does.

Yet another reason for choosing HRW is that it is one of the largest human rights organizations in the world and also has the most extensive research on human rights in the European Union. Many other large human rights organizations tend to turn their focus away from Europe towards other parts of the world, mainly Africa and the Middle East for obvious reasons.

For clarification, the objective here is not to investigate each EU member state individually, but rather to comprehend a more general picture of the situation of how the EU is working with human rights norms concerning persons with disabilities. Hungary and Croatia will be the main subjects of discussion because of their recent and also ongoing violations of human rights norms (in these countries persons with intellectual- and mental disabilities are particularly exposed to violations of their rights). Though there are also other EU member states that violates human rights norms in one way or another, Hungary and Croatia fail to comply with human rights norms to a larger extent than any other EU members. Therefore there is quite a lot of material to recover on this issue in these two countries.

Lastly, to better understand what human rights incorporates the following United

³⁰ FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 10 http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

Nations' documents have been analyzed: *the universal declaration of human rights*³¹, *the convention on the rights of persons with disabilities*³² (CRPD), *the Covenant on civil and political rights*³³, and *the Covenant on economic, social and cultural rights*³⁴. The following CoE (and ECtHR) document has also been analysed: *the European convention on human rights*³⁵ (ECHR). The significance of using documents from the UN and the CoE is that they are welcomed and widely accepted within the European Union as guidelines for human rights. The EU has nevertheless modified some of these norms and rights and made some interpretations of its' own. The changes are not major (one could actually call it a rephrasing of the documents), but the following document have nonetheless been part of the analysis: *the Charter of fundamental rights of the European Union*³⁶ (the Charter).

5. EARLIER RESEARCH

There has been a lot of research done on the EU as a political actor. Much of it has been on what kind of a political actor it is in international politics. This area of research has, for instance, been the subject of scholars like Sonia Lucarelli and Lorenzo Fioramonti. They have contributed much to this discussion. Some of their findings are presented in their book *External perceptions of the European Union as a global actor*. They conclude that whilst the EU sees itself as a growing power in the world, many others large actors see the EU in a different kind of light. In the previously mentioned book the USA, Russia, China and the African Union (AU) have been the main subjects of discussion. They appear to have a different understanding of the EU. Whilst most of them acknowledge the EU as a rising power in economical politics, they give little credit to the EU in many other areas.³⁷

³¹ UN, *the Universal Declaration of Human Rights*.
<http://www.un.org/en/documents/udhr/> (2015-01-08)

³² UN, *the Convention on the Rights of Persons with Disabilities*.
<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (2015-01-08)

³³ UN, *the International Covenant on Civil and Political Rights*.
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (2015-01-08)

³⁴ UN, *the International Covenant on Economic, Social and Cultural Rights*.
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (2015-01-08)

³⁵ ECtHR, *the European Convention on Human Rights*.
http://www.echr.coe.int/Documents/Convention_ENG.pdf (2015-01-08)

³⁶ EU, *the Charter of Fundamental Rights of the European Union*, 2000.
http://www.europarl.europa.eu/charter/pdf/text_en.pdf (2015-01-08)

³⁷ Lucarelli, Sonia & Fioramonti, Lorenzo (red.), *External perceptions of the European Union as a global actor*, Routledge, Milton Park, Abingdon, Oxon, 2010. s. (first spread)

The fact that the EU's self-perception does not always agree with perceptions of the EU from outside actors further motivates the use of the two main sources that has been used in this study. The FRA is part of the EU and might have a different take on it than what the HRW has, who is not included in the EU-system. This should open up for the possibility to see two sides of the same coin.

Whilst much of the research is on the EU as an international actor, there are obviously research on it as a national actor as well. However, when it comes to the EU and human rights norms most of the research has been on how these two correlate and interact in an international context. Nonetheless, Rosa Balfour is one of the persons that has brought much enlightenment to this area of knowledge. In *Values and principles in European Union foreign policy* from 2006 she discuss a statement that was made by the EU Commission in their 2001 published document *Communication from the Commission to the Council and the European Parliament - The European Union's role in promoting human rights and democratisation in third countries*. With this statement the Commission implies that it wants the EU to promote human rights norms in both their internal and external politics. Balfour responds by saying that "much institutional rhetoric has been spent on the EU's role in promoting principles of democracy and human rights, yet few analyses ascertain the extent to which the rhetoric is translated into political practice."³⁸ Her conclusion is that the EU has a "flexible adherence to principles [...] when it comes to deciding where, when, how and why to press for the principles it proposes to stand by."³⁹ The EU is simply not very consistent in this regard.

Furthermore, Balfour says that the EU has the tools to promote human rights norms and to punish those that do not abide by them. This claim will prove to be important for an argument made by the HRW later in this study, but more on this later. It should also be noted that as of 2006 the EU was the only actor in the world that had put on paper that its foreign policy included the support for human rights.⁴⁰

This study will to some extent continue and elaborate on Balfour's findings. As mentioned before the purpose of this study includes looking on the EU's norm diffusion on human rights in third parties, specifically its member states. Now that it also has been argued

³⁸ Balfour, Rosa. Principles of democracy and human rights. In *Values and principles in European Union foreign policy*, Lucarelli, Sonia & Manners, Ian (red.), 114-129, 1. ed., Routledge, London, 2006. p. 214

³⁹ Ibid. p. 227

⁴⁰ Ibid. p. 227

that human rights norms are part of the basis of the EU's foundation (as argued in 3. *Norms and the Theory of 'Normative Power Europe'*) it should be important for the EU to promote these norms at all times in their national and international politics, just as the Commission proposed it should.

6. WHAT IS 'DISABILITY'?

The CRPD is "recognizing that disability is an evolving concept"⁴¹, and as the FRA' reports in *Involuntary placement and involuntary treatment of persons with mental health problems* states "there are no commonly agreed terms to describe group of individuals with particular impairments."⁴² But since the FRA, after having consulted with various disabled persons' organizations (DPOs), decided to use the terms 'persons with intellectual disabilities' and 'persons with mental health problems' in their research these terms will also be used in this study as well. However, other preferred terms are, for example, 'persons with learning disabilities', 'persons with mental health problems', and 'persons with psych-social disabilities'.⁴³ All of these represents the same form of illness, but to keep it simple the latter three will not be used hereafter. They were solely mentioned for the sake of illustrating that there are quite a few terms in use describing basically the same thing.

One of the main reasons that the FRA decided, and therefore also this study, to go with two terms is because people with mental health issues is rarely keen to accept that they have a disability, as the FRA's studies show. One of the reasons for this is that in many countries people with disabilities have their rights violated which results in that they do not agree to that they have a disability so to avoid the violations. Furthermore, whilst there is a clear distinction between 'intellectual disability' and 'mental health problems', there is an overlap between them. For instance, persons with intellectual disabilities may also have mental health problems.⁴⁴

In this study, to avoid lengthy repetitions and for simplification purposes, the term 'persons with disabilities' will often be used. This term will serve to include both 'persons

⁴¹ UN web service section, Department of public information, *Convention on the rights of persons with disabilities*, 2006.
<http://www.un.org/disabilities/convention/conventionfull.shtml> (pdf page 1) (e) (2015-01-06)

⁴² FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 11
http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

⁴³ Ibid. p. 11

⁴⁴ Ibid. p. 12

with intellectual disabilities' and 'persons with mental health problems'. The intention here is not to undervalue any of these terms above. The use of this single, shorter term, is merely for practical purposes. Also, 'persons with disabilities' does not include persons with physical disabilities unless stated otherwise.

7. EMPIRICAL PRESENTATION - HOLDERS OF RIGHTS

The European Union has a clear code of conduct when it comes to human rights norms and its member states, as is presented in *the Charter of Fundamental Rights of the European Union*. Yet, there are several member states that violates these norms. The two most notorious countries when it comes to human rights violations within the EU are Hungary and Croatia. More often than not they fail to uphold these norms despite having agreed to comply with them. This is especially evident when it comes to how they treat their respective disabled population. This chapter will illustrate the general situation of the people with disabilities in these two countries. This chapter also includes a presentation on how the EU works with these sorts of issues, both in general as well as in these two states in particular.

7.1. HUMAN RIGHTS WATCH

7.1.1 HUNGARY

Hungary is presumably the worst country in the EU in which to live with a disability. Human Rights Watch has published an extensive number of papers and documents on Hungary's attitude towards human rights. Many of them have been published recently as a result of the behavior of the national conservative government that came to power in 2010, the Fidesz. Though the country ratified the CRPD in 2007, the Hungarian leadership has since then seemed to have forgotten all about it. Before 2012 the Fidesz had ruled that people living with disabilities in Hungary did not have the right to vote. After a lot of pressure from the ECtHR Hungary changed this so that a judge now makes individual assessments whether a person with a disability gets the right to vote. It has not yet been evaluated whether voting rights has changed in practice.⁴⁵ Nonetheless, the disabled are also excluded in almost every part of society because their government does not acknowledge their right to legal capacity. What this means is that the disabled have strict limitations on what decisions they are allowed to make in their lives. Many of them are not allowed to

⁴⁵ FRA, *the Right to Political Participation of Persons with Disabilities: Human Rights Indicators*, European Union Agency for Fundamental Rights, Vienna, 2014. p. 64

<http://fra.europa.eu/en/publication/2014/indicators-political-participation-persons-disabilities> (2015-01-06)

choose where to live, who to marry (often marriage is not allowed at all), or taking care of their own banking businesses. This is also applicable to persons that suffers from 'light' disabilities.

The HRW has sent numerous letters to the UN, the CoE, as well as the EU, addressing its concern over the recent developments in Hungary.⁴⁶ When Fidesz came to power its leaders immediately began to change Hungary's legal framework. This meant even more restrictions for the disabled population. The HRW has aimed substantial critique against Hungary because of this and because the Hungarian government constantly fails to listen to the appeals from the EU and the CoE. Since 2010 the government has adopted and amended a new constitution and rammed through over 600 new laws.⁴⁷

In November 2010 one of the founders of the HRW, Jeri Laber, published an article in the digital commons OpenDemocracy calling for the EU to punish Viktor Orbán (the prime minister of Hungary since 2010) for his negligence of international human rights norms. The article stressed that the situation of people with disabilities as one of the major concerns. Laber argues that the EU "has tools at its disposal — legal enforcement action, suspending voting rights, or ending economic support — to pressure EU member states to respect human rights." The EU should use these tools, he says.⁴⁸

In May 2013 the HRW published a report on Hungary called *Wrong direction on rights: assessing the impact of Hungary's new constitution and laws*. Among a lot of things it discuss the abolition of voting rights for the disabled (as was also mentioned above). Whilst many organizations and countries around the world have condemned this, including the United Nations Committee on Rights of Persons with Disabilities, the EU has remained silent.⁴⁹ Lydia Gall, a human rights lawyer and researcher on Balkans and Eastern Europe working for the HRW, accuses the EU of not responding to, nor addressing, the issue strongly enough. In fact, it has not done anything at all. Gall says: "when the core values of the European Union are under threat in a member state, EU institutions should act to sa-

⁴⁶ Human rights watch, *Hungary: change discriminatory voting laws*, October 2013.
<http://www.hrw.org/news/2013/10/01/hungary-change-discriminatory-voting-laws> (2015-01-06)

⁴⁷ Human rights watch, *Hungary rule of law under threat*, May 2013.
<http://www.hrw.org/news/2013/05/16/hungary-rule-law-under-threat> (2015-01-06)

⁴⁸ Laber, Jeri, *25 years after the fall of Communism: a call*, OpenDemocracy, November 2014.
<https://www.opendemocracy.net/can-europe-make-it/jeri-laber/25-years-after-fall-of-communism-call>
(2015-01-06)

⁴⁹ Human rights watch, *Wrong direction on rights: assessing the impact of Hungary's new constitution and laws*, USA. 2013. p. 18
http://www.hrw.org/sites/default/files/reports/hungary0513_ForUpload.pdf (2015-01-06)

eguard those values.”⁵⁰ Despite the fact that many of the EU member states support this view, the European Council has thus far “been unwilling to even issue a collective political statement urging the Hungarian government to reconsider its actions.”⁵¹ While the EU remains passive a few countries including Germany, the Netherlands, Finland, and Denmark (all of them EU member states) have written a collective letter to the EU encouraging it to “strengthen its tools to respond to abuses inside its own borders.” If this is allowed to continue, Gall argues, it sends a signal to other EU members that they too can abuse human rights norms without facing any real consequences.⁵²

7.1.2 CROATIA

The situation in Croatia is not quite as harsh as it is in Hungary, but there is still much room for improvements. Croatia became an official EU-candidate in 2004.⁵³ Since then the country has made huge progress to the living conditions and to the rights of its disabled population. However, despite being an actual EU member since 2013 the country still has a long way to go before it will live up to EU’s human rights standards.

In November 2010 the HRW urged the EU to pressure Croatia to reform its laws and policies concerning the rights of their disabled population. In the article *EU should press Croatia on disability rights* the HRW researcher and consultant Amanda McRae acknowledge the improvements to Croatian human rights norms that have been accomplished over the last years. But she says that the fact remains that in every annual progress report since 2007 Croatia has received massive critique because it has not lived up to the human rights norms expected from it.⁵⁴

When Croatia became an EU member the Union ended its formal monitoring of the country. The HRW does not approve with this decision and argues “that just because Croatia has been formally admitted to the Union does not mean that it has met all its human

⁵⁰ Lydia Gall, *Response to Hungary is a test for EU*, EU observer, May 2013.
<http://euobserver.com/justice/120145> (2015-01-06)

⁵¹ Ibid.

⁵² Ibid.

⁵³ Human rights watch, *Croatia: no let up on rights abuses*, June 2013.
<http://www.hrw.org/news/2013/06/28/croatia-no-let-rights-abuses> (2015-01-06)

⁵⁴ McRae, Amanda, *EU should press Croatia on disability rights*, November 2010.
<http://www.hrw.org/news/2010/11/18/eu-should-press-croatia-disability-rights> (2015-01-06)

rights obligations under EU law.”⁵⁵ Croatia was one of the first countries in the world to sign the CRPD, but little progress has been made since then. Once again the HRW calls for the EU to take responsibility for its member states to ensure that they do not continue their violations of human rights norms.⁵⁶ The HRW argues that the EU has a ”responsibility to ensure that all 28 member states keep their domestic laws and practices in line with EU standards, including the Charter of Fundamental Rights, and it should take robust action against any member states who fail to do so.”⁵⁷ Unfortunately this has thus far not been the case.

The 28 of June 2013 Hugh Williamson, HRW Director of the European and Central Asian Division, wrote an open letter to the Croatian prime minister Mr. Zoran Milanovic expressing HRW’s thoughts on the human rights situation in Croatia. Whereas the situation is not as bad as in Hungary, the disabled Croatian population does not enjoy their full extent of human rights here either.⁵⁸ There has been limited progress towards implementing the plans and policies that Croatia adopted as means to improve on its human rights when it still was an EU candidate. However, Croatia is going the opposite way from Hungary and becomes better and better in this regard. In fact, in difference to Hungary in 2012 Croatia made it legal for its disabled population to vote in the elections which before this point had been restricted from doing.⁵⁹ Nonetheless, in August 2014 the HRW sent an open letter to the UN which contained a number of recommendations on how to approach the issue of human rights norms in Croatia.⁶⁰ Williamson points out that ”the European Parliament, the European Commission, and the Council of the European Union have a role to play [in ensuring] that its member states meet these [human rights] obligations.”⁶¹

⁵⁵ HRW, *Croatia in the EU has no incentive to improve human rights*.

<http://www.publicserviceeurope.com/article/3663/croatia-in-the-eu-now-has-no-incentive-to-improve-human-rights> (2014-12-05)

⁵⁶ Ibid.

⁵⁷ Human rights watch, *Croatia: no let up on rights abuses*, June 2013.

<http://www.hrw.org/news/2013/06/28/croatia-no-let-rights-abuses> (2015-01-06)

⁵⁸ Williamson, Hugh, *Letter to Croatian Prime Minister Zoran Milanovic*, HRW, June 2013.

<http://www.hrw.org/news/2013/06/28/letter-croatian-prime-minister-zoran-milanovic> (2015-01-06)

⁵⁹ Ibid.

⁶⁰ Human rights watch, *Human rights watch submission to the United Nations Committee on the rights of persons with disabilities regarding Croatia*, August 2014.

<http://www.hrw.org/news/2014/08/25/human-rights-watch-submission-united-nations-committee-rights-persons-disabilities-r> (2015-01-06)

⁶¹ Ibid.

Despite that the HRW recognizes some importance to the role EU plays in Croatia it is deeply disappointed in the EU's work. The HRW writes: "The European Commission has been hesitant to confront member states on their human rights record in its annual report on the application of the [Charter of fundamental rights of the European Union]." This critique includes the EU's absence in Hungary. The HRW realizes that the EU cannot handle this issue all by itself and needs outside help to succeed. This help should come from the UN and the CoE, the HRW suggests. However, the EU should be the primary actor in the EU member states. The CoE should nonetheless step in when needed, but only to work as a compliment to the EU rather than a substitute.⁶²

Why is it that Hungary and Croatia are able to continue these violations without any 'real' interference from the EU? The answer to that question can be distinguished in the documents from the FRA.

7.2 EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

All in all there are some 80 million persons living with disabilities throughout the EU as of 2014. This number includes persons with physical disabilities.⁶³ However, according to the FRA many of these have intellectual- and mental disabilities. The exact number is unfortunately hard to come by since different states register them differently. Nonetheless, as a consequence of having disabilities these persons have lost much of their legal capacity as well as many of their human rights, as is illustrated in the cases of Croatia and Hungary.⁶⁴

On 15 November 2010 the EU adopted the *European disability strategy 2010-2020*⁶⁵. It is one of the largest projects put forward by the EU in this field of work. It voice a need for action against human rights violations against people with disabilities and

⁶² Human rights watch, *Strengthening the European Union's response to human rights abuses inside its own borders*, August 2013.
<http://www.hrw.org/news/2013/08/05/strengthening-european-union-s-response-human-rights-abuses-inside-its-own-borders> (2015-01-06)

⁶³ FRA, *People with disabilities*, 2014.
<http://fra.europa.eu/en/theme/people-disabilities> (2015-01-06)

⁶⁴ FRA, *the Right to Political Participation of Persons with Disabilities: Human Rights Indicators*, European Union Agency for Fundamental Rights, Vienna, 2014. p. 13
<http://fra.europa.eu/en/publication/2014/indicators-political-participation-persons-disabilities> (2015-01-06)

⁶⁵ European Commission, *the European disability strategy 2010-2020*, (last updated: 2013-07-16)
http://ec.europa.eu/justice/discrimination/disabilities/disability-strategy/index_en.htm (2015-01-08)

for the EU members to improve the quality of life for this group of people. The strategy reads: "EU action will support and supplement national policies and programs and promote equality by promoting the conformity of Member State legislation on legal capacity with the [CRPD]."⁶⁶ But as the FRA points out, this initiative did not come to life through a vacuum. In fact, this policy followed a series of initiatives taken "in a wider European context", mainly by the initiative of the CoE.⁶⁷ Four years earlier, in 2006, the CoE established a similar disability action plan that will run until 2015 (*Council of Europe Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society: Improving the Quality of Life of People with Disabilities in Europe 2006-2015*).⁶⁸ To almost every policy and strategy that the EU has come up with in recent years in the area of human rights norms there seems to be a counterpart that has already been initiated by the CoE or the UN.

As of March 2014 25 of the 28 EU member states have ratified the CRPD.⁶⁹ The FRA considers this a great accomplishment. However, it does not give the credit to the EU. The Union is too weak and too inexperienced with these sorts of matters to have accomplished this, the FRA says. The Union even struggles to make its own member states interpret the CRPD the same way despite working actively to make its members reach an unanimous approach to the Convention.⁷⁰ Nonetheless, it is not like the EU has not had any guidelines to pursue in the area of human rights. Since the introduction of the EU's Charter in 2000 the Union has been officially striving for equal rights for all persons of society. This can however prove somewhat misleading since many of the EU members already had adopted and implemented the ECHR (drafted by the CoE and the European Court

⁶⁶ EUR-lex, *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, 2010.

<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52010DC0636> (2015-01-06)

⁶⁷ FRA, 'Legal capacity of persons with intellectual disabilities and persons with mental health problems', European Union Agency for Fundamental Rights, Vienna, 2013. p. 10

<http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf> (2015-01-06)

⁶⁸ FRA, *the Right to Political Participation of Persons with Disabilities: Human Rights Indicators*, European Union Agency for Fundamental Rights, Vienna, 2014. p. 17

<http://fra.europa.eu/en/publication/2014/indicators-political-participation-persons-disabilities> (2015-01-06)

⁶⁹ Ibid. 13

⁷⁰ FRA, 'Legal capacity of persons with intellectual disabilities and persons with mental health problems', European Union Agency for Fundamental Rights, Vienna, 2013. p. 9

<http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf> (2015-01-06)

of human rights) in the 1950s before they entered the Union altogether. The FRA also notes that many of the articles in the Charter has been taken directly from the ECHR, meaning that it was not really anything new when it was drafted. Therefore it is hard to distinguish which of the documents the EU members relate to. Few EU members had to change anything in their policies to make sure they complied with it due to its similarities.⁷¹ Moreover, after 2006 and the introduction of the CRPD it is the CRPD that has been the universal guideline for states to follow. It appears as if the Charter is not even the most significant document in the Union when it comes to recommendations on how to deal with people with disabilities.⁷² This is further supported by the fact that in the EU27 not even one of the member states referred to the Charter in their legislations in the sections that deal with people with disabilities. Many of them, including Germany and Austria, actually refer to the CRPD instead. The only country mentioning a European related policy document is France, but it refers to 'European standards'⁷³, which actually proves to be referring to the CoE recommended norms.⁷⁴

One of the reasons that the European norms (both the ones in the EU and in the remaining part of Europe) "are bound to evolve in the light of the CRPD"⁷⁵ is that the "EU does not have the competence to deal with specific questions related to legal capacity of persons with disabilities."⁷⁶ However, at the moment the FRA implies that it is the Rec(99)4⁷⁷ (recommendation No.4 from 1990 by the CoE) that guides the European Court

⁷¹ FRA, '*Legal capacity of persons with intellectual disabilities and persons with mental health problems*', European Union Agency for Fundamental Rights, Vienna, 2013. p. 13
<http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf> (2015-01-06)

⁷² FRA, '*Involuntary placement and involuntary treatment of persons with mental health problems*', 2012. p. 23
http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

⁷³ Ibid. p. 30

⁷⁴ Ibid. p. 38

⁷⁵ FRA, '*Legal capacity of persons with intellectual disabilities and persons with mental health problems*', European Union Agency for Fundamental Rights, Vienna, 2013. p. 23
<http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf> (2015-01-06)

⁷⁶ Ibid. p. 23

⁷⁷ CoE, '*Recommendation no. R (99) 4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults*', 1999.
http://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec%2899%294E.pdf (2015-01-08)

of human rights (ECtHR), and therefore also the EU member states.⁷⁸ However, the FRA has found that the ECtHR "regularly cites the CRPD in its case law" and "that it will serve as a reference point for future standard-setting in the Council of Europe and the European Union."⁷⁹

Despite being undermined by other actors the EU still tries to be a 'force for good' and works consistently with improving and diffusing human rights norms into its member states. In 2001, for example, the EU invited its member to work together to improve their healthcare for their disabled populations, all in accordance with the *European Pact for Mental Health and Well Being*.⁸⁰ Worth mentioning is also that in 2005 the European Commission published a paper on mental health which have led many of the EU members to reform their legal frameworks to better comply with the papers' recommendations. However, the FRA recognizes that the CoE has taken this one step further and in 2013 they released "an additional protocol to the Convention on human rights and biomedicine which will act as a binding instrument for the European states to follow." This will be the first of its kind in Europe.⁸¹ As for now there are not any binding instrument that set specific standards in the EU when it comes to human rights for the disabled. There are only recommendations. The closest yet is the non-binding instrument Rec(2004)10⁸². For now, almost every EU member state have specific laws on mental health and how to treat people with disabilities in general.⁸³ When the members seems to have similar approaches this does not seem to have been the work of the EU. The FRA prefers to give the credit to the UN

⁷⁸ FRA, 'Legal capacity of persons with intellectual disabilities and persons with mental health problems', European Union Agency for Fundamental Rights, Vienna, 2013. p. 26
<http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf> (2015-01-06)

⁷⁹ FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 9
http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

⁸⁰ Ibid. p. 9

⁸¹ Ibid. p. 10

⁸² CoE, *Recommendation Rec(2004)10 of the Committee of Ministers to Member States Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder*, 2004
<https://wcd.coe.int/ViewDoc.jsp?id=775685> (2015-01-08)

⁸³ FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 29
http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

and the CoE instead.⁸⁴

8. ANALYSIS

First and foremost the term 'power' will be defined as it is used in this analysis. The definition will be twofold for the purpose of giving the term depth as well as to show that different dictionaries phrase the definition differently. This can lead to diverging interpretations so also for the sake of clarification; this study will use 'power' as "the capacity or ability to direct or influence the behavior of others"⁸⁵ along with "the ability or capacity to act or do something effectively".⁸⁶ Due to the second part of the definition of 'power' it will not be enough to solely identify involvement by the EU in their member states decision and policy-making: it also has to be effective in what it does. Thus, according to this study, for the EU to be considered a NNP it has to be possible to distinguish that the EU has contributed to an actual difference to the behavior and policies of its member states through any of the six ways Manners argues that norms can be diffused in third parties.

In this analysis it will be argued that the EU does not live up the expectations of a power. As will be illustrated the EU lives up the first part of the definition of 'power', but fails to achieve the second. For this reason can the EU not be considered a NNP either. Yet again it should be made clear that the NPE nor the EU's international normative power is in question here since these aspects have not been an enough part of this study. It should also be noted once more that since this study has exclusively focused on human rights norms in regard to disability, the discussion is limited to this aspect of the EU as a NNP. Any other form of the EU as a NNP is not taken into consideration.

Even though the EU is not a NNP it does have some normative tendencies. The EU often acts normative, as for one is evident in the case of Croatia due to its procedural norm diffusion. While Croatia still was an EU candidate the EU was able to influence Croatia's policy making since it would not be allowed into the EU otherwise. But as soon as Croatia got the membership the work it did to improve its human rights norms for the disabled slo-

⁸⁴ FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 36 & 38
http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

⁸⁵ Oxford Dictionaries, entry word: *Power*.
<http://www.oxforddictionaries.com/definition/english/power> (2015-01-06)

⁸⁶ The Free Dictionary: entry word: *Power*.
<http://www.thefreedictionary.com/power> (2015-01-08)

wed down significantly. This indicates that the EU does not have the ability, or the will, to ensure that the EU candidate(s) adopts the full extent of the EU's human rights norms. However, for this case the EU can be considered a NNP if seen to the first definition of 'power' since it actually showed it was able to influence the behavior of another party. Nonetheless, because it failed to do so effectively (illustrated by the fact the EU's influence was not enough to persuade Croatia to keep up its work when it left) it fails to be a NNP all the same.

A second argument that the EU fails to be a NNP is taken from the arguments of both HRW as well as Rosa Balfour that the EU has the tools to make its member states comply with its norms (as mentioned in 7.1.1 these tools includes legal enforcement action, suspending voting rights, and ending economic support). Thus far the EU has been unwilling to use these means despite the fact that a number of its member states, including Germany, have called for the EU to step up and take responsibility in the matter. Why the EU does not want to be involved can only be speculated upon. Perhaps the EU does not want to impinge on its member states sovereignty. Maybe it is the other way around, that the member states do not want the EU involved in fear that if they give the EU mandate to impinge on state sovereignty it will sometime in the future possibly invade on theirs. Manners would however argue that this would not matter since in his theory he explains that one of the EU's strengths is that it can involve itself in these matters without being seen as a threat to the third parties. On the other hand, Manners argument may only be applicable to third parties outside of the Union since this is where his theory mainly is supposed to be used. It is nevertheless unjustifiable by the EU to stay out of these issues. Human rights norms are one of the cornerstones to its foundation and because of that it is unacceptable to stand and watch when its own members fail to live up to its human rights norms and in some cases even violates them.

If the HRW and Balfour actually are right about the strength of the EU's tools to punish the countries that do not comply with EU's human rights norms, then the EU certainly should not be considered a NNP. The truth is that the EU has not even condemned the human rights violations that is going on in Hungary. This if anything should illustrate the weakness of the EU as a NNP. The EU does not even live up to its own standards and because of that it should have a hard time trying to diffuse norms since it is not a 'power by example' which is essential to the concept of a NP (in this case a NNP) according to Manners.

Yet another striking argument that the EU is not a NNP is the fact that not a single

one of its member states refer to the EU policies and documents in their legislations. Instead it is documents from the UN and the CoE that are mentioned, one of them being the CRPD. One of the most surprising things about this is that even though the EU has come up with equivalent documents to the UN and the CoE its members still refer to the former in their legislations. This undermines the legitimacy of the EU as a NNP since it does not appear influential enough to even ensure that its member states pursue the EU's human rights documents.

Moreover, when seen to how the FRA depict the EU as an actor in the area of human rights the Union comes out rather weak. Keep in mind that this is a portrayal by an agency that came to life on the behest of the EU. With Lucarelli and Fioramonti in mind it would not have been unreasonable to think that the FRA would have shed good light on the EU. Nonetheless, the FRA works as intended by the Union and evaluates their work and their member states work in the field of human rights. Anyhow, the saying 'monkey see, monkey do' fits quite nicely to the behavior of the EU as it is portrayed by the FRA. Much of what the EU does are, more or less, reactions to work that has already been put forward by the UN and the CoE. The fact that the *European disability strategy 2010-2020* and the Charter are based on work initiatives by the CoE illustrates this dilemma. The Charter for instance is, as previously mentioned, quite similar to the ECHR which was already adopted in all the EU member states long before the Charter was drafted. Whilst it is a good thing that the EU too works for the cause of human rights, the issue with being second also undermines its credibility as a NNP. From the FRA documents it is possible to interpret that the two most prominent normative powers in the EU are the UN and the CoE. It should be added that much of the CoE's normative legitimacy comes from its ability to manifest and impose norms through the influence it has over the ECtHR.

The FRA recognizes that the most important role of the EU in human rights is that of coordinator of document interpretations. In fact, the FRA argues that coordination of UN and CoE conventions and policies is what signifies the EU's strength in this kind of work. Many of these human rights documents, primarily the CRPD, can prove to be ambiguous in its meanings. EU works to ensure that its member states interpret the documents the same as well as to ensure that they all work towards a mutual goal.⁸⁷ This together with the example of the EU inviting its members to work with the healthcare for the disabled in 2001 can be seen as a form of informational diffusion by the EU in its member states. That

⁸⁷ FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 21 http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

should elevate the EU as a normative power, but yet again the FRA would argue that it fails to be effective in doing this. The FRA accuses the EU of not being very successful in carrying this role either. It is therefore not a very strong actor when it comes to working with human rights in its member states. But since no one else has taken on this role as coordinator this initiative can prove to be very important in the future when EU has gotten more experience.⁸⁸ For the time being, the main reason why the EU is not very good in working with human rights norms is because it lacks competence in this area. The FRA argues that the EU must work to improve its ability and experience in this regard. The EU must become better at this if it ever is going to be effective in either of the roles as coordinator or even as a NNP. This lack of qualified competence is most likely the main reason to why it is the UN and the CoE that are the main influential power in the EU when it comes to working with human rights norms.⁸⁹

To conclude, the EU can be seen as a 'force for good' and a NNP when it comes to its theoretical approach to working with human rights norms in its member states. But as soon as one starts to look at how the EU deals with these issues in practice the EU seems to be crippled. This becomes clear when seen to all the good policies and strategies it has initiated over the years, but how little it has done to actually get them implemented in its member states. As the situation is now the EU has not reclaimed its influential power over Croatia to make sure it fulfills its obligations, in Hungary the EU is absent, the EU member states do not include EU documents in their legislations, and the material in this study propose that the UN's CRPD "will serve as a reference point for future standard-setting [...] in the European Union."⁹⁰ These are surely not characteristics of a NNP.

9. CONCLUSION

In theory Ian Manner's NPE can be applied to the inside as well as to the outside of the EU. However, the theory does not seem to work very well when seen to EU's diffusion of human rights norms in its member states. The FRA blames the EU's lack in competence, saying that it is not experienced enough in working with human rights to be effective in this area. There are however a lot of actors that want to see the EU taking a greater re-

⁸⁸ FRA, *Involuntary placement and involuntary treatment of persons with mental health problems*, 2012. p. 13 http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf (2015-01-06)

⁸⁹ Ibid. p. 14

⁹⁰ Ibid. p. 9

sponsibility over its member states and ensure that they follow the EU human rights norms. This could mean that the EU has a great opportunity to take the step to become a NNP within the EU. There are however actors that argue that the EU already has the competence and the tools to be a NNP, but for some reason it has choose not to use them. For this reason the European Union fails to be a NNP. The normative powers in Europe are instead identified as the UN and the CoE (and the ECtHR).

From the finding above it is possible to argue that the EU does not even want to be a NNP. Its policies and strategies are arguably only for display in order to make itself look good and keeping a good image. Whilst this argument is weak; the fact remains that the EU is not doing anything about the human rights violations in Hungary. This goes against the EU's disability strategy and the EU's Charter as well as conflicts with the fact that the EU was the first actor to put on paper that its foreign policy included the support for human rights. What comes out as indifference to these violations goes against everything the EU stands for. This argument does actually give support to the statement by Howse and Kalypso that the EU is inadequate in working with "norm compliance at home".⁹¹ Also, when seen to Balfour's argument that few studies discuss how the EU's rhetoric on human rights are translated into practice; this study reveals that EU does not practice what it preach. This study would further support Balfour's statement that the EU has a "flexible adherence to principles [...] when it comes to deciding where, when, how and why to press for the principles it proposes to stand by."⁹² A third scholar that arguably gets support from this is Hyde-Price who argued that the EU only is entitled to handle the EU member's 'second-order' concerns, and only for as long as it does not conflict with their core interests. Perhaps this is the most truthful answer to why the EU does not intervene in Hungary.

Though it has been interesting to use NPE on a national level it does not appear to be a very good fit. This is not how it was intended to be used and perhaps that was for a good reason. Nonetheless, this study has only used documents from two main sources as well as only been looking at two EU member states. What this means is that this is not enough material to actually make any fair generalizations. This study's findings is unfortunately only applicable to Croatia and Hungary. However, the validity should prove quite strong because the method of a qualitatively oriented content analysis has made it possib-

⁹¹ Howse, Robert & Kalypso, Nicolaidis, *'This is my EUtopia ...': Narrative as Power*, Journal of Common Market Studies, 40(4), 767-792, 2002. p. 789
<http://users.ox.ac.uk/~ssfc0041/Nic-Howse2002.pdf> (2014-12-01)

⁹² Balfour, Rosa. Principles of democracy and human rights. In *Values and principles in European Union foreign policy*, Lucarelli, Sonia & Manners, Ian (red.), 114-129, 1. ed., Routledge, London, 2006. p. 227

le to actually answer the question whether the EU is a NNP in these two countries. Also, this study would also argue that it has a high reliability. This is however restricted to the notion that the EU is not a NNP in the case of diffusion of human rights norms in Croatia and Hungary. It is also important to point out that this study is also only limited to conclusions regarding human rights, this is to say that the EU might be a NNP when it is promoting other norms in Croatia and Hungary.

As a last note, the findings in this study is somewhat similar to how Manners discuss the EU as a normative power in the abolition on the death penalty in its member states. He says that the EU played an important role in those countries, but was not as important as the CoE was. In a sense this is quite similar to how the EU works with human rights norms in its member states. The EU does not appear to be the main driving force that pushes through human rights norms. It appears to have some normative behavior, but the main normative power is also in this represented by the CoE. However, since Manners argues that EU works exceptionally well in non-EU countries it would be interesting to see how well the Union promotes human rights norms for the disabled outside of the EU. Such a study would either prove the FRA right by indicating that the EU fails with its norm diffusion of these norms because it lacks competence. Or it can prove Manners right by showing that the EU has the competence, but that it works best outside of the EU.

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