

**GAGA GABRICHIDZE\***

# **The Instrument of Human Rights Clause as a Part of Conditionality in European Union–Georgia Relations**

## **Abstract**

*Political conditionality became an integral part of the external policy of the European Union (EU) in the early nineties. EU–Georgia relations are no exception to this. The aim of this paper is to provide a brief investigation of the place, significance and function of human rights' clauses as a part of political conditionality in the legal framework of the EU–Georgia relations. To this end, the paper briefly reviews human rights clauses in international agreements of the EU and analyses the relevant articles in EU–Georgia bilateral documents and autonomous instruments of the EU. Further, some considerations in respect of effectiveness and consistency of human rights are also provided. It is argued that the human rights clause plays a less important role in practice than it would be expected as an “essential element” of agreements concluded by the EU.*

**Key words:** Human rights clause; Conditionality; Georgia.

A number of instruments have been used by the EU to facilitate the export of its values and norms. In the first place, bilateral documents should be mentioned (trade and association agreements, action plans). However, unilateral acts of the EU, such as decisions of the Council, progress reports prepared by the Commission, etc., are also of very high significance (Cremona 2011, 275). Whereas, conditionality is the key tool to ensure that partner countries comply with human rights and democracy standards and it can be applied in different ways. While *ex ante* conditionality – whether in the framework of an association agreement or cooperation agreement – is to be fulfilled

---

\* New Vision University (Tbilisi), ggabrichidze@newvision.ge

in advance, ex post conditionality is a part of a relevant agreement and constitutes a precondition for its application/implementation (Fiero 2003, 131). The latter is more widespread in the external policy of the EU and an example thereof is the practice of including human clauses in agreements concluded by the EU with third countries. Conditionality can also be divided into positive and negative conditionality. Positive conditionality involves promising benefits to a partner country if it fulfils certain conditions. Negative conditionality involves reducing or terminating benefits in case the partner country does not comply with the conditions (Fiero 2003, 100). Often, the policy of the EU towards the partner is a combined version of both forms of conditionality. This is also the case with Georgia.

The paper aims to provide an overview and an analysis of human rights as a part of political conditionality in EU–Georgia relations. The starting point is a brief overview of human rights clauses provided for in international agreements concluded by the EU. This will lead us to an overview and analysis of the place and meaning of human rights as envisaged in EU–Georgia bilateral documents as well as in autonomous instruments of the EU. Finally, the issue of effectiveness and consistency of human rights as a part of political conditionality will be addressed. It is argued that human rights clauses lack strict and concrete mechanisms which would ensure their effectiveness in practice and go beyond the scope of consultations and political dialogue within the bodies established under the existed cooperation framework.

## **1. Human rights in international agreements of the European Union**

The EU has concluded numerous agreements with third countries or regional groups of third countries, such as, for example, ACP-EU Partnership Agreement (The Cotonou Agreement), which is the legal framework for EU's relations with 79 countries from Africa, the Caribbean and the Pacific. Although the main object of regulation of most of them is trade, many agreements exceed the scope of trade regulation and cover broader aspects of cooperation. Just as diverse are the titles of these agreements: trade agreement; political dialogue and cooperation agreement; framework agreement; economic partnership agreement; trade and cooperation agreement; partnership and cooperation agreement; stabilisation and association agreement; Europe agreement; association agreement. Human rights clauses as

a part of political conditionality have been an integral part of all these agreements concluded by the EU since the early nineties.

In 1995, the Council approved a suspension mechanism to be included in Community agreements with non-member states which enabled the European Community, in cases of serious and persistent violations of human rights, to react with immediate effect. Whereas, human right should be defined as an essential element of the agreement. This mechanism provided for taking “appropriate measures” in the event of violation of human rights. That does not necessarily mean that the appropriate measure should be suspension or termination of the agreement. As a rule, the EU uses dialogue with the government of the partner country as a primary tool for solving the problems. Furthermore, suspension of cooperation in certain areas, imposition of a trade embargo, postponement of planning or starting new projects, etc., can also be considered as an appropriate measure (Communication from the Commission 1995).

## **2. Human Rights in European Union–Georgia Bilateral Documents**

### **2.1. The Partnership and Cooperation Agreement**

The first legal basis for the relationship between the EU and Georgia was the Partnership and Cooperation Agreement (PCA) between the European Communities and their Member States, on the one part, and Georgia, on the other part, which was signed on 22 April 1996 and entered into force on 1 July 1999 for a period of ten years. After the expiry of this period in 2009 the PCA was being automatically renewed year by year<sup>1</sup>.

Already in the preamble of the agreement it is stated that the parties are “convinced of the paramount importance of the rule of law and respect for human

---

<sup>1</sup> Article 97 of the EU–Georgia PCA provided that it should be automatically renewed year by year provided that neither party gives the other party written notice of denunciation of this Agreement six months before it expires.

rights, particularly those of persons belonging to minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy, and recognizing the efforts of Georgia to create political and economic systems based on these principles". Furthermore, Article 2 of the PCA defines the essential elements of the agreement. Whereas, it should be noted that in the Georgian version of the PCA the term "basic elements" is being used. It cannot be considered as a correct translation of the term "essential elements" which can be found in the English version of the PCA. Based on the practice of the EU, the term "essential elements" does have a certain meaning and defines those conditions whose violation puts the application or even existence of an agreement into question. In particular, these are the following: Respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference.

Special importance is conferred on the provision of Article 2 of the PCA by Article 98 of the PCA. Namely, according to the latter, if either Party would consider that the other Party has failed to fulfil an obligation under the agreement, it can take appropriate measures. Before so doing, it shall supply the Cooperation Council<sup>2</sup> with all relevant information required for a thorough examination of the situation with an aim to seek a solution acceptable to the parties. However, in cases of special urgency, the parties had no obligation to address the Cooperation Council and could react immediately in cases of violation of the agreement, which could be in form of partial or full suspension of the application of the PCA. The joint declaration to Article 98 annexed to the PCA defines the term "cases of special urgency" as cases of material breach of the agreement by one of the parties. Whereas, violation of the essential elements of the agreement set out in Article 2 is considered such a breach. This form of human rights conditionality is the classic version of the so-called „Bulgarian“ clause (It was first used in the Europe Agreements with Bulgaria and Romania in 1993), which replaced the „Baltic“ clause (first used in the Europe Agreements with Baltic states in 1992) in the practice of the EU. They differ considerably from one another as, on the one hand, according to the „Baltic“ clause, only in case of a serious infringement of the essential provisions either party is enabled to immediately suspend the agreement either in whole or in part, while under the „Bulgarian“ clause either party is able to suspend the agreement another party fails to

---

<sup>2</sup> The Cooperation Council was established under Article 80 of the PCA.

fulfil any obligation under the agreement. On the other hand, the „Bulgarian“ clause, in contrast to the „Baltic“ clause, provides for consultation procedure and envisages immediate suspension only in cases of special urgency (Gabrichidze 2011, 47).

Here should be noted, that the PCA did not limit itself to only laying down human rights conditionality. It also provided for legal grounds for cooperation in the field of human rights. In particular, Title VII of the PCA was devoted to this issue. Article 71 of the PCA envisaged that the parties should cooperate on all questions relevant to the establishment or reinforcement of democratic institutions, including those required in order to strengthen the rule of law, and the protection of human rights and fundamental freedoms according to international law and OSCE principles. This cooperation should take the form of technical assistance programmes.

## **2.2. European Union–Georgia Action Plan under the European Neighbourhood Policy**

On 14 June 2004, Georgia was offered to participate in the initiative of the European Neighbourhood Policy (ENP) (Communication from the Commission 2003). Although the ENP did not substitute the PCA – the main legal basis of Georgia-EU relationships at that time – it expanded the scope of perspectives offered by the EU. Specifically, the ENP provided for the possibility to participate in the internal market and to further deepen the economic integration.

In the ENP Strategy Paper the Commission expressly refers to the central role and importance of values in external policy of the EU. In particular, it is stated that “the Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination. The Union’s aim is to promote peace, its values and the well-being of its peoples. In its relations with the wider world, it aims at upholding and promoting these values“ (Communication from the Commission 2004, 10). Furthermore, in the same document the Commission defines political conditionality with respect to those countries which would be covered by the ENP. Specifically, with regard to Southern Caucasus countries it is stated that „the EU should consider the possibility of developing Action Plans with these countries in the future on the basis of their individual merits. With this in view, the Commission will report to the Council on progress made by each country with respect to the strengthening of democracy, the

rule of law and respect for human rights” (Communication from the Commission 2004, 8).

In addition, the EU–Georgia bilateral Action Plan, which was the basic tool for the implementation of the ENP, laid down priority areas, which should be accorded particular attention within the framework of the cooperation. It is worth mentioning that the list starts with strengthening the rule of law, especially through reform of the judicial system, including the penitentiary system, and through rebuilding state institutions and strengthening democratic institutions and respect for human rights and fundamental freedoms in compliance with international commitments of Georgia (EU–Georgia Action Plan, 3).

In addition to the priorities, the Action Plan provided for general objectives and actions which had to complement the priorities (EU–Georgia Action Plan, 4). One of these objectives is political dialogue and reform (EU–Georgia Action Plan, 4.1) including the component “Democracy and the rule of law, human rights and fundamental freedoms” (EU–Georgia Action Plan, 4.1.1).

### 2.3. Association Agreement

Along with other Eastern neighbours of the EU Georgia is also included the EU Eastern Partnership initiative. Eastern Partnership, initiated by Polish and Swedish Governments, was decided to be adopted by the European Council on March 2009. Formally it was founded on 7 May 2009 (Joint Declaration of the Eastern Partnership Summit 2009).

Together with the other objectives intended to deepen cooperation, the Eastern Partnership provides for the possibility of concluding a new enhanced agreement with partner states which also includes the creation of a deep and comprehensive free trade area. Negotiations with Georgia in this respect began on 15 July 2010. The text of the EU–Georgia Association Agreement was initialled by the parties on 29 November 2013, at the third Eastern Partnership Summit and signed on 27 June 2014. On the basis of Article 431 of the Association Agreement, the provisional application of substantial parts of the Association Agreement started on 1 September 2014. It fully entered into force on 1 July 2016, the first day of the second month following the date of the deposit of the last instrument of ratification or approval (Article 431.2 of the EU–Georgia Association Agreement). Thus, the EU–Georgia Association Agreement is the current legal framework of relations between Georgia and the European Union.

As for the place and importance of human rights under the EU–Georgia Association Agreement, first of all, in the preamble there are several references to human rights. In particular, it is stated that the EU is built on the following common values: democracy, respect for human rights and fundamental freedoms, and the rule of law. Whereas, it is also underlined that these values also lie at the heart of political association and economic integration as envisaged in the Association Agreement (Paragraph 3 of the Preamble of the EU–Georgia Association Agreement). Further, the parties declare that they are committed to further strengthen the respect for fundamental freedoms, human rights, including the rights of persons belonging to minorities, democratic principles, the rule of law, and good governance (Paragraph 7 of the Preamble of the EU–Georgia Association Agreement). Besides, the parties, one more time, confirm that they are committed to all the principles and provisions of the Charter of the United Nations, the Organisation for Security and Cooperation in Europe, in particular of the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe, the concluding documents of the Madrid, Istanbul and Vienna Conferences of 1991 and 1992 respectively, and the Charter of Paris for a New Europe of 1990, as well as the United Nations Universal Declaration of Human Rights of 1948 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Paragraph 10 of the Preamble of the EU–Georgia Association Agreement).

In the first provisions of the Association Agreement it is stated that one of the aims of the association relationship established between the EU and Georgia is enhancing cooperation in the area of freedom, security and justice „with the aim of reinforcing the rule of law and the respect for human rights and fundamental freedoms“ (Article 1.2 f) of the EU–Georgia Association Agreement).

In addition, also here, just as in the PCA, respect for the democratic principles, human rights and fundamental freedoms are considered in the rank of essential elements of the agreement. Concerning their meaning there is a reference to the United Nations Universal Declaration of Human Rights of 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990 (Article 2.1 of the EU–Georgia Association Agreement).

As in the case of the PCA, the status of an essential element lends special significance to the democratic principle and protection of human rights compared to other obligations under the Association Agreement. In case of a dispute, a party may take appropriate measures if the matter is not resolved within three months of

the date of notification of a formal request for dispute settlement (Article 421 of the EU–Georgia Association Agreement) and if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement. The fact of violation by one of the parties of democratic principle or human rights is one of the exceptions when the other party is not under obligation to follow the procedure of a three month consultation period before reacting and taking appropriate measures (Article 422 of the EU–Georgia Association Agreement.).

In the Title II of the Association Agreement, which is devoted to political dialogue, reform and cooperation in the field of foreign and security policy, strengthening respect for human rights and fundamental freedoms is declared as one of the aims of political dialogue (Article 3.2 h) of the EU–Georgia Association Agreement). Furthermore, in the context of domestic reform it is mentioned that the parties will, among others, cooperate on developing, consolidating and increasing the stability and effectiveness of democratic institutions and the rule of law and on ensuring respect for human rights and fundamental freedoms (Article 4 of the EU–Georgia Association Agreement).

And finally, in Title III of the Association Agreement dealing with the issues of freedom, security and justice, the issue of the rule of law and respect for human rights and fundamental freedoms is separately addressed. Specifically, it is noted that in their cooperation in the area of freedom, security and justice the parties shall attach particular importance to further promote the rule of law, including the independence of the judiciary, access to justice, and the right to a fair trial (Article 13.1 of the EU–Georgia Association Agreement). Moreover, it is underlined that respect for human rights and fundamental freedoms will guide all cooperation on freedom, security and justice (Article 13.3 of the EU–Georgia Association Agreement).

Logically, provisions of the Association Agenda which was formally adopted by the EU and Georgia on 26 June 2014 and establishes priorities for the period 2014-2016 with a view to prepare for the implementation of the Association Agreement are more concrete. One of the priorities of the Association Agenda is, in accordance with the Association Agreement, political dialogue and reform, whereby one of the aims of the cooperation is to strengthen the respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including the rights of persons belonging to minorities as enshrined in the core UN and Council of Europe Conventions and related protocols (Paragraph 2.1 iii) of the EU–Georgia Association Agenda). In the context of cooperation, on the one hand, a reference is made to the EU Special Adviser on Constitutional and Legal reform and Human Rights Thomas Hammarberg's report from September 2013 „Georgia in Transition“ (Hammarberg



2013) and, on the other hand, a list of issues is provided for, which should be covered by cooperation (Paragraph 2.1 iii) of the EU–Georgia Association Agenda).<sup>3</sup>

### 3. Human Rights in Autonomous Instruments of the European Union

In the preamble of Regulation No 2053/03 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia which was adopted on 19 July 1993, the Council made a reference to the fact that technical assistance will be fully effective only in the context of progress towards free and open democratic systems that respect human rights. Regulation no 1279/96 of 25 June 1996, which replaced Regulation No 2053/03, is more explicit. In particular, according to Article 3.11 of Regulation no 1279/96, when an

---

<sup>3</sup> Specifically, the list includes the following issues: Adoption of a comprehensive National Human Rights Strategy and Action Plan; actively pursue in this strategy and action plan the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/European Commission against Racism and Intolerance and international human rights organisations notably in implementing anti-discrimination policies, protecting minorities and private life and ensuring the freedom of religion; Adoption of a comprehensive anti-discrimination law, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination; Taking steps towards signature, ratification and transposition into national legislation of relevant UN and Council of Europe instruments in the fight against discrimination, including taking into account the UN Convention on Statelessness and the standing recommendations of the Council of Europe on the European Charter for Regional or Minority Languages; Responding appropriately to the conclusions and recommendations of relevant Council of Europe bodies on compliance by Georgia with the Framework Convention for the protection of national minorities; Ensuring effective implementation of the UN Convention on the Rights of Persons with Disabilities; Ensuring effective execution of judgments of the European Court of Human Rights; Maintaining effective pre- and non-judicial mechanisms for both dispute settlement and the protection of human rights; promoting and raising awareness on human rights and anti-discrimination in the judiciary, law enforcement, administration; Continuing to strengthen media pluralism, transparency and independence in line with Council of Europe recommendations; Taking the recommendations of the Public Defender's Office into account in policy-making and provide adequate resources and strengthen the PDO office; Supporting the effective functioning of the institutional mechanism foreseen in the anti-discrimination law; Build monitoring capacities of the Parliamentary Committees on Human Rights and Legal issues linked to the implementation of the Human Rights Strategy and Action Plan; Supporting Civil Society Organisations and notably the representative social partners (trade-unions and employers' organisations) as service providers and watchdogs in areas prioritised by the EU–Georgia Association Agreement, including labour rights, privacy, rights of minorities and other vulnerable groups and media freedom.

essential element for the continuation of cooperation through assistance is missing, in particular in cases of violation of democratic principles and human rights, the Council may decide upon appropriate measures concerning assistance to a partner state.

The next succeeding regulation combined approaches of the both predecessor regulations. Namely, in the preamble of Regulation no 99/2000 of 29 December 1999 it is stated that assistance from the EU will be fully effective only in the context of progress towards free and open democratic societies that respect human rights, minority rights and the rights of the indigenous people. Besides, Article 16 of Regulation no 99/2000 envisages that in cases of violation of democratic principles and human rights, the Council may decide upon appropriate measures concerning assistance to a partner country.

In 2006 a new financial mechanism – the European Neighbourhood and Partnership Instrument (ENPI) – was established with the purpose to support the European Neighbourhood Policy (Regulation no 1638/2006). It replaced and enhanced the financial assistance programmes TACIS (for Eastern European countries) and MEDA (for Mediterranean countries). Programmes and projects financed within the framework of ENPI should be consistent with European Union policies and respect commitments under multilateral agreements and international conventions to which the EU and its partners are parties, including commitments on human rights, democracy and good governance (Article 5 of Regulation no 1638/2006). Accordingly, cases of threats to democracy, the rule of law, human rights and fundamental freedoms would provide a basis to conduct an ad hoc review of strategy papers (Article 7 of Regulation no 1638/2006). Moreover, together with the values of liberty, democracy and the rule of law, respect for human rights and fundamental freedoms are the principles that may trigger „appropriate steps“ in respect of any assistance granted to the partner country within the framework of the ENPI when they are failed to be observed (Article 28 of Regulation no 1638/2006 in conj. with Article 1.3 of the same regulation).

In 2014 the ENPI was replaced by the European Neighbourhood Instrument (ENI) (Regulation No 232/2014) which also declared promoting human rights and fundamental freedoms as one of its objectives and priorities (Article 2.2 a) of Regulation No 232/2014; Paragraph 1 of Annex II of Regulation No 232/2014). The progress of partner countries shall be regularly assessed and support may be reconsidered by the EU in the event of serious or persistent regression (Article 4.2 of Regulation No 232/2014). In general, analogous to the ENPI, according to the rules of the ENI, in the event of threats to democracy, the rule of law or human rights and fundamental freedoms an ad hoc review of the programming documents

may be conducted (Article 7.10 of Regulation No 232/2014). However, in the ENI the provision on „appropriate steps“ in respect of any assistance granted to the partner country is missing. Exactly this fact is referred to in the Statement of the European Parliament annexed to the Regulation establishing the ENI. In particular, the European Parliament underlines that the regulation does not contain any explicit reference to the possibility of suspending assistance in cases where a beneficiary country fails to observe the basic principles such as the principles of democracy, the rule of law and the respect for human rights. The European Parliament considers any suspension of assistance under the ENI to modify the overall financial scheme agreed under the ordinary legislative procedure. As a co-legislator and co-branch of the budgetary authority, the European Parliament is therefore entitled to fully exercise its prerogatives in that regard, if such a decision is to be taken. With this statement the European Parliament underlines its readiness to support possible decisions on suspending financial assistance (European Parliament 2014).

#### **4. Effectiveness and Consistency of Human Rights as a Part of Policy of Political Conditionality**

The main problem of human rights clause can be either non-existence of an effective mechanism of its implementation or non-use of the existing one. As for the human rights clauses used in EU–Georgia relations, no questions remain open concerning the content of these clauses. In particular, it is clear what is the meaning of human rights as there are given references to concrete international contractual frameworks and mechanisms existing in the field of human rights protection. Furthermore, the fact, that protection of human rights is one of the essential elements of agreements, leaves no room for interpretation. The core question remaining open concerns effectiveness and consistency of application of human rights clauses. These clauses are, by their nature, part of ex post conditionality. Respect for human rights by partner countries is not a condition to be fulfilled in advance but a condition for application/implementation of the relevant agreement. Accordingly, in the event of failure to comply with this obligation the partner country has to expect negative consequences.

Obviously, it is difficult to evaluate the impact of the EU on human rights protection in Georgia on the basis of objective criteria. However, it should be possible to identify the attitude of the EU towards the level of compliance with conditions regarding human rights protection as provided for in agreements concluded with

Georgia. With this in mind, a look at the relation of a progress or a backward step in respect of human rights with the instruments offered by the EU to Georgia with the aim of deepening bilateral relations can be taken.

For the purpose of getting a general picture of the situation regarding human rights protection in Georgia, annual reports of the international non-profit organisation “Freedom House” can be used. Whereas, the ratings of “Freedom House” are based on scores assigned to 25 indicators. Each country is assigned two numerical ratings – from 1 to 7 – for political rights and civil liberties, with 1 representing the most free and 7 the least free. The average of ratings determines whether it is Free, Partly Free or Not Free.

Since the 1992 reporting year Georgia is being rated as a “Partly Free” country<sup>4</sup>. Specifically, starting from 1996, the ratings of Georgia concerning state of political rights and civil liberties are as follows:

**Table 1: State of political rights and civil liberties in Georgia**

Report	Political rights	Civil liberties	Result
1996/1997	4	4	Partly Free
1997/1998	3	4	Partly Free
1998/1999	3	4	Partly Free
1999/2000	3	4	Partly Free
2000/2001	4	4	Partly Free
2001/2002	4	4	Partly Free
2003	4	4	Partly Free
2004	4	4	Partly Free
2005	3	4	Partly Free
2006	3	3	Partly Free
2007	3	3	Partly Free
2008	4	4	Partly Free
2009	4	4	Partly Free
2010	4	4	Partly Free
2011	4	3	Partly Free
2012	4	3	Partly Free
2013	3	3	Partly Free
2014	3	3	Partly Free
2015	3	3	Partly Free

Source: [https://freedomhouse.org/report-types/freedom-world#VcB\\_psDtmko](https://freedomhouse.org/report-types/freedom-world#VcB_psDtmko) (accessed on 15 August 2017).

<sup>4</sup> In 1991–1992 report covered the 1991 reporting year, Georgia was rated as Not Free.

If political conditionality would be effectively and consistently used from the side of the EU in relations with such countries as Georgia, in parallel with deepening and developing bilateral relations there should be a progress in these countries regarding human rights protection. In the table, the year 1996 is taken as the starting year as in 1996 the EU–Georgia PCA was signed. Other important dates in this context are: the year 1999, when the PCA came into force; the year 2004, when the ENP started; the year 2009, when the Eastern Partnership Initiative started; the year 2010 – beginning of negotiations on conclusion of an association agreement between Georgia and the EU; the years 2013–2015 – initialling, signing and entering into force of the EU–Georgia Association Agreement.

As the table shows, Georgia’s rating remained more or less stable during the period under consideration at a level of the average or below the average. Only in 2005–2006 (provided in the 2006 and 2007 annual reports) and 2012–2014 (provided in the 2013, 2014 and 2015 annual reports, respectively) state of both, political rights as well as civil liberties, was rated at the level of the average. If we compare the dynamics of deepening the EU–Georgia relations with the situation in Georgia regarding protection for human rights, we can see that the latter lags behind. This indicates that human rights clause plays a less important role in practice than it would be expected by an “essential element” of the agreements concluded by the EU.

Of course, the “Freedom House” reports cannot be considered a determining factor of the EU external policy. However, annual progress reports concerning the implementation of the ENP in Georgia prepared by the Commission also refer to problems with human rights<sup>5</sup>. Nevertheless, the EU uses political dialogue as the primary mechanism to address these difficulties.

Therefore, in general, effectiveness and consistency of human rights conditionality can be called into question. There are several reasons for this. First, it was not conducive to fulfilment of this condition that the EU was offering to deepen relations with the Eastern Partnership countries without a differentiated approach. For example, it was offering conclusion of association agreements to countries with different state of human rights protection. As of now it seems that the EU, with the revised ENP, takes a more differentiated approach (Joint Communication 2015). However, it is not to be ignored that sometimes economic and political interests and not human rights are in the foreground while developing relations with a partner

---

<sup>5</sup> ENP Country Progress Reports for Georgia can be found on the following website (accessed on 13 August 2017): [http://eeas.europa.eu/delegations/georgia/eu\\_georgia/political\\_relations/political\\_framework/enp\\_georgia\\_news/index\\_en.htm](http://eeas.europa.eu/delegations/georgia/eu_georgia/political_relations/political_framework/enp_georgia_news/index_en.htm)

country (Ghazaryan 2014, 172). It is obvious that this affects the effectiveness of the instrument of political conditionality. Second, the absence of a clear EU membership perspective in the Association Agreement can also affect motivation of the partner country.

Nevertheless, it should be also noted here that the absence of a rigid approach to human rights conditionality can be reasonable to some extent. Deepening of cooperation with a partner country through dynamic integration will more likely make this country more obliging in respect of human rights protection in the future. It cannot be denied that strict application of human rights clause can interfere with bilateral cooperation in other important areas. Besides, it is questionable how effective consistent and strict political conditionality would be in respect of human rights protection.

## Conclusions

Considered as the main instrument for supporting human rights protection in partner countries, human rights clause is an integral part of legal frameworks of cooperation between the EU and third countries, including Georgia. Moreover, it is an essential element of the EU–Georgia Association Agreement and thus, a formal condition for its application/implementation. But in fact, human rights clause as a part of political conditionality does not have strict and concrete mechanisms which would ensure its effectiveness and go beyond the scope of consultations and political dialogue within the Association Council. In practice, the use of the suspension mechanism by the EU can be expected only in dramatic cases of human rights violations. If we take a perspective of political sciences, in the end, impact of the EU policies on the domestic policy of partner countries can be explained with external incentives model (Schimmelfennig and Sedelmeier 2005, 7), according to which the level of compliance with requirements set by the EU is directly connected to the cost-benefit calculations by the partner country: the determinacy of conditions, the size and speed of rewards, the credibility of threats and promises, the level of adoption costs, etc (Schimmelfennig 2005, 3). Considering the practice of the EU related to the use of human rights clause there are also reasons to assume that on the side of the EU the cost-benefit calculation also can play important role in handling human rights clause.

## References

### Books and Articles

- Cremona, Marise. 2011. "Values in EU Foreign Policy", in: Malcolm Evans and Panos Koutrakos (eds.), *Beyond the Established Orders: Policy Interconnections between the EU and the Rest of the World*, Oxford: Hart Publishing: 275–315.
- Fiero, Elena. 2003. *European Union's Approach to Human Rights Conditionality in Practice*, Leiden: Brill/Nijhoff.
- Gabrichidze, Gaga. 2011. „Human Rights Clause in EU Trade Agreements“. In *International Standards of the Protection of Human Rights and Georgia*, Tbilisi: 47–57.
- Ghazaryan, Nariné. 2014. *The European Neighbourhood Policy and the Democratic Values of the EU*, Oxford: Hart publishing.
- Hammarberg, Thomas. 2013. *Georgia in Transition – Report on the human rights dimension: background, steps taken and remaining challenges. Assessment and recommendations*.
- Schimmelfennig, Frank. 2005. *The International Promotion of Political Norms in Eastern Europe: a Qualitative Comparative Analysis*, CES Working Paper, Harvard University: Center for European Studies.
- Schimmelfennig, Frank and Sedelmeier, Ulrich. 2005. Introduction: Conceptualizing the Europeanization of Central and Eastern Europe, in: Schimmelfennig, Frank and Sedelmeier Ulrich (eds.): *The Europeanization of Central and Eastern Europe*, Ithaca: Cornell University Press: 1–28.

### European Union Law

- Council Regulation (EURATOM, EEC) No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia, 29. 7. 93, Official Journal of the European Communities No L 187/1.
- Annex 2, Communication from the Commission on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries. COM (95) 216 final, 23 May 1995.

- Council Regulation (EURATOM, EC) No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, 4.7. 96, Official Journal of the European Communities No L 165/1.
- Partnership and Cooperation Agreement (PCA) between the European Communities and their Member States, on the one part, and Georgia, on the other part. Official Journal of the European Communities 1999, L 205.
- Council Regulation (EURATOM, EC) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia, 18. 1. 2000, Official Journal of the European Communities L 12/1.
- Communication from the Commission to the Council and the European Parliament “Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours“. COM (2003) 104 final.
- Commission of the European Communities: Communication from the Commission. European neighbourhood Policy. Strategy Paper, COM(2004) 373 final, Brussels, 12 May 2004.
- EU–Georgia Action Plan, [https://eeas.europa.eu/sites/eeas/files/georgia\\_enp\\_ap\\_final\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/georgia_enp_ap_final_en.pdf) (Accessed on 15 August 2017).
- Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, 9.11.2006, Official Journal of the European Union L 310/1.
- Council of the European Union, “Joint Declaration of the Eastern Partnership Summit“, Prague, 7 May 2009, Brussels, 7 May 2009 8435/09 (Presse 78).
- Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Official Journal of the European Union 2014, L 261
- EU–Georgia Association Agenda, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf) (Accessed on 15 August 2017).
- Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument .15.3.2014 EN Official Journal of the European Union L 77/27.
- Statement by the European Parliament on the suspension of assistance granted under the financial instruments. 15.3.2014, Official Journal of the European Union L 77/27.
- Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Review of the European Neighbourhood Policy, Brussels, 18.11.2015 JOIN(2015) 50 final.