

# Human rights cooperation between Russia and European intergovernmental organisations: a one-way transference of norms or a mutual process of adaptation?

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I Introduction	2
II Re-visiting constructivist assumptions about socialisation to human rights	3
III European framework for engagement with Russia	6
The Organisation for Security and Cooperation in Europe	6
The Council of Europe	8
The European Union	9
IV European action for the abolition of the death penalty in Russia	14
Abolition as a European norm	14
Developing European influence strategies	16
The abolitionist development in Russia	18
Promises made, promises broken	21
Turning the tables	24
V Conclusion	29
Evaluating the impact of the European organisations, evaluating the impact of Russia	29
Bibliography	31

## I INTRODUCTION

The European intergovernmental organisations such as the Council of Europe, OSCE and the EU have taken up the task to promote actively human rights in Russia. The organisations differ in methods, instruments and over-all strategies but the goal of socialising Russia to common European human rights norms is the same for all these organisations. Socialisation means a process through which norms are transmitted from one party to another and they become firmly established domestic practices.

The European practice of promoting human rights in third states has roots in the 1970s but it has become more active since the end of the cold war. The collapse of communism was generally seen as a victory of liberal western norms. Organisations based on those norms were eager to tie the liberated East-European states more closely into their structures of cooperation. The transition states on the other hand wanted to improve their international standing and domestic legitimacy by engaging in normative international cooperation. At the time the picture looked fairly clear-cut: Russia, among other east-European states, was to transform itself into a liberal democratic state based on respect for human rights, rule of law and functioning market economy. By internalising the western norms and values through international cooperation Russia would become full-fledged member in "our common European home".

As we now know, reality turned out to be much messier and more complex than was envisaged at the time. A few East-European states have been fully integrated into the European structures and there is little doubt about their commitment to liberal values, whereas some other states have developed into autocratic states where violations of human rights are an every-day practice. Some states, including Russia, hang on the edges of the European 'solidarist state society';<sup>1</sup> not clearly inside nor clearly outside of it.

To this day, Russia has continued being actively engaged in human rights cooperation within the OSCE and CoE and with the EU. Despite continuous engagement, the results of the cooperation have become increasingly modest. On many issues Russia is still nowhere close to meeting the European standards and there have even been negative development in democracy and human rights protection in Russia, yet the organisations seem to be less and less eager to criticise and pressure Russia. Paradoxically it seems that as the situation worsens in Russia, the European policy towards it grows more lenient.

This article aims to explain the mismatch between the results and the intensity of human rights cooperation between Russia and European intergovernmental organisations. This is done by revisiting the basic assumptions of international cooperation theory, formulating a hypothesis about the nature of cooperation, and finally testing the hypothesis on an empirical case regarding the abolition of death penalty. This article is a small contribution to the broader discussion on the nature of the relationship between the actors.

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<sup>1</sup> Kai Alderson and Andrew Hurrell, eds., *Hedley Bull on International Society* (Basingstoke and London: Macmillan Press, 2000), 9-11.

## II REVISITING CONSTRUCTIVIST ASSUMPTIONS ABOUT SOCIALISATION TO HUMAN RIGHTS

Recent IR literature on human rights cooperation has clustered around constructivist notions of state socialisation to international human rights norms. Unlike traditional cooperation theory which concentrates on material state interests, the constructivist strand highlights the social character of international relations and claims that states' action is based on their understanding of themselves and others, and that understanding is constructed – and reconstructed – in intersubjective processes between states and international structures. However, constructivists are not suggesting that only ideational factors such as identity, norms and ideas matter but instead they claim that material factors alone cannot provide sufficient explanation on world affairs.<sup>2</sup>

International human rights cooperation has become one of the best test cases for constructivism. The growing significance of human rights in international international affairs is difficult to explain purely by material rationalism. Realism has proved inadequate to explain states' willingness to restrict their national sovereignty for the sake of human rights as well as sacrificing material benefits by e.g. putting human rights before trade relations with third states.<sup>3</sup>

The constructivist socialisation literature sees state socialisation to human rights as a global process. A case in point is an edited book by Thomas Risse, Stephen Ropp and Kathryn Sikkink. The editors claim that through this international process of state socialisation human rights norms have causal effects. Through socialisation human rights gradually become part of their state identities and eventually the former violators of human rights become responsible, human-rights respecting states. The authors believe that the direction of this global process has been set even if the pace and timing of norm diffusion varies from case to case.

According to Risse, Ropp and Sikkink, socialisation to human rights involves three mechanisms: first, instrumental adaptation and strategic bargaining; second, moral consciousness-raising, dialogue and persuasion; and third, institutionalisation and habitualisation. The importance of these mechanisms varies with different stages of socialisation. Risse and Sikkink argue that instrumental thinking prevails in the early

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<sup>2</sup> Naturally, there are different variations of social constructivism: mainstream "modernist", "rule-based", "commonsense" and more post-modern constructivists. Despite all their differences, the points made here are common to all of these approaches. On different variations of constructivism, see e.g. Emanuel Adler, "Seizing the Middle Ground: Constructivism in World Politics," *European Journal of International Relations* 3, no. 3 (1997), Ralph Pettman, "Commonsense Constructivism and Foreign Policy: A Critique of Rule-Orientated Constructivism," in *Foreign Policy in a Constructed World*, ed. Vendulka Kubálková (Armonk, New York: M.E. Sharpe, 2001).

<sup>3</sup> See e.g. Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton: Princeton University Press, 2001), Jack Donnelly, "Post-Cold War Reflections on the Study of International Human Rights," *Ethics and International Affairs* 8 (1994), Kathryn Sikkink, "The Power of Principled Ideas: Human Rights Policies in the United States and Europe," in *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, ed. Judith Goldstein and Robert O. Keohane (New York: Cornell University Press, 1993), Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton: Princeton University Press, 2001).

phases and later on argumentation and dialogue become more significant. Institutionalisation marks the last phases of the socialisation process.<sup>4</sup>

Risse, Ropp and Sikkink believe that transnational human rights networks kicks off the socialisation process: domestic NGOs team up with international NGOs, IGOs and pro-human rights governments. Their pressure leads to some half-hearted concessions by the government after which the process starts to live its own life and becomes almost automatic. Concessions lead to more pressure and more concessions. Risse, Ropp and Sikkink tell us that a short backlash is a possibility but in the end human rights norms become institutionalised and fully accepted by the state.

The Risse-Ropp-Sikkink model of socialisation is based on universalistic optimism, which seems somewhat outdated from the post-9/11 perspective. It is evident that the development of human rights is not – and has actually never been – as clear-cut and simple as the authors claimed.

First of all, states' interpretation of human rights varies greatly in practice. Borrowing from discourse theory, the notion of 'human rights' has become an 'empty signifier' in global discourse.<sup>5</sup> The term is so central to modern political discourse and so widely accepted that in a way it has almost lost its contents: it can be used to back even violations of human rights.

The politicised nature of human rights does not mean that human rights are less important; it only means that we need to open up the concept and attach it to its concrete political context. More nuanced understanding of human rights offers far less clear-cut success cases of socialisation but it offers a more analytical and insightful understanding of how states and other actors are framing human rights and using them (what issues are prioritised and why, and how this framing shapes and is simultaneously being shaped by the international discourse and other actors).

A few researchers have highlighted similar issues. For example Frank Schimmelfennig has called for a 'communicative understanding' of norm socialisation and its normative effect which I would take to mean something similar to my thesis.<sup>6</sup> Also Peter Juviler has highlighted the 'contextualism' of human rights norms: in order to become properly internalised, norms need to be fitted into domestic norms and discursive structures.<sup>7</sup>

The definite, predetermined direction for the socialisation development seems also somewhat problematic. It is true that the importance of human rights norms has

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<sup>4</sup> Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse and Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 11-34.

<sup>5</sup> See Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe and Zizek* (Oxford: Blackwell, 1999).

<sup>6</sup> Frank Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," in *Norms and Nannies: The Impact of International Organisations on the Central and East European States*, ed. Ronald H. Linden (Lanham: Rowman & Littlefield Publishers, 2002), 9.

<sup>7</sup> Peter Juviler, "Political Community and Human Rights in Postcommunist Russia," in *Human Rights: New Perspectives, New Realities*, ed. Adamantia Pollis and Peter Schwab (Boulder: Lynne Rienner Publishers, 2000).

clearly increased in international politics in recent decades. Nevertheless, in recent years there have been worrisome signs that there can indeed be serious departures from the human rights commitments, even in well-established democracies.<sup>8</sup> The model seems to suggest that after human rights socialisation no change is possible. This complacent attitude seems ignorant and simplified. Politics do not cease to exist after socialisation.

To sum up, my critique of the Risse-Ropp-Sikkink model highlights the importance (1) of defining a concrete context and content of human rights, (2) of the fact that international and domestic fields are mutually constitutive and thus also the national discourse may have impact on the international framing of human rights norms, and, (3) of defining the socialisation process as a complex and open-ended process.

The specific case of Soviet Union's socialisation to human rights norms has been explored in Daniel C. Thomas' book on the "Helsinki effect" of the CSCE.<sup>9</sup> Thomas revises the Risse-Ropp-Sikkink model to accommodate a variable of domestic identity. Thomas claims that gaps between human rights rhetoric in the international arena and the actual protection of human rights at home reflect states efforts to fulfil their international identity without violating their domestic identity. The identities may change along the process of cooperation or be replaced by a competing identity.

Thomas claims that the CSCE norms gradually transformed the Soviet leadership's understanding of international society and human rights, and thereby changed the state identity of the Soviet Union. According to him, it was due to social mobilisation and international criticism that Gorbachev and his associates began to identify Soviet interests with universal human values, international norms and the wider society of European states. The reconstruction of state identity then led to the dismantling of the hegemonic ideology and the repressive party apparatus and the embrace of international institutions like the CSCE. Thomas claims that the transformation of the identity of the Soviet state set in motion by Helsinki norms thus paved the way for the democratic revolutions of the late 1980s and the early 1990s in Central and Eastern Europe.<sup>10</sup>

Thomas' model is more nuanced and seems to have more explanatory power than the Risse-Ropp-Sikkink model. Even if he does not look into more recent development in Russia, the model would suggest that that the problems in human rights in today's Russia stem from the fact that the prevailing domestic state identity is moving away from the western-minded emphasis.

Nevertheless, there are still considerable shortcomings in Thomas' model. For example it draws only one-way causal arrows: international cooperation leads to the establishment of norms which then empower civil society which leads to change in the identity of the target state and hence change in politics. Thomas fails to convincingly show that this is how it was: rather, the volume seems to suggest that the interpretations of norms changed during the process of cooperation on both sides. Disregarding the evidence, he seems to think that norms are fixed and refuses to see

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<sup>8</sup> See e.g. "Human Rights after September 11," (Versoix, Switzerland: International Council of Human Rights, 2002), 19-29.

<sup>9</sup> Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*.

<sup>10</sup> *Ibid.*, 280-81.

that norms, cooperation, state behaviour are mutually constitutive and thus the causal arrows should be drawn in both directions.

In summary, my criticism towards Thomas' book highlights the importance of seeing international cooperation as a continuous process that has both international and domestic effects. It shapes politics but also structures such as norms. Also national politics may reflect back to the international level and leave its mark on the norms as well as the cooperation process. This new understanding of cooperation has been captured well by O'Neill, Balsiger and VanDeveer: *cooperation comprises iterated processes, which continue beyond initial agreements and result in complex and enduring governance orders and social change*.<sup>11</sup> Social change is understood as a process through which the interaction between agents and structures changes norms and institutions and evolution of actors and their relations. I take norms as structures, which are negotiable, not fixed. Norms have causal effects but they are always connected with collective action, which simultaneously shapes norms and their framing. Norms simultaneously enable and restrict behaviour.

Building on these remarks, this article suggests that *European human rights cooperation with Russia is an iterated process of interaction which has been shaped by mutual adaptation and/or learning and constantly on-going re-negotiation of initial agreements on human rights norms*. The process is complex and often contradictory. Internal and external fields are often overlapping and influence each other. This hypothesis will be tested in this article on the empirical case of Russian-European cooperation on the question of abolition of the death penalty (see section IV).

### **III THE EUROPEAN FRAMEWORK FOR ENGAGEMENT WITH RUSSIA**

The framework for European human rights cooperation has developed gradually since the Second World War. Because of its obvious normative, ideational basis, the cooperation was first restricted to relations between the Western European states. In the 1970s human rights gradually became a topic on the East-West agenda, too. The Conference on Security and Cooperation in Europe became the main forum for east-west dialogue on human rights. The cooperation started to bear fruit with the growing liberalisation of socialist societies in the late-1980s. After the demise of communism, the institutional framework grew denser with institutional reforms and increasingly ambitious agendas.

#### ***The Organisation for Security and Cooperation in Europe***

After the cold war, the CSCE changed its institutional outlook in two phases, first in 1992 and then in 1995. It established a permanent secretariat and has been called the Organisation for Security and Cooperation in Europe (OSCE) since 1995. Currently its decision-making bodies consist of Summits and the Ministerial and Permanent Councils.<sup>12</sup> New offices include Parliamentary Assembly (1991), Chairman-in-Office

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<sup>11</sup> Kate O'Neill, Jörg Balsiger, and Stacy D. VanDeveer, "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate," *Annual Review of Political Science* 7 (2004).

<sup>12</sup> Each Summit is preceded by a follow-up conference, where the OSCE commitments are reviewed and future summit documents are negotiated. The Ministerial Council is convened in those years when no Summit takes place. The Permanent Council consists of senior diplomats and meets weekly in Vienna. Decisions are made unanimously at all levels.



(1991), Office for Democratic Institutions and Human Rights (ODIHR, 1990, expanded in 1992 and 1994), High Commissioner on National Minorities (1992), Representative on Freedom of the Media (1997). After the cold war the 'human dimension' cooperation (which was formerly known as the third basket) became the main area of OSCE activity.

In general, human rights cooperation can be divided into the broad categories of 1) political measures, 2) human rights assistance and 3) monitoring. Political measures comprise all sorts of political action such as diplomatic measures, public comments by representatives of state, negotiations at various levels, public or confidential meetings, international initiatives etc. Human rights assistance includes financing educational programmes, national institution building, action for strengthening the civil society etc. The third category of monitoring is located somewhere between political and 'technical' dimensions of cooperation. It includes periodic reports by states themselves or by outside observers. The monitoring reports can be either public or confidential.

The OSCE engages in all of these modes of human rights cooperation. Despite its institutional restructuring, the OSCE still relies mostly on confidence-building through high-level, in camera diplomacy and dialogue. Political measures often aim to add pressure and push states to implement the norms. Pressure is exercised in confidence (e.g. in the form of in camera diplomatic consultation) or publicly by invoking the so-called Vienna and Moscow Mechanisms. These mechanisms allow states to raise questions relating to human rights in another participating state and the establishment of ad hoc missions of independent experts to assist in the resolution of a specific human rights problem. However, usually states are rather cautious to exercise pressure towards other OSCE participating states.<sup>13</sup> The ultimate punitive measure is a suspension of membership. There are no exact rules on the suspension of membership – as the OSCE is by its nature inclusive and does not have entry conditions, problems in implementation need to be very serious before this option is considered. The only precedent is Yugoslavia whose membership was suspended from 1992 until November 2000.

The OSCE has been active in preventive and post-facto human rights assistance on flexible, ad hoc-basis by establishing field missions and special representatives of the Chairman-in-Office in various regional 'hot spots' before or after violations of human rights have taken place. Field missions thus combine political measures and human rights assistance. The establishment of OSCE field missions takes place only with the approval of the state in question. Field missions' course of action is characteristically cooperative, consensus-seeking and flexible. Mission mandates vary from case to case but they usually combine assistance, monitoring and early-warning or fact-finding functions.

The OSCE is actively involved in 'regular' human rights assistance such as providing assistance for national minorities, civil society actors and various training programmes. Currently it is engaged in some 30 such programmes with Russia.

OSCE monitoring is usually carried out by states themselves and these reports are mostly confidential. Its new institutions also engage in monitoring which can lead to

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<sup>13</sup> Until now the Moscow Mechanism has been established five times. The most recent case was in December 2002-March 2003 when it was invoked by ten participating states in relation to Turkmenistan.

various types of action. In case there is a threat of growing tension and human rights violations, the High Commissioner for National Minorities and the Representative on Freedom of Media may exercise early-warning mechanisms such as consultations and issuing a report to the Chairman-in-Office and the Permanent Council. The ODIHR also monitors human rights in participating states and assist states in protecting human rights.

### ***The Council of Europe***

Since the end of the cold war the Council of Europe has profoundly re-focused its activities. The CoE has shifted from essentially a Western European organisation into a heterogeneous organisation of 46 member states. It promotes and provides assistance for human rights, rule of law and democracy in its new member states alongside the traditional tasks of developing continent wide agreements to standardise its member states' social and legal practices.

The main decision-making body of the CoE is the Committee of Ministers, which is composed of the foreign ministers of its member states (or their Strasbourg-based deputies). Some institutional redevelopment has taken place since the end of the cold war: the post of Commissioner for Human Rights was established in 1999. Other institutions with partial human rights focus include the Parliamentary Assembly (PACE), Secretary General and the Secretariat's Directorate General II, which deals with human rights questions.

The CoE human rights policy can generally be described as more open and multi-level than the OSCE's policy. Some see its policy as more 'principled' than the OSCE's or EU's human rights policy.<sup>14</sup>

The CoE engages in human rights assistance, regular and treaty-based monitoring, political cooperation and judicial procedures through the ECHR. Many of its assistance programmes are directed specifically towards key professionals, such as judiciary, ombudsmen and police. Currently Russia takes part in the legal assistance and the freedom of expression and media programmes.

At the crossroads of technical assistance and political cooperation lie political dialogues on specific issue arenas that take place through PACE, CoE Secretariat (DG II) and the Commissioner of Human Rights. The aim of these dialogues is to offer know-how and advice to national governments and local actors on how to implement European standards in national legislation and practices.

Political measures of the CoE include issuing declarations and recommendations by the PACE and the Committee of Ministers. The application process for membership also includes some conditionality but this is often retrospective in nature and leans towards moral condemnation rather than on political sanctions.<sup>15</sup> The Charter of CoE recognises the possibility of suspension or abolition of membership. Less harsh punitive measures include the suspension of voting rights in PACE. The CoE may also suspend its cooperation and assistance programmes with a particular state.

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<sup>14</sup> Elena Jurado, "Complying with 'European' Standards of Minority Protection: Estonia's Relations with the European Union, OSCE and Council of Europe" (PhD Thesis, Oxford University, 2004), 10.

<sup>15</sup> Ibid.

The CoE requires candidate states to undertake numerous legal and political commitments during their membership bid and monitors closely how these commitments are implemented during the application process and after membership has been gained. The CoE exercises two types of monitoring. The first monitoring mechanism was launched in 1995. It is done by the Committee of Ministers and is confidential by its nature. In the closed meetings specific issues are reviewed with the representatives of the state in question. Performance of each member state is considered on regular basis.

Also the PACE exercises monitoring. It was first based on the so-called Halonen order (1993) according to which new member states' commitments were to be closely reviewed. It has since then been replaced by more equitable monitoring practice which covers all member states. In January 1997 the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe was established. It reports to the PACE and proposes practical measures to improve the situation in the country in question.

Other CoE monitoring is treaty- or ad hoc-based. Many European conventions that the CoE has drafted include a specific monitoring mechanism. For example the European Convention for the Prevention of Torture established a monitoring committee, which visits member states and issues reports on their implementation. Also the CoE's Human Rights Commissioner may issue reports based on his visits that are more ad hoc by nature. He can also issue early-warning reports on any question he or she considers relevant to the Committee of Ministers or PACE. The Commissioner's mandate is very flexible: in addition to monitoring, the commissioner may contact governments or members of the civil society and consult them on human rights issues. These meetings are usually held behind the close doors in confidence.

The European Court of Human Rights under the CoE is a judicial body that considers cases of human rights violations brought to its attention by individual or state complaint after exhaustion of domestic remedies. Individual complaints can be made by a person or a group whose rights have been violated or that is acting on the behalf of the victim.

### ***The European Union***

The EU's human rights cooperation with Russia differs remarkably from the frameworks of the CoE and OSCE. Firstly, Russia is not a member of the EU and it does not seem likely that it will become one – at least for quite a while. Second, the degree of integration within the EU makes it much more than a classic intergovernmental organisation. Its policies cover much wider area of issues than the policies of the OSCE and CoE. Despite the fact that the EU and Russia have established common institutions, such as the Permanent Partnership Council, their relations are nevertheless closer to traditional bilateral foreign policy relations.

The EU has started to emphasise the human rights aspect in its policies more strongly after the outbreak of ethnic conflict in Yugoslavia in the early 1990s.<sup>16</sup> Before that it promoted human rights in third states almost exclusively through assistance programmes. Nowadays the EU's external human rights policy is part of its Common Foreign and Security Policy (CFSP). Thus, the main actors in the EU's human rights policy are the European Council and the Commission, the Presidency and the High Representative for CFSP. Also the European Parliament actively promotes and monitors human rights in third states.<sup>17</sup>

The EU's political agenda is much wider than the OSCE or CoE frameworks and this means, at least in principle, that the EU has more tools at its disposal. The main method of the EU's external human rights policy is high-level political cooperation in the form of political dialogue. Human rights monitoring happens within its political framework without any special monitoring mechanisms or institutions. Pressure and punitive measures may be exercised through traditional diplomatic means or political or economic sanctions.

The European parliament may add political pressure by passing resolutions on human rights questions. The EU has also various assistance programmes, some of which deal with human rights questions. The Human rights programmes are coordinated through European Initiative for Democracy and Human Rights (EIDHR). Many of the programmes are carried out in cooperation with the CoE.

The EU has systematically included specific human rights clauses in all important agreements and treaties with third states since 1995. Human rights considerations are also incorporated into such CFSP documents as common strategies, common positions and joint actions.

The core document guiding EU-Russia cooperation is the Partnership and Cooperation agreement that was signed in 1994 came into force on 1 December 1997. The objectives of the PCA are 1) to offer a framework for political dialogue, promote trade and investment, 2) to strengthen political and economic freedoms in Russia, 3) to support Russian efforts to consolidate its democracy and to develop its economy, 4) to provide a basis for economic, social, financial, and cultural cooperation, 5) to promote activities of joint interest, 6) to provide an appropriate framework for gradual integration between Russia and a wider area of cooperation in Europe and 7) to create the necessary conditions for the future establishment of a free trade area between the Community and Russia.

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<sup>16</sup> The Treaty on European Unions (Maastricht Treaty, 1993) considerably strengthened the role of human rights and democratic principles in the policies of the EU. The treaty considers respect for human rights and fundamental freedoms to be one of the objectives of the Common Foreign and Security Policy (CFSP) and development cooperation. Also the Treaty of Amsterdam (1999) affirms that the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. The Commission's action in the field of external relations is also guided by compliance with the rights and principles contained in the EU Charter of Fundamental Rights (which was officially proclaimed at the Nice Summit in December 2000) in order to promote coherence between the EU's internal and external approaches.

<sup>17</sup> See e.g. overview at <[http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/com01\\_252\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf)>

The PCA also emphasises the common values shared by Russia and the EU, and it contains a human rights clause. A serious violation of human rights or democratic principles is a legitimate reason to suspend the agreement. Even if this provision has not been invoked by the EU, the EU refused to ratify the agreement for several months in 1995 on the basis of severe human rights violations in Chechnya. The EU has also adopted démarches and declarations on Russian human rights situation and it has redirected TACIS technical assistance to human rights for a year because of human rights violations. Most importantly the PCA created an institutional framework for political dialogue between the EU and Russia. It established an annual Cooperation Council which has recently been replaced by a Permanent Partnership Council. In the Council the EU is represented by the troika and Russian mission is led by Russia's foreign minister. The latest development in the field of human rights cooperation between Russia and the EU has been the establishment of special human rights dialogues that takes place during the EU-Russia summits. These meetings are confidential and take place behind the closed doors twice a year. The first such meeting took place in March 2005 and the parties are now preparing for the third such dialogue that is due in March 2006.

Other guiding documents include the EU Common Strategy on Russia (1999-2004) and the corresponding Russian Medium-term Strategy for Development of Relations between the Russian Federation and the European Union (2000-2010).

Also European Parliament is involved in the EU-Russia cooperation. It has an active parliamentary cooperation committee, which is composed of members of the European Parliament (EP) and the Russian Duma. The function of the committee is political dialogue and cooperation.

To sum up, this section has offered an overview of the instruments and mechanisms that the European organisations have at their disposal when seeking to influence their member states' or third states' human rights policies. It would appear that the problem is not so much to do with lack of instruments, but the will to use them.

Russia has been included in European frameworks of human rights cooperation. It interacts with the organisations at many levels on every-day basis. Despite the headlines that sometimes call for Russia's dismissal from the organisations, only rarely have punitive measures been applied to Russia. Leaving aside public and private statements of criticism, the organisations have exercised punitive measures in four occasions. In 1995, the CoE suspended the consideration of Russia's membership application and the EU postponed the ratification of Partnership and Cooperation Agreements because of the human rights violations in Chechnya. In 2000 the EU redirected TACIS assistance to human rights programmes for some months and Russia's voting rights were suspended in the Parliamentary Assembly of the Council of Europe, due to the re-eruption of hostilities in Chechnya. Despite earlier threats, the lack of progress in membership commitments, the deterioration of media or electoral freedom or abuse in military and prisons has not caused any coercive action by the organisations. In the recent years it has rather seemed that Russia has been the one attacking the organisations. Russia has claimed that OSCE should re-focus its activities and move away from the human dimension emphasis. It has also criticised CoE by claiming that the organisation should ease its monitoring vis-à-vis Russia.

The organisations' lenient action suggests that mere monitoring and dialogue on the commitments is believed to be enough to push Russia to implement the norms. As the next section – which provides a case study on the abolition of the death penalty – will show this has not turned out to be the case. Instead, Russia has manoeuvred and went back and forth on the issue, and finally openly challenged even the goal of implementing the once-agreed norm. The development has led to a situation where the CoE is applying pressure to states inconsistently regarding the abolition of the death penalty. The next section provides a detailed account on how European structures interact with Russia, and how the dynamics of cooperation work in practice. The aim is to contrast the empirical data on the cooperation on the death penalty with the earlier considerations on socialisation and the nature of international cooperation.

Summary of policy instruments and main characteristics of the human rights policy of the OSCE, CoE and the EU towards Russia.

	OSCE	CoE	EU
<b>Membership</b>	55 participating states from Europe, Central Asia and North America; CSCE was originally a Russian initiative and it was included from the beginning of negotiations in 1973	46 members states from Europe and near-by areas; Russia applied for membership in 1992 and was accepted in 1996	25 European states; Russia has not applied for a membership
<b>Basic documents organising the relations with regard to Russia</b>	- All major OSCE documents	- Statute of the CoE - ECHR (ratified by Russia 1998) - European Convention for the Prevention of Torture and inhuman or Degrading Treatment or Punishment - Framework Convention for the Protection of National Minorities	- PCA, negotiations started 1992, signed in July 1994, entered into force December 1997 - Common Strategy on Russia, 1999 (July 1999-July 2004) - Medium-term Strategy for Development of Relations between RF and the EU, 1999 (2000-2010)
<b>Decision-making institutions*</b>	- Summits - Ministerial Council - Permanent Council	- Committee of Ministers	- European Council, the Presidency, Political and Security Committee, the Secretary General of the Council/High Representative for CFSP
<b>Institutions dealing with human rights issues**</b>	- Decision-making bodies - Chairman-in-Office - Parliamentary Assembly and its president - Office for Democratic Institutions and Human Rights - Representative on Freedom and Media - High Commissioner for National Minorities	- Decision-making bodies - Secretary General - Commissioner for Human Rights (since 1999) - PACE and its chairman - European Court of Human Rights - Directorate General of Human Rights (DGII)	- CFSP framework (see above) - Commission - EP and its president and I committee on foreign and security policy (+ its subcommittee on human rights) and XIV committee on development
<b>Special structures with regard to Russia</b>	- OSCE Assistance Group to Chechnya (April 1995-Dec 1998 in Chechnya; Jan 1999- June 2001 in Moscow; June 2001-Dec 2002 in Chechnya)	- PACE Rapporteur on Chechnya - CoE Human Rights Experts to Chechnya (seconded under the Presidential HRs representative to Chechnya, 2001-2004; now ad hoc - based)	- Biannual summits b/w EU troika and Russia - Annual Cooperation Council; now replaced by the Permanent Partnership Council - Working Groups - Parliamentary Cooperation Committee
<b>Special human rights frameworks</b>	- Human Dimension (Vienna and Moscow mechanisms)	- ECHR	- European Initiative for Democracy and Human Rights - Human rights dialogues between Russia and the EU
<b>Human rights policy instruments</b>	1) HRs assistance: - Assistance and cooperation projects (now around 30 with Russia) - Election assistance - Field mission assistance (Field mission in Chechnya 1994-1999) 2) Monitoring: - Fact-finding and rapporteur missions (mission in Chechnya 1995-2002) - Personal representatives of the Chairman-in-office - Ad-hoc steering groups 3) Political measures: - High level exchange of information on questions relating to HD - Suspension or abolition of membership 4) Conflict prevention/management - Peace-keeping missions	1) HRs assistance: - Cooperation programmes (two currently with Russia) - many of the projects are co-projects with the EU - ad hoc advisors (3 experts in Chechnya 1999-2003; now ad hoc based consultation) - Election Assistance 2) Monitoring - by CM - by PACE - by CHR 3) Political measures: - In camera consultation by CHR or CM - resolutions, recommendations, statements - suspension of voting rights in PACE (suspension of Russia's voting rights for 6 months in 2000) - suspension or abolition of membership or cooperation programmes (the postponement of the consideration of Russian membership application) 4) Judicial procedures under ECHR (individual or state complaint)	1) HRs assistance: - with Russia Tacis, ECHO and EIDHR; many of the projects are co-projects with the CoE 2) Political measures: - conditionality (PCA ratification delayed for 6 months in 1995) - political and economic sanctions (Tacis aid redirected to human rights projects for 6 months in 2000) - diplomatic measures and confidential political dialogues - Monitoring carried out within the political structures (e.g. annual HRs reports) 3) Conflict prevention/management: - RRM, peace-keeping missions

\* In the case of the EU: decision-making structures within the CFSP framework; in the case of the OSCE: decision-making structures in the areas of political cooperation (excluding economic and security issues).

\*\* The EU: Institutions dealing with *external* human rights policy

#### **IV EUROPEAN ACTION FOR THE ABOLITION OF THE DEATH PENALTY IN RUSSIA**

This is thus the complex setting in which the human rights cooperation between Russia and the intergovernmental organisations take place. This section explores the European cooperation and its impact on Russia in the question of abolition of the death penalty. The hypothesis, which draws from the critical review of the earlier work on human rights socialisation (presented in Section II), is that the European human rights cooperation with Russia is an iterated process of interaction which has been shaped by mutual adaptation and on-going re-negotiation of initial agreements.

Unlike the earlier work on state socialisation this section aims to problematise the clear-cut view of state socialisation to set norms. The idea of unavoidable progress towards the fulfilment of western norms will be out under question through a detailed study of the European cooperation with Russia on the question of the death penalty. Much attention will be put on Russian policy and interaction with the organisations. The aim is to find out has Russia succeeded in re-framing the issue and thus influenced organisations' policy on the death penalty and perhaps even the European interpretation of the norm.

If the hypothesis on cooperation as a reiterated process of interaction is incorrect, we should be able to see clear-cut diffusion of norms from the international field to the domestic one without any significant renegotiation of norms. The norms are internalised in their original form, as set by the international institutions. The causal arrows flow only in one direction.

On the other hand, if the hypothesis is correct we should be able to see more controversial process of debating. Norms will be internalised in a renegotiated form or resisted altogether. The renegotiation and possible internalisation process may also have an impact on the general cooperation process or the international framing of the norms. The causal arrows flow in both directions.

##### **Abolition as a European norm**

The death penalty can be defined as a judicially ordered execution of a convict as a punishment for crime. The European norm is the total abolition of the death penalty, both in practice and in law without any exceptions. This means that the law does not provide for the death penalty for any crime, not even for military crimes or crimes committed during wartime. De facto abolitionism is not considered enough. De facto abolitionism means that a state retains the death penalty but in practice it has not applied capital punishment during the past ten years or more or that they have made an international commitment not to carry out executions.<sup>18</sup>

The modern European norm of the abolition of death penalty is based on the idea that death penalty is not an issue of criminal justice system of every sovereign state but an international issue of human rights. Although this norm is far from universally accepted, it has become a well-established European norm through the action by the CoE and the EU in the 1990s.<sup>19</sup> According to the current stance of the CoE, the death

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<sup>18</sup> Roger Hood, "Capital Punishment: A Global Perspective," *Punishment and Society* 3, no. 3 (2001).

<sup>19</sup> Ian Manners, "Normative Power Europe: A Contradiction in Terms?," *Journal of Common Market Studies* 40, no. 2 (2002).



penalty has no legitimate place in the penal systems of modern civilised societies and its application is a violation of the most fundamental right of all, the right to life. It may also be compared with torture and seen as inhuman and degrading punishment within the meaning of the Article 3 of the ECHR.<sup>20</sup>

However, this stance has only come about after the cold war. The Universal Declaration of Human Rights (1948), ECHR (1950) and the International Covenant on Civil and Political Rights (1960) all recognised the right to life but before the 1980s death penalty was still considered an internal matter of sovereign states. The original text of the ECHR explicitly states that death penalty may be applied by states under certain conditions.<sup>21</sup>

The traditional sovereignty-based interpretation started to be questioned by international non-governmental human rights organisations such as the Amnesty International and by the Parliamentary Assembly of the Council of Europe (PACE) during the 1970s and 1980s. It passed a resolution and recommendation in 22 April 1980 on the abolition of the death penalty. The resolution led to the drafting of the Protocol No. 6 to the ECHR concerning the abolition of the death penalty for ordinary crimes. The protocol was opened for signatures on 28 April 1983. Twelve of the then 21 members signed the protocol on that day. It entered into force with five ratifications on 1 March 1985.

Protocol No. 6 to the ECHR is the first agreement under international law containing a legal obligation to abolish the death penalty during peacetime.<sup>22</sup> It does not oblige states to introduce national legislation but instead it directly prohibits capital punishment. States are not allowed to make reservations when ratifying the protocol. Furthermore, the protection against capital punishment is unconditional and cannot be suspended by Article 15 which allows measures derogating from its obligations under the ECHR on the basis of war or public emergency that threatens the life of the nation. Protocol 6 is also subject to the formal conditions of denunciation: the denunciation is possible only after the expiry of five years from the date on which it became a party to it and after six months' notice to the Secretary General of the CoE.<sup>23</sup>

There have been further attempts to strengthen the norm of the abolition of the death penalty within the CoE since the mid-1990s. In 1994 PACE recommended that the Committee of Ministers would draw up a new additional protocol to the ECHR that would abolish the death penalty completely – in war and in peace – and oblige the signatories not to reintroduce it under any circumstances. PACE also decided then that the willingness to sign and to ratify Protocol No. 6 to the ECHR was to be a

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<sup>20</sup> See e.g. Renate Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," in *The Death Penalty: Abolition in Europe* (Strasbourg: Council of Europe, 1999). Renate Wohlwend is a member of the Liechtenstein delegation to the Parliamentary Assembly of the Council of Europe.

<sup>21</sup> See Article 2 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, CETS No. 005. The text is available at <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

<sup>22</sup> Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," 56.

<sup>23</sup> Hans Christian Kruger, "Protocol No. 6 to the European Convention on Human Rights," in *The Death Penalty: Abolition in Europe* (Strasbourg: Council of Europe, 1999), 70-71.

prerequisite for a membership.<sup>24</sup> This proposal resulted in the adaptation of the new Protocol No. 13 to the ECHR on the abolition of death penalty under any circumstances May 2002.

### **Developing European influence strategies**

During the cold war, the discussion on the abolition of the death penalty within the CoE involved only its Western European member states. However, with the new thinking and the easing of the cold war, the socialist states also started to engage with the debate on capital punishment that took place in the CSCE framework. The topic was included in the agenda of the 1989 Vienna Follow-up Meeting, and the concluding document mentioned that the participating states should use the capital punishment only for the most serious crimes and in accordance with the law and not contrary to their international commitments. The issue was also considered in the 1990 Copenhagen Meeting of the Conference on the Human Dimension and the states promised to publish and exchange information on the application of the death penalty. The following 1991 Moscow Meeting of the Conference on the Human Dimension and the Helsinki and Budapest Summits confirmed the CSCE commitments on the issue of the death penalty.

After the collapse of communism the CoE has played a significant role in promoting the international norm of the abolition of death penalty in Central and Eastern Europe. The abolition – or at least immediate moratorium and a commitment for its legal abolition – of capital punishment became a pre-condition for joining the CoE in June 1994. At that time, the CoE also called for all its de facto abolitionist member states to abolish the death penalty in law. Thus, the CoE norm on the abolition of capital punishment is its total abolition: it needs to be abolished not only in practice but in law as well. Legal guarantees – and in particular the ratification of the Protocol No. 6 – naturally makes the change in national policies more difficult. In addition to this practical justification, the formal, legal abolition of the death penalty holds significant symbolic value. It is not only a practical question of state not killing its citizens but essentially a question of identifying oneself with the European abolitionist states and the values and norms they uphold.<sup>25</sup>

By applying for the CoE membership in 1992, Russia committed itself to the requirements that came with it. Its progress towards the implementation of the membership conditions was scrutinised closely and it was taken into the discussion within the CoE. Despite the fact that Russia did not meet the requirement for membership it was accepted to become a CoE member state on 24 February 1996. It was nevertheless fundamentally clear to all parties that no executions were to be carried out after the accession. On the day of the accession Russian leadership promised to suspend executions from that date onwards and to ratify Protocol No. 6 in three years time.<sup>26</sup>

The main strategy of the CoE has been to push for commitment, to assist states with the abolition, and to monitor the implementation of abolition through its two-level

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<sup>24</sup> See e. g. Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," 57.

<sup>25</sup> Rick Fawn, "Death Penalty as Democratization: Is the Council of Europe Hanging Itself?," *Democratization* 8, no. 2 (2001).

<sup>26</sup> See Parliamentary Assembly of the Council of Europe, *Opinion: Russia's Application for Membership of the Council of Europe*, Doc. 7468.

monitoring system. Through its assistance and education programmes the CoE has aimed at convincing Russian authorities that the abolition is in Russia's own interests and that it is possible also in financial and practical terms. CoE's educational and informational work has revolved around providing information to Russian officials about research on the death penalty and engaging in dialogue with them. It has organised conferences and seminars in which it has tried to convince Russian officials and public opinion on the fact that capital punishment has statistically insignificant deterrence value and that no abolitionist state has experienced a sudden and serious change in the curve of crime following the abolition.<sup>27</sup>

The development of the norm within the EU structures also reflects these general trends. When the Protocol No. 6 to the ECHR entered into force on 1 March 1985 only nine of the then fifteen EU member states had abolished the death penalty for all crimes. However, with the end of the cold war, human rights became one of the corner stones of European human rights policy, both internally and externally.<sup>28</sup> The EU became more active with human rights after its "confidence crisis" that characterized the period from 1992 to 1997. After the end of the cold war, the European Parliament also started to push for greater respect for human rights, and campaigned for a European declaration of fundamental rights and the abolition of death penalty by member states. The new commitment to human rights was reflected in the Treaty of Amsterdam in 1997. The final act included a declaration on the EU commitment to the abolition of death penalty.<sup>29</sup> Today all EU member states have abolished the death penalty by ratifying Protocol No. 6 to the ECHR. All EU member states are also signatories to Protocol No. 13. The abolition of the death penalty is also a criterion for EU membership.

The EU actively promotes the abolition of the death penalty in third countries through political action. It promotes the goal through political dialogue and encourages states to ratify and implement international agreements.<sup>30</sup> The EU defines the norm of the abolition of the death penalty on the lines of the CoE and it closely cooperates with the CoE on the question of abolition in third states.

The campaign for the abolition of the death penalty has become one of the most visible areas of EU external policy. In June 1998 the Council of Ministers adopted guidelines for EU policy towards third states on the abolition of the death penalty in which it set out objectives and means of intervention on the question. Along these lines the EU presidency began issuing demarches on individual cases, starting with the Austrian presidency in December 1998.<sup>31</sup> This pattern of addressing directly the parties involved followed already established practice by the European Parliament. The Council also started to present annual an EU report on human rights. The report systematically records and assesses human rights in the EU member states as well as EU action on human rights in its external policies.

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<sup>27</sup> Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," 58-60.

<sup>28</sup> Manners, "Normative Power Europe: A Contradiction in Terms?," Karen E. Smith, *European Union Foreign Policy in a Changing World* (Cambridge: Polity, 2003).

<sup>29</sup> "Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts," (Luxembourg: Office for Official Publications of the European Communities, 1997). The text is available at <<http://www.europarl.eu.int/topics/treaty/pdf/amst-en.pdf>>.

<sup>30</sup> Manners, "Normative Power Europe: A Contradiction in Terms?."

<sup>31</sup> This first case was writing a letter George W. Bush regarding the case of *Stan v. Texas* in 1998.

In the case of Russia, the EU has combined the use of assistance, monitoring, treaty conditionality and diplomatic instruments. In 1999 the EU launched together with the CoE a joint public awareness campaign at a cost of EUR 670 000 over two years to provide information for the general public, legal experts and parliamentarians in Albania, Turkey, Russia and the Ukraine. All the major agreements and documents on EU-Russia relations mention human rights and the abolition of death penalty.<sup>32</sup> Even if treaty conditionality has not been used in practice on the question of the death penalty, it may still matter: for example, if Russia was to start executions again, the EU could well suspend its assistance and treaty obligations. The EU's latest opening in the field of human rights has been the establishment of biannual consultation meeting between the EU and Russia, in which the issue of the death penalty can also be discussed. The first such meeting took place in March 2005.

The OSCE supports the goal of abolition of death penalty even if the OSCE commitments as such do not require it. Ten of its 55 member states apply the death penalty. However, the OSCE requires transparency on the use of death penalty of all its participating states and obliges states to use capital punishment only for the most serious crimes in accordance with the national law, and not in contradiction to international commitments. Information on the application of the death penalty should be publicly available and the participating states are encouraged to exchange information on the issue. These principles were outlined and agreed by member states in 1989 the Concluding Document of the Vienna Follow-up Meeting, the Document of the 1990 Copenhagen and the 1991 Moscow Human Dimension meetings and the Concluding Documents of the 1992 Helsinki and 1994 Budapest summits. In 1999 the OSCE's Office for Democratic Institutions and Human Rights started to publish an annual review on the use of the death penalty in which the international standards and the use of the death penalty by OSCE states are studied. The data in the report comes from the participating states themselves. The idea behind the reporting is to monitor the situation and encourage discussion and increase knowledge on the issue.<sup>33</sup>

In summary, the European institutions have required (CoE), actively promoted (the EU and the CoE), and encouraged (OSCE) Russia to abolish the death penalty in practice and in law through various means since the early 1990s. The CoE and the EU norm is full abolition of the death penalty in law and in practice without any exceptions. This should be done by ratifying the Protocol No. 6 to the ECHR. Initially, the organisations firmly demanded that the norm should be applied to Russia, and that Russia should be treated as any other former socialist, European state seeking a membership of the CoE and close partnership with the EU.

### **The abolitionist development in Russia**

The death penalty was always a controversial issue for the Soviet Union. It was considered to be incompatible with the socialist ideals but remained widely in use in every-day practice.<sup>34</sup> Due to this contradiction, its provisional character was constantly stressed in law.<sup>35</sup> During the Soviet rule capital punishment was abolished

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<sup>32</sup> Manners, "Normative Power Europe: A Contradiction in Terms?."

<sup>33</sup> See information at <[http://www.osce.org/odihr/item\\_2\\_224.html?print=1](http://www.osce.org/odihr/item_2_224.html?print=1)>

<sup>34</sup> The exact numbers were confidential information until the late 1980s.

<sup>35</sup> Alexander S. Mikhlin, *The Death Penalty in Russia* (London: Simmonds & Hill Publishing and Kluwer Law International, 1999).

in law altogether three times but each time it was quickly reinstated. The issue was also used in Soviet propaganda internationally. For example, in a most bizarre episode, the Soviet delegation submitted a proposal to abolish the death penalty in all states at the UN General Assembly in 1949 (after the death penalty had been abolished in letter for the third time). It was naturally nothing more than a propagandist exercise by the Stalinist regime and before long even the formal abolition of the death penalty was soon repealed.<sup>36</sup>

In the late 1980s the topic of abolition of the death penalty appeared in the pages of newspapers and public speeches. Glasnost made public debate possible for the first time. The Soviet Union agreed internationally within the framework of the CSCE to publish information on the application of the death penalty. There were also attempts to limit the application of capital punishment, and international promises to do so were made at the CSCE meetings. During these years it became a norm set by practice that capital punishment was considered only for homicides and some especially grave infringements on the life of a person.<sup>37</sup>

In the public domain many members of the so-called intelligentsia started to actively promote the idea of more civilised criminal system and the abolition of the death penalty. References were regularly made to the European abolitionist example.<sup>38</sup> The liberal discourse highlighting humanistic ideals was dominant for a while but as the debate heated up, the general public's distaste for abolition became increasingly apparent. In 1987, the Soviet State granted a general amnesty for nearly all convicts on death row in the name of the 70th anniversary of the October Revolution. The event stirred up emotions and ordinary people wrote passionately to papers in defence of harsh punishments and against the measure taken by the government.<sup>39</sup>

In the early 1990s two mutually contradictory trends started to emerge in the Russian scene that reflected in the debate on the death penalty. The first one was the general growth of both perceived and real insecurity in a society undergoing dramatic transition. Also the rise of economic uncertainty, corruption and social problems hardened the public opinion and there was increasing pressure to make the punishments harder in the name of restoring order and respect for rules. The general public had never supported the abolition of the death penalty and these developments made their opposition for the abolition even stronger.

On the other hand, Russia was a target of growing international pressure to limit and eventually to abolish capital punishment. In 1994 the Council of Europe decided to make abolition of the death penalty (by ratifying Protocol No. 6 to the ECHR) one of the key conditions for membership in the organisation.<sup>40</sup> This provision applied to Russia as well as it had applied for CoE membership in 1992.

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<sup>36</sup> Ibid., 17-18.

<sup>37</sup> Ibid., 21-22.

<sup>38</sup> E.g. Nedelia, 19-25 October 1987, *Moskovskaia pravda*, 17 May 1987, *Ogonok*, no. 33, August 1987.

<sup>39</sup> *Ogonok*, no. 33, August 1987 and no. 49, December 1987.

<sup>40</sup> See Parliamentary Assembly of the Council of Europe, *On the Abolition of Capital Punishment*, 4 October 1994, Resolution 1044.

<<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA94/ERES1044.HTM>>

The goal of total abolition of the death penalty was stated in the new Russian Constitution of 1993. Article 20 Paragraph 2 allows the establishment of the death penalty "until its abolition thereof".<sup>41</sup> The constitution also confirmed that capital punishment could only be used in the case of especially grave crimes against life.<sup>42</sup> Article 20 Paragraph 2 continues "[...] the accused shall be granted the right to have his case examined by trial with jurors".<sup>43</sup> However, at that time only a fraction of the federation subjects had created such a court.<sup>44</sup> Article 6 of the Constitution states that the previous procedure should be retained until a new operating federal law that establishes a new procedure for the consideration of cases by the juror courts would be established.<sup>45</sup>

Meanwhile, the trend towards the limitation of the application of the death penalty continued in Russia. President of the Russian Federation and the Presidential Pardons Commission under him were the most important advocates of abolition of the death penalty. The Pardons Commission was created in 1992 in an attempt to expand the use of clemency. During Soviet times pardons were considered by the Committee on Pardons and Citizenship under the Supreme Soviet. The law was changed in 1991 when the president of the USSR was vested with the right to make the pardoning decisions.<sup>46</sup> Presidential right to pardon was confirmed in Article 89(c) of the 1993 Russian Constitution.

The character and composition of the Pardons Commission were both unique: it was headed by a well-known novelist Anatoly Pristavkin and its members included other well-known figures – poets, academics, priests – and experts such as jurists and psychologists. It met weekly on voluntary basis and considered thousands of sentences annually – among them approximately a hundred death sentences. The chairman of the pardons commission spoke actively in public, criticising the judicial system and the application of the death penalty. Therefore, the commission soon became commonly known as 'Pristavkin's commission'.<sup>47</sup>

Traditionally in the case of clemency, death sentences were replaced with 15 to 20 years of imprisonment.<sup>48</sup> In December 1992 a new law which stated that, in the case of clemency, a capital punishment was to be replaced by a deprivation of freedom for life. The law was based on a proposal by the presidential pardons commission and its purpose was to significantly expand the practice of pardoning.<sup>49</sup> The law seemed to suggest that life imprisonment was the only option available in the case of pardon. In order to clarify the situation the president passed a decree 'On Certain Questions of the Activity of the Commission for Questions of Pardon Attached to the President of

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<sup>41</sup> See *The Constitution of the Russian Federation*, 12 December 1993. Text is available at at <<http://www.constitution.ru/en/10003000-01.htm>>.

<sup>42</sup> The then prevailing criminal code allowed for much wider application of death penalty but the practice followed the constitution. The new criminal code was passed in 1996.

<sup>43</sup> See Art. 20 of the *The Constitution of the Russian Federation*.

<sup>44</sup> Jury courts existed in 9 regions out of 89 subjects of the RF. Gradually the situation has changed: since April 2003 only one federation subject did not have a jury court (Chechnya).

<sup>45</sup> See article 6 of the *The Constitution of the Russian Federation*.

<sup>46</sup> *Izvestia*, 2 April 1991.

<sup>47</sup> Anatoly Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," in *The Death Penalty: Abolition in Europe* (Strasbourg: Council of Europe, 1999).

<sup>48</sup> From 1986 onwards the substitution sentence could be more than 15 but no more than 20 years.

<sup>49</sup> Mikhlin, *The Death Penalty in Russia*, 103-33.

the Russia Federation' in March 1994. This regulation gave the president more flexibility: it confirmed that he could replace a death sentence with deprivation of freedom for 15 years or more.

In summary, the abolition of the death penalty has been a controversial topic in political debates in Russia since the reign of Elizabeth. Even if the European institutions did not introduce the topic to the Russian discussion, they definitely played a significant role in the process that led to the placement of the abolition to the practical, political reform agenda in the Soviet Union (and later in Russia). The strong trend towards abolition developed into a clearly pronounced political goal with the start of the CoE application process. During these early years, the organisations were clearly the ones who set the norms and they actively influenced Russian policy. Russia seemed to accept the norms and their applicability to Russia without much hesitation. The causal arrows can be drawn in one direction.

### ***Promises made, promises broken***

The war in Chechnya started late in the year 1994 and as a response to human rights violation there, the CoE decided to suspend the consideration of Russia's membership application.<sup>50</sup> This seemed to come as a surprise to the Russian leadership. After the decision the highest representatives of the Russian state – President Yeltsin, Prime Minister Viktor Chernomyrdin, Chairman of the State Duma Ivan Rybkin and president of the Federation Council Vladimir Shumeiko – sent a letter to the CoE. In the addendum of the letter the leaders promised that they would 'examine Protocol No. 6 (abolition of the death penalty) for the purpose of ratification'.<sup>51</sup> The application process was reopened in October 1995.<sup>52</sup>

In November 1995 the CoE and the EU started a comprehensive two-year assistance programme aimed at helping in constitutional arrangements, institution building and legal reform, and a month later PACE's Political Affairs Committee adopted a draft opinion in favour of Russia's membership. In the report the rapporteur, Ernst Muhlemann, mentioned the death penalty as one of the most pressing issues. At the time, Russia had not yet ratified the new criminal code and the prevailing legislation allowed the death penalty for 28 crimes. On the other hand, the Constitution did rule that it should be considered only for most grave crimes against life. The report included a detailed advisory and control programme that was aimed at guaranteeing Russia's swift compliance with the CoE norms.<sup>53</sup>

On 28 February 1996 the Russian Federation became officially the 39th member of the CoE despite the fact that it did not meet quite a few of the official membership conditions.<sup>54</sup> At the time of the accession president Yeltsin declared a moratorium on

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<sup>50</sup> Parliamentary Assembly of the Council of Europe, *On Russia's Request for Membership in the Light of the Situation in Chechnya*, Resolution 1055.

<sup>51</sup> See Annex 3, Parliamentary Assembly of the Council of Europe, *Report: Russia's Request for Membership of the Council of Europe*, 2 January 1996, Doc 7443.  
<<http://assembly.coe.int/Documents/WorkingDocs/doc96/EDOC7443.htm>>

<sup>52</sup> See Parliamentary Assembly of the Council of Europe, *On Procedure for an Opinion on Russia's Request for Membership of the Council of Europe*, Resolution 1065.

<sup>53</sup> See *Report: Developments in the Russian Federation in Relation to the Situation in Chechnya*, 23 April 1996, Doc. 7531.

<sup>54</sup> Council of Ministers of the Council of Europe, *Invitation to the Russian Federation to Become a Member of the Council of Europe*, 14 February 1996, Resolution (96)2, Doc. 7490.

the executions. This declaration was politically binding but unofficial. There was an understanding that Russia was to abolish the death penalty within three years of the accession by ratifying the Protocol No. 6 to the ECHR. There was a clear link between CoE and Yeltsin's moratorium decision.

Already in April 1996 PACE reprimanded Russia publicly because of human rights violations in Chechnya. Despite the growing tension between Russia and European organisations, a few positive steps were taken in the question of death penalty. The new criminal code of 1996 confirmed the principles laid out in the constitution and allowed death penalty only in three cases: homicide under aggravating circumstances, genocide and terrorist attack. In May the president issued a decree "On stage-by-stage reduction of execution of death penalty in connection with the Russian federation joining the Council of Europe". After the presidential elections Yeltsin declared an official moratorium on the execution of death penalties in August 1996.

A considerable blow on Russia's credibility as a CoE member occurred in December 1996 when it was revealed that Russian authorities had been carrying out executions during the first half of 1996 despite its CoE membership. In January 1997 the CoE published a report 'Honouring of the Commitment Entered into by Russia upon Accession to the Council of Europe' which concentrated exclusively on the question of the violation of the declared moratorium on the death penalty. It confirmed that at least 53 executions had taken place in Russia since Russia's accession. The report argued that the Committee on Legal Affairs and Human Rights "feels that the assembly needs to take action in accordance with its monitoring procedure to sanction this particular violation of an important human rights commitment by Russia, lest the credibility of the Council of Europe be damaged".<sup>55</sup> PACE held urgent debate on the issue during its part-session in January 1997. However, no special measures were required from Russia because it had already ceased carrying out executions by the time the information became public.

In March 1997 the State Duma considered a bill on the moratorium on executions but rejected the proposal by a clear majority: 177 votes against and 75 in favour with 6 abstentions.<sup>56</sup> At the time of the vote 688 prisoners were on a death row in Russia. Despite Duma's decision president Yeltsin signed the Protocol No. 6 to the ECHR in April 1997. A month later, Duma ratified ECHR (without Protocol No. 6), the Anti-Torture Convention and the European Charter of Local Self-Government.

In October 1997 the Council of Europe held a Summit where the heads of government called for universal abolition of death penalty and outlined the main elements of its anti-death penalty policy. It was to consist of a combination of several elements: general demarches, action on individual cases, human rights reporting and other initiatives including assistance programmes. That same year the European Union signed the Amsterdam Treaty, which confirmed its devotion to abolition of the death penalty. The strengthening of European action to abolish the death penalty

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<sup>55</sup> Parliamentary Assembly of the Council of Europe, *On the Honouring of the Commitment Entered into by Russia Upon Accession to the Council of Europe to Put into Place a Moratorium on Executions*, Resolution 1111. The source of the information was the head of the presidential clemency committee Anatoly Pristavkin. See Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia."

<sup>56</sup> Rossiiskaia gazeta, 6 May 1997.



continued the following year. In June 1998 the EU issued practical guidelines for its anti-death penalty policy towards third states in which it reinstated its commitment for universal abolition of the death penalty.<sup>57</sup>

In June 1998 CoE published its first comprehensive Honouring of Obligations and Commitments Report on the Russian Federation. The tone was fairly optimistic: it stated that the ratification of the ECHR, the Anti-Torture Convention and the European Charter of Local Self-Government and the respect of presidential moratorium represented historical steps in the enshrinement of Russia in the 'system of values' fostered by the Council of Europe. It was however clear on the issue that Russia should make further efforts to fulfil the obligations and commitments, including the complete abolition of the death penalty.<sup>58</sup>

During these years the Russian debate grew increasingly critical of abolishing the death penalty and the policy of international organisations on the question.<sup>59</sup> In the public domain, previous commitments were questioned. The first ones to criticise were the newspapers, but gradually also the state representatives and high officials took up the question. This marked the beginning of the renegotiation process: after its accession to the CoE, the agreed norms and commitments were opened again and questioned by Russia.

The Duma considered a draft law on a moratorium of the death penalty again with the ratification of the ECHR in February 1998. The session was preceded by a heated debate in the newspapers. Before the hearing, even a liberal representative of the Russian government Boris Nemtsov sent a comment to Duma claiming that on economic basis the law should not be passed. Duma ratified the European Convention on Human Rights but refused to ratify Protocol No. 6 to the treaty.<sup>60</sup> The following June, 1998, Minister of Justice Pavel Krasheninnikov made a public case for maintaining the death penalty on the basis of growth in crime and strong public support for maintaining it in.<sup>61</sup> The recently elected human rights ombudsman Oleg Mironov responded to Krasheninnikov's comments positively by suggesting that Russia should explain to the CoE that "the crime situation in our country is very bad and that having the death penalty for especially heinous crimes against human life serves as a deterrent".<sup>62</sup>

Krasheninnikov was far from the only representative of the executive who defended the death penalty. In fact, in November 1998 even the prime minister Evgeny Primakov criticised the official goal of abolition by claiming in a populist fashion that Russian government should be talking about "physically eliminating those who kill women and children and that is what we will do".<sup>63</sup> A few days later Vladimir

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<sup>57</sup> The European Union, General Affairs Council, *Guidelines for EU Policy towards Third Countries on the Death Penalty*, 29 June 1998.

<[http://europa.eu.int/comm/external\\_relations/human\\_rights/adp/guide\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm)>.

<sup>58</sup> Parliamentary Assembly of the Council of Europe, *Information Report: Honouring of Obligations and Commitments by the Russian Federation*, 2 June 1998, Doc. 8127.

<<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc98/edoc8127.htm>>

<sup>59</sup> *Izvestia*, 15 March 1996 and 31 January 1997.

<sup>60</sup> *Novie Izvestia*, 21 February 1998.

<sup>61</sup> *Sevodnia*, 4 June 1998.

<sup>62</sup> Mironov's interview in *Novie Izvestia*, 2 December 1998.

<sup>63</sup> See *Sevodnia* 7 December 1998.

Kartashkin, who had recently become the chairman of the Presidential Human Rights Commission, eagerly interpreted Primakov's comments as suggesting that evidently the moratorium on the death penalty would be lifted and punishments would be made tougher.

These pro-death penalty comments by major political figures and high state officials created confusion and raised serious doubts about Russia's intentions in the European human rights institutions. PACE raised the issue of state officials' comments which were contradictory to Russia's official policy. It reminded Russia that it had agreed to abolish the death penalty when joining the Council of Europe.

Given the wide-spread practice of behind-the-scenes manoeuvring so typical of Russian political life then and today, one cannot help but wondering if these high-level comments really happened contrary to the president's wishes. It might have been just a clever strategy to ease the international pressure to abolish the death penalty. The 'standard' reason given by Russia why the West should not criticise Russia over human rights violations, was the claim that irresponsible critique of the government would strengthen illiberal opposition in Russia. This was used rather effectively for example when the CoE membership and its conditions were discussed. Once again, the mixture of domestic pressure and some positive steps – though more modest than CoE expected – that were taken by the president made it almost impossible for the CoE to challenge the president's policy in the question of the death penalty. Still in June 1998 the CoE threatened Russia, Latvia and Ukraine that they would be expelled from the organisations if they failed to ratify Protocol No. 6.<sup>64</sup> In the case of Russia, this option was, however, gradually put aside.

During these years there was significant progress towards the implementation of the European norm of abolition of the death penalty in Russia. However, the progress was almost completely dependent on the president and growing signs of hesitation started to emerge relatively soon after the CoE membership was granted. The hesitation was not only to do with the implementation and its timing but it revolved increasingly around the question whether the norm was applicable to the Russian case at all. The CoE did offer some strong words, even threats, but it soon became more cautious and dropped off this policy line. Instead of pressure, the CoE seemed to rest its hope in – on one hand – confidential and compliant dialogue with Russian policy-makers and – on the other hand – providing information and discussing the topic in the press. It was hoped the measures would not directly challenge the Yeltsin administration which was one of the few supporters of the abolition and whose popularity was on a shaky ground in Russia. During this period the questioning of the norm and its applicability to the Russian case started. The norm was not challenged directly but instead gradually and indirectly through political manoeuvring and reframing of the norm. The development was contradictory and one can see neither clear-cut progress nor a complete backlash as outlined by the Risse-Ropp-Sikkink model of socialisation. The causal arrows start to emerge in both directions: from the European organisations towards Russia and from Russia towards the organisations.

### ***Turning the tables***

Nevertheless, the fragile moratorium on the death penalty was strengthened soon – at least temporarily. In February 1999 the Constitutional Court ruled that Russian

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<sup>64</sup> See Fawn, "Death Penalty as Democratization: Is the Council of Europe Hanging Itself?," 86.

courts should stop imposing death sentences until a law on jury trials had been passed in all federal subjects. At the time jury courts existed in nine (out of 89) regions. Even regions where the possibility of a jury trial existed had to cease passing new death sentences, in order to guarantee the principle of equality of all Russian citizens before the law. This was an important step because there is a qualitative difference between moratorium on executions and moratorium on passing death sentences by courts. After the ruling, Russia could be classified as a de facto abolitionist state.<sup>65</sup> This ruling and its independent judicial nature calmed down the debate on the death penalty – but only for a while.

During the first five months of 1999 the Pardons Commission considered record-breaking 700 cases in an attempt to get ahead of the long death row. A good point of comparison is that in previous seven years it had reviewed altogether 555 death sentences. In June Russian authorities and the CoE organised a major conference on the abolition of the death penalty in Moscow. Interestingly enough, Justice Minister Pavel Krashennnikov – who had criticised the goal of abolishing the death penalty just some months earlier – made a statement supporting the ban on capital punishment "The President and the government have already determined their position on the death penalty: it should be completely abolished".<sup>66</sup> On the opening day the president announced that he had signed a decree commuting all remaining death sentences into prison terms ranging from 25 years to life imprisonment.

This positive development soon came to an end. With the start of the second Chechen war in 1999, terrorism became more predominant in the Russian political agenda. The official immediate reason for the reopening of hostilities was the explosion of two apartment buildings near Moscow. Terrorist attacks against civilians considerably strengthened the support for the death penalty in Russia. The Russian press launched a populist pro-death penalty campaign and many public figures gave their support for the campaign. This pro-death penalty camp included figures such as the chess world champion Anatoli Karpov and Nobel Prize winner Zhores Alferov.<sup>67</sup>

Resuming of hostilities created also a volatile situation in the CoE. In December 1999 the Secretary General of CoE sent a letter to the foreign minister Igor Ivanov requesting information, under article 52 of the ECHR, on the situation in the Chechen Republic. The second exchange of letters took place in March 2000 with as little results as the first round.<sup>68</sup> The replies received from Russian authorities were deemed unsatisfactory by the Secretary General and PACE alike and tensions started to build up between the parties. The Political Affairs Committee under PACE submitted a report on the situation in Chechnya and recommended suspension of the Russian delegation's voting rights in PACE if no progress in solving the crisis was made by Russia. In April 2000 PACE decided to act by suspending Russia's voting rights in the Assembly.<sup>69</sup> Russian State Duma replied to the suspension decision by adopting a declaration "On the Position of the Parliamentary Assembly Concerning

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<sup>65</sup> Kommersant, 3 February 1999. See also Roger Hood, *The Death Penalty: A Worldwide Perspective*, 3rd ed. (Oxford: Oxford University Press, 2002), 31.

<sup>66</sup> Kommersant, 5 June 1999.

<sup>67</sup> Rossiiskaia Gazeta, 20 March 2002.

<sup>68</sup> See *Conflict in Chechnya: Reply from the Russian Federation to the Council of Europe's Request for Further Explanations*, 22 March 2000, Doc. 8671.

<sup>69</sup> See *Conflict in the Chechen Republic - Implementation by the Russian Federation of Recommendation 1444 (2000)*, 6 April 2000, Recommendation 1456 (2000).

the Situation in the Chechen Republic". In the document Duma "deeply regretted" the position adopted by the Assembly. It considered PACE's decision both unjust and unfounded and claimed that full-scale cooperation could only resume if the Assembly reversed its "discriminatory" decision.<sup>70</sup> Russia decided to keep away from PACE altogether until it would change its line.

On 23 January 2001 the Political Affairs Committee commented again the situation in Chechnya. The Committee regretted that the Russian delegation had taken the position of not participating as such in the work of the Assembly and its committees. It seems that the tables had unexpectedly turned: what had started as CoE pressure on Russia had become Russia's pressure on CoE.<sup>71</sup> PACE had to admit that if Russia was actually expelled from the CoE, the organisation would have to invent a completely new role for itself in the new Europe.

It thus became clear that the CoE needed Russia just like Russia needed the CoE. The rapporteur suggested the Assembly that "we must not give up our critical evaluation of the situation in the Chechen Republic, but I believe that the State Duma has increasingly become a partner in our efforts for change. Therefore the rapporteur proposes that the assembly should ratify the credentials of the new Russian delegation".<sup>72</sup> PACE decided to grant full voting rights for Russia.<sup>73</sup>

In addition to the situation in Chechnya, the status of the death penalty also caused debate within the CoE. The president of PACE has often made public appearances and has given statements on topical human rights issues in member states. In May 2001 PACE President Lord Russell-Johnston saw it necessary to give a declaration on the death penalty debate in Russia. In it he stated that "recent statements made by high-level Russian officials in favour of suspending the moratorium on the executions are therefore highly regrettable. These statements come against the background of serious concerns with regard to Russia's human rights record in Chechnya and its commitment to the freedom of media. They are worrying sign of either ignorance of, or blatant disregard for Russia's commitments and obligations as a member state of the Council of Europe." Further he claimed that a decision to end a moratorium would be challenging "the credibility of Russia's commitment to our organisation's values and principles [...] this would inevitably lead to the questioning of whether Russia is to continue as a member of the organisation".

In December 2001 Putin signed a package of bills including a new Russian Criminal Code. It confirmed the use of death penalty, but the moratorium was left untouched. A few months earlier Putin backed the goal of the abolition of the death penalty by claiming that no one – not even the state – had a right to "grant itself a divine right".<sup>74</sup>

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<sup>70</sup> State Duma of the Federal Assembly of the Russian Federation, *Statement on the Position of the Council of Europe Parliamentary Assembly on the Situation in the Chechen Republic*, 12 April 2000.

<sup>71</sup> This interpretation was confirmed in an interview with Mikko Elo, head of Finnish delegation to the CoE 24 March 2005.

<sup>72</sup> Parliamentary Assembly of the Council of Europe, Political Affairs Committee, *Report: Credentials of the Delegation of the Russian Federation*, 23 January 2001, Doc. 8949.

<sup>73</sup> Parliamentary Assembly of the Council of Europe, *Credentials of the Delegation of the Russian Federation*, 25 January 2001, Resolution 1241.

<sup>74</sup> Interfax, 9 July 2001.

The Pardons Commission was dissolved by a presidential decree in December 2001 and the Commission was set to be replaced by regional commissions. This measure did not relate to the death penalty debate anymore: at the time Russia was already a de facto abolitionist state and all the death row prisoners had been pardoned. Nevertheless, many observers were alarmed by the measure, especially because the judges could start issuing the capital punishment after jury courts had been established in all Russian regions. The debate soon died both domestically and internationally as at least in principle there was nothing drastically wrong with the measure. On face-value it was simply a question of replacing a central body with regional ones.<sup>75</sup>

What is interesting is that Anatoly Pristavkin himself was designated as Putin's political advisor on clemency. This 'divide and rule' tactic seems to be something very typical for president Putin's leadership. Simultaneously while removing most liberals from the key posts, he has nominated a few of them – like Ella Pamfilova, Vladimir Lukin and Anatoli Pristavkin – to become part of his presidential administration. These figures are hence moved from the opposition to the ruling elite, but their status is dependent on the president: they cannot challenge the president from their positions and also makes them more 'responsible' when expressing their views on human rights issues. At the same time, these actions are likely to improve the President's public image – especially abroad.

In February 2002 the State Duma rejected once more the ratification of Protocol No. 6 again by a large majority, with some members of the parliament even going as far as introducing an appeal to the president to reintroduce capital punishment.<sup>76</sup> This was shocking news to PACE. In March it commented on these developments in a monitoring session: "The assembly is shocked by the vote in the State Duma on 15 February 2002, asking President Putin to reintroduce the death penalty [...] the assembly nevertheless urges the Russian authorities to abolish the death penalty de jure and to conclude the ratification of the protocol no. 6 to the European convention on human rights". In 2002 the CoE Council of Ministers decided to discuss the question of the abolition of the death penalty at six-month intervals until de jure abolition in all member states.<sup>77</sup>

All this did little to prevent pro-death penalty comments from the Russian officials. Most serious of these attacks was Deputy Prosecutor Vladimir Koleshnikov's advocacy for the cancellation of the moratorium in February 2005. His comments

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<sup>75</sup> PACE did, however, voice some concerns after the disbandment of the commission but there was very little it could do about the situation. The Council of Ministers approved the measure but allocated more resources on cooperation, technical assistance and education of the inexperienced staff of the regional commissions. The CoE organised a three-day workshop in March 2002 and contributed to the first all-Russian conference on clemency issues in December 2002. By 2003 there were 89 regional commissions with some 1200 staff. The clemency numbers nevertheless fell significantly: during the eleven months since the reorganisation only 182 decisions lead to clemency by the president (out of total 6628 requests and 1117 recommendations for pardon). Council of Europe, Parliamentary Assembly, *Presidential Pardon Commission of the Federation of Russia*, 2 February 2002, Written Question No. 407, Doc. 9354.

<<http://assembly.coe.int/Documents/WorkingDocs/doc02/EDOC9364.htm>>

<sup>76</sup> Rossiiskaia gazeta, 20 March 2002.

<sup>77</sup> See Parliamentary Assembly of the Council of Europe, *The Honouring of Obligations and Commitments by the Russian Federation*, 23 April 2002, Recommendation 1553.

<<http://assembly.coe.int/Documents/AdoptedText/TA02/EREC1553.htm>>

were sent to the Federation Council who was considering anti-terrorist legislation. These comments were even more worrisome as the Constitutional Court ruling on the application of the death penalty was about to become irrelevant: the only region without a jury court is Chechnya. The episode was renewed in February 2006 when the deputy prosecutor general of the Russia Federation Nikolai Shepel publicly expressed his wish that the terrorist behind the Beslan school attack, Nurpashi Kulaev, should be executed. Pavel Krasheninnikov – this time as a chairman of the legislative committee of the Duma – spoke against exceptions to the moratorium and also president Putin has now and again expressed his conviction that death penalty should not be re-introduced.<sup>78</sup> On the other hand, nothing has been done to abolish the death penalty in law.

In May and June 2005 the Council of Europe published a report by the human rights commissioner Alvaro Gil-Robles and PACE rapporteurs Rudolf Binding and David Atkinson. Both reports listed some positive developments such as the adoption of a new criminal code and a reduction of the number of prisoners on death row. However, they remained firm on their criticism on the failure to abolish the death penalty in law, and to bring to justice those found responsible for human rights violations in Chechnya.<sup>79</sup>

The EU has also increasingly paid attention to human rights and the issue of the death penalty in EU-Russia relations. In 2001 the Commission confirmed in its communication that human rights are a priority area in its relations with third countries.<sup>80</sup> The EU and Russia had their first human rights consultation round in March 2005. The issue of capital punishment was also discussed in this meeting. The consultations have continued and the EU and Russia are now preparing for the third such meeting.

In short, the CoE and the EU have used political measures, monitoring and assistance to influence Russia's policy on the death penalty. Political measures have included both public pressure and dialogue e.g. at PACE and more confidential, in camera consultations, such as the human rights dialogue meetings between Russia and the EU. Monitoring has happened on many levels, in public reports of monitoring committees and human rights bodies as well as behind closed doors on a higher level. Punitive measures have been used against Russia, but not because of the lack of progress on the issue of abolition of the death penalty.

Nevertheless, the results of the cooperation are not impressive: the protocol that was supposed to be ratified in 1999 at the latest is still waiting for the ratification. After

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<sup>78</sup> Moscow News, 10 February 2006.

<<http://www.mosnews.com/news/2006/02/10/penalty.shtml>>

<sup>79</sup> See Parliamentary Assembly of the Council of Europe, *Report: Honouring of Obligations and Commitments by the Russian Federation*, 3 June 2005, Doc. 10568.

<<http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10568.htm>>, and *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on His Visit to the Russian Federation (15-30 July 2004 and 19-29 September 2004)*, 20 April 2005, CommDH(2005)2. <[http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/Documents/pdf.CommDH\(2005\)2\\_E.pdf](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/pdf.CommDH(2005)2_E.pdf)>

<sup>80</sup> *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*, 8 May 2001, COM(2001)252 final.

<[http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/com01\\_252\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf)>

the international ordeal over the question of Chechnya, Russia's policy towards the CoE has been self-confident: Russia knows that the CoE will not test the limits of its influence any time soon, in particular over some issue that does not make the headlines such as the abolition of the death penalty. At this point it is hard to imagine that the CoE would expel Russia because it has not ratified Protocol No. 6 on the death penalty. Yet, this is exactly what it proposed earlier.

The CoE's policy has gradually changed towards Russia. It has had very little impact on Russia since Russia's membership application was approved. Russia, on the other hand, seems to have succeeded in pushing for an exception in the issue of abolition. This naturally reflects back to the European organisations, as well as on the European norm of abolition. The causal arrows flow in both directions: from the organisations towards Russia and likewise. The arrows flowing from Russia towards the organisations are stronger than before whilst the arrows from the organisations towards Russia are alarmingly fading.<sup>81</sup>

## V CONCLUSION

### *Evaluating the impact of the European organisations, evaluating the impact of Russia*

In summary, Russia has not executed any convicts since mid-1996, there are no convicts on death row, and since 1999 no courts have passed new death sentences. The situation is nevertheless far from clear-cut and stable. The Russian Duma seems firm on its stance against abolishing the death penalty. The moratorium on passing death sentences is soon to become void as jury courts exist in all but one federation subject (Chechnya). President Putin has publicly backed the goal of abolition but he has not taken any concrete measures to abolish the death penalty in law (as is required by the CoE). Also, his second term is running out in 2008 and there are naturally no guarantees that his successor holds similar views on the issue.

Russia has gradually and indirectly challenged the already once agreed norm of the legal abolition of the death penalty. Initially when Russia was taken into the CoE, Russia promised to ratify Protocol No. 6 to the ECHR within three years. After ten years, Russia is nowhere close of reaching the goal. Even the goal has been questioned by the authorities, even if not by the president himself. The CoE did not expect that its loss of leverage would be quite as drastic as it has been after Russia's membership in the organisation. Recently Russia has also claimed that PACE should give up monitoring Russia's membership criteria commitments, as it has practically fulfilled the conditions. Needless to say, the PACE president did not share this view.

It is of course true that the European organisations have influenced Russia's policy in a great many ways. First of all, they influenced Russia by bringing the topic in the public eye and raising discussion within Soviet Union on the issue. Also, the decrease in the number of executions and the new openness about the application of the death penalty were very much influenced by the debate taking place within the CSCE framework. Similarly, the fact that Russia officially declared its early intention to abolish the death penalty was crucially connected to the European policy. This goal was made even more explicit by the CoE membership application process.

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<sup>81</sup> A comment to the issue, see William D. Jackson, "Russia and the Council of Europe: The Perils of Premature Admission," *Problems of Post-Communism* 51, no. 5 (2004).

Since then Russia has been under considerable European political and 'moral' pressure to abolish the death penalty. The Council of Europe and the EU have also assisted in many practical ways, e.g. by training officials and giving advice on legislation.

Nevertheless, very little indeed has been achieved on the issue since Yeltsin signed Protocol No. 6 in 1997. In practical terms the CoE seems to have settled for the prevailing situation. Because Putin – just like Yeltsin before him – has effectively demonstrated that he is one of the very few who supports the abolition as a distant goal, the CoE does not seem willing to push the issue further. The organisation is afraid that if the president was pressured, things might get worse. The development has led to a situation where the CoE is applying pressure to states inconsistently with regard to the death penalty. Russia is the only European former socialist state within the CoE that has not signed Protocol No. 6. The European organisations seem toothless with Russia because it has challenged their authority on questions that were already agreed upon. Russia has responded coldly to cases of direct pressure from these institutions. This has discouraged the use of pressure and the organisations have started to utilise other measures (e.g. the EU's confidential human rights dialogue with Russia).

As this article has attempted to demonstrate, Russia's action has influenced the nature and priorities of the European policy on the issue. If the situation continues like this and an exception is effectively allowed to Russia on the norm of complete abolition of the death penalty, the European interpretation of the norm may be gradually changing.

In conclusion, there has not been a simple diffusion of the European norm to the Russian domestic field in this case. Instead, we can see an on-going process of mutual adaptation and re-negotiation of the methods and instruments of cooperation and perhaps even the norm itself. The cooperation between Russia and the European organisations does not resemble either successful socialisation or a dramatic backlash as outlined by Risse, Ropp and Sikkink. The challenging of the human rights norms by Russia has not been direct or absolute but gradual and indirect. Despite tensions and problems the cooperation has continued and it has become an institutionalised every-day practice. What we have here is neither a great failure nor a success case of socialisation. The causal links would appear as more complex than is envisaged by constructivist literature on state socialisation so far.

It seems that Russia has indeed been socialised to the practice of cooperation with the European organisations but it clearly has not been socialised to the norms and values of the organisations (at least in the way they have been interpreted by the organisations and their member states so far). Unlike the earlier writings on state socialisation, this article has argued that norms – even human rights norms – are not fixed but may change in the process of international cooperation. It is here where the danger lies for the European organisations: Russia's resistance may in the long run affect also the European interpretation of the norms. If exceptions are made, the norms grow weaker and the requirement for implementation less absolute.



## Bibliography

- Adler, Emanuel. "Seizing the Middle Ground: Constructivism in World Politics." *European Journal of International Relations* 3, no. 3 (1997): 319-63.
- Alderson, Kai, and Andrew Hurrell, eds. *Hedley Bull on International Society*. Basingstoke and London: Macmillan Press, 2000.
- Clark, Ann Marie. *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*. Princeton: Princeton University Press, 2001.
- The Constitution of the Russian Federation*. 12 December 1993.
- Council of Europe, Parliamentary Assembly. *Conflict in the Chechen Republic - Implementation by the Russian Federation of Recommendation 1444 (2000)*. 6 April 2000, Recommendation 1456 (2000).
- Council of Europe, Parliamentary Assembly. *Opinion: Russia's Application for Membership of the Council of Europe*. Doc. 7468.
- Council of Europe, Secretary General. *Conflict in Chechnya: Reply from the Russian Federation to the Council of Europe's Request for Further Explanations*. 22 March 2000, Doc. 8671.
- Council of Europe. *Convention for the Protection of Human Rights and Fundamental Freedoms*. 4 November 1950, CETS No. 005.
- Council of Europe, Parliamentary Assembly. *Credentials of the Delegation of the Russian Federation*. 25 January 2001, Resolution 1241.
- Council of Europe, Parliamentary Assembly. *The Honouring of Obligations and Commitments by the Russian Federation*. 23 April 2002, Recommendation 1553.
- Council of Europe, Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of Council of Europe. *Information Report: Honouring of Obligations and Commitments by the Russian Federation*. 2 June 1998, Doc. 8127.
- Council of Europe, Council of Ministers. *Invitation to the Russian Federation to Become a Member of the Council of Europe*. 14 February 1996, Resolution (96)2, Doc. 7490.
- Council of Europe, Parliamentary Assembly. *On Procedure for an Opinion on Russia's Request for Membership of the Council of Europe*. Resolution 1065.
- Council of Europe, Parliamentary Assembly. *On Russia's Request for Membership in the Light of the Situation in Chechnya*. Resolution 1055.
- Council of Europe, Parliamentary Assembly. *On the Abolition of Capital Punishment*. 4 October 1994, Resolution 1044.
- Council of Europe, Parliamentary Assembly. *On the Honouring of the Commitment Entered into by Russia Upon Accession to the Council of Europe to Put into Place a Moratorium on Executions*. Resolution 1111.
- Council of Europe, Parliamentary Assembly. *Presidential Pardon Commission of the Federation of Russia*. 2 February 2002, Written Question No. 407, Doc. 9354.
- Council of Europe, Office of the Commissioner for Human Rights. *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on His Visit to the Russian Federation (15-30 July 2004 and 19-29 September 2004)*. 20 April 2005, CommDH(2005)2.
- Council of Europe, Parliamentary Assembly, Political Affairs Committee. *Report: Credentials of the Delegation of the Russian Federation*. 23 January 2001, Doc. 8949.

- Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Mr David Atkinson and Mr Rudolf Bindig). *Report: Honouring of Obligations and Commitments by the Russian Federation*. 3 June 2005, Doc. 10568.
- Council of Europe, Political Affairs Committee. *Report: Russia's Request for Membership of the Council of Europe*. 2 January 1996, Doc 7443.
- Council of Europe, Parliamentary Assembly. *Report: Developments in the Russian Federation in Relation to the Situation in Chechnya*. 23 April 1996, Doc. 7531.
- Donnelly, Jack. "Post-Cold War Reflections on the Study of International Human Rights." *Ethics and International Affairs* 8 (1994).
- European Commission. *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*. 8 May 2001, COM(2001)252 final.
- The European Union, General Affairs Council. *Guidelines for EU Policy towards Third Countries on the Death Penalty*. 29 June 1998,
- Fawn, Rick. "Death Penalty as Democratization: Is the Council of Europe Hanging Itself?" *Democratization* 8, no. 2 (2001): 69-96.
- Hood, Roger. "Capital Punishment: A Global Perspective." *Punishment and Society* 3, no. 3 (2001): 331-54.
- . *The Death Penalty: A Worldwide Perspective*. 3rd ed. Oxford: Oxford University Press, 2002.
- "Human Rights after September 11." Versoix, Switzerland: International Council of Human Rights, 2002.
- Jackson, William D. "Russia and the Council of Europe: The Perils of Premature Admission." *Problems of Post-Communism* 51, no. 5 (2004): 23-33.
- Jurado, Elena. "Complying with 'European' Standards of Minority Protection: Estonia's Relations with the European Union, OSCE and Council of Europe." PhD Thesis, Oxford University, 2004.
- Juviler, Peter. "Political Community and Human Rights in Postcommunist Russia." In *Human Rights: New Perspectives, New Realities*, edited by Adamantia Pollis and Peter Schwab. Boulder: Lynne Rienner Publishers, 2000.
- Kruger, Hans Christian. "Protocol No. 6 to the European Convention on Human Rights." In *The Death Penalty: Abolition in Europe*, 69-78. Strasbourg: Council of Europe, 1999.
- Manners, Ian. "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40, no. 2 (2002): 235-58.
- Mikhlin, Alexander S. *The Death Penalty in Russia*. London: Simmonds & Hill Publishing and Kluwer Law International, 1999.
- O'Neill, Kate, Jörg Balsiger, and Stacy D. VanDeveer. "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate." *Annual Review of Political Science* 7 (2004): 149-75.
- Pettman, Ralph. "Commonsense Constructivism and Foreign Policy: A Critique of Rule-Orientated Constructivism." In *Foreign Policy in a Constructed World*, edited by Vendulka Kubálková, 249-65. Armonk, New York: M.E. Sharpe, 2001.
- Pristavkin, Anatoly. "A Vast Place of Execution - the Death Penalty in Russia." In *The Death Penalty: Abolition in Europe*, 129-38. Strasbourg: Council of Europe, 1999.
- Prokosch, Eric. "The Death Penalty versus Human Rights." In *The Death Penalty: Abolition in Europe*. Strasbourg: Council of Europe, 1999.

- Risse, Thomas, and Kathryn Sikkink. "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." In *The Power of Human Rights: International Norms and Domestic Change*, edited by Thomas Risse and Stephen C. Ropp and Kathryn Sikkink. Cambridge: Cambridge University Press, 1999.
- Schimmelfennig, Frank. "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues." In *Norms and Nannies: The Impact of International Organisations on the Central and East European States*, edited by Ronald H. Linden, 1-29. Lanham: Rowman & Littlefield Publishers, 2002.
- Sikkink, Kathryn. "The Power of Principled Ideas: Human Rights Policies in the United States and Europe." In *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, edited by Judith Goldstein and Robert O. Keohane. New York: Cornell University Press, 1993.
- Smith, Karen E. *European Union Foreign Policy in a Changing World*. Cambridge: Polity, 2003.
- Thomas, Daniel C. *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*. Princeton: Princeton University Press, 2001.
- Torring, Jacob. *New Theories of Discourse: Laclau, Mouffe and Zizek*. Oxford: Blackwell, 1999.
- "Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts." Luxembourg: Office for Official Publications of the European Communities, 1997.
- Wohlwend, Renate. "The Efforts of the Parliamentary Assembly of the Council of Europe." In *The Death Penalty: Abolition in Europe*, 55-67. Strasbourg: Council of Europe, 1999.



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