ASPECTS OF EUROPE´S NORMATIVE POWER IN THE CONTEXT OF ROMANIA´S TRANSITIONAL JUSTICE

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Abstract

This paper aims to provide an insight into the European Union constructing its role as a normative power in relation to Central and Eastern European countries. Special attention is drawn to a specific scenario, namely Romania´s attempts to initiate the transitional justice process. Thereby, it is shown that transitional justice has become increasingly relevant within the EU, and that it has recently evolved into an independent European field of action within the democratization policy. This leads to the question of previous manifestations and impacts of Europe´s normative power role in relation to Central and Eastern European countries, more specifically to Romania´s transitional justice measures. Although a more indirect approach has been followed, the diffusion of Europe´s norms within communicative platforms and even normative pressure were identified in relation to truth seeking attempts and reconciliation with the communist past.

Key words: normative power, transitional justice, Romania, European Union, reconciliation with the communist past

1. Introduction

The European Union continues to change its behaviour as a global player, depending on multiple variables including resources and instruments available in each policy field, internal cohesion among member states, external constellations, and especially the role of the counterpart it is acting on. One major challenge in acting globally with a single voice is facing different situations, which make a coherent behaviour - given its complex decisional structure and the multiple actors having to reach a common denominator - even more difficult. Therefore, it is more appropriate to differentiate between and discuss scenarios of EU actorness, rather than refer to uniform attitudes in international relations.

When referring to "normative power Europe" (Manners, 2002; Dietz, 2005), several scenarios arise from its effectiveness towards specific actors, in other words, the reaction of member or third states towards the EU´s normative claims, this effectiveness being measured in what scholars more recently also describe as "Europeanization" (Börzel 2003; Hirschhausen and Patel, 2010; Radaelli, 2003). Other scenarios could emerge from Europe´s behaviour itself.

The main purpose of this paper is to examine the constructiveness of "normative power Europe" from both perspectives, pointing at internal and external challenges confronting the EU and arguing about the importance of role-assignments not only as self-attributions but also as ascriptions granted by member states or third countries. The perspective of Central and Eastern European countries seems to be even more interesting in this regard, as this region has always felt part of Europe and, on the other hand, because it still had to undergo – even more than other old member states – an adjustment process that was not without normative pressure. Following these introductory remarks, the first part of the paper will discuss the concept of "normative power Europe" introduced in the scientific and political debate by Ian Manners and Thomas Dietz (chapter 2), while in the main second part the focus will be shifted to Romania´s case, namely transitional justice discourses that may have consolidated or even challenged the construction of Europe´s normative role (chapters 3 and 4).

2. Constructing Normative Power Europe

Compared to other actors in the international system and especially to the USA, Europe was described in terms of military (Bull, 1982), civilian (Duchene, 1972; Maull, 1992) and ultimately normative power (Manners, 2002; Dietz, 2005), which corresponds to the endeavours of the EU to act in the global system as a distinctive entity with a single voice.

Considering its new form of governance, the European Union emerged as a new type of actor, being firstly described by François Duchêne (1972) as a "civilian power" with various economic and lack of military resources (cited in Manners, 2002, p. 236). Starting from this point, political and social science scholars extended the debate to the concepts "civilising power" (Hyde-Price, 2000 cited in Niemann and June, 2011, p. 105-106),

"normative power" (Dietz, 2005; Manners, 2002), and "hegemonic power" (Niemann and June, 2011, p. 114), and adapted those to new challenges of European foreign policy. Without tracing the history of this concept, this paper focuses on Ian Manners´ (2002) and Thomas Dietz´s (2005) "normative power Europe", which is more relevant in this regard, as it emphasises the ideational aspect of norms and values.

Referring to H. Maull (1992) and K. Twitchett (1976), Manners mentions significant aspects, which mark the economic and civilian dimension of the European Union: "the primacy of diplomatic co-operation to solve international problems; and the willingness to use legally-binding supranational institutions to achieve international progress." (Twitchett, 1976, pp. 1-2; Maull, 1990, pp. 92-3 cited in: Manners, 2002, pp. 236-37). The opposite perspective which Manners refers to as "empirical force" (Manners, p. 238) is that of "military power Europe" emphasised by Hedley Bull (1982) on the background of the Cold War (Manners, 2002, p. 237). Manners (2002, p. 240) concludes that both "civilian and military power Europe" have been structured by the political constellation of the Cold War, also stressing the continuing weakness of the European defence policy despite its increasing institutionalization after the Cold War. Pointing out that former regimes defined themselves rather normatively and that their collapse was rather a normative than a physical one, Manners argues about the concept of "normative power Europe" described as the "ability to shape conceptions of `normal´" (Manners, 2002, p. 240), therefore shifting the focus from institutional to cognitive, symbolic processes (Manners, 2002, pp. 239-240).

Significant political and institutional transformations, such as the European integration process, the eastward enlargement, and the further development of the social policy in order to overcome negative consequences of market integration have been linked to a catalogue of norms, which aim to ensure the EU´s internal and international identity. "Peace, liberty, democracy, rule of law, human rights" but also the subsequent norms "social solidarity, anti-discrimination, sustainable development and good governance" (Manners, 2002, p. 242) are included, according to Manners, in EU´s normative basis. Whether through unintentional or intentional diffusion, the European Union acts in different policy fields, using also its normative reserves. However, the specific circumstances in which the EU is able to infuse norms, considering also other normative powers, as well as the unclear

distinction between norm diffusion and represented interests, were subject to criticism, as emphasized by Thomas Dietz (Dietz, 2005).

Thomas Dietz (2005) draws on Manners' concept and considers "normative power" from the constructivist perspective - rather than a discourse, a more or less efficient ability to change others´ behaviours and attitudes. In his view: "`Normative power` is not an objective category […] it is a practice of discursive representation" and the main question "is not whether Europe is a normative power or not, but how it is constructed as one." (Dietz, 2005, p. 626). He continues to argue that the European Union is engaged in a practice of "othering", constructing "the other" in order to play a normative role in relation to it. Others may be represented therefore as "existential thread", "inferior", "violating universal principles", or "different" (Dietz, 2005, p. 628). The EU is strengthening to each of these counterparts its corrective function. In order to avoid double standards and prescriptive attitudes, Dietz (2005) suggests, at the end, a self-reflexive approach.

The question in this regard is whether the EU can apply its practice of "othering" not only in relation to various international actors, but also within its own structures. In addition to the practice of "othering", an extensive view on the EU´s normative power role should also include attributions granted by member states and third countries. Only a mutual role attribution can validate this concept, detach it from a one-sided, unidirectional definition and therefore complete it.

However, these attributions are differentiated and gradually used by both sides. While the EU, according to Thomas Dietz (2005), develops several forms of "otherness" to which it behaves differently, with a different degree of normativity, the addressees respond by the role attribution "normative power Europe", which they assess in relation to their self-image. Thus, the attributions by candidate-, neighbour-, and other third countries, but also among member states, would be different or at least would gradually differentiate.

On the other hand, although the EU advocates universal norms, it uses - depending on the scope for action and the profile of the addressees – a variety of norm diffusion instruments, which in turn have a gradually varying impact: Stabilization and Association Agreements, accession negotiations, development policy, diplomatic conflict resolution, or foreign trade. Actors such as Russia, the USA, the West Balkans countries or the new and old member states may respond differently to Europe´s normative aspirations.

In such different constellations, it is therefore more appropriate to discuss what Norman Davies (1997, p. 9) emphasise as "tidal Europe" and other scholars recently relate to as the concept of "Europeanization" (Hirschhausen and Patel, 2010), as well as to mental maps or the spatial dimension of cognitive processes (Troebst, 2013). "Tidal forms" of normative power are providing a more differentiated explanation for Europe´s identity constructions, considering their spatial and temporal transformations, the more or less prominent capacity or willingness to enforce this role, as well as the various reactions of the counterparts.

3. The European Union´s transitional justice policy

One of the most important areas in which the European Union enforces its role as a normative power is that of transitional justice.

This process includes a series of legal and institutional measures meant to ensure transition from an authoritarian, dictatorial to a democratic regime, based on human rights principles. Providing access to secret police archives, seen as a precondition for other transitional justice mechanisms, as well as lustration, trials on crimes against humanity, formation of truth commissions, and material compensation or moral rehabilitation of victims are, however, state affairs that, because of their controversy or conflict potential, are often induced by external normative pressure. Reconciliation with the past could also be initiated by various scientific, cultural or civil society communities, which do not necessarily direct public opinion towards a moral, but rather a critical examination of the past (Gyöngy, 2016).

The EU´s relation to Central and Eastern European countries before and even after enlargement was linked to transitional justice issues at a discursive level, rather than to concrete top-down indications focused on the entire judicial reform. Moreover, in relation with the West Balkans, the normativity of transitional justice was led to a categorical imperative, which ultimately indicates that the EU seems to be tightening its role as a normative power. In the context of accession negotiations, conditionality was extended to

concrete transitional justice measures, namely world-crime trials led by the International Criminal Tribunal for the former Yugoslavia (ICTY) (Woelk, 2013).[**]

Although already implicit in the EU´s democratization and enlargement policy including the Copenhagen criteria and the 23th Negotiation Chapter, transitional justice as a commitment was explicitly introduced in the *Action Plan on Human Rights and Democracy 2015-2019* (c. 22b) and further elaborated in *The EU´s Policy Framework on support to transitional justice* (2015) as part of its implementation. The objectives and measures elaborated in the latter document reflect the lessons that "normative power Europe" has drawn so far and emphasise a contextual, flexible approach to supporting transitional justice, which should ensure timely implementation, address challenges of political will in the respective country and provide support to further victim groups such as women and children (EU´s Policy Framework, 2015). Moreover, the cooperation with international organisations, the UN and the International Criminal Court in particular, but also with local and international civil society has been identified as particularly important, suggesting that the EU is neither able nor willing to act prescriptively. This multilateral framework should facilitate the exchange of best practices and the implementation of training programmes, mutual learning, which in turn reinforces its open attitude towards transitional justice.

However, normative pressure can result from the direct connection of the transitional justice process with crisis management, development policy, and, most importantly, with enlargement policy, which ultimately brings financial incentives and accession prospects into the equation. In addition to combating impunity and providing "technical and financial support", in the specific field of enlargement policy the bottom-up process of transitional justice is explicitly emphasised, with the EU now focusing on empowering civil society and NGOs open for reconciliation. This seems to be particularly relevant given the role of the EU vis-à-vis Central and Eastern European countries in their pre-accession period.

[**] Further details about the EU´s transitional justice requirements in the West Balkans, as well as about the current status of the enlargement and neighbourhood policy can be found in: COM (2018) 65 final. *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans,* pp. 6-7/ p. 15, Strasbourg, 6.2.2018. Available from: http://eur-lex.europa.eu/resource.html?uri=cellar:d284b8de-0c15-11e8-966a-01aa75ed71a1.0001.02/DOC_1&format=PDF [Accessed 26/04/18].

4. Romania´s approach to transitional justice: constructing normative power Europe?

The main areas of transitional justice in Romania are the lustration attempts in the 1990s, the criminal prosecution and, in some cases, the conviction of communist officials, and finally the opening of the Securitate files and the foundation of the *National Council for the Study of Securitate Archives* (CNSAS) (Stan, 2009), the latter being a precondition for judicial, political, cultural, scientific, and individual coming to terms with the communist past. However, all these transitional justice areas, while being a major issue of public debate, either have failed or are lagging behind, the most advanced area being the administration of the Securitate files by CNSAS (Stan, 2009), without considering here the restitution of properties and the material compensation of victims.[††]

Systematic and more comprehensive scientific research on this subject was provided by Lavinia Stan (2009) and Julie Trappe (2009), both pointing to the lack of political will and other technical difficulties faced in this process. In this regard, the measures taken at the official level were not without controversy, power struggles or criticism within civil society, and furthered the division between the new-old political elites and the Romanian society. Focused on rhetorical commitments rather than concrete judicial measures and their coherent implementation, the transitional justice process has been prolonged and rendered obsolete.

Considering the implementation deficits of transitional justice in Romania, also emphasised by various scientific endeavours (Gyöngy 2016; Stan, 2009; Trappe, 2009), one could raise the questions: what role did Europe play in this process, how was this role discursively constructed and what impact did it have in this regard?

"Normative power Europe" can be identified in this specific context – rather in Thomas Dietz´s than in Ian Manners´ terms – as a discursive construction. The main explanation lies in the absence of direct intervention through explicit guidelines and in the creation of a (transnational) communicative platform, allowing first of all the emergence of such ascriptions that finally confirmed its normative role. By supporting bottom-up

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[††] For a country-based as well as a comparative insight into transitional justice measures in various European countries, see the online platform *Transitional Justice and Memory in the EU*, available from: http://www.proyectos.cchs.csic.es/transitionaljustice/, [Accessed 28/04/18].

initiatives, as also envisaged in the current enlargement policy (The EU´s policy framework, 2015), the EU has gained access to non-state social structures, thus indirectly exerting normative power.

The "return to Europe"- a paradigm emphasised by Central and Eastern European countries after the end of communism and, in this respect, the return to European democratic principles was highlighted in particular by emerging civil society groups. Newly founded political and cultural organizations were steeped in this idea.[‡‡] Society´s claim to transitional justice was not limited to the Romanian state either, but was discursively linked to Europe; this intended to put the Romanian state under normative pressure. Nevertheless, these discourses had to confront nationalistic tendencies often turned against Europe´s norm infusion (Marino, 1996, chapter IV).

Nonetheless, the return to European democratic values was explicitly declared in the *Proclamation of Timișoara* (1990), the first document claiming transitional justice and, in particular, lustration (Art. 8), a document created by Timișoara´s civil society and former protesters (Stan, 2009). Beyond lustration, which ultimately could not be achieved, this document clearly reflects openness towards Western Europe, without claiming to imitate it. Entering the "House of Europe" – one could recognise M. Gorbachev´s concept – is linked to a learning process based on values of tolerance, "European" democracy, dialogue and freedom of political expression (Art. 4 and 5, Proclamation of Timișoara, 1990). In this proclamation, the European "normative pressure" projected upon the new political leaders becomes particularly visible.

After transitional justice measures such as lustration, opening the Securitate archives and criminal proceedings against human rights offenders proved to be mostly unsuccessful in the 1990s (Stan, 2009), and new initiatives emerged especially in the second half of the 2000´s, in the context of Romania´s accession to the EU. The approach changed, however, from a judicial to a more symbolic one, so that one could speak of softening transitional justice. The link between truth-seeking and the confrontation with the past, on the one hand,

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[‡‡] A remarkable collection of press articles, founding documents and statements from the civil society and intellectual elites concerned with the idea of Europe between 1990 and 1995, can be found in: Adrian Marino (ed.) (1996) *Revenirea în Europa. Idei și controverse românești 1990-1995*. Craiova: Aius.

and European norms and principles, on the other, was not only advocated within various civil society groups, but also affirmed among political actors. The establishment of a truth commission to investigate the Romanian communist past (Raport final, 2006)[§§], on the basis of which president Traian Băsescu´s condemnation of communist atrocities in parliament took place in December 2006, was nevertheless marked by EU accession and, consequently, by a certain normative pressure. In his speech (Speech given by Traian Băsescu, 2006),[***] he addressed Romania´s new future within the Union, pointing to a break with the communist past. He also referred to Resolution 1481/2006 of the Parliamentary Assembly of the Council of Europe, emphasizing the European normative framework in which this symbolic act took place.

Further evidence for "normative power Europe"- attributions concerns the Securitate archives, whose accessibility has been assured during this period. Even though they have been open since 1999, access to the files has been hampered by shortcomings und controversies (Gyöngy, 2016; Stan, 2009). In this regard, Europe´s communicative platform was identified within the *European Network of Official Authorities in Charge of the Secret-Police Files* launched in 2008. This network representing all Eastern European authorities responsible for examining the files of the former political police relies on mutual exchange of information and best practices. The new European cooperation framework as well as the prevention of political instrumentalization of these files were particularly emphasised in the foundation paper:

> "With the establishment of this European network, we would like to make clear
> that these issues do not encompass merely a national context. They involve coming to
> terms with the past in a European, an international context. We wish to stress the
> importance of opening the files and access to these files, which is regulated in accordance

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[§§] Comisia prezidențială pentru analiza dictaturii comuniste din România, *Raport final, 2006,* București. Available from: http://www.proyectos.cchs.csic.es/transitionaljustice/sites/default/files/maps/info/truth-commissions/romania_commission_2006.pdf [Accessed 22/04/18].

[***] The Speech given by the President of Romania, Traian Băsescu, on the occasion of the Presentation of the Report by the Presidential Commission for the Analysis of the Communist Dictatorship in Romania (The Parliament of Romania, 18 December 2006).

Available from: http://www.proyectos.cchs.csic.es/transitionaljustice/sites/default/files/maps/info/public-apologies/romania_basescu_condemns_communism_2006.pdf [Accessed 22/04/18].

with the rule of law, and also the importance of independent research […]. We wish to guarantee the full independence of archival research. Any kind of political instrumentalization must be prevented. We wish to advocate this together publicly." (Foundation Paper, 2008, p. 77).[†††]

This statement indicates that a European communicative framework can promote exchanges and mutual learning among the countries concerned, thereby allowing the intentional or unintentional, "informational" or "procedural" (Manners, 2002, pp. 244-245) diffusion of European norms. The constructed "other", in the words of Thomas Dietz (2005), is thus gradually incorporated into a common "self", not without changing it.

5. Conclusion

The reasons why Romania´s transitional justice is still lagging behind other Central and Eastern European countries were emphasised by Lavinia Stan (2009). The social advancement of a major part of Romania´s population as well as the high number of party members and informers during the communist period indicate either regime acceptance or resignation, both incompatible with demands for transitional justice and reconciliation with the communist past. Moreover, the relatively limited anti-regime opposition during the 1980s finally hampered an "elite replacement", leaving room for "elite reproduction" (Stan, 2009, pp. 147-148). Another reason for this hesitant attitude towards transitional justice is closely related to the emergence and cohesion difficulties faced by the civil society during and after the communist regime, a civil society that would have had the ability to guide the regime change and the post-communist transition in a much more coherent way.

However, "normative power Europe" envisaging principles of democracy, the rule of law and human rights, to mention just a few, has been linked to transitional justice in Central and Eastern Europe mainly through transnational communication platforms, informational

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[†††] Foundation Paper "The European Network of Official Authorities in Charge of the Secret-Police Files", Berlin, 16. 12. 2008. *The „European Network of Official Authorities in Charge of the Secret-Police Files", a Reader on their Legal Foundations, Structures and Activities* (2009), Berlin: Die Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik, pp. 77-79. Available from: http://www.cnsas.ro/documente/European%20Network.pdf, [Accessed 28/04/18].

exchange and mutual learning, which encouraged these countries to grant normative roles to the EU.

At discursive level, normative pressure regarding concrete transitional justice measures was played off by oppositional or civil society groups against the old-new political elites, while later, at the time of accession, it was taken over even by the political leaders.

Tidal forms of "normative power Europe" can be noticed even more recently in the programmatic strengthening of the EU´s role in this field. The transitional justice policy is now directly related not only to the enlargement policy, but also to conflict resolution and peace building (EU´s Policy Framework, 2015), precisely because the current political situation in the new neighbouring and accession countries could escalate into new conflicts, while the normative power of the communist regime in East-Central Europe at the time no longer presented any conflict potential, but still belonged to a "constructed other".

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