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## **EU's human rights dialogues with Belarus and the developments around presidential elections<sup>1</sup>**

**Mădălin-Cătălin Blidaru**

PhD student, National University of Political Studies and Public Administration,  
Bucharest, Romania  
[contact@madalinblidaru.ro](mailto:contact@madalinblidaru.ro)

**Abstract.** The 2020 presidential elections in Belarus were characterised by widely recognised human rights violations. The European Union decided not to recognise the results after important declarations and consultations among its leaders. However, the European Union and Belarus were engaged in a structured human rights dialogue. The author discusses the links between the human rights dialogue as a foreign policy instrument and the dynamics around the 2020 presidential elections in Belarus. The hypothesis stresses that the evolution of the bilateral dialogues provides information on the developments within the relations between the European Union and Belarus. The case study, based on extensive analysis of official documents, finds additional support for the claim against the effectiveness of the human rights dialogues with third parties. Apart from a better understanding and a channel of dialogue with the country, the human rights topics recreated an environment in which it justified the return to restrictions and sanctions against individuals involved in illegitimate actions. The historical analysis of the presidential elections, particularly the climate around their organisation, the assessment of the human rights dialogues as a policy tool, and the analysis of the official dialogues on the thematic areas of concerns from the human rights dialogues support this hypothesis.

**Keywords.** human rights dialogue, European Union, foreign policy, presidential elections

### **1. An introduction to EU's human rights dialogues**

The human rights dialogue is an instrument of the foreign policy of the European Union, part of the EU human rights policy. The European Union is recognised as a human rights actor across the globe, not only based on its internal dimensions, with the founding treaties and the EU Charter of Fundamental Rights, with many areas of high standards, but also through its external focus on human rights.

The debates on the 'civilian power' (Duchene, 1972) or 'normative power' (Manners, 2002) Europe already reached decades of active scholarship, and the European Union is now an active global player even based on the most stringent criteria. The Lisbon Treaty (2007, art. 21) bound the European Union and its external action on the idea of 'universality and indivisibility of

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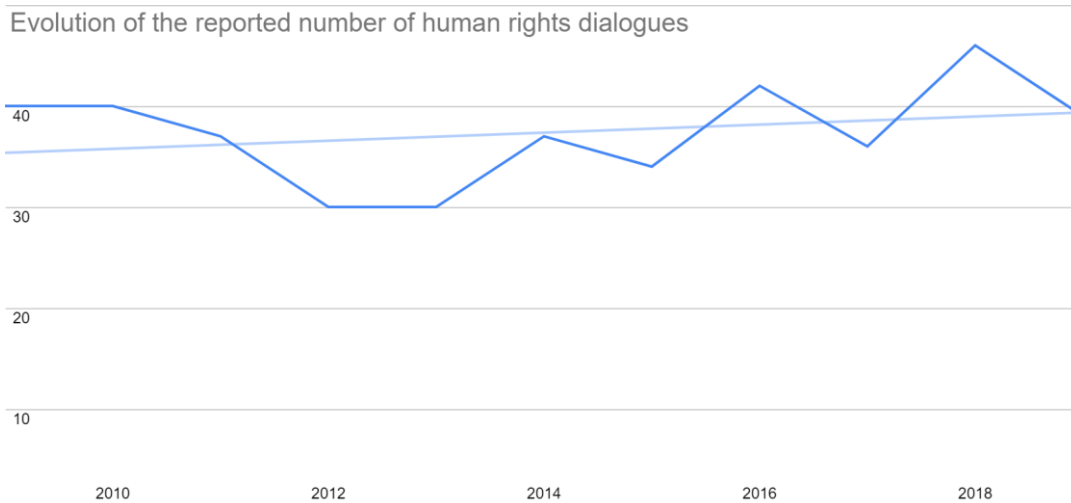
human rights and fundamental freedoms'. The human rights dialogue is part of its external action arsenal.

This exploratory article is focused on the role of the human rights dialogues in the framework of EU foreign policy. A case study on the human rights dialogues with Belarus is highlighted to improve the understanding of the thematic areas of the dialogue, its effects and to what extent the Belarusian presidential elections crisis could have been predicted based on the public information we have on the human rights situation in Belarus.

Its hypothesis stresses that the evolution of the bilateral human rights dialogues provides information on the developments within the relations between the European Union and Belarus, particularly on the human rights agenda challenges. The study is based on analysis of official documents, particularly legal documents, reports, declarations and releases by the international organization under discussion. Academic literature is used as secondary sources to define whether the effectiveness of this policy tool has been assessed by other researchers before. Media sources and databases have been used for additional details and for contextualization of the events analysed in this paper such as the presidential elections results.

Among the EU instruments external action for dealing with human rights issue there are the already established human rights dialogue, which are part of the current analysis, the guidelines on human rights (addressing issues such as children in armed conflict, human rights defenders, gender violence, compliance with international humanitarian law, torture and other cruel, inhuman or degrading treatment or punishment, religion or belief, LGBTI rights, death penalty, freedom of expression, children rights and others), country strategies, financing instruments (such as the European Instrument for Human Rights and Democracy, the Policy Support Facility of the Partnership Instrument), and other tools dealing with specific human rights or human rights-related topics, such as the election observation missions.

The EU's human rights dialogues take different formats from structured human rights dialogues to dialogues in dedicated subcommittees under association agreements, partnership and cooperation agreements, cooperation agreements or other types of agreements embedding dialogue between parties on human rights, local human rights dialogues or consultations on human rights issues. Quantitatively, the reported number of human rights dialogues organised during the year has been slightly increasing over the past decade. Based on the yearly reporting of the European External Action Service (EEAS) on human rights and democracy, the number of human rights dialogues remain centred around 40/year in the past decade. It is not clear if this number reflects the capacity to conduct such dialogues or it is a strategic planning limit. From this reporting, it is not clear the distinction between structured human rights dialogues and other forms of dialogues and consultation on human rights issues.



*Table 1: Evolution of the yearly human rights dialogues, based on analysis of annual human rights reports*

The human rights dialogues follow a specific format. Firstly, there are carried out consultations with the civil society in Brussels or in the host country. After the human rights dialogue, debriefings are held. Civil society seminars may take place back-to-back the human rights dialogue.

## **2. Human rights dialogues. A policy instrument without effectiveness?**

### *2.1. EU guidelines on human rights dialogues*

The EU guidelines on human rights dialogues were established in 2001, updated by the Council of the European Union in 2008. In 2001, the situation was described by a limited number of structured human rights dialogues with third parties.

Few structured human rights dialogues were taking place now when the first guidelines were negotiated within the Union. As the preamble underlines, there was only “*one regular, institutionalized dialogue devoted solely to human rights between the European Union and a third country*”, at senior officials’ level (European Union, 2001, p. 2). The oldest structured human rights dialogue has been with China. In 2020, it is expected to be the 38th edition of the EU-China Human Rights Dialogue, being postponed by the COVID-19 pandemic. In fact, the issue of consistency and coherence guides the negotiations and approval of these orientations at that time, as part of EU’s measures on human rights policy. It remains interesting that the approach on seeing the human rights policy within the overall strategy to promote human rights, peace and stability. These conclusions even highlight the variety of dialogues, consultations and even discussions that were held without a coherent and consistent approach, plus the different procedures established through other treaties, agreements and conventions.

At the center of the organization of a human rights dialogue with a third country is the Working Party on Human Rights (COHOM), dealing with the human rights dimension of the EU’s external action, included, but not limited to: support for the identification of EU strategic priorities on thematic and specific geographic issues, coordination of the positions of EU member states in multilateral human rights fora, development and oversee of the implementation of the EU policy on human rights and democracy (EU Council, 2017). The procedure for the initiation of a human rights dialogue is described in the document mentioned above.

There are four aim of the guidelines (European Union 2001; 2008; p. 4):

- 1) “identify the role played by this instrument in the global framework of the CFSP and the EU's policy on human rights;
- 2) strengthen the coherence and consistency of the European Union's approach towards human rights dialogues;
- 3) facilitate use of that instrument by defining the conditions in which it is to be applied and made effective;
- 4) notify third parties (international organisations, non-governmental organisations, the academic world, the European Parliament, third countries) of this approach.”

Furthermore, the guidelines define the basic principles, the objectives and the issues covered in human rights dialogues, apart from the procedures related to initiation, organisation, assessment and coordination. As basic principles, the European decision-makers state the mainstreaming of human rights and democratisation objectives into all aspects of EU's external policies. Flexibility and pragmatism is added for the initiation of a human rights dialogue with a particular third country.

The list of objectives of this instrument is not exhaustively presented in the guidelines, even mentioning that “*the objectives of human rights dialogues will vary from one country to another and will be defined on a case-by-case basis*” (European Union 2008, p. 5). It highlights two that may be included: “*a) discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations; b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavouring to improve the human rights situation in that country*” (European Union, 2008, pp. 5-6). The EU also states that this dialogue could have an early-stage impact on identification of problems that could lead to conflict in the future.

While the issues proposed for the human rights dialogues are based on a case-by-case determination and this instrument provides also the environment for the third country to raise human rights concerns related to the European Union, a set of issues is highlighted with potential of being dealt with (European Union, 2008, p. 6):

- signing, ratification and implementation of international human rights instruments;
- cooperation with international human rights procedures and mechanisms;
- combating death penalty;
- combating torture;
- combating all forms of discrimination;
- children's rights, including, in particular those of children in armed conflicts;
- women's rights;
- freedom of expression;
- the role of civil society and the protection of human rights defenders;
- international cooperation in the field of justice, particularly in relation to the International Criminal Court;
- promotion of processes of democratisation and good governance;
- rule of law and prevention of conflicts;
- preparing and following up the work of multilateral fora.

The section on ‘issues’ is one that was amended by adding new areas during the 2008 revision of the guidelines.

## *2.2. A policy instrument with limited effectiveness*

The effectiveness of the human rights dialogues is questioned by academics and practitioners.

The oldest surviving structured dialogue has served as an example. In her analytical work on European human rights diplomacy regarding China, Katrin Kinzelbach concludes with a description of the dialogue as ‘impotent’ (apud Wan, 2015, p. 243). While this type of dialogue is an opportunity to stress a wide range of concerns, it is far from being proved effective. The same human rights dialogue, at its 37th edition, put again on the agenda the deteriorating situation of civil and political rights in China, with concrete examples of individuals whose release was expected (EEAS, 2019; European Council 2020). One year later, this engagement can be described as rather a dialogue of the deaf, since all the issues remained valid and there were no improvements in regard to the human rights situation in China, some of them with aggravating circumstances. This is an old conclusion of human rights relations between the two parties. After the Cold War, the human rights policy of the EU towards China has been described by mainly two periods. One, until 1997/98, was characterized by open criticisms and coercive measures, from 1989. The other one, up to present-day, was based on engagement, partnership and cooperation. In her analysis of these two moments, in practical terms, Wenwen Shen (2013, p. 176) states that “*promoting human rights through engagement can be problematic and ineffective because of the inherent tension between engaging with China and standing for the EU’s own principles*”.

China is not the exception in the discussion on the effectiveness of this instrument. Another researcher, in the case of the human rights dialogues with the Central Asian republics, noted that “the absence of clear objectives is problematic” (Axyonova, 2011, p. 3). She continues highlighting that it may be problematic to discuss in some formats ‘hard’ cases of human rights and formulates a set of policy recommendations. A group of researchers published an analysis based on five case studies of human rights dialogues in 2016 (African Union, India, China, Morocco, Peru). Depending on the case, they found the EU’s Eurocentric view on India, differences regarding human rights conceptions and other conceptual differences (Peru, China, Morocco), sensitive and contentious points between parties (on migration and ICC with African Union, plus the colonial past legacy), different normative approaches on human rights, democracy and rule of law (China). The authors reflect on overarching topics as state sovereignty, double standards critique, universality and cultural diversity, indivisibility, conceptualization, and the politicization of conceptual differences in a report that concludes with a set of recommendations for the EU side (Majtényi, Sosa, Timmer, 2016). In the framework of the partnership and cooperation agreement with Azerbaijan, a coalition of non-governmental organisations released a briefing paper with a set of recommendations (IPHR, EHRAC, HRC, 2020) and highlighted the “need for redlines and benchmarks” (IPHR, 2020).

Thus, the critique of human rights dialogues is not visible in a single locus. The above originated in academia, policy and non-governmental sectors, involving both observers and practitioners. However, the European Union regards this instrument as “*key [...] for enabling the EU engage bilaterally on human rights*” (EU, 2020, p. 147).

### 3. Case study: Belarus in dialogue. Agenda and issues

Six structured human rights dialogues were held in Belarus before 2020. Belarus is a neighbour of the European Union (Latvia, Lithuania and Poland have a direct land border with Belarus) and a partner in bilateral and multilateral tracks. It is part of the Eastern Partnership and has a set of bilateral agreements with the EU on thematic areas. However, these are not comprehensive and less developed compared to other EU neighbours. The EU and Belarus were negotiating the partnership priorities before the crisis. Overall, the relations between Belarus and the European Union were castellated, marked by many crises, after the Cold War, crises that undermined the cooperation prospects.

The first EU - Belarus human rights dialogue was organised in 2009, described by the EU counterparts as being held in a “constructive and open atmosphere” (Council of the European Union, 2009), in a neutral place in Czech Republic. The presidential elections in Belarus in 2010 changed the situation. Belarus declared independence from the USSR on 27th of July 1990 and became the Republic of Belarus on 25th of August 1991. Its first constitution was adopted in 1994, including the creation of the elected presidential office. In 1994, the first and the last free elections took place in Belarus up to date.

Year	Turnout	Winner	Runner-up	3rd place
1994 (run-off)	79%	Lukashenko, 45,8%	Kebich, 17,7%	Pazniak, 13,1%
	70%	Lukashenko, 80,6%	Kebich, 14,2%	
2001	84%	Lukashenko, 77,4%	Goncharik, 16%	Gaidukevich, 2,5%
2006	92%	Lukashenko, 84,4%	Milinkievic, 6,2%	Gaidukevich, 3,5%
2010	90%	Lukashenko, 79,65%	Sannikov, 2,43%	Romanchuk, 1,98%
2015	87%	Lukashenko, 84,14%	Karatkevich, 4,48%	Gaidukevich, 3,3%
2020	84%	Lukashenko, 80,1%	Tsikhanouskaya, 10,12%	Kanapatskay, 1,6%

*Table 2: Evolution of results of the presidential elections in Belarus*

Alexander Lukashenko won his fourth term with 79,67% of the votes, according to the domestic electoral commission, the runner-up having only 2,43%, however this information cannot be confirmed. The organization of the elections was widely contested, as well as the follow-up. The presidential elections were far from being in accord with the commitments of a democratic election. The OSCE/ODIHR election observation mission summarized in its final report on the Belarus presidential elections from 2010:

“There was a lack of independence and impartiality of the election administration, an uneven playing field and a restrictive media environment, as well as a continuous lack of transparency at key stages of the electoral process. Election night was marred by detentions of most presidential candidates, and hundreds of citizens, among them journalists, human rights activists and other civil society representatives. Belarusian authorities explained at the time that a number of participants in “unsanctioned activities” have been sentenced by the courts to administrative arrests and fines, in addition to which criminal proceedings have been instituted under the title of “mass disturbances”. Meanwhile, most detainees were released, yet dozens of them, including three former presidential candidates continue to be detained at the time of writing this report. One former presidential candidate has been placed under house arrest.” (OSCE/ODIHR, 2010, p. 1)

The 2020 presidential elections reflected widely the developments from 2010. Opposition candidates under pressure - intimidated, arrested, tortured, mass protests following the elections and protests' crackdown, contested results, international solidarity with the opposition groups, elections not being recognized by international actors, and others. The EU High Representative recalled the policy of critical engagement conditioned by respect of the principles of democracy, rule of law and human rights: “our policy of critical engagement, through which the EU has offered a deepening relationship with Belarus. This is conditional on respect for the principles of democracy, the rule of law and human rights” (Ashton, 2010).

For almost six years, there was not organised any human rights dialogue between the European Union and Belarus. These were resumed in 2015, after the engagement and constructive role of Belarus in another Eastern European crisis, this time the Ukrainian one. Belarus hosted in Minsk the negotiation for the agreements on the development of the efforts to stop the war in Donbass, an effort mediated by France and Germany, that brought at the same table, under the auspices of the Organization for Security and Co-operation in Europe, Russia, Ukraine and other belligerents. Both agreements (Minsk I, 2014, and Minsk II, 2015) were negotiated and agreed in the capital of Belarus. The human rights dialogues resumed and took place on a yearly basis, with a similar agenda.

<b>Round</b>	<b>Venue and date</b>	<b>Human rights topics</b>
1st round	Prague, 16-17 June 2009	freedom of assembly and association, including labour rights; freedom of expression and information; freedom of thought, conscience and religion; combating different forms of intolerance and hate crimes; rights of migrants and persons belonging to minorities; combating trafficking of human beings; protection of different vulnerable groups;

		<p>situation in prisons and detention facilities; death penalty; functioning of national institutions for the protection of human rights; international cooperation (UN HRC, UN GA, OSCE, CoE); Czech Ombudsman example.</p>
2nd round	Brussels, 28 July 2015	<p>establishment of a national human rights institution; freedom of expression, assembly and association; death penalty; the fight against torture and ill-treatment; children's rights; international cooperation (UN, coordination on multilateral issues); detention of human rights defenders and political prisoners.</p>
3rd round	Minsk, 7 June 2016	<p>freedoms of expression, assembly and association; electoral rights; death penalty; fight against torture and ill treatment; the rights of people with disabilities; the fight against violence in the family forthcoming parliamentary elections; international cooperation (UN mechanisms - the Universal Periodic Review); individual cases.</p>
4th round	Brussels, 20 July 2017	<p>freedoms of expression, assembly and association; electoral rights; death penalty; penitentiary reform; anti-discrimination policy; gender equality and the fight against violence in the family; role of CSOs on civil, political, economic, societal and cultural rights; development of Belarus' national institutions for protection of human rights; implementation of the National Human Rights Action Plan; International cooperation (UN mechanisms - the Universal Periodic Review); individual cases.</p>
5th round	Minks, 17 July 2018	<p>freedoms of expression, assembly and association; electoral rights;</p>

d		<p>death penalty; penitentiary reform; anti-discrimination policy; gender equality and the fight against violence in the family; development of national institutions for protection of human rights; implementation of the National Human Rights Action Plan; international cooperation (UN mechanisms - the Universal Periodic Review); individual cases; role of CSOs on civil, political, economic, social and cultural rights.</p>
6th round	Brussels, 18 June 2019	<p>policy developments; implementation of the National Human Rights Action Plan; human rights situation in the country: - freedom of expression, assembly and association; - review of policies on gender equality and fight against violence in the family; - death penalty (recent execution) international cooperation - international cooperation on promoting human rights in international fora (UN mechanisms - the Universal Periodic Review) - UN special procedures mandate holders individual cases; role of CSOs on civil, political, economic, social and cultural rights.</p>

*Table 3: Issues on the agenda of the EU-Belarus human rights dialogues*

The fundamental rights have been a blistering topic on the agenda of the dialogues for all six editions up to 2020. From the analysis of the press information released by the European Union, we can observe that the issue of electoral rights is on the agenda for three consecutive rounds. Apart from this, it seems to an improving trend in terms of the development and implementation of the national human rights framework, even though there are contentious points and conceptual differences between parties.

On 9th of August 2020, Belarus held the last presidential elections. OSCE/ODIHR was unable to observe the election after a set of issues concerning the observation invitation. In the public position, the institution describes intimidation and disproportionate police force against protesters, administrative misconduct during the elections, intimidation of political activists in the pre-election period, detention of prospective candidates, lack of inclusiveness of candidate registration and formation of election commissions for the elections, concerns over the accuracy, limitations to citizen election observation and detention (OSCE/ODIHR, 2020).

The first reaction after the election from European leaders consisted in a declaration by the High Representative on behalf of the European Union. “*Elections were neither free nor fair*”, it stated. “*Since the 2015 release of political prisoners, the relationship between the EU and Belarus had improved. But without progress on human rights and the rule of law, the EU-Belarus relationship can only get worse*” (European Union, 2020). The declaration is supported not only by the 27 EU Member States, but also by four candidate countries (North Macedonia, Montenegro, Serbia and Albania), a potential candidate (Bosnia and Herzegovina), EFTA countries (Iceland, Liechtenstein, Norway) and Ukraine.

In addition, the EU High Representative published an article called Belarus: “*violence must stop and the regime must change*”. It is an extraordinary situation when an EU leader calls for regime change. Josep Borrell described the improving path since 2015, including the economic support delivered by European institutions to Belarus and the support for political objectives such as the preparation for the WTO membership. He quoted the deterioration of the political climate in “*neither free nor fair elections and an outburst of repressive violence*”. He puts on the table two options: put an end to violence, release political prisoners and return to democratic governance or the EU will have to reconsider the relations (Borrell, 2020).

The situation was further discussed in other deliberative bodies of the Union, culminating with a video conference of the highest body of the European Union. A special European Council was held to deal with the situation in Belarus, with conclusions focused almost entirely on the situation from the Eastern European country. On 19th of August 2020, Charles Michel, the President of the European Council, released a statement with the conclusions of the discussion with the EU Member States leadership. It concluded that the EU does not recognise the results of the presidential elections, that the progress made in the previous years on the bilateral relations is at risk, and that the European Council expresses its solidarity with the people of Belarus. It condemned the violence displayed by the authorities against peaceful protests and calls for immediate and unconditional release of those unlawfully detained, as well as for the protection from arrest and violence of the civil society and the opposition. The EU leaders announced sanctions “*against a substantial number of individuals responsible for violence, repression and the falsification of election results*” (European Council, 2020). It also contains an important dimension based on the human rights situation. Thus, the change of policy towards Belarus is confirmed, after the past years based on easing restrictions.

#### **4. Concluding remarks**

Back to square one. The recent developments following the 2020 presidential elections in Belarus solidify the arguments against the ineffectiveness of the human rights dialogues with third parties. Fundamental rights and electoral rights have been on the agenda of the European Union - Belarus human rights dialogues since 2009, yet this ‘quiet diplomacy’ did not deliver results. Furthermore, apart from a better understanding and a channel of dialogue with the country, the human rights topics recreated an environment in which it justified the return to restrictions and sanctions against individuals involved in illegitimate actions. The case study focused on these developments, convoluted around the timeline of human rights dialogues or, rather human rights dialogue - presidential elections.

The instrument of human rights dialogue is an established tool of the EU foreign policy and, particularly, EU human rights policy. Every year, around 40 third parties, countries or regional arrangements, take part in these structured, yet pragmatic and flexible thematic engagements

with the European Union. The human rights dialogues aim to discuss questions of mutual interest and to enhance the cooperation on human rights, as well as to gather information, to register the concerns felt by the EU and to support improvements in the human rights situation in the country in dialogue. However, the academic and policy feedback on the effectiveness of the human rights dialogues is rather mixed, if not negative.

The electoral record of Belarus in regard to presidential elections, during the timeline of this dialogue, is as dynamic as its deployment as an external action tool. From the 'constructive and open atmosphere' from 2009 to the non-recognition of the results and, even regime change calls from leaders, the Belarusian presidential elections, through their human rights impact, guided the progress or regress of the bilateral agenda. Could have been forecasted the developments? The historical analysis of the presidential elections, particularly the climate around their organisation, the assessment of the human rights dialogues as a policy tool, and the analysis of the official dialogues on the thematic areas of concerns from the human rights dialogues support this hypothesis.

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