

THE MACEDONIAN EQUITABLE REPRESENTATION VS. PUBLIC ADMINISTRATION REFORM: THE LACK OF INTERACTION BETWEEN EU ACCESSION REQUIREMENTS

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The paper discusses the problem of lack of interaction between different EU accession requirements as an intrinsic feature of the EU external governance that impacts the quality of the Europeanisation outcomes in the candidate countries. It takes the Macedonian equitable representation policy of the smaller ethnic communities as a case study, and discusses its interplay with the requirement on Public Administration reform. On the basis of a qualitative analysis of the EU Progress Reports and a desktop research on the implementation of the equitable representation policy vis-à-vis the Public Administration reform, the paper infers that the EU approach seriously fails in linking these interrelated accession requirements. This contributes to overlooking the real roots of the problems, and additionally reflects on the lack of clear guidelines and recommendations for the candidates. Thus, EU fails to establish a right 'diagnosis' and 'therapy' for the country, which leads to suboptimal Europeanisation outcomes.

Key words: EU external governance; Macedonia; Ohrid Framework Agreement; Policy on Equitable Representation; Public Administration Reform.

1 INTRODUCTION

The Europeanisation of the candidate countries has been established as an independent research discipline focused on the European Union (EU) external governance as one of the crucial factors in the candidate countries' democratic and economic reformation. In spite of the initial enthusiasm with regard to the EU's transformational power, the research eventually has become more interested in the limitations of the Europeanisation process. These limitations come to the surface mostly in those policy areas that lack a

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clear legal basis in the EU *acquis*. They are often manifested as suboptimal policy/institutional solutions implemented by the candidate countries. In this context, the paper recognizes the lack of interaction between different accession requirements as a serious intrinsic shortcoming of the EU external governance, responsible for the suboptimal Europeanisation outcomes. It departs from the assumption that in policy areas where the EU accession conditionality stands on 'shaky' legal basis, and lacks clear policy/institutional models, the interaction of different, but interrelated accession criteria is an important factor in providing clear guidelines for the candidate country's reform.

This problem, although recognized in the Europeanisation literature, has not been researched extensively. Moreover, it has been completely underplayed in the research of the Western Balkans (WB), a region offering a more complicated context than the Central Eastern European (CEE) enlargement. The WB's complexity does not only imply a lack of clear membership prospect, but also unresolved statehood issues and disputes with neighbours; vivid memory of military conflicts; security challenges; ethnically heterogeneous population; all of which lead to a new, more demanding conditionality. This new conditionality not only lacks a legal basis in the *acquis*, but the EU, as an actor responsible for the monitoring and guidance of the process, lacks the appropriate experience, due to the absence of these problems at the previous enlargements. Thus, the capacity of the EU to provide as clear and detailed language as possible in its documents (the Accession Partnership and the yearly Progress Reports) in order to fill the legal gap is challenged.

The paper's hypothesis is that the EU does not provide clear guidelines for the candidate countries, due to a lack of interaction between different, but interrelated accession criteria. This contributes to the emergence of suboptimal policy and institutional outcomes implemented within the candidate countries.

The Macedonian policy on equitable representation of the smaller ethnic communities is taken as a case study, and is discussed from the aspect of its interplay with the requirement on Public Administration reform (PA). The aim is to assess the EU approach towards these two different, but directly interrelated requirements from the political *acquis*. Therefore, a qualitative analysis of the EU Progress Reports on the Macedonian progress is conducted. In addition, the EU assessment of the reform is contrasted with the main dilemmas and problems deriving from the implementation of the reforms on the ground. The purpose of the paper is to assess the capacity of the EU approach to address these dilemmas and problems; hence, to answer whether the interaction of different, but interrelated accession criteria is crucial for the quality of the reforms undertaken by the candidate country.

In the next chapters, the paper provides a brief literature review, followed by a desktop research noting the main challenges and problems of the policy on equitable representation vis-à-vis the PA reform. Then, these observations are contrasted with the conclusions from the qualitative analysis of the EU Progress Reports. Eventually, it infers a conclusion about how the lack of interaction between different accession criteria impacts the Europeanisation policy/institutional outcomes.

2 THE INTERACTION OF DIFFERENT ACCESSION CONDITIONS THROUGH THE PRISM OF THE EUROPEANISATION LITERATURE

The membership in the European Union is a strong incentive for the potential candidates and the candidate countries to undergo radical transformation. The transformational power and capacity of the EU external governance² is especially evident when the macro-level democratization and marketization of the candidate countries are analyzed.³ Thus, the most common reference to Freedom House ratings, foreign direct investments, or GDP growth, serves as a strong argument for the success and power of the EU enlargement governance. The context of asymmetrical relationship⁴ between the EU and the candidate countries enables the Union, through a clearly linked conditionality to the prospect of membership, to initiate reforms of the candidates' legal and political systems.

However, the success of the Europeanisation process is questionable when the different policy areas are analysed individually. Here, the Europeanisation literature is not united with regards to the effects of the accession process. For instance, Grabbe concludes that, despite the shortcomings, the Europeanisation effects in the candidate countries are much broader and deeper in scope compared to the member states.⁵ Contrary to that, Goetz argues that the effects of the process are shallow and reversible, since the candidates' aim is to circumvent deep Europeanisation and 'locking in' effects, counting on their uploading capacity once they become member states.⁶ However, the reality is somewhere in between. Accepting the cynical line of Goetz implies an assumption that the candidate countries have a strong policy making capacity in different EU related areas. However, the candidates are usually weak states, and often do not have a clear idea, nor an expertise on EU policies. Therefore, they do not have the capacity to 'rebel' against the 'locking in' effects strategically, by implementing shallow institutions to be reversed once they become member states. Thus, the sub-optimal results of the policy/institutional outcomes do not derive from the strategic decision of the candidates to circumvent radical changes until they become member states, but rather from the interplay of both domestic and EU conditions.

Whether the EU conditionality will be successful, depends on the attractiveness of the membership prospect among the national actors, the speed of adjustment and illegitimate and inefficient institutions dating back to communist times.⁷ The process is additionally challenged by the intrinsic features (problems) of the EU conditionality strategy, recognized by Grabbe: 1. Lack of institutional templates; 2. Uncertain linkage between fulfilling particular tasks and receiving particular benefits; 3. Lack of transparency about how much progress has been made and what the standards of compliance are (complex requirements, not amendable to quantitative

² Lykke Friis and Anna Murphy, "The European Union and Central and Eastern Europe: Governance and Boundaries," *Journal of common market studies*, 37, 2 (1999), 211–232.

³ James Hughes, Gwendolyn Sasse and Claire Gordon, "Conditionality and Compliance in the EU's Eastward Enlargement: Regional Policy and the Reform of Sub-national Government," *Journal of common market studies*, 42, 3 (2004), 523.

⁴ Andrew Moravcsik and Milada A. Vachudova, "National Interests, State Power, and EU Enlargement," *East European Politics and Societies*, 17, 1 (2003), 46.

⁵ Heather Grabbe, "Europeanisation goes East: Power and Uncertainty in the EU accession process," in *The Politics of Europeanisation*, ed. Kevin Featherstone and Claudio M. Radaelli (Oxford: Oxford University Press, 2003), 303.

⁶ See Klaus H. Goetz. *Europeanisation in West and East: A Challenge to Institutional Theory*. Paper prepared for 1st Pan-European Conference on EU Politics, Bordeaux, September 26–28, 2002.

⁷ Heather Grabbe, "How does Europeanisation affect Governance? Conditionality, Diffusion and Diversity," *Journal of European Public Policy*, 8, 4 (2001), 1014.

targets); 4. Inconsistencies within the EU's advice to applicants; 5. Complex actor's constellations involved, meaning that different EU institutions give different advice and signals.⁸

Hence, Grabbe partly tackles the problem of interaction between different accession criteria, when pointing to the inconsistencies within the EU's advice to the applicants. Namely, she points out the tension between "decentralisation versus control and efficiency, and democratic legitimacy versus fast and full implementation of the *acquis*"⁹, generated by the collision of the EU requirements on regionalisation and democratisation. The requirements on subsidiarity, sub-national government autonomy and more participatory decision-making have clashed with those EU requirements that encourage the exclusion of both the sub-national actors and parliaments from the accession process, on the advantage of the executive.¹⁰

A somewhat different, but representative example of lack of interaction between different sets of requirements is found in the Bulgarian accession. Here, the lack of linkage between the political criteria for membership and the reforms required under specific *acquis* chapters lead to the paradox that the Commission praised the high degree of formal legal harmonisation within the chapter Justice and Home Affairs, but criticized the country for its failure to comply with the rule of law principle from the political conditionality.¹¹

Similarly, in 2003, the Macedonian equitable representation policy of the smaller ethnic communities challenged the consistency of the EU conditionality requirements.¹² Namely, the country progress was conditioned by the improvement of the Albanian representation within the central and local institutions, which assumed budget implication in terms of increased public spending. At the same time, EU demanded cuts in the administration and decrease of the public expenditure, as a requirement from the economic conditionality. Thus, the implementation of the Ohrid Framework Agreement, which has been set by the EU as the most important part of the political conditionality, and crucial for any step forward with regard to the Macedonian accession, came directly in collision with the economic set of conditions.

These problems of clashing accession requirements have been raised within the theoretical discussion of the concept of conditionality. However, the concept has been criticised for being narrow and thus, incapable of establishing a clear causal relationship between the EU approach and the candidate countries' compliance record.¹³ It means that there is no straightforward link between the application of the conditionality and the change within the candidate countries. Any possible causal relation is disturbed by other (e.g. domestic) factors, which also shape the final outcome. Hence, a more comprehensive theoretical framework has been developed by Schimmelfennig and Sedelmeier, as an answer to this criticism.¹⁴ Namely, three models explaining the rule transfer in the candidate

⁸ Ibid., 1023–24.

⁹ Ibid., 1023.

¹⁰ Ibid.

¹¹ See Vladimir Shopov. *Projecting Political Influence: Beyond EU Conditionality*. Paper presented at the European Neighbourhood Policy conference, Sofia, April 11–12, 2008, 8.

¹² Othon Anastasakis and Dimitar Bechev, *EU Conditionality in South East Europe: Bringing Commitment to the Process* (Oxford: St. Antony's College, 2003), 13.

¹³ James Hughes, Gwendolyn Sasse and Claire Gordon, *Europeanisation and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality* (Basingstoke: Palgrave Macmillan, 2005), 2.

¹⁴ Frank Schimmelfennig and Ulrich Sedelmeier, "Introduction: Conceptualizing the Europeanisation of Central and Eastern Europe," in *The Europeanisation of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier (Ithaca and London: Cornell University Press, 2005), 1–29.

countries have been designed – the external incentive model, the social learning and the lesson drawing model; the former embodying the logic of the rational institutionalism and the latter two, the logic of the social institutionalism. By contrasting the two logics, the literature on Europeanisation anchors the rational, rather than the social constructivist logic, as the most relevant to explaining the successful rule transfer in the candidate countries.¹⁵ The ‘new’ theoretical models developed for the candidate countries are not quite ‘new’, since they rely on the same theoretical lines as those developed for the EU member states.¹⁶ However, the novelty is that they shift the academic focus on a spectrum of EU and domestic factors for the explanation of rule transfer in the candidate countries.

The upgraded theoretical framework is relevant to the paper, to the extent that it refers to the issue of interaction between different sets of conditionality. In this context, the social learning model is to be mentioned, as it partly tackles the problem. Its variable “legitimacy of rules and processes”, is measured *inter alia* by the presence of cross-conditionality (implying dissonance between the EU accession criteria and the conditionality of other international institutions). However, since the Europeanisation literature has rejected the social constructivist approach, it also rejects the ‘legitimacy’ of the accession requirements as a relevant factor in the explanation of the Europeanisation outcomes. More precisely, the theory sets the “high credibility of treats (exclusion) and promises (membership)”¹⁷ and “the size of the governmental adoption costs”,¹⁸ both variables from the external incentive model, as the only relevant factors in the rule transfer of the political *acquis*. Similarly, the credible membership perspective was recognized as the only relevant factor in the rule transfer of the *acquis* conditionality.¹⁹ Hence, the Europeanisation literature concludes that the rules’ legitimacy and cross-conditionality have no impact on the process of successful rule transfer in the candidate countries. These conclusions are based only on a formal compliance with the EU standards and norms, implying that an adoption of the relevant legislation and a positive EU assessment are the only criteria for determining successful rule transfer.²⁰ Since a formal compliance does not equal a genuine transformation, the current Europeanisation literature has pretty limited and superficial reach in explaining the process. Thus, cases like Slovakia (after Meciar’ rule) or Latvia are considered to be success examples of the Europeanisation transformative power;²¹ nevertheless, there are serious shortcomings registered even after the EU accession.²² The conclusions of

¹⁵ Frank Schimmelfennig and Ulrich Sedelmeier (ed.), *The Europeanisation of Central and Eastern Europe* (Ithaca and London: Cornell University Press, 2005).

¹⁶ Ulrich Sedelmeier, “Europeanisation in new member and candidate states,” *Living Reviews in European Governance* 1, 3 (2006). Available at <http://europeangovernance.livingreviews.org/Articles/lreg-2006-3/> (28 October 2011).

¹⁷ Frank Schimmelfennig and Ulrich Sedelmeier, “Conclusions: The impact of the EU on the Accession Countries,” in *The Europeanisation of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier (Ithaca and London: Cornell University Press, 2005), 213.

¹⁸ *Ibid.*, 213.

¹⁹ *Ibid.*, 215–216.

²⁰ Frank Schimmelfennig and Ulrich Sedelmeier (ed.), *The Europeanisation of Central and Eastern Europe* (Ithaca and London: Cornell University Press, 2005).

²¹ Judith G. Kelley, “Does domestic politics limit the influence of external actors on ethnic politics?” *Human rights review*, 4, 3 (2003): 49–50; see also Frank Schimmelfennig and Ulrich Sedelmeier, “Conclusions: The impact of the EU on the Accession Countries,” in *The Europeanisation of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier (Ithaca and London: Cornell University Press, 2005).

²² Kyriaki Topidi, “The Limits of EU Conditionality: Minority Rights in Slovakia,” *Journal on Ethnopolitics and Minority Issues in Europe*, 1 (2003). Available at http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2003/nr1/Focus1-2003_Topidi.pdf (28

the Europeanisation literature with regard to successful rule transfer are unable to explain the persistence or emergence of problems in the candidate countries even after the positive EU assessment. This is the gap in the literature that the paper aims to address by analysing how the interaction of the different EU accession requirements contributes to the (sub)optimal policy/institutional choices implemented by the candidate countries.

3 THE COLLISION OF THE FAIR REPRESENTATION POLICY AND THE PUBLIC ADMINISTRATION REFORM

Macedonia was granted a candidate status in 2005, as a reward for the implementation of the Ohrid Framework agreement (OFA). This means that the provisions of the OFA have been fully incorporated into the Macedonian legal and political system.²³ Moreover, the silence of the Accession Partnership, regarding any particular legal requirements in this area, means that all major legal questions of OFA are closed and that a satisfactory legal framework is set in place. This, *inter alia*, refers to the legal framework of the policy on equitable representation of the smaller ethnic communities. It implies that any problems emerging from the implementation can be resolved within the present legal framework.

This paper, however, claims the opposite. The present legal framework accommodating the principle on fair representation and its implementation are in collision with the PA reform, precisely the merit requirement. Furthermore, the current EU approach does not contribute to a solution, but encourages the *status quo* situation. This is due to the artificial division and lack of interaction between the requirements on fair representation and on the PA reform in the EU official documents.

Since, from a legal point of view, the equitable representation policy is a closed question, the Accession Partnership only has required from the authorities to “upgrade and implement the strategy on equitable representation of non-majority communities, notably by providing adequate resources and imposing effective sanctions for failure to meet targets”.²⁴ This leads to a conclusion that the legal rules successfully accommodate the grievances of the minorities; hence, the administrative capacity and the implementation dynamic are the only problems that need to be addressed in the future.

However, the situation on the ground is different. The problems that emerge from this policy cannot be effectively tackled within the present legal framework. Nevertheless, both the Accession Partnership and the Progress Reports are silent regarding any concrete measure for improvement of the legislation. The Progress Reports and the Accession Partnership are EU instruments, through which the vague Copenhagen criteria (particularly the political ones) are more closely specified. Neither the PA reform²⁵ nor the fair representation policy stands firmly on the *acquis*; therefore, the EU develops

November 2011); see also Geoffrey Pridham, “Change and Continuity in the European Union’s Political Conditionality: Aims, Approach, and Priorities,” *Democratization*, 14, 3 (2007), 453.

²³ Zoran Ilievski and Dane Taleski, “Was the EU’s Role in Conflict Management in Macedonia a Success?” *Ethnopolitics*, 8, 3 (2009): 359.

²⁴ Council of the European Union, *Council Decision 2008/212/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2006/57/EC*, Brussels, 2008. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0032:0045:EN:PDF> (20 October 2011).

²⁵ Antoaneta Dimitrova, “Enlargement, Institution building and the EU’s administrative capacity requirement,” *West European Politics*, 25, 4 (2002), 177–180.

more precise conditionality and guidelines through these instruments. This aims to secure, on the one hand, clearer information about the future tasks of the candidate country, and, on the other hand, better transparency of the EU assessment. The issue of 'clarity' of the tasks is crucial, due to the candidates' lack of policy-making capacity and "protectorate mentality"²⁶ characterising their political cultures. In such a context of weak states, the EU Progress Reports are the most credible reference point for any future reform steps. Thus, by not properly articulating the problems and the recommendations, EU indirectly contributes to the *status quo* of the reform.

The policy on equitable representation, on the one hand, supports Grabbe's observation that quantified targets could be the answer to the problem of "moving target"²⁷ and flexible Commission assessments. The statistics on the increase of the percentage of the smaller ethnic communities within the PA were used as one of the main arguments for the successful implementation of the OFA; thus, they were crucial for the EU decision to grant Macedonia the candidate status. However, this policy has also shown that quantified targets are not sufficient guidelines for the establishment of optimal policies on the ground. Although, the aim of the reform was to establish more just and inclusive public administration reflecting the ethnic parameters set by the 2002 census, in reality, its implementation was reduced to a dubious process of filling posts, only for the sake of meeting the required percentage. Moreover, the reform was praised by EU only on statistical grounds, referring exclusively to the percentage of employed civil servants belonging to the smaller ethnic communities. This was the case even when significant number of the new employees *de facto* did not go to work, but stayed at home while being paid from the state budget.²⁸ They served as a quantitative argument for the success of the reform for both the EU and the national politicians.²⁹

Grabbe also referred to the "speed of adjustment"³⁰ as a feature of the EU approach that leads to a more successful convergence with the EU requirements in the candidate countries. But even in this aspect the Macedonian case of equitable representation provides a counterfactual example. Here, the speed of the reform has been clearly to the detriment of its quality. The EU pressure for speedy reform has derived from the specific context of latent interethnic tensions being kept under control, only by fast and visible results of the OFA implementation. Any slower implementation not only would have raised suspicions among the Albanian ethnic community about the political will for reform, but would also have negatively impacted the Commission assessment, thus, the euro-integration progress.

In spite of the 'quantitative' success and the positive EU assessment, this policy faced the experts' criticism from the very beginning. The critics, on the one hand, focused on the negligence of the smaller ethnic communities at the expense of the Albanian ethnic community; and, on the other hand,

²⁶ Othon Anastasakis and Dimitar Bechev, *EU Conditionality in South East Europe: Bringing Commitment to the Process* (Oxford: St. Antony's College, 2003), 17.

²⁷ Heather Grabbe, "European Union Conditionality and the Acquis Communautaire," *International Political Science Review*, 23, 3 (2002), 251.

²⁸ This problem became visible in 2009. However, it was not mentioned and addressed in the 2009 Progress report.

²⁹ Мери Јордановска и Владимир Николовски, "Фиктивни рамковни вработувања за мир во коалиција," *Нова Македонија*, октомври 9, 2009. Available at <http://www.novamakedonija.mk/NewsDetal.asp?vest=109999232&id=9&setlzdanie=21808> (20 October 2011); also see Светлана Унковска, "Договор за рамковни игри со бројки," *Утрински весник*, август 9, 2010. Available at <http://www.utrinski.com.mk/?ItemID=1E5B4D07C9A0554D88F1CD73CCEC9F45> (12 October 2011).

³⁰ Heather Grabbe, "How does Europeanisation affect Governance? Conditionality, Diffusion and Diversity," *Journal of European Public Policy*, 8, 4 (2001), 1015.

focused on the negative impact this policy had on the overall Public Administration (PA) reform, particularly the implementation of the merit principle.³¹ It was pointed out that the Macedonian fair representation policy deviates from the general understanding of the positive discrimination concept assuming open competition, rather than automatic preference of the disadvantaged group. This is also in breach of the idea of positive action embedded in the EU law, although in a different context, which clearly opposes measures giving an automatic preference to individuals who belong to the disadvantaged group.³² In the Macedonian case, the candidates from the smaller ethnic groups are not recruited in an open competitive procedure with candidates from the majority; but the recruitment procedure is conducted exclusively among them.³³ Therefore, a candidate does not get the position on the bases of his competitive skills compared to those of all possible candidates and, then, on the basis of his affiliation to the disadvantaged group; but solely and automatically on the latter.

Another problematic aspect of the recruitment procedure of candidates from the non-majority ethnic communities was the abolishment of the expert's exam as an employment requirement during the first phase of its implementation (2004–2006);³⁴ otherwise compulsory in the regular recruitment procedure. Moreover, the recruitment procedure has been divided between two institutions; the regular recruitment procedure has been conducted by the Civil Service Agency, whereas the Secretariat for implementation of the Ohrid Framework Agreement (SIOFA) within the Government has been responsible for the 'OFA employments'.³⁵ Therefore, the OFA employments have been perceived as an opportunity window by the political parties representing the minorities in the government, who usually have the power over SIOFA, to secure electoral support by 'bribing' their voters with employments.³⁶ This kind of employment faced the criticism of partisan influence; and the policy on equitable representation was accused of being directly responsible for undermining the merit system within the PA.³⁷

In spite of the positive EU assessment³⁸ of the reform, there is obviously an absence of legal mechanism that consolidates the merit principle with the principle of fair representation. The relevant legislation³⁹ stipulates the need

³¹ See Marija Risteska. *Policy brief no.19: Ten Years after the OFA*. Paper presented at the conference One decade after the Ohrid Framework agreement: Lessons (to be) learned from the Macedonian experience, Skopje, June 24–26, 2011.

³² The EU law sets the basic principles of positive discrimination in the area of gender equality. Although, the context is different, it is representative of the EU idea about the concept of positive discrimination in general. The relevant case law, *Abrahamsson v Fogelqvist* (C-407/98) clearly established that automatic preference to candidates from the under-represented sex is in breach of the EU law. See Penelope Kent, *European Union Law* (London: Sweet & Maxwell, 2006), 192–193.

³³ See Marija Risteska. *Policy brief no.19: Ten Years after the OFA*. Paper presented at the conference One decade after the Ohrid Framework agreement: Lessons (to be) learned from the Macedonian experience, Skopje, June 24–26, 2011, 11.

³⁴ Ibid.

³⁵ See European Commission. *Commission Staff Working Documents The Former Yugoslav Republic of Macedonia 2010 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2010–2011*, Brussels, 2010, 21.

³⁶ See SIGMA. *The Former Yugoslav Republic of Macedonia: The Public Service and the Administrative Framework Assessment May 2008*. Available at <http://www.oecd.org/dataoecd/48/48/41637503.pdf> (27 October 2011), 3.

³⁷ Ibid.

³⁸ See European Commission. *Commission Staff Working Documents The Former Yugoslav Republic of Macedonia 2009 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2009–2010*, Brussels, 2009, 13; European Commission, *Commission Staff Working Documents The Former Yugoslav Republic of Macedonia 2010 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2010–2011*, Brussels, 2010, 11.

³⁹ See Official Gazette of Republic of Macedonia. *Law on Civil Servants*, 76, 7 June 2010, art.12.

for balance of both principles, but fails to provide clear legal mechanisms to address their potential collision in practice. More precise, but equally useless language can be found in the “Strategy for Just and Equitable Representation”. Here, the general idea of the positive discrimination concept is clearly stated: if a candidate belonging to the smaller ethnic community for which the post is reserved, has the same qualifications as the candidate belonging to the majority ethnic community, the authorities are encouraged to employ the candidate from the group subjected to a positive discrimination.⁴⁰ Nevertheless, this part of the Strategy is obsolete since it refers to an implementation of a positive discrimination in a context of open competition, which is not ensured in practice by the current equitable representation policy design.

Unlike the Macedonian case, other systems of positive discrimination are familiar with legal mechanisms that consolidate principles of merit and fair representation. For instance, the South Tyrolean system, in spite of its shortcomings, is considered to be one of the most successful examples of positive discrimination.⁴¹ The mechanism⁴² applied within the South Tyrolean system stipulates that in case it is impossible to find a qualified candidate belonging to the group for which the post is reserved, the post is given to the most qualified candidate of one of the other two linguistic groups. The latter group has to return such ‘off quota’ post in some subsequent recruitment procedure.

This, differently from the Macedonian experience, presupposes competition among candidates from all groups. The reserved post is not given by automatism to a candidate of the disadvantaged group for which the post is reserved, but on the bases of his/her competitiveness and skills. Furthermore, this mechanism answers some of the recent problems the South Tyrolean system of fair representation faced, which might not be alien to the Macedonian case in the future. Namely, a lack of interest among the German speaking community for employment in the health service and the court administration has been registered, due to the low salaries in these public sectors.⁴³ This made the required percentage impossible to reach. However, the abovementioned legal mechanism addressed the challenge, by providing more flexible distribution of the posts, corresponding to the real needs of the labour market.

At first glance, this problem seems impossible to happen in the Macedonian context, due to the high unemployment rate.⁴⁴ However, it is not an impossible scenario. It has already occurred, but on a significantly smaller (minor) scale compared to the South Tyrolean case. Nevertheless, it is an interesting situation⁴⁵ that challenged the capacity of the legal framework to deal with similar problems of larger scale in the future. In 2007, the Ministry of Defence faced a problem to fill the yearly quotas for the non-majority ethnic communities, even after lowering the selection criteria. There was

⁴⁰ See Government of Republic of Macedonia. *Strategy for Just and Equitable Representation*, 2007, 23.

⁴¹ Emma Lantschner and Giovanni Poggeschi, “Quota system, Census and Declaration of Belonging to a Linguistic Group, and Quota System,” in *Tolerance Established by Law. Self Government and Group Rights: The Autonomy of South Tyrol*, ed. Joseph Marko, Francesco Palermo and Jens Woelk (Leiden: Martinus Nijhoff, 2008), 219–233.

⁴² Ibid., 222.

⁴³ Ibid.

⁴⁴ The latest information from the Statistical office for 2011 registers unemployment rate of 31.3%. State Statistical office of Republic of Macedonia, *Key indicators – Labour market*, Skopje, 2011. Available at http://www.stat.gov.mk/OblastOpsto_en.aspx?id=14 (1 December 2011).

⁴⁵ Игор Илиевски, “APM со пропустлив филтер за малцинските заедници,” *Дневник*, декември 4, 2007. Available at <http://www.dnevnik.com.mk/?itemID=6F23B774957E3A4BB36BD177D6B0C595&arc=1> (11 October 2011).

simply no interest among the smaller ethnic communities for the reserved posts in the army. Several awareness raising campaigns were conducted by the Ministry of Defence, as well as concrete measures to advertise this employment possibility. However, all efforts (direct visits on the field, TV and newspaper advertisements) were fruitless. This problem neither provoked inner debate for a more flexible approach to the issue of fair representation, nor 'caught the eye' of the EU reports. It is very possible that the former was only a consequence of the latter, since the EU is the only reference point with regards to the decision, when and what needs to be reformed.

4 QUALITATIVE ANALYSIS OF THE EU PROGRESS REPORTS 2006–2011

The EU Progress Reports are the most exploited reference points within the public debate in the candidate states about the future reform steps. Therefore, the paper analyses the language of these documents and their capacity to guide the candidate country in addressing the key problems on the accession path. Therefore, a qualitative analysis of the EU 2006–2011 Progress Reports has been conducted. The focus of the analysis is placed on the interaction of the criteria on equitable representation and PA reform.

The qualitative analysis shows that the equitable representation policy and the PA reform, although interrelated, are separately approached by the EU Progress Reports. The issue of equitable representation has been addressed exclusively as a minority protection measure, independently from the PA reform. It has been tackled under a special title "Minority rights, cultural rights and protection of minorities", within the political criterion assessment. Similarly, the part of the progress reports dealing with the PA reform, did not thoroughly refer to the issue of fair representation. Before 2009, the equitable representation policy was not even mentioned in the part of the Progress Report dealing with the PA reform. Thus, in this period the policy on equitable representation was exclusively dealt with under the title "Minority rights, cultural rights and protection of minorities", while the PA reform was exclusively discussed under a special title "Public administration".

There has been a slight change, rather formal than substantial, in the approach from 2009 onwards. In the 2009 Progress Report for the first time, the issue of fair representation was mentioned in the context of the PA reform, urging more coherent approach by the state institutions in securing the representation of all ethnic communities. In addition, it required strengthening of the "planning of the human-resource needs across the entire civil service..."⁴⁶ Reading between the lines, EU was provoked by the varying record of the policy implementation across the PA, and reminded the government that the principle of equitable representation must not be implemented selectively, but at all levels and by all PA institutions. However, this did not represent a drastic shift, since the issue of equitable representation was again discussed under the title discussing minority rights and exclusively from the aspect of the number of employments from the smaller ethnic communities.⁴⁷

⁴⁶ See European Commission. *Commission Staff Working Documents The Former Yugoslav Republic of Macedonia 2009 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2009–2010*, Brussels, 2009, 12.

⁴⁷ *Ibid.*, 21.

In the 2010 progress report, for the first time, under the title “Public administration”, the recruitment of a large number of employees from non-majority communities conducted on “quantity basis and without matching the needs of the institutions with the required training and qualifications”⁴⁸, was recognized as a problem. Moreover, it was noted that the recruitment procedure was subjected to “undue influences”. In addition, the progress report urged the authorities to address the lack of coordination between the Civil Servants Agency (CSA) and the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), in the area of planning. Due to a lack of other guidelines, a logical conclusion follows that the shortcomings noted can be effectively addressed only by a better coordination of CSA and SIOFA.

In addition, the PA reform was criticised for undermining the merit principle within the general recruitment procedure. The 2010 report noted that “the final stage of the civil servant’s recruitment does not guarantee a transparent, merit-based selection, as it leaves too large room for discretion”.⁴⁹ Furthermore, the vagueness of the legislative framework with regards to the application of external vs. internal recruitment procedure was another target of criticism. Again, the EU did not register any causal link between the implementation of the fair representation policy and the general state of the art within the PA.

The 2011 progress report, consistently to the previous, registered the problem of mismatch of the employment under the positive discrimination measure and the real needs of the institutions. It again referred to the problem of political influence on the recruitment procedure.⁵⁰ Although, these questions have been raised in both parts of the Progress Report on “Public administration” and “Minority rights, cultural rights and protection of minorities”, the EU again failed to recognize any causal link, or at least to discuss the current design of the equitable representation policy as problematic for the implementation of the merit principle in the PA.

The 2011 Progress Report is critical of the amendments of the Civil Servants Law, stating that “the rules on recruitment, appraisal and promotion; appointment of senior managers; and termination of employment”⁵¹ remain the weakest link of the PA reform. However, it is not clear whether EU finds connection between the general situation of the PA and the similar problem it has recognized in the case the fair representation policy. The progress report does not clarify whether the former is the generator of the latter, or simply its consequence. By failing to establish or clearly to reject any interdependence between these two questions, EU fails to identify the reasons behind the problems depicted in the progress report.

The 2011 progress report has a consistent approach also with regards to the quality of the guidelines and recommendations. Again, they fail to address the main problems and challenges registered. The latest 2011 report, second year in a row, advises better coordination between the state institutions; now,

⁴⁸ See European Commission. *Commission Staff Working Documents The Former Yugoslav Republic of Macedonia 2010 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2010–2011*, Brussels, 2010, 11.

⁴⁹ *Ibid.*, 10.

⁵⁰ See European Commission. *Commission Staff Working Documents The Former Yugoslav Republic of Macedonia 2011 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2011–2012*, Brussels, 2011, 10.

⁵¹ *Ibid.*, 9.

between the SIOFA and the Ministry of Information Society and Administration (MISA), which took over the CSA responsibilities. This type of superficial and technical guidelines contributes to nothing more, but sustaining the *status quo* instead of tackling the roots of the problem. It only raises the chances for repetition of the same wording in the next Progress Report, implying no substantial improvement.

5 CONCLUSION

The fair representation policy, as it is designed and implemented at the moment, contradicts the merit principle that EU requires within the PA reform. Thus, the analysed case study has shown that the 'lack of communication' between the different requirements prevents the EU from detecting the real reasons behind the problems noted in the progress reports. Additionally, it fails to provide adequate guidelines for the future steps of the candidate country.

The present EU approach only has a capacity to provide a snapshot of the state of the art; however, fails clearly and analytically to link the interrelated problems and establish the right 'diagnosis'. It risks overlooking the present and anticipating the future problems, as well as suggesting appropriate solutions to them. Substantial guidelines and recommendations in the EU Progress Reports, beyond some technical observations and directions, are missing; thus, the Reports do not go step further from the prevailing descriptive assessment provided. In a context of passive political culture and 'protectorate mentality', where the reform process follows exclusively 'top-down' logic, the current EU approach contributes for nothing more, but sustaining the *status quo*.

The paper takes a rather limited aspect of the EU conditionality; thus, its conclusions do not pursue universality and exclusivity in explaining the sub-optimal results of the Europeanisation outcomes in the candidate states. The main aim of the paper is to bring a new, relevant and previously neglected factor into the focus of the Europeanisation research agenda.

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