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Human Rights in the EU's Conditionality Policy Towards Enlargement Countries in the Western Balkans

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The special section in the present issue of *Intersections. East European Journal of Society and Politics* was inspired by FRAME (Fostering Human Rights Among European Policies), a large-scale EU FP7 research project¹ that investigated the role of human rights, including a part that focused specifically on the EU's enlargement conditionality towards the Western Balkans. The research gave a bird's eye view on the situation of human rights in the Western Balkans, which allowed us to identify a number of challenges, such as the shallowness of reforms in the area of human rights and democracy in the whole region, or the short supply of in-depth case studies focusing on specific human rights.

Enlargement is considered to be the EU's most efficient foreign policy instrument in terms of its ability to transform existing practices and institutional structures outside of its borders. Less is known about how it works on the ground in specific contexts. Despite high leverage at the general level and the efforts of monitoring, for example through the meticulous assessment in the Commission's annual progress reports, a large part of the enlargement literature shares the view that the EU's record in spreading human rights and democratic norms in a credible and effective fashion during the accession process is mixed at best. Compliance may stop at the level of formal changes, seemingly satisfying both sides, the candidate country's government as well as the EU, while falling short of bringing about sustainable reforms that are hard to be reversed. Experiences from the Central Eastern European enlargement have also revealed the limits of the EU's democratic conditionality, as measured by implementation, sustainability and post-accession performance. This means that new member states carry their deficiencies of democracy and human rights with them, which calls for new mechanisms to address problems with human rights and the rule of law within the EU.

Huszká and Körtvélyesi ('Conditional Changes: Europeanization in the Western Balkans and the Example of Media Freedom') examine more closely how such mechanisms could possibly work and more precisely what particular aspects such effective mechanisms should take into account in the case of media freedom in the Western Balkans. The study finds that enlargement countries continued to receive benefits in the form of progressing along the way to accession while their performance in a key area of human rights and democratization has shown considerable backlash. Formal compliance, an easy target both for the EU (to measure) and for the respective governments (to fulfil), can be coupled with continued violations and sometimes even

¹ See <http://fp7-frame.eu> Accessed: 28-06-2017.

with strengthening repression. The examples of Hungary and Poland shred the optimism that post-accession trends somehow lead to an automatic reinforcement and conclusion of the process of democratization, the respect for human rights and the rule of law. Shallow democratization might easily prove to be unsustainable and easy-to-implement reforms might be equally easy to revert. This is why the argument to prioritize stability over democratization is a false dilemma. While keeping states on the enlargement path and institution-building are crucial goals, the pattern we find in the case of media freedom raises the question whether measures that sever the link between performance and benefits can still be called 'conditionality', in the original sense of the word, or 'principled pragmatism', if the principles seem to have faded. This risks human rights conditionality to be completely hollowed out. In fact, the EU, by its very presence and tacit encouragement, can strengthen autocratic leadership in the region if it continues to support politicians who can deliver while it fails to maintain a check on this performance based on the EU's core values.

After the study that looked at the entire Western Balkan region, Kadribašić ('Effectiveness of Human Rights Conditionality in Bosnia and Herzegovina: What Lessons for Future Advocacy?') narrows the focus of analysis down to Bosnia and Herzegovina and anti-discrimination reform. His contribution investigates how the EU applied the condition related to the Sejdić and Finci judgement that sought to end the ethnic discrimination inherent in the constitutional structure of Bosnia and Herzegovina. The article presents this case in the wider context of anti-discrimination reform triggered by the EU's visa-liberalisation conditionality in 2009. Kadribašić thus presents a focused case study on the essential elements of effective conditionality. We now know that the implementation of the Sejdić and Finci judgement as a condition has been postponed. Kadribašić provides an explanation for why this particular condition failed to trigger domestic changes. While the condition was clear in what it sought to achieve and there were direct and credible rewards promised in the case of compliance, with six years of stalled progress due to non-compliance, the domestic adoption costs proved to be too high. While dropping the condition later might have hurt consistency and credibility, the case shows the importance of assessing the domestic context of the reform in addition to setting and communicating European standards.

In another close-up case study ('Human Rights in the EU's Conditionality Policy towards Albania: the Practice of Sub-Committee Meetings') Jusufi brings a more positive view and discusses the case of Albania, and focuses on an institutional aspect that is hardly ever examined in detail by studies of enlargement conditionality. Jusufi argues that human rights conditionality brought about important changes in the domestic institutional structure and the work of sub-committees was central to these. The study, in line with numerous calls for transparency of the accession process (see e.g. BiEPAG, 2017: 11–12), provides insight into the work of sub-committees. Jusufi's assessment of the work of the Sub-Committee on Justice, Freedom and Security demonstrates how direct engagement with Albanian decision-makers led to a number of important changes that can be instrumental in sustainable democratization. It served as a learning experience and created new capacities in government offices that deal with human rights in addition to what Jusufi calls a 'constituency', within the bureaucracy, committed to the cause of human rights. Domestic entities like law

enforcement institutions received direct feedback on their human rights performance with established guidelines. All this has taken place against a background of weak state institutions, and a number of shortcomings of the established procedures, including the challenge to go beyond a mere recitation of well-known human rights standards and the problem that most human rights issues are, due to the time limitation inherent in the working of sub-committees, not discussed in detail. Finally, the lack of clear *acquis* in a number of fields can hamper the effectiveness of conditionality.

Two recent books confirm the dilemmas of external conditionality and domestic change. Marek reviews the volume edited by Bojan Bilić (*LGBT Activism and Europeanisation in the Post-Yugoslav Space: On the Rainbow Way to Europe*, Palgrave Macmillan, 2016). The book documents how the struggle for LGBT rights has been ‘Europeanized’ in the post-Yugoslav region, creating a ‘hegemonic framework’ and moving away the focus from what ultimately counts, domestic support for equality. The chapters in the book demonstrate and substantiate the oft-made remark about unintended consequences, with the illustrative example of Pride Parades: the way the easy-to-monitor condition of holding peaceful Pride marches are problematic in their potential to advance the cause of LGBT rights.

Kadribašić reviews Marko Kmezić’s book (*EU Rule of Law Promotion: Judiciary Reform in the Western Balkans*, Routledge, 2017) that also raises the question of effective conditionality, this time in the context of rule of law promotion, more specifically concerning the reform of the judiciary, building on case studies of the ex-Yugoslav states that are not yet EU members: Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia. This area is key in that it has a direct impact on sustaining and securing a regime with human rights and the rule of law, and also on the implementation of EU law, considering that domestic courts are key actors in this respect. Kmezić finds that the technocratic approach that focuses on short-term but shallow, formal changes, often monitored following vague guidelines, is an important impediment to achieve meaningful progress. The book also criticizes the almost exclusive focus on the role of the state, which limits effective rule of law conditionality. While states and governments are important actors, they are by no means the only players in achieving sustainable changes. More regard for the local context, socialization, engaging with civil society should also form part of conditionality because only these long-term changes can protect reforms from easy reversal.

This links back to a thread common to the contributions, a dilemma that is summarized in a text written over 150 years ago, from John Stuart Mill:

If a people – especially one whose freedom has not yet become prescriptive – does not value it sufficiently to fight for it, and maintain it against any force which can be mustered within the country, even by those who have the command of the public revenue, it is only a question in how few years or months that people will be enslaved. [...] for, unless the spirit of liberty is strong in a people, those who have the executive in their hands easily work any institutions to the purposes of despotism. (Mill, 1859)²

² As quoted by Müller, 2013: 3.

Promotion of liberal democratic reforms from the outside is a delicate endeavour and past experiences show that pushing for legal and institutional reform is only one part of the equation, a part that is easily lost without domestic popular support. This latter is harder to achieve but without this, all achievements of conditionality and integration are built on shaky grounds.

References

- BiEPAG (Balkans in Europe Policy Advisory Group) (2017) *The Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy*. BiEPAG, Belgrad; Graz.
<http://www.biepag.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf> Accessed: 21-06-2017.
- Mill, J. S. (1859) A Few Words on Non-Intervention. Fraser's Magazine, LX. 766–776. Note: Republished in Foreign Policy Perspectives No. 8.
<http://www.libertarian.co.uk/lapubs/forep/forep008.pdf> Accessed: 28-06-2017.
- Müller, J. W. (2013) *Safeguarding Democracy Inside the EU. Brussels and the Future of Liberal Order*. 2012-2013 Paper Series, No 3. Washington, DC: Transatlantic Academy.
http://www.transatlanticacademy.org/sites/default/files/publications/Muller_SafeguardingDemocracy_Feb13_web.pdf Accessed: 28-06-2017.