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**Democracy and Human Rights in
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EUROPEAN REGIONAL MASTER IN DEMOCRACY
AND HUMAN RIGHTS IN SOUTH-EAST EUROPE

Introduction

When it comes to the process of democratic development and enhancing human rights protection in South-Eastern Europe, 2015 was marked both by encouraging progresses and profound challenges.

The post-socialist and post-conflict transition and transformation process in the Balkan region witnessed a series of successes, but was also confronted with dangerous threats. The protection of minorities, the rise of citizens' distrust toward the political performance of local élites, the limitations of media and research freedom, and the effectiveness of EU democracy promotion policies have vividly characterized the political and social discourse of the year.

In this regard, the effect and hopes set out in the EU integration project and the accession negotiations have been under the spotlight. In 2015, the EU enlargement advanced, slowly, but consistently. After Croatian membership in 2013, Montenegro has started accession negotiations, closing already eight of the foreseen thirty-five chapters, while Serbia is ready to open the first in early 2016 and Albania, as the newest candidate country, has positively progressed in the five key political criteria. At the same time, Bosnia-Herzegovina and Kosovo have seen the Association and Stabilization Agreement enter into force whereas Macedonia seems to have consistently approached the urgent systemic reforms recommended by the EU after the recent political crisis.

These are good news for the region but, nevertheless, a lot remains to be done, especially in terms of the recognition and implementation of social and economic rights - particularly for the most vulnerable social strata - which are increasingly relevant in the context of general dissatisfaction towards politics and social disillusion (especially within the young generations). The interplay of these factors has nowadays become particularly relevant because of the overall inadequate welfare conditions in the region and the pressing immigration crisis, which might lead to an alarming rejection of "otherness", which has been escalating both across EU member state and the southeastern neighbors.

In light of that, this Volume aims to address some of these crosscutting and burning issues. The first paper by Škrijel focuses on the integration of the Roma, namely, the biggest ethnic minority in Europe. Through the cases of Romania and Macedonia, the author investigates whether protection, anti-discrimination policies, participation and inclusion of the Roma community functions better within EU member states and if the EU accession process has had a positive impact with regards to the protection of the rights of Roma people. Subsequently, Krosi analyzes the state building process in Bosnia and Herzegovina and Kosovo, questioning how effective the EU conditionality is in promoting democratic state building in a region of weak states.

In the second section, Icovski focuses on the governmental performance in Bosnia and Herzegovina and Serbia, as countries in transition towards democracy with similar political and historical backgrounds, however, marked by significant disparities in the political management performance. Finally, through the dichotomic cases of Slovenia and Kosovo, Antić analyzes the role of state archives making as the lowest common denominator for both the freedom of information (media, research) and the identity building, in the process of democratic development.

The Volume, which is the result of the joint cooperation between the Institute for Central-Eastern and Balkan Europe (IECOB) and the European Regional Master in Democracy and Human Rights in South-East Europe, will be of interest to students and researchers in the aforementioned fields of democracy development and human rights advancement in the post-Yugoslav space and the Balkan region, and aims at representing a solid contribution of ideas and critical analyses, based on its multidisciplinary and original comparative approach.

Adriano Remiddi
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Part I

Transition, Society and EU Enlargement

Common Obstacles towards Democracy: the Protection of Roma Rights in Romania and Macedonia

by Jovana Škrijel

Jovana is Peace and Human Rights Activist - an activist who uses her artistic talents to fight and struggle against injustice and oppression, merging commitment to justice and freedom with the pen, the lens, the voice, and imagination. She obtained a degree in Journalism in 2008 along with the several years of journalistic experience, working on the social and political issues in Serbia, particularly those concerning youth and vulnerable groups. In 2009, she became active in a peace movement Service Civil International through which she has received an education in the field of peace building, human rights, community development and intercultural dialogue. From then on, she has been organizing, leading and facilitating a number of creative educational workshops, workcamps, trainings and campaigns, focusing on audio-visual education and experiential learning. In 2010 she moved to Prishtina, engaging with the work on the rights of marginalized and minority groups, particularly the rights of Roma, Ashkali and Egyptian communities in Kosovo. In 2014, she moved to Sarajevo wishing to return to academia and rethink the notion of human rights, and all the paradoxes it offers. She is still far from figuring it all out, but in the meantime she obtained the Master degree in Democracy and Human Rights in SEE. This paper is one of the outcomes of that journey.

Abstract

With an estimated population of 10-12 million in Europe, of whom approximately six million live in the EU – Roma people are the biggest ethnic minority in Europe. The data suggest that majority of persons belonging to the Roma minorities across Europe live in very poor conditions, often being maltreated, discriminated against and socially, but also politically excluded. The purpose of this paper is to examine if the protection of rights of Roma community functions better within EU member states and if the EU accession process has had a positive impact with regards to the protection of the rights of Roma people. The research is going to be done by analysing the situation of Roma in Romania, who join EU in 2007, and Macedonia, a current candidate for accession. After the careful observation of two independent variables – Romani political participation and principle of anti-discrimination – it is argued that Roma face quite similar issues in both of the countries. Namely, protection of their rights is rather a matter of political will and targeted and measurable actions in law and practice, than promising legal framework.

Key Words

Roma, Minority rights, Protection, Anti-Discrimination, Participation

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List of Abbreviation

| | |
|-----------|--|
| ADL | Anti Discrimination Legislation |
| CPD | Commission for Protection against Discrimination |
| FRA | European Agency for Fundamental Rights |
| LPPD | Law on Prevention and Protection against Discrimination |
| MP | Member of Parliament |
| NCCD | National Council for Combating Discrimination |
| PSD | Social Democratic Party |
| RED | European Race Directive |
| RPPE | Roma Party Pro-Europe |
| UDHR | Universal Declaration of Human Rights |
| VMRO-DPME | Unutrašnja Makedonska Revolucionarna Organizacija – Partija za Makedonsko Nacionalno Jedinstvo (Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity) |

Introduction

Roma people have been an integral part of European civilisation for more than thousand years. Today, with an estimated population of 10-12 million in Europe, approximately six million of whom live in the EU, Roma people are the biggest ethnic minority in Europe.¹ The available evidence given by different nongovernmental organizations such as Amnesty International, Human Rights Watch, etc. suggests that many Roma live in overwhelmingly poor conditions on the margins of society, and face extreme levels of social exclusion.²

Minority rights, and later more specifically the improvement of life conditions of their Roma populations, have been one of the many preconditions for countries in Central and Eastern Europe that have hoped to join the European Union (EU). Before the 2004 and 2007 enlargement processes³, the Roma across the EU also became protected under the EU's new anti-discrimination policies, which shall be discussed in the first chapter of this paper.⁴

By comparing the situation of Roma in Romania 8 years after its accession to EU in 2007, and Roma in Macedonia, current candidate for accession to EU, in the second and third chapter this paper will try to examine whether membership in the EU, where the democracy is supposed to be fully in place, makes a difference in respect to protection of minority rights. These two countries have been chosen to reflect upon the topic of Roma rights protection, from EU, in the first case, and non-EU perspective, in later case.

This will be done through 2 independent variables: Romani participation in decision-making processes and Anti-discrimination policies. The first one is chosen given that a variety of recommendations made by a number of international agencies addressing Roma issues emphasis was made on the item of inclusion of Roma in decision-making processes, i.e., their participation in the public and political life of the country.⁵ The second one is selected due to different reports arguing that no legal framework can change the situation of Roma until the social perceptions of Roma are changed for better.⁶

When it comes to the research methodology, the first variable is examined through closer insight into the state level legislative bodies in the respective countries, by looking into the

¹ see http://ec.europa.eu/justice/discrimination/roma/index_en.htm.

² Amnesty International, Roma demanding Equality and Human rights, <http://www.amnesty.org/en/roma> (accessed on 19th January 2015).

³ 2004, 2007 enlargemrnts.

⁴ *Beyond first steps: What next for the EU Framework for Roma Integration*, Bernard Rorke, Roma Initiative Office, Open Society Institute, 2013, <http://www.opensocietyfoundations.org/publications/beyond-first-steps-what-next-eu-framework-roma-integration> (accessed on 19th January 2015).

⁵ One of the examples for this would be the slogan of Decade of Roma Inclusion 2005-2015, in which both countries take part "Nothing about us without us".

⁶ *Beyond first steps: What next for the EU Framework for Roma Integration*, Bernard Rorke.

presence and influence of Roma representatives, as well as the approaches to their integration into the mentioned political structures. The second variable is examined through legal and policy frameworks, remedies and initiatives dealing with the issues of discrimination, questioning their (lack of) efficiency and levels of implementation.

Finally, while comparing respective laws, policies and initiatives concerning the protection of Roma rights with their practical application, in the last chapter I'll try to provide potential answers for the working hypothesis of this paper, which assumes that ‘‘the Gypsy problem’’⁷ has little to do with the official statuses of these two countries and that protection of Roma rights is rather a matter of political will and targeted, measurable and complementary actions in law and practice, than promising legal framework.

⁷ Back in the early 1990s Vaclav Havel famously called the ‘Gypsy problem’ a litmus test of civil society and described driving out manifestations of intolerance as the biggest challenge of our times.

1. Romani rights protection

This chapter intends to introduce the basic information on legal and policy framework of protection of minority rights. Specifically, it will explain the background necessary to understand the concept of Roma rights protection. It will as well make clear why the two chosen variables ‘‘participation in decision making’’ and ‘‘anti-discrimination’’ play significant role in the overall process.

1.1 Legal framework of minority protection

The end of communism in Central and Eastern Europe was a catalyst for the contemporaneous processes of the deepening of the EU as a political union based on common values beyond the regulation of an internal market, and its eastward enlargement. ‘‘The formulation by the EU of the conditions for membership for the former communist states of Central and Eastern Europe, as set out by the Copenhagen Council of 1993, marked a significant disjuncture from its previous approach to political norms in one key respect – that relating to minority protection’’.⁸ The first Copenhagen criterion stated that: ‘‘Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, human rights, the rule of law and respect for and protection of minorities’’.⁹

All EU members are also expected to respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to the Treaty on European Union under Article. ⁶ This statement was further clarified and strengthened by provisions of the Amsterdam Treaty in 1997, adding that ‘the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States’. The Amsterdam Treaty also extended the powers of the European Court of Justice to this article and made it possible to suspend some rights of Member States that violate these principles.

In 2011, under the EU framework for national integration strategies up to 2020, each EU member state is called upon to produce a concrete plan to improve the situation of the marginalized Roma specifically focusing on the areas of housing, education, healthcare and

⁸ Hughes, James, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*.

⁹ European Neighbourhood Policies and Enlargement negotiation <http://europa.eu.int/comm/enlargement/intro/criteria.htm> (accessed on 19th January 2015).

employment.¹⁰ The EU also provides remedy under the Racial Equality Directive 2000/43/EC, adopted to prevent discrimination on the basis of ethnicity or race.¹¹

1.2 Political participation of Roma

The idea to internationally recognize a citizen's right to take part in the government of his country - with a larger content than the traditional political rights to vote and to be elected - first took expression in the 1948 Declaration of Human Rights (Art 21), after the Second World War. After the Cold War, similar circumstances pushed to the acknowledgement of a right to effective participation to public life for national minorities members (1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art 2 and 1995 Council of Europe Framework Convention for the Protection of National Minorities (Art.15)). The justification of such an international minority right generally stands on three sets of arguments: the security concern, the substantial equality principle and the legitimation of democratic states.¹²

From the perspective of political sciences, the political participation of national minorities' members is conceptually embedded - as a procedural requirement - in social inclusion policies.¹³ This is visible in the Roma inclusion policies in European countries. Active participation of Roma is listed as the last of the 10th common principles¹⁴ to be followed in this field. In most of the European countries Roma integration has become an assumed objective and its realization is the process in which Roma themselves need to participate. "The European Union's Roma inclusion policy and the Council of Europe Framework Convention monitoring mechanism seems to advance European integration but, on the level of social justice, the success of the national and European Roma inclusion seems to depend, among other factors, on the ability to ensure that Roma interests and perspectives are legitimately and accountably represented, and that responsibility is shared."¹⁵

Roma participation in the legislative process depends among others factors on the interplay of the Constitution, the electoral law and the parliamentary practice. "They define how national minorities are identified, how they obtain parliamentary representation,

¹⁰ European Commission, Justice, EU and Roma, http://ec.europa.eu/justice/discrimination/roma/eu-framework/index_en.htm (accessed on 19th January 2015).

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML> (accessed on 19th January 2015).

¹² Prisacariu, Roxana, *Article:Roma Political representation in Romania: from presence to influence*, Institute for Federalism of the University of Fribourg, Switzerland, 2013, p.4.

¹³ Ibid.

¹⁴ *Vademecum: The 10 common basic principles on Roma inclusion*, An initiative of EU, http://www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf (accessed on 17th January 2015).

¹⁵ Ibid.

who represents them and which powers do they have."¹⁶ Nevertheless, the efficiency of participation seems to require that participation must have at least the chance to change the outcome of the decision-making.

1.3 Non-discrimination

According to Amnesty International, discrimination is seen as an assault on the very notion of human rights. It is the systematic denial of certain peoples' or groups' full human rights because of who they are or what they believe. "The denial of person's human rights comes due to seeing the other or group of others as "less human". This is why international human rights law is grounded in the principle of non-discrimination. The drafters of the Universal Declaration of Human Rights stated explicitly that they considered non-discrimination to be the basis of the Declaration."¹⁷

Discrimination on the grounds of race, colour or ethnicity is outlawed by international and European law as a violation of human rights. "The case-law of international human rights bodies, such as the European Court of Human Rights, outlines that States have an obligation to prevent, sanction and remedy discrimination."¹⁸

Non-discrimination has been embodied in Chapter III, Article 29 of EU Charter of Fundamental Rights. "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited." Fundamental principles of anti-discrimination are as well embodied in Western Balkan constitutions, as well as in legislation and strategic documents on minorities, gender equality and Roma.¹⁹

Yet, discrimination against Roma is widespread throughout Europe, as stated by a number of reports, including a recent report by the European Agency for Fundamental Rights (FRA).²⁰ The Council of Europe's Commissioner for Human Rights in 2012 underlined that discrimination and other human rights abuses against Roma have become severe and that no European government can claim a fully successful record in protecting the human rights of the members of these minorities.²¹

¹⁶ Ibid.

¹⁷ see <http://www.amnesty.org/en/discrimination>.

¹⁸ Gergely, Desideriu, *Fighting Discrimination and Promoting Equality in the Context of the Roma Inclusion Policies in Europe*, European Roma Rights Centre, 2014, <http://www.errc.org/roma-rights-journal/roma-rights-2013-national-roma-integration-strategies-what-next/4238/8> (accessed on 18th January 2015).

¹⁹ *Best practices for Roma integration: Regional Report on Anti-Discrimination and Participation of Roma in Local Decision-making*, OSCE, May 2013, <http://www.osce.org/odihr/102083?download=true>, (accessed on 17th of January 2015).

²⁰ The EU Agency for Fundamental Rights: *The situation of Roma in 11 EU Member State*, 2012, http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf (accessed 17 of January 2015).

²¹ Council of Europe, Thomas Hammarberg, *Human rights of Roma and Travellers in Europe*, 2012, http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf, (accessed on 23rd January 2015).

The realization at all levels of the extent and consequences of the deeply entrenched exclusion and discrimination which Roma face inside and outside the EU is followed by a strong commitment by Member States to work closely with the EU institutions to fully use of the enormous potential offered by the Structural Funds and pre-accession instruments and to create synergies with other processes such as the Roma Decade.²² However, the analysis of the Progress Reports of the European Commission for the individual countries in the Western Balkans reveals that many of these reports did not take into account the importance of recognizing discrimination.²³

²² The Decade of Roma Inclusion 2005–2015 is an unprecedented political commitment by European governments to eliminate discrimination against Roma and close the unacceptable gaps between Roma and the rest of society. See <http://www.romadecade.org/about-the-decade-decade-in-brief> (accessed on 15th January 2015).

²³ The problem of discrimination is inconsistently reported and often not specified in many progress reports, being often explained with the sentence “the problem of discrimination still needs to be addressed.. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf (accessed on 16th January 2015).

2. Situational analyses of Roma in Romania

Official census figures put the number of Roma in Romania at approximately 500,000 people. However, it is estimated that the true number of Roma may be over two million, which would comprise about 10% of the Romanian population and makes Roma community one of the largest minority groups in this country.²⁴

Romania signed all major European and international human rights instruments and the Constitution asserts that constitutional provisions concerning the citizens’ rights shall be interpreted and enforced in conformity with the UDHR, the covenants and other treaties Romania is a party to. Article 20 of the Constitution as well provides for the primacy of the international regulations in cases of inconsistencies between the treaties on fundamental human rights that Romania is a party to, and the national laws, unless the Constitution or national laws comprise more favorable provisions.²⁵

In the case of Roma citizens, the approach of public policies has been focused on measures in the social field: education, employment, health, housing and small infrastructure, fields accompanied by measures for fighting against discrimination, fighting against poverty and promoting equality of chances. The main programming documents in the field are: Strategy of the government of Romania for the inclusion of Romanian citizens belonging to Roma minority²⁶ and the Decade of Roma Inclusion 2005 – 2015, which contains a political commitment of the Government of Romania at international level.²⁷

2.1 Political participation

For its first democratic elections in 1990, a reserved seat provision effectively guaranteed one seat in the Chamber of Deputies, the lower house in the country’s bicameral legislature,

²⁴ *Romania: Situation of Roma, including their treatment by society and government authorities; state protection and support services available to Roma*, UNHCR 2010, <http://www.refworld.org/docid/4e4393e82.html> (accessed 21st of January 2015).

²⁵ European Network of legal experts in non-discrimination field, *Romania: summary country report*, 2013, <http://www.non-discrimination.net/countries/romania> (accessed on 1st February 2015).

²⁶ This Strategy ensures the continuity of the measures taken by the previous Strategy of the Government of Romania for improving the condition of the Roma for the period 2001 – 2010 and is based on the guidelines regarding Roma inclusion for the period 2011-2020 and the European legislation into force (the European Commission’s Communication “An EU Framework for National Roma Integration Strategies up to 2020” and the European Council’s conclusions of 19 May 2011 on the EU Framework for National Roma Integration Strategies up to 2020”).

²⁷ European Network of legal experts in non-discrimination field, *Romania: summary country report*, 2013.

for each nationally recognized minority group.²⁸ This provision has been in place ever since. The Chamber of Deputies currently has two Romani deputies, one elected to a reserved seat through the Roma Party Pro-Europe (RPPE), and the other elected on the list of the opposition Social Democratic Party (PSD). Given that the Chamber has 412 deputies, the two Romani members constitute less than one half of 1% of the total number of seats.²⁹ The Romanian Senate, which has no such provision, elected its first Romani member, Damian Draghici, in 2012 from the list of the PSD. This makes Romani representation in the Senate 0.57%, with one seat out of 176.

Although this system has guaranteed the Roma a constant representative in parliament for two decades, they remain the most underrepresented ethnic group in Romania. Unless other Roma get additionally elected through the regular procedures outside of the reserved seat, their community of nearly two million people is entitled only to the same single seat. So far, only two of the seven Roma ever to serve in the Chamber of Deputies have been elected outside of the reserved seat.³⁰ Therefore, the possibility of an expansion of Roma representation under the current system appears thin.

In order to claim the one seat reserved for a particular minority group, a candidate must obtain 10% of the average number of votes required to elect one regular MP.³¹ If several organizations from the same ethnic group run, only the one with the largest number of votes wins the reserved seat. In the case of the Roma, this provision has contributed to their underrepresentation in the parliament. Other provisions regarding party registration, elections and funding for national minority organizations have a combined negative impact on the ability of Roma to gain representation proportionate to their population size. These laws also inhibit open political competition for Roma votes, lessening the accountability of the party that holds the single Roma seat, in this case the RPPE, which has monopolized the Romani legislative mandate for nearly two decades.³²

In fact, the constitution decrees that each national minority is entitled to representation by only one organization, either a political party or NGO. The incumbent RPPE, which is actually not a political party but NGO, currently holds that entitlement, having gained entry to the parliament in 1992, from which point it has continued to hold the single Roma seat. “The laws governing political party and NGO registration have ensured that in the case of almost every ethnic minority, the first organization that won an election has continued to monopolize the community’s national political representation”.³³ Although ethnically based political parties are not prohibited by law, the registration criteria are

²⁸ Pajic, Catherine Messina, *Roma Rights 2012: Challenges of Representation: Voice on Roma Politics, Power and Participation*, European Roma Rights Centre, <http://www.errc.org/article/roma-rights-2012-challenges-of-representation-voice-on-roma-politics-power-and-participation/4174/3> (accessed on 20th January 2015).

²⁹ Romania-Insider, *Romanian Parliament Structure*, January 2013, <http://www.romania-insider.com/romanian-parliament-structure-technical-studies-few-women-and-lower-than-expected-re-election-rate/73971/> (accessed on January 20th 2015).

³⁰ Protsyk, Oleh, *Representation of Minorities in the Romanian Parliament*, IPU and UNDP, 2010, p. 6-7 <http://www.ipu.org/splz-e/chiapas10/romania.pdf> (accessed on 20th January 2015).

³¹ Ibid.

³² Pajic, Catherine Messina, *Roma Rights 2012: Challenges of Representation: Voice on Roma Politics, Power and Participation*.

³³ Ibid.

so severe that it proves almost prohibitive for minority parties to present candidates for election lists.³⁴

NGOs representing ethnic minorities can participate in elections; however, the challenges to electoral competition are still great. In addition to restrictive membership requirements the law mandates that minority NGOs wishing to field candidates must be “officially recognized minority organizations” with membership in the National Council for Minorities, a body composed of NGOs that have elected representatives in parliament – such as the RPPE.³⁵ Therefore a minority NGO can field candidates only if it is already in parliament – a provision that has effectively protected the RPPE’s status, since it first entered parliament before the law was passed. “This entitlement has lessened the ability of the Roma community to hold its representatives accountable, and thereby lowered the RPPE’s incentive to perform on their behalf. Despite its poor showing in elections, the RPPE lacks a strong platform to regain voters from the minority that it represents, knowing that it will be re-elected regardless of how few votes it attracts.”³⁶

Currently, the national threshold required to be represented in the parliament (outside of the guaranteed minority seats) is 5%. Some believe that this is too high for any Roma political party to meet and have suggested lowering the threshold for ethnic minorities without limiting them to one seat, which would allow more Roma to enter parliament and maybe diversify the political landscape for Romani voters.³⁷ After the general elections held in December 2012 Romania Roma are represented in the parliament by three ethnic MPs. At the moment this represents only 0,5% of the nation’s direct representatives (currently 588 parliamentarians).³⁸

2.2 Anti-discrimination

The Romanian Constitution guarantees equal treatment of all citizens in Art.4.2 providing for citizenship without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin, and in Art. 16 - providing for the equality of all citizens before the law and public authorities, without any privilege or discrimination. Art. 30 (7) prohibits ‘any instigation ... to national, racial, class or religious hatred, any incitement to discrimination.’³⁹ Constitutional norms are not self-

³⁴ According to the Law on Political Parties, 25,000 members are required to register a party, with at least 700 members each in 18 of the country’s 41 *judets*, plus Bucharest. Furthermore, the party can lose its status and be forced to re-register if it fails to win 50,000 votes in two consecutive elections.

³⁵ Pajic, *Roma Rights 2012: Challenges of Representation: Voice on Roma Politics, Power and Participation*.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Prisacariu, Roxana, *Article:Roma Political representation in Romania: from presence to influence*.

³⁹ The constitution of Romania, <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan040659.pdf> (accessed 17th January 2015).

enforcing. The 2013 discussions for the revision of the Constitution touched upon the list of protected grounds, expanding the list to the one in Art. 21 of the Charter of Fundamental Rights of the EU.⁴⁰

In August 2000, The EU Race Directive (2000/43/EC) was transposed in Romania by Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination.⁴¹ “In order to comply with the requirement to have an independent specialised equality body at the national level, the 2006 amendments of the Anti Discrimination Legislation (ADL) provided that the National Council for Combating Discrimination (NCCD) is a quasi-judicial body, an autonomous state authority, under parliamentary control.”⁴²

However, ADL had numerous flaws when it comes to the transposition of the RED such as permitting exceptions to direct discrimination in the area of housing, access to services and access to goods or the shifting of the burden of proof. Moreover, the ADL does not explicitly regulate segregation on the basis of racial or ethnic origin as a form of discrimination or subsequent sanctions for such discrimination. For example, the practice of segregation of Roma children in education is regulated only at an administrative level by the Ministry of Education. As noted in the Strategy: “this shows a major deficiency of the ADL, which neither refers to nor defines segregation in education on the basis of racial or ethnic origin as a form of discrimination. It is therefore not translated into the special section of the law that regulates which acts of discrimination are sanctioned accordingly by administrative fines”⁴³

Non-discrimination as provided by the Romanian equality legislation is one of the nine principles governing the implementation of the Strategy. Nevertheless, despite this positive aspect, it needs to be underlined that fighting discrimination, for example, is not mentioned among the priorities, policies or the framework set for the implementation of the strategy.⁴⁴ Furthermore, the principle of non-discrimination is not coherently and substantially translated into effective actions alongside the measures envisaged in regard to education, employment, health and housing.⁴⁵ According to the research of European Roma Rights Centre, the Romanian equality body (NCCD) is among other public authorities, indicated as responsible for implementing the Strategy-related measures. “Yet, NCCD is entirely left out in regard to its potential role, implication or at least cooperation with relevant Ministries, public authorities and local institutions in implementing the actions set in the Strategy or the Plan of Measures related to Education, Employment, Health and Housing.”⁴⁶

Finally, one the most striking facts when it comes to discrimination of Roma in Romania

⁴⁰ European Network of legal experts in non-discrimination field, *Romania: summary country report*, 2013, <http://www.non-discrimination.net/countries/romania> (accessed on 1st February 2015).

⁴¹ Romania: a report by the European Roma Rights Centre, 2011-2012, <http://www.errc.org/cms/upload/file/romania-country-profile-2011-2012.pdf> (accessed on 16th January 2015).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020, Chapter III Priorities, Policies, Existing Legal Framework; There is no reference to importance of effective implementation of anti-discrimination law, cross cutting cooperation with the equality body etc. http://ec.europa.eu/justice/discrimination/files/romania_strategy_en.pdf (accessed on 17th January 2015).

⁴⁵ Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020, Chapter VI Principles; point 5 The principle of equal opportunities and gender awareness.

⁴⁶ Romania: a report by the European Roma Rights Centre.

are anti-Roma statements of high level officials, members of Government and politicians. One example of such stigmatising anti-Roma rhetoric found in Romanian public and political discourse is one of statements of the Mr. Teodor Baconski, former Minister of Foreign Affairs, who in February 2010 while speaking about Romanians in France referred to Romanian communities and especially to Roma ethnic Romanian citizens in regard to “some physiological, natural problems of criminality”.⁴⁷ Human rights organisations have protested against such statements, expressing concerns over stigmatising and basically criminalising the Roma community. “A complaint was lodged by non-governmental organisations before the Romanian equality body, which found in 2011 that the statements of the Minister were discriminatory towards the Roma.”⁴⁸ However, the equality body issued a recommendation without imposing a sanction relative to the act of discrimination.⁴⁹

Later on, during the same year, former President of Romania Mr Traian Basescu, during an official visit to Slovenia stated that the integration of the nomadic Roma is difficult because “very few of them want to work” and “many of them, traditionally, live off what they steal”.⁵⁰ Non-governmental organisations referred the statements to the equality body, which dismissed the case in 2011 on the basis of procedural grounds. The decision has been appealed and the case was pending before the Romanian High Court of Cassation and Justice over a year. In the end, Basescu was fined with the symbolic amount of 130€ (600 lei).⁵¹ Still, when anti-Roma statements are made by state or non-state actors in Romania, there seem to be neither public reaction nor condemnation from the Government or the political class.

⁴⁷ Mediafax.ro, 23.02.2010, statement of Minister Teodor Baconski. <http://www.mediafax.ro/social/%20baconschi-cu-vantul-fiziologica-sublinia-ca-rata-infractionalitatii-e-similara-altor-comunitati-5600317> (accessed on 1st February 2015).

⁴⁸ Macedonia: a report by the Roma Rights Centre 2011-2012.

⁴⁹ National Council for Combating Discrimination, 26 November 2010, <http://www.cncd.org.ro/noutati/cauta/Precizarea-privind-solutionarea-dosarului-in-cazul-Baconschi-95/> (accessed on 1st February 2015).

⁵⁰ Mediafax.ro, Basescu: Mulți dintre romii nomazi, “în mod tradițional trăiesc din ce fură” [Basescu: many of the nomadic Roma live off what they steal], 03.11.2010, <http://www.mediafax.ro/social/basescumulti-dintre-romii-nomazi-in-mod-traditional-traiesc-din-ce-fura-7689349> (accessed on 1st February 2015).

⁵¹ The voice of anti-racist movement in Europe, European Network against Rasizm, <http://enar-eu.org/Romanian-President-sentenced-Hate> (accessed on 1st of February 2015).

3. Situational analyses of Roma in Macedonia

According to the last census done in 2001, there are 53,979 Roma in Macedonia. Nevertheless, it is estimated that the accurate number of Roma might be around 200,000, which would, as in case of Romania, comprise about 10% of the population. In Macedonia, Roma were officially recognized as a minority—for the first time anywhere in the world—under the Constitution adopted in 1991.⁵² The current constitution also recognizes Roma as a minority.

Macedonia has ratified major international human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Framework Convention for the Protection of National Minorities, and they take precedence over national legislation. As in Romania, the main programming documents ensuring the protection of the rights of the Roma are The Strategy for the Roma in the Republic of Macedonia and the Decade of Roma⁵³ Inclusion, emerged from the country's aspirations for EU membership.

3.1 Political participation

The Macedonian Assembly's 123 members are elected through a closed-list proportional representation system. The country has six electoral districts, with 20 members each.⁵⁴ No set threshold is required to enter the parliament, as votes are tabulated using the D'Hondt formula.⁵⁵

With no guaranteed seats, smaller minorities such as the Roma usually go into pre-election coalitions with the major parties. The Roma typically get one or two slots on the party's list, high enough to get into parliament.⁵⁶

⁵² Muller, Stefan and Jovanovic, Zeljko, *Pathways to Progress*, The EU and Roma Inclusion in Western Balkans, Roma Initiative Open Society Institute, 2010, p.31. <http://www.opensocietyfoundations.org/reports/pathways-progress-europe-an-union-and-roma-inclusion-western-balkans> (accessed 16 January 2015).

⁵³ Macedonia is one of the founding member countries of the Decade of Roma Inclusion.

⁵⁴ Inter-Parliamentary Union, The Former Yugoslav Republic of Macedonia, "Last Elections", http://www.ipu.org/parline/reports/2313_E.htm (Accessed on 21st January 2015).

⁵⁵ According to the D'Hondt method, from a political party A will enter in the parliament the first nine from the list. From the list, B will enter 6 MPs, from the list C will enter the first five; http://www.tcd.ie/Political_Science/staff/michael_gallagher/ElectoralStudies1991.pdf.

⁵⁶ Pajic, *Roma Rights 2012: Challenges of Representation: Voice on Roma Politics, Power and Participation*.

During debates over the electoral reform prior to the 2008 elections, a proposal was introduced to create reserved seats for Roma, Turks, Serbs and Vlach – 10 seats for the four communities combined – but it was not successful. Perhaps one reason why reserved seats have not been deemed necessary is because other provisions encourage representation of minorities in the parliament.⁵⁷

Particularly, The Ohrid Framework Agreement that ended the country's civil conflict in 2001 stipulated that ethnically related proposals in the National Assembly should be supported by a majority of both major ethnic groups – Albanian and Macedonian. "Often called the "Badinter principle" after one of the Agreement's drafters, this later became enshrined in the country's constitution and subsidiary laws, which require that certain legislative proposals can pass only with a majority of the representatives of the ethnic minorities in the parliament."⁵⁸ While this primarily affects the much larger Albanian community, it does create an incentive to elect Roma and other minorities in order to achieve the necessary ethnic minority vote on key pieces of legislation.⁵⁹

The Ohrid Agreement as well stipulates that one individual out of the group of MPs identifying themselves as Roma sit on the Committee for Relations among Communities. This Committee, a body parallel to the Assembly that deals especially with minority issues, has powers concerning voting on parliamentary issues related to minorities, and can decide to call a re-vote on such issues if a vote is "unsuccessful or questionable". If no Romani MP is elected, the Roma are represented on the Committee by the People's Public Attorney.⁶⁰

Even with these provisions and with a consistent presence in the parliament, the election of one or two MPs out of 123 leaves Roma underrepresented proportionate to their size. After the general elections in held in March 2014 Macedonian Roma are represented in the parliament by one ethnic MPs. At the moment this represents only 0,8% of the nation's direct representatives.⁶¹ Moreover, the Roma who have been elected have not always been effective at introducing legislation to benefit their constituency or at raising Roma issues in parliamentary debate. Their seats are generally seen as a "pseudo-democracy," which "serve only as political decoration" and no real chance to influence policy.⁶²

Indeed, the fact that all Roma political parties, five of them, made a coalition with VMRO-DPMNE without having any kind of cooperation and dialogue among each other leaves one with the impression of how and where from Roma political parties draw their legitimacy and positioning within the system. However, by strategically utilizing the Badinter majority on key votes and leveraging the political capital gained in the election campaign to land a higher position in government, Roma can have decisive input into policy that directly affects them.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Assembly of the Republic of Macedonia, <http://www.sobranie.mk/members-of-parliament.nspx> (accessed on 24th of January 2015).

⁶² Deutsche Welle, Roma minority lacks political representation in Europe, 31.03.2014, <http://www.dw.de/roma-minority-lacks-political-representation-europe/a-17517717> (accessed on 27th of January 2015).

In fact, Macedonia has often been mentioned as a positive case and a model of integration when it comes to Roma political representation. Often given examples are Municipality of Shuto Orizari in Skopje, the only Roma-governed municipality in Europe, but as well Roma representatives being Member of Parliament, Mayor, and a Government Minister.⁶³

3.2 Anti-discrimination

Macedonian constitution includes the principle of equality and prohibits discrimination, including on the grounds of race and ethnic origin. According to the Article 9 of the Constitution, all citizens in Macedonia are equal. The Ohrid Framework Agreement, which ended the armed conflict in 2001, provided for a range of legislative and policy measures to ensure equality and minority protection. As a result, constitutional changes were made and legislation introduced or amended. Article 29 on human freedoms and rights, underline that ‘persons belonging to national minorities have the right to exercise without discrimination and equally under the law, the fundamental human rights and freedoms’.⁶⁴

Macedonia has adopted the Law on Prevention and Protection against Discrimination (LPPD) in early 2010. The law prohibits discrimination on the basis of sex, race, skin colour, gender, membership of a marginalized group, ethnic origin, language, citizenship, social origin, creed, education, political orientation, personal or social status disability, age, marital status, property status, or health condition. Arguably of particular importance for Roma is the inclusion of membership of a marginalized group among the grounds on which discrimination is explicitly prohibited.⁶⁵

However, ‘there are some issues of non-compliance with the RED and the Employment Equality Directive, such the use of statistics as evidence in indirect discrimination cases and the fact that the capacity of associations to bring an action is limited to judicial procedures only and the collective interest of certain groups. Similarly, the law fails to define and prohibit segregation as a special form of discrimination.’⁶⁶

In January 2011, Macedonia gets a new resource to combat discrimination - a Commission for Protection against Discrimination (CPD), comprising seven members. However, the CPD does not have a mandate to impose sanctions, but only to issue opinions and recommendations. If the discriminating party refuses to comply with the CPD’s recommendation, the CPD can initiate procedures before the relevant bodies, such as a misdemeanour procedure or filing

⁶³ Macedonia: *The Roma Inside or Outside of the Circle?* The Voice, published on 2nd of May, 2011 <http://globalvoicesonline.org/2011/05/02/macedonia-the-roma-inside-or-outside-the-circle/> and *Roma minority lack political representation in Europe*, Deutsche Welle (accessed on 27th of January 2015).

⁶⁴ Constitution of the Republic of Macedonia, <http://www.wipo.int/edocs/lexdocs/laws/en/mk/mk014en.pdf> (accessed on 19 January, 2015).

⁶⁵ Macedonia: a report by the Roma Rights Centre 2011-2012, p.8. <http://www.errc.org/cms/upload/file/macedonia-country-profile-2011-2012.pdf> (accessed on 19th of January, 2015).

⁶⁶ Ibid, p.13.

a criminal complaint if appropriate.⁶⁷ Moreover, the role of the CPD before the courts is not clearly regulated by the law – the law does not explicitly allow for the CPD to act as an ‘intervener’ or ‘co-litigant’ in the discrimination claim before civil courts. ‘What law foresees is only that associations, foundations, institutions and other organisations from civil society may co-litigate the discrimination claim, provided that they have justified interest and make probable that the right to equal treatment of greater number of persons has been violated.’⁶⁸ In addition to it, the independence and expertise of the members of the CDP has been questioned considering that three of the seven members were until recently or currently are employed in state institutions, and not all of them have experience of working on human rights issues.⁶⁹

Between January 2011 and April 2013, 159 complaints were submitted to the Commission for Protection against Discrimination (CPD), 85 of which had been completed. Sixteen complaints were filed by Roma on the grounds of ethnic affiliation, of which eight cases had been concluded, while discrimination was found only in one case.⁷⁰ Such low number of submitted complaints may indicate low awareness among Roma in Macedonia on anti-discrimination legislation and protection mechanisms.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid, p.14.

⁷⁰ Ibid.

4. Comparison

As suggested in the introduction of the paper, while comparing respective data provided in the second and third chapter, in the final part of this paper I will try to highlight the gaps between the instruments of Roma rights protection and efficiency in their practical application.

Furthermore, I'll try to prove that these gaps towards the protection of Roma rights found both in case of Romania and Macedonia are to be seen and approached as a common challenge of not only these two countries, but the whole Europe.

4.1 Romania and Macedonia: contrasted and compared

Even though the Romanian system of reserved seats has guaranteed Roma a constant representation in parliament for two decades, Romani people still remain the most underrepresented in the parliament. Furthermore, the cases that additional Roma get elected through regular processes are extremely rare. The system of claiming the seat reserved for particular minority group is so complicated, that the moment that some Roma leader, or party enter the parliament, it results in monopolizing of Romani legislative mandate.

On the other hand, with no guaranteed seats in Macedonian parliament, smaller minorities such as the Macedonian Roma usually go into pre-election coalitions with the major parties. The Roma typically get one or two slots on the party's list which is high enough to get into parliament. However, such conditional system more than often might result of Romani MPs balancing between personal benefit and interests of majority's parties through which they entered the parliament in the first place, neglecting the well-being of their constituency.

In such situation, the progress of community they were supposed to represent is being left aside. As a result there is a huge discrepancy between Romani political leader and grass-root community. As shown in previous chapter, similar scenario occurs in Romania. Since dominant Romani political elite hold the monopoly over mandate and do not need to rely anymore on votes from their community, they are rather focused on personal benefit than occupied with the issues of the community they represent.

Therefore, we might conclude that both in Romania and Macedonia, the majority of Romani communities remain excluded and voiceless. They are being left out from both direct and indirect decision-making, firstly by not being able to enter the higher political structures and secondly by not having representatives who will raise the voice for in their name. Finally, Roma political participation in both countries seems to range below effective influence but mostly not

because of the scarcity of the instruments that countries laws provide for, but because of the selective co-optation of Roma representatives they support complemented with the apparently weak connection between key Roma representatives and the grassroots Roma communities.

As for the second variable – anti-discrimination - despite the existence significant policy framework and measures to address discriminatory act, when it comes to protection of Roma rights the impact on the ground has been very limited to date in Romania and Macedonia likewise. In fact, the implementation of the policies targeting the inclusion of Roma remains slow, and only a few of the proposed measures have actually been implemented. Second common trend for both countries is an evident lack of harmonization of national and supranational instruments combating discrimination, seen in inconsistencies of countries' anti-discrimination legislations and RED.

Macedonia lacks clear division roles and responsibilities of regulatory bodies, as in case of Commission for Protection against Discrimination which does not have a mandate to impose sanctions, but only to issue opinions and recommendations. Romanian legislative and jurisdictional policies do not seem to be in sink, as in cases illustrated before, in which anti-Roma statements do not properly and timely sanctioned.

4.2. Common obstacle towards democracy

Since Romania joined EU in 2007, after satisfying Copenhagen criteria, it's been consider that the country has achieved stability of institutions guaranteeing democracy, human rights, the rule of law and respect for and protection of minorities. Macedonia which still paves its way towards EU is considered as partially democratic state. However, when it comes to protection of Roma rights, regardless of their official status in respect to democracy, these two countries face similar challenges.

Coming back to our variables, it could be concluded from the previous chapters is that even though the right to non-discrimination is recognized and guaranteed by law and is therefore an entitlement for both Romanian and Macedonian citizens – most of the policies remain utterly dependent on the political will of state actors at national, regional or local level.

Besides political will, fighting discrimination requires a complex array of effective, targeted and measurable actions in law and practice that translate into promoting equality by preventing, punishing and remedying the infringement of rights and creating equal opportunities for those disproportionately affected by discrimination.⁷¹ If Roma are largely perceived mostly as a target group for drafting projects - that's not only unfair according to the democratic principles but it can result with very the limited efficiency in the intention of improving their situation. In other words, one of the keys to real impact in the field of protection of Roma rights is to increase the participation of Roma at all stages, thus achieving long-term sustainability of the social inclusion initiatives.

⁷¹ Gergerly, Desideriu, *Fighting Discrimination and Promoting Equality in the Context of the Roma Inclusion Policies in Europe*, European Roma Rights Centre, 2014 (accessed on 17th January 2015).

Conclusion

Roma, the largest minority in Europe, are the continent's most disadvantaged and vulnerable ethnic group. Many of Roma live in overwhelmingly poor conditions on the margins of society, and face extreme levels of social exclusion. In this paper I tried to understand whether the membership in the EU, where the principles of democracy are supposed to be fully respected, makes a difference in respect to protection of minority rights, in particular Romani rights. This has been done through situational analyses of Roma in Romania, EU Member State since 2007, and Macedonia, current candidate that hasn't yet met all conditions for accession to EU.

In order to introduce the concept of the phenomenon to be examined, in the first chapter of this paper I listed the basic information on legal and policy framework of protection of minority rights. Specifically, I explained the background necessary to understand the concept of Roma rights protection. In addition to it, I as well tried to shed light on the importance of 'participation in decision making' and principle of anti-discrimination which were used as the two independent variables for the purposes this comparative research.

Second and third chapter were meant to explain the position of Roma in both Romania and Macedonia, describing first the legal framework ensuring the protection of this community and later its efficiency in relation to political participation of Roma, their presence and influence within major political structures. The practical applications of anti-discrimination policies have been as well examined through cases specific for each of the respective countries.

Finally, in the last chapter, I tried to argue that issues faced by Roma do not differ much in countries compared, both when it comes to efficiency of Romani participation in political life and protection of their basic human rights guaranteed by national laws and major international treaties ratified by both countries in question. Furthermore, I tried to indicate the common obstacles and reasons for which the situation of Roma remains one of the greatest concerns in terms human rights protection.

Nevertheless, achievement of the better protection of Roma rights is a task for years to come and leaves lots of space for further discussions. Even so - strong and common political will, targeted, measurable and complementary actions in law and practice, and active involvement of both Roma and non-Roma actors – seem to be good material to start that discussion with.

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The European Union and State-Building in Bosnia & Herzegovina and Kosovo

by Qemal Krosi

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Abstract

This academic paper, explores the conditions under which the European Union state-building modus is most likely to help produces democratic reforms in two countries in Western Balkans, Bosnia and Herzegovina and Kosovo- and factors that explain this impact, focusing on the outcomes of reforms of political institutions that EU modus claims to spur. The comparative analysis will consider the role of two variables, namely: public administration and local self-government.

The aim of the paper is to understand the impact that EU's approach to democratic state-building has on political reforms in Bosnia and Herzegovina and Kosovo. While evidences suggest that EU has played an important role in encouraging political reforms, on the other hand these reforms were slow and remained largely on paper.

Finally, I will discuss and argue about the effectiveness of EU conditionalities in promoting democratic state-building in these two countries. Even though there were huge incentives by the EU, the progress was slow in both countries, particularly in public administration. The EU threats of withholding aid, does not show positive results.

Keywords

European Union, State-building, Public Administration, Local Self-Government, Conditionality.

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List of Abbreviations

| | |
|-------|---|
| BH | Bosnia and Herzegovina |
| CARDS | Community Assistance for Reconstruction, Development and Assistance |
| CE | Central Europe |
| DPA | Dayton Peace Agreement |
| EC | European Commission |
| EU | European Union |
| IPA | Instrument for Pre-Accession Assistance |
| LSG | Local-Self Government |
| NGO | Non-Governmental Organization |
| PAR | Public Administration Reform |
| PCC | Potential Candidate Countries |
| SAP | Stabilisation Association Process |
| SP | Stability Pact |
| WBC | Western Balkan Countries |

Introduction

The European Union (EU) in recent years remains the leading player to set up persistent efforts to attain prosperous state-building and democracy in the Western Balkans. As Adam Fagan states in his book: “The EU looks and acts like a multilateral development agency: it funds road-building, railways and hospitals; it trains police officers, civil servants and doctors; supports community development, NGOs and substitutes for the absence of state and market provision in the realms of welfare and education.”¹ It is seen as two way or dual strategy of EU, starting with stabilisation or state building and moving toward integration of Western Balkan countries (WBC).

State-building is a common term in the vocabulary of international relations, which implies in the case of the chosen countries. This endorsement and the effort to rebuild the societies which fall apart from civil disputes can be dated back in the early 1990s. Conflicts in Bosnia and Herzegovina (BH) and Kosovo broke after the dissolution of Socialist Federal Republic of Yugoslavia. Even though, they differ from each other, the strategies and the solutions acknowledged by the international community were very similar.

This paper explores the influence of EU modus to democratic state-building on political reform in two countries in the Western Balkans, BH and Kosovo. Moreover by analysing the external factors that explain this influence, focusing on the results of reforms of political institutions that EU it is seen as driving force. In particular it reveals reforms in two areas: Public Administration, viewed as a center of EU state-building attempts and Local Government, which is considered a key European standard, on which: “The European charter of Local Self Government”² was adopted. The principle of conditionality contemplates support only for the countries that adhere to EU demands. However, referring to considerable research done on previous enlargements, conditionality as a principle does not lead to the same results, candidate countries varied in their response to these conditions. In this regard, it makes our interest in exploring the factors which shape the effectiveness of EU conditionality and understand whether these different determinants are as a result of domestic politics or rely at EU level.

The main research question for this paper is: “How effective is the EU conditionality in promoting democratic state building in this region of weak states, post conflict reconstruction and limited democratization”? The assumption of the research: it expects that the annual reviews or assessments of progress reports are in compliance with the Copenhagen criteria and together with the financial and technical help, will stimulate deep transformation, administrative and political reforms that enhances democracy in Kosovo.

¹ Fagan, Adam. *Europe's Balkan Dilemma Paths to Civil Society or State-building?* London: I.B. Tauris, 2010. Pg.1.

² Adopted under the auspices of the Congress of the Council of Europe, was opened for signature by the Council of Europe's member states on 15 October 1985.

The paper is divided in four chapters. Chapter one will set out the EU engagement in Western Balkans, the idea to extend its success in promoting democratic state-building from Central Europe (CE) to Western Balkans, the overriding aim of the chapter is to provide the reader with an overview of EU relations with the states in this region. We will take a look at the EU policy towards Western Balkans. Furthermore, after exploring EU commitment to the region, the EU conditionality in the Western Balkans will be discussed, in order to properly address the research question.

Chapter two and three demonstrates the findings of the empirical research conducted in the analyzed country of Western Balkans, more concretely BH and Kosovo. The research will concentrate on the impact of EUs approach toward democratic state building on political reforms in Kosovo by analyzing the chosen country external factors that explain this impact based on outcomes of political reforms in public administration and local self-government. Notably, by analyzing entirely the EU documents, in this respect the most significant progress reports produced by the European Commission. The final chapter of the paper, will compare both countries, analyzing the differences and commonalities based on the outcomes and results of political reforms imposed by EU, where I will argue and discuss about the effectiveness of EU conditionality as the main tool of the EU to encourage and ensure compliance with the European standards.

To attain these aims the paper is set up upon an integrated approach with combination of both primary and secondary resources. Notably, the analysis of the annual progress reports produced by the Commission of the European Communities, multiple EU instruments providing financial aid in order to support their attempts to enhance political and institutional reforms such as the Community Assistance for Reconstruction and Development and Stabilization (CARDS), the Instrument for Pre-Accession Assistance (IPA). Furthermore, the international organizations which assess the country's degree of democracy and political freedom will be analyzed.

1. The EU engagement in Western Balkans

Since the fall of the Berlin Wall and the Yugoslavia crisis, the Western Balkans became an area of increased interest for the EU. Since 90's the EU is engaged in the region in different levels, such as conflict prevention, peace settlement, state-building and assistance towards EU membership. As, Fagan states: "Conditionality, phases of enlargement, regular reports, and pre-accession negotiations, aid and assistance have not only become the lingua franca of the post-socialist world, they have imposed a political and economic rationale on the group of states that were, during the Cold War era, referred to as 'Eastern Europe', or that constituted Yugoslavia".³ Therefore, the EU is committed to bring peace and stability within Western Balkans, subsequently take necessary democratic steps and political reforms in order to bring countries of the region closer to EU integration.

"State-building- the creation of new governmental institutions and the strengthening of existing ones-is a crucial issue for the world community today".⁴

In this opening statement of chapter one, Fukuyama describes the way in which European players promote state-building: by creating new institutions and strengthening the existing ones, that are considered democratic. At the very beginning we would raise a question why do we need the EU to promote state-building in the countries of the region? Rick Fawn describes this phenomena, saying that: "Domestic actors do not have the potential and political will to build democratic state-building on their own and that they require help from international actors".⁵ Also, lack of democratic values, which is a general characteristics of WB, it was noted by Mikael, that there is a substantial: "Distance from the norms, values and identity of the EU member states".⁶

Thereby, the EU it is engaged to promote democratic state-building in this region of weak states and limited democratization. The EU is trying to overcome this situation, for the eventual integration of the countries of the region, through imposing conditions formulated within the "Copenhagen Criteria".⁷ That is why countries of the region remain the essential preoccupation for Europe, Rupnik, arguing in this direction states that: "The 'Balkan question' remains more than ever a 'European question'".⁸

³ Fagan, Adam. *Europe's Balkan Dilemma Paths to Civil Society or State-building?* London: I.B. Tauris, 2010. P.18.

⁴ Fukuyama, F. *State-Building: Governance and World Order in the 21st Century*. 2004. P. ix.

⁵ Fawn, R., & Richmond, O. (2009). De Facto States in the Balkans: Shared Governance versus Ethnic Sovereignty in Republika Srpska and Kosovo. *Journal of Intervention and Statebuilding*, 3(2), 205-238.

⁶ Mäki, Johannes-Mikael. "EU Enlargement Politics: Explaining the Development of Political Conditionality of 'Full Cooperation with the ICTY' towards Western Balkans". *Politicka misao*, (45), 2008. Pg. 75.

⁷ Copenhagen Criteria: rules that define wheather a country is eligible to join EU, june 1993.

⁸ Abramowitz, Morton, and France Paris. *The Western Balkans and the EU: "the Hour of Europe"* Paris: Institute for Security Studies, 2011. 17.

The enhanced relationships between the EU and WB, started since the establishment of the “Stability Pact in 1999”⁹, followed with the introduction of the “Stabilization and Association Process”¹⁰ The Stability Pact (SP), was established in 1999 at the initiative of EU, immediately after the peaceful solution to Kosovo conflict as a framework to reinforce peace and security in the region. Whereas, the Stabilization and Association Process (SAP), is the EU policy, which aims to provide the WB states with the means to maintain democratic institutions, stability, ensure rule of law based on European norms and values. It aims, to bring peace and stability within the WB, and then bring countries closer to the EU integration. The SP and SAP, are regarded as very successful initiatives launched by the EU, in order to maintain stability and bring countries closer to the EU. In this regard, Dinas states that: “The European Stability Pact a mechanism to promote good relations among the newly independent countries of Central and Eastern Europe, was one of the EU’s earliest and most successful joint actions”.¹¹ The SAP is considered as the main framework governing the relationship between the EU and the WB countries.

The first concrete steps of EU initiatives aiming at integrating the Western Balkans were made at the “Thessaloniki summit”¹² Eviola states: “At the EU-Western Balkans Summit, the Union confirmed its ‘unequivocal support to the European perspective’ of the region and declared that the ‘future of the Western Balkans is within the European Union’.”¹³ Even though these countries need to fulfill and meet some criteria set by the EU, democratic requirements, reforming the institutions and the desire of the Western Balkan countries to “join the EU club”. It was made clear at the European Council in Santa Maria da Feira in June 2000, the EU leaders made some conclusions and stated that:

The European Council confirms that its objective remains the fullest possible integration of the countries of the region into the political and economic mainstream of Europe through the Stabilisation and Association process, political dialogue, liberalisation of trade and cooperation in Justice and Home Affairs. All the countries concerned are potential candidates for EU membership. The Union will support the Stabilisation and Association process through technical and economic assistance. The Commission has already presented proposals to the Council to streamline and accelerate the procedures for disbursement of assistance and the early extension of asymmetrical industrial and agricultural trade benefits to the Balkan States.¹⁴

In this short paragraph, the European Council demonstrated its unequivocal support for the WB countries, stating that all countries that are part of the SAP, are ‘potential candidates’ for EU membership. Also, the Commission underlines the technical and economical assistance, moreover at present, the EU is much more engaged to the region than any other external

⁹ The Stability Pact for South Eastern Europe was an institution aimed at strengthening peace, democracy, human rights and economy in the countries of South Eastern Europe from 1999 to 2008.

¹⁰ The Stabilisation and Association Process (SAP) is the European Union’s policy towards the Western Balkans, established with the aim of eventual EU membership.

¹¹ D.Dinan. *Europe Recast, A history of European Union*. Palgrave Macmillan, 2004. Pg. 315.

¹² The European Council met in Thessaloniki on 19 and 20 June 2003.

¹³ Prifti, Eviola, and France Paris. *The European Future of the Western Balkans: Thessaloniki@10 (2003-2013)*. Pg.13.

¹⁴ Santa Maria Da Feira European Council. *Conclusions of the Presidency. 19 and 20 July 2000*. Available at: http://aei.pitt.edu/43325/1/Feira_Council.pdf.

factor. Since 1991, the EU has been the largest donor in WB, and has committed billions (See Annex 1) through its financial programs, in different areas with regard of building institutions and strengthening the democracy. During the period (2000-2006), the EU financial assistance exceeded over € 5 billions and under IPA over the next four years (2007-2010), the WB countries received € 2.7 billion (See Annex 2). The framing financial and technical aid of these states in terms of building democratic institutions, suggest continuity with the earlier enlargements. However, the post-conflict states of the Yugoslavia, have had difficulties in transition and absorption of European standards and can be hardly considered as consolidated democracy.

The particular states under examination in this paper, Bosnia and Herzegovina and Kosovo are countries referred to by the EU as Potential Candidate Countries (PCCs). However, this immediately suggest that these states are at the very beginning of the EU accession process. According to Adam: “The reality therefore for individual PCCs is entry according to the pace of reform and the realization of what amounts to extremely rigorous standards and conditions”.¹⁵ How these particular countries have developed throughout these years, we will see in the next chapters by analyzing the result of external factors.

¹⁵ Fagan, Adam. *Europe’s Balkan Dilemma Paths to Civil Society or State-building?* London: I.B. Tauris, 2010. Pg.20.

2. EU impetus on reforms of political institutions in Bosnia and Herzegovina

The European Union has continually pursued democratic reforms and stimulated Western Balkan countries, by setting out Copenhagen criteria as conditions or prerequisite for accession. As C. Pippan states: “Conditionality has moved to the heart of EU and has become the crucial principle of the enlargement process.”¹⁶ Countries who want to join European Union, must meet the conditions articulated in the Copenhagen Criteria, which include: “Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy, as well as the ability to cope with competitive pressures and market forces within the Union, the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union”.¹⁷ EU has also adopted the “Stabilization and Association Process”¹⁸ for Western Balkan countries, in order to adopt EU laws and regulations and meet the European standards.

The EU state-building model seeks to encourage capacity building of Bosnia and Herzegovina which was recreated by the: “Dayton Peace Agreement”¹⁹ through its evaluations of reform progresses, financial targeted aid through IPA funds and CARDS. This would help what Knaus and Markus describe as: “Administrative revolution that increases accountability which is essential for democratic governance”.²⁰ Therefore in the next subchapters we will analyze the annual progress reports for BH on public administration and local government, comparing different years and analyzing how effective were the EU conditionalities and incentives in this regard.

¹⁶ C. Pippan, *The Rocky Road to Europe*: 2004. Pg. 77-81.

¹⁷ European Council, Presidency conclusions, Copenhagen, June 1993. elements of the accession process.

¹⁸ The SAP was launched in June 1999 and strengthened at the Thessaloniki Summit in June 2003 taking over elements of the accession process.

¹⁹ Dayton Agreement, Dayton is the peace agreement reached in November 1995, and formally signed in Paris on 14 December 1995. These accords put an end to the 3 1/2-year-long Bosnian War, one of the armed conflicts in former Yugoslavia.

²⁰ Knaus, G. & Marcus C. The ‘Helsinki Moment’ in Southeastern Europe. 2005. 45.

2.1 Public Administration Reforms

The EU attempts to help BH to create more democratic and effective public administration that enhances accountability and expects that progress reports are in compliance with Copenhagen criteria. As Vachudova argues: “The EU’s role of annual reviews is to stimulate reforms to professionalize and make public administration more accountable”.²¹

“Stabilization and Association Agreement”²² negotiations were opened in 2005, which is the reason why the Commission’s progress reports of BH are reviewed from that year onwards. The 2005 progress report concluded that: “Some positive steps have been taken in the field of public administration”.²³ The financial aid provided through CARDS in this field exceeded “EUR 30 million”²⁴ supporting political reforms and institution building. Also, democracy index ratings show that BH was in a better position than previous years in the functioning of government at both levels national and local with a score of 3.29, on a scale from 0 (worst) to 10 (best) and it was ranked 87.”²⁵

The 2006 progress report indicates that: “Bosnia and Herzegovina has made some progress in this area. The National Strategy for the Reform of the Public Administration was finally adopted.”²⁶ Also, the financial assistance was increased in this year for: “EUR 50 million”.²⁷ Nevertheless, after analyzing the evaluation of Commission’s progress reports on the following three years we figure out almost the same language used by European Commission stating that: “There has been some progress in the area of public administration. However, Bosnia and Herzegovina is still in an early phase of the public administration reform, which needs to be accelerated.”²⁸ The EU continued the financial assistance and under 2008 IPA program, the EC allocated a total of “EUR 75 million”.²⁹ The Economist Intelligence Unit’s index of Democracy shows that: “Bosnia has made some progress and in 2008, it was ranked 86 with overall score of 5.70, on a scale from 0 to 10.”³⁰

Examination of progress reports on BH from 2010 onwards, show very little progress. The 2010 progress report concluded that: “Very little progress was made in the area of public administration and resources for RAP implementation are insufficient.”³¹ The IPA

²¹ Vachudova, M.A. Democratization in Postcommunist Europe. 2010. 110.

²² Stabilisation and Association Agreement (SAA) negotiations started. 25 November 2005.

²³ European Commission. Brussels, 9 November 2005.14.

²⁴ Ibid., 6.

²⁵ The Economist Intelligence Unit Democracy index 2007. 3.

²⁶ Commission of the European Communities, Brussels, 08 November 2006. 9.

²⁷ Ibid., 5.

²⁸ Commission of the European Communities, 2007, 2008, 2009.

²⁹ European Commission, Brussels, 5.11.2008. 6.

³⁰ The Economist Intelligence Units index of Democracy 2008. 6.

³¹ European Commission, Brussels, 9 November 2010. 12.

2010 program exceeded “EUR 90 million”³² but the EU shows concern that very little progress has been made by the country’s authorities for decentralized management of EU funds. Afterwards the 2012 progress report states that: “The public administration reform process lacks the necessary political support”.³³ The EU changed its attitude towards BH in regard to IPA funds by blocking them, noting that: “Lack of agreement between stakeholders in the country regarding the projects to be financed under the IPA 2012 national programme”. As well the democracy index rating showed that: “BH was in a worse position ranked 98 with a score of 2.93. on a scale from 0 to 10”.³⁴ Even worse in 2014 where Commission shows concern considering new strategy for future development stating that: “The dysfunctionalities of public administration remain an issue of serious concern. A new reform strategy after 2014 needs to be developed”.³⁵ Also, regarding financial assistance, the EU it is very clear stating that: “No progress”³⁶ has been made to establish structure necessary for management of EU funds.

2.2 Local Government Reforms

Local self-government plays an important role for democratic development and this has been constantly asserted by the Council of Europe, in the European Charter of Local Self-Government, adopted in 1985. In BH, EU has provided incentives for local government developed programs, to make reforms and local government transformation as European Commission reaffirms that: “European institutions have provided aid that seeks to make local governments comply with European norms and EU accession requirements.”³⁷ The Commission’s 2006 report notes that: “Local self-government reform, in line with the European Charter for Local Self-Government, is underway. Both Entities have adopted laws on local self governance which are, in principle, aligned with the Charter.”³⁸ The 2008 progress report concluded that: “The legislation was largely in line with the European Charter for Local Self-Government. However, the impact on decentralisation of powers to local self-government units has been limited.”³⁹ According to Freedom House rating changes between 2008 and 2012 on Local Democratic Governance BH was in a “status quo”⁴⁰

In 2011, the Commission progress report indicate some improvement, as stated in the

³² Ibid., 7.

³³ European Commission, Brussels, 10.10.2012. 12.

³⁴ The Economist Intelligence Units index of Democracy 2012. 6.

³⁵ European Commission, Brussels, 8.10.2014. 11.

³⁶ Ibid.

³⁷ Congress of Local and Regional Assemblies, European Commission 2009.

³⁸ Commission of the European Communities, Brussels, 08 November 2006. 10.

³⁹ European Commission, Brussels, 8.10.2014. 12.

⁴⁰ Freedom House. Democratic Scorecard Western Balkans.2013.

report: “A Croat National Assembly, comprising of municipalities and Cantons with a Croat majority, was established.”⁴¹ In the following years, evaluation of progress reports showed that: “BH’s legislation was in line with European Charter on Local Self-Government, but there was lack of clarity in appointment of powers between Entities, Cantons and Municipalities with a relatively low autonomy at municipal level.”⁴² The 2014 progress report indicates that the same situation continues and that: “Cantons have started harmonising their legislation with Federation law on the principles of local self-government, but progress is slow.”⁴³ This situation it is shown in the ratings of Freedom House which indicates that: “BH on Local Democratic Governance from 2005 till 2012 it was in the same position, with the same pace and average score of 4.75, based on a scale of 1 to 7, with 1 representing the highest level and 7 the lowest.”⁴⁴

Overall, the public administration and local-self government remain one of the key issues for accession. Both processes appear to be challenging for BH, despite the progress assessed by the progress reports at the beginning, and the successful adoption of legislations. However, the Commissions assessment from 2010 onwards started to realize that BH is lacking on implementation. Furthermore, BH continuously has benefited from the EU funding instruments, even though the report in 2010, indicated that no progress has been done to establish structure necessary for management of EU funds. Nevertheless, in the comparison section, will be analyzed more thoroughly the progress of BH throughout the years.

⁴¹ European Commission, Brussels, 12.10.2011. 10.

⁴² European Commission, 2012, 2013.

⁴³ European Commission, Brussels, 8.10.2014. 10.

⁴⁴ Freedom House, Nations in Transit 2012.

3. EU impetus on reforms of political institutions in Kosovo

The European Union has continually pursued democratic reforms and stimulated Western Balkan countries, by setting out Copenhagen criteria as conditions or prerequisite for accession. As C. Pippan states: “Conditionality has moved to the heart of EU and has become the crucial principle of the enlargement process.”⁴⁵ Nevertheless, after the Kosovo war in 1999, EU was entirely focused in the region and: “It became evident to the EU that only a strategy for political, economic reforms its not enough to bring stability in the region but integration into the EU was a way to achieve that.”⁴⁶

EU adopted gradual approach towards Kosovo in terms of technical and financial support which were subject to conditionalities. Hence, in the next subchapters we will look over progress reports for Kosovo and evaluate the EU influence on reforms of political institutions such as public administration and local government.

3.1 Public Administration Reforms

Public administration reform, remains the key priority under the political criteria for Kosovo, the essential principles: accountability, transparency and effectiveness. To build this administrative transformation the authors argue that European Commission measures the countries: institutions, laws in regard to the: “*acquis*”.⁴⁷

Kosovo is the newest country in the region that is aiming to sign the SAA. Since its declaration of independence in 2008. The 2008 progress report was not the first one that the Commission had prepared for Kosovo, but it was meant as a pre-feasibility study to assess the overall institutional infrastructure that the new country had created. In this year the progress report shows clear reflection of the actual situation stating that: “Public administration and the coordination capacity of public bodies in Kosovo continue to be weak.”⁴⁸ On the other hand there was a huge financial support through CARDS “EUR 170 million”⁴⁹ and IPA program “EUR 122 million”. The following year, the 2009 progress report indicated that: “There has been some progress, however the capacity of Kosovo’s

⁴⁵ C. Pippan, “The Rocky Road to Europe.2004. 77-81.

⁴⁶ Ibid.

⁴⁷ The *acquis* is the body of common rights and obligations that is binding on all the EU member states.

⁴⁸ Commission of the European Communities, Brussels 5.11.2008. 7.

⁴⁹ Ibid., 12.

public administration remains weak.”⁵⁰ Kosovo continues to benefit from the IPA, macro-financial assistance and other sources of funding. “Over EUR 103 million has been allocated in the IPA Annual Programme for 2009.”⁵¹ The distribution of the funds 2008 and 2009 will be for the purpose of the strengthening of public administration reform, rule of law, education, unemployment, culture and youth etc.

The 2010 European Commission progress report on Kosovo concluded that: “There has been progress as regards public administration reform and Kosovo adopted two key laws in this area: on civil service and on the salaries of civil servants, However the public administration reform remains major challenge and that the capacity of Kosovo’s public administration remains weak.”⁵² Important is that Kosovo continues to benefit from IPA program and the Commission mentions that: “The package is fully operational”⁵³. Even though the following year is characterized with some progress, the Commission called attention for: “Professional public administration free of political interference.”⁵⁴ According to the Freedom House annual assessments of governance standards, on a scale of 1 best to 7 worst, “Kosovo remained an outlier at 5.25 and the only country in the area that is rated as a Semi-Consolidated Authoritarian Regime.”⁵⁵

The 2013 progress report indicates that: “The secondary legislation of laws was enacted, still there is lack of professionalism and motivation on the part of staff.”⁵⁶ The Commission 2014 progress report urged Kosovo to: “Make serious political commitment to public administration reform, very little progress has been made and the slow pace continues to pose the greatest challenge.”⁵⁷ Kosovo, continued to benefit financially in order to help the country to make this administrative transformation. As, noted by the Commission: “with EUR 5.0 million in 2013”⁵⁸ and “EUR 3.5 million in 2014.”⁵⁹ Overall, PAR remains one of the key medium-term priorities for the Government of Kosovo as it established framework for complying with SAA obligations. Nevertheless, despite the progress made the Commission continuously in each progress report stresses the need to reform public administration towards more professionalized system away from the political interference.

⁵⁰ Commission of the European Communities, Brussels 14.10.2009. 9.

⁵¹ Commission of the European Communities, Brussels 14.10.2009. Pg.6.

⁵² European Commission, Brussels 9 November 2010. 8.

⁵³ Ibid., 6.

⁵⁴ European Commission, Brussels 12.10.2011. 9.

⁵⁵ Freedom House. *A Democratic Scorecard for the Western Balkans. June 26 2013.*

⁵⁶ European Commission, Brussels 16.10. 2013. 9.

⁵⁷ European Commission, Brussels, October 2014. 10.

⁵⁸ European Commission. *Annual Program. Support to Public Administration Reform.* 01.01.2013.

⁵⁹ European Commission. Commission Implementing Decision. *Adopting an Annual Action Plan for Kosovo for the year 2014.* Brussels, 11.12.2014. Pg. 3.

3.2 Local Government Reforms

Kosovo, after the declaration of independence and entry into force of the Constitution in June 2008, became engaged in the process of decentralization. As emphasized by the Kosovo Local Government Institute report that: “Kosovo has become increasingly committed to a framework of decentralization. The model for this framework has been specified in the Law on Local Self-Government.”⁶⁰ However, the report states that: “One year since the adoption of the Constitution, Kosovo’s local government is far from establishing the new municipalities, let alone exercising the services and responsibilities allocated to them.”⁶¹

The European Union has supported projects in Kosovo, which cover the development, modernization, and transformation of central and local administrations. To make them comply with the European regulations enacted in the European Charter of Local Self Government, their projects include: decentralization, professionalization, accountability, relations among municipality and civil service. The 2008 Commission progress report on Kosovo indicates that: “Local government has been strengthened. New legislation on administrative municipal boundaries, local self-government, and local government finance and decentralisation came into force in June.”⁶² The following year, the progress report concluded that: “There has been some progress in the area of local government reform and decentralization, working groups have been formed on legislative reform, establishment of new municipalities, capacity building.”⁶³ Also, reaffirmed by Freedom House report on 2009 indicating that: “The state showed improvement in local democratic governance”.⁶⁴

In 2010, there is some enhancement as the progress report shows that: “There has been some progress in the reform of local government administration. Kosovo has achieved significant progress as regards decentralisation. In April, the government extended the decentralisation action plan for two more years.”⁶⁵ European Commission’s financial contribution for 2010 exceeded “EUR 10 million, with the objective to support the implementation of the status settlement and advance the reform and capacity building of local self-government.”⁶⁶ On the following year, the progress report indicates that: “Significant progress has been achieved on decentralisation. Municipalities continue to face challenges in terms of capacity and

⁶⁰ Kosovo Local Government Institute. Implementing Decentralization in Kosovo: On year on. Friedrich Ebert Stiftung. Pristina, June 13, 2009. Pg. 4.

⁶¹ Ibid.

⁶² Commission of the European Communities, Brussels 5.11.2008.10.

⁶³ Commission of the European Communities, Brussels 14.10.2009. 8.

⁶⁴ Freedom House report. Democracy suffers dark year in former communist states. 2009.

⁶⁵ European Commission, Brussels 9 November 2010. 8.

⁶⁶ European Commission. 2010 Annual Programme. Municipal, Social and Economic Facility. 2011. Pg.1.

resources.”⁶⁷ Differently from national level, on local level Freedom House report indicated that: “Rating changes between 2008 and 2012 show improvements”.⁶⁸

The 2013, European Commission mentions some commitments such as: “Improved capacity, transparency of information on management and budget and reporting on municipal decision.”⁶⁹ European Commission encourages Kosovo, in the 2014 progress report noting that: “Efforts to further improve capacity of local government have continued, the government also improved guidance to municipalities on implementation of legislation. However, at both central and local levels, Kosovo needs to focus on improving 10 strategic planning.”⁷⁰ European Commission through IPA II 2014-2020 program, supported financially Kosovo with “EUR 7.6 million, to improve social and economic infrastructure in Kosovo municipalities.”⁷¹ According to the Freedom House, Nations in Transit ratings it is shown that: “From 2008 on Local Democratic Governance, Kosovo has made continuous improvement, 2008 with average score of 5.50 and 2013 score of 4.75, based on a scale of 1 to 7, with 1 representing the highest and 7 the lowest democratic progress”.⁷²

Overall, local government reform remains priority and Kosovo has continuously made efforts to increase the administrative capacity and facilitate the decentralization process. European Commission progress reports on the other hand, indicate that Kosovo throughout the years has made progress, it is evaluated that the capacities of local government had improved generally. Even though there are challenges which Kosovo is facing during the implementation of legislations and policy making processes.

⁶⁷ European Commission, Brussels, 12.10.2011. 8.

⁶⁸ Freedom House. Democratic scorecard. 2013.

⁶⁹ European Commission, Brussels, 16.10.2013. 8.

⁷⁰ European Commission, Brussels, October 2014. 9.

⁷¹ European Commission. Instrument for Pre-Accession Assistance (IPA II) 2014-2020. Kosovo Municipal, Social and Economic Infrastructure. 2014. Pg.2-3.

⁷² Freedom House. Nations in Transit 2013.

4. Comparison

In this chapter, I would like to reflect on some views that help to delineate the effectiveness of EU strategies in general and conditionality in particular on state building of BIH and Kosovo. We analyzed the EU impact and impetus by focusing on the outcomes of reforms of political institutions in two areas: public administration and local government. In both countries the EU, state building model is trying to encourage political reforms through its annual evaluation of progress reports and its financial and technical support.

In the case of Bosnia, we analyzed the outcomes of political reforms from 2005. At the beginning evidences suggests that the EU has played an important role in encouraging political reforms. The Commission reports in 2005 and 2006 noted mainly “positive steps” and “some progress” made in the area of public administration. This was also estimated in the democracy index ratings showing that Bosnia was in a better position than previous years. Also in the field of local government, the Commission indicated that: “Local government reforms are in line with the European Charter for Local Self-Government”. Reaffirmed by Freedom House that in this field Bosnia was in a “status quo”. EU was providing financial assistance to Bosnia through the CARDS and IPA funds in order to support political reforms.

Differently in the case of Kosovo, The Commission progress reports we analyzed from 2008, showed that: “Public administration in Kosovo “continue to be weak”. The following year, the Commission noted: “Some progress” but still public administration remains weak. While in the area of local government Kosovo was in a better position, the Commission stated that: “Local government has been strengthened”, “there has been progress in the area of local government and decentralization”. Assessed also by Freedom House that on a National level Kosovo it was declining but on a Local level it was improving. EU rewarding were on financial assistance through the CARDS and IPA funds.

Albeit, we mentioned that EU has played a positive role encouraging political reforms on both countries, also it is seen that EU has not been so effective to stimulate political reforms, instead reforms have been slow. From 2010 onwards in the case of Bosnia, the situation it is worse, associated with difficulties in implementing the legislations and the Commission changes the assessment from “some progress” to “very little progress”. However in 2014, the Commission shows concern about the situation indicating that: “A new strategy needs to be developed”. This was also assessed in the 2012 democracy index rating showing that Bosnia was in a worse position than 2005. In the field of local government although the situation remains the same. The progress reports stated that; “The legislations were in line with the European Charter for Local Self-Government”. In 2014, the Commission clearly stated that “the progress is slow”. Because of such a non-compliance with EU requirements, Bosnia went to stagnation, blocking of IPA funds.

Differently in the case of Kosovo, from 2010, the Commission indicates “Some progress” but still the capacity of public administration remains weak. The following year, the Commission shows “some progress” but notes the “political interference”. In 2014 the Commission stated that: “Very little progress and slow pace continues. This situation was assessed by the Freedom House indicating that “Kosovo on National Democratic Governance was declining. Anyway the EU continued to reward Kosovo through IPA funds and the importance that they were “fully operational”. While in the area of local government the position was much better. The 2010 progress report indicates significant achievement in regard to decentralization. The Commission encourages Kosovo for the commitments, like improved capacity, transparency of information. In 2014, the progress report noted that: “The efforts for improvement continue”. It was reaffirmed by the Freedom House noting that “On Local democratic government Kosovo from 2008 it was improving.

In this paper, I argue that in the case of BH, the EU was not so effective in promoting democratic state building in this two particular areas. Even though it was supported financially, the commission reports and the democracy index ratings showed the opposite, the EU changed its attitude, warning BH for freezing financial incentives but still Bosnia did not meet the EU requirements. Differently, in the case of Kosovo, which was initially standing in a better position, even though the reforms were slow improvements were made, especially in the field of local government, allowing Kosovo to met the EU requirements on decentralization.

Conclusion

Looking more deeply at democratic state-building in BH and Kosovo with a perspective of joining the European Union, is critical for understanding the effectiveness and impact that EU has in the transformation of formerly state socialist institutions. This research, reflected the EU engagement in Western Balkans and its approach towards democratic state-building on political reforms in Bosnia and Herzegovina and Kosovo. The two countries discussed here are Potential Candidate Countries, meaning entry according to the pace of reforms and yet there was a varying levels of political will to pursue reforms demanded by the EU.

Firstly, we discussed the EU approach and engagement in the Western Balkans, which was in different levels, starting with conflict prevention, peace settlement, state-building and finally assistance towards EU membership. Following this general overview, I analyzed how the EU has influenced the democratic state-building in political reforms in BH and Kosovo, particularly reforms in public administration and local self-government. Finally, I asked whether EU conditionality as a main tool, and Europeanization as a final goal was effective in promoting this reforms. What came as a result of this analysis, is that EU was not so effective in promoting democratic state-building in these three particular areas.

If I would have to assess the EU conditionality with the harmonization of legislation, then I would tend to say that conditionality was effective, because progress reports show that BH and Kosovo at the beginning were very successful in adoption of new legislations, laws and strategies. However, when it comes to implementation than I would say, that conditionality was not so effective. Therefore, the Commission progress reports after 2011, started to realize that these institutions lack implementation and from some progress the Commission assessed with limited progress, to no progress.

The European Union, even though has played an important and positive role in helping Western Balkan countries and encouraging them to adopt democratic reforms, to their public administration and local government. On the other hand, the analysis indicate that these reforms have been slow and left largely on paper, especially in public administration. Furthermore, despite the huge financial incentives in stimulating these reforms, I argue that financial assistance did not play the key role in promoting reforms in these areas. As, in the case of Bosnia, the Commission was reporting that there is “no progress” in managing these funds. Examination of progress reports and assessment of different indexes in BH and Kosovo showed slow improvements of public administration and local government reforms. It was stressed by the Commission that in both cases the reforms continued with a slow pace due to lack of political will. In light of that, the EU changed its attitude with a serious threat of withholding aid but still it was showed that conditionality was not so effective. Further field research it is necessary for closer understanding of EU effectiveness in promoting democratic state-building in these weak state of the region.

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Annex I: The European Commission and IPA

The European Commission has today finalised its 2014 package of pre-accession assistance programmes to support reforms in countries wishing to join the EU. The funding, totalling EUR 2 billion, comes under the Instrument for Pre-accession Assistance (IPA), and will be available to Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Kosovo and Turkey. The package also includes multi-annual programmes to support specific sectors over the next three years in Turkey and the former Yugoslav Republic of Macedonia.

“These funds will support concrete democratic and economic reforms: from modernisation of the judiciary and public administration, to investments in infrastructure and connectivity between the enlargement countries and with the EU Member States. This will further strengthen the region’s stability, its economy and its investment potential”, said Johannes Hahn, European Commissioner for European Neighbourhood Policy and Enlargement Negotiations.

This year’s funding will provide for a stronger ownership by the beneficiaries through integrating their own reform and development agendas. It will notably include a budget support programme to reform the system of public finance management in Albania, the first of its kind in the Western Balkans.

The programmes will focus on better governance, with projects aiming at reforming public administration, using EU assistance more efficiently, adopting and enforcing EU standards, as well as implementing more reforms in the judiciary and fundamental rights and further supporting the fight against organised crime and corruption.

Details per country:

| Country | Amount in EUR | Main sectors financed |
|------------------------|---------------|---|
| Albania | 66,746,389.00 | Democracy and Governance, Rule of Law and Fundamental Rights |
| Bosnia and Herzegovina | 22,581,834.00 | Democracy and Governance, Rule of Law and Fundamental Rights, Competitiveness and Innovation: Local Development Strategies, Education, Employment and Social Policies |

| | | |
|--|----------------|---|
| The former Yugoslav Republic of Macedonia 2014 national programme | 52,717,811.25 | Democracy and Governance, Rule of Law and Fundamental Rights, Competitiveness and Innovation |
| 2014 – 2016 multi-annual action programme | 81,271,609.70 | Environment and Climate Action, Transport |
| Kosovo | 66,050,000.00 | Democracy and governance, Rule of Law and Fundamental rights, Energy, Competitiveness and Innovation, Agriculture and Rural Development |
| Montenegro | 35,707,300.00 | Democracy and Governance, Rule of Law and Fundamental Rights, Environment and Climate Action, Transport, Competitiveness and Innovation, Agriculture and Rural Development |
| Serbia | 115,090,000.00 | Democracy and Governance, Rule of Law and Fundamental Rights, Energy, Competitiveness and innovation; and Education, employment and social policies. |
| Turkey 2014 national programme | 366,040,000.00 | Democracy and Governance, Rule of Law and Fundamental Rights, Energy, Agriculture and Rural Development |
| 2014-2016 multi-annual action programmes | 793,090,000.00 | Employment, Education and Social policies, Competitiveness and Innovation, Transport, and Environment and Climate Action |
| Cross border programmes | 11,400,000.00 | Tourism, Cultural and Natural Heritage, Environmental protection, Employment, Mobility, Social Inclusion, Competitiveness, SMEs, trade and investments, Youth, education and skills |
| Civil Society Facility 2014 – 2015 | 68,700,000.00 | Civil society empowerment, media freedom |
| Multi-Country | 152,600,000.00 | Horizontal support, regional structures and networks, regional investment support, territorial cooperation |
| Special measure for flood recovery and flood risk management | 127,000,000.00 | Flood recovery and prevention for Bosnia and Herzegovina and Serbia |
| Support measures | 21,082,478.00 | Audit, Evaluation, Monitoring, Information and Communication, support to OHR in Bosnia and Herzegovina |

Source: European Commission (2014) Instrument for Pre-Accession Assistance (IPA) : IPA: €2 billion package to support reforms in the Western Balkans and Turkey in 2014.

Annex II: Financial Assistance to the Western Balkans

EU financial assistance to the Western Balkans was substantial during the period 2000-2006, totalling € 5.4 billion. This amount includes considerable reconstruction aid after the Kosovo war.

Since the 1 January 2007 financial Assistance for the countries of the Western Balkans is provided through the Instrument for Pre-accession Assistance (IPA). The Commission remains committed to supporting the region with adequate funds to back EU policy priorities. A key role of IPA will be to act as a catalyst for attracting further domestic and foreign investment.

Under IPA, the countries of the Western Balkans are due to receive around € 2.7 billion over the next four years (2007-2010). A multi-annual indicative financial framework covering 2008-2010 (and confirming 2007 figures) was adopted by the Commission on 8 November 2006. The planned allocations by country (in million €) are shown in the table:

| Country | 2007 | 2008 | 2009 | 2010 | 2007-10 |
|--|-------|-------|-------|-------|---------|
| <i>Croatia</i> | 141.2 | 146.0 | 151.2 | 154.2 | 592.6 |
| <i>Former Yugoslav Republic of Macedonia</i> | 58.5 | 70.2 | 81.8 | 92.3 | 302.8 |
| <i>Serbia</i> | 186.7 | 190.9 | 194.8 | 198.7 | 771.1 |
| <i>Kosovo</i> | 68.4 | 64.7 | 66.1 | 67.3 | 266.5 |
| <i>Montenegro</i> | 31.4 | 32.6 | 33.3 | 34.0 | 131.3 |
| <i>Bosnia & Herzegovina</i> | 62.1 | 74.8 | 89.1 | 106.0 | 332.0 |
| <i>Albania</i> | 61.0 | 70.7 | 81.2 | 93.2 | 306.1 |
| <i>Total W.Balkans</i> | 609.3 | 649.9 | 697.5 | 745.7 | 2702.4 |

Source: Financial Assistance to the Western Balkans during the period (2000-2006) and under IPA during the period (2007-2010).

Part II

Democracy, Transformation and Governance

Political Management Performance in Bosnia & Herzegovina and Serbia

by Marjan Icoski

Marjan Icoski is born in 1989 in Ohrid, Macedonia. In 2013, he graduated from Iustinianus Primus Faculty of Law, University Ss Cyril and Methodius in Skopje, earning a Master Degree in Civil Law and Civil Procedure. After graduation he worked as a law clerk in a private law office mainly focusing on civil and administrative law issues. In 2015 he earned his second Master Degree from the European Regional Master in Human Rights and Democracy in South East Europe (ERMA) from the University of Bologna/Sarajevo as one of the best students of the programme. His thesis "The doctor's luxury: conscientious objection to abortion in Croatia" was amongst the awarded thesis by the programme's board. His fields of interest are international human rights law, democracy and public policy.

Abstract

The political, social and economic transformation towards democracy and market economy requires professional and responsible governance by the political elites. In the period of deep reforms the governments are the main actor for successful democratization. As democracy seeking countries with similar political and historic background, Bosnia and Herzegovina and Serbia in the period of 2011-2013 have shown significant disparities in the political management performance. In comparison, according to the data provided by Bertelsmann Stiftung Transformation Index, the political management performance in Bosnia and Herzegovina (BiH) is lower by more than two grading points and additionally, Serbia is ranked seventy two places higher. By using the comparative research method this paper will argue the democratic conditions in the both countries and their efforts for further democratization. While Serbia's political management have shown serious improvement and political maturity, especially regarding the European integration and the Kosovo's independence, the leadership capacities and consensus building process in Bosnia and Herzegovina are mainly predetermined by the post conflict constitutional framework and ethno-political power sharing system. The complexity of the Bosnia's Dayton structure creates difficult procedural and substantial obstacles for the political leadership in the country, and often gives opportunity for usage of the system for personal prosperity and fertile political positions. Hence, the political management performance in BiH is unsatisfactory and generates bad governance of the transformation reforms. On the contrary, the determination of the Serbian political actors placed the state on the right path to European accession and democratic prosperity.

Keywords

Bosnia and Herzegovina, Serbia, Europeanization, Democratization, Political Management Performance

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List of Abbreviations

| | |
|------|---|
| BiH | Bosnia and Herzegovina |
| BTI | Bertelsmann Stiftung Transformation Index |
| DPA | Dayton Peace Agreement |
| EU | European Union |
| FBiH | Federation of Bosnia and Herzegovina |
| RS | Republika Srpska |
| UN | United Nations |

Introduction

In modern democracy terms, the state political management is a complex process that embodies horizontal cooperation between the government and other non state institutions and civil society groups. In the period of crucial and deep reforms, the political management of post-communist countries is the main actor for achieving successful transformation. The turbulent process of political, economic and social transformation towards democracy and market economy requires good governance on many societal levels.

In the case of Bosnia and Herzegovina (hereinafter BiH) and Serbia the transition to democracy and market economy has not been linear, but rather significantly perturbed by post-conflict agendas and international assistance. The constant changing of the state-framework and the political establishment in the countries, together with the historic and political system heritage, gave similar starting grounds for democracy building.

The democracy-building in BiH began only after the cessation of a violent four-year conflict in 1995. The country emerged from the war divided largely into three zones *de facto* Para-states dominated by largely illiberal wartime ethno-national elites. BiH's constitution (Annex 4 of the Dayton Peace Agreement), with a critically weak federal center and two highly autonomous self-governing entities (Federation of BiH and Republika Srpska), was designed to end the war by reconciling competing visions of statehood, borders and self-determination rights for the country's three constituent peoples (Bosniaks, Serbs and Croats). Moreover, BiH was governed as a semi-protectorate after the war with a United Nations mandated High Representative. However, since 2006, the authority of the civilian and military missions has been much reduced.

Similarly, facilitated by the wars and nationalist mobilization, Serbia's President Milosevic established a semi-authoritarian system in the remaining parts of Yugoslavia and remained in power until 2000. In the Milosevic era, in the beginnings of the 1990's the Yugoslav National Army attacked the new form republics and in the late 1990's started violent military repression of Ethnic Albanians in Kosovo which provoked an air force attack from NATO. Moreover, Serbia's state framework has changed several times since the dissolution of communist Yugoslavia. Between 1992 and 2003, Serbia and Montenegro, the two still united republics of the former Yugoslavia, constituted the Federal Republic of Yugoslavia. Following a referendum in May 2006, Montenegro became an independent state and the state union was dissolved. As a consequence of its military defeat in Kosovo, Serbia had to accept a U.N. - led interim administration in Kosovo. This administration has exercised political authority over the territory since 1999, and in 2008 Kosovo declared its independence, subsequently recognized by the major Western states but fervently opposed by Serbia.

In addition, both countries signed the Stabilization and Association Agreement with EU in 2008. However, in the past years, Serbia made significant progress in democratization of the country and gained a status of Candidate Country and further, the EU Council adopted the negotiating framework in 2013, while BiH has made very limited democratization progress and maintained *status quo* position. The progress towards EU Integration is significant indicator for the improvement of the democratic constellations in the countries, having in mind that in these countries the democratization process is overlapping with their parallel Europeanization, or in other words, democracy and the democratic institutions are fundamental elements of their European perspective. Hence, the EU progress is an important signal for the quality of the work by the national political management regarding transformation reforms.

Using the individual country reports and evaluations of the Bertelsmann Stiftung Transformation Index (hereinafter BTI) for 2014, a global ranking of democracy, market economy and political management, further in this paper I will analyze and compare the political management performance in BiH and Serbia in the period of 2011-2013 through two variables: the steering capability and the consensus building as the main factors for good governance.¹ The consent on the strategic priorities and effective leadership which will fulfill the common goals through diverse cooperation, are distinctive elements for successful political performance. In the case of Serbia and BiH there are considerable differences between the capacities of the political elites to guide their country through the transformation. The political management performance in BiH is lower by more than 2 grading points and additionally, Serbia is ranked 72 places higher (See table 1, p.5). Interpreting the data provided by BTI,² I will answer the question why BiH's political management performance is remarkably lower than the Serbian; and what are the reasons for the bad governance of BiH, having in mind all above mentioned. Finally, drawing on these observations, I will argue that the vast differences between the governance of these countries is based on the constitutional framework and the ethno political system of BiH which generates nonfunctioning power-sharing relationships based on vital ethno national interests.

The paper has the following structure: the first chapter elaborates the role of the political management in the democracy building process and defines the steering capability and the consensus building process. Chapter two and three will present the findings of the political management performance in these two countries, respectively. Furthermore, in the third chapter I will compare the analysis of the previous findings, emphasizing the similarities and the differences between the two countries, and present how the constitutional framework in BiH affects the leadership capacities and the consensus building process, and in general, the political management performance.

¹ The Bertelsmann Stiftung's Transformation Index (BTI) analyzes and evaluates whether and how developing countries and countries in transition are steering social change toward democracy and a market economy. Focusing on the quality of governance, the Management Index assesses the acumen with which decision-makers steer political processes. The BTI is published every two years. This biennial evaluation of transformation and development allows us to assess observed trends and identify the outcomes of transformation strategies. The BTI expands the available body of knowledge about how political processes are managed and decision-making is conducted, and makes this knowledge available to policy-makers and other advocates of reform. Overall, the BTI offers a comprehensive body of data allowing a broad spectrum of actors to assess and compare the factors driving success in developing and transformation countries.- See: <http://www.bti-project.org/index/methodology/>.

² In this paper will be used other data provided by the EU progress reports and international and national NGO's.

Table 1: Political management performance-Data provided by BTI

| Political management performance on a scale of 1 to 10 - South East European Countries | Indicator | | | | Ranking-total 129 countries |
|--|---------------------|--------------------|------------------------|------------------|-----------------------------|
| | Steering capability | Consensus building | Management performance | Management index | |
| Serbia | 7.30 | 8.20 | 7.13 | 6.30 | 28 |
| Macedonia | 7.30 | 7.20 | 7.5 | 6.12 | 29 |
| Montenegro | 7.30 | 8.20 | 7.63 | 6.42 | 19 |
| Kosovo | 5.70 | 6.40 | 5.93 | 5.20 | 56 |
| Bosnia | 4.30 | 4.40 | 4.52 | 3.59 | 100 |

1. The role of the political management in the democracy building process in the Balkans

In this chapter I will address the concept of political management (governance) and its contribution to the democratization processes and society transformations in the young democracies. Moreover, the definitions of the steering capability and consensus building will be presented.

1.1. The importance of the political management for democratization and Europeanization

After the end of the wars in the 1990's and the fall of the semi-authoritarian regimes, the former Yugoslav countries have been striving to build democratic governments and societies. The democratic regime-building in the region coincided with state-building and post-war reconstruction. These countries were challenged by a triple transition: from war to peace, from a communist command economy to a liberal market economy, and from a single-party rule to a pluralist democracy. Therefore, the focus of EU integration in the Western Balkans lies on state-building to overcome the results of the violent break-up of Yugoslavia, which aims at rebuilding fundamental governance structures such as political institutions, civil societies and economic and welfare systems.³

Resolving statehood issues requires negotiations with neighboring countries, adding a fourth *volet* to the complex challenges that these countries are facing. At the heart of the problem is the state: its weakness is a major challenge for carrying out the necessary reforms for integration into the EU and for the resolution of internal and neighborhood problems. At the heart of the solution is democracy: the only insurance for the region to consolidate its states and societies.⁴ Consequently, these countries leveled their political courses and engaged vital changes in their social, political and economic systems in accordance with the western democratic principles and EU *acquis communautaire*.⁵ As stated by S. Keil:

³ E. Amitai, Reconstruction: An Agenda." In State building and Intervention. Policies, Practices and Paradigms, edited by David Chandler, London, 2009, p.101-121.

⁴ R.Balfour and C.Stratulat, "The democratic transformation of the Balkans", EPC issues paper No.66, 2011, p.3.

⁵ These criteria can be seen at: http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm.

The carrot of membership in the EU is used to motivate political elites in these countries to implement important reforms to strengthen state capacity and enhance democratic decision-making. *In fact, democratization is a further feature of Europeanization in the region.* Democratization in this context refers to the establishment and strengthening of democratic governance. This includes free and fair elections, a professional parliamentary service, cooperation between government and opposition, civil society input into government activities and legislation and the establishment of *Rechtsstaatlichkeit*.⁶

The term new governance is a modern concept of governance focusing mainly on the government, as one of many equal actors in society which together with the others actors and institutions constitutes a network for regulation and coordination of the policy sectors according to the preferences and interests of their members.⁷ The complex and long-term process of multilevel transformation of BiH and Serbia driven by the European aspirations, demands highly professional managing from the national political elites. In this period of essential metamorphosis of the society, the capacity and the will of the political management plays a crucial role of the further development of the democratic institutions and pro-European future of the countries. According to N.Curak and S.Turcalo, "In deep divided societies and fragile states the significance of the political consensus inside the elites is the crucial condition for integration and state strengthening. Otherwise, if there is a conflict of interests and values within, there is enormous chance for disintegration and paralysis of the state apparatus".⁸

Moreover, for R.Mayntz, equally important crucial issues for good governance are "... certain institutional and structural preconditions, both on the side of the political regime and on the side of civil society. Political authorities must be in a general way acceptable as guardians of public welfare."⁹ Consequently, the political elites as representatives of the *demos* have responsibility and accountability to provide a fertile ground and preconditions to meet all the necessary criteria regarding the democratization processes. In other words, the success of the democratic development and sustainable market economy of these countries is determined by the consistency, the consent and the effective cooperation from the political elites, both, on national and international level.

One of the most significant elements of successful political management is the steering capability and the goals consent by the elites. The leadership capability of the political elites includes setting strategic priorities, implementing policies, and innovation and flexibility in the governance system.¹⁰ The long term vision of the elites grounded in quality policies guarantees good governance. Hence, the steering capability can be defined as effective and responsible leadership through the transformation reforms capable to achieve the priority

⁶ Keil S., "Europeanization, state-building and democratization in the Western Balkans", Applied Social Sciences, Canterbury Christ Church University, UK, 2012, p.4.

⁷ Nekola M., "Political participation and governance effectiveness-does participation matter?", Center for Social and Economic Strategies (CESES), Faculty of Social Sciences, Charles University, Prague, Czech Republic, p.2. See at: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan022171.pdf>.

⁸ Curak N., Cekarlija Dz. Sarajlic E., and Turcalo S., "Political Elites in BiH and EU"-measuring values, University of Sarajevo, Sarajevo, 2009, p.11.

⁹ R.Mayntz, "From Government to Governance: The Case of Integrated Product Policy", International Summer Academy, Wuerzburg, Germany. September 7-11, 2003.

¹⁰ Bertelsmann Stiftung Transformation Index. -www.bti-project.org.

goals. On the other hand, very tightly interconnected and interdependent with the steering capability is the consensus building. The consensus building is a process that embodies dialogues and referenda by various entities (e.g. government, political parties, civil society organizations, ethnic groups and etc) in order to achieve a common agreement for divergent issues.¹¹ Consequently, in the manner of “hybrid democracies”¹², the concept of good governance is a common agreement, attitude and *praxis* for fulfilling the strategic democratic goals through conflict resolutions, reconciliation and citizenry participation.

¹¹ U.S. Department of State, “Governing Justly and Democratically Indicators and Definitions, 2012. <http://www.state.gov/documents/organization/78561.pdf>.

¹² “Hybrid regimes” or “Hybrid Democracies” are political entities characterized by a mixture of institutional features which are typical of a democracy with other institutions typical of an autocracy. See: Cassani A., “Hybrid what? The contemporary debate on hybrid regimes and the identity question”, Panel: “Breakdown of the Authoritarian Regimes and Democracy”, Rome, 2012, p.3.

2. Steering capability and consensus building of the political management in Bosnia and Herzegovina

In the transformation index provided by BTI for the reviewed period, the management performance in BiH is valued with score of 4.4 out of 10 and average management index of 3.95 out of 10, which ranks BiH on the 100th position of total 129 countries. Individually, the steering capability and the consensus building are valued with score of 4.3 out of 10 and 4.4 out of 10, respectively (table 1).¹³

2.1. Steering capability of the political management in Bosnia and Herzegovina

The political guidance in BiH during the review period has showed little capacity to override the private aspirations for government positions and power.¹⁴ The functionality and efficiency of all levels of government continued to be affected by fragmented, uncoordinated policy-making. The delays in the formation of the Council of Ministers and political disagreements between parties in the governing coalition delayed progress on the EU agenda.¹⁵ The new multiethnic coalitions on the state and federation levels reduced the policy to the lowest common-denominator issues.¹⁶ As with many other reform processes strategic documents are usually developed under pressure from international organizations.¹⁷ Strategic planning coordination or cooperation between levels of government is inadequate and usually follows international pressure or guidance. Moreover, even the country’s key goal, EU integration, is given little strategic direction.

¹³ Bertelsmann Stiftung Transformation Index-country report on Bosnia and Herzegovina. Available at: www.bti-project.org/reports/country-reports/ecse/bih/index.nc#chap14 (accessed 27.01.2015).

¹⁴ Ibid.

¹⁵ Commission staff working document, Bosnia and Herzegovina 2012 Progress Report. See at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

¹⁶ This is evidenced by the agreement reached between the largest two parties in each entity (Social Democratic Party, SDP, and Alliance of Independent Social Democrats, SNSD) in November 2012, which would reverse some of the international community’s flagship reforms in BiH, taking powers away from independent bodies (like the High Judicial and Prosecutorial Council, the Central Election Commission and the Civil Service Agencies) and giving them to politicians. See: www.bti-project.org.

¹⁷ Bertelsmann Stiftung Transformation Index-country report on Bosnia and Herzegovina. Available at: www.bti-project.org/reports/country-reports/ecse/bih/index.nc#chap14 (accessed 27.01.2015).

Second, policy development and implementation were seriously hampered by the protracted crisis in government formation in the federation and at the state level.¹⁸ The situation at the state level was most marked. During the 15 months of negotiations on government formation from October 2010 until the end of December 2011, there was a critically low level of output, and the state operated without an adopted budget, using emergency measures instead.¹⁹ Additionally, institutionalized or *ad hoc* policy learning in BiH is on very low level.²⁰ Assessment mechanisms are rare and the country's multiple layers of government reduce opportunities for policy learning. There is a dearth of mechanisms to monitor policy implementation or to enforce the decisions of the federal center (at state and federation levels) at lower levels of government.²¹

Third, ethno-national cleavages in BiH are significant and are reflected in the party system. Politicians play on interethnic tensions and lack of trust for electoral gain. The RS leadership continued to express support for RS secession, labeling the Bosnian state an unnatural and unworkable entity. The RS President Dodik, employed highly charged rhetoric to question the legitimacy of the state and the possibility of a harmonious common future between BiH's entities and various ethnic groups. In the face of allegations of corruption and mismanagement of public funds, Dodik has styled himself as the protector of Serb interests against an allegedly centralizing state and prejudiced international community.²² Croat politicians, excluded from government, called for the establishment of Croat self-government. Bosniak politicians are least likely to question the country's constitutional order, partly because their electorate favors a united BiH, which entails ethnic groups living together.

¹⁸ Ibid.

¹⁹ Even after the government was formed, the Centers for Civic Initiatives (CCI) reported in September 2012 that in the preceding nine months, parliament had operated without even a semblance of a work plan, adopting only 16 laws, and rejecting almost as many. The federation was also beset with political deadlock. In the first nine months of 2011, CCI reported that the federation parliament adopted only nine of 90 planned laws, a meager 10%. The governance in the RS is more straightforward, as all coalition partners are Serb parties and the entity is highly centralized. However, implementation rates in the entity are still low. CCI reported that during the first nine months of 2012, only 49 measures of 112 envisaged in the National Assembly's "unambitious" program of work were passed, amounting to a 44% implementation rate. - www.cci.ba/publications.

²⁰ Policy learning is the capacity of the government for innovation and flexibility in regards creating, implementing and controlling public policies. This is important for the democratization process because it creates a horizontal and vertical network of bodies and groups who are working to establish fertile ground for the qualitative compliance of the domestic and international policies.

²¹ There has been no tangible progress in establishing functional and sustainable institutions. Likewise, the Parliamentary Assembly of Bosnia and Herzegovina has made very limited progress in adopting EU-related legislation. Disagreements along political and ethnic lines have had a major negative effect on the work of the assemblies at the State level and in the Federation. - EU Progress report 2014. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf.

²² The High Representative has described this rhetoric at its worst as "hate speech." In September 2012, at a pre-elections rally, Dodik stated that genocide was not committed in Srebrenica, contradicting the rulings of the International Criminal Court and the International Criminal Tribunal of the former Yugoslavia (ICTY). - www.bti-project.org.

2.2. Consensus building in Bosnia and Herzegovina

The political actors in BiH are formally committed to the EU integration, which entails the continuation and intensification of the democratic and market economy transformations.²³ However, in practice, politicians from across the political spectrum are keen to entrench their positions, and show little readiness to undertake painful structural reforms, whether economic or constitutional.^{24 25}

Some provisions enabling institutional cooperation between government and civil society are in place, but the actual links between the political system and civil society organizations remain weak.²⁶ Civil society is generally not consulted in the course of agenda setting or policy formulation. International organizations and donor projects in BiH facilitate and support such cooperation, but there are rarely guarantees that civil society positions will be integrated into final policy.^{27 28} The BiH's politicians have generally absolved themselves of the moral or practical requirement to promote post-conflict reconciliation

²³ According to Sarajlic and Turcalo, in BiH the political consensus is substituted by ethnical and national interests: "The Dayton BiH is ethnical state in which federal institutions do not hold the decision making power. The institutions are only basis for ethnical representation and *a priori* divided political power and sovereignty. Hence, consensus building in BiH has never been political, but purely ethnical task... If the current political constellations and practice would not be deconstructed; there is a huge possibility for irreparable deconstruction of the BiH Federation as such."-Sarajlic E. and Turcalo S., "The policy of simulated consensus: EU, political elites and deconstruction of BiH", The political elites and EU, University of Sarajevo, Sarajevo, 2009, p.67.

²⁴ Tomic Z. and Granic I., "Political programs and attitudes of the political parties towards EU integration", Political elites in BiH and European Union, University of Sarajevo, Sarajevo, 2007, p.175. In this research are presented the official programs of the political parties and their actual fake formal aspirations towards EU integration.

²⁵ As stated by E.Sarajlic: "The political and constitutional system based on the current societal constellations, empowered the political elites to promote their own model of reproduction and institutional power-sharing canals. The Dayton Agreement, which compose the institutional framework of BiH, is in tight structural relations with the societal conflicts and the political elites as their generator... Designed in the manner of ethno territorial division, the Dayton political framework is shaped by the priorities of the elites, and on the other hand those elites are counter self product of the exact framework."- Sarajlic E., "The political elites in theoretical perspective", the political elites in BiH and EU, University of Sarajevo, Sarajevo, 2009, p.45.

²⁶ The Law on Associations and Foundations ("Official Gazette of BiH", No: 32/01, 42/03, 63/08 and 76/11) is in accordance with international standards and practice (registration, tax exemption etc). At the RS level the legal framework for including citizens in the decision-making processes is being implemented, FBiH Parliament created a Civil society Organizations register in order to consult them when a legal act is drafted, Agreement signed between Council of Ministers of BiH and non-governmental organizations (2007), was established Office for cooperation with civil society and etc. See: http://www.tacso.org/doc/BA_NA_Report.pdf.

²⁷ Civil society is thus involved more in monitoring government activities and reporting on their performance. General levels of apathy in society and low expectations of politics and politicians exacerbate the situation, as does the complicated and often opaque multilayered system of government. -EU Commission progress report 2014. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf.

²⁸ The legal and institutional framework for the observance of human rights is in place and the main elements of international human rights laws have been incorporated into the legal system. However, increased political and financial pressure on the media and intimidation and threats against journalists and editors are of serious concern. There needs to be more effort to make schools more inclusive and to address the continuing existence of 'two schools under one roof' in the Federation. Effective prevention and investigation of cases of hate speech, violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI).-EU Commission progress report 2014. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf.

in the war-scarred society. The initially international-led prosecution of war crimes has not been accompanied by a formal reconciliation process, and this is unlikely to happen without a sea change in the behavior of the country's political leadership. Politicians present sharply different versions of wartime events, often manipulating war crimes and victims for political gain.²⁹

Reform-minded politicians are extremely constrained within multiethnic coalitions of convenience that lack consensus on basic policy and their room for maneuver is significantly marginalized.³⁰ RS politicians' attempts to undoing state-building and their rhetorical support for RS independence creates an impression that the state of BiH as a whole is increasingly unworkable and no more than the dysfunctional sum of its parts. Calls for more Croat autonomy may have a similar effect and cause political instability. Politicians use these issues instrumentally for electoral purposes, without regard for the negative impact on social trust within BiH and the confidence of the EU and foreign investors.³¹ Moreover, distinctions between reformists and nationalist politicians who question and undermine constitutional rules are becoming less clear. The most significant anti-democratic veto actors control veto positions within the constitutional system of power-sharing and policymaking.³²

²⁹ Bertelsmann Stiftung Transformation Index-country report on Bosnia and Herzegovina. Available at: www.bti-project.org/reports/country-reports/ecse/bih/index.nc#chap14 (accessed 27.01.2015).

³⁰ The Stabilization and Association Agreement (SAA) signed in 2008 and ratified in 2011 has not yet entered into force as Bosnia and Herzegovina has not yet fulfilled the conditions [not implemented the decision of the European Court of Human Rights, *Sejdic-Finci vs BiH*].-EU Commission progress report 2014. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf.

³¹ The country remains at a standstill in the European integration process. There remains a lack of collective political will on the part of the political leaders to address the reforms necessary for progress on the EU path. There has been very limited progress on political and economic issues and on moving towards European standards- EU Commission progress report 2014. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf.

³² Bertelsmann Stiftung Transformation Index-country report on Bosnia and Herzegovina. Available at: www.bti-project.org/reports/country-reports/ecse/bih/index.nc#chap14 (accessed 27.01.2015).

3. Steering capability and consensus building of the political management in Serbia

In the BTI transformation index for the reviewed period, the management performance in Serbia is valued with score of 7.3 out of 10 and average management index of 6.1 out of 10, which ranks Serbia on the 28th position of total 129 countries. Concretely, the steering capability and the consensus building are valued with score of 7.3 out of 10 and 8.2 out of 10, respectively (table 1).³³

3.1. Steering capability of the political management in Serbia

Serbia's new political leadership since May 2012 has reiterated its commitment to political stability, democracy, reforms and the market economy.³⁴ As its main priority, the new cabinet listed the acceleration of European integration, and has put forth maximum effort toward getting a date to begin EU membership talks.³⁵ Other strategic prerogatives of the Prime Minister Dacic's government fall under the umbrella of conditions for EU membership. Serbia made progress towards a visible and sustainable improvement in relations with Kosovo, the key priority set out in the Commission's Opinion on Serbia's membership application.³⁶ In this regard, Serbia has demonstrated more urgency and political pragmatism than before, firmly adhering to legal and political ways and means to speed up its EU integration.³⁷ Although still politically prone to populism, and reluctant to perform some of the painful but necessary economic measures for political reasons, Serbia's leadership continued to harmonize its economic and social policies with those of the EU and showed a strong commitment of the nation's EU integration.³⁸

³³ Bertelsmann Stiftung Transformation Index-Country report on Serbia. Available at: www.bti-project.org/reports/country-reports/ecse/srb/index.nc (accessed 27.01.2015).

³⁴ Ibid.

³⁵ Ibid.

³⁶ Commission staff working document, Progress report 2012 Serbia. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf.

³⁷ Nonetheless, a 2012 paper from the Center for European Studies concluded that the durability of the pro-European line in the Serbian government's policy, and the implementation of agreements with Kosovo, is contingent on a positive response from the European Union: The decision of the European Council to open negotiations was reached due to Serbia's progress in the reforms and its continued commitment to the normalization of its relations with Kosovo.- http://csis.org/files/publication/100917_Bugajski_WesternBalkans_WEB.pdf.

³⁸ Bertelsmann Stiftung Transformation Index-Country report on Serbia. Available at: www.bti-project.org/reports/

The parliament has continued with intensive legislative activity, adopting more than 70 laws and 40 other acts since May 2012. It should be noted, however, that most of the laws were drafted and adopted hastily with the use of an urgent procedure, which usually affects the quality of laws.³⁹ Nevertheless, as Freedom House reported in 2011, the harmonization of Serbian laws with the EU is constantly undermined by lobbying interests and politicians' pandering to certain demographics like public employees and pensioners.⁴⁰ The policies of the new government under Prime Minister Dacic, just like its predecessors, have been significantly influenced by the direct input from international partners, making it impossible to gauge how much policy learning has occurred internally. Serbia's freedom of action is often limited, managed or directed by the European Union, the United States and to a significant extent, the IMF and the World Bank.⁴¹

3.2. Consensus building of the political management in Serbia

The current Serbian leadership is unified in its commitment to the further consolidation of democracy, the acceleration of selective market and social reforms, and European integration as a strategic goal.⁴² ⁴³ The ruling coalition can count on the current lack of serious parliamentary opposition, with the once powerful Democratic Party still trying to gain strength after election defeat, and the nationalist Serbian Radical Party almost vaporized from the political scene.⁴⁴

Over the years, the Serbian authorities have achieved significant, though not a sufficient, progress in strengthening the legal framework for the parliamentary accountability of the

[country-reports/ecse/srb/index.nc](http://www.bti-project.org/reports/country-reports/ecse/srb/index.nc) (accessed 27.01.2015). Ibid.

³⁹ Among the new and amended laws adopted in 2012 are the Law on Public Procurement, amendments to the Criminal Code (which introduces an abuse in public procurement as a new criminal offense), the Law on Budget 2013, and the Law on Public Companies that guarantees the substantial withdrawal of the state from the management of public enterprises. Parliament also changed the Central Bank Law in an effort to curb criticism from the European Union and the IMF that earlier legislation limited the bank's independence. www.bti-project.org.

⁴⁰ Freedom house report for Serbia, 2011.- <https://freedomhouse.org/report/freedom-world/2011/serbia>.

⁴¹ Bertelsmann Stiftung Transformation Index-Country report on Serbia. Available at: www.bti-project.org/reports/country-reports/ecse/srb/index.nc (accessed 27.01.2015).

⁴² Ibid.

⁴³ The results of an opinion poll by the Faktor Plus agency taken in November 2012 showed that 38% of Serbian citizens believe the government is moving in the right direction, while 26% thinks it is doing a bad job. Notwithstanding the government's strategic thinking and goals, there is a possibility that deeper anti-reform and anti-European feelings will foment inside Serbia as a result of the economic depression and social tensions, in conjunction with perceived foreign meddling, mostly over Kosovo. <http://www.faktorplus.rs/srb/>.

⁴⁴ Early parliamentary elections in March confirmed the European integration aspirations of the country. EU accession remains the main goal of the new government. It can count on an unprecedented two thirds majority in parliament to conduct the key priority reforms needed to drive the country on its European path. The Serbian government set itself ambitious economic goals in this respect. Constitutional reforms early on in the new legislature would represent a decisive progress in the accession negotiations.- EU Commission progress report for Serbia 2014. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

army and the secret services.⁴⁵ During the summer of 2012, the opposition sharply criticized the adoption of contentious changes in the Law on Security Services proposed by the ruling coalition. Both the former and the new Serbian government have introduced and implemented tough security and legal measures against a number of violent far-right and clero-fascist groups and banned two such organizations, though with mixed results.⁴⁶ The new government held the first direct meeting with the representatives of Pristina focusing on technical issues in March 2011, under the auspices of the EU High Representative for Foreign Affairs and Security Policy.⁴⁷

Serbia's political leadership has taken a number of steps to support partnership with civil society. In January 2011, Serbia acted on the European Commission's recommendation and opened the Office for Cooperation with Civil Society, tasked with initiating dialogue with civil society on matters of mutual interest. The overall role of civil society organizations still provokes the mistrust and a lack of understanding in some parts of the state administration.⁴⁸ The new Serbian leadership has been active in addressing issues of responsibility and guilt for the 1990's wars. Following the 2011 capture of the last two remaining war crimes fugitives, Ratko Mladic and Goran Hadzic, a new trial against a previously identified group of 10 individuals suspected of aiding Mladic to evade justice was restarted in 2012.⁴⁹ Nevertheless, BiH and Serbia agreed to the signing of a protocol on war crimes cooperation between the countries prosecution offices.⁵⁰

⁴⁵ Bertelsmann Stiftung Transformation Index-Country report on Serbia. Available at: www.bti-project.org/reports/country-reports/ecse/srb/index.nc (accessed 27.01.2015).

⁴⁶ As stated in the Freedom House 2011 report, this initiative marked the first time the Serbian government reacted to frequent calls from civic activists to deal with organizations that violate human and minority rights.

⁴⁷ In February 2012, Serbia and Kosovo reached an agreement permitting Kosovo's participation in regional meetings held in the Balkans under the name "Kosovo*" (with an asterisk). The two sides have made agreements on cadastre records, civil registries, custom stamps, regional cooperation, mutual recognition of university diplomas, freedom of movement of persons and the appointment of liaison officers. The implementation of the Integrated Border Management (IBM) began in mid-December 2012. www.bti-project.org.

⁴⁸ According to a study by the Bureau for Social Research (CSOs in Serbia: Challenges and Opportunities), the main problems that CSOs in Serbia face are a misuse of public funds for CSOs, political parties financing "via" CSOs, and ensuring that actions are sustainable. In addition, according to the Office for Cooperation with Civil Society, there were almost 16,500 citizens' associations registered in Serbia as of December 2011.- <http://www.birodi.rs/category/publikacije/>.

⁴⁹ Bertelsmann Stiftung Transformation Index-Country report on Serbia. Available at: www.bti-project.org/reports/country-reports/ecse/srb/index.nc (accessed 27.01.2015).

⁵⁰ Serbia continued to adopt a constructive approach in regional cooperation and made significant improvements when it comes to relations with some of its neighbors. EU progress report 2014. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

4. Comparison

The management performance profiles on steering capability and consensus building in BiH and Serbia in the previous chapters have shown significant differences in the capacity of the political leaders for successful transformation towards democracy and market based economy. The 100th position with management performance of 4.4 place BiH in the category of countries with weak capacity. On the other hand, the 28th position with management performance of 7.3 categorized Serbia as country with good capacity for managing transformation.⁵¹

Regarding the steering capability, the political elites in BiH have shown little capacity for further development of the democratization process placing their power aspirations as priorities. The political crisis invoked by lack of long term development vision and the incapability to form coalition government, together with the difficulties for cooperation between the levels of government, created a hostile environment for good governance. On the contrary, in Serbia, the political leadership continued with the implementation of EU democratic policies and legislative instruments accelerating their assessment. Additionally, the political pragmatism and positive approach towards the independency of Kosovo are proof of their common vision for the European future of their country. However, in both countries the legislative reforms especially in the economic sphere are insufficient and often under pressure from the lobbying groups and private interests of the elites.⁵² Furthermore, the policies in the both countries are under direct influence and assistance of the international community and are mostly managed by the EU and the international financial institutions.

Second, in BiH exists a fake, superficial consensus regarding the Europeanization of the country. In practice, the genuinely reform minded politicians are limited by the multiethnic coalitions and their nationalist interests. In addition, the rhetorical support for RS independence and bigger Croat's autonomy, supported by the anti-democratic actors who abuses the constitutional guaranteed veto of the power sharing framework, deepen the ethno-cleavages and contribute for unworkable consensus building atmosphere. Additionally, the civil society is insufficiently included in the policy-making processes and the maturity of the elites for post-conflict reconciliation is very limited. *A contrario*,

⁵¹ Just for illustration the others former Yugoslav countries members of EU have similar management performances. Croatia is ranked on the 18th place (index 6.46), Slovenia on the 20th (index 6.30). Also the others members of EU who are still in the process of development are evaluated as countries with good capacities for transformation. For example, Slovakia 7th place (index 7.09); Lithuania 8th place (index 7.08); Czech Republic 17th place (index 6.57); Bulgaria 21th place (index 6.30) and etc.- www.bti-project.org.

⁵² Freedom house report for Serbia, 2011, available at: <https://freedomhouse.org/report/freedom-world/2011/serbia>. See also: Bertelsmann Stiftung Transformation Index-country report on Bosnia and Herzegovina. Available at: www.bti-project.org/reports/country-reports/ecse/bih/index.nc#chap14.

in Serbia the Europeanization as a strategic goal produces a wide consensus in the political arena. The institutional and legal framework is directed in place and there is progress in the partnership between the politicians and the participation of the civil society and protection of human rights. More clearly, the effort for stabilization of the relations with Kosovo is a huge step forward in the process of preventing and resolving ethnic, national and religious conflicts. Yet, in both countries there is a space for improvement in the civil society sector besides the decent legal framework. The majority of the NGO's are financed from external sources and they are partly included in the policy making process. Additionally, the countries made a significant progress in the bilateral reconciliation relations signing the protocol on war crimes cooperation between the prosecuting authorities.

Having in mind all above mentioned, we can pose the question why BiH's political management performance is very low in comparison with Serbia (and equally with the other post communist Balkan countries)? In addition what the core essence of the unwillingness of the politicians to built consensus and provide effective political leadership is? Can we talk about "Europeanization"⁵³ or "Latinization"⁵⁴ of BiH as a regional example of unfulfilled social expectations, weak structures of political representation, populism, bad governance and the general weakening of reform dynamics?

If we analyze the language that is being used in the BTI periodical reports (similarly in others analysis as the EU progress reports, NGO's periodical reports and etc), such as "unworkable entity", "non functioning multiethnic coalition", "antidemocratic actors using their right to veto", "secession rhetoric", "non cooperation between levels of government", "hate speech", "ethno cleavages", "vital interest" and etc. we can notice that the main issues emphasized in the findings are actually part of the language of the constitutional structure in the country.

First, the reason for the secession speech and nationalist rhetoric even after twenty years lies is the fact that DPA in order to achieve and maintain peace, created a state with weak center of power and two separate highly autonomous ethnic entities (FBiH and RS), besides the will of the polity, political representatives and the national groups.⁵⁵ The "imported" structure generated of and by the pressure of the international community did not withhold the desires for more autonomy and even independent states.⁵⁶ The current legal and political constellation highly reduces the chances for successful cooperation between levels of complex government and creating and implementing effective

⁵³ Europeanization as "an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making", yet as well as building a stable "western example" institutional democracy. See: Ladrech, R., 'Europeanization of Domestic Politics and Institutions: The Case of France', *Journal of Common Market Studies*, Vol. 32, No. 1, pp. 69-88.

⁵⁴ Many Latin American democracies are characterized by unfulfilled social expectations, weak structures of political representation, populism, bad governance and the general weakening of reform dynamics or the so called "Latin disease". See: Brusis M., Thiery P., "Comparing political governance-Southeastern Europe in Global Perspective", Bertelsmann Group for Policy Research, 2006, p.18.

⁵⁵ Constitution of the Federation of Bosnia and Herzegovina, 18 March 1994, available at: <http://www.refworld.org/docid/3ae6b56e4.html> [accessed 7 February 2015], Article 1, paragraph 3.

⁵⁶ The constitution of RS was adopted as a "constitution of a separatist entity claiming to be independent state."- Opinion on the Constitutional situation in BiH and the powers of the High representative adopted by the Venice Commission, no. CDL-AD (2005) 004 Paragraph 4 and 5, Venice 11.03.2005. Available at <http://www.venice.coe.int/webforms/documents/CDL-AD%282005%29004-e.aspx>.

democratization policies.⁵⁷ The ethnic key used in the political institutions can hardly provide good mechanisms for cooperation and policy control. Furthermore, the vastly different political and ideological positions on the future constitutional shape of BiH and the current ethno territorial entities with national(istic) prefixes do not create a common vision for BiH as such. Similarly, the structure of the country gives an open ground for promoting national interest while neglecting the state ones. As a result, in the current constitutional and political system of BiH, the separate national entities and the national based vision of the country are significant obstacles for effective leadership.

Second, the structure and functioning of the power-sharing system in BiH favors representation and protection of the collective interests only of the constituent peoples by fair ethnic key. The exclusive multi level system of governance includes certain protective mechanisms in the decision making in BiH representative bodies. Above all, it is the mechanism of protection of vital national interests in the House of Peoples of the BiH Parliamentary Assembly (equally on the cantonal and entity representative level, and in the Tripartite Presidency).⁵⁸ This mechanism provides each of the constitutional peoples with a right to veto to ensure that no decision of vital national interest is taken in contravention of any of the constituent peoples. In other words, only by simple majority vote of the respective national group can block the decision making process without any explanation and without any criteria.⁵⁹

Moreover, in the Parliament Assembly as a regular way of the decision making process, the rule is established so that majority of present and voting is required to adopt a decision with a provision that the majority must include at least one third of the votes from each entity (entity interest).⁶⁰ As a result, lack of common direction seriously hampered the output of the government multiethnic coalition, which operates according to power-sharing rules that give ethnic groups and representatives from each entity veto rights over common decisions. Additionally, the interethnic cleavages and the lack of consensus into the governance system produced low level of cooperation and inclusion of the civil society. If we further add the deep post-conflict division of the society and the low level of

⁵⁷ The governance structure of Bosnia and Herzegovina consists of: nine ministries at the state level, 32 ministries at the entity level (16 in the Federation of Bosnia and Herzegovina (FBiH) and 16 in Republika Srpska (RS)), 130 ministries at the cantonal level in FBiH, while there are 142 municipalities (79 municipalities and two cities in FBiH and 63 in RS) with their legislative and executive structure. There is a total of 13 Assemblies. A third unit is a small multi-ethnic area, Brcko, designated as a District, with an administrative and legislative apparatus independent from the entities.

⁵⁸ The Parliamentary Assembly shall have two chambers: the House of Peoples and the House of Representatives. The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs). The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska. Nine members of the House of Peoples shall comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present. The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska. Members of the House of Representatives shall be directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. A majority of all members elected to the House of Representatives shall comprise a quorum.- *Constitution of the Federation of Bosnia and Herzegovina* [], 18 March 1994, available at: <http://www.refworld.org/docid/3ae6b56e4.html> [accessed 7 February 2015], article 4.

⁵⁹ It is not defined in the constitution and it is interpreted very radically and extensive.

⁶⁰ Constitution of the Federation of Bosnia and Herzegovina, 18 March 1994, available at: <http://www.refworld.org/docid/3ae6b56e4.html> [accessed 7 February 2015], article 4, paragraphs 1,2 and 3.

reconciliation, it is inevitable that this vital interest veto system is counterproductive and has crucial influence on the consensus building between the national political elites and in general, on the political system and the right of the citizens.⁶¹

⁶¹ On the other hand, in the academic circles there are opinions about the abuses of the system from the elites and intentional preservation of the *status quo*. The lack of the political will to change the constitution (after two unsuccessful attempts), the mystification of the EU and the fictive consensus are the main arguments for these claims. For this scholars, only the deconstruction of the system leads to deconstruction of the impotent political structure. See: Curak N., Cekarlija Dz. Sarajlic E., and Turcalo S., "Political Elites in BiH and EU"-measuring values, University of Sarajevo, Sarajevo, 2009.

Conclusion

As argued in this comparative study, BiH contrasted to Serbia has major problems regarding the governance of the state. The discrepancies between the results achieved and the EU progress have shown that BiH has very low political capacity for managing the transformation. The unsuccessful cooperation between the entities and the federation, the veto system based on the vital national interest, the complexity of the parliament procedure, the ineffective reconciliation policy, the nationalist and secession rhetoric's and etc. are the main contributors for bad managing. Almost after twenty years from the bloody ethnic war, the political elites are not ready and capable to overcome the differences and trace the path towards democracy and prosperity through the system based on the DPA. The complexity of the system is often used by the political leaders to strengthen their positions and to trace the path for winning the next elections. The civil society sector as a crucial part of the modern democratic state is neglected and put on the margins of the governance. The lack of effective cooperation with the civil sector misses the "ground's voice" and does not address the state issues in substantial manner.

On the other hand, the findings for the political management in Serbia have shown significant improvement and political maturity. The broad political vision for European Serbia influenced the institutional and legal changes towards sustainable democracy. The adoption of new laws in "European spirit" and the addressing of sensitive questions in the international sphere presented Serbia in good light in the international scene. The policy discourse concerning the independency of Kosovo and the prosecution of the war crimes are a strong signal for the international community for Serbia's political determination. The strong unity of the government clearly has taken the task of transformation of the society and the economy seriously, although the civil society sector needs to be more included in the system of governance.

To sum up, the bad leadership and lack of common vision are structurally based on the existing power-sharing system grounded in the BiH's constitution and the ethno-national division guaranteed in. BiH needs to provide serious efforts for developing sufficient capacities for successful leadership and political consensus in consideration with the current system. By comparison, Serbia is only on the right way for further development of sustainable democracy and a good regional example to follow. Maintaining the political discourse and dedication to EU integration are primary future tasks for effective democratic progress of the country.

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Democracy and the Role of Archives in the Creation of the States of Slovenia and Kosovo

by Rastko Antić

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Always the eager student, Rastko returned to studying last year with a Master in Human Rights & Democracy at the Universities of Sarajevo & Bologna. The purpose of this was to bridge his interests between politics, anthropology, & actions in public spaces. He continues to pursue new means of combining these interests as an activist, writer, & academic. [Rastko believes we need to bring postmodernism into institutional politics to fight neoliberalist world order rather than try to reinforce leftist policy.] You can find more of his work on www.etzeichen.wordpress.com or follow him on Twitter @kokoschkachanel.

Abstract

In this paper, the notion and history of the democratic archive has been developed as it appears in theory and in international law (Chapter 1) to ground a study of the democratization of archival practice in the Republics of Slovenia (Chapter 2) and Kosovo (Chapter 3). A final contrast between the countries, against the backdrop of EU norms and practices illustrates the difference between Slovenia's consolidated democratic archives to Kosovo's archives in transition (Chapter 4). This is evident in both the legal frameworks of the countries and in the level of archive accessibility alike. A comparison between two states in more equal positions would neither be able to show the difference in stages of democratization – consolidation and transition – nor give opportunity to make recommendations for consolidating democratic practice for states in transition. The study is placed on the backdrop of Derrida's *Archive Fever* (1995) and the wave of theory works on archive science that followed as well as on the Convention for the Protection of Cultural Property in the Event of Armed Conflict and on the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Keywords

Archives, cultural property, free access to information, Slovenia, Kosovo.

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Introduction

The democratization of archives represents the lowest common denominator of the freedom of information in any country. A country that does not give open access to its documents cannot be relied on for media and research freedom, cannot be named democratic.¹ The multifarious functions of archives include: identity building of an institution or nation, acquiring supporting evidence in legal disputes, enabling historical research, and representing a testament to democratic values. “In a world of continuous and rapid change, modern archive services in the 21st century are an element of continuity, stability and provide a solid base for essential information and indispensable documents and archives, which are among the prerequisites for the democratic functioning of our societies”.² A democratic archive is understood to include the following core features: open access without discrimination, no deliberate exclusion or alteration of documents, protection of individual privacy, and collaboration with other state archives. Defining a democratic archive cannot be said to be controversial, as defining a democratic country might be. The past should be predictable, after all.³

This paper will look into the democratization of archives in the Republics of Slovenia (Chapter 2) and Kosovo (Chapter 3). These are states not only at geographic poles of former Yugoslavia, but also at completely different stages of nation-building and with unlike structures of the physical archives. Nevertheless, they once did share common policies under communist rule⁴ and the two countries also share objectives of modernizing their archives to United Nations Educational, Scientific, and Cultural Organization (henceforth, UNESCO) and European Union (henceforth, EU) standards (Chapter 1). Assessment of their success at modernization will consider two variables: the legal framework in place in the respective countries and the accessibility of their archives – how much is available for viewing and to whom. Studying the accessibility of these archives is a means of evaluating the stage of democracy’s *consolidation* in these countries, as opposed to the degree of formal (legal) transition. “In general terms, democratic consolidation is not only a much lengthier process

¹ It is a hotly contested point in the information age and the degrees of accessibility and restriction are in constant debate – particularly the policies of China and Russia, or as dramatized by the case of Edward Snowden.

² European Commission. “Report on archives in the enlarged European Union”. Luxembourg: Office for Official Publications of the European Communities, 2005. ix.

³ Rewriting the past is still practiced, as a recent article develops a European example, stating “the battle over narrative is as important as the outcome of the shooting war” and “It is only when Russia and Europe share a common understanding of past events that something durable can be built between them”. (Nougayrede).

⁴ 89 separate laws regarding archival practice were passed in Yugoslavia between 1945 and 1986 (cf. Habjan, Hana. “Slovene archives in transition from joint state of the Socialist Federal Republic of Yugoslavia to independent state Republic of Slovenia: Reflections of the transition in Slovene archival theory and practice”. Conference of Catalan Archivists in Barcelona, May 2013. <http://www.arxiv.org/index.php/documents/activitats/1308-slovene-archives-in-transition-from-joint-state-of-the-socialist-federal-republic-of-yugoslavia-to-independent-state-republic-of-slovenia-reflections-of-the-transition-in-slovene-archival-theory-and-practice/file>).

than transition to democracy but also one with wider and usually deeper effect. The idea is that the internalization of rules and procedures and the dissemination of democratic values through the activation of civil society and a *remaking* of the political culture”.⁵ The archive is a crucial institution in forming structural democracy within a state. In a concluding comparison between Slovenia and Kosovo along the basis of the EU prospective changes (Chapter 4), the distinction between consolidation and transition will be key in understanding the degree of archival democratization in the countries. Archival approaches are dynamic and various; as there is a trend to universalize archival methods, it is worthwhile to look into these processes of democratization in determining a future direction.

⁵ Pridham, Geoffrey. “EU Enlargement and Democracy in Post-Communist States”. *Journal of Common Market Studies*. Vol. 40, No. 3 (2002). 955, emphasis his.

1. The archive as political object

The archive serves states as a memorybank on which both the nation and its citizens rely for a solid sense of identity – “The loss of archives is as serious as the loss of memory in a human being; societies simply cannot function properly without the collective memory of their archives”.⁶ In Europe, as in Asia, armed conflict is responsible for the greatest part of archival destruction.⁷ Three forms of attacks on archives can be identified: (1) genocidal, where the intent is to wipe out the cultural heritage of a people;⁸ (2) rememory, sometimes practiced by the leaders of the same country to cleanse certain episodes in the country’s history; (3) terrorism, destruction for the sake of bureaucratic difficulty. All three will make appearances in the Slovenian and Kosovar examples. Although attempts at protecting archives and similar structures⁹ – libraries, museums, and cultural centres – have been around since the end of WWII (see 1.2), signaling a recognition of their importance, any academic consideration of the subject was slow coming.¹⁰

1.1 Derrida’s *Archive Fever*

One work stands out in the field, if not for its scholarly contribution to archive sciences at least for its influence: after Jacques Derrida’s *Archive Fever* of 1995, there was an explosion of writing on the subject. In it, Derrida discusses the linguistic and spatial roots of *archive*: “initially a house, a domicile, an address, the residence of the superior magistrates, the archons, those who commanded.”¹¹ Why did they command? Because they had sole access

⁶ UNESCO. “Memory of the World: Lost Memory: Libraries and Archives destroyed in the Twentieth Century2”. Paris : UNESCO, 1996. 19.

⁷ *Ibid.*, 29.

⁸ Zgonjanin, Sanja. “The Prosecution of War Crimes for the Destruction of Libraries and Archives during Times of Armed Conflict”. *Libraries and Culture*, Vol. 40, No. 2 (Spring, 2005). 128.

⁹ The question of protecting physical archives seems likely to be superceded in the coming century with mass digitalization of such records already happening in developed countries. This is an instance of technology contributing to security. Nevertheless questions regarding the integrity of the information, the accessibility of documents, and means of their use will never be superceded.

¹⁰ Of course, there were earlier documented ideas of archival practice, such as Gottfried Wilhelm Leibniz’s which already connected the running of archives with the running of state, but no movement could be said to exist until the late 1990s. Elio Lodolini’s study of Leibniz’s archive theory (1998) belongs to this movement. (cf. Lodolini, Elio. “Leibniz’s Theory on Archiving”. *Information Summary on Archives*. No. 9 (2001): 6–7.).

¹¹ Derrida, Jacques. “Archive Fever: A Freudian Impression”. *Diacritics*. Vol. 25, No. 2 (1995). 9.

to the archived treasure – protected alike from enemies and countryfolk – which ensured that they could be the sole interpreters of the information, as per that familiar formation of knowledge as power. For Derrida, this is the beginning of the State, patriarchy, and Legal Systems sheltering to protect their authority. A counterforce only appears during the French Revolution, where free distribution of information, access to libraries and records played an essential part; the Americas and many other regions followed suit. By connecting the repetition of archives – its reproducibility, reaccessibility, recollection – to Freud’s death drive, Derrida offers an explanation of the significance of retaining memory: only by storing the past, can a nation work towards overcoming it.¹²

1.1.1 Post-Derridean theory

The next generation of archive theorists were more critical of the archival process itself. While being able to praise the archive for its “superior[ity] to actual memory in terms of its accessibility, its durability, its scope, and its promise of objectivity and stability”,¹³ there is general consensus that the archive is not in fact an all-powerful knowledge machine. That is to say, truth does not reside in the archive and the types of truths that can be extracted from an archive are, of course, limited: “the methods of transmitting information shape the nature of the knowledge that can be produced”.¹⁴ The articles compiling an archive represent the pre-interpretive history of a country or group of people; they are important in that they account for the future potential of developing narratives, historical accounts, and nation-building. As well as being curated, the contents of an archive are incidental – collections of surviving samples or randomly fossilized objects. “[T]he archive as detritus turns around the presumptions of neutral detachment, objectivity, fidelity, consistency, and authenticity – instead claiming partiality, fluidity, randomness, and memory”.¹⁵ Although the starting point of analysis, an archive is still a medium, neither a primary source, nor history. We must treat the misbalance seriously as it represents all that remains once the ethereal disappears, “it is what has been made available, what has been thus presented to us, a kind of gift, which is to say also – for future constituencies, future publics – a kind of debt”.¹⁶ The archive is a responsibility.

¹² Ibid., 14.

¹³ Reason, Matthew. “Archive or Memory? The Detritus of Live Performance”. *New Theatre Quarterly*. Vol. 19, No. 1 (2003). 86.

¹⁴ Manoff, Marlene. “Theories of the Archive from Across the Disciplines”. *Portal: Libraries and the Academy*. Vol. 4, No. 1 (2004), 12.

¹⁵ Reason, Matthew. “Archive or Memory?” 89.

¹⁶ Osborne, Thomas. “The Ordinarity of the Archive”. *History of the Human Sciences*. Vol. 12, No. 2 (1999), 57.

1.2 Archive protection under International Conventions

While attacking archives is a regular military strategy, that is not to say such aggression can be normalized or legitimated; a number of international conventions exist to protect archives. The Convention for the Protection of Cultural Property in the Event of Armed Conflict was first, compiled in the Hague in 1954. It is under this Convention that the right of protecting archives and other cultural spaces – both the building structures and their contents – was introduced. It appears in the wake of WWII, “recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction”.¹⁷ Yugoslavia was among the first countries to sign on 14 May 1954, yet it was the crimes enacted during the break-up of that same federation that led to a Second Protocol being drawn up in 1999. In the Second Protocol a Committee for the Protection of Cultural Property in the Event of Armed Conflict was established to serve in extra-ordinary situations; in peace time, the Committee meets yearly to develop guidelines for implementing the protocol and to maintain and promote the List of Cultural Property under Enhanced Protection. Like Yugoslavia, many other non-democratic countries had signed the 1954 Hague Convention as there was no penalty for breach in place until the Second Protocol’s amendments when Jurisdiction, Prosecution, and Extradition were incorporated through Articles 16, 17, and 18 respectively.

The 1970 Paris UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is the other major tool for protecting the contents of archives in international law. As well as protecting the cultural property, there are strict policies of restitution in place. Yugoslavia never signed this Convention. Successor States signed in the following order: Croatia in 1992, Slovenia together with Bosnia and Herzegovina in 1993, Macedonia in 1997, Serbia in 2001, and Montenegro in 2007. Kosovo is yet to sign.

¹⁷ UNESCO. “Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict”. 14 May 1954, entered into force 7 August 1956.

2. Slovenian example

After its independence from Yugoslavia, Slovenia already had all the resources to update its archival spaces and practices from the communist strategy – adoptive of classified archives and falsified statistics – to the UNESCO standard (as per 1.2) and European cooperativeness (to be elaborated in 4.1). The beginnings of a unified archive in Ljubljana are long-standing, dating back to 1859 with Anton Aškerc, after whom the awards for excellence in Archival Science is named. A separate archive was officially created under the Kingdom of Yugoslavia in 1926, although these were kept in the same location, the Carniolan Provincial Museum, and conflated with the State Archive. The Central State Archives of Slovenia as a separate institution was established only in 1945 – after many losses to archives around WWII – as Yugoslav social order was being arranged and parts of the archives become publicly accessible for the first time.¹⁸ The Central State Archives would undergo some changes in nomenclature, though always remain recognizable; today's variant is the Archives of the Republic of Slovenia. An Archival Association of Slovenia (AAS) has existed since 1954, which organizes conventions and two relevant publications. Contents of the archives include everything from records of administrative authorities past and present, family records from the 13th century onwards, as well as charters, manuscripts, and over 90% of all Slovenian films. Evidently, these objects together make up the heritage of the Slovenian people, representing their political, economic, cultural, and international relations practices.

Conflation between the communist records and the State Archives after Slovenia's independence from Yugoslavia was almost immediate. Their website announces that “the so-called ‘special archives’¹⁹ were abolished and merged with the national archives. The Historical Archives of the Central Committee of the League of Communists of Slovenia merged with the national archives in 1990, the former Archives of the Institute of the History of the Labour Movement (later renamed the Institute of Contemporary History) was included in 1992, and in 1998, so was part of the Archives of the Ministry of Internal Affairs, which kept records of the National Security Agency”.²⁰ The importance of integrating the archives of old and new political systems will become apparent when considering its policy and public uses.

¹⁸ Glažar, Natalija. “Archives in Slovenia”. Ministry of Culture. http://www.culture.si/en/Archives_in_Slovenia.

¹⁹ “These ‘special archives’ were the Historical Archive of the Central Committee of the Slovenian League of Communists (in 1990), the former Archive of the Institute of the History of the Labour Movement (in 1992) and the Archive of the Ministry of Internal Affairs (in 1998) which kept records of the National Security Agency” (2005 INSAR report)

²⁰ “About the Archives”. Ministry of Culture. http://www.arhiv.gov.si/en/about_the_archives/.

2.1 Legal framework

In 2006, the National Assembly of the Republic of Slovenia adopted the Protection of Documents and Archives and Archival Institutions Act (PDAAIA) supplanting a 1997 equivalent. Even the older Act was already compliant with UNESCO standards: allowing for the ideal environmental storage, a focus on retaining the integrity of the documents, preventing illegal acquisition and distribution of archival material, and – this is where the 2006 law excels – enabling their reliable digital conversion for long-term preservation. Equal value is now given to digitalized documentation as to the originals (Article 31). The 2006 Act also states that, while allowed to be temporarily exported, the archives cannot be alienated from Slovenia (Article 42) – this conforms to the value that an archive is a national treasure. Even the duties of Archival public service are stipulated (Article 53) like the duties of the newly-formed Archival Commission (Article 67) in this comprehensive Act. Articles 92–97 note the fines for the various possible breaches of these laws. The greatest issue for Slovene archivists today is how to assimilate private archives to the public ones and which policies specific to private archives work best.

Observing the PDAAIA, it is not difficult to see how Slovenia is an example of success of an ex-Yugoslav Nation organizing an efficient archival system under its new shape as a democracy, being able to follow the advice of the 1954 Hague Convention in full:

Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict [...] shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.

Sensitive material regarding national and public security, defence, intelligence, and security of the State will be made publicly available 40 years after their creation; any records from before the formation of the Republic of Slovenia are already freely accessible.²¹ The policy for the personal records of individuals allows 75 years of privacy from the time of creation or 10 years after the concerned individual's death. Once in the public domain, however, no restrictions are put on who is able to access these documents. Under special circumstances, records can be retrieved earlier to settle legal cases, for instance when the now-famous “erased” are looking to prove the exile of their families in accordance with the

²¹ The crucial Article 65.3 stipulates in full: “The archives created before the constitution of the Assembly of the Republic of Slovenia on May 17, 1990, relating to former political organizations (e.g. League of Communists of Slovenia, Socialist Alliance of the Working People, Trade Union Federation of Slovenia, Alliance of Socialist Youth of Slovenia, Alliance of Leagues of Combatants during WWII in Slovenia, Alliance of Reserve Military Officials of Slovenia), internal affairs authorities (e.g. police), judicial authorities (e.g. courts, prosecutors, prisons) and intelligence and security services shall be available without limitations, except for those archives containing sensitive personal data acquired with violations of human rights and fundamental freedoms, and relating to persons, who were not public functions holders.”

Act of Victims of War Violence. The “erasure” was an act of rememory, an attempt to deny the shared past with the country’s Western Balkan neighbors.

2.2 Accessibility

In the early days of the national archive, true to Derrida’s supposition (1.1), access was limited to the archive holders and people of influence. Today, nonetheless, in true democratic fashion, Art. 63.1 of the PDAAIA reads: “Public archives shall be accessible for use in archival institutions to any person, who has submitted a written request, or shall be available to anyone on the web”. There is no evidence to show that this Article is not being followed; the 2005 Information Summary on Archives (INSAR) report²² – issued one year after Slovenian admission into the EU – also applauds the use and accessibility of the national archives. The only special requirement is registration, itself a measure for protecting the archives. No restrictions are put on foreign citizens; all relevant information is transcribed online in both Slovenian and English. Each day, the 7 structures in Ljubljana that make up the Archives of the Republic of Slovenia are open for 7 hours. Reading and Media rooms are made available, ensuring that all members of society can enjoy the multi-media contents of the archives on the premises – there is no exclusion of those without private computers, for instance.

²² Glažar, Natalija. “Organization of Slovene Public Archives Sector”. *Information Summary on Archives*. No. 10 (2005): 7–9.

3. Kosovo en route

The long path of Kosovo’s independence can be traced in the present state of the Republic’s State Archives: the 5 centuries of Ottoman rule, the Yugoslav period, and the final struggle with Serbia. Let us start with the last point of destruction, during the 1999 NATO bombing of Serbia. At this time, the Serbian Army was partially stationed in the Kosovo State Archives and in the National and University Library of Prishtina –in breach of the codes of conduct in times of conflict under the Conventions discussed in 1.2. These buildings remained intact, but their contents were ruffled by the military. A survey after the war of the 25 main public libraries in the country show that 10 survived unharmed, 12 were damaged, and 3 burnt down altogether with a calculated loss of 44.7% of all collections held in Kosovo;²³ the destruction of birth and marriage certificates, state records, citizenships, property contracts, and so forth was part of the ethnic cleansing strategy of the Serbian Army, but at the same time compromising efforts to establish an independent state in the future.

After the end of the war of 1998/1999 in Kosovo, the archives of Kosovo started the consolidation in the organizational, professional, and legislative aspect. However, special attention was paid to the approach and involvement in the world stream of archives. The overall engagement and the proof for professionalism from the workers of archives has enabled that Kosovo Archives, now constituted as a State Agency of Kosovo Archives, in 2002 was accepted in the International Council on Archives, in category A, as a national archives, equal to other archives of independent countries.²⁴

Kosovo Archives have since also assimilated to the UNESCO standards discussed above, allowing them to engage with a whole network of international archives. Of these, the State Archives of Turkey was most able to provide the newly formed country with important historical records; a cooperation protocol was signed 1 February, 2005. Many thousands of digitalized archival documents regarding Kosovo’s past – mainly from the 15th to the 19th centuries – were transported from the Ottoman Archives in Istanbul. In such ways, the heritage of Kosovo is being re-instated through the democratic exchange with other nations. Collaboration with the Republic of Serbia, which stores more modern Kosovar history, remains impossible even on this front until Serbia recognizes Kosovo’s independence. This is illustrative of why collaboration between state archival institutions is a condition of democratic archives.

²³ Riedlmayer, Andras. “Libraries and Archives in Kosovo: a post-war report”. Bosnia Report, December 1999. <http://www.bosnia.org.uk/bosrep/decfeb00/libraries.cfm>.

²⁴ Sülçevsi, Refike. “Archival Cooperation Between the Kosovo State Archives Agency and Archiving Institutions of the Republic of Turkey”. *Tehnicni in vsebinski problemi klasicnega in elektronskega arhiviranja*, Radenci, Slovenia, 2013. http://www.pokarh-mb.si/uploaded/datoteke/Radenci/Radenci2013/08_Sulcevs_i_2013.pdf 90.

3.1 Legal framework

The language of the 2012 Law on State Archives – repealing the Law on Archive Substances and Archives 2003 – is overflowing with imprecise language, relying heavily on acquaintance with international archival practice. In Art. 5.2, for instance, it is stated that “The Agency shall exercise its activities in accordance with the law and other acts based on it and international archival standards” without elaboration of these standards, though presumably those discussed in 1.2 of this paper. Also, the instructions of protection go no further than “Archive material is to be preserved in the condition it was accepted in the Agency” (11.1). Unfortunately, binding itself to unspecified international archival standards does not make for a strong law. It is mostly concerned with regulating public institutions’ requirement of archiving “all materials which are not considered necessary to perform further duties and whose deadline for storage has passed” (10.1). That is to say, the Law on State Archives serves to ensure future documentation and collection of these records at the Government-run Archival Agency rather than preserving and distributing already existing archives. It can be assumed that once Kosovo’s archives do represent its cultural heritage better, a reform of this Law will take place to correct its many gaps.

There are two points at which the law does not need correcting. Firstly, the release of information to the public does follow international trends – 10 years after the death of the person concerned or 100 years from birth. If the status of birth or death is unknown, then 60 years of privacy are granted from the moment of creation of the archive material. Other archived material, such as governmental and institutional documents, can be publicly accessed 30 years from creation. Secondly, the enforcement of digitalization of the public archive registry – 3 years from enforcement (this year, 2015) – is the typical expectation of a modern archive.

3.2 Accessibility

While Article 8.5 of the Law on State Archives reads, “Every natural and legal entity may have access to public archive registry” this was not always the case: “Beginning in October 1990, ethnic Albanian faculty and students were ejected by Serbian police from classrooms and offices at the University of Prishtina, which became an apartheid institution reserved for ethnic Serbs only. At the same time, non-Serb readers were banned from the National and University Library, which serves as the central research library for the university and as Kosova’s national library of record”.²⁵ Fortunately, practices of

²⁵ Riedlmayer, Andras. “Libraries and Archives in Kosovo”. Bosnia Report.

exclusion have come to an end, which is a major step forward for the democratization of the archives. Nevertheless, access is still compromised to this day although equally to all groups. Details of opening hours and requirements of accessing the archives in Prishtina are not available online neither in Albanian, nor in Serbian or English; only the address is advertised. The State Archive does not have a webpage. Even if Act. 12.3 of the Law on State Archives reads, “Research and usage of archive material is fundamental right of citizens for free information, and being so, in principle it can not be restricted”, we can see by the lack of available information that there is no priority to enable researchers or users of archives to access them. Furthermore, one cannot say that the archives are truly democratic on account of Art. 12.6.1: “when the well-being of the Republic of Kosovo is endangered”. While the other points of subsection 6 are evidently there to protect the rights of individuals, human rights and freedom, or standing policy in Kosovo, 6.1 is problematic because it can easily be employed to prevent healthy criticism of the Republic. Democratic archives are not restricted, neither in part or in full, in such cases.²⁶

²⁶ Žumer, Vladimir. “Dostop do javnih podatkov, informacij, dokumentov in arhivskega gradiva v Republiki Sloveniji”. *Arhivi* 26. 2003. 13.

4. The degrees of archive democracy in Slovenia and Kosovo in contrast

A constant theme throughout this paper has been the nation-building and stabilizing properties of archives as well as the identifiable weakness of archives in nations of weaker identity. Many believe that “[a]n enduring state formation [...] has to precede – conceptually and in political practice – any meaningful democratization. This, in the European context, is still painfully evident in Bosnia-Herzegovina and in Kosovo”.²⁷ Indeed, not only do both countries lack a clear sense of statehood, both also suffered great losses in archival content – 90% and 44.7% respectively – in the conflicts of the 1990s.²⁸ Kosovo is most frequently compared to Bosnia and Herzegovina on these grounds. Their strict similarity, however, means that comparing them persistently has become a fruitless exercise: in order to evaluate what might move the process of democratization forward, a contrast works better. Slovenia provides an appropriate contrast as its history was, for around 8 decades, collected in the same archives as Kosovo’s history. Like Kosovo, Slovenia experienced a great loss of archives, only earlier, in WWII.²⁹ On 25 June 1991, when Slovenia declared independence, it would also mark a change to a democratic political system, the sovereign state’s first experience of democracy. Kosovo made its declaration on 7 February 2008, after a much longer fight for sovereignty which is yet to be fully resolved. We see that while they have the same starting-point materially, their temporal starting-points differ greatly.

In all respects, it can be said without any controversy that Slovenia is a more democratic country than Kosovo – as reflected in Slovenia’s fast accession into the EU and Kosovo yet to achieve candidate status (although “a definite European perspective” has been confirmed by the Council of the EU). The same goes for their archival methods. Before we undertake an in-depth comparison, it is worthwhile to explain the EU practices and goals regarding archives as these are Slovenia’s reality and Kosovo’s perspective. As is typical of the region, the terms democratization and EU assimilation are often conflated. In the case of archives in former Yugoslav countries, this is not untrue. Yet the desire for EU accession cannot be taken as the cause of introducing democratic archival policies, it was rather the case that EU accession and the will to democratize archives under new political systems coincided under the sign of good faith to develop into truly democratic states.

²⁷ Berg-Schlosser, Dirk. “The Quality of Post-Communist Democracy”. *Developments in Central and East European Politics* 4. ed. Stephen White. Palgrave Macmillan: New York, 2007. 265.

²⁸ Perhaps not incidentally, the same decade that saw the birth of archive theory. 1992 was also the year the library and archives in Abkhazia were deliberately torched (cf. De Waal, Thomas. “Abkhazia’s Archive: Fire of War, Ashes of History”. *Open Democracy*. 22 October 2011. https://www.opendemocracy.net/democracy-caucasus/abkhazia_archive_4018.jsp).

²⁹ UNESCO. “Memory of the World”. 65, for a full list of losses.

4.1 EU Model and Ambition

The 28 EU member states have very different legal frameworks for dealing with archives, yet all of them face the same challenges. On 6 May 2003 the Council of the European Union adopted a resolution on archives in member states, aiming to increase archival cooperation – first brought to the table by the Netherlands in 1991. The resolution “stressed the importance of archives for the understanding of the history and culture of Europe and for the democratic functioning of society” (Art. 2 of the Council Recommendation 2005). On 14 November 2005 a Council Recommendation was adopted to create a European Archives Group (EAG)³⁰ which would monitor: (1) preservation and prevention of damage in archives; (2) reinforce interdisciplinary cooperation on electronic documents and archives; (3) establish and maintain an internet portal for documents and archives; (4) promote best practice with regard to national and European law on the management of, and access to, documents and archives; (5) take measures to prevent archival theft. As this was just one year after the largest EU enlargement, monitoring changes in legal frameworks of new member states was also a priority. The EAG has published two reports so far, one in 2008 and another in 2012. In the latter report, regrets at not collaborating on the reformation of existing regulations and creation of new ones with the European Commission was expressed; the problem, it was claimed, stems from the fact that only during the drafting process of new policies is the EAG a stakeholder, but as of yet the Group has never formally been consulted by the European Commission nor has the EAG proactively requested consultation.

Without a doubt, these processes are proving not to be ideal in their present state, but through collaboration of the large number of member states a model of democratic archives is more likely to be achieved than a state could on its own. Indeed, there is a movement at combining the digital archives of all EU member states,³¹ which can have serious advantages even in helping to identify international organized crime groups among other services mostly helpful to EU citizens living in EU countries other than their country of origin. This movement is based on the Community regulation of 1st and 8th of February 1983 and the following three regulations: (1) encouragement of research into the history of the European Communities; (2) promotion of public interest in the development of the European integration; (3) greater transparency of the workings of the European Institutions.

³⁰ A European Board of National Archivists (EBNA) already existed but never held a formal status in the European policy framework. Now EBNA and EAG work together, convening twice a year since 2009. A third counterpart organization exists, the European Branch of the International Council of Archives (EURBICA), which represents European archival models to the global field perspective.

³¹ European Commission. “Report on archives in the enlarged European Union”. 37.

4.2 How the Slovenian example might influence Kosovo

In both variables considered in the present study, the legal framework regarding archives and their accessibility, Slovenia excels while Kosovo shows room for improvement. Even superficially looking at the laws of each country, we can note the PDAAIA is almost four times the length of Kosovo's Law on State Archives. Among the many advantages of the lengthier document is the opportunity to include clearly defined values of archival practice into the Slovenian policy: most representatively, perhaps, in Art. 7 which reads, "Archives represent a cultural monument and shall be protected accordingly." In the study of the Kosovar legal framework (3.1), even the values of the external conventions on which it relies heavily were not made explicit we saw. Another major drawback of the Law on State Archives is a failure to stipulate fines for breaches of archival use and care – although, before set punishments can be established, instructions of preservation would have to be drawn up such as Articles 23 and 36 of the PDAAIA. Slovenia has the added level of protection offered by the Archival Commission as well as the requirement of reporting on procedures of storage (Art. 37) which would be a good idea for any state, especially one which has suffered archival losses as Kosovo had. Neither law has specific measures to defend archives from deliberate aggression, presumably relying on the Convention for the Protection of Cultural Property in the Event of Armed Conflict and on the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Importantly for Kosovo, legal instructions for cooperation with international state archives would help enable such procedures that would allow for the further expansion of their state archives; the PDAAIA Art. 42.2 defines the conditions of "temporarily export[ing] public archives to third countries or transfer them to the European Union member states for scientific or cultural purposes" – under the condition of being returned to retain the archive's integrity and with a clearly defined return date. Certainly, digitalization is an important step forward for archive protection. While Kosovo's insistence to digitize archive contents will prepare the country for eventual EU integration (as elaborated in 4.1), the details of digitalization need to be decided on, including the value of digital copies as opposed to the originals, the possible destruction of the originals (if equal value is given), and digital-specific preservation and storage instructions. Slovenia's policy is comprehensive on this front also. In all the aspects of both laws, we have identified an insufficiency in detail in Kosovo's Law on State Archives when compared to Slovenia's example. This results unfailingly in an insufficient system in practice.

The more empirical measure of democracy of an archive is the degree of accessibility. Here, the differences between the Slovenian and Kosovar examples are much greater: at the most basic level, the opportunity of informing persons or parties interested in accessing state archives regarding opening hours and requirements of access are at poles in the countries. There is an organizational problem in Kosovo's state archives that prevents the stabilization

of the State Archive and EU integration as per the Copenhagen Criteria stipulating that "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities".³² "Citizens value an institution only if it efficiently meets their requirements".³³ The Archives of the Republic of Slovenia are an illustrative model of well-functioning and accessible archives on account of the reasonable opening hours, free accessibility, non-discriminatory policy, appropriate work spaces, efficient retrieval system, and measures to protect archival documents. Kosovo's law aims at these ideals also, but there is a discrepancy with the actuality; extending the existing legal framework with specific instructions for care and use as well as determined fines will no doubt aid in stabilizing the archive as institution.

³² European Council. "The declaration of the June 1993 European Council in Copenhagen". 21–22 June 1993. 7.A.iii.

³³ Jeraj, Mateja. "The Social Role of Archives and Their Public Image". European Board of National Archives, 2006. http://www.archives.gov.ua/International/EBNA_MJeraj.pdf.

Conclusion

This paper opened with the assumption that the democratization of archives represents the lowest common denominator of the freedom of information in any country. A democratic archive was defined as having four characteristics: open access without discrimination, no deliberate exclusion or alteration of documents, protection of individual privacy, and collaboration with other state archives. Not meeting one or more of these traits is a sign of oppression or of manipulating the history of a State. Inversely, investing in fulfilling these characteristics is beneficial for new states both for institutional functionality and for state-building.

This paper used the Republics of Slovenia (Chapter 2) and Kosovo (Chapter 3) as case studies. A comparison between two states in more equal positions would neither be able to show the difference in stages of democratization – consolidation and transition, respectively – nor give opportunity to make recommendations for consolidating democratic practice for states in transition. Assessment was based on two variables: the legal framework in place in the respective countries and the accessibility of their archives. The findings show a great disparity with regard to both variables. Points on which Kosovo fails to meet EU standards in the law include: stipulated archival values that match the international conventions they are based on, determined fines for precisely articulated violations of the archives, legal instruction for international cooperation, and an elaborate policy for the digitalization of content – including clearly defining the legal value of digitalized documents. At a future point, Kosovo may consider establishing an Archival Commission similar to the one running in Slovenia. More immediate improvements are needed in the practical aspects, however. Recommendations for this include: reasonable opening hours that are advertised, free access to the archives, an efficient retrieval system, measures for protecting the physical archives, and the installation of work spaces. In conclusion, while much space for improvement has been identified Kosovo is a young state that has shown good will to democratize its archives and is on the path to fulfilling the requirements of a democratic archive; this list of improvements is rather testament to the status of Kosovo of still being a transitional democracy.

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