



## The Impact of EU Political Conditionality on Minority Rights in Western Balkans: Insights from the Croatian Enlargement

Odeta Berberi

Department of Political Science, Faculty of Social Sciences,  
University of Tirana, Tirana, Albania

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### Abstract

*The present paper addresses the following questions: In what way have the European Union (EU) political conditionality affect minority rights in the Western Balkan (WB) region? Did the EU political conditionality on minority issues succeed in addressing the stateness problems in Croatia? With the term "impact" I mean the absorption of formal and informal rules, procedures, norms and practices and I am going to analyze the relation European Union/Western Balkans as unidirectional i.e. the transposing of EU rules on accession countries. In the first part of this work I will analyse the EU standard of minority rights (internal dimension) and compare it with the norm 'content' in its external dimension. In the second part, the EU approach concerning minority rights toward the WB region, will be explored. In order to do so I will analyse the Enlargement Strategy and Main Challenges produced by the European Commission (EC) from 2004. In the above document the EC emphasize the main challenges and set out the priorities for the whole region, considered as a single entity. In Western Balkans region we do have an example of recent accession. For this reason, the empirical analysis of this paper will focus on the pre-accession process of one of the new member states, Croatia. In the end I will draw some conclusions concerning the future prospects of the WB region concerning the EU conditionality and the real impact of minority right in the process.*

**Keywords:** European Union, Western Balkans, europeanization, minority rights, Croatia

### 1. Introduction

Minority rights are an emblematic problem of the Western Balkans region<sup>1</sup>. Minorities and their lack of identification with the State has brought up the persistence of *stateness* problems in the majority of Western Balkans countries. For Linz and Stephan 'agreements about stateness are logically prior to the creation of democratic institution' (Linz and Stephan, p.26). At this point since the European Union (EU) has been the most important actor, which has had an important impact on the democratic institutions-building in the region, it is important to see how the *stateness* problem has been addressed. As noted in a recent work by Arolda Elbasani, '*stateness*' has been identified as the main obstacle for the Western Balkans (WB) countries capacity to absorb EU rules (Elbasani, 2013). Since Croatia is the first state from the Western Balkans region to be part of the European Union, it is interesting to analyse if the country has overcome the *stateness* problem.

In this paper I will address the following questions: In what way have the EU political conditionality affect minority rights in the Western Balkan region? Did the EU political conditionality on minority issues succeed in addressing the *stateness* problems in Croatia?

With the term "impact" I mean the absorption of formal and informal rules, procedures, norms and practices and I am going to analyze the relation European Union/Western Balkans as unidirectional i.e. the transposing of EU rules on acceding countries. This study will explore the previous literature on Europeanization in which much of it refer to the domestic impact of the EU in a target country. The big enlargement of ten countries from Central Eastern Europe (CEE)

<sup>1</sup> For the purposes of this paper, I will refer to the Western Balkans the area that comprise these countries: Albania, FYR of Macedonia, Montenegro, Serbia, Croatia, Kosovo and Bosnia and Herzegovina

have caught the attention of scholars, which addressed questions concerning the decisive impact of EU in the democratic transformation of these countries (Vachudova, 2005). Nevertheless, few of these studies were directed toward the Western Balkans region and less on the EU transformative power in specific areas such as minority rights.

With the term Europeanization (via enlargement) I refer to EU political conditionality versus one area or country. There is no agreement among scholars about the real influence of EU in CEE countries, if the former has been determinant to the post-communist transition of these countries or not. Nevertheless as Schimmelfennig claim in his work "both sides in the debate take it very much as a given that the EU has, or at least could have, a pervasive influence on the domestic policies of the CEE countries" (Schimmelfennig and Ulrich, 2005, p. 3). Furthermore Schimmelfennig claim that the likelihood of adoption of a EU norm depends on its credibility and adoption cost (Schimmelfennig and Ulrich, 2005, p.29). What I will claim in this paper is that in the case of minority rights the likelihood of adoption depends on EU standard credibility and the adoption cost for the concerned country. In the first part of this work I will analyse the EU standard of minority rights (internal dimension) and compare it with the norm 'content' in its external dimension. Instead concerning the adoption cost, I will sustain that if *stateness* problems continue to persist the adoption of EU norms on minority rights will be conceived of high cost for the domestic political elite.

In the second part of this work, the EU approach concerning minority rights toward the WB region, will be explored. In order to do so I will analyse the Enlargement Strategy and Main Challenges produced by the European Commission (EC) from 2004. In the above document the EC emphasize the main challenges and set out the priorities for the whole region, considered as a single entity.

In the Western Balkans region we do have an example of recent accession. For this reason, the empirical analysis of this paper will focus on the pre-accession process of one of the new member states, Croatia. In the end I will draw some conclusions concerning the future prospects of the WB region concerning the EU conditionality and the real impact of minority right in the enlargement process.

## 2. Minority Rights in European Union: Outside In?

When it comes to minority rights, it is important to make an important distinction between the internal and external dimension of the EU. Other studies<sup>2</sup> have stressed this distinction not only when it comes to minority rights but in a more enlarged dimension such as human rights (Henrad, 2009 and Hughes, 2003). For the purposes of this paper I will refer to the term "internal dimension" of EU as the development of the *acquis communautaire* and the tradition of European Union Member States concerning minority rights. Instead with the term "external dimension" I will refer to the EU standards and criteria applied in the relationship with 'member to be' countries in the accession process.

Back to the establishment of the regional organization, it is important to stress the complete absence of the principles of human rights and minority rights. The above-mentioned omission was justified by the exclusive economic grounds of the new Union.<sup>3</sup> There are some novelties with the Treaty of Rome of 25 March 1957, concerning the inclusion of some rights but nevertheless the rights included were related to the functioning of the European Economic Community.<sup>4</sup> From the Treaty of Rome there were some tentative<sup>5</sup> to include more human rights principles in the *acquis communautaire*, but only in 1987 with the sign of the Single European Act (Single European Act, 29 June 1987), there was a direct reference to the human rights and their protection from the Community. Nevertheless, despite the inclusion of human rights reference, there was no explicit reference to minority rights in the Internal dimension of the EU. In the European Charter for Human Rights, even though not in a direct way, there is a reference to minority rights when it comes to the principle of non-discrimination based on ethnic grounds.<sup>6</sup> From what we have analysed so far it is difficult to

<sup>2</sup> Henrad, Kristin, *Double Standards pertaining to Minority Protection*, Brill Academic Publishers, 2009

Hughes, James, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1, 2003.

<sup>3</sup> The Treaty establishing the European Coal and Steel Community (ECSC Treaty) was signed in Paris in 1951 and brought France, Germany, Italy and the Benelux countries together in a Community with the aim of organizing free movement of coal and steel and free access to sources of production.

<sup>4</sup> In specific, in the text the free movement of workers was included and the prohibition of discrimination of workers based on their nationality or sex.

<sup>5</sup> Joint Declaration by the European Parliament, the Council and the Commission signed in Luxembourg on 5 April 1977. or the Memorandum on the Accession of the European communities to the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the European Commission on 4 April 1979

<sup>6</sup> In Art. 21 use the following wording when it comes to minorities: "1. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority,

find tentative of codification of minority rights in the internal dimension of the EU. Kymlicka goes further by claiming that "there was no Western discourse of the rights of 'national minority' prior to 1990, either within particular countries or across Europe as a whole" (Kymlicka, 2006, p. 39).

In the external dimension of the EU, the inclusiveness of minority rights has a different excursus. Some authors argue that the real development of minority rights principles come as a necessity from the external dimension of the EU. This has been the main reason why different studies had come to the conclusion of the existence of a double standard in the EU concerning minority rights: that between the internal and the external dimension. Nevertheless, beside this distinction it is important to identify the European standards concerning minority rights in order to analyze its application in the enlargement process.

The standard of minority rights protection has been formulated as a criteria for membership for the countries aspiring to become members of the EU, long time before the above standard would become part of the EU internal legislation. In fact, only with the Treaty of Lisbon of 2007, the standard of respect and protection of minority rights will be part of the *acquis communautaire*. This has been the main reason why different authors<sup>7</sup> has argued that the EU has given more importance to minority rights in its external dimension, particularly in the enlargement process, and does not apply the same standard with its member states. For the countries, which aspire to become EU member states, the standards concerning minority rights are enclosed in the Copenhagen criteria. More specifically in the first Copenhagen criteria it is made a direct reference to the "respect and protection of minority rights" when it comes to the requirements that a State have to fulfill in order to become a EU member state.<sup>8</sup> Nevertheless it is important to stress the fact that this principle was in 1993, but still is a controversial principle. The lack of a clear legal base in the EU legislation makes more difficult the application of this principle in the external dimension without claiming the existence of the above incongruence (Rechel, 2009, p. 17.). As the EU did not address this issue, some studies<sup>9</sup> have concluded that in the aftermath of the membership some countries of CEE have registered slowness in the positive developments registered during the pre-accession process concerning minority rights.

Since we are analyzing the minority rights standards in the external dimension of the EU, it is important to know how this standard was monitored in the countries that aspire to become EU member states. Before the formulation of the Copenhagen criteria, it was the Council of Europe (hereafter CoE), which monitored for EU (at that time EC) the compliance of aspiring countries with the human and minority rights standards (Hughes, 2003, p.9). This situation confirm the fact that before 1993 it does not exist one standard when it comes to minority rights in the EU legislation but the reference was taken from external institutions (like CoE or OSCE) or international legal documents.

Despite the fact that there was a clear reference to the "respect and protection of minority rights" in the Copenhagen criteria, the same wording was "omitted" in the text of the Amsterdam Treaty in 1997. In Article 6 of the Treaty, the term 'minority rights' was not mentioned in the list of freedoms and rights.<sup>10</sup> The lack of coherence in the internal dimension of the EU was the main argument for those studies which criticize the importance of the EU *vis a vis* minority rights and the use of double standards, that of Copenhagen when it comes to countries which aspire to become EU members and the standard of the Member States in the internal dimension.

This approach has been reflected in the EU requirements for the candidate countries to ratify the Framework Convention on National Minorities (FCNM), without imposing the same standard to its Member States.<sup>11</sup> The same point was raised by the OSCE Commissioner on National Minorities in 2002 when claiming:

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*property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited."*

<sup>7</sup> Nasi, Halida, "Minority Rights Instruments and Mechanisms: Minority Protection along the Conflict Continuum", *European Academy*, 2007: p. 59.

Hughes, James, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1, 2003: p. 11.

Rechel, Bernd, "What has limited the EU's impact on minority rights in accession countries?", *East European Politics and Societies*, Vol. 22 (1), 2008: f. 181

<sup>8</sup> In the first Copenhagen criteria it is stated that "Countries wishing to join need to have stable institutions guaranteeing democracy, the rule of law, human rights and the respect for and the protection of minorities". (Online), Available: [http://ec.europa.eu/enlargement/policy/conditions-membership/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm).

<sup>9</sup> Schweltnus G., MikalayevaL., "It ain't over when it's over: The Adoption and Sustainability of Minority Protection Rules in New EU Member States", *European Integration Online Papers*: 2009, p. 17.

<sup>10</sup> Treaty of Amsterdam signed in 2 October 1997

<sup>11</sup> Countries like Greece and Belgium have signed but not ratified the FCNM, instead France has never signed it.

“...What are the EU's own standards when it comes to the protection of national minorities? It is clear that the Copenhagen criteria are important for clearing the bar to get into the EU, but what happens when you have passed that hurdle? Do the rules change? Surely the standards on which the Copenhagen criteria are based should be universally applicable within and throughout the EU, in which case they should be equally – and consistently – applied to all Member States. Otherwise, the relationship between the existing and aspiring EU Members States would be unbalanced in terms of applicable standards...” (Ekeus, 2002, p.3)

Two Directives that of “Racial Equality ” and the ‘Equality in Employment’ of June 2000 and of November 2000 respectively, tried to address the critiques and to a certain extent impose to its existing member states ‘anti-discrimination’ policies in different sectors such as employment, education and health. As I already mentioned previously, the Charter of Fundamental Rights (hereafter Charter) in its article 21 mentioned minorities in strong correlation with the principle of non-discrimination.

The Charter become legally binding for the member states only in 2009, with the entering into force of the Lisbon Treaty. Previous to the Lisbon Treaty, the Treaty for the establishment of a Constitution for Europe in 2004 (Treaty of 2004, p. 10), was the first fundamental document that explicitly refer to the ‘rights of persons belonging to minorities’ as Union’s values. Nevertheless this Treaty was signed but never ratified. In the Lisbon Treaty the same wording were used when it comes to the Union’s values that includes also the ‘rights of persons belonging to minorities’.<sup>12</sup>

This first part of the article was important to see the actual situation of norms, institutions inside the EU as one of the Copenhagen Criteria require to the aspiring member state to harmonize their legislation to the *acquis*. The following part of this work will analyze the inclusion of the criteria of minority rights in the EU’s policy of conditionality towards the Western Balkans countries.

### 3. Europeanization of Western Balkans: The Issue of Minority Rights

First of all, it is important to define the term Europeanization. I will not explore the whole range of studies, which analyze the term as it is not the purpose of this work. I will refer to the definitions given from authors which best reflect the necessities of this work. The most frequently used definition is given by Radaelli in 2003, who refer to the term ‘Europeanization’ as the processes of:

a) construction; b) diffusion; and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated within the logic of domestic (national and sub-national) discourse, identities, political structures and public policies. (Radaelli, 2003, p. 30)

Initially the term denoted the adjustment posed by the EU in the actual member states. In the late 90s various studies were focused on the EU’s conditionality in the eastern enlargement. These studies refer to the above process as the “Europeanization of applicant states”. (Sedelmeier, 2011, p.5-7). This work relied in the latest group of studies in Europeanization, which aim to analyze the impact of EU in the enlargement process in a specific area such as minority rights. More specifically this study will analyze the impact of EU norms, rules, institutions on the domestic minority rights of aspiring countries.

In the first part of this study I did analyze the legal ground of minority rights in the internal dimension of the EU, as I am going to analyze the credibility of EU’s political conditionality concerning minority rights in the enlargement process. Nevertheless it is important to stress the fact that the aspiring member state when it comes to minority rights should not only comply with *acquis communautaire*, but also to other standards formulated in the enlargement process. As Wiener and Schwelgnus (2004: p. 15) claim in their work, the minority rights conditionality “varies greatly across accession states”. At this point it is important to analyse which were the standards of minority protection formulated in the enlargement process of Western Balkans countries and then illustrate with a case study from the region in the third part.

Apart from the Copenhagen Criteria formulated in 1993 as an answer to the CEEC to join the EU, in the case of WB region other requirements were added. The Stabilization and the Association Process was formulated to address the most urgent problem of the region of that time: the stabilization of fragile political systems. Nevertheless as Elbasani (2008, p. 301) has stressed on her paper, stabilization and association were two objectives that were very hard to reconcile. In comparison to the previous experience with the CEECs where there was more certainty about their future membership, WB countries were assured about their future membership only in the Thessaloniki Summit of 2003. Furthermore this was an important step for the relations of EU with WB countries as in 2005 it moved to a “higher level”,

<sup>12</sup> <http://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN>

that of enlargement. For this reason in this part I am going to analyze the main EU document produced from the year 2005 in the enlargement process with the WB region as a whole i.e. the Enlargement Strategy Paper. Since in this document, the European Commission have to reconcile the above mentioned priorities stabilization and association, it is important to see, which of these priorities have prevailed.

The Enlargement Strategy Paper address main challenges and the recommendations for the WB region. From a deep analysis of the Enlargement Strategy through the years it can be noticed a lack of coherence and continuity when it comes to minority rights issues. In the first three documents, the Enlargement Strategy and Main Challenges in the years 2005-2006, 2006-2007, and 2007-2008,<sup>13</sup> the Commission referred to minorities in the region only in terms of security. The Commission in one of the above documents suggested that:

*"All countries need to encourage a spirit of tolerance towards minorities and take appropriate measures to protect persons who may be subject to discrimination, hostility or violence. This is essential to achieve reconciliation and lasting stability." (Enlargement Strategy 2007-2008, p. 6)*

In the Enlargement Strategy and Main Challenges 2008-2009, the Commission mentioned minorities in just one sentence by saying that the "Dialogue among political forces and a spirit of compromise are still insufficient, including on ethnic-related issues". (Enlargement Strategy 2008-2009, p.3-4)

In the Enlargement Strategy of the successive year, the Commission mentioned minority rights two times: when referring to Croatia and Kosovo. For the first time, in the Enlargement Strategy and Main Challenges 2010-2011, minorities were referred by the Commission not just in terms of security but also in social terms. Nevertheless, the formulation remained vague and still in very general terms "*the economic crisis has had a negative impact on social welfare in the enlargement countries. Vulnerable groups, including minorities, disadvantaged communities and people with disabilities, have been particularly affected.*" (Enlargement Strategy 2010-2011, p. 7) A particular attention was given to Roma minority as a vulnerable group most affected by the economic crises. In just two countries, Croatia and Kosovo, the Commission suggested to work on for the further integration of minorities especially Serb minority (Enlargement Strategy 2010-2011, p. 17). In the following Enlargement Strategy, FYR of Macedonia is mentioned as a country that need to address the challenges concerning the respect for and the protection of minorities (Enlargement Strategy 2011-2012, p. 14). Kosovo remain problematic concerning the reconciliation and steps need to be taken in order to integrate Serb minorities (Enlargement Strategy 2011-2012, p. 17).

In the strategic document of 2012, the Commission was more explicit when referring the minorities by saying that "*Civil, political, social and economic rights, as well as the rights of persons belonging to minorities are key issues in most enlargement countries*" (Enlargement Strategy 2012-2013, p. 5). And it goes even further by saying that "*Issues related to minorities remain a key challenge in the Western Balkans*" (Enlargement Strategy 2012-2013, p. 8). But surprisingly enough just two countries, Kosovo and FYR of Macedonia, were mentioned by EC as countries that inter-ethnic relations still remain a challenge. No mention was made for Croatia contrary to the previous documents, as the Country was in the process of being part of the EU.

This summary shows that the main document of the European Commission towards the region of Western Balkans still address the issue of minority rights in terms of security and the fact that Kosovo is the only Country mentioned in all the Enlargement Strategies enforce this statement. The problem of treating the issue of minority rights in terms of security consist in the fact that for the sake of this priority it has undermined a sustainable and democratic 'solution' of the contradictions majority / minority in a country. And as I will show by analyzing the case of Croatia, the enlargement process fail to address the *stateness* problem in the country.

In the next part of this paper, I will analyse more in detail the case of Croatia in order to provide a clearer picture of the EU approach towards minority rights and its importance in the whole process of membership.

#### 4. The Case of Croatia

The enlargement of Western Balkans seemed less probable today more than 10 years ago, when in 2003 it was clearly stated that the "future of the region is in the EU". This has come for 'endogenous' reasons of the EU, summarized with the notion of the 'enlargement fatigue' and for 'exogenous' reasons related to the countries of the region itself and their lack of absorption/ implementation of EU norms. After the 2004 and especially the 2007 enlargement, the language of the

<sup>13</sup> *Enlargement Strategy and main Challenges 2005-2006, Enlargement Strategy and main Challenges 2006-2007, Enlargement Strategy and main Challenges 2007-2008 European Commission, 2005 Enlargement Strategy Paper, 9 November 2005*

Commission was more strict toward 'members to be' by saying that "*The pre-accession strategy and negotiations with candidates and potential candidates should be pursued in a rigorous manner, fully respecting the agreed conditions*" (EC, Enlargement paper 2006/2007, p. 2). The accession of Bulgaria and Romania provides a number of lessons for the EU, which are now being incorporated into the pre-accession strategy (EC, Enlargement paper 2006/2007, p. 5). Nevertheless, the EU membership of Croatia has been considered a clear signal for the remained countries of the region that if a country tackles the path of democratic reforms, it is possible to achieve the ultimate goal, that of 'membership'.

In this final part, I will analyze the EU requirement on minority rights advancement with a special focus to Serb minority for two main reasons: *in primis* due to its difficult relationship with the majority and the second reason is related to the fact that the Serb minority constituted the biggest minority in the country. Most importantly the Serb minority were considered a 'threat' to the Croatian State for quite a long time and to a certain extent has been the reason of the persistence of *stateness* problem in Croatia. The empirical case will help to shed light on the real impact of EU political conditionality on minority rights and explore if the EU approach has been in line with what Linz and Stephan claim about the consolidation of fragile democracies. As we mentioned earlier in this work, in countries with the persistence of *stateness* problems it is quite impossible to achieve democratic consolidation without previously solve the *stateness* problems.

This article will analyze the Progress Reports and other official EU documents and see the behavioral change on the ground for the case country. EU integration in Western Balkans countries has been accused of not narrowing the gap between legislation in paper and actual implementation on the ground. Concerning national minorities, so far as I mentioned in the first part of this work the EU has made clear that aspiring member states should sign and comply with FCNM on minority issues. It is important to see the coherence of this statement and if in practice the EC in formulating its conditionality 'for members to be' has considered the recommendations from the Advisory Committee of the FCNM.

Immediately after granting the candidate status to Croatia, in September 2004 a European Partnership was signed with Croatia, which laid down the principles and priorities for further integration. Surprisingly, the respect for minority rights was included in the short term priorities with a specific requirement "*ensure proportional representation of minorities in local and regional self government units, in the State administration and judicial bodies, and in bodies of the public administration*"(Council of European union, EU Partnership 2004, art 3.1). These priorities were reflected in the successive Progress Reports in the form of requirements that the target country had to accomplish. In the Progress Report of 2005 (EC, Progress Report, p. 20-22), it can be noticed a long and exhaustive description of the situation of National Minorities in Croatia, with a special focus on Serb minority. Nevertheless, the Commission failed to address how the problematic should be overcome by Croatia and did not formulate benchmarks to measure the progress in this field for the successive years. The only compatibility between the report of Advisory Committee of CoE on its first report on Croatia in 2001 (Advisory Committee, on the FCNM, 2001) and EC Progress Report of 2005 is related to the description of problems but still as I did mention previously there are no clear recommendations how to overcome these problems.

In the next Accession Partnership (Council of European Union, EU Partnership 2006, art 3.1) in comparison with the European Partnership of 2004, the Council return to a more general requirement as it refer to the principles of "*the European Convention on Human Rights and the principles laid down in the Council of Europe's Framework Convention for the Protection of National Minorities*". In the Progress Report of 2006, EC still lack clarity when it comes to recommendation in the field of minority rights when it stated that: "*Despite the progress made, more needs to be done in terms of tackling ethnic bias in the area of war crimes*"(EC, Progress Report, p. 13). The same can be said of the Accession Partnership of 2008 where the Commission claimed that Croatia should "*promote respect for and protection of minorities in accordance with international law and best practice in EU Member States*" (Council of European Union, EU Partnership 2008).

The same vague wording, without a clear benchmarking of how to measure progress in the field of minority rights protection, were present in the Progress Report of 2007. EC stated that: "*Particular attention needs to be paid to its employment provisions as well as to tackling discrimination more widely, especially in the public sector*" (EC, Progress Report of 2007, p. 53). It does not specify a clear conditionality for Croatia in this specific area of employment of minority members in the public sector and the type of priority (short, medium, long).

In the 2009 EC Conclusions on Croatia concerning the minority rights criteria, the Commission stated that:

*However, many problems remain for minorities. Minorities continue to face particular difficulties in the area of employment, both in terms of under-representation in state administration, the judiciary and the police as well as in the wider public sector. Legal provisions and programmes need to be implemented with more determination, and adequate monitoring assured. Croatia needs to encourage a spirit of tolerance towards the Serb minority and take appropriate*

*measures to protect those who may still be subject to threats or acts of discrimination, hostility or violence.*<sup>14</sup> (EC, *Enlargement Strategy 2009-2010*, p.36)

The same wording can be found in the 2010 Conclusions, without major modifications. In the Progress Report of 2011 (EC, p. 11), a positive picture of the minority rights regime in Croatia has been provided. Instead the Advisory Committee in its Third Opinion on Croatia (Advisory Committee, on the FCNM, 2010), continue to provide a problematic picture concerning minority rights protection. For the Advisory Committee, implementation of the legislation in force remained an issue of concern, especially when it comes to the employment of national minorities members. Instead the Commission emphasized the adoption of a Plan by the Croatian Government in the above matter of concern, but in order to measure its implementation no further benchmarks were indicated.

In the Analytical Report of 2012 (EC, p. 7) the general situation of minorities were described in positive terms. The Commission recommend that Croatia needs to foster a spirit of tolerance towards minorities, in particular Croatian Serbs and to take measures to protect those who may still be subjected to threats or acts of discrimination, hostility or violence". However, the Commission did not specify how to achieve it and concrete steps to adopt in order to 'foster the spirit of tolerance' in the Country. Negotiations on Chapter 23 that treat minority rights were opened in June 30, 2010 and closed on June 30, 2011. (Zenith Association, 2013, p. 11) In one year Croatia had to meet all ten benchmarks and their sub-benchmarks formulated by the Commission (EC, Interim Report, 2011). Nevertheless as the European Commissioner for Enlargement and Neighborhood Policy, Stefan Fule has stated during a speech concerning the reforms of Croatia regarding Chapter 23 "Overall, Croatia and its government have made considerable progress in the field of the judiciary and fundamental rights. However, much remains to be done."<sup>15</sup> This statement was given in March 2011. Despite what European Commissioner has claimed, the negotiations concerning Chapter 23 were closed in June 2011, in less then three months. Still is to be clarified if in few months Croatia has addressed the concerns that the European Commissioner was referring too.

In the Resolution adopted in 6 July 2011 by the Committee of Ministers of CoE, several aspects were listed as issues of concern.<sup>16</sup> Cases of discrimination toward Serbs minority and Roma were common in different sectors such as education, employment, housing, property rights etc. The Government intervention was suggested in different sectors starting from the preventive measures in order to 'avoid unequal treatment based on ethnic origin' and continuing with direct intervention by the central government in a number of issues such as: the introduction of minority language use when dealing with the public administration in municipalities composed by a substantial number of persons belonging to minorities; monitor and sanction for the full implementation of Art. 22 of the Constitutional Rights on National Minorities. As it can be noted from the Resolution, CoE was in line with what Fule has stated in March 2011, that 'much remains to be done' by the Croatian government.

## 5. Conclusion

Amnesty International in its annual report 2014-2015, sustained that Serb minority still face discrimination in Croatia especially when it comes to public sector employment and social housing.<sup>17</sup> Milorad Pupovac, the president of the Serb National Council in Croatia, claimed in May 2015 in a letter sent to the President of the European Parliament that "The escalation of intolerance and the creation and acceptance of an anti-minority atmosphere in the last three years have seriously threatened what has been achieved during our accession negotiations..."<sup>18</sup> This declaration put a question mark on the real advancement on the ground in issues concerning the rights of national minorities.

It is important to stress at this point that the whole process of negotiations regarding Chapter 23 was quite untransparent and it was criticized by civil society and scholars.<sup>19</sup> As a matter of fact there is a lack of availability of

<sup>14</sup> European Commission, *Enlargement Strategy and Main Challenges 2009-2010*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/conclusions\\_on\\_croatia\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/conclusions_on_croatia_en.pdf)

<sup>15</sup>[http://europa.eu/rapid/press-release\\_SPEECH-11-138\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-11-138_en.htm)(Accessed 25 October 2015)

<sup>16</sup> Committee of Ministers of CoE, *Resolution CM/ResCMN(2011)12 on the Framework Convention for the Protection of National Minorities by Croatia*, adopted on 6 July 2011 [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805b0594](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805b0594) (Accessed 06.10.2016)

<sup>17</sup><https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>(Accessed 20 October 2015)

<sup>18</sup>[http://www.b92.net/eng/insight/pressroom.php?yyyy=2015&mm=05&nav\\_id=94068](http://www.b92.net/eng/insight/pressroom.php?yyyy=2015&mm=05&nav_id=94068) (Accessed 20 October 2015)

<sup>19</sup> cited in Directorate General for the external policies of European Union (2012), "Mainstreaming Human and minority rights in the EU enlargement with the Western Balkans", p. 68. Jovana Marovic, *Montenegro and the negotiations in the Chapter 23*, Institute Alternative, 2012

documents, which refer to benchmarking from the Commissions and the answer provided by Croatia on their fulfillment. This has constituted a problem in view of new countries from the region ready to start or did start (Montenegro) the negotiation process of Chapter 23.

In different studies that address the effects of EU conditionality in the Western Balkans Countries has been mentioned the lack of importance given to the implementation over the formal compliance with the *acquis communautaire*. As the Croatian case have shown there was an overall very good compliance with the *acquis communautaire* but the lack of implementation at the same degree was the main problem.

In this paper I tried to analyze the impact of EU political conditionality on minority rights in the Western Balkan region. In order to do so I stated that in the case of minority rights the likelihood of adoption depends on EU standard credibility and the adoption cost. Concerning the EU standard credibility, after analyzing the excursus of inclusion of this standard I concluded that the principles of minority rights protection were not an integral part in the genesis of the organization but were a product of necessity from the external dimension of the EU. This situation has undermined the norm credibility of EU in the enlargement process *vis a vis* the 'members to be'.

Concerning the second element, since the countries of the Western Balkans region mostly rely on nationalistic politics, the adoption cost were considered high concerning minority rights. This has undermined the EU transformative power in Croatia concerning minority rights.

Finally to the question if the EU political conditionality on minority issues has succeed in addressing the *stateness* problems in Croatia, my answer in this paper was negative as it was not in the main objectives of the EU to address the root causes of the problematic relationship with national minorities but to 'pretend' only the absorption of *acquis communautaire* in the Croatian national legislation.

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