

The Political Participation of National Minorities in the Enlargement Process: the Case of Albania and FYR of Macedonia

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Abstract

In the last decade an increasing number of authors have studied the EU transformative power in Central Eastern Europe. In this paper I will analyse the impact of the enlargement process in the political participation of national minorities in Western Balkans. 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. For this reason the EU requirements concerning the right to political participation of national minorities in the concerning countries, will be analysed. In the second part it will be analyzed how the EU requirements on the national minority participation has been 'translated' in Macedonia and Albania. In this paper I will combine a review of the academic literature on the topic with the illustration of practical case study from the Western Balkans.

Keywords: EU enlargement, Western Balkans, political participation, FYR of Macedonia, Albania.

Introduction

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 (Henrad 2009, Hughes 2003) have stressed this distinction not only when it comes to minority rights but in a more enlarged dimension such as human rights. For the purposes of this paper I will refer to the term 'internal dimension' of EU as the development of the *acquis* 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 in the founding documents of the principles of human rights and minority rights. This omission was justified by the exclusive economic grounds of the new Union.¹ 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.² From the Treaty of Rome there were some tentative³ to include more human rights principles in the

¹ 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.

² 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.

³ Joint Declaration by the European Parliament, the Council and the Commission signed in Luxembourg on 5 April 1977.

acquis communautaire, but only in 1987 with the sign of the Single European Act, 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, minority rights were mentioned when it comes to the principle of non-discrimination on ethnic grounds.¹ From what we have analyzed so far it is difficult to 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 had 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 implementation in the enlargement process.

The standard of minority rights protection has been formulated as a criterion 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*. This has been the main reason why different authors have 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. As EU did not address this issue, some studies have concluded that when it comes to minority rights, in the aftermath of the membership some countries of CEE have registered slowness in the positive developments registered during the pre-accession process (Schwellnus, 2009, p.17).

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 connection 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.² 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 *acquis* makes more difficult the application of this principle in the external dimension without claiming the existence of the above mentioned incongruence (Bernd, 2009, p.17). In the next chapter of this paper, I will analyse the EU approach concerning the political participation national minorities, in the WB region.

2. Exploring effective political participation of national minorities in the enlargements process: the case of WB region

Minority rights and especially a specific right such as their right of political participation, has been a controversial and the most debated issue by internal actors but also by the so-called ‘democratic promoters’ and scholars. 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 WB region, it is important to see how specific minority rights issues has been addressed.

First of all I need to make some clarifications concerning the use of terms 'minority' and 'national minority'. Since the EU itself it is not consistent on using these terms, you will find the same inconsistency on my paper. Anyway since I am more concerned about national minorities (the so called traditional minorities) with the term minority I will mean national minority.

Furthermore, it is important to define the term "Europeanization". For the purposes of this paper I will not explore the whole range of studies, which analyze the above-mentioned 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 the one 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" (Sedelmeir, 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 and its excursus in the external dimension, as I am going to analyze the 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 the *acquis*, but also to other standards formulated in the enlargement process. As Wiener and Schweltnus stress in their work, the minority rights conditionality "varies greatly across accession states" (Wiener, 2004, p. 15). 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 case studies from the region in the third part.

Apart from the Copenhagen Criteria formulated in 1993 as an answer to the Central Eastern Europe Countries (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", 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. In the above document, the European Commission had to reconcile the priorities formulated in the enlargement process for WB region that of stabilization and association. Through a deep analysis of the Enlargement Strategy Papers, we are going to see, which of these priorities have prevailed.

The Enlargement Strategy Paper addressed main challenges and 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, 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." (EC, 2007, 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*" (EC, 2008, 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*" (EC, 2010, 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 (EC, 2010, 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. (EC, 2011, p. 14). Kosovo remain problematic concerning the reconciliation and steps

need to be taken in order to integrate Serb minorities. (EC, 2011, p. 17).

In the Enlargement Strategy of 2012-2013, 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*” (EC, 2012, p. 5). And it goes even further by saying that “*Issues related to minorities remain a key challenge in the Western Balkans*” (EC, 2012, 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 as a whole, 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 fact that the EU approach toward minorities is mainly formulated in security terms mean that certain minority rights needs to be considered of less importance and are not found in the main EU documents towards the region. The same right of political participation will be interpreted and the requirements formulated in the enlargement process will be in line with the ‘achievement’ of the main objective: that of security.

At this point, we are going to analyse the EU approach when it comes to a specific right of minority protection that of effective political participation. The effective political participation of national minorities have been deeply analysed by scholars and regional organisations such as OSCE and CoE. For this reason, *in primis* I am going to define the term ‘effective political participation’ according to regional organisations, which have national minorities as a main focus of their work and then compare it with the EU approach when it comes to the same issue of concern. Effective political participation is a term that can be found in the Copenhagen Declaration and the Lund Recommendations of the OSCE and also in the Framework Convention on National Minorities. Scholars like Will Kymlicka (2006) explain that ‘the effective political participation’ somehow recognize the political dimension of the aspirations of national minorities’ (p. 55) and in order to be qualified as ‘effective’ a political participation need to have a real impact on the decision-making. For Kymlicka this can be achieved through territorial autonomy or consociative models.

When it comes to the practical implementation of this principle, Kymlicka make the distinction between a minimalist and a maximalist reading of the ‘effective political participation’ of national minorities. Based on the minimalist approach of the effective political participation, members of the minority should not be confronted with discrimination when exercising the right to vote or the right to be elected. Instead a maximalist view of the above right would mean that the representation in the public administration would reflect the exact percentage of the minority. (Kymlicka, 2006, p.55-60). Nevertheless none of the above readings can overcome the ethnic conflicts, and for Kymlicka (2006) the only solution requires the implementation of the ‘counter-

majoritarian form of federal or consociational power-sharing” (p.57). Furthermore, the concept of effectiveness of political participation of national minorities has been largely analysed by the Advisory Committee in the Commentary document dedicated to Art 15 of the FCNM. In the Commentary has been exposed the many facets of the concept of ‘effectiveness’ of national minorities participation. For the Advisory Committee the effective participation has been conceived as the development of a number of instruments and just the mere representation and participation of persons belonging to national minorities in the public administration it is not sufficient. The electoral systems, media, availability of financial resources for minority-related activities or language requirements are other forms that together can contribute to ensure an effective political participation of national minorities. As far as my study’s scope is concerned, I will analyse the EU approach when it comes to effective political participation of (national) minorities. In order to do so I am going to analyse the EU documents i.e. progress reports, Analytical Report-produced in the framework of enlargement process toward the WB region. When it comes to political participation of national minorities, the EC requirement has been formulated in the case of Macedonia mainly in terms of “equitable representation of non-majority communities” (EC, 2005, p. 29), which according to Advisory Committee interpretation it is not sufficient to achieve an effective political participation. In the next chapter, two case studies from the region will be analysed and compared with the CoE approach concerning the same issue and the same country.

3. Empirical cases: Albania and Macedonia in a comparative perspective

In the previous section of this work, I did analyse the EU approach concerning the political participation of national minorities and how it was reflected in the enlargement process. Since the EU requirements, especially when it comes to minority rights depends also on the concerned country which applies for EU membership; in this part I will analyse and compare two empirical cases from the region. I did choose Macedonia as a case study for many reasons but the most important is connected to the fact that many studies have claimed that EU ‘minority rights conditionality’ are strictly connected to security concerns. The case of the Albanian national minority has much of the security concerns, especially after the 2001 conflict. Concerning the second case study from the WB region, I decided to analyse the Greek national minority in Albania because it has never been considered by the EU in terms of security. It is interesting to see if this fact has had an impact on the EU approach towards the particular national minority right.

The case of Albania and Macedonia represent two case studies from the region with national minorities, which have different characteristics and very different size. The Albanian national minority representing more than 25% of the population in Macedonia and the Greek national minority around 1% of the population in Albania. In this part I am going to analyse the EC reports in view of the requirements towards

Macedonia concerning the political participation of the concerned national minorities. Since I am going to analyse the EU impact of the political conditionality in the enlargement process, the period under study will be from 2005, which is the year that the countries of WB were moved from external relations to the enlargement process. In the Commission's Opinion and the EC Regular Reports, the EU requirement concerning the political participation of the Albanian National Minority was confined on one particular area: the equal participation in the public administration. As the under-representation of the Albanian national minority in the public administration, considering its high percentage in the population composition, was an issue even after the signing of the Ohrid Agreement in 2001 the formulation of this criteria was indicated in the Opinion of the Advisory Committee of 2005.

Instead in the case of Albania, the EC requirement concerning the political participation of the Greek National Minority was confined to the well-functioning and the efficiency of the State Committee on Minorities. In all the progress reports from 2005 there is a specific requirement formulated for the Albanian Government: enforcing the institutional capacity of the State Committee on Minorities.

Nevertheless for an effectiveness of the political participation of national minority just a formal 'proportional' representation of the minority in the public administration it is not enough. The Advisory Committee in its Opinion suggested Macedonia to advance with the decentralization reform and to "set up consultative committees" for interethnic relations in a number of municipalities, which have to be effective. The Advisory Committee in its suggestions it is not limited in the formal set up of bodies but they need to be efficient in order to have an impact in the decision-making.

In the case of Albania, the Advisory Committee analyse other requirements as important for an effective political participation of national minorities such as the participation of national minorities in the process of electoral law reform, national minorities participation in the local/ central level public administration and in the Parliament.

In order to compare the EU with the CoE approach concerning the effective participation of national minorities, I did summarize in a table the requirements/suggestions provided by the above regional organizations on the case of Albania and Macedonia. As it can be noted the EC in some reports recall the Advisory Committee suggestions concerning national minority rights. Nevertheless for the European Commission the principle of political participation in both cases analysed from the region, was confined to just one element.

	PR-Albania	PR- FYR Macedonia	CoE-FCNM Albania	CoE-FCNM Macedonia
2005-2006	<p>Further efforts are now required to complete the legal and administrative framework for the protection of minorities and to implement it...</p> <p>The work of the Special State Committee on Minorities continues to be hampered by a lack of clear rules concerning its composition and mandate.</p>	<p>-participation of non majority communities in the public administration and public enterprises</p>	<p>2002 Opinion: The Advisory Committee has received complaints from representatives of different national minorities concerning their level of political representation both at local level and in the People's Assembly.</p>	<p>-under-representation of persons belonging to minorities in the judiciary</p> <p>-The Advisory Committee welcome the reforms under way on the decentralization front,</p>
2007	<p>The government signed memoranda of understanding with local governments to promote the use of minority languages in relations with the administrative authorities and to display traditional place names in areas inhabited by persons belonging to national minorities.</p>	<p>Further progress has been made on its implementation, for instance regarding equitable representation, local self government and use of languages.</p>		<p>-Also, whereas consultative committees for interethnic relations have been set up in a number of municipalities, the impact of these new bodies remains limited.</p> <p>-Thus, in Parliament, the members of the Committee on Relations between Ethnic Communities feel that their views are not sufficiently taken into consideration, particularly in the drafting or amendment of legislation in various areas of concern to national minorities.</p>
2008	<p>The Civil Service Law allows participation by minorities in public administration, the armed forces and the police. However, minority representation remains limited.</p> <p>...further improvements are needed, particularly regarding collection of sound data on all minorities, a key European Partnership priority.</p>	<p>Principle of equitable representation,</p>	<p>-The Advisory Committee invites the Albanian authorities, in future discussions on electoral law reform, to give further thought to ways of increasing the representation of persons belonging to national minorities. Persons belonging to national minorities should be involved in such discussions.</p> <p>-The authorities have only piecemeal information on participation of persons belonging to national minorities in public administration. The bulk of the data contained in the State Report in this connection relate to political rather than administrative posts</p>	
2009	<p>There continues to be no accurate data on minorities. The next population census, while respecting international standards on data protection, will be key to address this issue.</p> <p>The Civil Service Law provides for the participation of minorities in public administration, the armed forces and the police. However, minority representation remains limited.</p> <p>The institutional capacity of the State Committee on Minorities remains weak. Its role as intermediary between</p>	<p>There has been some progress on equitable representation and the government undertook initial steps to address the issue of implementation of the law on languages and to foster inter-ethnic integration in the education system.</p> <p>Progress towards implementing the Law on Use of Languages spoken by at least 20% of the citizens and the strategy for equitable representation in the public administration.</p> <p>A broad consensus on the Law on the Use of Flags of the Communities has not emerged</p>		

	<p>the government and minority representatives requires further strengthening in order to ensure effective participation of minorities in decision-making processes.</p>			
2010	<p>The institutional capacity of the Committee remains weak and its performance as an effective advisory body can be questioned. The Albanian authorities need to ensure that the Committee has the necessary financial and human resources to effectively perform its tasks. The level of representation of persons belonging to minorities in public administration and politics needs to be enhanced.</p>	<p>many state institutions as well as local entities have not made progress, and clear responsibility for planning and monitoring implementation of the language law needs to be established.</p>		
2011	<p>No progress has been made towards strengthening the capacity of the State Committee for Minorities.</p>	<p>The overall number of civil servants from the non-majority ethnic communities reached 30%, which is broadly in line with the demographic structure.</p>	<p>The Advisory Committee regrets that the State Committee on Minorities does not represent all minority groups. In addition it lacks independence and its composition is arbitrary. These shortcomings indicate that persons belonging to some national minorities do not benefit from a truly representative body, which can speak on their behalf and defend their interests on issues concerning them.</p>	<p>The Advisory Committee notes that interpretation between the Albanian and Macedonian languages is ensured in the plenary and committee sessions of the National Assembly</p>
2012	<p>The mandate of the State Committee for Protection of Minorities has not been enhanced nor has work started towards drafting a comprehensive legislation on minorities, which was recommended by the Advisory Committee of the Framework Convention for the Protection of National Minorities.</p>	<p>As regards equitable representation, the overall proportion of civil servants from non-majority communities is satisfactory and remains at approximately 29%. However, the distribution between ministries is uneven and equitable representation at senior level remains insufficient.</p>		<ul style="list-style-type: none"> -seek to increase support for the cultural activities of the national minorities' organisations and ensure that financial difficulties will not affect disproportionately persons belonging to national minorities; -involve national minority representatives in the decisions on the distribution of funds allocated to cultural projects; -put in place conditions necessary for the use of languages of national minorities in dealings with administrative authorities -provide additional support to civil servants to acquire more skills in the minority languages;
2013	<p>Short-term measures ensuring equal access in practice to rights for persons belonging to all minorities throughout Albania, abolishing any ground for differentiated treatment between the categories of national and ethno-linguistic minorities and enhancing the representativeness and consultative role of the State</p>	<p>With regard to inter-community relations, the Ohrid Framework Agreement (OFA) has been in force in 2001, but progress is still needed on systemic issues relating to decentralisation, non-discrimination, equitable representation...</p> <p>No specific reference to national minority political participation under Chapter 23 was made</p>		

	Committee on Minorities, would be steps in the right direction.	
2014	Better coordination between central and local government and improved inter-ministerial cooperation are essential. A working group has been set up to evaluate the existing legal and policy framework and to prepare and adopt improvements to the legislation on minorities.	-The Secretariat and the Secretariat General continued recruiting civil servants from non-majority communities, but without specifying defined posts or job descriptions, often at the expense of the principle of merit. -No specific reference to national minority political participation under Chapter 23 was made
2015	In April the inter-institutional working group on minorities led by the Ministry of Foreign Affairs submitted conclusions aimed at addressing shortcomings in the protection of minorities, taking into account the recommendations of the Advisory Committee of the Framework Convention for the Protection of National Minorities. The group suggested drafting a specific law on minorities aimed at equal treatment of national and ethno-linguistic minorities, and enhancing the representativeness and consultative role of the State Committee on Minorities.	No specific reference to national minority political participation under Chapter 23 was made

Conclusions

In this paper I argued that the EU conditionality when it comes to the political participation of national minorities was confined in just one criterion: in the case of Macedonia in the proportional participation of national minorities in the public administration instead in the case of Albania in the effectiveness of the State Committee of Minorities. As compared with the Advisory Committee Report on both cases, there are other requirements mentioned and analysed in order to achieve an effective political participation of national minorities. The fact of limiting the EU requirement in one aspect of political participation of national minorities has had in turn a limited EU impact when it come to the achievement of an effective political participation of the Albanian and Greek national minority in the respective countries. As the concept elaborated by scholars and regional organizations, such as the Council of Europe or OSCE, claimed that the participation in order to be defined as effective needs to have a real impact on the decision-making, in the case under study the EU has not succeed in achieving it. If we analyse the case of Macedonia, not denying the fact that the under-representation of the members from the non-majority group is important, it is also important to see the real impact of the new hiring the decision-making. As it was emphasized by the Advisory Committee members of national Minority lack in important sectors of the public administration such as the Judiciary and the new hiring in the public administration with members coming from the national minority were not followed with a job description, which demonstrate the fact that their impact in the decision-making of that institution is highly discussed. The EC

when evaluating the above-mentioned criteria considered it as a progress, in terms of numbers it can be considered as an achievement but if we are going to analyse the real impact of new hiring in the Macedonian public administration or in the decision making in general, the considerations are different.

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