

## Human Rights promotion in Serbia: a difficult task for the European Union

*A promoção dos Direitos Humanos na Sérvia: uma difícil missão para a União Europeia*

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Rev. Bras. Polít. Int. 54 (1): 142-158 [2011]

### Introduction

Accession to the European Union (EU) is oftentimes considered as the most successful instrument for the promotion of human rights in post-communist countries, such as the Western Balkans. As the democratisation of non-member states is both a normative and strategic aim of the EU, human rights promotion is a main element of its foreign policy. It is reflected in its relation with these countries in general, and in the enlargement policy, in particular.

Even though the membership perspective might be a promising instrument to promote democracy, and human rights in external countries, the underlying causal mechanisms have to be identified in order to provide evidence for this assumed causality. Conditionality serves in this context both as a promising tool of the EU to promote democracy and human rights and as a theoretical framework to explain causalities between an EU membership perspective and the implementation of human rights values in Serbia.

It is clear that the EU demands on human rights protection are an important dimension of the enlargement policy. The human rights standard as part of the conditionality criteria of the EU is a message towards the countries aspiring membership such as Serbia. However, progress in the field can hardly respond to the integration stage that Serbia aspires in its relation with the EU, thus the candidate status.

This paper aims to uncover Serbia's progress towards human rights protection. The main question is to find out if conditionality is working in this case. This paper is divided in three parts. In the first one, we assess under which conditions is conditionality a successful strategy to promote human rights protection. In the second part, we argue that conditionality strategy has some limitations in what

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it concerns the promotion of human rights. In the third part, we analyse Serbia's path towards the EU and the results of conditionality strategy regarding the respect of human rights, and especially, the minority rights in Serbia.

## Conditionality: the EU strategy to promote human rights

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.<sup>1</sup> When the EU launched the Common Foreign and Security Policy some years ago, it placed human rights at the heart of this policy. This stemmed from the conviction that respecting and promoting the rule of law as well as fundamental rights and freedoms not only will define the EU, but is also in its interest. The European Security Strategy, adopted in 2003, states clearly that “spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order.”<sup>2</sup>

The EU's enlargement policy has been perhaps its most powerful tool in promoting and projecting human rights in its neighbourhood. Accession to the EU requires acceptance of European law (the ‘acquis’), and compliance with the ‘Copenhagen criteria’, ensuring “stable institutions that guarantee democracy, the rule of law, human rights, respect for and protection of minorities”.<sup>3</sup>

Each year the European Commission prepares Progress Reports on candidates and potential candidates, which cover their record on human rights and identify areas for improvement. Thus, the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law are inherent to the European integration process.<sup>4</sup> Human rights and democratisation issues are mainstreamed into all aspects of EU policy decision-making and implementation, as outlined in the Communication (2001) on the EU's role on promoting human rights and democratisation in third countries.<sup>5</sup>

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1 “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” Treaty on the European Union, article 2.

2 European Security Strategy, 2003 (reviewed in 2008).

3 European Council in Copenhagen Conclusions of the Presidency, 21–22 June 1993. Published in [[http://ec.europa.eu/bulgaria/documents/abc/72921\\_en.pdf](http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf)]. Accessed 2 February 2010.

4 The Treaty on European Union, article 11, defines that one of the objectives of the EU's Common Foreign and Security Policy is the development and consolidation of democracy, and the rule of law, and respect for human rights and fundamental freedoms.

5 EUR-LEX – Communication from the Commission to the Council and the European Parliament – The EU's role in promoting human rights and democratisation in third countries. COM/2001/0252 final. Published in [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0252:EN:NOT>]. Accessed 2 February 2010.

Conditionality is one powerful Europeanization instrument that gives the EU significant leverage in transferring to the applicant countries its principles, norms, and rules, as well as in shaping their institutional and administrative structures.<sup>6</sup> It also links the progressive improvement of the EU's relations with the respective countries to the fulfilment of a whole range of political and economic conditions by the latter.

Frank Schimmelfennig (2005, 127) defines political conditionality as “a strategy of reinforcement used by international organisations and other international actors to bring about change and stabilize political change at the state level. Karen E. Smith (1998, 256) offers a broader, more EU-relevant, definition of political conditionality: “political conditionality entails the linking, by a state or international organisation, of perceived benefits to another state (such as aid), to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles”. After the end of the Cold War, the EU has been applying political conditionality more than before. Simultaneously, a qualitative change has also occurred concerning the use of political conditionality as a strategy. Jeffrey Checkel (2000, 5) states that conditionality is no longer *ex ante* and based on promises, but rather now *ex post* and premised on assessments on performance in retrospective. This means that “compliance is induced not so much by incentives and coercion as through education and teaching by the international institutions and learning at the national level” (Ibid.).

Political conditionality as an EU foreign policy strategy to promote political and economic reforms with third countries started with the Central and Eastern countries (CEEs) enlargement process. Aid was only given (positive conditionality) by the EU to a third country on the condition of committing to the reforms (SMITH, 1998, 261). Positive conditionality embodies the promise of a benefit in return for the fulfilment of a predetermined condition and is often used in the delivery of economic assistance, as well as in the context of the EU enlargement. Negative conditionality, in turn, inflicts a punishment if a specific obligation is omitted and the most evident cases in point are sanctions (TOCCI, 2008, 882). Conditionality can be used to promote democracy and human rights by combining attractive rewards with certain conditions of democratic development.

Conditionality as a political strategy depends on the following basic conditions: two actors have to be in place with certain interests. These actors are state governments or governmental international or regional organisations. They have to be capable of acting in general, plus acting rational on a reliable cost-benefit calculation (REINHARD, 2008, 8). The incentives offered by one actor can be

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<sup>6</sup> The process of Europeanization as defined by Radaelli argues that EU impacts the domestic discourse, identities, political structure and public policies. Europeanization is a process of construction, diffusion and 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 making of EU decisions and then incorporated into the logic of domestic discourse, identities, political structures and public policies (RADAELLI, C., 2000).

either social (national and international prestige and appreciation) or material (financial aid or trade liberalisation), but they have to be of certain attractiveness for actor 2. Following, the main characteristics of conditionality are outlined: conditionality is a top-down-approach acting in a state-to-state constellation; conditionality works on a formal, direct, short-term level; conditionality depends on clear conditions; compliance with these conditions can be observed and measured.

### Conditionality limitations on human rights promotion

As already mentioned, conditionality is a top-down approach in state-to-state constellations. So, it can only cause changes at the governmental level; the democratisation process can only be influenced top-down, by governmental elites. Important actors of a democratisation process like civil society, economic elites, political parties, the administration or judiciary on local or regional level cannot be reached through conditionality. In contrast to convergence, conditionality works on formal procedures and negotiations: conditionality depends on clear conditions where compliance can be controlled and measured; the conditions and rewards have to be formulated clearly in intergovernmental agreements and they have to be measurable to evaluate compliance transparently.

From these logical assumptions, consequences for democracy promotion through conditionality can be derived: the institutionalisation of formal democratic procedures, of a democratic constitution or the codification of human rights or free and fair election procedures can be formulated as clear conditions. Accordingly, to promote these elements of democracy, conditionality can be a promising strategy. In contrast, elements of democratic consolidation as the spread of democratic norms, the functioning of civil society within the values of human rights, the establishment of a party system and its root in society or a functioning judiciary accompanied by a judiciary culture can only be marginally influenced through conditionality. In this line of thought, human rights legal framework can be established through the threat of conditionality but not its real implementation. The EU as an external actor can demand to establish the legal framework for the protection of human rights, but its real implementation and respect on a daily basis lies beyond the scope of governmental influence. It is civil society (which per definition is non-governmental) that needs to respect these values. The legal framework is crucial for the protection of human rights, but more important is its implementation, which can hardly be measured and thus not formulated as a clear condition. In contrast, the performance of free and fair elections can be influenced through conditionality. Election procedures are first and foremost based on an election law which is a formal process. The democratic conduct of free and fair election is measurable, as the reports of the Organisation for Security and Cooperation (OSCE) in Europe show. Through conditionality an external actor like the EU can demand formal implementation of certain norms, but a culture of respect for human rights and

the compliance on local level can hardly be influenced through conditionality. A change of mentality and culture cannot be reached by a state-centred top-down approach as conditionality. And this is the main problem in the Serbia case.

As the analysis shows, not all elements relevant for democratic development can be aimed at through a state-centred action mode as conditionality. In the field of institution-building conditionality seems to be a quite suitable instrument, but in the field of consolidation and rooting of democratic culture and behaviour, where we include human rights, conditionality fails to derive certain influence, simply due to its mode of action. Regarding the leading question, whether conditionality is a promising strategy to promote democracy and human rights, we have shown on a theoretical level that conditionality is a promising strategy to promote the formal institutionalisation of democracy but, in contrast, conditionality has limitations in the field of human rights and is no promising strategy to complete the consolidation of democracy.

In this analysis, it is also important to note that research on the eastern enlargement showed that the effectiveness of conditionality was dependent on several mediating factors (KELLEY, 2004; SGIMMELFENNIG & SEDELMEIER, 2004, 661–79; SEDELMEIER, 2006, 8). The credibility of EU conditionality was a central factor. As Ulrich Sedelmeier (2006, 12) noted, “credibility has two sides. The candidates have to be certain that they will receive the promised rewards after meeting the EU’s demands. Yet they also have to believe that they will only receive the reward if they indeed fully meet the requirements”. The credibility of EU conditionality represents a major difference between the Eastern enlargement and the enlargement strategy used for the Western Balkans. The current candidates (Croatia, Macedonia and Turkey), and especially the potential ones like Serbia, are less certain when or even if they will receive the ultimate reward of EU accession. The EU’s “absorption capacity” has moved into the centre of discussions, meaning that the capacity to absorb new member states must be taken into account when deciding on further enlargement (EMERSON, 2006). As a result, some scholars assumed that the changed circumstances of the Western Balkans’ EU integration and the questionable credibility of the membership perspective would affect the candidate countries’ calculation of the non-adaptation costs (LAVENEX & UÇARER, 2004, 432–33). Othon Anastasakis and Dimitar Bechev even stated that the EU’s regional strategy would suffer from a “commitment deficit” resulting in, among others, a decrease in “the chances of success for domestic reforms” (ANASTASAKIS & BECHEV, 2003, 15–16).

## Serbia path towards the EU

Serbia began its transition process after the victory of a wide coalition of Serbian democratic forces at the federal elections in 2000. At that time, relations between the EU and the then Federal Republic of Yugoslavia (Serbia

and Montenegro) were raised to the formal level already achieved by its Western Balkan neighbours, and Belgrade and Podgorica embarked on the road of European integration. The opportunity for Serbia to become a full member of the EU has been formalised on the basis of decisions taken at the Thessaloniki Summit in June 2003 and confirmed on several occasions by the EU.

After the end of the State Union, in 2006, the Enhanced Permanent Dialogue has continued separately both with Serbia as well as with Montenegro. Serbia integration in the EU was challenged by the strong opposition of a predominant conservative bloc unwilling to accept the electoral defeat in 2008. Having won these elections by a rather thin margin, the democratic bloc was struggling to consolidate its power at local, regional and national level. Though working in the climate of constant opposition, the government managed to fulfil the preconditions for activation of the Provisional Trade Arrangement with EU and obtain access to “white visa regime”. In the meantime, the conservative bloc adjusted its rhetoric to new circumstances, adopting a pro-European discourse and thus opened the door to communication with the West.

Serbia signed a Stabilisation and Association Agreement (SAA) with the EU on 29 April 2008. The SAA gives references to human rights in the preamble<sup>7</sup> and in its Article 2, “General Principles”: “Respect for the democratic principles and human rights and as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms, in the Helsinki Final Act and the Charter of Paris for a New Europe, respect for principles of international law, including full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY)....<sup>8</sup>

Following the positive assessment of Serbia’s cooperation by the ICTY Chief Prosecutor, on December 2009, as a result of the conditionality strategy, the Council of the EU decided to unblock the Interim Agreement of the SAA (which subsequently entered into force on 1 February 2010) and to return to the issue of the SAA’s ratification after six months. At this time, Serbia applied for accession to the EU.

Being the human rights an important element of the conditionality strategy, the EU continued to review Serbia efforts, especially the situation of socially vulnerable groups and minorities within the framework of the Stabilisation and Association process, on the basis of the European Partnership and through the Commission’s annual progress report. Furthermore, the EU Delegation in Belgrade has been closely monitoring the situation of human rights in general, including

7 “Considering the commitment of the Parties to increasing political and economic freedoms as the very basis of this Agreement, as well as their commitment to respect human rights and the rule of law, including the rights of persons belonging to national minorities...”. Stabilisation and Association Agreement (SAA) between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part. Published in [[http://ec.europa.eu/enlargement/pdf/serbia/key\\_document/saa\\_en.pdf](http://ec.europa.eu/enlargement/pdf/serbia/key_document/saa_en.pdf)]. Accessed 2 February 2010.

8 *Ibid.*, p. 11.

the rights of persons belonging to minorities, through various means such as field missions, as well as through regular dialogue with relevant stakeholders such as Civil Society Organisations and International Organisations.

Although some progress in the Serbia path towards the EU, the reform of the rules of procedure of Parliament, the general democratic reforms, the judicial reform, and the fight against corruption and organised crime are still identified by the European Commission as the main problems of the transition process in Serbia (EUROPEAN UNION, 2010, 108).

At this moment, Serbia benefits of two main supports from the EU which constitute attractive incentives to its path: politically, the High Representative appointed a Personal Representative based in Belgrade to work closely with the Serbian Government on all political and rule of law issues; financially, Serbia's national Instrument for Pre-Accession Assistance (IPA) allocation for 2009 totalled € 194.8 million (Ibid.). This financial assistance was directed to areas including strengthening the rule of law, human rights, and education. Also a number of civil society initiatives are being supported both under the national and regional IPA programmes under the Civil Society Facility and by thematic financing instruments such as the European Initiative for Democratisation and Human Rights.<sup>9</sup>

## Human rights in Serbia

As the Helsinki Committee for human rights states, “human rights are mirrors of societies and reliable indicators of the value systems on which they rest” (HCHR, 2009, 16). Unfortunately, the Serbian society is still burdened by the legacy of Milosevic's regime. It has been difficult to overcome accumulated problems, including those in the area of human rights (Ibid.). Consequences of wars – as most brutal forms of human rights violations – are still visible in the Serbian society.

The last year's developments were marked by the endeavours to affirm Serbia's pro-European course – the endeavours paradoxically stemming from extremely unfavourable economic and financial circumstances, domestic and international. Despite this negative context, the government managed to push the great bulk of the legislation rounding off the legal frame for the exercise and protection of human rights through the parliament, proving that the EU conditionality policy has a great influence at governmental level. Serbia has ratified a number of international human rights conventions and agreements, being the most significant the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

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<sup>9</sup> The European Instrument for Democracy and Human Rights (EIDHR) is a European Union programme that promotes and supports human rights and democracy worldwide mainly through civil society projects (EIDHR strategy paper for 2011–2013 has been adopted by the European Commission on 21 April 2010). It also supports regional and international organisations in this field, such as the Council of Europe, the OSCE and the Office of the UN High Commissioner for Human Rights. Published in [[http://ec.europa.eu/europeaid/what/human-rights/index\\_en.htm](http://ec.europa.eu/europeaid/what/human-rights/index_en.htm)]. Accessed 3 April 2010.

It also revised the European Social Charter and the Council of Europe Convention on Action against Trafficking in Human Beings (EUROPEAN COMMISSION, 2009, 13). The parliament also ratified the Convention of the Promotion and Protection of Diversity of Cultural Expressions, the Convention on Access to Information, the Additional Protocol to the Convention on Cybercrime, two conventions of the International Labour Organization, one of which dealing with occupational safety and health.

Nevertheless, regarding social climate and value system, Serbia still tends towards the radical right wing. Accordingly to Helsinki Committee, the social climate is not propitious for the respect of human rights, notably human rights of vulnerable and minority groups “[E]xercise and protection of human rights are basically hampered by dysfunctional or understaffed institutions” (HCHR, 2009, 17). In addition, nationalism, xenophobia and intolerance still dominate the value system that permeates the everyday life of younger generations in particular. Serbia closed and intolerant society is one of the main reasons behind the low level of the respect of human rights. The blocked and impaired system, selfish political elites and immoral public dealings are appointed by the Helsinki Committee as the “biggest stumbling blocs in the way of harnessing social energy for changes” (HCHR, 2009, 17).

Although the government has been trying to respond to these negative phenomena, Serbia’s judicial system still has to be empowered (through relevant laws and mechanisms) for the implementation of mandatory decisions by international human rights bodies (UN Committee and European Court of Human Rights). The judiciary reform was launched in 2009, and the regime took punitive measures against outbursts of violence and discriminatory incidents, and neutralized the previous government’s negative effects on all the forms of human rights defence as an effort to accomplish the protection and respect of human rights. Additionally, the Ministry for Human and Minority Rights is playing an important role in promoting such rights raising awareness not only within the administration about international human rights obligations, but also among population, promoting tolerance and respect for human rights in several occasions such as the International Day of Tolerance, the International Roma Day and Universal Children’s Day (EUROPEAN COMMISSION, 2009, 15).

Nevertheless, there is still much to do in Serbia. The European Court of Human Rights received 1361 new applications and delivered 17 judgments from October 2008 to September 2009, which found that Serbia had violated the European Convention for the Protection of Human Rights and Fundamental Freedoms (Ibid., 13). Awareness among judges of international human rights obligations has improved. However, courts are still reluctant to directly enforce ratified international treaties (Ibid., 15).

Accordingly to the European Commission report (2009, 15), there has been some progress on human rights field, such as the prevention of torture and ill-

treatment and the fight against impunity. However, Serbia has not yet established a national mechanism to prevent torture, an obligation deriving from its ratification, in 2006, of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Regarding the access to justice, no progress has been made on adopting legislation and establishing a comprehensive system of free legal aid. New anti-discrimination legislation introduced a rule prohibiting hate speech. A similar prohibition also exists in the Public Information Law and amendments to the Penal Code in August 2009 have further elaborated provisions against hate speech. However, in spite of the legal framework, incidents involving hate speech, threats and physical attacks against journalists, human rights defenders and the lesbian, gay, bisexual and transgender (LGBT) population have not been properly investigated and perpetrators have not been brought to justice.<sup>10</sup>

To conclude, Serbia has already the legal and institutional framework for human rights and the protection of minorities in place. Nevertheless, accordingly to the European Commission (2009, 16), “the existing constitutional and legal guarantees need to be fully enforced”, and relevant legislation needs to be further brought into line with European standards. Human rights are still violated in Serbia, directly and indirectly. Unlike in the nineties, when national minorities were a target of the nationalists in Serbia and Montenegro, nowadays some of the problems come from political and economic instability. This instability emerges from the legacy of the past regime, ineffective judiciary, corruption, and slow economic reforms. As Slavissa Rakovic (2006, 163) stated, “[T]he overall political situation in Serbia can, in a word, be described as heavily hindered by the recent past. As far as ‘Serb national interests’ are concerned the Serbian Prime Minister Vojislav Kostunica acts as a hard-liner, whereas the President of Serbia Boris Tadic is trying to act as a moderate politician, which is difficult to accomplish due to the complicated distribution of power between the President and the Government of Serbia”.

Once the Serbian government consolidated its pro-European course it was faced with strong opposition from the anti-European and anti-West alliance of powers perceiving such development as a threat to their ideological concept. For the government has become a part of the process in which Serbia will have to close

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10 The parliamentary discussion on the Law against Discrimination exposed the impervious and xenophobic attitudes of the Serbian elite, and it also showed how deeply ingrained homophobia is in Serbian society. According to a report by the Gay-Straight Alliance on the state of human rights of LGBT individuals, 67 percent of the people surveyed have a negative attitude towards the LGBT population, 22 percent do not have a negative attitude or have a neutral attitude, and only 11 percent have a positive attitude. More than half of the individuals surveyed do not oppose LGBT individuals living in Serbia, yet this percentage declines when it comes to living in the same city. Every other individual surveyed feels that homosexuality is a threat to society, and that the state should combat it actively, while seven out of ten citizens consider homosexuality to be a disease. Three quarters of the population surveyed oppose gay pride parades. This deeply ingrained homophobia is accompanied by hatred towards all individuals who support the aforementioned law and actively promote human rights (FREEDOM HOUSE, 2010, 462).

down the question of “the nation and statehood”, meaning to give up its territorial aspirations, such as those towards Bosnia. This bloc or alliance is politically embodied in Vojislav Koštunica and his party, Tomislav Nikolic regardless of his party’s changed rhetoric, Vojislav Seselj’s Radicals and the party led by Velimir Ilic. The bloc is in fact much larger as it encompasses influential circles in Serb Orthodox Church and in academic and cultural elites.

Regardless of the opening of its European perspective, Serbia is still torn between its wish to join the European family and a strong conservative bloc trying to preserve the model of a patriarchal and populist state.

## Minorities

The relationship of the Serbian government towards national minorities began to evolve after the October 2000 regime change and under pressure from the international community, especially the European Union. In 2002, the Parliament of Serbia and Montenegro passed the Law on the Protection of Rights and Freedoms of National Minorities, which secured that each national minority has the right to elect its own national council in order to exercise self-governance in the field of language, education, media and culture. This process has also included the adoption of the Constitutional Charter on Human and Minority Rights and Civil Liberties (2003), which was the main precondition for Serbia’s acceptance into the Council of Europe. In its article 52 are expressed the rights of national minorities: to express, keep, cherish, develop and publicly manifest minority’s national and ethnic, cultural and religious identity; to use minority symbols on public places; to freely use minority language and script; to have proceedings conducted also in the minority language in communities with considerable minority population; to have access to education in minority language; to establish private educational institutions at all levels; to use name and surname in minority language; to have street names and other topographical indications written in the minority language, in communities inhabited by substantial minority populations.<sup>11</sup>

Since the Charter was adopted, the status of minorities in Serbia has been continually monitored by international organisations of the EU, OSCE, Council of Europe, as well as local non-governmental organisations, such as the Helsinki Committee. Accordingly to this last organisation, Serbia’s last years were marked by “numerous incidents and by essentially inadequate government policies” (HCHR, 2009, 241). Since the political elite maintained the concept of an ethnic state, the position of national minorities – dissatisfied with their treatment by the state and society – remained a constant matter of concern for all observers of affairs in Serbia.

At the end of 2008, the Advisory Committee on the Framework Convention for the Protection of National Minorities concluded that the Serbian government

11 Charter on Human and Minority Rights. Sluzbeni list Srbije i Crne Gore (Official Gazette of Serbia and Montenegro) No. 6/2003.

had not developed a comprehensive or strategic approach – an active politics of inclusion – to promote the integration of minorities in a broader political and social community. In addition, the Committee assessed that certain minority rights protection measures were perceived as simply a result of pressure from the international community (COUNCIL OF EUROPE, 2008). This was the case with the adoption of two important laws for the realization of minority rights: the Law against Discrimination and the Law on National Minority Councils. The first law is critical for establishing civil equality, as it prohibits discrimination on the basis of race, religion, gender, and sexual orientation. The second one creates a foundation for traversing the legal vacuum that national councils confronted after most of their mandates expired. The Anti-Discrimination Law was one of the preconditions for Serbia's inclusion on the Schengen White List, while the Law on National Minority Councils enables the implementation of local minority self-government, since it regulates competencies and the election of national minority councils in line with international standards. These two laws are an important step towards the implementation of the European standards in this field. However, certain definitions relating to discrimination still need to be better formulated. A number of exceptions are wider than allowed under European standards and the rights of NGOs and associations to pursue discrimination before the courts still need to be clarified (HCHR, 2009, 266).

Regarding Serbia Constitution, several dispositions are important regarding human rights: article 14 provides that Serbia shall protect the rights of national minorities and guarantee special protection to them for the purpose of exercising full equality and preserving their identity; article 76 protects national minorities against discrimination; article 81 provides that in the field of education, culture and information, the state shall encourage a spirit of tolerance and intercultural dialogue and shall take effective measures to promote mutual respect, understanding and co-operation among all people living in Serbia irrespective of their ethnic, cultural, linguistic and religious identity. In addition to these constitutional provisions, new legislation explicitly prohibits discrimination against ethnic minorities. The Law on Political Parties provides for affirmative action in favour of ethnic minority parties, by allowing a lower number of signatures for registration (EUROPEAN COMMISSION, 2009, 17).

Furthermore, the status of different minorities varies in practice from one region to another. In particular, the position of the Vlachs and Bunjevci is uncertain and their status has not been clarified, as highlighted by the recommendations made by the Council of Europe's Committee of Ministers in May 2009 (COUNCIL OF EUROPE, 2009). The Bulgarian national minority has been having problems with exercising its right to have access to information in its language and the right to official use of the Bulgarian language in municipal administrations (EUROPEAN COMMISSION, 2009, 18). Also in Vojvodina, the political situation has been affected by the debate over adoption of the new Statute. And, in southern

Serbia, problems persist with regard to integration of Albanians into the public administration and integration of Serbs into local governments in Presevo and Bujanovac (HUSZKA, 2009).

Not different is the situation in Sandžak. Divisions within the Muslim community have continued and there have been several outbreaks of violence. In April 2009 the incidents spilled over from Sandžak to Vojvodina, triggering clashes between supporters of the opposing Muslim religious factions (HUMAN RIGHTS WATCH, 2009).

Regarding Roma issues, Serbia government was obliged to respond to incentives (and also pressure) coming mainly from the EU, for taking and upholding an affirmative policy in regard to Roma minority, in order to keep the EU membership as an achievable objective. The key tools for the improvement of overall human rights situation of Roma in Serbia were the adoption of the 'Draft Strategy for Inclusion and Empowerment of Roma' (in 2003) and the launching of 'Decade of Roma Inclusion 2005–2015', which includes realization of action plans for the improvement of Roma rights in areas such as housing, health care, education and employment. However, insufficient funds were allocated for the strategy, which turns difficult any real change in the situation of Roma minority (HCHR, 2009, 256).

On general, the basic legal framework necessary for minority rights implementation has been established with the passing of important laws, the formation of electoral lists, the adoption of the Strategy for Improving the Roma Status, the continued operation of the Serbian Government Council for National Minorities, and the ratification of the Vojvodina Statute, as well as guarantees of the forthcoming Human Rights Strategy. As Serbia Minister of Human and Minority Rights claims, "in normative terms, according to passed laws and ratified international conventions, Serbia's protection of human and minority rights is on the level of a Western democracy".<sup>12</sup> He defends that the extent problems are not political or national, but economic, as Serbia is entering the transition process as a very poor country: "If it weren't for these economic problems, the only obstacle minority communities would face would be the 'sweet suffering' of realizing and using their rights".<sup>13</sup>

The human rights situation of national minorities is dependent on the economic context, and the region, in which the minorities live. Minority rights in the province of Vojvodina, for example, are comparatively better protected than in other parts of the country. The Roma community remains the most disadvantaged minority group in Serbia, and their position is precarious vis-à-vis the rest of the Serbian population in terms of all social indicators – education, health, housing and employment. Other minority groups such as the Muslim Slavs/Bosniaks in the

12 Interview to Minister Svetozar Čiplić: "Human and minority rights in Serbia are more of an economic than a political question." 3 August 2009.

13 Ibid.

Raška region and the Albanians in southern Serbia find themselves in a difficult position owing to economic underdevelopment in these regions. Economic conditions in southern Serbia and Sandžak are extremely dire.

In order for Serbia to genuinely establish itself as a democratic society, minority rights needs to be supported by more than just legislation. The development of a corresponding political culture – that will support the implementation of these laws – is essential. Improved economic conditions can contribute to the advancement of minority rights, but they cannot eliminate all problems. The transformation of both the political culture and the fundamental belief system of the population require more time and effort. And conditionality strategy cannot have any role at this level.

Minority rights and status are extremely complex issues. Attitudes towards minority rights impact Serbia's international standing. In practice, the legal framework should provide respect for and protection of minority rights; however, its implementation on a daily basis within Serbia society has not been easy due to lack of awareness, poverty-related obstacles, and absence of mechanisms for protection. The greatest problem is that the legislation is either not implemented, or it is implemented only in select cases. As the Regional Administrative Secretary Tamaš Korhec argues, laws are only selectively applied, most frequently when their implementation serves personal, group or party interests of the ruling elite.<sup>14</sup> Another problem lies in the contradiction between certain laws, which puts minorities in an extremely difficult situation – one law will stipulate a course of action, while another prohibits it.<sup>15</sup>

It is important to note that the EU is not alone in applying conditionality in what it concerns respect for human rights, and promoting minority rights. Other organisations – European and international, intergovernmental and governmental as well as non-governmental – follow the same basic values and principles. So, EU conditionality in the area of minority protection could be best understood as the cumulative effect of different international institutions. As Sasse argued, “the actual policy leverage of the EU in minority protection has been anchored in the instruments and recommendations of the Council of Europe and the OSCE, and a range of other actors, including NGOs” (SASSE, 2005).

## Conclusion

The respect for and protection of human rights and democratic principles is one of the main elements of the EU's policy in the Western Balkans, which has

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<sup>14</sup> “The Rule of Law and the Process of European Integration”, *Dnevnik*, RTS, 17 July 2009.

<sup>15</sup> A typical example of this is the legislative regulation of public information. The discrepancies between the Law on Radio Broadcasting (2004) and the Law on Local Self-Government (2007) are a commonly discussed case. The two laws prescribe contradictory norms in regards to the rights of local self-government to set up electronic media sources in minority languages (HCHR, 2009, 242).

doubtlessly contributed to the stability of the region. An important part of the EU's strategy consists of building acceptance for universal principles in parts of the world where there may be little tradition of freedom, democracy, equality, the rule of law or respect for human rights. This is long-term work, but it is vital to shaping the terms of debate about how to organise international affairs.

Since the Copenhagen European Council, the EU keeps emphasizing the importance of securing the rights of ethnic and national minorities as a norm and as a political precondition for new enlargements. The EU conditionality strategy has been crucial to support Serbia efforts in the democratisation process and to help promote human rights, but has some limitations in what it concerns its respect by the society in general. Despite the Serbia progress in this area, with the creation of a complex legal framework, the protection and implementation of human rights in society are still far from accomplishment.

Serbia needs to undergo serious changes in its system for human rights protection. The efforts must be at two different levels: the first one is situated at the government level and it implies to continue adopting international human rights instruments, as a guarantee that it is in the correct way. The second is at society level, where it is important to start dealing with the value changes not only among the citizens, but also among the state officials (the police and the army, specifically). Despite its declarative commitment to modern values, Serbia's value system did not make much progress relatively to the authoritarian model, combined with anarchy as the consequence of the overall devastation of society. Conservatism makes Serbian society xenophobic and intolerant. It is dominated by radical right-wing groups which are present at the University and strongly influence young generations. This has a decisive effect on their value model and, thus, on their perception of others. All this contributed to extreme intolerance towards all minority and vulnerable groups, in which Serbian nationalism is reflected.

Human rights record of the country presents some progress in theory but not in practice. The reasons of the malaise implementation of the existent human rights legislation lies in the lack of coordination among the agents involved in the process, the lack of human rights culture, and responsibility among the individuals on the existent mechanisms for their rights protection.

Whatever policy change is concerned, its occurrence depends on the rational choice of governments and on public acceptance of this change. Thus, the minority protection criteria in EU candidate states or just potential candidates, such as Serbia, includes both the choice of governments to accept certain positive policy measures regarding minorities, as well as governments' policy of persuading the general public about the acceptability of those measures. Since minority issues are a highly sensitive and contested policy area in Western Balkan countries, this request of minority protection is a serious challenge, as far as it affects perceptions, nationalist ideas, minority rights promotion, and implies redistribution or re-allocation of scarce public resources in favour of particular minority groups.

In addition, whatever policy changes and initiatives the Serbia government decides to undertake in favour of Roma minorities, it will have to justify its decisions in front of the general public. So, in this process of policy changes, it is not only domestic policy actors that have to accept those changes. It is also the public and society at large that need to be receptive.

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Received October 24, 2010  
Accepted February 28, 2011

## Abstract

This article explores the role of the European Union in the human rights protection, implementation and promotion in Serbia. It is clear that the EU demands on democratisation in the region of Western Balkans are crucial to achieve the respect for human rights. The human rights standards as part of the conditionality criteria of the EU is a clear message towards the countries aspiring membership. However, Serbia progress in the field has been difficult due to several internal constraints. This paper aims to uncover the democratisation process of Serbia on its path towards the EU, and its progress (or not) regarding human rights protection and implementation.

**Keywords:** Human Rights; conditionality strategy; Serbia.

## Resumo

Este artigo explora o papel da União Europeia na proteção, implementação e promoção dos direitos humanos na Sérvia. Torna-se claro que as exigências da União Europeia em matéria de democratização na região dos Balcãs Ocidentais têm sido fundamentais também ao nível dos direitos humanos. Os direitos humanos como parte dos critérios da política de condicionalidade da União Europeia são uma mensagem clara para os Estados que desejam a adesão. Contudo, o progresso da Sérvia nessa área tem se debatido com questões internas. Este paper visa analisar o processo de democratização da Sérvia no seu caminho para a União Europeia, e o seu progresso (ou não) no que se refere à proteção e implementação dos direitos humanos.

**Palavras-chave:** Direitos Humanos; estratégia de condicionalidade; Sérvia.